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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

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FILE:

Office: ALBANY, NY

Date:

MAY 19 2010

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

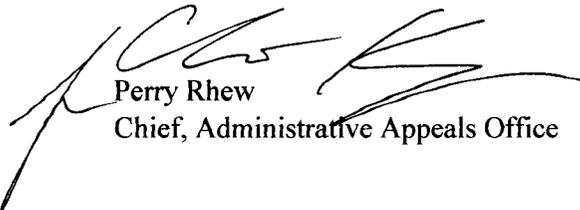
ON BEHALF OF APPLICANT:

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,


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Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Buffalo, New York, 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 April 8, 1989 in Jamaica. The applicant's parents are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's father has been a U.S. citizen since his naturalization on July 7, 1995, when the applicant was six years old. The applicant was admitted to the United States as a lawful permanent resident on February 19, 1996, when he was six years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship through his father.

The field office director concluded, in relevant part, that the applicant did not acquire U.S. citizenship under section 320 of the Act because he was not legitimated under the laws of Jamaica and therefore did not fall within the definition of a "child" for citizenship purposes. The director cited *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), noting that legitimation under Jamaican law requires the marriage of the natural parents. The application was consequently denied.

On appeal, the applicant, through counsel, maintains that *Matter of Hines* was "incorrectly decided" and that he was legitimated under Jamaican law. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO and Applicant's Appeal Brief.

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 section 321 of the Act. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 320 of the Act, 8 U.S.C. § 1431, as amended, is therefore applicable to this case.

Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.

- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 101(c) of the Act, 8 U.S.C. § 1101(c), states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

The applicant was admitted to the United States as a lawful permanent resident, and his father naturalized, prior to the applicant's eighteenth birthday. The applicant was born out of wedlock and his natural parents were never married to each other. The question remains whether the applicant fell within the definition of a "child," specifically, whether he was legitimated under the laws of his (or his father's) residence or domicile such that he automatically acquired U.S. citizenship on February 27, 2001 (the CCA's effective date).

The record indicates that the applicant and his father resided in New York state at the time of his father's naturalization. The applicant was not, however, legitimated under New York law. *See Matter of Patrick*, 19 I&N Dec. 726, 728 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation under New York law). With respect to Jamaican law, the sole means of legitimating a child born out of wedlock in Jamaica is the marriage of that child's natural parents. *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008).¹

The applicant, through counsel, maintains that *Matter of Hines* was incorrectly decided. The AAO, however, is bound by the precedent decisions of the Board. Section 103(a)(1) of the Act, 8 U.S.C. § 1103(a)(1) (providing that the "determination and ruling by the Attorney General with respect to all questions of law shall be controlling"). Pursuant to the regulation at 8 C.F.R. § 1003.1(g), decisions of the Board "shall be binding on all officers and employees of the Department of Homeland Security" and "selected decisions designated by the Board . . . shall serve as precedents in all proceedings involving the same issue or issues." The AAO is therefore bound by the Board's precedent decision in *Matter of Hines*.

The AAO must conclude that the applicant was not legitimated by his father and therefore did not automatically acquire U.S. citizenship on February 27, 2001 pursuant to section 320 of the Act.

¹ The Board in *Matter of Hines*, a precedent decision, overruled *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981). Under *Clahar*, children born in or out of wedlock were deemed legitimate for immigration purposes by virtue of the Jamaican collective legitimation laws.

As the applicant was not legitimated and consequently does not meet the definition of a child at section 101(c) of the Act, the AAO does not reach the issue of whether the applicant was residing in the legal and physical custody of his father prior to his eighteenth birthday, as required by section 320(a)(3) of the Act.

The applicant bears the burden of proof in these proceedings to establish his eligibility for citizenship under section 320 of the Act. 8 C.F.R. §§ 320.2(a), 320.3(b). The applicant is statutorily ineligible for citizenship under section 320 of the Act. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.