

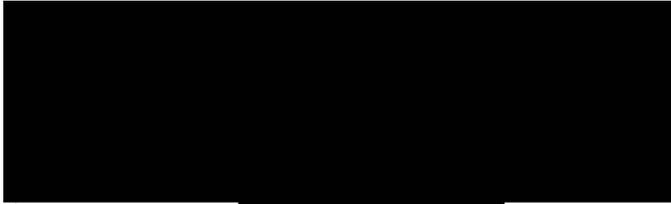
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: HARTFORD, CT

Date: JUL 26 2006

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321(a)(2) of the Nationality Act, 8 U.S.C. § 1432(a)(2), now repealed

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Hartford, Connecticut, 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 January 31, 1980 in Carrefour, Haiti. The applicant's father, [REDACTED] born in Haiti, became a naturalized U.S. citizen on April 21, 1989, when the applicant was nine years old. The applicant's mother, a citizen of Haiti, has been declared an "absentee" by a Justice of the Peace in Carrefour, Haiti based on testimony that she disappeared from her address in Haiti in 1991 and has not been seen since then. The applicant was admitted into the United States as a lawful permanent resident on March 18, 1987 when he was seven years old. The applicant, as stated on appeal, seeks a certificate of citizenship pursuant to former section 321(a)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(2).

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321(a)(2) of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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.

On appeal, counsel contends that, pursuant to section 321(a)(2), the applicant acquired U.S. citizenship through the naturalization of his father in 1989 when he was nine years old as his mother has been missing in Haiti since he was ten months old and is presumed to be dead. The AAO does not agree.

To have been eligible for automatic citizenship under section 321(a)(2) prior to February 27, 2001, an applicant had to establish that at the time the surviving parent naturalized, the other parent was already deceased. In the instant case, the evidence of record includes a November 29, 2005 statement issued by a justice of the peace in Carrefour, Haiti declaring the applicant's mother to be an "absentee," which indicates that her disappearance occurred subsequent to a September 30, 1991 Haitian coup d'etat, not ten months after the applicant's 1980 birth, as claimed by counsel. Accordingly, the record not only fails to support counsel's statements regarding the length of time the applicant's mother has been missing, it indicates that she was not dead at the time that the applicant's father became a U.S. citizen in 1989. Accordingly, the applicant did not automatically acquire U.S. citizenship in 1989 at the time his father naturalized under section 321(a)(2) of the Act.¹

The AAO notes further that the applicant does not qualify for citizenship pursuant to former section 320 of the Act, 8 U.S.C. § 1431. Former section 320 of the Act provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents were U.S. citizens at the time of his birth. The applicant therefore does not qualify for U.S. citizenship under former section 320 of the Act.

The applicant also fails to qualify for U.S. citizenship under former section 322 of the Act, which provided that:

(a) 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.

¹ Although section 320 of the Act, as amended by the CCA, permits a child born outside of the United States to automatically become a citizen based on the naturalization of one parent, the provisions of the CCA are not retroactive. The amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 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, as amended. See *Matter of Rodriguez-Tejedo*, *supra*.

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service 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 AAO notes that, whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, section 322(b) required that an applicant also establish that his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's eighteenth birthday, and that the applicant had taken an oath of allegiance prior to turning eighteen. The applicant in the instant case has not met the requirements set forth in former section 322(b) of the Act. CIS did not approve his certificate of citizenship application before he turned eighteen, and he did not take an oath of allegiance prior to his eighteenth birthday.

For the reasons previously discussed, the applicant has not established that he is eligible for a certificate of citizenship. Accordingly, the AAO will not disturb the director's denial of the application.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The appeal is dismissed.