U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

E2

FILE: [redacted] Office: BOSTON, MA Date: AUG 2 5 2006

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321(a)(3) of the Nationality Act, 8 U.S.C. § 1432(a)(3), now repealed

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

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

Previous counsel for the applicant, [redacted] notified the AAO in an August 23, 2006 letter that he is no longer counsel of record. As no other Notice of Entry of Appearance as Attorney or Representative (Form G-28) is in the record, the applicant will be considered as self-represented.

The record before the AAO reflects that the applicant was born on June 17, 1970 in Jamaica. Only the applicant's mother [redacted] is listed on his birth certificate. [redacted] subsequently immigrated to the United States. She married [redacted] on June 16, 1979 in Jamaica, when the applicant was nine years old. The applicant immigrated to the United States on March 25, 1981 as a derivative on an immigrant visa petition filed by his mother on behalf of [redacted] On May 30, 1985, the applicant's mother became a U.S. citizen. [redacted] naturalized on April 9, 1999. The applicant seeks a certificate of citizenship pursuant to former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3), based on his claim that he was in the custody of his mother at the time of her naturalization and that his paternity was never established by legitimation.

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. However, any person who would have acquired automatic citizenship under its provisions 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). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321(a)(2) of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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 (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 establishes that the naturalization of the applicant's mother and his admission to the United States as a lawful permanent resident occurred prior to his 18th birthday. It further demonstrates that he was born prior to his parents' marriage. Therefore to prove that he is eligible to acquire U.S. citizenship under former section 321(a)(3) of the Act, the applicant may establish either that, at the time of his mother's naturalization, he was in her legal custody following her legal separation from [redacted] or that his birth had not been legitimated.

The record provides no proof that the applicant's parents are legally separated. Although the applicant claims that he resided solely with his mother beginning in 1982, his statements are not proof of a legal separation. Neither are the tax and school records that prior counsel submits on appeal. While they establish that the applicant lived with his mother for a period of time, that his mother listed him as a dependent on her health plan and her tax returns, and that she was the parent of record on his school transcripts, they are not, as counsel claims, proof of a legal separation from the applicant's father. As noted by the district director in his denial letter, an informal separation between married partners is insufficient to meet the requirements of section 321(a)(3) of the Act.

The AAO now turns to whether the applicant's paternity has been established through legitimation.

Matter of Clahar, 18 I&N Dec. 1 (BIA 1981) held that a child within the scope of the 1976 Jamaican Status of Children Act (SCA) may be included within the definition of a legitimate or legitimated child set forth in section 101(b)(1) of the Act, so long as familial ties are established by the requisite degree of proof and the status arose within the time requirements set forth in that section.

In the instant case, the evidence of record indicates that [redacted] was listed on the applicant's Optional Form 230, Application for Immigrant Visa and Alien Registration, as the applicant's father and that the applicant entered the United States on March 25, 1981 as the child of [redacted] Moreover, even though [redacted] was not listed on the applicant's birth certificate as his father, the applicant was given his surname. Accordingly, the AAO finds the record to establish the familial ties referenced in *Matter of Clahar*. [redacted] is the applicant's father.

Section 7(a)(1) of the SCA states that a child is legitimated when his or her father and mother are married to each other at the time of conception or thereafter. Accordingly, the 1979 marriage of the applicant's parents legitimated him under Jamaican law, prior to his 18th birthday, as required to meet the definitional requirements of a legitimated "child" set forth in section 101(b)(1) of the Act. Therefore, the applicant's paternity has been established through legitimation and he is not eligible for U.S. citizenship under either prong of section 321(a)(3) of the Act .[1]

The AAO notes further that the applicant does not qualify for citizenship pursuant to former section 320 of the Act, 8 U.S.C. § 1431. Former section 320 of the Act provided that:

---

[1] Although section 320 of the Act, as amended by the CCA, permits a child born outside of the United States to automatically become a citizen based on the naturalization of one parent, the provisions of the CCA are not retroactive. The amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of section 320 of the Act, as amended. *See Matter of Rodriguez-Tejedo, supra.*

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when
>
> > (1) such naturalization takes place while such child is under the age of 18 years; and
> >
> > (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Neither of the applicant's parents were U.S. citizens at the time of his birth. The applicant therefore does not qualify for U.S. citizenship under former section 320 of the Act.

The applicant also fails to qualify for U.S. citizenship under former section 322 of the Act, which provided that:

> (a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:
>
> > (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
> >
> > (2) The child is physically present in the United States pursuant to a lawful admission.
> >
> > (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
>
> (b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, section 322(b) required that an applicant also establish that his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's eighteenth birthday, and that the applicant had taken an oath of allegiance prior to turning eighteen. The applicant in the instant case has not met the requirements set forth in former section 322(b) of the Act. CIS did not approve his certificate of citizenship application before he turned eighteen, and he did not take an oath of allegiance prior to his eighteenth birthday.

For the reasons previously discussed, the applicant has not established that he acquired U.S. citizenship at the time of his mother's naturalization. Accordingly, the AAO will not disturb the director's denial of the application.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden.

ORDER: The appeal is dismissed.