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

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[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: NOV 18 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Former 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.

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office 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 Jamaica. The applicant's mother, [redacted] became a naturalized U.S. citizen on January 21, 2000, when the applicant was 19 years old. The individual claimed by the applicant as his father, [redacted] acquired U.S. citizenship on October 8, 1985, when the applicant was five years of age. The applicant's parents never married. The applicant was admitted to the United States as a lawful permanent resident on October 16, 1980 at the age of four months. The applicant seeks a certificate of citizenship based on his maternal grandmother's naturalization.

The applicant seeks to establish his claim to citizenship under the requirements of former section 320 of the 1952 Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. Although these requirements were amended by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001, any person who would have acquired citizenship under them 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).

Former section 320 of the Act provided that:

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when
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> (1) such naturalization takes place while such child is under the age of 18 years; and
>
> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

On appeal, the applicant contends that he derived U.S. citizenship through his grandmother as she had become a U.S. citizen prior to the issuance of the immigrant visa that brought the applicant and his mother to the United States and had assumed legal custody of him upon his arrival. He states that, under Title III of the Act, he, therefore, acquired U.S. citizenship through his mother and grandmother.

While the AAO notes the applicant's claim to citizenship under former section 320 of the Act, it is not persuasive. Individuals eligible for a certificate of citizenship under former section 320 must have been born to parents, one of whom was a U.S. citizen at the time of his or her birth. In the present case, neither of the applicant's parents were U.S. citizens on the date of his birth. The applicant's mother held no status of any kind in the United States until her October 16, 1980 admission as a lawful permanent resident.[1] Moreover, the record also fails to establish that the applicant's out-of-wedlock birth was ever legitimated, thereby

[1] The AAO notes that may have acquired citizenship under former section 321(a) of the Act upon her admission to the United States as a lawful permanent resident in 1980. The record, however, does not provide sufficient evidence to establish that this is the case. Nevertheless, as [redacted]s admission as a lawful permanent resident, a requirement for citizenship under section 321(a) of the Act, did not take place until after the applicant's birth, she was not a U.S. citizen when he was born.

allowing him to be classified as a child under section 101(c) of the Act. In *Matter of* [redacted] 24 I&N Dec. 544 (BIA 2008), the Board of Immigration Appeals has held that the sole means of legitimating a child born out of wedlock in Jamaica is the marriage of the child's natural parents. As the applicant's parents never married, he has not been legitimated under Jamaican law and the record fails to establish that his natural father legitimated him under U.S. law. For both these reasons, the AAO will not consider the applicant's claim to citizenship under former section 320 of the Act further.

As the son of naturalized U.S. citizens, the applicant must establish his claim to citizenship under either former section 321, which was repealed by the CCA, or former section 322 of the Act.

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:
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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.

The AAO notes that, like former section 320, the requirements of former section 321 of the Act must have been met prior to the applicant's 18th birthday. Accordingly, it finds that the applicant has not established eligibility for a certificate of citizenship under section 321(a)(1) of the Act based on the naturalization of both his parents. He has failed to demonstrate that the [redacted] who became a U.S. citizen on October 8, 1985 is his father and the naturalization of [redacted] did not take place until January 21, 2000, when the applicant was already 18 years of age. As neither of the applicant's parents is deceased, he also does not have a claim to citizenship under section 321(a)(2). The applicant is also unable to satisfy the requirements of former section 321(a)(3) as the naturalization of [redacted] did not take place until the applicant was 19 years old. Therefore, the applicant has not established eligibility for citizenship under former section 321(a) of the Act.

Former section 322 of the Act allowed:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, ["Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The child is physically present in the United States pursuant to a lawful admission.

(3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years-

a. the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or
b. a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The AAO notes that former section 322 of the Act allows an applicant to acquire U.S. citizenship based on the residence of a U.S. citizen grandparent in the United States when a U.S. citizen parent is unable to meet its physical presence requirements. However, as is the case with former sections 320 and 321 of the Act, all the requirements of former section 322 must be satisfied prior to an applicant's 18th birthday, including requiring the applicant's application for citizenship to have been approved by Citizenship and Immigration Service (CIS) and the oath of allegiance to have been taken prior to reaching the age of 18 years. The applicant in the instant case has not met the requirements of former section 322 as he was over 18 years of age when his mother became a U.S. citizen. Further, he was also over 18 years of age on the date he filed the instant application for a certificate of citizenship and is, therefore, unable to meet the requirements of former section 322(b). Accordingly, although the applicant's maternal grandmother may meet the physical presence requirements of former section 322(a)(5)(b), he is not eligible for a certificate of citizenship under former section 322 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). As previously noted, 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. The appeal will, therefore, be dismissed.

ORDER: The appeal is dismissed.