



U.S. Citizenship  
and Immigration  
Services

*EL*

[REDACTED]

FILE: [REDACTED] Office: DALLAS, TX

Date: DEC 14 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant's father, [REDACTED], was born in Haiti and that he became a naturalized U.S. citizen on June 15, 1978. The applicant's mother, [REDACTED] was born in Haiti and she was not a U.S. citizen. The applicant's parents married on September 20, 1947, and the applicant was admitted into the U.S. as a lawful permanent resident on March 11, 1986. The record contains two birth certificates for the applicant. One reflecting that "[REDACTED]" was born on February 28, 1963, and another reflecting that "[REDACTED]" was born on February 28, 1971. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.<sup>1</sup>

The applicant first filed a Form N-600, Application for Certificate of Citizenship (N600 application) on April 24, 2002. The N600 application was denied by the District Director, Los Angeles, California on October 9, 2002 due to abandonment. The applicant filed the present N600 application on June 24, 2004. The District Director, Dallas, Texas denied the N600 application on March 22, 2005, based on a finding that the applicant had failed to establish he was born on February 28, 1971, rather than on February 28, 1963. The district director concluded that the applicant had therefore failed to establish that he was under the age of eighteen when he became a U.S. lawful permanent resident, as required by section 321 of the former Act.

On appeal, counsel asserts that affidavit and other evidence contained in the record establish that the applicant was born in 1971, and that the applicant meets the requirements for citizenship under section 321 of the former Act.

Section 321 of the former Act provided, 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

<sup>1</sup> The AAO notes that section 321 of the former Act was repealed on February 27, 2001, by the Child Citizenship Act of 2000 (CCA). However, persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

(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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record contains the following evidence pertaining to the applicant's U.S. citizenship claim:

A Haitian Birth Certificate issued on June 11, 1980, reflecting that [REDACTED] was born in Port-au-Prince, Haiti on February 28, 1963 to [REDACTED] (father) and [REDACTED] (mother), and that the birth was registered on March 4, 1963.

A Haitian Birth Certificate reflecting that on January 15, 2000, [REDACTED] informed the Haitian Birth Certificate Register Office that his son [REDACTED] was born on February 28, 1971 [REDACTED] (father) and [REDACTED] (mother). The birth certificate was registered on January 15, 2000.

A Form I-130, "Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa" (I-130 Petition) signed under penalty of perjury and filed by the applicant's father on August 24, 1984, stating that his son [REDACTED] was born in Haiti on February 28, 1963.

A Department of State, Optional Form 230 signed by the applicant under penalty of perjury on October 7, 1985, indicating that "[REDACTED] had a U.S. address and was previously admitted into the United States as a student, and stating that the applicant's date of birth is February 28, 1963.

An Immigrant Visa and Alien Registration form containing a February 28, 1963 birth date, reflecting that [REDACTED] obtained a P1-1 (unmarried son or daughter over the age of 21) immigrant visa and was admitted into the United States as a lawful permanent resident on March 11, 1986.

A Form I-94 issued on March 11, 2002, reflecting that [REDACTED] date of birth is February 28, 1963.

A "Medical Examination of Applicants for United States Visas" form dated October 2, 1985, reflecting that [REDACTED] was 22 years old at the time of his examination.

An October 7, 1985, "Selective Service Registration Notice," notifying every male between the ages of 18 and 26 of their duty to register for the Selective Service. The Notice was signed by the applicant, [REDACTED] and states that he was born on February 28, 1963.

An October 9, 1985, Haitian Police Clearance form used for passport approval purposes, reflecting that [REDACTED] was born on February 28, 1963.

U.S. Certificates of Naturalization reflecting that:

[REDACTED], born March 29, 1917, became a naturalized U.S. citizen on June 15, 1978.

[REDACTED], born May 27, 1965, became a naturalized U.S. citizen on December 5, 1997.

born January 11, 1951, became a naturalized U.S. citizen on December 6, 1991.

born October 17, 1964, became a naturalized U.S. citizen on October 29, 1999.

An April 10, 2005 statement signed by the applicant indicating that [redacted] and [redacted] are his siblings. The applicant indicates further that he lived with his ill mother in Haiti prior to his immigration to the United States, and that prior to his admission into the United States as a lawful permanent resident, his father changed the applicant's birth year from 1971 to 1963 so that he could work and contribute to the family financially in the United States rather than attend school.

A March 5, 2004 letter signed by the applicant's father stating that he is the biological father of [redacted] and that the applicant was fifteen years old when he entered the U.S. as a lawful permanent resident in 1986.

A suspended and expired Pennsylvania Driver's License, originally issued to [redacted] on November 13, 1998, reflecting a February 28, 1971 date of birth.

The record contains no evidence to establish that the applicant's mother is deceased or that she at any time obtained a legal separation from the applicant's father. Moreover, the AAO finds that the evidence contained in the record fails to establish that the applicant was born on February 28, 1971 rather than on February 28, 1963. The AAO notes that the birth certificate issued under the name, [redacted] and containing the February 28, 1963 birth date was officially recorded within a week of birth, on March 4, 1963. The AAO notes further that the name [redacted] and the February 28, 1963 birth date are contained in all of the applicant's immigrant visa related documentation.

The birth certificate containing the February 28, 1971 birth date, on the other hand, was recorded in the year 2000, almost thirty years after the applicant's claimed birth, based on testimony evidence from the applicant's father. The AAO notes that the latter birth certificate was issued under the name "[redacted] rather than [redacted]". The AAO notes further that the latter birth certificate contains no indication that it sought to correct or amend the applicant's 1963 birth certificate.

The Haitian Police Clearance form also reflects the applicant's February 28, 1963 birth date. Moreover, the AAO notes that the Selective Service Registration Notice signed by the applicant was intended for males between the ages of 18 and 26 years old. It is additionally noted that the applicant's siblings obtained their U.S. citizenship through the naturalization rather than the certificate of citizenship process. Furthermore, the AAO notes that the applicant's claim that he lived with his mother in Haiti prior to becoming a lawful permanent resident, and that his father changed his birth year so that he could work rather than study once he entered the U.S. conflicts with the 1985, Optional Form 230 information indicating the applicant resided in the U.S. and had previously been admitted into the United States as a student.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present matter has not been met his burden of establishing that he qualifies for citizenship under section 321 of the former Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.