



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: BUFFALO, NEW YORK

Date: **MAY 12 2006**

IN RE:

Applicant

APPLICATION:

Application for Certificate of Citizenship under § 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 for a certificate of citizenship was denied by the District Director, Buffalo, New York on December 12, 1996. The applicant filed motions to reconsider or reopen on December 23, 2005 and February 13, 2006, both of which were denied. 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 October 21, 1978 in the Dominican Republic. The applicant's parents married each other for the second time in 1981, and the applicant entered the United States as a lawful permanent resident in 1984. The applicant's father became a naturalized U.S. citizen in 1996, when the applicant was seventeen years old. The applicant's mother became a naturalized U.S. citizen in 2004. The Form N-600 application for a certificate of citizenship is considered pursuant to § 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432. The AAO notes that on his Form I-290B Notice of Appeal, the applicant indicated that he wished to submit a brief and/or further evidence to the AAO within 60 days. As of this date, however, the AAO has not received any further documentation; hence, the record is complete.

Section 321(a) of the former Act provides, 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 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. . . .

The director determined that the applicant did not qualify for citizenship under § 321 of the former Act because there is no evidence that his parents were legally separated subsequent to their 1981 divorce. In reviewing the case twice on motion, the district director found that the applicant's parents' declaration of their intent to physically but not legally separate, made before a notary public in the Dominican Republic in 1995, did not constitute documentation of legal separation or divorce. On his Form I-290B Notice of Appeal, the applicant failed to proffer any specific bases for a finding that the district director erred on this point.

The applicant appears to raise a matter relating to U.S. nationality on his Form I-290B; however, the applicant has claimed that he is a U.S. citizen, and the issue of U.S. nationality is not relevant to this decision. The AAO has reviewed the entire record and concludes that the evidence fails to overcome the district director's determination

that the applicant's parents were never legally separated or divorced. Therefore, the applicant does not qualify for a certificate of U.S. citizenship pursuant to 321 of the former Act.

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

**ORDER:** The appeal is dismissed.