

identifying data deleted to
prevent clearly unwarranted

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**



FILE:



Office: PHILADELPHIA (PITTSBURG), PA

Date: **OCT 22 2004**

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 8, 1985, in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic, and he became a naturalized U.S. citizen on April 3, 1996, when the applicant was nine years old. The applicant's mother, [REDACTED] was born in the Dominican Republic, and she is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on July 5, 1998, when he was twelve years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined the applicant had failed to establish that he was legitimated by his father. The district director concluded that the applicant therefore did not qualify as a "child" under section 101(c) of the Act, 8 U.S.C. § 1101(c), and that he was thus not eligible for citizenship under section 320 of the Act.

On appeal, the applicant, through his father, submits a Dominican Republic court document and translation, dated December 18, 2003. The applicant asserts that the court document establishes he was legitimated in the Dominican Republic by his father.

Section 320(a) of the Act allows a child born outside of the United States to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 101(c) of the Act defines "child" for Title III naturalization and citizenship purposes, and states in pertinent part:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

In *Matter of Cabrera*, 21 I&N Dec. 589, 592 (BIA 1996), the Board of Immigration Appeals (Board) found that a child residing or domiciled in the Dominican Republic may qualify as a legitimated child once his or her father acknowledges paternity in accordance with Dominican law.

Article 21 of the Dominican Code for the Protection of Children, which relates to proof of filiation, states that "[s]ons and daughters born out of wedlock may be acknowledged individually by their father either when the birth occurs, or by means of a will, or by a public instrument." See *Matter of Cabrera, supra*, at FN 1.

The present record reflects that the applicant's father acknowledged the applicant in the Dominican Republic, by public instrument on December 18, 2003, when the applicant was eighteen years old. Because section 101(c) of the Act requires that legitimation take place before the applicant reaches the age of sixteen, the applicant has failed to establish that he meets the definition of "child" as set forth in section 101(c) of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden, and the appeal will be dismissed without prejudice.

ORDER: The appeal is dismissed.