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U.S. Department of Homeland Security

Citizenship and Immigration Services

OFFICE OF ADMINISTRATIVE APPEALS
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
ton, D.C. 20536

[redacted]

FIL[redacted] Office: NEW YORK, NY Date: JAN 07 2004

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant was born on May 21, 1988, in Freeport, Grand Bahama, and he is a citizen of Jamaica. The applicant's mother, [redacted] was born in Jamaica on November 1, 1958. She became a naturalized United States (U.S.) citizen on June 7, 2001. The applicant's natural parents were never married and the record contains no evidence that the applicant was legitimated by his natural father. The applicant was lawfully admitted to the United States for permanent residence on February 28, 1990. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The interim director concluded that the applicant had failed to meet the definition of "child" as defined in section 101(c) of the Act, 8 U.S.C. § 1101(c)(1). The application was denied accordingly.

On appeal, counsel asserts that the applicant was issued a U.S. passport on April 11, 2003, and that he qualifies for U.S. citizenship under section 320 of the Act.

Section 320 of the Act states that a child born outside of the U.S. may 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.

Section 101(c) of the Act 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, and except as otherwise provided in section 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating

> or adopting parent or parents at the time of such legitimation or adoption.

A September 26, 2003, Memorandum, by William R. Yates, Citizenship and Immigration Services (CIS), Acting Associate Director, entitled, "Eligibility of Children Born out of Wedlock for Derivative Citizenship" interprets Section 101(c)(1) of the Act, and states:

> 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.

In the present case, the record contains a birth certificate establishing the applicant's out of wedlock birth to his mother on May 21, 1988. The record additionally reflects that the applicant's mother became a naturalized U.S. citizen on June 7, 2001, that the applicant was lawfully admitted for permanent residence in the United States on February 28, 1990, and that the applicant has permanently resided in the U.S. since 1990. In addition, the applicant is under the age of 18 and he has continuously resided in the legal and physical custody of his mother. The applicant therefore meets the definition of "child" as set forth in section 101(c) of the Act, and he is entitled to automatic citizenship pursuant to section 320 of the Act.

ORDER: The appeal is sustained.