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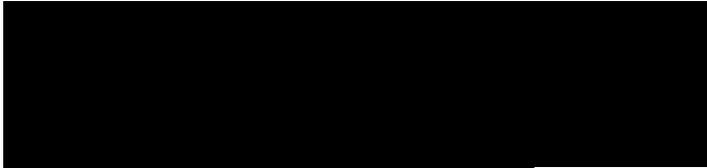
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: BUFFALO, NY

Date:

**MAY 04 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:

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, 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 Field Operations Director, Buffalo, 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 November 16, 1975 in Jamaica. The applicant's birth certificate indicates that his mother was [REDACTED]. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on August 14, 1992, when the applicant was 16 years old. The applicant was admitted to the United States as a lawful permanent resident on March 11, 1983, when he was seven years old. 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citizenship pursuant to section 321 of the former Immigration and Naturalization Act (the former Act), 8 U.S.C. § 1432 (repealed) claiming that he derived citizenship through his father.

The field operations director denied the applicant's citizenship claim upon finding, in relevant part, that the applicant was not legitimated by his father, and therefore could not derive U.S. citizenship through him under the cited provision. On appeal, the applicant claims that he derived U.S. citizenship through his father given that his mother was deceased prior to his father's naturalization. The applicant also notes that his sister obtained U.S. citizenship.<sup>1</sup>

"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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 1975. The applicant was over 18 on the effective date of the Child Citizenship Act of 2000. Section 321 of the former Act, 8 U.S.C. § 1432, is therefore applicable to this case.

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-

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<sup>1</sup> The AAO notes that the applicant indicates that a brief or additional evidence would be submitted within 30 days of filing the appeal. To date, more than 30 days after filing of the Notice of Appeal, no brief or additional evidence has been received by the AAO.

(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 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 applicant was born out of wedlock. Pursuant to section 321 of the former Act, 8 U.S.C. § 1432, children born out of wedlock may only derive U.S. citizenship through their mother (where paternity was not established by legitimation). The applicant's mother, [REDACTED], was not a U.S. citizen. Therefore, the applicant did not derive U.S. citizenship under section 321 of the former Act, 8 U.S.C. § 1432.

The applicant claims that he derived U.S. citizenship through his father because his mother was deceased prior to his naturalization. As noted above, an out of wedlock child may only derive U.S. citizenship through his mother pursuant to section 321 of the former Act. In any event, there is no death certificate or other evidence in the record to establish the applicant's mother's death.

The AAO further notes that the applicant did not derive U.S. citizenship through his step-mother, as the Act does not provide for derivation or acquisition of citizenship through a step-parent. *Compare* section 101(c) of the Act *with* section 101(b) of the Act. Section 101(c) of the Act states that, for citizenship and nationality 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, and, except as otherwise provided in sections 320, and 321 of 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 (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

A "step-child" is not included in the definition of "child" for Title III (citizenship and nationality) purposes. Therefore, the applicant did not derive U.S. citizenship upon his step-parent's naturalization.

The AAO also notes that the applicant does not meet the definition of "child" with respect to his father because he was not legitimated under the law of his or his father's residence or domicile. Pursuant to Article 3, section 24 of New York domestic relations law, the parents of a child born out of wedlock must marry in order to legitimate that child. *See Matter of Vizcaino*, 19 I&N Dec. 644 (BIA 1988); *see also Matter of Bullen*, 16 I&N Dec. 378 (BIA 1977); *Matter of Archer*, 10 I&N Dec. 92 (BIA 1962). The record contains no evidence to prove that the applicant's biological

parents ever married. The record indicates that the applicant's father was married twice, to [REDACTED] in 1979 and to [REDACTED] in 1990.<sup>2</sup> Accordingly, the record does not establish that the applicant was legitimated under the laws of New York.

The applicant was also not legitimated under Jamaican law. In *Matter of Shawn Theodore Hines*, 24 I&N Dec. 544 (BIA 2008), the Board of Immigration Appeals (BIA) 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 BIA's decision in *Hines* overruled *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), under which a child subject to the 1976 Jamaican Status of Children Act (SCA) was deemed to be legitimate. The AAO is bound by the BIA's recent precedent and must conclude that the applicant, whose biological parents never married, was not legitimated under Jamaican law.

Because the applicant was not legitimated by his father, he does not meet the definition of "child" for citizenship purposes (in section 101(c) of the Act). The applicant is therefore statutorily ineligible to derive U.S. citizenship through his father under any provision of the Act, including section 321 of the former Act.

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 not met his burden to prove that his mother was a U.S. citizen, that she was deceased or that he was legitimated by Edgar Gray. He therefore did not derive U.S. citizenship under section 321(a) of the former Act, 8 U.S.C. § 1432(a). The appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The AAO notes that the applicant has claimed that [REDACTED] was his mother, but that the record does not support his claim. The applicant's birth certificate lists [REDACTED] as his mother. There is also no evidence that the applicant was adopted by [REDACTED]. As noted above, the applicant could not derive U.S. citizenship through his step-mother because a "step-child" does not meet the definition of "child" in section 101(c) of the Act.