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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: BUFFALO, NY Date: SEP 17 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for Certificate of Citizenship pursuant to Section 321(a)(3) of the Nationality Act, 8 U.S.C. § 1432(a)(2), now repealed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:

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 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 17, 1984 in Jamaica. The applicant's father, [redacted], also born in Jamaica, became a naturalized U.S. citizen on September 17, 2002, when the applicant was 17 years old. The applicant's mother, [redacted], is a citizen of Jamaica. The record does not indicate that the applicant's parents ever married. The applicant was admitted to the United States as a lawful permanent resident on August 4, 1998, when he was 13 years old. He seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 based on his father's naturalization.

The field operations director, noting the applicant's out of wedlock birth, found that the applicant had failed to establish that he had been legitimated under the laws of Jamaica or the State of New York, and, therefore, did not meet the definition of child under section 101(c)(1) of the Act, as required for eligibility for a certificate of citizenship under section 320 or former section 321 of the Act. The field operations director denied the application accordingly. *Decision of the Field Operations Director*, dated August 4, 2008.

On appeal, the applicant asserts that he has met the requirements of section 320(a) of the Act, specifically noting that prior to his 18th birthday he was in the sole custody of his father. *Applicant's letter*, dated August 21, 2008.

The AAO notes that the field operations director considered the applicant's eligibility under former section 321 of the Act, which was repealed by the Child Citizenship Act of 2000 (CCA), effective February 27, 2001. While persons who acquired automatic citizenship under the provisions of section 321 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)), the AAO does not find the applicant in the present matter to fall within one of the categories of persons eligible to derive citizenship under its provisions.[1] The applicant does not claim that, prior to his 18th birthday, both of his parents naturalized; that his mother died leaving his father as his only surviving parent; that he was in the legal custody of his father following the legal separation of his parents; or that his mother

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[1] Former section 321 of the Act, 8 U.S.C. § 1432, in relevant part, states 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.

had become a naturalized U.S. citizen. Accordingly, the AAO will not review the applicant's eligibility for a certificate of citizenship under former section 321 of the Act. The present proceeding will consider only whether the record establishes that the applicant has satisfied the requirements for a certificate of citizenship under section 320 of the Act.

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 had not reached their 18th birthdays as of February 27, 2001. Because the applicant was only 16 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act states in pertinent part that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (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.

The AAO turns first to the question of whether the record establishes the applicant as a child for the purposes of section 320 of the Act.

To qualify as a child under section 320 of the Act, the regulation at 8 C.F.R. 320.1 requires an applicant to meet the definition of child set forth in section 101(c)(1) of the Act, which states that for Title III naturalization and citizenship purposes:

> 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 or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The applicant has neither claimed nor submitted evidence to establish that his natural parents were married at the time of his birth. As a child born out of wedlock, he must, therefore, demonstrate that he was legitimated by [redacted] or the State of New York, [redacted]'s domicile, if he is to be deemed a child for the purposes of section 320(a) of the Act.

Pursuant to Article 3, section 24 of New York domestic relations law, the parents of a child born out of wedlock must marry in order to legitimate that child. *See Matter of Vizcaino*, 19 I&N Dec. 644 (BIA 1988); *see also Matter of Bullen*, 16 I&N Dec. 378 (BIA 1977); *Matter of Archer*, 10 I&N Dec. 92 (BIA 1962). The record, however, contains no evidence to prove that the applicant's parents ever married and a review of related Citizenship and Immigration Services (CIS) records indicates that [redacted] September 12, 1986

marriage to his current spouse, [redacted], is his only marriage. Accordingly, the record does not establish that the applicant has been legitimated under the laws of New York .

The record also fails to prove that he has been legitimated under Jamaican law. In *Matter of Shawn Theodore Hines*, 24 I&N Dec. 544 (BIA 2008), the Board of Immigration Appeals held that the sole means of legitimating a child born out of wedlock in Jamaica is the marriage of that child's natural parents. The BIA's decision in *Hines* overruled *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981) under which a child subject to the 1976 Jamaican Status of Children Act (SCA) was determined to be legitimate. The AAO is bound by the BIA's recent precedent and must conclude that the applicant, whose parents never married, has not been legitimated under Jamaican law and, therefore, may not be classified as a child under section 101(c)(1) of the Act.

As the applicant has not established that he meets the definition of a child under section 101(c)(1) of the Act, he is not a child for the purposes of section 320 of the Act and is not eligible to receive a certificate of citizenship based on the naturalization of his father. Accordingly, the appeal will be dismissed.

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.

**ORDER:** The appeal is dismissed.