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

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FILE:

Office: WASHINGTON, D.C. Date: OCT 02 2007

IN RE:

Applicant:



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:

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, Washington, D.C., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on September 7, 1967 in Georgetown, Guyana. The applicant's birth certificate indicates that his father was [REDACTED] and his mother [REDACTED]. The applicant's mother was born in Guyana on [REDACTED], and became a naturalized U.S. citizen on January 26, 1982, when the applicant was 14 years old. The applicant's mother was married to [REDACTED] in 1942. The record contains a divorce certificate, dated 1970, terminating the applicant's marriage to [REDACTED]. The applicant's mother married [REDACTED] in 1973. The applicant was admitted to the United States as a lawful permanent resident on January 17, 1980, when he was 12 years old. In 1981, the applicant's mother married [REDACTED]. The applicant claims that [REDACTED] is his father. [REDACTED] was born in Guyana on [REDACTED] and passed away on [REDACTED]. He seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed), claiming that he derived citizenship through his mother.

The district director denied the applicant's citizenship claim finding that he did not derive U.S. citizenship because he had been legitimated at birth in accordance with the law in Guyana and because he had failed to establish that his father was a U.S. citizen or that he was deceased.

On appeal, the applicant asserts that his father, Joseph Fields, also went by the name Joseph Lancelot George. He claims that because his father was deceased prior to his 18th birthday, he can derive U.S. citizenship through his mother pursuant to section 321(a)(2) of the former Act, 8 U.S.C. § 1432 (repealed).

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.

The AAO notes that legal precedent decisions have clearly established that the provisions of the CCA are not retroactive and that 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, the AAO finds that he is not eligible for the benefits of section 320 of the amended Act. See *Matter of [REDACTED]*, 23 I&N Dec. 153 (BIA 2001).

The U.S. Supreme Court has further stated "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.'" *Berenyi v. District Director*, 385 U.S. 630, 671 (1967)(citation omitted). Pursuant to 8 C.F.R. § 341.2(c), the applicant must establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

The applicant was under 18 when he was admitted to the United States as a lawful permanent resident and when his mother naturalized. The applicant was born out of wedlock, given that his mother's then-husband, David Roberts, was not the applicant's father. The applicant claims that his father [REDACTED] Fields is the same person. [REDACTED] married the applicant's mother in 1981. He passed away in 1985, when the applicant was 17.

There is not sufficient evidence in the record to determine whether [REDACTED] and [REDACTED] is the same person. Despite the uncertainty regarding the identity of the applicant's father, the AAO can conclude that the applicant derived U.S. citizenship through his mother. If [REDACTED] is the applicant's father, and is not [REDACTED] the applicant derived U.S. citizenship upon his mother's naturalization pursuant to section 321(a)(3) of the Act, 8 U.S.C. § 1432(a)(3). The applicant was in the legal custody of his mother, and [REDACTED]'s paternity was not established by legitimation. See *Matter of Rowe*, 23 I.&N. Dec. 962, 967 (BIA 2006) (overruling *Matter of Goorahoo*, 20 I.&N Dec. 782 (BIA 1994), and holding that "marriage of the parents of a child born out of wedlock is the sole means of legitimation under Guyanese law"). Alternatively, if [REDACTED] the applicant derived U.S. citizenship under section 321(a)(2) of the Act, 8 U.S.C. § 1432(a)(2), because [REDACTED] passed away before the applicant's 18th birthday.

The AAO thus concludes that the applicant has met his burden to establish, by a preponderance of the evidence, that he derived U.S. citizenship through his U.S. citizen mother. The appeal will therefore be sustained.

ORDER: The appeal is sustained.