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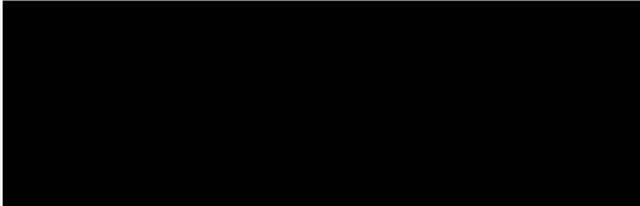
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:

AAO 10 035 50005

Office: PHILADELPHIA

Date:

FEB 16 2010

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Sections 301 and 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (1961).

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Philadelphia Field Office Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record shows that the applicant was born on February 16, 1961 in Jamaica. The applicant's birth registration identifies his father as [REDACTED] and his mother as [REDACTED]. The applicant's parents were married in 1955. The applicant was admitted to the United States as a lawful permanent resident on June 22, 1970 at the age of nine. The applicant's mother passed away in October 1977. The applicant's father became a naturalized U.S. citizen on December 12, 1977 when the applicant was 16 years old. The applicant seeks a certificate of citizenship claiming that he derived citizenship at birth through his mother and, in the alternative, that he acquired citizenship upon his father's naturalization.

The director determined that the applicant did not qualify for citizenship under former section 321 of the Act because his mother never naturalized, his parents never obtained a legal separation and his father did not have legal custody of the applicant before he turned 18. On appeal, the applicant asserts that he derived citizenship through his mother who he claims was a U.S. citizen by virtue of her birth in Guantanamo Bay, Cuba. The applicant also submitted a Jamaican court order granting custody of the applicant to his father. This document and the applicant's claims fail to establish that he acquired or derived citizenship through either of his parents.

Although subsequent amendments to the Act have changed the requirements for transmitting citizenship from a parent to a child, the law in effect at the time of the applicant's birth applies in this case. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000). The applicant was born in 1961. Former sections 301 and 321 of the Act are therefore applicable to his case.

Former section 301 of the Act, 8 U.S.C. § 1401 (1961), provided, in pertinent part, that:

(a) The following shall be nationals and citizens of the United States at birth:

\* \* \*

(7) 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 ten years, at least five of which were after attaining the age of fourteen years . . . .

Former section 321(a) of the Act, 8 U.S.C. § 1432(a) (1979), provided, in pertinent part, that:

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 such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

The record does not demonstrate that the applicant obtained citizenship through his mother under former section 301 of the Act. The applicant cites *Boumediene v. Bush*, 128 S. Ct. 2229 (2008) in support of his claim that Guantanamo Bay, Cuba was a sovereign territory of the United States such that his mother acquired U.S. citizenship upon her birth there. The applicant's reliance on *Boumediene* is misplaced. In *Boumediene*, the Supreme Court addressed the issue of whether aliens held as enemy combatants at the U.S. naval base in Guantanamo Bay had the right to file writs of *habeas corpus* with U.S. courts. The Court determined that the United States exercised *de facto* jurisdiction over the military base at Guantanamo Bay for the purposes of *habeas corpus*, but that the Cuban government exercised *de jure* sovereignty over the territory encompassing the U.S. base. *Boumediene v. Bush*, 128 S.Ct. at 2253. The *Boumediene* case did not address the issue of U.S. citizenship acquired at birth in U.S. territories or possessions and the case does not support the applicant's claim. Even if the applicant had established that his mother was a U.S. citizen by virtue of her birth in a U.S. territory or outlying possession, he provides no evidence that his mother had the required physical presence in the United States or an outlying possession for ten years before his birth, including five after she turned 14.<sup>1</sup> Accordingly, the applicant has not established that he derived citizenship through his mother under former section 301(a)(7) of the Act.

The applicant has also failed to demonstrate that he acquired citizenship through either of his parents under former section 321 of the Act. First, the applicant's mother never naturalized. Consequently, the applicant is not eligible for citizenship under former section 321(a)(1) of the Act, which required the naturalization of both parents.

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<sup>1</sup> Moreover, even if the U.S. military installation at Guantanamo Bay was considered a sovereign territory of the United States, the applicant has not demonstrated that his mother was born on the U.S. base, rather than in the surrounding area. The applicant did not submit a birth certificate, registration or other documentation of the precise location of his mother's birth. In addition, "outlying possessions of the United States" are defined only as American Samoa and Swains Island. Section 101(a)(29) of the Act, 8 U.S.C. § 1101(a)(29).

Second, the record contains no evidence that the applicant's parents obtained a legal separation and that the applicant was in his father's legal custody for the purposes of former subsection 321(a)(3) of the Act. The applicant submitted a copy of an order dated November 25, 1974 issued by the Supreme Court of Judicature of Jamaica in Equity, which states that the applicant's father "be granted full custody[,] care and control of" the applicant with "liberal access to the Mother." This document is of questionable veracity given the fact that the applicant and his parents were living in the United States when it was issued and because the applicant's father stated that he was still married to and residing with the applicant's mother on his naturalization petition.

Even if valid, the Jamaican court order does not establish that the applicant's parents were legally separated at the time. The term "legal separation," as used in former section 321(a)(3) of the Act, means either a limited or absolute divorce obtained through judicial proceedings. *See Nehme v. INS*, 252 F.3d 415, 425-26 (5<sup>th</sup> Cir. 2001); *Matter of H*, 3 I&N Dec. 742, 743-44 (1949). The record in this case lacks any evidence of judicial divorce proceedings concerning the applicant's parents. Accordingly, the applicant has not demonstrated that he acquired citizenship through his father under former section 321(a)(3) of the Act.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). *See also Fedorenko v United States*, 449 U.S. 490, 506 (1981) ("[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship."). In this case, the applicant has failed to establish that his mother was a U.S. citizen and was physically present in the United States for the requisite periods such that he could obtain citizenship through her under former section 301(a)(7) of the Act. The applicant also has not demonstrated his eligibility for citizenship under former section 321(a) of the Act because his mother never naturalized and his parents never legally separated.

In these proceedings, the applicant bears the burden of proof to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c); *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 164 (BIA 2001). The applicant in the present case has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.