

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E-2

MAR 05 2009

FILE:

Office: NEW YORK

Date:

MAR 05 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:

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.

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).

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 dismissed.

The record reflects that the applicant was born on March 8, 1999 in the Republic of Guinea. The birth certificate indicates that his parents are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on October 14, 2005, when the applicant was six years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on September 12, 2007, when he was eight years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431 claiming that he derived citizenship through his father.

The district director denied the applicant's citizenship claim upon finding that he was not legitimated by his father in accordance with the laws of the Republic of Guinea. The application was accordingly denied. This appeal followed.

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 when the CCA took effect, he 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.
 - (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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 1101(b)(1) of this title.

The definition of "child" applicable to the citizenship and nationality provisions in Title III of the Act is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), and provides as follows:

...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, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The AAO notes the Library of Congress advisory opinion cited by the district director stating that the law in the Republic of Guinea requires marriage and recognition by the parents in order to legitimate a child born out of wedlock. The AAO further notes that the law in New York similarly requires the marriage of the natural parents in order to legitimate an out of wedlock child. *See e.g. Matter of Archer*, 10 I&N Dec. 92 (BIA 1962).

The AAO notes that the applicant has submitted DNA evidence to establish his biological relationship to his father as well as a document entitled "Recognition Judgments of Paternity" issued in the Republic of Guinea in 2006. As noted above, however, the law in the Republic of Guinea requires that the natural parents marry each other in order to legitimate an out of wedlock child. Paternity, acknowledgement, filiation and recognition may have been established in the applicant's case, but the record does not contain evidence that the applicant was legitimated in accordance with the laws of the Republic of Guinea or the State of New York. The applicant's parents were never married to each other; therefore he has not been legitimated. The applicant did not acquire U.S. citizenship upon his father's naturalization under section 320 of the Act because he has not been legitimated, and thus does not meet the definition of "child."

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 has failed to meet his burden. He is therefore not eligible for U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, and the appeal will be dismissed.**

ORDER: The appeal is dismissed.