

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

E,

Date: **JAN 05 2012**

Office: LAWRENCE, MA

File: [REDACTED]

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 APPLICANT:

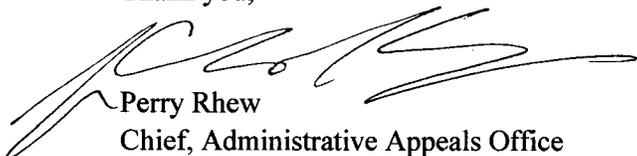
[REDACTED]

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 \$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 Field Office Director, Lawrence, Massachusetts denied the Application for Certificate of Citizenship (Form N-600) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born out-of-wedlock in Haiti on January 23, 1973. The applicant was admitted to the United States as a lawful permanent resident on May 14, 1988. The applicant's mother became a naturalized U.S. citizen on February 23, 1989. The applicant's father is not a U.S. citizen. 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 Field Office Director found that the applicant had failed to establish that he met the requirements in former section 321 of the Act because, while the applicant was born out-of-wedlock, he was legitimated by his non-U.S. citizen father and the applicant failed to establish that his mother had legal custody after a legal separation of his parents. The application was denied accordingly. *See Field Office Director's Decision*, dated August 22, 2011. On appeal, counsel contends that the director erred as a matter of law and misconstrued the provisions of former section 321 of the Act.¹ *See Form I-290B*, dated September 1, 2011.

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). The applicable law for derivative citizenship purposes is that 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); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act is therefore applicable in this case.

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

¹ While counsel also contends that the director misapplied section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), the record reflects that the director correctly found that the CCA does not apply in this case because the applicant was over the age of eighteen years on February 27, 2001, the effective date of the CCA.

(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.

The term legal separation means "either a limited or absolute divorce obtained through judicial proceedings." *Afeta v. Gonzales*, 467 F.3d 402, 406 (4th Cir. 2006) (affirming the Board of Immigration Appeals' construction of the term legal separation as set forth in *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949)) (internal quotation marks omitted); *see also Minasyan v. Gonzales*, 401 F.3d at 1076 (stating that the term legal separation refers to a separation recognized by law; considering the law of California, which had jurisdiction over the applicant's parents' marriage).

On appeal, counsel contends that the applicant qualifies for derivative citizenship based on the naturalization of his mother.

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, the applicant was admitted to the United States as a lawful permanent resident when he was fifteen years old, and the applicant's mother became a naturalized U.S. citizen when he was sixteen years old. However, while the applicant was born out of wedlock, the applicant was legitimated under Haitian law and cannot derive citizenship from his mother under former section 321(a)(3) of the Act.

Under the Civil Code of Haiti, as amended by a 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. *Matter of Cherismo*, 19 I&N Dec. 25 (BIA 1984). 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. *See Matter of Richard*, 18 I&N Dec. 208, 211 (BIA 1982) (quoting Article 305 of the Haitian Civil Code regarding a father's acknowledgment of a natural child). The record contains an extract from the Registry of Bureau of Vital Statistics in Port-au-Prince indicating that, on March 12, 1973, the applicant's birth was registered by the applicant's natural father, [REDACTED] who appeared in person and presented the applicant, declaring the applicant to be his son born on January 23, 1973 to the applicant's mother. The applicant's father, therefore, officially acknowledged the applicant as his child under Haitian law and the applicant was legitimated by his father at the time his birth was registered. Consequently, the applicant was legitimated and cannot derive citizenship through his mother under former section 321(a)(3) of the Act.

The applicant is also ineligible to derive citizenship under any other subsection of former section 321(a) of the Act.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.