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

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FILE: [redacted] Office: PHILADELPHIA, PA Date: JUL 11

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321(a)(3) of the Immigration and Nationality Act; 8 U.S.C. § 1432(a)(3), now repealed

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania 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 on January 18, 1976 in Haiti. The applicant's natural father, [redacted], became a naturalized U.S. citizen on November 12, 1996, when the applicant was 20 years of age. The applicant's mother, [redacted], is a citizen of Haiti. The applicant's parents did not marry. The applicant was admitted to the United States as a lawful permanent resident on July 28, 1999, when he was 23 years of age. He seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship through his father's naturalization.

The district director considered the applicant's claim to citizenship under former section 321(a) of the Act and denied the Form N-600, Application for Certificate of Citizenship, because he found that the applicant had not been admitted to the United States as a lawful permanent resident prior to his 18th birthday. The district director also noted that the applicant's father had not become a citizen before the applicant turned 18 years of age and that his mother and father had never married, thus preventing the applicant from being placed in the legal custody of his father following their legal separation. *Decision of the District Director.*

On appeal, the applicant contends that he has derived citizenship through his father because [redacted]s applied for naturalization when the applicant was only 17 years of age. The applicant contends that as he was not yet 21 years of age at the time [redacted]s naturalized, the provisions of the Child Status Protection Act (CSPA) allow him to derive citizenship through [redacted]s' naturalization. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated November 18, 2007.

The section of law under which the applicant must establish his eligibility for a certificate of citizenship is former section 321 of the Act, repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.[1] However, any person who would have automatically acquired citizenship under the provisions of section 321 prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321 of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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

[1] The CCA benefited all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was 25 years old on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

> (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 AAO first considers whether the record establishes the applicant as a child for the purposes of section 321 of the Act. Section 101(c) of the Act, 8 U.S.C. § 1101(c) 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 . . . 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.

On January 27, 1959, Haiti abolished all legal distinctions between Haitian children born in and out of wedlock. In *Matter of Richard*, 18 I&N Dec. 208 (BIA 1982), the Board of Immigration Appeals noted that when a country eliminates all legal distinctions between legitimate and illegitimate children, all subsequently born children are deemed to be the legitimate off-spring of their natural father for immigration purposes. It held that, as of January 27, 1959, all persons born out of wedlock in Haiti and acknowledged by their natural fathers are deemed to be legitimate children.

In that the record includes a birth registration from the National Archives of Haiti, which establishes that [redacted] registered the applicant's January birth on March 6, 1976 and acknowledged the applicant as his son, it demonstrates that the applicant was legitimated by his natural father prior to his 16th birthday. Further, the registration of the applicant's birth is also sufficient proof that, at the time he was legitimated, the applicant was in the legal custody of his father. 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. *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980). Accordingly, the record establishes the applicant as a child for the purposes of section 321 of the Act.

As the applicant seeks a certificate of citizenship based solely on the 1996 naturalization of Mr. [redacted] he must establish his eligibility under section 321(a)(3) of the Act. Guidance issued by the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services) on February 18, 1997[2] provides the following discussion of former section 321(a) requirements:

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[2] Memorandum from Terrance M. O'Reilly, Acting Assistant Commissioner, Naturalization Division, Immigration and Naturalization Service, *Section 321(a) of the INA*, HQ321 (February 18, 1997).

> Section 321(a) of the Act provides for acquisition of citizenship of a minor upon the naturalization of both his/her parent(s) (or the surviving parent or the parent with legal custody) provided certain conditions are satisfied. There is no specific order in which the conditions of the law must be satisfied for citizenship as long as all conditions are satisfied before the child's 18th birthday.

Accordingly, to establish eligibility for citizenship under the language of former section 321(a)(3) of the Act, the applicant must prove that prior to the date of his 18th birthday, January 18, 1976, his father had become a U.S. citizen, and that he was living in the United States as a lawful permanent resident in the legal custody of his father subsequent to the legal separation of his parents.

The record, however, establishes that the applicant was 20 years old at the time of 1996 naturalization and that he was 23 years of age when he was admitted to the United States as a lawful permanent resident in 1999. Further, in that the applicant's parents were never legally married, he is unable to establish that prior to his 18th birthday, they obtained the divorce or other legal separation necessary to satisfy the requirements of section 321(a)(3) of the Act. Accordingly, the applicant has not demonstrated that he is eligible for derivative citizenship under section 321(a)(3) of the Act.

The applicant contends that the provisions of the CSPA allow him to benefit from his father's naturalization because he was only 17 years of age at the time his father submitted his application for citizenship. However, the provisions of the CSPA, Pub.L. 107-208, which allow the beneficiaries of certain immigrant visa petitions to retain the classification of child even though they have reached the age of 21 years, applies only to petitions filed under Title II of the Act. The AAO notes that the applicant is not the beneficiary of an immigrant visa petition, but has filed the Form N-600 to establish his eligibility for derivative citizenship under Title III of the Act. Accordingly, the provisions of the CSPA do not apply in this matter and do not allow the applicant to retain eligibility for derivative citizenship under section 321(a) of the Act.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The regulation at 8 C.F.R. § 341.2 provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.