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

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[REDACTED]

FILE:

Office: NEW YORK, NY

Date:

**APR 22 2008**

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.

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, New York, New York, 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 August 16, 1982 in the Dominican Republic. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED].

The applicant's mother became a U.S. citizen upon her naturalization on August 21, 1992,<sup>1</sup> when the applicant was ten years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on November 23, 1996, when the applicant was 14 years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432 (repealed), claiming that he derived citizenship through his mother.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 upon finding, in relevant part, that the applicant had been legitimated by operation of law or, alternatively, by his father's acknowledgement. Therefore, the district director concluded that the applicant was ineligible to derive citizenship under section 321 of the former Act, 8 U.S.C. § 1432, and the application was accordingly denied.

On appeal, the applicant, through counsel, contends that the district director erred in denying the citizenship claim. *See* Brief in Support of Form I-290B, Notice of Appeal to AAO. Specifically, counsel maintains that the applicant was not legitimate at the time of his mother's naturalization in 1992.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 1982. The applicant was over 18 on the effective date of the Child Citizenship Act of 2000. Section 321 of the former Act, 8 U.S.C. § 1432, is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432, 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-

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<sup>1</sup> The director's decision mistakenly indicates that the applicant's mother naturalized on November 13, 1991.

(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 finds that the applicant has established that he was under 18 when his mother naturalized and at the time of his admission to the United States as a lawful permanent resident. The AAO finds, however, that he was legitimated by operation of law in 1995, before his admission to the United States as a lawful permanent resident, and therefore did not derive U.S. citizenship under section 321 of the former Act, or under any other provision of law.

Under *Matter of Martinez*, Interim Dec. 3329 (BIA 1997), a child residing or domiciled in the Dominican Republic is legitimated if he is under the age of 18 on January 1, 1995 (the effective date of the Code for the Protection of Children and Adolescents, Law No. 14-94) and was acknowledged by his father prior to his 18<sup>th</sup> birthday, unless he was legitimated under the country's former laws. When a country, such as the Dominican Republic, eliminates all legal distinctions between children born in and out of wedlock, "all children born out of wedlock are deemed to be legitimate or legitimated children of their natural fathers from the time that country's laws are changed." *Matter of Martinez, supra*, citing *Matter of Hernandez*, 19 I&N Dec. 14 (BIA 1983) and *Matter of Clarke*, 18 I&N Dec. 369 (BIA 1983).

The applicant was under 18 when the Dominican Republic eliminated the distinctions between children born in and out of wedlock. The applicant's parents were never married, but his father's formal recognition is evidenced in his birth certificate. The applicant therefore was legitimated under the Code for the Protection for Children and Adolescents, by operation of law, on January 1, 1995.<sup>2</sup>

8 C.F.R. § 341.2(c) 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." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has failed to meet his burden to prove that paternity was not established by legitimation. He is therefore not eligible for U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1431, and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The applicant was not legitimated at the time of his mother's naturalization in 1992, but he was also not a lawful permanent resident of the United States at that time. Contrary to the applicant's claim, he therefore did not derive U.S. citizenship in 1992.