

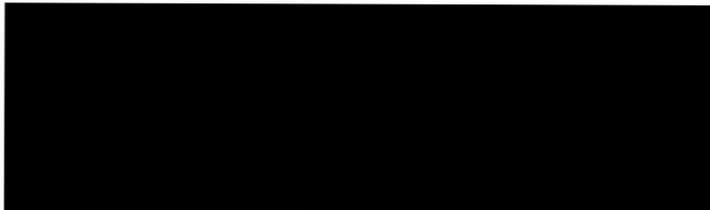
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529

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U.S. Citizenship  
and Immigration  
Services



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FILE: [REDACTED] Office: PHILADELPHIA, PA Date: **AUG 10 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:

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 that reads "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Philadelphia, Pennsylvania, and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on May 7, 2009. The applicant has timely filed a Motion to Reopen. The motion will be granted and the application will be approved.

The record reflects that the applicant was born on September 25, 1971 in Haiti. The applicant's birth certificate indicates that his parents are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. The applicant's mother passed away on January 1, 1977.<sup>1</sup> The applicant's father became a U.S. citizen upon his naturalization on January 20, 1981, when the applicant was nine years old. The applicant was admitted to the United States as a lawful permanent resident on December 24, 1983, when he was 12 years old. The applicant's step-mother, [REDACTED] is a U.S. citizen.<sup>2</sup> 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citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed).

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

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<sup>1</sup> A copy of the applicant's mother's death certificate is included for the first time with the instant motion. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and supported by documentary evidence. The applicant's instant motion meets the regulatory requirements of a motion to reopen and will therefore be granted.

<sup>2</sup> The applicant's father married [REDACTED] in 1981. The AAO notes that USCIS records consistently indicate that the applicant's mother was [REDACTED], and that [REDACTED] was his step-mother. The applicant was not adopted by his step-mother. Citizenship cannot be derived or acquired through a step-parent. See Section 101(c) of the Act, 8 U.S.C. § 1101(c).

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 applicant has established that he was admitted to the United States as a lawful permanent resident and that his father naturalized prior to his 18<sup>th</sup> birthday. The AAO notes, however, that the applicant, whose father's name appears in his birth certificate, was legitimated under Haitian law. *See Matter of Richard*, 18 I&N Dec. 208 (BIA 1982). Therefore, the applicant cannot derive U.S. citizenship under section 321(a)(3) of the former Act, 8 U.S.C. § 1432(a)(3). *See* AAO Decision, dated May 7, 2009.<sup>3</sup>

The AAO nevertheless notes that the applicant has now established that when his father naturalized (in 1981), his mother was deceased. Pursuant to section 321(a)(2) of the former Act, 8 U.S.C. § 1432(a)(2), a child can derive U.S. citizenship upon "the naturalization of the surviving parent if one of the parents is deceased." The applicant therefore derived naturalization through his father under section 321(a)(2) of the former Act, 8 U.S.C. § 1432(a)(2).

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 his mother was deceased as required by section 321(a)(2) of the former Act, 8 U.S.C. § 321(a)(2). He therefore has established that he derived U.S. citizenship through his father, and his application for a certificate of citizenship will be approved.

**ORDER:** The motion is granted. The application is approved.

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<sup>3</sup> The applicant did not derive U.S. citizenship under section 321(a)(3) of the former Act because that provision only allows derivation by out of wedlock children through the mother (and only when paternity was not established by legitimation). The applicant's mother was not a U.S. citizen, and the applicant's paternity was established by legitimation.