



U.S. Citizenship
and Immigration
Services

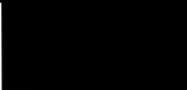
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

E2

PUBLIC COPY



FILE:



Office: NEW YORK, NY

Date: **MAY 01 2008**

IN RE:

Applicant:



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

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.

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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the N-600 application will be denied.

The record reflects that the applicant was born in Guyana on December 21, 1989. He turned eighteen on December 21, 2007. The applicant's mother was not a U.S. citizen. The applicant's father was born in Guyana, and he became a naturalized U.S. citizen on February 6, 2007, when the applicant was seventeen years old. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on August 14, 2001, when he was eleven years old. He presently 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 derived citizenship through his father.

The district director concluded that the applicant was ineligible for citizenship under section 320 of the Act because he failed to establish he was legitimated by his U.S. citizen father, and therefore did not meet the definition of "child" as set forth in section 101(c) of the Act, 8 U.S.C. § 1101(c). The district director found further that the applicant had failed to demonstrate that he was in the legal and physical custody of his citizen father, as set forth in section 320(a)(3) of the Act. The N-600 application was denied accordingly.

On appeal the applicant states, through counsel, that the law in Guyana makes no distinction between a child born in or out of wedlock. The applicant concludes that he has therefore been legitimated under Guyanese law. To support his assertions, the applicant submits a copy of the Constitution of Guyana, and he refers to the Board of Immigration Appeals (Board) decision, *Matter of Goorahoo*, 20 I&N Dec. 782 (BIA 1994.) Through counsel, the applicant additionally indicates that evidence in the record demonstrates that the applicant's parents had a common law marriage, and that the applicant and his father had a parent-child relationship.

Section 320 of the Act provides that a child born outside of the U.S. may automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (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)(1) of the Act, 8 U.S.C. § 1101, defines the term, "child" for citizenship purposes, and states in pertinent part that:

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.

In the present matter, the record reflects that the applicant was born out of wedlock. Thus, in order to qualify as the child of his father for immigration purposes, the applicant must establish that prior to his sixteenth birthday he was legitimated by his father pursuant to the law in Guyana (the applicant's former residence/domicile) or the law in New York (his father's residence/domicile.) The applicant must then establish that he was in his father's legal custody at the time of legitimation.

New York State law provides that the parents of a child born out of wedlock must marry one another in order for the child to become legitimated. *See* New York Domestic Relations Law, Section 24; *see also*, *Matter of Espinoza*, 17 I&N Dec. 522 (BIA 1980) (discussing legitimation requirements under New York law.) Because the applicant's parents never married, the applicant has not been legitimated under New York State law.

The AAO finds that the applicant has also failed to establish that he was legitimated by his father under laws in Guyana. The Board held in, *In Re Rowe*, 23 I&N Dec. 962, 966, 967 (BIA 2006), that the sole means of legitimation of a child born out of wedlock in Guyana is the marriage of the child's parents. In making its decision, the Board explicitly overruled its previous holding in *Matter of Goorahoo*, *supra* at 785, which held that all children born in Guyana after May 18, 1983, were legitimate because the Guyanese Removal of Discrimination Act eliminated all legal distinctions between legitimate and illegitimate children. The Board found in, *In Re Row*, that its holding in *Matter of Goorahoo* was in error, and the Board stated that, "[t]he Removal of Discrimination Act did not expressly override or amend the Legitimacy Act which provides that the marriage of a child's parents is the sole means of legitimation under Guyanese law." *In Re Rowe*, *supra* at 966-67. The Board subsequently concluded that, "[t]he Legitimacy Act continues to provide that the marriage of the parents of a child born out of wedlock is the sole means of legitimation under Guyanese law. Because the respondent's parents never married . . . his paternity was not established through legitimation." *Id.*

The regulations provide in pertinent part at 8 C.F.R. 1003.1(g), that:

Except as Board decisions may be modified or overruled by the Board . . . decisions of the Board . . . shall be binding on all officers and employees of the Department of Homeland Security . . . in the administration of the immigration laws of the United States. . . .

In re Rowe, *supra*, explicitly overruled the holding in *Matter of Goorahoo*, *supra*, and held that the parents of a child born out of wedlock in Guyana must marry in order for the child to be legitimate. Based on the Board holding in *In Re Rowe*, the AAO finds that because the applicant's parents did not marry, the applicant has not been legitimated under the law in Guyana. Accordingly, the applicant did not qualify as a child under section 101(c) of the Act prior to his eighteenth birthday, and he does not qualify for consideration of his citizenship claim under section 320 of the Act.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her *claimed citizenship* by a *preponderance of the evidence*. *The applicant has not met his burden* in the present matter. The appeal will therefore be dismissed and the N-600 application will be denied.

ORDER: The appeal is dismissed. The application is denied.¹

¹ The present decision is without prejudice to the applicant's filing, if eligible, a Form N-400, Application for Naturalization under section 316 of the Act, 8 U.S.C. § 1427.