U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

Date: OCT 07 2004

FILE: [redacted] Office: LOUISVILLE, KY (NEW ORLEANS, LA)

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to section 321 of the Act, 8 U.S.C. § 1432.

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The application was denied by the District Director, New Orleans, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on February 14, 1975, in Haiti. The record reflects that the applicant's mother, was born in Haiti on September 17, 1942, and that she became a naturalized U.S. citizen on March 6, 1992, when the applicant was seventeen years old. The record indicates that the applicant's father was born in Haiti and has no claim to U.S. citizenship. The applicant's parents married in Haiti in 1972. They divorced in Florida on March 12, 1986, when the applicant was eleven years old. The applicant was admitted into the United States as a lawful permanent resident on August 30, 1991, at the age of sixteen. He presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The district director concluded that the applicant had failed to meet the requirements for citizenship under section 321 of the former Act because the applicant's parents shared legal custody over the applicant after their divorce. The application was denied accordingly.

On appeal, the applicant asserts that his father has not been a part of his life and that pursuant to legal guidelines he meets the legal custody and other requirements set forth in section 321 of the former Act.

The AAO notes that as of February 27, 2001, the Child Citizenship Act of 2000 (CCA) repealed section 321 of the former Act, and amended sections 320 and 322 of the former Act, 8 U.S.C. §§ 1431 and 1433. The provisions of the CCA are not retroactive and the amended provisions apply only to persons who were not yet eighteen years old as of February 27, 2001. The applicant was over the age of eighteen on February 27, 2001. He is therefore not eligible for the benefits of sections 320 or 322 of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

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. *See 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.

The applicant failed to meet the requirements set forth in sections 321(a)(1) or 321(a)(2) of the former Act. The evidence in the record establishes, however, that the applicant meets the requirements set forth in subsections (3), (4) and (5) of section 321 of the former Act.

The record reflects that the applicant's mother became a naturalized U.S. citizen in 1992, when the applicant was seventeen years old. The record reflects further that the applicant was admitted into the U.S. at the age of sixteen, pursuant to a lawful admission for permanent residence, and that he has resided permanently in the United States. The record additionally contains evidence establishing that the applicant's parents obtained a legal divorce in Dade County, Florida on March 12, 1986, and the divorce decree reflects that the applicant's mother was granted primary physical custody over the applicant, and that both parents shared legal custody (referred to as parental responsibility pursuant to § 61.13, Fla. Stat., as amended), over the applicant.

The AAO notes that section 321 of the former Act does not require that the applicant establish his U.S. citizen mother had *sole* legal custody over the applicant. Moreover, in *Matter of Rivers,* 17 I&N Dec. 419, 422 (BIA 1980), the Board of Immigration Appeals (Board) held that an applicant whose natural parents shared custody over their child satisfied the legal custody requirement for immigration purposes.[1]

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant has established that he meets the requirements for U.S. citizenship under section 321 of the former Act. The appeal will therefore be sustained.

ORDER: The appeal is sustained.

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[1] Specifically, the Board held that:

> [R]ather than require affirmative evidence that the mother of a legitimated child has been deprived of custody, we will presume that the father has not been divested of his natural right to equal custody in the absence of affirmative evidence indicating otherwise.

See Matter of Rivers at 422. The Board clarified further that:

> Unless there is evidence to show that the father of a legitimated child has been deprived of his natural right to custody, he will be presumed to share custody with the mother, and to satisfy the legal custody requirement of section 101(b)(1)(C).