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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



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Date: **JAN 30 2012**

Office: NEWARK, NJ

FILE: 

IN RE: IAN EDWARD HOLNESS

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (1983)

ON BEHALF OF APPLICANT:

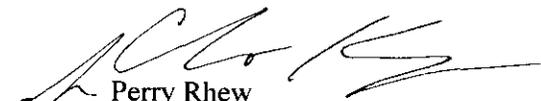


INSTRUCTIONS:

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 \$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 for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Newark, New Jersey, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO dismissed a subsequent motion to reconsider. The matter is now before the AAO on a motion to reopen. The motion will be denied. The AAO's previous order dismissing the appeal will be affirmed.

The record reflects that the applicant was born in Jamaica on [REDACTED]. The applicant's parents, [REDACTED] were married on [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on [REDACTED] when he was [REDACTED]. The applicant's mother became a U.S. citizen on [REDACTED] when the applicant was [REDACTED]. The applicant's father became a U.S. citizen on [REDACTED] when the applicant was [REDACTED]. The applicant seeks a Certificate of Citizenship claiming that he derived citizenship through his mother.

The field office director determined that the applicant failed to establish eligibility under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 because only one of his parents naturalized prior to the applicant reaching the age of eighteen. *See Director's Decision*, dated May 6, 2009. The application was denied accordingly.

On appeal, the applicant contended that his parents were separated at the time his mother naturalized and he therefore derived U.S. citizenship pursuant to former section 321(a)(3) of the Act. *See Appeal Brief*. The AAO found that the applicant did not derive U.S. citizenship through his mother under former section 321 of the Act because he was legitimated by his father through his parents marriage, his parents were not legally separated and only one of the applicant's parents naturalized prior to him reaching the age of eighteen. *See AAO's Decision*, dated January 5, 2011.

In his motion to reconsider, the applicant contended that he was born out-of-wedlock and his paternity was not established by legitimation because [REDACTED] is not his biological father. *See Brief in Support of Motion to Reconsider*. The AAO found that (1) the applicant's mother had previously identified [REDACTED] as the applicant's father; (2) [REDACTED] refusal to sign the applicant's birth certificate was not sufficient to establish that he is not the applicant's birth father; and (3) the applicant identified [REDACTED] as his father in prior applications. The AAO found that the applicant failed to present any evidence to support his claim that he was not Stelford Holness' biological son and dismissed the motion to reconsider. *See AAO's Decision* dated August 29, 2011.

In his motion to reopen, the applicant, through counsel, submits a copy of [REDACTED] immigrant visa application and contends that the consular office's finding that they were unable to verify the relationship between Stelford Holness and the applicant contradicts the AAO's previous findings and establishes that the U.S. government previously determined that paternity for the applicant cannot be established. *See Brief in Support of Motion to Reopen*. The entire record was reviewed in rendering a decision in this case.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) *Requirements for motion to reopen.*

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. . .

In his motion to reopen, the applicant submits a copy of [REDACTED] immigrant visa application and contends that the consular officer's finding that he or she was unable to verify the relationship between [REDACTED] and the applicant contradicts the AAO's previous findings and establishes that the U.S. government previously determined that paternity for the applicant cannot be established; however, the applicant fails to state any new facts that have developed since the AAO's decision that have any bearing on the applicant's case. Moreover, the documentation submitted by applicant contradicts his prior contentions that [REDACTED] has always denied that he is the applicant's father because [REDACTED] clearly listed the applicant as one of his children on his immigrant visa application. The fact that the consular office was unable to verify the relationship between the applicant and [REDACTED] based on the information that was available to them at the time does not alter the evidence that is and has been before the AAO. As discussed in the AAO's prior decisions, the evidence in the record fails to establish that [REDACTED] is not his biological father or that his paternity had not been established through legitimation. The applicant's contention that [REDACTED] has not recognized him as his son is contradicted by the fact that, at the time [REDACTED] registered the applicant's birth, he provided the applicant with his surname rather than the applicant's mother's maiden name.

While counsel also contends that the AAO misapplied Jamaican law as it pertains to paternity and legitimation, the applicant has not filed a motion to reconsider. Moreover, counsel's contentions are identical to those made in her brief in support of her prior motion to reconsider and the AAO addressed such arguments in its January 5, 2011 and August 29, 2011 decisions. Even if counsel had filed a motion to reconsider in the present matter, she fails to make any argument supported by pertinent precedent decisions establishing that the AAO's prior decisions were based on an incorrect application of law or agency policy, as required for a motion to reconsider. *See* 8 C.F.R. § 103.5(a)(3).

The applicant's evidence and claims on motion fail to establish that the AAO's prior decision to deny the application was erroneous. The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements set forth in former section 321 of the Act.

ORDER: The motion is dismissed. The AAO's decisions, dated January 5, 2011 and August 29, 2011, are affirmed. The appeal remains dismissed.