U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: Office: BUFFALO, NY Date: JUL 14 2009

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Operations Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 17, 1980 in Haiti. His birth certificate indicates that his parents are [redacted] and [redacted] The applicant claims that his parents were never married. He was admitted to the United States as a lawful permanent resident on July 1, 1990, when he was nine years old. The applicant claims that his father became a U.S. citizen upon his naturalization in 1991. The applicant's mother was naturalized on January 4, 2001, when the applicant was 20 years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed), claiming that he derived citizenship through his father.

The field operations director denied the applicant's citizenship claim. The director first noted that the applicant was ineligible for benefits under the Child Citizenship Act of 2000 (CCA) because he was over 18 years old on its effective date. The director found that the applicant had failed to establish that [redacted] was his father. Further, the director stated that the record did not establish that the applicant was legitimated or whether his parents were married. The director concluded that the applicant did not derive U.S. citizenship pursuant to section 321 of the former Act, 8 U.S.C. § 1432 (repealed) and the application was accordingly denied.

On appeal, the applicant states that [redacted] is his father "because his name is on [his] birth certificate." *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant further states that he resided with his father until he was 14 years old. *Id.*

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1980. The applicant was over 18 on February 27, 2001, the effective date of the CCA. The CCA is not retroactive. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432, is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432, 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.

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[1]

The AAO notes that the applicant indicates in his Form N-600, Application for Certificate of Citizenship, that he is the son of [redacted] and [redacted]. He further indicates that his father became a U.S. citizen in 1991 and his mother in 2001. He states that his father was born on July 8, 1961. The AAO notes that the applicant's file does not contain a copy of the applicant's claimed father's naturalization certificate or birth record. USCIS records do contain a naturalization certificate for a [redacted] born on July 9, 1961 and naturalized on February 15, 1996. The AAO notes that this [redacted] is the son of [redacted] and [redacted] USCIS records indicate that the applicant's mother's parents were [redacted] and [redacted]. They further indicate that the applicant immigrated with his mother in 1990 on the basis of a petition for alien relative filed by the applicant's maternal grandmother, [redacted].

The AAO finds that the applicant has not established that [redacted] is his biological father. USCIS records suggest that [redacted] is his maternal uncle. Therefore, the applicant did not derive U.S. citizenship upon the naturalization of [redacted]

The AAO notes further that there is no evidence that the applicant was legitimated in accordance with either New York or Haitian law, even if it can be established that [redacted] is his biological father. Pursuant to *Matter of Richard,* 18 I&N Dec. 208 (BIA 1982), under the Civil Code of Haiti, as amended

[1] The definition of "child" in section 101(b)(1)(D) of the Act, 8 U.S.C. § 1101(b)(1)(D), is inapplicable to citizenship and naturalization cases.

by the 1959 Presidential Decree, children born out of wedlock after January 27, 1959, and acknowledged by their natural father have the same rights and obligations as legitimate children, except for offspring of adulterous or incestuous relations. Acknowledgment of a natural child is made through a special instrument executed before an Official of the Civil Registry if it is not made in the birth registration act. Acknowledgment cannot benefit a child born from an incestuous or adulterous union. Pursuant to *Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988), the subsequent marriage of an applicant's biological parents is required for legitimation under New York law. The record indicates that the applicant's mother was never married, and there is no evidence that a special instrument of acknowledgment was executed by the applicant's father.

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. 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." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has failed to meet his burden to prove that [redacted] is his father, or that was legitimated. Therefore, he cannot establish that he derived U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1431. The appeal will be dismissed.

ORDER: The appeal is dismissed.