U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

[redacted]

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FILE: [redacted] Office: BUFFALO, NEW YORK Date: APR 26 2005

IN RE:

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

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Dominican Republic on December 24, 1978. The applicant's mother was born in the Dominican Republic. The applicant's father was born in the Dominican Republic and became a naturalized United States (U.S.) citizen on April 20, 1996. The record reflects that the applicant's parents were married in the Dominican Republic, and that they obtained a divorce in the Dominican Republic on September 9, 1988. The applicant was admitted into the United States on January 21, 1984 pursuant to a relative petition filed by his father. The applicant seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The director concluded that the applicant had failed to establish he resided in the U.S. in the legal custody of his U.S. citizen parent, as required by section 321 of the Act. The application was denied accordingly. *Decision of Director*, Buffalo District Office, dated September 29, 2004.

On appeal, the applicant contends that his parents had a mutual understanding that after their divorce, the applicant's father would receive custody of the applicant. In the Notice of Appeal to the AAO, the applicant requested 90 days to submit a brief and additional evidence The AAO received the applicant's appeal approximately six months ago, and no additional documents have been received.

Section 321 of the former Act states in pertinent part that:

(a) A child born outside of the United States of alien parents . . . 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 such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

In the present case, the record reflects that the applicant's father became a naturalized U.S. citizen on April 20, 1996, when the applicant was seventeen years old, and that the applicant was residing in the U.S. at that time pursuant to a lawful admission for permanent residence. Accordingly, the applicant has met the requirements of Sections 321(a)(4) and 321(a)(5) of the former Act.

On September 16, 2003, while the applicant was in custody pending immigration removal proceedings based on criminal convictions, he filed the instant Application for Certificate of Citizenship with the United States Citizenship and Immigration Services (the Service). In support of the application, the applicant submitted a divorce decree for his parents that did not address custody of the children. After the applicant was released from custody, the Service obtained documents that the applicant had submitted to the Immigration Court. The record contains the divorce decree submitted in Immigration Court, which included an attached notation indicating that the applicant's mother stated that page two of the divorce decree provided that custody of the applicant and his siblings was granted to the mother. The record does not contain a copy of the second page of the divorce decree, but the AAO will accept the notation from the court file as evidence of the mother's custody.

The record contains no evidence to establish that the applicant's father obtained an amended divorce decree awarding him legal custody over the applicant and the applicant has provided nothing on appeal to overcome the director's decision. The AAO therefore finds that the applicant has failed to establish that he resided in the legal custody of his U.S. citizen father, as set forth in section 321(a)(3) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish citizenship by a preponderance of the evidence. *See also* § 341 of the Act, as amended, 8 U.S.C. § 1452. The applicant failed to establish that he meets the requirements for citizenship as set forth in section 321 of the former Act and his appeal will be dismissed.

ORDER: The appeal is dismissed.