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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

PUBLIC COPY

[REDACTED]

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FILE:

[REDACTED]

Office: NEWARK, NJ

Date:

MAY 18 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

ON BEHALF OF APPLICANT:

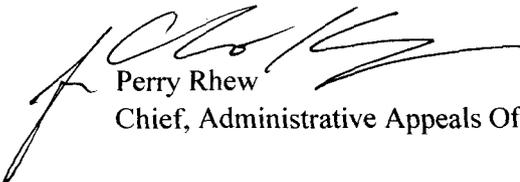
[REDACTED]

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 application was denied by the Field Office Director, Newark, New Jersey, 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 December 8, 1978 in El Salvador. The applicant's parents are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's mother has been a U.S. citizen since her naturalization on May 13, 1996, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on January 23, 1986, when he was seven years old. The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), based on the claim that he derived U.S. citizenship upon his mother's naturalization.

The field office director determined, in relevant part, that the applicant was legitimated under the laws of El Salvador and therefore ineligible to derive U.S. citizenship solely upon his mother's naturalization. The application was consequently denied.

On appeal, the applicant, through counsel, maintains that he was not legitimated. Counsel claims that the Board of Immigration Appeals' decision in *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), relating to legitimation laws in Jamaica, applies equally to the collective legitimation laws in El Salvador. Counsel thus states that, under *Hines*, Salvadoran law also requires marriage of the natural parents for a child born out of wedlock to be legitimated. See Applicant's Appeal Brief at 3.

The applicable law for derivation of U.S. citizenship is "the law 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). The applicant in this case was born in 1989. The provisions of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) took effect on February 27, 2001 and apply to persons who were not yet 18 years old as of February 27, 2001. See CCA § 104. The CCA amended sections 320 and 322 of the Act, and repealed former section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act is therefore applicable to this case.

Former section 321 of the Act stated, 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-
- (4) Such naturalization takes place while such 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 record establishes that the applicant's mother naturalized, and that the applicant was admitted to the United States as a lawful permanent resident, prior to his eighteenth birthday. The record further establishes that the applicant was born out of wedlock, but that his natural father acknowledged him before the civil authorities by appearing before the Civil Registry and signing his birth registration shortly after the applicant's birth.

In order to derive U.S. citizenship solely through his mother, the applicant must establish that his father's paternity was not established by legitimation. Former section 321(a)(3) of the Act. The 1983 Constitution in El Salvador eliminated all legal distinctions between children born in and out of wedlock, making those born on or after December 16, 1965 legitimated for purposes of the Act once paternity is established. *Matter of Moraga*, 23 I.&N. Dec. 195, 198-99 (BIA 2001), *modifying Matter of Ramirez*, 16 I.&N. Dec. 222 (BIA 1977) (requiring acknowledgement and marriage of biological parents for legitimation).

The applicant, through counsel, maintains that, under *Hines*, the marriage of his parents is required to establish his legitimation. See Applicant's Appeal Brief at 3. The *Hines* decision relates to Jamaican law and is therefore inapplicable to this case. See *Matter of Hines*, 24 I&N Dec. at 548 (specifying that decision applies only to "child[ren] born out of wedlock in Jamaica"). Moreover, as noted above, the applicable law for derivation of U.S. citizenship is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan, supra*. The applicable law in this case is the law in effect prior to the applicant's eighteenth birthday, in 1996. The 1983 Constitution collectively legitimated all children in El Salvador, by operation of law. The AAO therefore finds that the applicant's paternity was established by legitimation. The applicant therefore did not derive U.S. citizenship solely through his mother.

In this case, the applicant was born out of wedlock. The applicant's parents were never married to each other. The plain language of former section 321(a)(3) of the Act allows for derivation of U.S. citizenship by a child born out of wedlock only through a naturalizing mother when the paternity of

the child has not been established by legitimation. *See Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007). The applicant's paternity was established by legitimation under the laws of El Salvador. Consequently, the applicant did not derive U.S. citizenship solely upon his mother's naturalization.

The Supreme Court has explained that there "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(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.