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: [redacted] Office: HARLINGEN, TX Date: JUL 13 2010

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

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 $585. 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, Harlingen, Texas. 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 September 17, 1986 in Jamaica. The applicant's parents are [redacted] The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on August 22, 1997, when the applicant was 10 years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a conditional permanent resident on July 31, 2001, when he was 13 years old. The applicant's eighteenth birthday was on September 17, 2004. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director determined that the applicant did not automatically acquire U.S. citizenship through his father because he was not legitimated under Jamaican law and therefore not a "child" for citizenship purposes. The director further noted that the applicant had failed to establish that he had resided in his father's legal and physical custody. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he was residing in his father's legal and physical custody. *See* Statement Accompanying Form I-290B, Notice of Appeal to the AAO.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act, as amended, states in pertinent part that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
> (2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

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 . . . .

The record shows that the applicant was born out of wedlock. At the outset, the AAO must determine if the applicant was legitimated under the law of the applicant's or his father's residence or domicile. Jamaican law requires the marriage of the applicant's parents to establish legitimation. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). The applicant was not legitimated under the law of Jamaica because his parents were never married to each other. Legitimation in Maryland, the applicant's father's state of residence, can be accomplished through a court order, a written acknowledgement or recognition of paternity, or marriage of the natural parents. *Matter of Chambers*, 17 I&N Dec. 117 (BIA 1974). The applicant was legitimated under the laws of Maryland because he was recognized by his father.

The question remains, however, whether the applicant can establish that he was residing in his father's legal and physical custody prior to his eighteenth birthday. 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 regulations provide that legal custody will be presumed "[i]n the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." 8 C.F.R. § 320.1 (defining "legal custody"). The Act defines the term "residence" as "the place of general abode . . . his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). There is no evidence in the record to indicate that the applicant resided with his father during the relevant time period (between his admission as a lawful permanent resident and his eighteenth birthday). To the contrary, the applicant's immigration records show that he was admitted to the United States pursuant to a visa petition filed on his behalf by his stepfather and that he resided with his mother and stepfather after his arrival in the United States. In addition, the applicant's parents' affidavits indicate that although the applicant frequently visited his father, the applicant resided with his mother upon arriving in the United States in 2001 and until his eighteenth birthday. The applicant therefore was not residing in the United States in the legal and physical custody of his U.S. citizen father.

"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 is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.