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U.S. Citizenship
and Immigration
Services

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[redacted]

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FILE: [redacted] Office: MIAMI, FL Date: MAY 29 2008

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Certificate of Citizenship under Section 321(a)(3) of the Immigration and Nationality Act; 8 U.S.C. § 1432(a)(3), now repealed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

[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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida 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 February 11, 1973 in Haiti. The applicant's natural father, [redacted], became a naturalized U.S. citizen on June 23, 1986. The applicant's mother, [redacted], is a citizen of Haiti. The applicant has submitted documentation to establish that his parents married in 1983 and divorced in 1986. On November 18, 1988, the applicant was admitted to the United States as a lawful permanent resident. He seeks a certificate of citizenship pursuant to section 321(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a), based on the claim that he acquired U.S. citizenship through his father's naturalization.

The director denied the Form N-600, Application for Certificate of Citizenship, because she found that the applicant had failed to prove that prior to his 18th birthday, he was in the custody of his father following the legal separation of his parents, as required to derive citizenship under the provisions of former section 321(a)(3) of the Act. *Decision of the District Director*, dated September 28, 2007.

On appeal, counsel contends that the applicant's detention has prevented him from obtaining the documentation necessary to establish his parents' marriage and divorce. She asserts that the applicant is unable to travel outside the United States as a result of his felony convictions and requests 90 days in which to file a brief and/or additional evidence. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated October 5, 2007. On March 18, 2008, the AAO contacted counsel with regard to the additional evidence that was to be submitted within 90 days. As of this date, counsel has not responded. Accordingly, the record is found to be complete.

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 28 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 the applicant's father registered the applicant's February birth on May 11, 1973 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 1986 naturalization of his father, 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, February 11, 1991, 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 establishes that the applicant was 13 years old at the time of his father's 1986 naturalization and that he was 15 years of age when he was admitted to the United States as a lawful permanent resident in 1988. To demonstrate that, prior to his 18th birthday, he was also in the legal custody of his father following the legal separation of his parents, the applicant has submitted the following evidence related to the marriage and divorce of his parents: a September 25, 2007 affidavit sworn by the applicant's mother stating that she married the applicant's father in 1983 and divorced him in 1986; and an extract from the Registry of Divorce Certificates of the Community of Croix-des-Bouquets, Haiti, which states that the applicant's parents were divorced on November 8, 1983. The record also contains a sworn statement from the applicant, dated September 26, 2007, attesting to his belief that his parents were married in 1983 and divorced in 1986. However, neither the statements made by the applicant and his mother, nor the submitted extract establish the marriage or divorce of the applicant's parents.

As discussed by the district director in her decision, the registry extract submitted by the applicant is counterfeit and serves to undermine the applicant's claim regarding his parents' divorce. The statements made by the applicant and his mother, unsupported by any type of documentary evidence, are insufficient proof of the divorce both claim occurred in 1986. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In that no evidence in the record credibly demonstrates that the applicant's parents were divorced in 1983 or 1986, the applicant has failed to prove that he was in the legal custody of his father following the legal separation of his parents prior to his 18th birthday. Accordingly, he has not established eligibility for a certificate of citizenship under section 321(a)(3) of the Act and the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.