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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN JUAN, PR

Date:

MAY 08 2007

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to former section 322 of the Nationality Act, 8 U.S.C. § 1433

ON BEHALF OF APPLICANT:

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, San Juan, Puerto Rico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The record reflects that the applicant was born on December 2, 1962 in Jamaica. The applicant's father, [REDACTED], also born in Jamaica, became a naturalized U.S. citizen on August 23, 1978, when the applicant was 15 years old. The applicant's mother remains a citizen of Jamaica. She and the applicant's father never married. The applicant was admitted to the United States as a lawful permanent resident on April 13, 1980 at the age of 17 years. On appeal, counsel for the applicant contends that the applicant acquired U.S. citizenship at the time of his 1980 arrival in the United States under former section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The section of law under which the applicant contends he has established U.S. citizenship was amended by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. However, any person who would have acquired 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 record establishes that the applicant acquired U.S. citizenship under the previous provisions of section 322 of the Act.

Former section 322 of the Act 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 district director concluded that the record did not demonstrate that Mr. [REDACTED] had established the applicant's paternity through legitimation and, therefore, that the applicant was not eligible for a certificate of citizenship. While the AAO agrees that the record offers no evidence that would indicate that Mr. [REDACTED] has taken steps to legitimate the applicant, it, nevertheless, finds the district director to have erred in determining that the applicant's Jamaican birth had not been legitimated. As of November 1, 1976, the Jamaican Status of Children Act of 1976 removed the distinction between Jamaican children born in and out of wedlock, regardless of whether they were

born before or after its enactment. Accordingly, the AAO finds the applicant's 1962 birth to have been legitimate and the record to establish him as a child for the purposes of former section 322 of the Act.

Based on the record before it, the AAO finds the applicant to have demonstrated that prior to his 18th birthday, his father became a U.S. citizen and that he had been lawfully admitted to the United States as a permanent resident. However, nothing in the record establishes that prior to his 18th birthday, the applicant, although he lived with his father, resided in the legal custody of Mr. [REDACTED] as required by section 322(a)(3) of the Act. The AAO notes that the record contains a May 24, 1978 letter from the applicant's mother who states that she has given her consent for the applicant to immigrate to the United States to join Mr. [REDACTED] and his wife. The letter does not, however, establish Mr. [REDACTED] legal custody of the applicant for the purposes of section 322 of the Act. Therefore, the applicant has not established eligibility for a certificate of citizenship under the requirements of former section 322(a) of the Act. Moreover, the applicant has also failed to comply with the requirements of section 322(b) of the Act.

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) requires that an applicant have had his or her application for citizenship approved by CIS and have taken an oath of allegiance prior to reaching his or her 18th birthday. The applicant in the present case has not met these requirements as CIS did not approve his certificate of citizenship application and he did not take an oath of allegiance before he turned 18 years of age.

The applicant also fails to qualify for a certificate of citizenship under former section 321 of the Act, 8 U.S.C. § 1432, which was repealed by the CCA. Former section 321 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 does not establish the applicant as the son of two naturalized parents prior to his 18th birthday, nor that his naturalized father was his only surviving parent, as required by sections 321(a)(1) and (2) of the Act respectively. As already noted, the applicant's parents were never married so he cannot establish a claim to

citizenship that requires their legal separation, the first prong of section 321(a)(3) of the Act. Neither is he the illegitimate son of a naturalized mother, as required to satisfy the second prong of section 321(a)(3). As a result, the applicant cannot establish a claim to citizenship under section 321 of the Act.

For the reasons previously discussed, the applicant has not established that he is eligible for a certificate of citizenship under former sections 321 or 322 of the Act. Accordingly, the petition will be denied.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The petition is denied.