

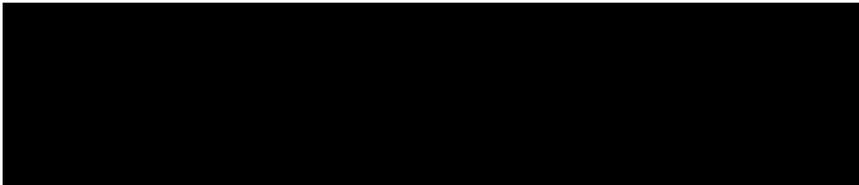


U.S. Citizenship
and Immigration
Services

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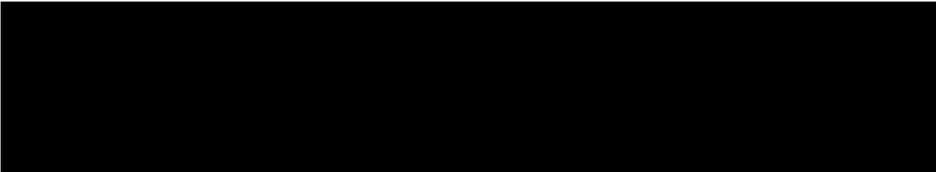


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 26 2007**
WAC 06 021 52511

IN RE: Applicant [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 309(a) and 301(g) of the Immigration and Nationality Act; as amended, U.S.C. §§ 1409(a) and 1401(g)

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center 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 November 5, 1971 in Guyana. The applicant's natural father, [REDACTED] became a naturalized U.S. citizen on June 10, 1986. The applicant's mother, [REDACTED] was, at the time of the applicant's birth, a native of Guyana, and the record does not indicate that her nationality has changed. The applicant's parents did not marry. On October 30, 1982, the applicant was admitted to the United States as a lawful permanent resident. He seeks a certificate of citizenship pursuant to sections 309(a) and 301(g) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. §§ 1409(a) and 1401(g), based on the claim that he acquired U.S. citizenship through his father's naturalization.

The director denied the Form N-600, Application for Certificate of Citizenship, because he found the applicant's out of wedlock birth to preclude him from deriving citizenship through his natural father. The director relied on the provisions of former section 321 of the Act, 8 U.S.C. § 1432, repealed by the Child Citizenship Act of 2000 (CCA).

On appeal, counsel contends that Guyanese law gives equal rights to all children born in Guyana, regardless of whether they are born of natural or legal unions. She asserts that the provisions of the Removal of Discrimination Act of 1983, which introduced these equal rights, establishes the applicant as the legitimate child of his father since it applied to all children born out of wedlock in Guyana who were under 18 years of age on its effective date, May 18, 1983. The applicant, counsel states, was 11 years old on that date. In support of her statements, counsel cites *Matter of Goorahoo*, 20 I&N Dec. 785 (BIA 1994).

The AAO first turns to counsel's claims on appeal regarding the legitimate nature of the applicant's birth under Guyanese law.

In *Matter of Goorahoo*, 20 I&N Dec. 785 (BIA 1994), the Board of Immigration Appeals found the following with regard to the impact of the Guyanese 1983 Discrimination of Removal Act:

[W]hen the country where a child was born eliminates all legal distinction between legitimate and illegitimate children, all children are deemed to be the legitimate offspring of their natural parents from the time that country's laws are changed That is, children born after a country's laws are changed in the above manner are deemed to be legitimate, and children born prior to such a change in the law are deemed to be legitimated as of the date of the change, provided of course, that a child so legitimated was under the age of 18 years at the time the law changed, as required by section 101(b)(1)(C) We consider all legal distinctions abolished only where there is complete equality of filial rights between legitimate children and those born out of wedlock

On our review of the record, . . . we are satisfied that pursuant 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

As the record establishes that the applicant was not yet 18 years of age on the effective date of the 1983 Guyanese Removal of Discrimination Act, the applicant's birth is found to be legitimate.

Accordingly, the section of law under which the applicant must establish his eligibility for a certificate of citizenship is former section 321 of the Act, repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.¹ However, any person who would have automatically acquired citizenship under the provisions of section 321 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 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.

As the applicant seeks a certificate of citizenship based on the 1986 naturalization of his father and does not claim that his mother has died, he must establish his eligibility under section 321(a)(3) of the Act.

¹ The CCA benefited all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was 19 years old on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

Guidance issued by the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services) on February 18, 1997² provides the following discussion of former section 321(a) requirements:

Section 321(a) of the Act provides for acquisition of citizenship of a minor upon the naturalization of both his/her parent(s) (or the surviving parent or the parent with legal custody) provided certain conditions are satisfied. There is no specific order in which the conditions of the law must be satisfied for citizenship as long as all conditions are satisfied before the child's 18th birthday.

...

A child who is given into the custody of a parent following that parent's naturalization (the other parent being an alien) would derive citizenship under Section 321(a)(3) of the Act on the date custody is awarded provided such date is prior to the child's 18th birthday and the child is residing in the United States pursuant to lawful permanent residence on that date. If the child is not residing in the United States on that date but enters the United States to begin lawful permanent residence before age 18, citizenship would be acquired on the date of such entry.

Therefore, to establish eligibility for citizenship under the language of former section 321(a)(3) of the Act, the applicant must prove that prior to the date of his 18th birthday, November 5, 1989, his father had become a U.S. citizen, and that he was a lawful permanent resident in the legal custody of his father subsequent to the legal separation of his parents.

The applicant's father became a U.S. citizen on June 1986 when the applicant was 14 years of age and the applicant was admitted to the United States as a lawful permanent resident on October 30, 1982 at the age of 10 years. However, as the applicant's parents never married, he is unable to establish that he was in the legal custody of his father "subsequent to the *legal separation of his parents* [emphasis added]." Therefore, the applicant is not eligible for a certificate of citizenship under section 321(a)(3) of the Act and the appeal will be dismissed.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this proceeding.

ORDER: The appeal is dismissed.

² Memorandum from [REDACTED] Acting Assistant Commissioner, Naturalization Division, Immigration and Naturalization Service, *Section 321(a) of the INA*, HQ321 (February 18, 1997).