

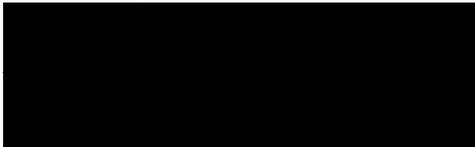
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U.S. Citizenship  
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FILE:



Office: PHILADELPHIA, PA

Date: NOV 18 2005

IN RE:

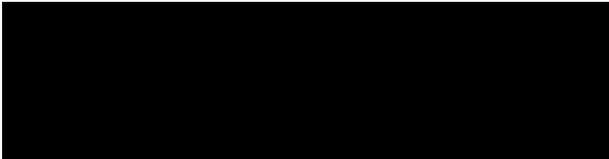
Applicant:



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:



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

**DISCUSSION:** The application was denied by the District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on August 28, 1967, in Jamaica. The applicant's father, [REDACTED] was born in Jamaica on April 10, 1941. The record contains a Certificate of Naturalization reflecting that he became a naturalized U.S. citizen on October 30, 1984, when the applicant was seventeen 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 on April 19, 1982 as a lawful permanent resident, based on an immigrant petition filed by his stepmother. 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 was not 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 section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because he was over the age of eighteen when the provision became effective on February 27, 2001.

On appeal, counsel asserts that the applicant was legitimated by his father prior to his eighteenth birthday, and that he was in the legal custody of his father prior to his eighteenth birthday. Counsel concludes that the applicant is therefore eligible for citizenship under section 321 of the former Act. Counsel does not address the district director's finding that the applicant's parents were not legally separated or divorced, and that he therefore does not qualify for consideration 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 1976, Jamaican Status of Children Act abolishes all distinctions between legitimate and illegitimate children in Jamaica once paternity over a child is established. See *Matter of Clahar*, 18 I&N Dec. 1, 2 (BIA 1981).

The AAO notes that the district director did not find that the applicant was not legitimated by his father or that he did not reside in the legal custody of his father prior to his eighteenth birthday, and the immigrant visa petition evidence contained in the record establishes that the applicant's father publicly acknowledged his paternity over the applicant prior to his eighteenth birthday and that the applicant was thereby legitimated. "[W]here a child born out of wedlock has been properly legitimated, neither parent will be presumed to have a greater right than the other to the legal custody of that child. See *Matter of Rivers*, 17 I&N Dec. 419, 421

(BIA 1980). The AAO finds that the record establishes an un rebutted presumption that the applicant's father and mother shared full legal custody over the applicant at the time of legitimation. The applicant therefore 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.

(Emphasis added). 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 that the legal separation requirements set forth in section 321(a)(3) of the former Act were met. The record contains no evidence to indicate that the applicant's parents were at any time married. "[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 has 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 section 320 of the Act. Section 320 of the Act was 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 birthday as of February 27, 2001.<sup>1</sup> The provisions of the CCA are not retroactive and the amended provisions of section

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

320 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 section 320 of the Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her 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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- (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.