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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: SEP 09 2004

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432.

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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DISCUSSION: The waiver application was denied by the Center Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn and the matter remanded to the director for further action consistent with this decision.

The information contained on the applicant's N-600, Application for Certificate of Citizenship (N-600 application) indicates that the applicant was born in Haiti, on March 31, 1990. The applicant's father, [REDACTED] was born in Haiti, and he became a naturalized U.S. citizen on November 15, 2002. The applicant's mother, [REDACTED] was born in Haiti, and she became a naturalized U.S. citizen on June 18, 2002. The N-600 application indicates that the applicant's parents were married in Haiti on December 11, 1990. The applicant was lawfully admitted for permanent residence in the United States on December 27, 1990, pursuant to an immigrant visa petition filed by his mother. The applicant presently seeks a certificate of citizenship.

The director concluded that the applicant's birth certificate, as well as his parents' marriage certificate, were not probative in the applicant's case, because they were issued by a local authority in Port-au-Prince, Haiti, rather than through the Haitian National Archives office. The director supported his decision by stating that all birth certificates and marriage certificates issued in Haiti, on or after July 12, 1983, must be in the form of National Archives extracts, and that locally issued documents are unacceptable. The application was denied accordingly.

On appeal, the applicant's mother states that she is submitting her original marriage certificate and the original of the applicant's birth certificate. The AAO notes that the certificates submitted are originals of the locally issued documents previously submitted to the director. The appeal does not address the director's determination that only a marriage and birth certificate issued by the National Archives in Haiti is acceptable in the applicant's case. The applicant makes no other assertions and provides no other evidence on appeal.

On February 27, 2001, the Child Citizenship Act of 2000 (CCA) amended section 320 of the Act, and repealed section 321 of the former Act. The amended provisions contained in section 320 of the Act are not retroactive and apply only to persons who were not yet eighteen-years-old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant was ten-years-old on February 27, 2001. He is thus eligible to apply for the benefits of section 320 of the Act.

Section 320(a) of the Act, effective on February 27, 2001, 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.

The birth certificate contained in the record reflects that the applicant was born in Port-au-Prince, Haiti, on April 23, 1990, and that his mother is [REDACTED] and his father, [REDACTED]. The marriage certificate contained in the record reflects that the applicant's parents married in Port-au-Prince, Haiti, on December 11, 1990. The record reflects further that [REDACTED] became a naturalized U.S. citizen on June 18, 2002, and that [REDACTED] became a naturalized U.S. citizen on November 15, 2002. In addition, the record reflects that the applicant was admitted into the U.S. as a lawful permanent resident on December 27, 1990, and

that he has resided in the U.S. with his mother since his entry.¹ Thus, if the applicant's birth certificate had been accepted as probative evidence in the present case, the applicant would have qualified for automatic acquisition of citizenship under section 320 of the Act.

The AAO notes that the director also adjudicated the applicant's citizenship claim pursuant to section 321 of the former Act. The Board of Immigration Appeals, held in *Matter of Rodriguez-Tejedor, supra*, that persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time.

Former section 321 of the Act provided, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased;
or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years;
and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record reflects that the applicant's parents did not become naturalized U.S. citizens prior to February 27, 2001. The applicant therefore does not qualify for consideration under section 321 of the former Act.

8 C.F.R. § 320.5 states in pertinent part:

(a) [I]f the decision of the district director is to deny the application for a certificate of citizenship under this section, the applicant shall be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 C.F.R. 103.3(a).

8 C.F.R. § 103.3(a)(1)(i) states in pertinent part:

(b) Denials and appeals – (1) General –

¹ The AAO notes that the applicant's birth certificate was apparently accepted by the Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, CIS) for lawful permanent resident immigration purposes, on December 27, 1990.

- (i) [W]hen a Service officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial.

The AAO finds that in the present case, the director did not explain the specific reasons for his denial of the applicant's citizenship claim. Although the director's decision states that birth certificate documents issued in Haiti, on or after July 12, 1983, must be in the form of Haitian National Archives extracts rather than in the form of locally issued documents, the director provides no Citizenship and Immigration Service (CIS) policy basis for the stated requirement. The record also contains no information explaining the requirement that the applicant's 1990 issued documents must be issued through the Haitian National Archives office in order to be accepted for citizenship purposes. The AAO finds that in order to be substantiated, the director's conclusion must be supported by individualized and specific evidence of fraud or unreliability. In the present case, however, the director's conclusion that the birth certificate and marriage certificate documents are unreliable, is general and unsupported by any official policy or evidence in the record.

Because the director's decision failed to clarify the specific reasons for his denial of the applicant's claim, the AAO finds it necessary to remand the present matter to the director for a new decision explaining any policy directives or fraud investigation findings in the applicant's case. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.