

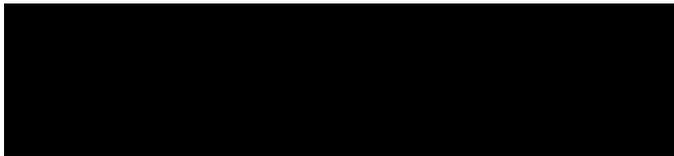
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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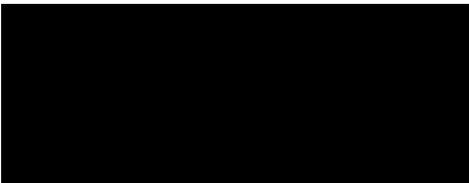
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FILE: [Redacted] Office: NEW YORK, NEW YORK Date: **MAY 23 2005**

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.

For

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 December 3, 1969, in Jamaica. The applicant's mother [REDACTED] was born in Jamaica on February 10, 1942, and she became a naturalized U.S. citizen on September 30, 1989, when the applicant was nineteen years old. The record reflects that the applicant was born out of wedlock, and her father is not recorded on her birth certificate. The applicant does not claim that her father is a U.S. citizen. The record reflects that the applicant was admitted into the U.S. as a lawful permanent resident on August 30, 1981, when she was eleven 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 she acquired U.S. citizenship through her mother.

The record contains two March 16, 1998, decisions by the district director. One decision found the applicant had failed to establish that she qualified for citizenship under section 322 of the former Act, 8 U.S.C. § 1433, because she was over the age of eighteen. The second decision found that the applicant had failed to establish she qualified for citizenship under section 321 of the former Act, because "[d]ue to the laws of Jamaica you have two parents." The application was denied accordingly.

Counsel asserts that the present appeal, filed March 27, 2000, is timely because neither counsel nor the applicant received the March 16, 1998, decisions until February 2000. In support of his assertion, counsel submits copies of the envelope, postmarked February 17, 2000, in which he received the applicant's March 1998 decisions. The record additionally contains certified receipt copies reflecting that the decisions were mailed to the applicant on February 28, 2000.

Counsel asserts further on appeal that the applicant qualifies for U.S. citizenship pursuant to section 321 of the former Act. Counsel asserts that the district director did not provide the applicant with a proper opportunity to present evidence in her case, and that the district director's decision was unclear and failed to specify a legal basis. Counsel additionally asserts that despite Jamaican law provisions that legitimate and accord equal treatment to all children born in Jamaica, the applicant has not been legitimated by her biological father because paternity was not established in her case.

8 C.F.R. § 103.3(a)(2) states in pertinent part:

(i) Filing appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in pertinent part, that, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed."

The record reflects that the applicant received the March 16, 1998, district director decisions on February 28, 2000. The record reflects further that the applicant's appeal was filed on March 27, 2000, within thirty days after service of the decisions. Accordingly, the AAO finds that the present appeal is timely:

Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

...

- 5) If the citizen parent has not 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-
 - (A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or
 - (B) a citizen parent of the citizen parent 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.

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter 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.

The record reflects that the applicant was over the age of eighteen when she filed her Form N-600, Application for Certificate of Citizenship (N-600 Application). She therefore failed to meet the requirements for citizenship as set forth in section 322 of the former Act.

Section 321 of the former Act stated 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.

(Emphasis added). In the present matter, the N-600 application reflects that the applicant's parents did not marry. Moreover, the applicant's birth certificate reflects that no information relating to her father was recorded. The AAO additionally notes that the applicant's mother's U.S. naturalization certificate states that her mother is single. Based on the evidence in the record, the AAO finds that the applicant has established by a preponderance of the evidence that she was born to her mother out of wedlock.

The AAO notes that the Jamaican Status of Children's Act of 1976 (Jamaican Act) abolished distinctions between legitimate and illegitimate children. However, the Jamaican Act contains explicit provisions requiring proof of paternity prior to legitimation of a child.

In *Matter of Clahar*, 18 I&N Dec. 1, 2 (BIA 1981), the Board held:

[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).

(Emphasis added). In *Matter of Moraga*, 23 I&N Dec. 195 (BIA 2001), the Board stated, "[i]n light of the 1983 change in Salvadoran law . . . a child born out of wedlock who was under 18 years of age on December 16, 1983, or who was born on or after that date, may now qualify as the legitimated child of his or her parent". Footnote 6 clarified, however that, "[t]o establish a child's paternity, if he or she is born out of wedlock, the acknowledgment of the child according to the legal procedures established by the Family Code may be required."

Pursuant to section 8 of the Jamaican Act, 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 in the present matter reflects that the applicant's original birth certificate does not contain her father's name, and there is no evidence of an amended birth certificate in the record. The record also contains

no evidence to indicate that the applicant's mother has acknowledged or signed a legal document naming the applicant's father. The record additionally contains no indication that the applicant's father made a legal declaration regarding his paternity over the applicant, and the record does not contain a court decree relating to the paternity of the applicant. Accordingly, the AAO finds that the applicant's paternity has not been established. She has therefore not been legitimated according to Jamaican law.

Nevertheless, the AAO finds that the applicant has failed to meet the age requirements as set forth in section 321(a)(4) of the former Act. The record reflects that the applicant's mother became a naturalized U.S. citizen on September 30, 1989, when the applicant was nineteen years old. The applicant has therefore failed to meet the requirement that she be under the age of eighteen at the time of her mother's naturalization. Accordingly, the applicant has failed to establish that she qualifies for a certificate of citizenship pursuant to section 321 of the former Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.