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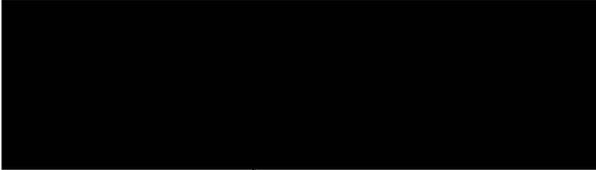
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: MIAMI, FL
(TAMPA, FL)

Date: **JUL 16 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the Form N-600 will be denied.

The applicant was born in Jamaica on June 26, 1991. She will be eighteen years old on June 26, 2009. The record reflects that the applicant's father was born in Jamaica, and that he became a naturalized U.S. citizen on September 1, 2000, when the applicant was 9 years old. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on April 8, 1995, when she was 3 years old. She presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1431, based on the claim that she derived citizenship through her father.

The district director concluded that the applicant was ineligible for citizenship under section 320 of the Act because she failed to establish she was in the legal custody of her father at the time of her legitimation as required by section 101(c) of the Act, 8 U.S.C. § 1101(c). The applicant therefore did not meet the definition of a "child" as set forth in section 101(c) of the Act. The Form N-600 was denied accordingly.

Through her father, the applicant asserts on appeal that she has been in her father's legal custody since the time of her birth, and that she has lived in the physical and legal custody of her father since immigrating to the United States in 1995. The applicant believes that she derived automatic U.S. citizenship under section 320 of the Act, and she requests that her Form N-600 application be approved.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 9 years old on February 27, 2001. She therefore meets the age requirement for benefits under the CCA.

Section 320 of the Act provides that a child born outside of the U.S. may automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 321 of the former Act, 8 U.S.C. § 1432, was repealed by the CCA. The AAO notes, however, that all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force 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.)

Section 321 of the former Act provides, 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 notes that “[w]here the actual parents of the child were never married, there could be no legal separation of such parent.” *See Matter of H*, 3 I&N Dec. 742 (1949.)

Section 101(c)(1) of the Act, 8 U.S.C. § 1101, defines the term, “child” for citizenship purposes, and states in pertinent part that:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

In the present matter, the applicant was born out of wedlock. Thus, in order to qualify as the “child” of her father for derivative citizenship purposes, the applicant must establish that prior to her sixteenth birthday (on June 26, 2007), she was legitimated by her father pursuant to the law in Jamaica (the applicant's former residence/ domicile) or the law in Florida (her father's residence/domicile.) The applicant must then establish that she was in her father's legal custody at the time of legitimation.

Florida State law provides that the parents of a child born out of wedlock must marry in order for the child to become legitimated. *See Florida Statutes* §§ 742.091 and 732.108. The applicant's parents never married. Accordingly, the applicant has not been legitimated under Florida State law.

The applicant has also failed to establish that she was legitimated by her father under Jamaican law. The Board of Immigration Appeals (Board) held in *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), that the sole means of

legitimation of a child born out of wedlock in Jamaica is the marriage of the child's parents. In making its decision, the Board explicitly overruled its previous holding in *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), which found that the 1976, Jamaican Status of Children Act eliminated all legal distinctions between legitimate and illegitimate children once paternity over a child was established. The Board found in *Matter of Hines*, that its holding in *Matter of Clahar* was in error, and the Board stated that:

A review of Jamaican law reflects that the traditional legal concept of "legitimation" has survived despite other enlightened legal developments that have sought to place children on an equal footing without regard to the circumstances of their birth. Specifically, although the Jamaican Status of Children Act of 1976 eliminated all legal distinctions between "legitimate" and "illegitimate" children and provided a mechanism by which the father of a child born out of wedlock could acknowledge paternity, section 2 of the Jamaican Legitimation Act has remained in effect and continues to provide that a child born out of wedlock can be "legitimated" only by the subsequent marriage of his or her parents.

The Board concluded that:

[W]e will hereafter deem a child born out of wedlock in Jamaica to be the "legitimated" child of his biological father only upon proof that the petitioner was married to the child's biological mother at some point after the child's birth.

The regulation provides in pertinent part at 8 C.F.R. 1003.1(g), that:

Except as Board decisions may be modified or overruled by the Board . . . decisions of the Board . . . shall be binding on all officers and employees of the Department of Homeland Security . . . in the administration of the immigration laws of the United States. . . .

Matter of Hines, supra, explicitly overruled the holding in *Matter of Clahar, supra*, and held that the parents of a child born out of wedlock in Jamaica must marry in order for the child to be legitimated. The AAO therefore finds that because the applicant's parents did not marry, the applicant has not been legitimated under Jamaican law. It follows that the applicant could not have been in the legal custody of her father at the time of legitimation. The applicant therefore does not qualify as a 'child' under section 101(c) of the Act, and she does not qualify for consideration under section 320 of the Act or section 321 of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met her burden in the present matter. The appeal will therefore be dismissed and the N-600 application will be denied.

ORDER: The appeal is dismissed. The application is denied.¹

¹ The present decision is without prejudice to the applicant's filing, if eligible, a Form N-400, Application for Naturalization under section 316 of the Act, 8 U.S.C. § 1427.