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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



ER

FILE:



Office: NEW YORK, NY

Date:

AUG 10 2005

IN RE:

Applicant:



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:

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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, 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 on July 22, 1971, in Jamaica. The applicant's father, [REDACTED] was born in Jamaica on March 31, 1945, and he became a naturalized U.S. citizen on July 24, 1987, when the applicant was sixteen years old. The applicant's mother, [REDACTED] was born in Jamaica, and she is not a U.S. citizen. The record reflects that the applicant's parents never married. The applicant was admitted into the United States as a lawful permanent resident on March 21, 1987. He seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he acquired citizenship through his naturalized U.S. citizen father.

The district director determined that the applicant was ineligible for citizenship under section 321 of the former Act because the applicant's mother did not become a naturalized U.S. citizen prior to the applicant's eighteenth birthday, and because the applicant's parents were not legally divorced or separated prior to the applicant's eighteenth birthday. The district director determined further that the applicant did not qualify for citizenship under sections 320 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 1433, because he was over the age of eighteen when the provisions became effective, on February 27, 2001.

On appeal, the applicant asserts that he meets the definition of "child" under Jamaican law, and that he is therefore eligible for citizenship under section 321 of the former Act.

Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c) provides that:

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 sections 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 (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption

The AAO notes that pursuant to the 1976, Jamaican Status of Children Act, all distinctions between legitimate and illegitimate children in Jamaica are abolished once paternity over a child is established. *See Matter of Clahar*, 18 I&N Dec. 1, 2 (BIA 1981). Section 8 of the Jamaican Status of Children Act states that paternity may be demonstrated through specific documents that include a birth certificate reflecting the father's name. The record reflects that the applicant's birth certificate contains his father's name. The applicant was therefore legitimated pursuant to Jamaican law, and he qualifies as a "child" under section 101(c) of the Act.

Section 321 of the former Act provides, 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 applicant does not claim that his mother is deceased or that she became a naturalized U.S. citizen prior to his eighteenth birthday, and the record contains no evidence to indicate that either event occurred. The AAO therefore finds that the conditions set forth in section 321(a)(1) and 321(a)(2) of the former Act have not been met.

The AAO additionally finds that the applicant has failed to establish he meets the legal separation requirements set forth in section 321(a)(3) of the former Act. The applicant does not claim that his parents were married. Moreover, the record contains a sworn statement signed by the applicant's father on March 23, 2002, stating clearly that he never married the applicant's mother. Precedent legal decisions, including the *Brissett v. Ashcroft*, 363 F.3d 130 (2<sup>nd</sup> Cir. 2004) decision referred to by the applicant on appeal, state clearly that, "[l]egal separation of the parents . . . means either a limited or absolute divorce obtained through judicial proceedings . . . where the actual parents of the child were never married, there could be no legal separation of such parent." See *Matter of H*, 3 I&N Dec. 742 (1949) (Quotations omitted). The applicant failed to establish that his parents were legally married or that they obtained a legal separation or divorce prior to his eighteenth birthday. The applicant therefore does not qualify for consideration under former section 321 of the Act.

The AAO notes further that the applicant is not eligible for citizenship pursuant to sections 320 or 322 of the Act. Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001.<sup>1</sup> Legal precedent decisions have made clear that the provisions of the

<sup>1</sup> Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
  - (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.

CCA are not retroactive and that the amended provisions of sections 320 and 322 of the Act 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). Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of sections 320 or 322 of the Act.

8 C.F.R. § 341.2(c) provides 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. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

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Section 322 of the Act provides, in pertinent part that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security, "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], that the following conditions have been fulfilled:

- (1) At least one parent is . . . a citizen of the United States, whether by birth or naturalization.
- (2) The United States citizen parent--
  - (A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
  - (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.