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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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FILE:



Office: MIAMI (TAMPA), FL

Date:

APR 17 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432.

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (N-600 application) was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Jamaica on August 7, 1960. He turned eighteen on August 7, 1978. The applicant's mother, [REDACTED], was born in Jamaica, and she became a naturalized U.S. citizen on November 20, 1975, when the applicant was fifteen years old. The applicant's father, [REDACTED] was not a U.S. citizen. The record reflects that the applicant's parents were not married at the time of the applicant's birth. The applicant's parents subsequently married in New York on October 12, 1968, when the applicant was eight years old. They obtained a divorce in Florida on January 24, 1983, when the applicant was twenty-two years old. The applicant was admitted into the United States pursuant to a lawful admission for permanent residence on April 8, 1969, when he was eight years old. He presently seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he derived U.S. citizenship from his mother.

The district director determined that the applicant did not satisfy the requirements of section 321 of the former Act because he was legitimated when his parents married on October 12, 1968, and he failed to establish that his father became a naturalized U.S. citizen. The district director found that the applicant did not qualify for citizenship under section 320 of the Immigration and Nationality Act, as amended, (the Act), 8 U.S.C. § 1431, because he was over the age of eighteen when the provision went into effect on February 27, 2001. The applicant's Form N-600, Application for Certificate of Citizenship, was denied accordingly.

On appeal, the applicant does not dispute that he is ineligible for citizenship under section 320 of the Act, as amended. The applicant asserts, however, through counsel, that he derived U.S. citizenship pursuant to section 321 of the former Act. The applicant asserts that his birth certificate contains no paternal information, and that paternity has not been established for legitimation purposes. The applicant asserts further that his parents married in New York in 1968, and that he did not enter and begin living with his parents in the United States until six months later. The applicant concludes that he was therefore not in his father's legal custody at the time of legitimation, and that he thus meets the requirements for derivative citizenship under section 321(a)(3) of the former Act.

It is noted 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 provisions apply only to persons who were not yet eighteen years old as of February 27, 2001. In the present matter, the applicant was over the age of eighteen on February 27, 2001. He is therefore ineligible for consideration under section 320 of the Act. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001.)<sup>1</sup>

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<sup>1</sup> 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.

Although section 321 of the former Act was repealed by the CCA, 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. *Matter of Rodriguez-Tejedor, supra.*

Section 321 of the former Act states in pertinent part that:

- (a) A child born outside of the United States of alien parents . . . 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.

(Emphasis added.) Section 101(c) of the Act, 8 U.S.C. § 1101(c), 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 . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

The present record reflects that the applicant's parents were not married at the time of the applicant's birth. To establish that he is eligible for a certificate of citizenship under the second prong of section 321(a)(3) of the Act, the applicant must demonstrate that he was not legitimated under either Jamaican or New York law – the place of residence or domicile of the applicant and his father – prior to his sixteenth birthday.

New York law provides that legitimation occurs upon the marriage of a child's natural parents. *See* New York Domestic Relations Law § 24 (NYDL § 24). *See also, Matter of Reyes*, 16 I&N Dec. 4775 (BIA 1978).

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- (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.

The Legitimation Act of Jamaica provides that, “[a] child born before the marriage of his parents shall be considered their legitimate child from the date of the marriage and shall be entitled to all rights of a legitimate child.” *Matter of Clahar*, 16 I&N Dec. 484, 486 (BIA 1978) (citations omitted.) *Matter of Clahar* was modified in 1981 to demonstrate that, where a child’s parents have not married, the Jamaican Status of Children’s Act of 1976 (Jamaican Act) abolished distinctions between legitimate and illegitimate children. *Matter of Clahar*, 18 I&N Dec. 1, 2 (BIA 1981).

The AAO notes that the Jamaican Act contains specific provisions relating to proof of paternity prior to legitimation of a child:

[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).<sup>2</sup>

*Matter of Clahar, supra*. Under 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.

The birth certificate issued to the applicant at birth, however, contains no paternal information, and the AAO finds that 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, proof of paternity has not been established for legitimation purposes under the Jamaican Act.

Section 24 of the NYDL provides that in the State of New York:

[A] child born of parents who, though not married at the time of the child’s birth, later marry is also rendered the legitimate child of both parents. The statute, in effect, creates a presumption of legitimacy of a child whose parents marry at any time. However, the statute applies only where parenthood is conceded or proven. Hence, where the mother of a child born out of wedlock marries a man, the child is not presumed to be the legitimate child of the man unless he concedes paternity or his paternity is judicially declared or established. . . . This is the purpose of the statute, to legitimate children who are known or proven to be the offspring of fathers who, at some point, married the mothers of such children. The statute was not intended to establish paternity in contested proceedings.

(Citations omitted.)

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<sup>2</sup> The Board’s holding is equally applicable to the definition of “child” contained in section 101(c) of the Act.

Counsel for the applicant contends that the marriage of the applicant's parents did not legitimate the applicant as he was not in his father's legal custody at that time, but was living in Jamaica with his grandmother. However, in *Matter of Rivers*, 17 I&N Dec. 419 (BIA 1980), the Board of Immigration Appeals held that the natural father of a child is to be presumed to have legal custody of that child at the time of legitimation in the absence of affirmative evidence indicating otherwise, finding that:

- (1) Unless local law otherwise dictates (i.e., through statutory or case law giving greater rights to one parent than to the other), a father's natural right to the custody of a child he has lawfully legitimated is equal to the natural right of the mother to the child's custody.

Accordingly, the AAO finds that the applicant's paternity was established by legitimation prior to his sixteenth birthday and that at the time of his legitimation he was in the legal custody of his father, as required by the definition of child in section 101(c) of the Act. Therefore, he is not eligible for a certificate of citizenship based on the naturalization of his mother under the second prong of section 321(a)(3) of the Act. Neither is the applicant able to demonstrate that he derived citizenship from his mother under the first prong of section 321(a)(3) of the Act as his parents did not divorce until 1983, when the applicant was already 22 years of age. The record also fails to establish that, prior to the applicant's 18<sup>th</sup> birthday, his father also became a U.S. citizen, as required for a certificate of citizenship under section 321(a)(1) of the Act. As the applicant's father was not deceased prior to his 18<sup>th</sup> birthday, the applicant cannot acquire citizenship under section 321(a)(2) of the Act. Accordingly, the appeal will be dismissed.

Counsel has asserted that Citizenship and Immigration Services (CIS) has failed to offer proof to support its findings regarding the applicant's legitimation and custody. However, in the present proceeding, the burden of proof is not on CIS but on the applicant. The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The regulation at 8 C.F.R. § 341.2 provides that the burden of proof shall be on the claimant to 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." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant in the present case has not met his burden.

**ORDER:** The appeal will be dismissed.