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U.S. Department of Homeland Security
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: HARLINGEN, TX Date: SEP 01 2009

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to Section 321(a)(3) of the Nationality Act, 8 U.S.C. § 1432(a)(2), now repealed

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.

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 Field Office Director, Harlingen, Texas and the matter 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 23, 1966 in Jamaica. The applicant's mother, [REDACTED], became a naturalized U.S. citizen on February 8, 1982, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident on December 17, 1976, when he was ten years old. The applicant seeks a certificate of citizenship pursuant to former section 321(a)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(a)(3), based on his mother's naturalization.

The section of law under which the applicant contends he has established U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001. However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321(a)(3) of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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-
- (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.

On appeal, counsel contends that the applicant was born out of wedlock and was never legitimated by his biological father. He asserts that the marriage of the applicant's mother to [REDACTED] on January 23, 1968 did not result in the legitimation of the applicant as there is no direct evidence that

██████████ is the biological father of the applicant. Therefore, counsel states, the applicant acquired U.S. citizenship through the naturalization of his mother when he was 15 years old pursuant to section 321(a)(3) of the Act.

The record establishes that the applicant was admitted to the United States as a lawful permanent resident on December 17, 1976 at ten years of age and that his mother became a U.S. citizen when he was 15 years of age. The record also includes a Jamaican birth certificate for the applicant that identifies only his mother; the section entitled "Father" is blank. Accordingly, the AAO finds the record to establish that the applicant was born out of wedlock.

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. In light of the BIA's new holding, the AAO will consider whether the 1968 marriage of the applicant's mother to her husband, ██████████, constitutes the marriage of the applicant's natural parents and thereby not only legitimates him under Jamaican law but establishes his paternity through legitimation for the purposes of section 321(a)(3) of the Act.

The record contains a Form I-550, Application for Verification of Lawful Permanent Residence of an Alien, filed by ██████████ on June 12, 1975. On his application, ██████████ identifies the applicant as his son. The record also includes a Form FS-510, Application for Immigrant Visa and Alien Registration, dated November 18, 1976 and filed on behalf of the applicant, which lists Mr. ██████████ as the applicant's father. The AAO also notes that, although no father is listed on the applicant's birth certificate, the applicant was given the surname of ██████████ at the time of his birth. Counsel contends that this evidence is not proof of ██████████ paternity and that only an affidavit of paternity or court order declaring him to be the biological father of the applicant is sufficient to establish this relationship.

The AAO agrees that the documentation in the record does not definitively establish ██████████ as the applicant's natural father. However, it notes that the burden of proof in this matter is on the applicant to establish his claim to citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2. In order to demonstrate his eligibility for a certificate of citizenship under the second prong of section 321(a)(3) of the Act, the applicant must establish that ██████████ whose surname he acquired at birth, is *not* his natural father.

The record offers no evidence that demonstrates ██████████ is not the applicant's natural father, e.g., a judgment from a Jamaican or U.S. court identifying the applicant's biological father or DNA testing results that establish there is no biological relationship between ██████████ and the applicant. In the absence of such documentation, the applicant has not proved that he was not legitimated by the marriage of ██████████ and ██████████, and his paternity established through legitimation. Accordingly, he has not established eligibility for a certificate of citizenship under section 321(a)(3) of the Act based on his mother's 1982 naturalization.

The AAO also finds that the record fails to demonstrate that the applicant is eligible for a certificate of citizenship under any of the other provisions of section 321(a) of the Act. As [REDACTED] did not become a U.S. citizen until August 26, 1995, when the applicant was already over 18 years of age, the applicant cannot claim derivative citizenship under section 321(a)(1) of the Act, which requires the naturalization of both parents. Neither does he qualify for citizenship under section 321(a)(2) of the Act as the record does not indicate that [REDACTED] is deceased. As there is no evidence that [REDACTED] divorced prior to his 18th birthday, the applicant also cannot claim eligibility under the first prong of section 321(a)(3) of the Act.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The regulation at 8 C.F.R. § 341.2 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.” See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding and the appeal will be dismissed.

ORDER: The appeal is dismissed.