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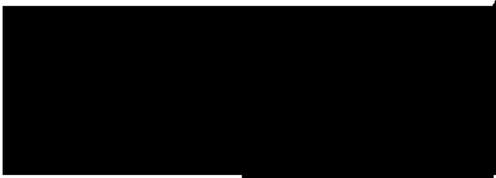
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: BUFFALO, NY

Date:

FEB 13 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act, 8 U.S.C. §1432.

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, Buffalo, New York, 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 August 22, 1980 in the Dominican Republic. The birth certificate indicates that his mother is [REDACTED]. The birth certificate further indicates that the applicant was recognized by his father, [REDACTED] on January 22, 1985. The applicant's parents were married in New York on June 22, 1984. The applicant's mother became a U.S. citizen upon her naturalization on May 21, 1993, when the applicant was 12 years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on April 8, 1987, when the applicant was 6 years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed) claiming that he derived citizenship through his mother.

The district director denied the applicant's citizenship claim upon finding that his parents were not legally separated, and that the applicant's paternity was established by legitimation. The application was accordingly denied.

On appeal, the applicant, through counsel, contends that the district director erred denying the citizenship claim. *See* Statement on Form I-290B, Notice of Appeal to AAO. Specifically, counsel maintains that the applicant's father did not acknowledge the applicant before or at the time of his marriage and that, in accordance to Dominican law, he was therefore not legitimated. *See* Applicant's Appeal Brief. The applicant submits a copy of a baptismal certificate, issued in 2007, that does not include the note relating to the applicant's legitimation that appears in the baptismal certificate, issued in 1986, that was already in the record.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1980. The applicant was over 18 on the effective date of the Child Citizenship Act of 2000. Section 321 of the former Act, 8 U.S.C. § 1432, is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432, 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

(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 AAO finds that the applicant has established that his mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his 18th birthday. The AAO finds, however, that the applicant has failed to establish that his parents are legally separated¹ or that paternity was not established by legitimation such that he could derive U.S. citizenship from his mother alone.

Under *Matter of Martinez*, 21 I&N Dec. 1035 (BIA 1997), a child residing or domiciled in the Dominican Republic is legitimated if he is under the age of 18 on January 1, 1995 (the effective date of the Code for the Protection of Children and Adolescents, Law No. 14-94) and was acknowledged by his father prior to his 18th birthday, unless he was legitimated under the country's former laws. When a country, such as the Dominican Republic, eliminates all legal distinctions between children born in and out of wedlock, "all children born out of wedlock are deemed to be legitimate or legitimated children of their natural fathers from the time that country's laws are changed." *Matter of Martinez, supra*, citing *Matter of Hernandez*, 19 I&N Dec. 14 (BIA 1983) and *Matter of Clarke*, 18 I&N Dec. 369 (BIA 1983).

The applicant was under 18 when the Dominican Republic eliminated the distinctions between children born in and out of wedlock. The applicant's parents were married in 1984, and he was recognized by his father (as evidenced by his birth certificate) in 1985. The applicant's 1986 baptismal certificate further confirms that the applicant was legitimated.² The AAO finds that the applicant was legitimated because he was under 18 when the new legitimation law took effect, and because he was acknowledged before his 18th birthday. The AAO further finds that the applicant was legitimated under the former laws of the Dominican Republic based on the applicant's father's 1985 recognition as shown in the applicant's birth certificate.³

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has failed to meet his burden to

¹ Although the applicant initially claimed that his parents were legally separated, he does not make such a claim in these proceedings and the record contains no evidence of any legal separation of his parents.

² The AAO finds the 1986 baptismal certificate to be more reliable than the recently submitted 2007 certificate because it is contemporaneous and because it was likely not obtained for purposes of establishing eligibility for U.S. citizenship.

³ The AAO notes that the fact that the father's recognition appears in the birth certificate in 1985 does not establish that that the applicant was not acknowledged a few months earlier prior to or at the time of his parents' marriage.

prove that paternity was not established by legitimation. He is therefore not eligible for U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432, and the appeal will be dismissed.

ORDER: The appeal is dismissed.