

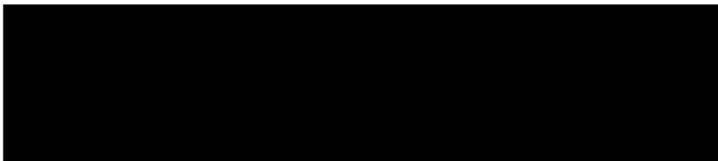
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: Office: PHILADELPHIA, PA Date: **MAY 07 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 Office Director, Philadelphia, Pennsylvania, 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 September 25, 1971 in Haiti. The applicant's 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 January 20, 1981, when the applicant was nine years old. The applicant was admitted to the United States as a lawful permanent resident on December 24, 1983, when he was 12 years old. The applicant's step-mother, [REDACTED] is a U.S. citizen.<sup>1</sup> 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 office director denied the applicant's citizenship claim upon finding, in relevant part, that the applicant was born out of wedlock and that he could not derive U.S. citizenship through his father 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 admission to the United States and his father's naturalization.

"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 1971. 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 applicant's father married [REDACTED] in 1981. The applicant was not adopted by his step-mother. Citizenship cannot be derived or acquired through a step-parent. See section 101(c) of the Act, 8 U.S.C. § 1101(c).

(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 AAO notes, however, that 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).<sup>2</sup> 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 AAO notes the applicant's claim on appeal that his mother, [REDACTED], is deceased. There is no death certificate or other evidence in the record in support of this claim. Indeed, the applicant's immigrant visa documentation suggests that his mother was alive and residing in Haiti prior to his immigration to the United States.

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 ever became a U.S. citizen such that, as an out of wedlock child, he could derive U.S. citizenship under section 321(a)(3) of the former Act, 8 U.S.C. § 1432(a)(3). The applicant also has not established that his mother passed away prior to his 18<sup>th</sup> birthday as is required by section 321(a)(2) of the former Act, 8 U.S.C. § 321(a)(2). He therefore has not established that he derived U.S. citizenship and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The AAO notes that the applicant, whose father's name appears in his birth certificate, was legitimated under Haitian law. See *Matter of Richard*, 18 I&N Dec. 208 (BIA 1982).