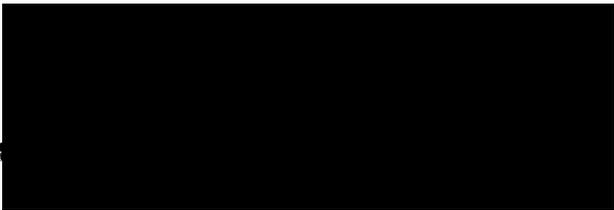


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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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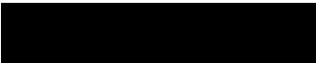
FILE:



Office: BUFFALO, NEW YORK

Date: NOV 22 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:

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, 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 Jamaica on March 31, 21, 1962. The applicant's father, [REDACTED] was born in Jamaica. The applicant's mother, Constance [REDACTED] Henry), was born in Jamaica and became a naturalized United States (U.S.) citizen on June 6, 1979. The record reflects that the applicant's parents were never married. The applicant was admitted into the United States on March 12, 1976 as a permanent resident pursuant to a relative petition filed by his maternal grandfather. The applicant claims to have derived U.S. citizenship through his mother and 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 is the legitimated child of [REDACTED] pursuant to the Jamaican Status of Children Act of 1976, and that the applicant does not qualify for issuance of a certificate of citizenship because only his mother became a naturalized citizen prior to his eighteenth birthday. *Decision of Director*, Buffalo District Office, dated July 11, 2005.

On appeal, the applicant contends that:

The District Director erred in denying applicant's eligibility for issuance of a certificate of citizenship through the naturalization of his mother prior to his 18<sup>th</sup> birthday by concluding that the applicant was the legitimated child of [REDACTED] under the Jamaican Status of Children Act of 1976 (JSCA). The DHS failed to establish applicant's legitimation by clear, unequivocal and convincing evidence because there was no proof of acknowledgement by [REDACTED] as required pursuant [sic] Section 8 of the JSCA during the lifetime of the applicant. The DHS's conclusion was based on uttered testimony and hearsay and without more conclusive evidence that acknowledgement occurred as required under the JSCA, applicant is not a child that has not [sic] been legitimated within the meaning of 101(b)(1) of the Immigration and Nationality Act (INA). Accordingly, the applicant does qualify for issuance of a certificate of citizenship pursuant to section 321 of the INA.

In support of the appeal, the applicant submitted a brief and a copy of the JSCA.

Because the applicant turned eighteen years of age prior to February 27, 2001, section 321 of the former Act applies. 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.

Section 101(b)(1) of the Act provides:

(1) The term "child" means a person under twenty-one years of age who is—

...

(C) 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 or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

In *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), the Board of Immigration Appeals held that the Jamaican Status of Children Act of 1976 (JSCA) had, as of its effective date of October 19, 1976, eliminated all distinctions between children born in and out of wedlock. Thus, a child within the scope of the JSCA may be included within the definition of a legitimate or legitimated "child" pursuant to section 101(b)(1) of the Act provided that the familial tie or ties are established by the requisite degree of proof, and that the person is under 21 years of age and was legitimated before the child reached 18 years of age.

The applicant contends that he derived citizenship through his mother, who became a naturalized U.S. citizen before the applicant turned eighteen. Section 321 of the former Act required the naturalization of both parents prior to the child's eighteenth birthday unless one parent was deceased; there was a legal separation of the parents; or the child's mother was naturalized but the child's paternity had not been established by legitimation. Since only the applicant's mother naturalized prior to his eighteenth birthday, the issue is whether the applicant's paternity was established by legitimation. If the applicant was legitimated, he must establish that both parents became naturalized U.S. citizens before the applicant turned eighteen.

Section 7 of the JSCA provides that the relationship of father and child will be recognized if paternity has been admitted by or established during the lifetime of the father whether by one or more of the types of evidence specified by section 8 or otherwise. Section 7 refers to "the occurrence of any act, event, or conduct which enables that relationship (i.e. father-son)." Such language indicates that a variety of occurrences can establish the father-son relationship. Section 8 provides examples of evidence (e.g. the father's name was entered in the register of births) that will establish paternity, however, the list is not intended to be exhaustive. The AAO notes that the JSCA was designed to give equal legal status to children born out of wedlock, i.e. the legislative intent was to make it easier to establish paternity for children born out of wedlock. As such, the range of acceptable evidence for establishing paternity is broad.

The director analyzed the evidence in the record related to the applicant's paternity as follows:

In your case, although your father was not named on the birth record, you (and your brother) carry his surname, [REDACTED] your mother has identified [REDACTED] to you as your father; you and your siblings resided with your mother and [REDACTED] as a family unit for at least five years; subsequent to your parents split you resided with your father's mother for some periods; on your immigrant visa application your mother's father identified [REDACTED] as your father; and all through your immigration history the only person identified as your father is [REDACTED]. As such, it is the opinion of this Service that you are a legitimated child [REDACTED] and [REDACTED] pursuant to the Jamaican Status of Children Act of 1976.

The AAO agrees with the director's finding that the evidence in the record establishes that the applicant was legitimated under the JSCA. Accordingly, the applicant cannot be issued a certificate of citizenship, because only his mother became a naturalized U.S. citizen before the applicant's eighteenth birthday.

The applicant asserts that "the DHS failed to establish applicant's legitimation by clear, unequivocal and convincing evidence because there was no proof of acknowledgment by [REDACTED] as required pursuant [sic] Section 8 of the JSCA during the lifetime of the applicant," and that DHS based its conclusion on "uttered testimony and hearsay." In support of his assertion that the standard of proof is "clear, unequivocal and convincing," the applicant cited *Woodby v. Immigration and Naturalization Services* [sic], 385 U.S. 276 (1966). In *Woodby*, the United States Supreme Court concluded that in deportation proceedings, the government must establish the facts supporting deportability by clear, unequivocal, and convincing evidence. The AAO notes that *Woodby* is distinguishable from the instant case. First, the applicant filed the present appeal in response to the director's denial of the applicant's claim to derivative citizenship, i.e. the appeal relates to the adjudication of the applicant's claim to derivative citizenship, not to the determination of whether the applicant is deportable. Second, the applicant is seeking a benefit, i.e. derivative citizenship. As such, the applicant, not the government, bears the burden of proof in showing that he is eligible for the benefit sought. Third, the issue in the present case is whether the applicant was legitimated under the terms of the JSCA. The JSCA makes no reference to requiring "clear, unequivocal and convincing evidence" to establish legitimation, and its emphasis on inclusion is contrary to such a standard of proof.

The applicant maintains that in order for section 7 of the JSCA to have legal force, the father must acknowledge paternity through one or more of the types of evidence specified in section 8 of the JSCA. The applicant offered no evidence to support this restricted interpretation of the JSCA. Indeed, the JSCA's emphasis on inclusion contradicts the applicant's interpretation.

Finally, the AAO notes that aside from the applicant's statements, he offered no evidence to establish that he was not legitimated under the terms of the JSCA. As indicated earlier, the record contains a variety of evidence that establishes that the applicant was legitimated under the JSCA.

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.