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

PUBLIC COPY

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[REDACTED]

FILE:

Office: PROVIDENCE, RI

Date:

OCT 22 2007

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (N-600 Application) was denied by the Field Office Director, Providence, Rhode Island. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The record reflects that the applicant was born in the Dominican Republic on October 22, 1994. The applicant's father was born in the Dominican Republic, and he became a naturalized U.S. citizen on February 7, 1989, when the applicant was twelve-years old. The applicant's mother was born in the Dominican Republic, and she became a naturalized U.S. citizen on January 4, 1999, when the applicant was twenty-two years old. The evidence in the record indicates that the applicant's parents were married at the time of the applicant's birth, and that they divorced in October 1979, when the applicant was three years old. The applicant was admitted into the United States as a lawful permanent resident on March 3, 1984, when he was seven 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 field office director determined that the applicant's mother became a naturalized U.S. citizen in 1999, after the applicant's eighteenth birthday, and that the applicant had failed to establish that he was in his U.S. citizen father's custody prior to his eighteenth birthday, as required by section 321(a)(3) of the former Act. The field office director concluded that the applicant therefore did not qualify for U.S. citizenship under section 321 of the former Act. The field office director determined further that the applicant did not meet the requirements for U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The N-600 application was denied accordingly.

On appeal the applicant indicates, through counsel, that his mother was awarded custody over him when his parents divorced in 1979. Through counsel, the applicant asserts however, that his mother subsequently transferred her custody rights over the applicant to his father August 1989. The applicant asserts, through counsel, that he therefore derived U.S. citizenship through his naturalized U.S. citizen father, prior to his eighteenth birthday. The applicant does not address his eligibility for U.S. citizenship under section 320 of the Act.

The AAO notes that section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA) as of February 27, 2001. The provisions of the CCA are not retroactive and the provisions of section 320 of the amended Act apply only to persons who were not yet eighteen years old as of February 27, 2001. *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 consideration under section 320 of the Act.¹

Section 321 of the former Act was repealed on February 27, 2001, however, all persons who became U.S. citizens automatically under section 321 of the former Act, as previously in force prior to February 27, 2001,

¹ Section 320 of the amended 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.

may apply for a certificate of citizenship at any time. *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.

The applicant does not claim that either of his parents died prior to his eighteenth birthday, and the record reflects that the applicant's mother became a naturalized U.S. citizen on January 4, 1999, after the applicant's eighteenth birthday. Accordingly, the applicant does not meet the requirements set forth in section 321(a)(1) and (2) of the former Act. The record indicates that the applicant's parents were married in Santo Domingo, Dominican Republic on June 23, 1973, and that they obtained a divorce in the Dominican Republic on [REDACTED] when the applicant was three years old. The provisions contained in section 321(a)(3) of the former Act therefore apply to the applicant's case.

Legal custody vests by virtue of either a natural right or a court decree. *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970.) The present record does not contain a copy of the applicant's parents' divorce decree, however, the applicant submits a sworn declaration signed by his mother on August 28, 1989, stating in pertinent part that she obtained a divorce from the applicant's father on October 26, 1979, and that she was awarded guardianship over the applicant at the time of her divorce. The applicant's mother states that due to health reasons she returned to the Dominican Republic and granted permanent guardianship and care of the applicant to his father, until he reached legal age.

Based on the applicant's mother's statement, she obtained a court decree of custody over the applicant. The record contains no indication that the applicant's mother's sworn declaration transferring custody over the applicant to his father, was filed with a court in the United States or in the Dominican Republic, or that a custody order was legally amended in court transferring custody over the applicant to his father. The applicant therefore failed to establish that his father obtained legal custody by virtue of a court decree.

The AAO notes that in the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be

regarded as having legal custody. *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950.) The present record contains no corroborative evidence to establish that the applicant lived with his father at any time, or that the applicant was at any time in the actual uncontested custody of his father. The AAO finds that the applicant therefore failed to establish by a preponderance of the evidence that he was in his divorced father's custody prior to his 18th birthday, as required by section 321(a)(3) of the former Act.

Under 8 C.F.R. § 341.2(c), the burden of proof is on the applicant to establish his 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 will be denied.

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