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

U.S. Citizenship and Immigration Services

E2

[redacted]

FILE: [redacted] Office: BUFFALO, NY Date: JUN 0 2 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (1979).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Buffalo Field Office denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant seeks a certificate of citizenship under former 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1979), claiming that he derived citizenship through his mother. The field office director determined, in relevant part, that the applicant's paternity had been established and he consequently could not derive citizenship solely through his mother under former section 321 of the Act.

An appeal must be filed with the office where the unfavorable decision was made within 30 days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In this case, the field office director denied the application on March 19, 2010. The March 19, 2010 decision notified the applicant that if he wished to appeal, he would have to submit his appeal to the Buffalo Field Office within 33 days. The record indicates that a Form I-290B, Notice of Appeal, was sent to the applicant with the March 19, 2010 decision. The applicant subsequently submitted a letter to the Buffalo Field Office indicating that he wished to appeal the decision, but the applicant did not include a Form I-290B, Notice of Appeal. On April 22, 2010, the field office director returned the applicant's letter and explained that an appeal must be filed on a Form I-290B, as required by the regulation at 8 C.F.R. § 103.3(a)(2)(i). The applicant subsequently submitted a Form I-290B, which he dated May 2, 2010. Accordingly, the applicant's appeal was not properly filed until more than 33 days had passed since the March 19, 2010 decision of the field office director denying the application. Consequently, the appeal must be rejected as untimely filed.

Even if the appeal had been timely filed, the record does not indicate that the appeal could be sustained. In cases of derivative citizenship, the applicable law is that in effect at the time the critical events giving rise to eligibility occurred. *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). In this case, the record shows that the applicant was born in 1962 in Jamaica; that his mother naturalized in 1978; and that he entered the United States as a lawful permanent resident in 1979. Accordingly, former section 321(a) of the Act applies to the applicant's case.

Former section 321(a) of the Act provided, in pertinent part, that a child born outside of the United States to alien parents would become a citizen of the United States upon:

(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 applicant did not derive citizenship under former section 321(a)(1) of the Act because the record indicates that his father never naturalized. The applicant did not derive citizenship from his mother under former section 321(a)(2) of the Act because the record does not indicate that his father was deceased prior to the applicant's eighteenth birthday. The applicant also did not derive citizenship through his mother under former section 321(a)(3) of the Act because the record contains no evidence that the applicant's parents were legally separated and because the applicant's paternity was established by legitimation upon his parents' marriage in 1971. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). The applicant consequently did not derive citizenship through his mother under former section 321(a) of the Act.

The appeal shall be rejected as untimely filed. Even if timely filed, however, the record does not establish the applicant's eligibility for citizenship under former section 321(a) of the Act.

ORDER: The appeal is rejected.