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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**

E₂



FILE:



Office: HOUSTON, TX

Date:

DEC 28 2010

IN RE:

Applicant:



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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Houston, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant states that he was born on May 7, 1981 in Sierra Leone to [REDACTED]. The applicant's parents were divorced on July 9, 1990. The applicant's mother became a U.S. citizen upon her naturalization on February 20, 1998, when the applicant was 16 years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident in 1994. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his mother's naturalization pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The field office director denied the application upon finding that the applicant had failed to establish his name, date of birth or maternity. On appeal, the applicant submits additional documentation, including results of a DNA test and school records, in support of his claim that [REDACTED] is the same person and that he was born on May 7, 1981 to [REDACTED]. He claims to derive U.S. citizenship

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has failed to establish his eligibility for citizenship and the appeal will be dismissed for the reasons discussed below.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); see also *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (holding that the amendments to the Act enacted by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) are not retroactive and apply only to persons who were not yet 18 years old as of February 27, 2001). Former section 321 of the Act is therefore applicable in this case.

Former section 321 of the Act, stated, 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 (1) of this subsection, or the parent 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 applicant claims that he was born on May 7, 1981 and that his mother, [REDACTED], became a U.S. citizen on February 20, 1998. The DNA test results in the record indicate that [REDACTED] biological mother. The divorce decree terminating [REDACTED] marriage to Hamid Kamara (the applicant's father) indicates that the applicant was residing in Sierra Leone with his father and therefore not within the jurisdiction of the Texas court entering the divorce judgment. At issue in this case, whether or not the applicant can establish his identity or birth date, is whether he was in his mother's legal custody upon his parents legal separation as required by former section 321(a)(3) of the Act.

Legal custody vests by virtue of "either a natural right or a court decree." *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The applicant's parents' divorce decree does not address the issue of the applicant's custody, finding that the children of the marriage were residing outside the jurisdiction of the court (with their father). Where, as in this case, the parents have legally separated but there is no formal, judicial custody order, the parent having "actual, uncontested custody" is to be regarded as having "legal custody" of the child. *See Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, *supra*, at 856). There is no evidence in the record indicating that the applicant was in his mother's "actual, uncontested custody." Although the applicant was admitted to the United States in 1994 on the basis of an immigrant petition filed by his step-father, the record does not establish that he resided with his mother between 1994 and 1999, in her "uncontested custody." Therefore, the applicant cannot establish that he was in his mother's legal custody before his eighteenth birthday and did not derive U.S. citizenship upon her naturalization.

"There 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 burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.