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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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PUBLIC COPY



FILE:



Office: CHICAGO, IL

Date:

MAY 03 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under sections 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432 and section 320 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1431.

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.

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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born in Jamaica on November 1, 1984. The applicant's father was born a Jamaican citizen in St. Thomas, Virgin Islands. The applicant's father became a naturalized U.S. citizen on May 14, 2002, when the applicant was seventeen years old. The applicant's mother was born in Jamaica, and she became a naturalized U.S. citizen on July 2, 2003, when the applicant was eighteen years old. The record does not contain a marriage certificate for the applicant's parents, and the applicant states that his parents were not married at the time of his birth. The applicant indicates that his parents later married, and that they obtained a divorce prior to his eighteenth birthday. The applicant 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 and section 320 of the Immigration and Nationality Act, as amended (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant did not qualify for U.S. citizenship under section 320 of the Act because he failed to establish: 1) that he was under the age of eighteen when his mother became a naturalized U.S. citizen; or 2) that he was in the legal and physical custody of his U.S. citizen father prior to his eighteenth birthday. The district director did not address the applicant's U.S. citizenship claim pursuant to section 321 of the former Act.

The applicant asserts on appeal that both of his parents became naturalized U.S. citizens prior to his eighteenth birthday, and that his U.S. citizenship status has been established because he was issued a U.S. passport. The applicant requests that he be issued a certificate of citizenship.

The AAO notes that as of February 27, 2001, the Child Citizenship Act of 2000 (CCA) repealed section 321 of the former Act, and amended section 320 of the former Act; 8 U.S.C. § 1431. The provisions of the CCA are not retroactive and the amended provision applies only to persons who were not yet eighteen years old as of February 27, 2001. In the present matter, the applicant was under the age of eighteen on February 27, 2001. He therefore meets the age requirement for consideration under section 320 of the Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act provides, 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.

Although section 321 of the former Act was repealed by the CCA, the AAO notes that all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor, supra.*

Section 321 of the former Act provided 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.

In order to qualify for citizenship under section 320 of the Act or section 321 of the former Act, the applicant must first demonstrate that he meets the definition of "child" as set forth in section 101(c) of the Act, 8 U.S.C. § 1101(c). Section 101(c)(1) of the Act provides that:

[T]he 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.

The present record does not contain a marriage certificate for the applicant's parents, and the record reflects that the applicant's parents were not married at the time of the applicant's birth. Accordingly, the applicant must demonstrate that he was legitimated under either Illinois or Jamaican law – the place of residence or domicile of the applicant and his father prior to the applicant's sixteenth birthday.

Illinois law provides that a child is legitimated by the intermarriage of his or her parents. No other form of legitimating may be established. See Illinois Revised Statutes § 40-303, and Illinois Revised Statutes Title 40, § 1351. To establish his parents' marriage and subsequent divorce, the applicant submits a copy of a Petition for Dissolution of Marriage (Petition), signed by the applicant's father on April 16, 1996, indicating that the applicant's parents married on July 21, 1990 in Jamaica, and that the marriage was registered in Jamaica. The AAO finds that the Petition fails to establish the applicant's parents' marriage or divorce. The

record contains no indication that the Petition was ever filed in Court, and the record contains no other evidence to establish that the applicant's parents were legally divorced, or that they ever legally married. Accordingly, the applicant failed to establish that he was legitimated prior to his sixteenth birthday under Illinois law.

The petitioner additionally failed to demonstrate that he was legitimated prior to his sixteenth birthday under Jamaican law. The Jamaican Status of Children's Act of 1976 (Jamaican Act) abolished distinctions between legitimate and illegitimate children. However, the Jamaican Act contains explicit provisions requiring proof of paternity prior to legitimation of a child. The birth certificate issued at the time of the applicant's birth contains no paternal information.

The Board of Immigration Appeals (Board) held in *Matter of Clahar*, 18 I&N Dec. 1, 2 (BIA 1981) that:

[A] child within the scope of the Jamaican Status of Children Act may be included within the definition of a legitimate or legitimated "child" set forth in section 101(b)(1) of the Immigration and Nationality Act so long as the familial tie or ties are established by the requisite degree of proof and the status arose within the time requirements set forth in section 101(b)(1).¹

Pursuant to section 8 of the Jamaican Act, paternity may be demonstrated through specific documents that include a birth certificate reflecting the father's name, a signed legal acknowledgement by the mother naming the child's father, a legal declaration made by the father, or a court order as to paternity.

As previously noted, the birth certificate issued to the applicant at birth contains no paternal information. Moreover, a subsequent birth certificate amending the applicant's paternal information to include his father's name, age, birthplace and occupation, was not issued by Jamaican authorities until June 6, 2005, well after the applicant's sixteenth birthday. The record contains no evidence to indicate that prior to the applicant's sixteenth birthday, the applicant's mother acknowledged or signed a legal document naming the applicant's father. The record additionally fails to establish that the applicant's father made a legal declaration regarding his paternity over the applicant, prior to the applicant's sixteenth birthday, and the record does not contain a court decree relating to the paternity of the applicant. Accordingly, the applicant has failed to demonstrate that paternity was established prior to his sixteenth birthday, or that he was legitimated under Jamaican law prior to his sixteenth birthday. He therefore does not qualify as a "child" under section 101(c) of the Act, or for section 321 of the former Act, derivative citizenship through his father, purposes.

The applicant additionally failed to establish that he derived U.S. citizenship through his mother, as a child born out of wedlock whose paternity has not been established by legitimation. The record reflects that the applicant's mother did not become a naturalized U.S. citizen until July 2, 2003, after the applicant's eighteenth birthday. The applicant therefore did not meet the age requirements set forth in section 321(a)(4) of the former Act.

The AAO notes that the requirements for citizenship set forth in the former and amended Acts are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a certificate of citizenship when an applicant fails to meet statutory provisions for U.S. citizenship. *See Iddir v.*

¹ The Board's holding is equally applicable to the definition of "child" contained in section 101(c) of the Act.

INS, 301 F.3d 492 (7th Cir. 2002). In the present matter, the applicant submitted a copy of a U.S. passport issued to him by the U.S. Department of State on July 10, 2003, as evidence of his U.S. citizenship status. While the applicant's passport constitutes strong evidence of U.S. citizenship status, the AAO finds that the evidence contained in the record before the AAO fails to establish that the applicant meets the statutory requirements for U.S. citizenship under section 320 of the Act and section 321 of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c) 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 failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the application denied.

ORDER: The appeal is dismissed. The application is denied.