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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: BUFFALO

Date:

SEP 08 2010

IN RE:



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

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 application was denied by the Buffalo, New York Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Jamaica on May 15, 1989. The applicant's mother became a U.S. citizen by naturalization on July 25, 2005. The record contains no evidence that the applicant's father is a U.S. citizen. The applicant was admitted to the United States on September 6, 2003, as the nonimmigrant child of a lawful permanent resident awaiting the availability of an immigrant visa.

The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The director denied the application because the applicant never became a lawful permanent resident and was consequently ineligible to derive citizenship through his mother. On appeal, the applicant claims that he should derive citizenship through his mother because he applied for permanent residence and that the law does not require him to actually adjust his status to permanent residency.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this case because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act provides:

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.

Although the applicant was under 18 when his mother naturalized, he was never admitted for permanent residence prior to his eighteenth birthday and did not meet the requirement at section 320(a)(3) of the Act. The record shows that the applicant's mother's Form I-130, Petition for Alien Relative, filed on the applicant's behalf, was approved in 2004, but his corresponding Form I-485, Application to Adjust Status to lawful permanent residency, remains pending with U.S. Citizenship and Immigration Services (USCIS). The record further indicates that the Immigration Judge denied the applicant's request for adjustment of status during his removal proceedings and that the Board of Immigration Appeals dismissed the applicant's subsequent appeal in 2009. Because the applicant never obtained lawful permanent resident status before turning 18, he is ineligible for derivative citizenship under section 320(a) of the Act.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.