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**U.S. Citizenship
and Immigration
Services**



FILE:



Office: BUFFALO, NY

Date: **JAN 11 2006**

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, Buffalo, New York. 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 in Guyana on October 17, 1978. The applicant's mother, [REDACTED] was born in Guyana [REDACTED] and she became a naturalized U.S. citizen on June 8, 1996, when the applicant was seventeen years old. The applicant's father, [REDACTED] was born in Guyana and he is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the U.S. as a lawful permanent resident on December 23, 1995, when he was seventeen years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The district director determined that the applicant was legitimated by his father pursuant to Guyanese law as set forth in *Matter of Goorahoo*, 20 I&N Dec. 782 (BIA 1994). The district director determined further that the applicant had failed to establish that both of his parents became naturalized U.S. citizens prior to his eighteenth birthday, as required by section 321 of the former Act. The district director additionally noted 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 went into effect (on February 27, 2001.) The application was denied accordingly.

On appeal the applicant asserts that he was raised by his mother, and that prior to his immigration to the United States his mother obtained custody over him through a Guyanese court. The applicant asserts that his mother is presently attempting to obtain her custody decree. The AAO notes that it has not received any custody decree documentation from the applicant.

Section 321(a) of the former Act provided, in pertinent part, that:

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 both of his parents became naturalized U.S. citizens, and the evidence in the record does not indicate or establish that the applicant's father at any time became a naturalized U.S. citizen. Moreover, the Board of Immigration Appeals (Board) held, in *Matter of Goorahoo*, *supra* at 785, that:

[P]ursuant to the Removal of Discrimination Act, Guyana has eliminated all legal distinctions between legitimate and illegitimate children. Thus, children born out of wedlock in Guyana after May 18, 1983, which is the effective date of the Removal of Discrimination Act, and children who are under the age of 18 prior to that date are deemed legitimate and legitimated children, respectively.

The Board in *Matter of Goorahoo* subsequently held that a person who was born in 1987, and for whom a birth certificate with the father's name reflected that paternity was uncontested, was legitimated for immigration purposes.

In the present matter, the applicant, born in 1978, was under the age of eighteen when the Guyanese Removal of Discrimination Act went into effect in 1983. In addition, the record contains the applicant's birth certificate reflecting that his father is [REDACTED] and the record contains no assertions or evidence to contest [REDACTED] paternity over the applicant. Based on the above facts, the AAO finds that the applicant was legitimated under Guyanese law. He therefore does not meet the requirements for U.S. citizenship as set forth in section 321(a) of the former Act.¹

The AAO notes that section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001. Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

The provisions of the CCA are not retroactive and the amended provisions of section 320 of the Act apply only to persons who were not eighteen years old as of February 27, 2001. *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 amended 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.

¹ The AAO notes that the applicant's parents were not married and thus did not obtain a legal separation. Whether the applicant's mother had legal custody over the applicant is thus not a determinative issue in the present matter.

ORDER: The appeal is dismissed.