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U.S. Citizenship
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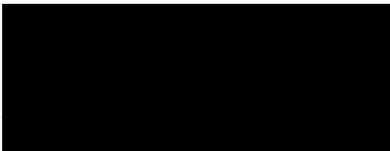


FILE: [REDACTED] Office: BOSTON, MA (HARTFORD, CT) Date: JUN 29 2005

IN RE: Applicant: [REDACTED]

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:



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 District Director, Boston, Massachusetts, 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 Jamaica to unmarried parents on December 25, 1981, in Jamaica. The applicant's father's name was recorded on the applicant's birth certificate on December 28, 1981. The applicant's mother, [REDACTED] was born in Jamaica on November 1, 1961, and she became a naturalized U.S. citizen on February 21, 1992, when the applicant was ten years old. The applicant's father, [REDACTED] was born in Jamaica. He is not a U.S. citizen. The applicant was admitted into the U.S. as a lawful permanent resident on June 25, 1986, when he was four years old. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432, based on the claim that he acquired U.S. citizenship through his mother at the time of her naturalization.

The district director found the applicant had failed to establish that he was a U.S. citizen pursuant to section 321 of the former Act, because he did not qualify as an unlegitimated child born out of wedlock. The application was denied accordingly.

On appeal, counsel asserts that the applicant was not legitimated because his parents were never married, and counsel asserts that the applicant qualifies for U.S. citizenship pursuant to section 321 of the former Act in spite of Jamaican law provisions that legitimate and accord equal treatment to all children born out of wedlock in Jamaica.

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.

The AAO notes that the Jamaican Status of Children's Act of 1976 abolished distinctions between legitimate and illegitimate children once proof of paternity was established. In *Matter of Clahar*, 18 I&N Dec.1, 2 (BIA 1981), the Board of Immigration Appeals stated that:

[A] child within the scope of the Jamaican Status of Children Act may be included within the definition of a legitimate or legitimated "child" set forth in section 101(b)(1) of the Immigration and Nationality Act so long as the familial tie or ties are established by the requisite degree of proof and the status arose within the time requirements set forth in section 101(b)(1).

Counsel asserts that the holding in *Matter of Clahar* does not apply to the applicant's case because *Clahar* was not a citizenship case and because the *Clahar* decision did not specify the specific legitimation requirements in Jamaica. Counsel asserts that the historic Jamaican Legitimation Act thus continues to require marriage between parents in order for a child to become legitimated. Counsel asserts further that the applicant's case is analogous to the U.S. District Court for the District of Connecticut case, *Gorsira v. Loy*, 2005 WL 396437, which found that under Guyanese law legitimation of a child does not occur unless the parents marry.

The AAO finds counsel's assertions to be unpersuasive. Counsel did not provide evidence of any present Jamaican law stating that parents must marry in order to legitimate their child. Furthermore, Section 8 of the Jamaican Status of Children Act states clearly that paternity may be demonstrated through specific documents that include a birth certificate reflecting the father's name, a signed legal acknowledgement by the mother naming the child's father, a legal declaration made by the father, or a court order as to paternity. The record reflects that the applicant's birth certificate contains his father's name. The applicant's father's paternity over the applicant was therefore established at the time of his birth in 1981, and the applicant was legitimated pursuant to the Jamaican Status of Children 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.

ORDER: The appeal is dismissed.