

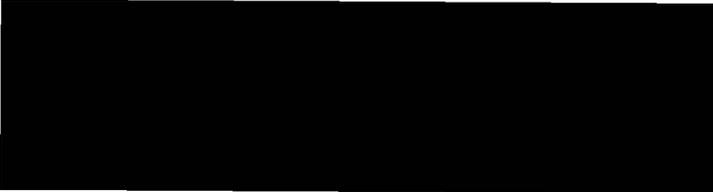
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**



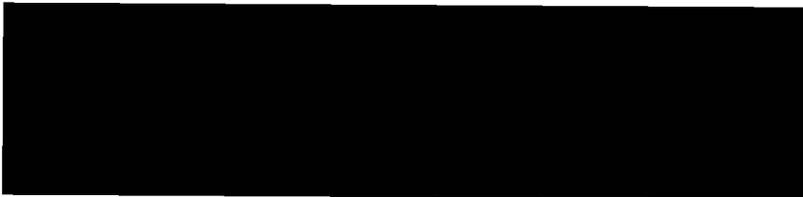
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FILE: [REDACTED] Office: BUFFALO, NY Date: **APR 23 2009**

IN RE: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Operations Director, Buffalo, New York, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on February 18, 2008. The applicant filed a motion to reconsider, which was dismissed by the AAO on April 15, 2008. In November 2008, the applicant filed a new Form N-600, Application for Certificate of Citizenship. The application was again denied by the director and this appeal followed. The appeal will be sustained.

The record reflects that the applicant was born on August 22, 1980 in the Dominican Republic. The applicant's birth certificate indicates that his mother is [REDACTED]. The birth certificate, as registered in 1980, does not list a father. The applicant's mother married [REDACTED] in 1984. The applicant's birth certificate, issued in 1985, includes an annotation indicating that he was recognized by "his father" [REDACTED]. 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 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 applicant initially claimed that [REDACTED] was his father, but that he his paternity was not established by legitimation in accordance with the laws of the Dominican Republic. The director denied the applicant's citizenship claim upon finding that the applicant's paternity was established by legitimation. On appeal, the applicant, through counsel, maintained that [REDACTED] did not acknowledge him before or at the time of his marriage to the applicant's mother and that, in accordance to Dominican law, he was therefore not legitimated. The AAO dismissed the appeal, finding that paternity had been established by legitimation in accordance with the laws of the Dominican Republic, and the State of New York. The applicant's motion to reconsider the AAO decision was dismissed.

In his new Form N-600, Application for Certificate of Citizenship, the applicant claims that [REDACTED] is not his biological father. In support of his claim, the applicant submitted, in relevant part, the results of a DNA test indicating that [REDACTED] is not his biological father. The director nevertheless denied the application, finding that the applicant had failed to submit any documentation from a court in the Dominican Republic "that would overturn [REDACTED] paternity." See Decision of the Field Operations Director, dated January 15, 2009. In this appeal, the applicant continues to claim that his paternity was not established by legitimation and that, because [REDACTED] is not the applicant's biological father, he automatically derived U.S. citizenship upon his mother's naturalization.

"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.

At issue in this case is whether the applicant's paternity was established by legitimation.

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) (emphasis added).

Black's Law Dictionary defines the phrase "born out of wedlock" as born to "parents [who] are not, and have not been, married to each other regardless of marital status of either parent with respect to another." Additionally, Black's Law Dictionary defines "legitimation" as: "The making legitimate or lawful that which was not originally so; especially the statutory procedure of legalizing (legitimizing) the status of an illegitimate child. Such is usually necessary to assure inheritance rights to child."

It is undisputed, given the DNA evidence, that [REDACTED] is not the applicant's biological (i.e. natural) father. The applicant's father's name was not listed in his original birth certificate, issued in 1980. The record does not contain any evidence of the identity of the applicant's biological father. The applicant's mother's 1984 marriage certificate indicates that she was not previously married. The record indicates that the applicant's biological parents were never married to each other. The applicant was therefore born out of wedlock. The AAO must therefore also find that, because the record contains no evidence of recognition or acknowledgment by the applicant's biological father, the applicant's paternity was not established by legitimation. Therefore, the applicant derived U.S. citizenship upon his mother's naturalization pursuant to section 321(a)(3) of the former Act.

The AAO notes that the applicant's lawful permanent resident status was obtained on the basis of his paternal relationship with [REDACTED] and that the applicant is now conceding that [REDACTED] is not his biological father. At the time of the applicant's admission to lawful permanent residence, however, [REDACTED] was the applicant's stepfather. The AAO notes that section 101(b) of the Act, 8 U.S.C. § 1101(b), includes a stepchild in the definition of "child" for immigration purposes. Compare section 101(c) of the Act, 8 U.S.C. § 1101(c) (definition of "child" for citizenship purposes). Specifically, section 101(b) of the Act provides that "a stepchild, whether or not born out of wedlock, [is a "child"] provided the child has not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred." The applicant was three years old when his mother married [REDACTED]. Therefore, the applicant was eligible to immigrate to the United States in 1987 as the stepchild of [REDACTED]. The applicant has thus established that he was lawfully admitted for permanent residence prior to his 18th birthday.

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 in this case has met his burden to prove that he was under 18 when his mother naturalized in 1993, and that his paternity was not established by legitimation such he derived U.S. citizenship upon his mother's naturalization alone under section 321(a)(3) of the former Act, 8 U.S.C. § 1432(a)(3). The appeal will be sustained.

ORDER: The appeal is sustained.