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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **JUL 05 2013** Office: NEW YORK, NY

FILE: [REDACTED]

IN RE: Respondent: [REDACTED]

APPLICATION: Cancellation of Certificate of Citizenship under Section 342 of the Immigration and Nationality Act; 8 U.S.C. § 1453.

ON BEHALF OF RESPONDENT:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The respondent's Certificate of Citizenship was cancelled by the District Director, New York, New York, and the director's decision came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on January 6, 2011. The respondent filed a motion to reopen and reconsider, which was dismissed on April 25, 2012 as untimely filed. The respondent filed a second motion to reopen and reconsider on May 31, 2012. The respondent's motion will be granted. The AAO's January 6, 2011 decision will be affirmed and the appeal will remain dismissed.

The AAO notes that the regulation at 8 C.F.R. § 341.5(e) provides that once a Form N-600, Application for Certificate of Citizenship, has been rejected and the time in which to appeal has expired, a respondent must be instructed to file a motion to reopen, accompanied by the rejected application and the specified fee. The respondent in this case did not file a new Form N-600, and this motion therefore does not fall within the purview of the regulation at 8 C.F.R. § 341.5(e).

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The regulations, at 8 C.F.R. § 103.5(a)(3), provide further that a "motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy."

The respondent's motion is accompanied by a brief, copies of an unpublished decision of the U.S. Court of Appeals for the Second Circuit (relating to the issue of legitimation under Jamaican law), and a legal opinion letter submitted by [REDACTED] (relating to legitimation under the law of the Dominican Republic). The respondent's motion meets the requirements of a motion to reconsider and will therefore be granted.

On appeal, the respondent maintained that the district director erred in cancelling his certificate of citizenship. Specifically, the respondent has claimed that he was legitimated under the laws of the Dominican Republic. As noted above, the instant motion is accompanied by copies of a Second Circuit decision remanding a case involving Jamaican legitimation to the Board of Immigration Appeals. The motion is also accompanied by a previously submitted letter by a Dominican lawyer stating that, in her legal opinion, the respondent was legitimated under the laws of the Dominican Republic. The brief accompanying the respondent's motion includes a citation to the above-mentioned Second Circuit case, but relates mostly to the respondent's tardiness in filing his previous motion.

Section 342 of the Act, 8 U.S.C. § 1453, provides, in relevant part, that:

The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of citizenship . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the

reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

As noted in the AAO's January 6, 2011 decision, the district director properly notified the respondent of her intent to cancel the Certificate of Citizenship and afforded him an opportunity to respond as required by the Act and the regulations.

The respondent was born on December 6, 1968 in the Dominican Republic. The respondent's parents are [REDACTED] and [REDACTED]. The respondent's father became a U.S. citizen upon his naturalization in 1980. The respondent's mother passed away in 1976. The respondent was admitted to the United States as a lawful permanent resident in 1978.

At issue in this case is whether the respondent can establish that he was legitimated by his father such that he could derive U.S. citizenship upon his naturalization pursuant to former section 321(a)(2) of the Act, 8 U.S.C. § 1432(a)(2)(repealed).¹ The AAO concluded in January 2011 that the respondent was not legitimated under either the laws of the Dominican Republic or New York, and therefore did not fit within the applicable definition of "child" in section 101(c) of the Act, 8 U.S.C. § 1101(c).²

¹ 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.

² Section 101(c) of the Act provides, in relevant part, the following definition of child for purposes of Title III of the Act:

[A]n 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, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . .

The respondent maintains that he was legitimated under the laws of the Dominican Republic. The AAO is bound by the precedent decisions of the Board of Immigration Appeals, in *Matter of Reyes*, 17 I&N Dec. 512 (BIA 1980) and *Matter of Doble-Pena*, 13 I&N Dec. 366 (BIA 1969), holding that the subsequent marriage of a child's parents, and acknowledgment of the child, are required for legitimation under the laws in the Dominican Republic. *See also* Article 2 of the Civil Code of the Dominican Republic (stating that the 1995 Code for the Protection of Children, which eliminated all legal distinctions between children born in and out of wedlock and took effect on January 1, 1995, is not retroactive). The AAO is not bound by the unpublished opinion of the Second Circuit Court of Appeals that accompanies the respondent's motion, nor does the opinion relate to the legitimation laws of the Dominican Republic. Likewise, the AAO is not bound by the opinion of a foreign attorney. Additionally, the legal opinion provided appears to relate to the Dominican legitimation law under the 1995 Code which, as previously noted, is not retroactive and therefore inapplicable to the respondent's case.

The respondent's parents were not married to each other. He therefore was not legitimated under the applicable laws of the Dominican Republic pursuant to the precedent decisions of the Board of Immigration Appeals. The respondent cannot meet the definition of "child" found in section 101(c) of the Act. He therefore did not derive U.S. citizenship pursuant to former section 321 of the Act or any other provision of law, and his Certificate of Citizenship was properly cancelled.

The burden of proof in cancellation proceedings is on the government, and cancellation of a certificate of citizenship is authorized "if it shall appear to the [Secretary of Homeland Security's] satisfaction that such document . . . was illegally or fraudulently obtained. . . ." The AAO finds that the district director has met her burden of proof and that the respondent's certificate of citizenship was properly cancelled. The respondent's motion to reconsider is granted, but his appeal must remain dismissed.

ORDER: The motion is granted. The AAO's January 6, 2011 decision is affirmed. The appeal remains dismissed.

and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.