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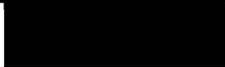


U.S. Citizenship
and Immigration
Services

E2



FILE:



OFFICE: ATLANTA, GA

DATE: JUN 09

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:



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, Atlanta, Georgia. 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 Haiti on June 13, 1974. He turned eighteen on June 13, 1992. The applicant's natural mother, [REDACTED] was born in Haiti and she is not a U.S. citizen. The birth certificate contained in the record does not contain the applicant's father's name. DNA evidence, however establishes [REDACTED] is the applicant's father. [REDACTED] was born in Haiti, and he became a naturalized U.S. citizen on October 11, 1983, when the applicant was nine years old. The applicant's natural parents did not marry. The record reflects that [REDACTED] and his [REDACTED] legally adopted the applicant on December 31, 1979, when the applicant was five years old. [REDACTED] became a naturalized U.S. citizen on January 9, 1996, when the applicant was twenty one years old. The applicant was admitted into the United States as a lawful permanent resident on June 6, 1986, when he was eleven years old. He presently 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 provisions contained in section 321 of the former Act did not apply to the applicant, and that he did not qualify for citizenship under section 320 of the amended Immigration and Nationality Act (the Act) because he was over the age of eighteen when the amended provisions went into effect.

On appeal, counsel asserts that the applicant meets U.S. citizenship requirements because he was born out of wedlock, was adopted by his natural father and entered the U.S. as a lawful permanent resident after his father became a naturalized U.S. citizen.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) provides that for citizenship purposes:

(1) 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.

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 AAO notes that the out of wedlock provisions contained in section 321(a)(3) of the former Act apply specifically to transmission of citizenship from the natural mother to the child. The provisions do not apply to a natural father's ability to transmit U.S. citizenship to his child. The AAO notes further that in order for a natural father to transmit U.S. citizenship pursuant to section 321(a)(3) of the former Act, the applicant must establish that his natural parents were legally separated. The applicant has failed to establish that the legal separation requirements set forth in section 321(a)(3) of the former Act were met. "[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 record reflects that the applicant's natural parents never married. Accordingly, there could be no legal separation between his parents.

The applicant also failed to establish that both of his adoptive parents became naturalized U.S. citizens prior to his eighteenth birthday, and the applicant failed to establish that he is otherwise eligible for citizenship under section 321 of the former Act.

The AAO notes that the applicant also failed to meet the requirements for citizenship as set forth in sections 320 and 322 of the former Act, which required, among other things that one of the applicant's parents be a U.S. citizen at the time of the applicant's birth, or that the applicant's citizenship application be filed and approved prior to his eighteenth birthday.¹

¹ Section 320 of the former Act, in effect prior to February 27, 2001 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.

Section 322 of the former Act provided 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:

The applicant is also not eligible for citizenship pursuant to section 320 of the amended Act. Section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001.² 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 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 in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

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- 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.

....

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.

² Section 320 of the Act states in pertinent part that:

- (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.