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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

E2 JUN 01 2004

FILE: [redacted] Office: PHILADELPHIA, PA Date:

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on April 10, 1986, in Kingston, Jamaica. The applicant's mother was born in Jamaica on February 27, 1967, and she became a naturalized United States (U.S.) citizen on February 27, 2002, when the applicant was fifteen years old. The record reflects that the applicant's natural parents were never married and the applicant's father's name is not contained on the applicant's birth certificate. The applicant was lawfully admitted into the United States for permanent residence on October 21, 1992. He 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 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, the applicant, through his mother, indicates that the applicant has not met his natural father, that it is unclear whether the applicant's natural father knows he has a son, and that the applicant qualifies for U.S. citizenship under section 320 of the Act.

Section 320 of the Act, effective February 27, 2001, 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.

The record reflects that the applicant's natural parents were never married, and because there is no evidence regarding who the applicant's father is or whether he has ever established paternity over the applicant, the AAO finds that the record fails to establish that the applicant was legitimated by his natural father despite the passage of the Jamaican Status of Children Act of 1976 (which essentially eliminated legal distinctions between children born in and out of wedlock). *See Matter of Clahar,* 18 I & N Dec.1 (BIA 1981).

A September 26, 2003, Memorandum, b 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 April 10, 1986. The record additionally reflects that the applicant's mother became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The record also reflects that the applicant was lawfully admitted for permanent residence in the United States prior to turning eighteen and that he has permanently resided in the U.S. in the legal and physical custody of his mother since 1992. 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.