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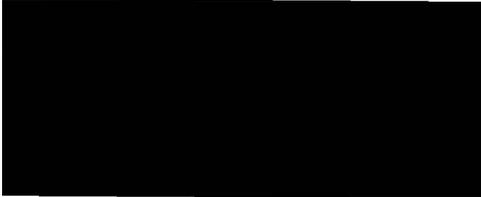
U.S. Department of Homeland Security
20 Mass. Ave, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: Office: PHILADELPHIA, PA Date: **SEP 29 2008**

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 321(a)(3) of the Immigration and Nationality Act; 8 U.S.C. § 1432(a)(3), now repealed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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania 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 May 13, 1980 in Liberia. The applicant's natural father, [REDACTED] became a naturalized U.S. citizen on December 10, 1990, when the applicant was 10 years of age. The applicant's mother, [REDACTED], is a citizen of Liberia. The applicant's parents did not marry. The applicant was admitted to the United States as a lawful permanent resident on October 10, 1991, when he was 11 years of age. He seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship through his father's naturalization.

The field office director considered the applicant's claim to citizenship under former section 321(a) of the Act and denied the Form N-600, Application for Certificate of Citizenship, because she found that the applicant had not established eligibility under former section 321(a)(3) of the Act. The field office director also noted that the applicant had never been legitimated by his father under Liberian law. She denied the application accordingly. *Decision of the Field Office Director*, dated July 27, 2008...

On appeal, the applicant contends that he has derived citizenship through his father and that the record does not establish that the Liberian law cited by the field office director is still enforced in Liberia. *Attachment to Form I-290B, Notice of Appeal to the Administrative Appeals Office*, undated.

The section of law under which the applicant must establish his eligibility for a certificate of citizenship is former section 321 of the Act, repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.¹ However, any person who would have automatically acquired 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). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321 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:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

¹ The CCA benefited all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was 20 years old on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

(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 first considers whether the record establishes the applicant as a child for the purposes of section 321 of the Act. Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, 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 . . . 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.

The field office director determined that the applicant had not been legitimated by his father under Liberian law, i.e., by his birth parents’ marriage or through an application filed by his father with a Liberian probate court. The AAO notes, however, that section 101(c) of the Act also provides for the legitimation of an applicant under the laws of his or her father’s residence or domicile. In the present case, it finds the record to establish that the applicant was legitimated by his father under the laws of the State of Maryland, his father’s residence at the time the applicant immigrated to the United States.

In *Matter of Chambers* 17 I&N Dec. 117 (BIA 1979), the Board of Immigration Appeals (BIA) found that a child born out of wedlock was legitimated under Maryland law if he or she met the requirements set forth in section 1-208 of the Estates and Trusts Article of the Maryland Code. Subsection (b) of section 1-208 states:

Child of his father. – A child born to parents who have not participated in a marriage ceremony with each other shall be considered to be the child of his father only if the father

- (1) Has been judicially determined to be the father in an action brought under the statutes relating to paternity proceedings; or
- (2) Has acknowledged himself, in writing, to be the father; or
- (3) Has openly and notoriously recognized the child to be his child; or

- (4) Has subsequently married the mother and has acknowledged himself, orally or in writing, to be the father.

In the present case, the applicant's father, in 1991, filed a Form I-130, Petition for Alien Relative, on behalf of the applicant, identifying himself as the applicant's father. The AAO finds that the filing of the Form I-130 by the applicant's father legitimates the applicant under the requirements of section 1-208(b)(3) of the Estates and Trusts Article of the Maryland Code as it represents an open and notorious recognition of the applicant by his father. Therefore, the applicant's was legitimated by his father prior to his 16th birthday. As a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise (*Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980)), the record establishes the applicant as a child for the purposes of former section 321 of the Act, i.e., he was legitimated by his father while in his father's legal custody when he was under 16 years of age.

The applicant seeks a certificate of citizenship based on the 1990 naturalization of his father. Accordingly, he must establish his eligibility under the third criterion of former section 321(a) of the Act – the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents. Guidance issued by the legacy Immigration and Naturalization Service (now Citizenship and Immigration Services) on February 18, 1997² provides the following discussion of former section 321(a) requirements:

Section 321(a) of the Act provides for acquisition of citizenship of a minor upon the naturalization of both his/her parent(s) (or the surviving parent or the parent with legal custody) provided certain conditions are satisfied. There is no specific order in which the conditions of the law must be satisfied for citizenship as long as all conditions are satisfied before the child's 18th birthday.

Accordingly, to establish eligibility for citizenship under the language of former section 321(a)(3) of the Act, the applicant must prove that prior to the date of his 18th birthday, May 13, 1998, his father had become a U.S. citizen, and that he was living in the United States as a lawful permanent resident in the legal custody of his father subsequent to the legal separation of his parents.

The record establishes that the applicant was under 18 years of age at the time of his father's 1990 naturalization and his own 1991 admission to the United States as a lawful permanent resident. However, as the applicant's parents were never legally married, he cannot demonstrate that, prior to his 18th birthday, they had obtained the divorce or other legal separation necessary to satisfy the requirements of section 321(a)(3) of the Act. The AAO notes that the Board of Immigration Appeals (BIA) has held that "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. See *Matter of H*, 3 I&N Dec. 742 (1949); see also, *Nehme v. INS*, 252 F.3d 415, 425-26 (5th Cir. 2001). As the applicant was not in his father's custody following the legal separation of his parents, he is not eligible for derivative citizenship under section 321(a)(3) of the Act.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to

² Memorandum from Terrance M. O'Reilly, Acting Assistant Commissioner, Naturalization Division, Immigration and Naturalization Service, *Section 321(a) of the INA*, HQ321 (February 18, 1997).

the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.