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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

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[redacted]

FILE: [redacted] Office: HIALEAH, FLORIDA Date: JUN 01 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF PETITIONER:

[redacted]

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 for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Hialeah, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Haiti on January 31, 1975. The applicant's parents were not married at the time of his birth. The applicant was admitted to the United States as a lawful permanent resident on October 20, 1984. The applicant's mother became a naturalized U.S. citizen on June 4, 1991. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his mother.

The director determined that the applicant did not qualify for citizenship under former section 321(a)(1) of the Act, 8 U.S.C. § 1432(a)(1), because only his mother became a naturalized U.S. citizen. *See Decision of the Director*, dated Sep. 30, 2009. The director also determined that the applicant did not qualify for citizenship under section 320(a) of the Act, 8 U.S.C. § 1431(a), because he was over the age of 18 on February 27, 2001. *Id.* The director denied the application accordingly. *Id.* On appeal, the applicant contends through counsel that the director erred in failing to consider his eligibility for citizenship under former section 321(a)(2) – (5) of the Act, 8 U.S.C. § 1432(a)(2) – (5). *See Form I-290B, Notice of Appeal*, dated Oct. 13, 2009.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering this decision on appeal.

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Former section 321(a) of the Act provided, in pertinent part:

> A child born outside of the United States of alien parents . . . 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 such child is unmarried and under the age of eighteen 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 eighteen years.

The order in which the requirements are fulfilled is irrelevant, as long as all requirements are satisfied before the applicant's 18th birthday. *Matter of Baires-Larios*, 24 I&N Dec. at 470.

Section 321(a)(3) of the Act provides that an out-of-wedlock child may derive citizenship through the naturalization of his mother if "the paternity of the child has not been established by legitimation." In Haiti, a child born out of wedlock is legitimate upon acknowledgment by his or her natural father. *Matter of Richard*, 18 I&N Dec 208, 210 (BIA 1982). Here, the applicant was acknowledged by his father on his birth certificate. Accordingly, the applicant does not meet the requirements for derivative citizenship set forth in section 321(a)(3) of the Act.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. 8 C.F.R. § 341.2(c). Here, the applicant has not established by a preponderance of the evidence that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act prior to his 18th birthday. Accordingly, the appeal will be dismissed.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967). The applicant must meet this burden by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under former section 321 of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.