



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date:

JUL 17 2009

IN RE:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and
Nationality Act; 8 U.S.C. §1431.

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the *Administrative Appeals Office (AAO)* on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 24, 1984 in Jamaica. The applicant's birth certificate indicates that her parents are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's father became a U.S. citizen upon his naturalization in 1993, when the applicant was nine years old. The applicant was admitted to the United States as a lawful permanent resident in 1992, when she was seven years old. The applicant obtained a U.S. passport in 2002.¹ The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she acquired U.S. citizenship through her father.

The district director concluded, in relevant part, that the applicant did not acquire U.S. citizenship under section 320 of the Act because her father's paternity had not been established by legitimation. The director cited *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). The director further noted that the applicant's U.S. passport was issued in error. The application was therefore denied.

On appeal, the applicant, through counsel, claims that she satisfies the definition of "child" in section 101(b)(1)(D) of the Act, 8 U.S.C. § 1101(b)(1)(D). Specifically, counsel states that the applicant and her father have a *bona fide* parent-child relationship.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA repealed section 321 of the former Act, 8 U.S.C. § 1432. The CCA amendments benefit all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, 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.

¹ The record also contains the applicant's previously denied Form N-600, Application for Certificate of Citizenship. In denying that application, in 1998, the director noted that the applicant was legitimated by her father but could not derive U.S. citizenship from him because section 321(a) of the Act (which has since been repealed) required that she establish that her mother was also a U.S. citizen.

- (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.

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 legitimation²

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 1992, and that her father naturalized in 1993. The applicant’s 18th birthday was on October 24, 2002. The question remains whether the applicant fell within the definition of “child,” specifically, whether she was legitimated under the laws of her (or her father’s) residence or domicile such that she automatically acquired U.S. citizenship on February 27, 2001 (the CCA’s effective date).

The AAO notes that the applicant was not legitimated under New York law. *See Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation). With respect to Jamaican law, however, the AAO notes that until 2008, a child born out of wedlock in Jamaica was deemed legitimate by virtue of the collective legitimation laws of that country, which deemed legitimate any child whether born in or out of wedlock. In 2008, the Board of Immigration Appeals decided *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008) and, overruling *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), 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 AAO notes, however, that the applicant had already automatically acquired U.S. citizenship on February 27, 2001, before the Board’s decision in *Matter of Hines* was issued. Once bestowed, U.S. citizenship (unless illegally or fraudulently procured) cannot be lost involuntarily. *See Afroyim v. Rusk*, 387 U.S. 253 (1967).

The AAO concludes that the applicant automatically acquired U.S. citizenship on February 27, 2001 pursuant to section 320 of the Act, 8 U.S.C. § 1431. As of February 27, 2001, the applicant was under 18 and residing in the United States in the legal and physical custody of her U.S. citizen father pursuant to a lawful admission for permanent residence. The AAO notes further that the record

² The definition of “child” in section 101(b)(1)(D) of the Act, 8 U.S.C. § 1101(b)(1)(D), is inapplicable to citizenship and naturalization cases.

contains a copy of the applicant's U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked.

Pursuant to 8 C.F.R. § 341.2(c), 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 has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.