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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date: JUN 02 2009

IN RE:

Applicant:

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 The director's decision is withdrawn and the matter remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born on December 28, 2000 in Senegal. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's parents were never married to each other. The applicant's father has been a U.S. citizen since his naturalization on June 6, 1996. The applicant was admitted to the United States as a lawful permanent resident on May 5, 2008, when he was seven years old. The applicant seeks a certificate of citizenship based on the claim that he acquired U.S. citizenship through his U.S. citizen father.

The district director concluded, in relevant part, that the applicant did not acquire U.S. citizenship under section 320 of the Act because he was not legitimated by his father, under either the laws of the State of New York or the laws of Senegal. The application was therefore denied.

On appeal, the applicant, through counsel, maintains that the out of wedlock children, whose paternity was not established by legitimation, may derive U.S. citizenship from a U.S. citizen father. The applicant's father cites a Memorandum entitled "Eligibility of Children Born out of Wedlock for Derivative Citizenship" dated September 26, 2003.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits 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, he meets the age requirement for benefits under the CCA. The AAO nonetheless notes that, because the applicant's father was a U.S. citizen at the time of the applicant's birth, this citizenship claim arises under sections 301(g) and 309(a) of the Act, 8 U.S.C. §§ 1401(g) and 1409(a), not section 320.¹

Section 301(g) of the Act, 8 U.S.C. § 1401(g), states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

¹ 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.
 - (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.

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States . . . by such citizen parent . . . may be included in order to satisfy the physical-presence requirement of this paragraph.

Section 309 of the Act, 8 U.S.C. § 1409, states in pertinent part that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 2002, and that he has been residing in his father's legal and physical custody since. Prior to 2002, the applicant was residing with his biological mother in Senegal. The applicant's immigration record establishes that he was admitted to the United States on the basis of an approved relative petition filed by his father.

As noted above, the director analyzed the applicant's citizenship claim under section 320 of the Act, 8 U.S.C. § 1431. The matter must therefore be remanded to the director to consider the applicant's eligibility for a certificate of citizenship pursuant to sections 301 and 309 of the Act, 8 U.S.C. §§ 1401 and 1409.

With respect to the issue of legitimation, the AAO notes that the applicant was not legitimated under New York law because his biological parents did not marry each other. *See Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation); *see also Matter of Hines*, 24 I&N Dec. 544 (BIA 2008) (same). Section 309(a)(4) of the Act requires that the applicant establish that he was legitimated under the law of the applicant's residence or domicile, i.e. New York.² Therefore, it appears the applicant cannot establish that he was legitimated as required under section 309(a)(4)(A) of the Act, 8 U.S.C. § 1409(a)(4)(A). Nevertheless, the director must also consider whether the applicant's father (whose name appears on the applicant's birth certificate) has acknowledged paternity in writing and under oath as required under section 309(a)(4)(B) of the Act, 8 U.S.C. § 1409(a)(4)(B). The director shall also determine whether the applicant's father has agreed in writing to provide for his financial support until he reaches the age of 18 years as required by section 309(a)(3) of the Act, 8 U.S.C. § 1409(a)(3).³

The matter is therefore remanded to the director for a new decision considering the applicant's eligibility, particularly under section 309(a)(3) and (4) of the Act. The director shall also request additional evidence to establish the applicant's father's physical presence in the United States,⁴ and consider the evidence in determining whether the applicant satisfies the requirements of section 301(g) of the Act. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.

² The AAO notes that, according to the information provided by the applicant, although a legitimate child under Senegalese law is one born to parents who are legally married at the time, a natural child may be "recognized" by his father and, if his parentage is lawfully established, is comparable to the legitimate child. *See* Articles 4, 191, and 263 of the Family Code.

³ The AAO notes that the applicant is only eight years old. His father therefore still has the opportunity to agree to financially support him, and to acknowledge him, in accordance with the requirements of section 309(a)(3) and (4) of the Act.

⁴ The applicant indicates in his Form N-600, Application for Certificate of Citizenship, that his father has been present in the United States since 1986.