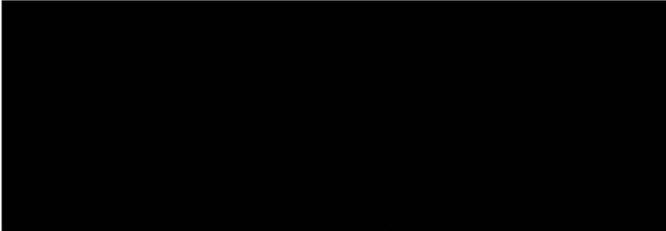


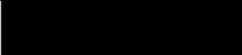


U.S. Citizenship
and Immigration
Services

E2



FILE:



Office: HARLINGEN, TX

Date:

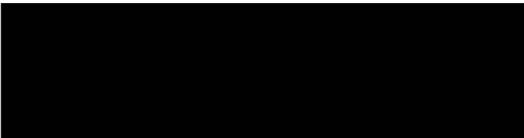
DEC 09 2009

IN RE: Applicant:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, Texas and the Administrative Appeals Office (AAO) dismissed the applicant's subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider its prior decision. The motion to reopen and reconsider will be dismissed. The prior decision of the AAO will be affirmed.

Pertinent Facts and Procedural History

The record shows that the applicant was born on March 23, 1966 in Jamaica. The applicant's birth certificate does not identify his father, but names [REDACTED] as his mother. The applicant's mother married [REDACTED] on January 23, 1968 in Jamaica when the applicant was 22 months old. The applicant was admitted to the United States as a lawful permanent resident on December 17, 1976 when he was 10 years old. His mother became a naturalized U.S. citizen on February 8, 1982 when the applicant was 15. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1966), based on the claim that he derived U.S. citizenship through his mother.

The field office director determined that the applicant did not derive citizenship under section 321(a) of the former Act because his paternity was established by legitimation when his father married his mother in Jamaica and his father had not passed away or naturalized before the applicant turned 18.

On appeal, the applicant, through counsel asserted that [REDACTED] was not the applicant's biological father and that the applicant's paternity had not been established by the marriage of his mother to [REDACTED]. Accordingly, counsel claimed that the applicant had derived citizenship through his mother.

In its September 1, 2009 decision, incorporated here by reference, the AAO determined that the preponderance of the evidence indicated that [REDACTED] was the applicant's natural father and that the applicant's paternity was establish through legitimation upon the marriage of his natural parents. In particular, the AAO noted that the applicant was given [REDACTED] surname upon birth and that [REDACTED] identified the applicant as his son on the Form I-550, Application for Verification of Lawful Permanent Residence, in the record, which is dated June 19, 1975.

Applicable Law

In its prior decision the AAO explained the general principle that 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. *See Chau v. Immigration and Naturalization*

Service, 247 F.3d 1026, 1029 (9th Cir. 2000) (internal citations omitted). Because the applicant was born in 1966, section 321(a) of the former Act applied to his case.¹

Section 321(a) of the former Act, 8 U.S.C. § 1432(a) (1966), provided, in pertinent part, that:

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 such child is under the age of eighteen 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 eighteen years.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). The burden rests on the applicant to show his eligibility for citizenship in every respect. *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The Board of Immigration Appeals (BIA) has held that the sole means of legitimating a child born out of wedlock in Jamaica is the marriage of the child's natural parents. *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). Accordingly, to derive U.S. citizenship through his mother under section 321(a)(3) of the former Act, the applicant must establish that Stephen Bailey is not his biological father and that his paternity was not established by legitimation.²

¹ The AAO noted that Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

² The applicant cannot derive citizenship under section 321(a)(1) or (2) of the former Act because U.S. Citizenship and Immigration Services (USCIS) records show that his father, [REDACTED], was not naturalized or deceased before the applicant turned 18.

In its prior decision, the AAO discussed the relevant evidence of record, which indicated that [REDACTED] was the applicant's biological father. In addition to the Form I-550 on which [REDACTED] identified the applicant as his son, the record contains further evidence that [REDACTED] is the applicant's biological father. The applicant's immigrant visa application names [REDACTED] as his father. *Form FS-510, Application for Immigrant Visa*, dated November 18, 1976. The applicant's mother also identifies [REDACTED] as the applicant's biological father. *Affidavit of [REDACTED]*, dated March 13, 2008 (stating "I was not married to [the applicant's] biological father at the time of his birth (Exhibit C – Marriage Certificate between [REDACTED] and [REDACTED]"))

The Applicant's Claims on Motion

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On motion, the applicant claims, as he previously asserted on appeal, that his paternity was not established by his mother's marriage to [REDACTED]. The applicant does not state any new facts and submits no additional supporting evidence. Although the record shows that on November 19, 2009, the Immigration Judge ordered the applicant to obtain a DNA test to determine whether or not [REDACTED] is his biological father, the present record contains no DNA test results or other new evidence regarding the relationship between the applicant and [REDACTED]. Accordingly, the applicant's submission does not meet the requirements for a motion to reopen.

The applicant's claims also do not meet the requirements for a motion to reconsider. In his September 16, 2009 letter, the applicant reasserts that the "humane purpose" of the Act "was intended to keep families together" and that the distinction between legitimate and illegitimate children is arbitrary. The applicant made these same claims on appeal and he cites no precedent decisions to support his assertions. Nonetheless, we note that the statutory language of section 321(a) of the former Act distinguishes between children born out of wedlock who have been legitimated and those who have not. Because the requirements for citizenship are statutorily mandated by Congress, U.S. Citizenship and Immigration Services (USCIS) lacks authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. at 885. Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467

(1928) (stating that “citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant”).

The applicant cites three cases in support of his assertion that legitimation of a child born out of wedlock does not in itself establish the child’s paternity. *Applicant’s September 16, 2009 Letter*. Accordingly, as the applicant previously claimed on appeal, his mother’s marriage to [REDACTED] does not establish that [REDACTED] is his biological father. *Brief on Appeal*, dated October 10, 2008 at 1. The applicant submitted a printout of an unpublished BIA decision. Such decisions are not designated as precedent and are not binding on USCIS in this case. *See* 8 C.F.R. § 1003.1(g). The applicant also cited *Lau v. Kiley*, 563 F.2d 543 (2nd Cir. 1977) and *Miller v. Christopher*, 96 F.3d 1467 (D.C. Cir. 1996), however neither of these decisions provide binding authority for these proceedings because they were decided outside of the Fifth Circuit where the applicant’s case arose.

In addition to their lack of precedential authority, none of the cases cited by the applicant provide persuasive authority for his claim on motion. In *Miller*, the court determined that a child did not acquire citizenship at birth through her U.S. citizen father under sections 301 and 309 of the Act because her paternity was not established while she was a child. *Miller*, 96 F.3d at 1472-73. *Miller* provides no support for the applicant’s claim because paternity was established in that case and the court did not address the distinction between paternity and legitimation. In *Lau*, the court determined that China did not distinguish between legitimate and illegitimate children and therefore a child born out of wedlock would be eligible for an immigrant visa petition filed by the child’s father if the father could establish their biological relationship. *Lau v. Kiley*, 563 F.2d at 551-52. *Lau* does not support the applicant’s claim because the court affirmed that whether or not a child has been legitimated is determined by the law applicable at the time and place of the child’s birth. *Id.* at 545 (citing *Matter of Kwan*, 13 I&N Dec. 302, 305 (BIA 1969)). The BIA has determined that under the Legitimation Act of Jamaica,³ a child born out of wedlock is legitimated by the subsequent marriage of his or her biological parents. *Matter of Hines*, 24 I&N Dec. at 547-48. As the Legitimation Act of Jamaica was in effect at the time and place of the applicant’s birth, we are bound by the BIA’s decision in *Matter of Hines*. The preponderance of the evidence in this case indicates that [REDACTED] is the applicant’s biological father. Consequently, the subsequent marriage of the applicant’s mother to [REDACTED] established the applicant’s paternity by legitimation. In sum, the applicant has cited no precedent decisions establishing that the prior decision of the AAO was based on an incorrect application of law or USCIS policy and the applicant’s submission fails to meet the requirements for a motion to reconsider.

Conclusion

On motion, the applicant does not state any new facts or provide new evidence to support his claims. Although the record indicates that the applicant was asked to obtain a DNA test to

³ Legitimation Act of Jamaica, II Jamaica Laws, c. 217 (rev. ed. 1953), as amended by the 1961 Jamaica Laws, No. 18.

determine whether or not [REDACTED] is his biological father, the record contains no documentation of such test results. Accordingly, the applicant's submission does not meet the requirements for a motion to reopen pursuant to the regulation at 8 C.F.R. § 103.5(a)(2).

On motion, the applicant repeats claims he previously asserted, which were considered by the AAO on appeal. The applicant cites three cases in support of his claim that his paternity has not been established by legitimation, yet none of the cases are precedent decisions or binding authority. In addition, the reasoning in the cases cited by the applicant does not support his citizenship claim. The applicant has failed to reference precedent decisions establishing that the AAO's prior decision erroneously applied relevant law or USCIS policy, based on the evidence of record at the time. Accordingly, the applicant's submission does not meet the requirements for a motion to reconsider pursuant to the regulation at 8 C.F.R. § 103.5(a)(3).

The applicant's submission fails to meet the requirements for a motion to reconsider or a motion to reopen. Consequently, the applicant's motion will be dismissed and the AAO's prior decision will be affirmed.

ORDER: The motion to reopen and reconsider is dismissed. The September 1, 2009 decision of the Administrative Appeals Office is affirmed.