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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BUFFALO, NY Date: JUL 11 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321(a)(3) of the Nationality Act, 8 U.S.C. § 1432(a)(2), now repealed

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Operations Director, Buffalo, New York and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 9, 1982 in Jamaica. The applicant's mother, [redacted], became a naturalized U.S. citizen on October 23, 1990, when the applicant was seven years old. The applicant's father, [redacted], entered the United States in 1993 as a lawful permanent resident, but remains a citizen of Jamaica. The applicant's parents married on August 19, 1989. The applicant was admitted to the United States as a lawful permanent resident on April 30, 1987, when he was four years old. 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 mother's naturalization.

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.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:
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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
>
> (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.

On appeal, prior counsel contends that, pursuant to section 321(a)(3), the applicant acquired U.S. citizenship through the naturalization of his mother when he was seven years old. Counsel asserts that although the applicant's out of wedlock birth may be deemed legitimate under the 1976 Jamaican Status of Children Act (SCA), his paternity has not been established under the requirements of Section 8 of the SCA. Accordingly, she states that, for the purposes of section 321(a)(3) of the Act, he is not a child whose paternity has been

established through legitimation and is, therefore, eligible to derive citizenship based on [redacted]s 1990 naturalization. Counsel also contends that the applicant does not meet the definition of legitimated child under the definition of child in section 101(c) of the Act because the identity of his father, although found by the field office director to be [redacted], is still in question. Accordingly, counsel states, it cannot be established that the applicant was in the legal custody of the legitimating parent, his father, at the time of legitimation.

The AAO notes that counsel's brief references *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), in which the Board of Immigration Appeals (BIA) 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. However, the AAO notes that the BIA in *Matter of Shawn Theodore Hines*, 24 I&N Dec. 544 (BIA 2008) has overruled *Matter of Clahar* and found that the sole means of legitimating a child born out of wedlock in Jamaica is the marriage of the child's natural parents. In light of the BIA's new holding, the AAO will consider whether the marriage of [redacted] and [redacted]n in 1989 constitutes the marriage of the applicant's natural parents and thereby not only legitimates him under Jamaican law but establishes his paternity through legitimation for the purposes of section 321(a)(3) of the Act.

The AAO notes that the record indicates that, at the time the applicant was processed for an immigrant visa in 1987, [redacted]n signed the applicant's Optional Form 230, Application for Immigrant Visa and Alien Registration, on his behalf and listed himself as the applicant's father. When [redacted] submitted a Form I-130, Petition for Alien Relative, on [redacted]s behalf on March 8, 1991, she identified him as her husband and the father of the applicant. On his own Optional Form 230, processed in 1992, [redacted] listed the applicant as his child. Moreover, the AAO notes that, although no father is listed on the applicant's birth certificate, the certificate was amended on December 16, 1982, approximately one month after the applicant's birth in order to record his name as "[redacted]."

To prove that the identity of the applicant's father remains in question, counsel submits copies of the applicant's birth certificate, which does not identify his father; a birth registration from the Jamaican Birth Registry issued in 2008 that indicates the applicant's birth record still fails to identify his father; a 1989 divorce certificate for [redacted]n and [redacted] in support of counsel's contention that Ms. marriage to [redacted] should have no bearing on the establishment of the applicant's paternity as it was her second marriage following the applicant's birth; and a 1990 petition filed by [redacted] in the State of New York seeking support from [redacted] for herself and her daughter, which counsel asserts is proof that [redacted]s paternity in relation to the applicant had not been established. Counsel contends that this evidence is proof that the paternity of the applicant has not been demonstrated through any of the available methods under Jamaican law, i.e., those stated in Section 8 of the SCA, and, therefore, that Mr. has not been established as the applicant's father.

The AAO agrees that the documentation submitted by counsel does not establish as the applicant's natural father. However, in order to demonstrate the applicant's eligibility for a certificate of citizenship under second prong of section 321(a)(3) of the Act, the applicant must establish that [redacted], whose surname was formally given to the applicant shortly after the applicant's birth and who testified before U.S. government officials that the applicant was his son, is *not* his natural father. The AAO notes that the

burden of proof in this matter is on the applicant to establish his claim to citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2.

The record, however, offers no evidence that demonstrates is not the applicant's natural father as he claimed during the applicant's and his own visa interviews, e.g., a judgment from a Jamaican or U.S. court identifying the applicant's father or DNA testing results that establish there is no biological relationship between [redacted] and the applicant. In the absence of such documentation, the applicant has not proved that he was not legitimated by the marriage of [redacted] and [redacted], and his paternity established through legitimation. Accordingly, he has not established eligibility for a certificate of citizenship under section 321(a)(3) of the Act based on his mother's 1990 naturalization.

The AAO also finds that the record fails to demonstrate that the applicant is eligible for a certificate of citizenship under any of the other provisions of section 321(a) of the Act. As the applicant has indicated that his father remains a lawful permanent resident, he cannot claim derivative citizenship under section 321(a)(1) of the Act, which requires the naturalization of both parents. Neither does he qualify for citizenship under section 321(a)(2) of the Act since his father is not deceased. As there is no evidence that the applicant's parents divorced prior to his 18th birthday, he cannot claim eligibility under the first prong of section 321(a)(3) of the Act.

Former section 322 of the 1952 Act also fails to provide the applicant with an avenue for acquiring citizenship based on his mother's naturalization. Under its provisions:

> (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.
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> (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 November 9, 2000, and he did not take an oath of allegiance prior to that date.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). As previously noted, the regulation at 8 C.F.R. § 341.2 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." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding and the appeal will be dismissed.

ORDER: The appeal is dismissed.