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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: NEW YORK, NY

Date: MAY 14 2008

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, 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 Ghana. The applicant's mother, [REDACTED] (maiden name, [REDACTED], was born in Ghana, and she became a naturalized U.S. citizen on June 7, 1996. The applicant's father, [REDACTED] was born in Ghana, and he is not a U.S. citizen. 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 February 27, 1997. He presently seeks a certificate of citizenship based on the claim that he derived U.S. citizenship through his mother.

The district director determined that illegitimate children do not become citizens upon the naturalization of their mothers, and that the applicant did not meet the definition of "child" as set forth in section 101(c) of the Act, 8 U.S.C. § 1101(c), because he failed to establish that he was legitimated by his father. On this basis, the district director determined that the applicant was ineligible for 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 that he is eligible for derivative citizenship because his mother is his custodial parent, and he has been legitimated through her.

The AAO notes that the record contains two different birth certificates for the applicant. A birth certificate registered on September 18, 1990, submitted and used by the applicant for all U.S. immigrant visa and lawful permanent resident purposes, states that the applicant was born on August 19, 1981. A subsequent birth certificate registered on February 19, 1997, was submitted by the applicant with the present N-600 application and states that the applicant was born on August 19, 1984. The record contains no court documentation or any other information regarding the different birth certificates and birth years submitted by the applicant. As such, the AAO finds that a change in the applicant's birth date is not justified for purposes of his citizenship claim. The August 19, 1981, birth date contained on the applicant's earlier registered birth certificate, and used by the applicant for all U.S. immigrant visa and lawful permanent resident purposes, shall therefore be used by the AAO for purposes of the present application.

It is noted that the district director appears to have used the August 19, 1984, date of birth in the adjudication of the applicant's derivative citizenship claim. On this basis, the district director erroneously applied the provisions of section 320 of the Act to the applicant's citizenship claim. Section 320 of the former Immigration and Nationality Act (former Act) was amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001. Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

Legal precedent decisions have made clear that the provisions of the CCA are not retroactive and that the amended provisions of section 320 of the Act apply only to persons who were not eighteen years old as of February 27, 2001. In the present matter, the record reflects that the applicant turned eighteen on August 19, 1999. Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001.)¹

The CCA repealed section 321 of the former Act. Nevertheless, 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 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.

¹ The district director's finding that an unlegitimated child may not derive citizenship through his naturalized mother under section 320 of the Act was also in error.

Assuming an alien child meets all other requirements of Section 320 and 322, an alien child who was born out of wedlock and has not been legitimated is eligible for derivative citizenship when the mother of such a child becomes a naturalized citizen.

See September 26, 2003, Memorandum by William R. Yates, CIS Acting Associate Director, entitled, "Eligibility of Children Born out of Wedlock for Derivative Citizenship"

(Emphasis added.) Section 101(c) of the Act provides, in pertinent part, that for 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 or adoption.

Under the Immigration and Nationality Act, a child born out of wedlock whose paternity has not been established by legitimation before the age of sixteen, may derive citizenship through his or her naturalized mother.

In the present matter, the record reflects that the applicant's parents did not marry. The applicant provided no information or evidence pertaining to legitimation laws in Ghana. An advisory opinion from the Library of Congress entitled, "Children Born Out of Wedlock and Legitimation in Ghana" (June 3, 1994) (LOC 94-1737) states that every child is legitimate in Ghana, and that the concept of illegitimacy and its social and legal consequences are foreign to Ghanaian customs and traditions. The Library of Congress further found that no law has been enacted on the legitimation of children born out of wedlock in Ghana, and that the existence of the father's name on the child's birth certificate reflects the father's acknowledgment and legitimation of the child. In the present matter, the birth certificate submitted by the applicant contains his father's name. It thus appears that the applicant was acknowledged, and legitimated by his father in Ghana prior to his sixteenth birthday

The Board held in *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980), that a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise. The present record contains no evidence to indicate that the applicant's father did not have legal custody over the applicant. Accordingly, the AAO finds that the applicant was legitimated in Ghana prior to his sixteenth birthday, as provided for in section 101(c) of the Act. Because paternity over the applicant was established by legitimation, the applicant failed to establish that he meets all of the requirements contained in section 321(a)(3) of the former Act. The applicant additionally failed to demonstrate that his father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday, as set forth in section 321(a)(1) of the former Act. The applicant also failed to establish that the requirements contained in section 321(a)(2) of the former Act were met.

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 failed to meet his burden of proof 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.²

² The present decision is without prejudice to the applicant's filing, if eligible, a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.