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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: NEW YORK, NY

Date: JUN 03 2008

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

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

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 December 21, 1989 in Guyana. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's mother is deceased. The applicant's father became a U.S. citizen on February 6, 2007, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on August 14, 2001, when he was 11 years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship through his father.

The district director concluded that the applicant had failed to establish that he was residing in the legal and physical custody of a U.S. citizen father. The director further found that the applicant had not been legitimated, and therefore did not meet the definition of "child." The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that he was legitimated in accordance with the laws of Guyana. The applicant claims that Guyana has eliminated the distinctions between legitimate and illegitimate children and, as such, all children in Guyana are deemed to be legitimate. *See* Statement on Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by photographs of the applicant's family, a copy of part of the Constitution of Guyana, a copy of a section of an immigration sourcebook.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The 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 record reflects that the applicant was admitted to the United States as a lawful permanent resident in 2001, and that the applicant's father naturalized in 2007. The applicant was born out of wedlock, and his parents were never married to each other. The applicant reached the age of 18 on December 21, 2007. The question remains whether the applicant falls within the definition of "child," specifically, whether he was legitimated under the laws of his (or his father's) residence or domicile before his 16th birthday.

The AAO finds that the applicant was not legitimated under Guyanese law. *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"). The AAO further finds that the applicant was not legitimated under New York law. *See Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation). The applicant therefore does not meet the definition of "child" found in section 101(c) of the Act, 8 U.S.C. § 1101(c), and thus did not automatically acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.

Pursuant to 8 C.F.R. § 341.2(c), 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 not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.