U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: JUL 14 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under § 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:

[redacted]

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 District Director, New York, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Jamaica on December 10, 1974. The applicant's parents, who were both born in Jamaica, were married in New York in 1999. At the time the applicant was born, his parents were not married to each other, but his father's name appears on the applicant's birth certificate. The applicant's mother became a naturalized citizen in 1992, when the applicant was seventeen, and his father became a naturalized U.S. citizen in 1997, when the applicant was twenty two. The applicant seeks a certificate of citizenship pursuant to § 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he became a U.S. citizen when his mother naturalized.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under §§ 320, 321, or 322 of the former Immigration and Nationality Act (the former Act), and the application was denied accordingly. On appeal, counsel disagrees with the district director's determination with respect to the applicant's ineligibility under § 321 of the former Act. Counsel asserts that the applicant was not legitimated prior to his eighteenth birthday; thus, he became a U.S. citizen as the illegitimate child of a naturalized U.S. citizen mother.

The AAO notes that the applicant does not benefit from provisions of the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001 and amended §§ 320 and 322 of the former Act and repealed § 321 of the former Act. However, all persons who acquired citizenship automatically under § 321 of the former Act may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). The applicant in the present matter was born in 1974; hence, § 321 of the former Act applies.

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:
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> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or
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> (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.

Counsel asserts that the applicant was not legitimated while he was under the age of eighteen, because the Jamaican Status of Children Act (JSCA) of 1976 only applies to children born after its enactment. The JSCA guarantees that all children whose paternity has been admitted or established should enjoy the same legal rights to succession, inheritance, etc., whether their parents are married to each other or not. The JSCA does not limit its application to children born after its enactment, as counsel suggests. JSCA § 3(3) states that its provisions apply to all children, whether born before or after its effective date of November 1, 1976, regardless of the child's place of birth or the parents' domicile. Pursuant to the JSCA § 8, paternity may be demonstrated through specific documents, including a birth certificate reflecting the father's name. The applicant's father is listed on his birth certificate; therefore, the applicant was legitimated in 1976 prior to his second birthday by operation of the JSCA.

In *Matter of Clahar,* 18 I&N Dec. 1 (BIA 1981), the Board of Immigration Appeals held that children under the purview of the JSCA may be considered to be legitimate or legitimated within the meaning of § 101(b)(1) of the Act, as long as the familial tie has been established by the requisite degree of proof, and the status arose within the time frame provided in § 101(b)(1) of the Act. Hence, Citizenship and Immigration Services (CIS) considers the applicant in the instant case to be a legitimate child, notwithstanding the fact that the applicant's status falls under naturalization rather than immigration definitions. As a legitimate child, the applicant did not meet the statutory provision set forth at § 321(a)(3) of the former Act, and he did not become a U.S. citizen when his mother naturalized in 1992. Since his father did not naturalize until after his eighteenth birthday, the applicant also does not qualify for citizenship under § 321(a)(1) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.