U.S. Department of Homeland Security
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Washington, DC 20529

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: NOV 2 2 2006

WAC 05 022 51565

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

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 Director, California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 24, 1968 in Haiti. The applicant's father, [redacted] also born in Haiti, became a naturalized U.S. citizen on December 2, 1983, when the applicant was 15 years of age. The applicant's mother [redacted], as indicated by the Form N-600, Application for a Certificate of Citizenship, remains a citizen of Haiti. The applicant's parents married on February 23, 1974 in Orangeburg, New York. The applicant was admitted into the United States as a lawful permanent resident on January 22, 1978, when he was nine years old. The applicant seeks a certificate of citizenship based on the naturalization of his father.

The director denied the applicant's Form N-600 because he was over the age of 18 on February 27, 2001, the date on which the Child Citizenship Act of 2000 took effect and was, therefore, ineligible to benefit from its provisions. The director further found that the applicant did not qualify for a certificate of citizenship under any other section of law.

On appeal, the applicant contends that the director's decision was flawed, as he failed to consider the "national rights" asserted by the applicant in Part 2, D of the Form N-600 or that custody may be shared by parents, as recognized in an August 15, 2002 AAO decision. The applicant contends that his father's naturalization prior to his 18th birthday allows him to acquire citizenship under 321(a)(3) of the Immigration and Nationality Act (the Act). He further asserts that the decisions required by section 325 and section 341(b)(2) of the Act have not been made.

The AAO notes the applicant's statements in Part 2, D of the Form N-600, which reference the definition of a U.S. national under section 101(a)(22)(B) of the Act – "a person who, though not a citizen of the United States, owes permanent allegiance to the United States" and the acquisition of a certificate of non-citizen national status from the Secretary of State pursuant to section 341(b)(2) of the Act. The applicant, however, has filed the Form N-600 seeking a certificate of citizenship based on the naturalization of his father. Accordingly, the statutory language governing the certification of U.S. national status is not relevant to this proceeding.

For the same reason, the applicant's reference to the language of section 325 of the Act, which allows U.S. nationals to apply for naturalization once they reside in the United States or an outlying possession of the United States, will be discounted. The applicant is a lawful permanent resident seeking a certificate of citizenship, not a U.S. national who is applying for naturalization.

The applicant's reliance on a prior AAO decision as support for his claim is also misplaced. The issue before the AAO in the referenced case involved that applicant's custody following the divorce of his U.S. citizen parents. This issue is not raised in the instant case, as the applicant has neither indicated, nor documented, that his parents ever separated or divorced. Therefore, the AAO's 2002 decision is not relevant to the applicant's circumstances.

The AAO now turns to the evidence of record and the extent to which it establishes the applicant's claim to U.S. citizenship as a result of his father's naturalization.

As stated by the director, the applicant is not eligible for a certificate of citizenship under the CCA, as its provisions apply only to those persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was 32 years old on February 27, 2001, he does not meet the age requirement for benefits under the amended language of section 320 of the Act.

Instead, the applicant must establish his claim to derivative citizenship under former section 321 or 322 of the 1952 Immigration and Nationality Act (1952 Act), as amended, the statutory requirements governing the acquisition of citizenship prior to February 27, 2001. The AAO will first consider whether the applicant qualifies for a certificate of citizenship under former section 321 of the Act, repealed by the CCA as of February 27, 2001. 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).

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:
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> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or
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> (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
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> (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.

While the applicant contends that he is eligible for a certificate of citizenship under section 321(a)(3) of the Act, the record, as previously noted, does not demonstrate that the applicant's parents separated or divorced prior to his 18th birthday. Neither does it establish that the applicant's mother became a U.S. citizen prior to his 18th birthday or that she died prior to her husband becoming a U.S. citizen, as required to satisfy the

requirements at section 321(a)(1) and (2). Accordingly, even though the naturalization of his father and his admission as a lawful permanent resident occurred prior to his 18th birthday, the applicant is not eligible for a certificate of citizenship under section 321 of the Act.

The applicant also fails to qualify for U.S. citizenship under former section 322 of the 1952 Act, as amended, 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:
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> (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
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> (2) The child is physically present in the United States pursuant to a lawful admission.
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> (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
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> (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.
>
> (c) Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

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 18 years of age. The applicant in the instant case has not met the requirements set forth in former section 322(b) of the Act as CIS did not approve his certificate of citizenship application before he turned 18 years of age on May 24, 1986, and he did not take an oath of allegiance prior to that date.

For the reasons previously discussed, the applicant has not established that she is eligible for a certificate of citizenship.

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 of proof. The appeal will, therefore, be dismissed.

ORDER: The appeal is dismissed.