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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: NEW YORK, NY

Date:

SEP 13 2010

IN RE: Applicant: 

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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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

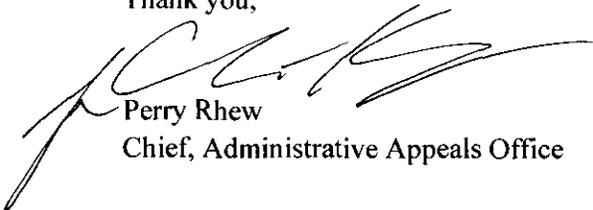


INSTRUCTIONS:

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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on [REDACTED] in Colombia. The applicant's parents, [REDACTED] were never married to each other. The applicant therefore was born out of wedlock. The applicant's mother became a U.S. citizen upon her naturalization on July 20, 1994, when the applicant was 11 years old. The applicant was admitted to the United States as a lawful permanent resident on February 6, 1987, when she was four years old. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The district director determined that the applicant could not derive U.S. citizenship under former section 321 of the Act because she could not establish that both her parents naturalized prior to her eighteenth birthday or that her paternity was not established by legitimation such that she could derive U.S. citizenship solely through her mother. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that she derived U.S. citizenship through her mother because she resided in her mother's sole legal custody pursuant to a court order. *See Applicant's Appeal Brief*. Further, counsel argues that the applicant was recognized by her father, but not legitimated. In this regard, counsel cites *Matter of Hines*, 24 I & N Dec. 544 (BIA 2008) and *Matter of Rowe*, 23 I & N Dec. 962 (BIA 2006), maintaining that like in Jamaica and Guyana, the countries involved in those cases, a legitimation process exists in Colombia despite Law No. 29 which eliminates the distinctions between legitimate and illegitimate children. *Id.*

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2005). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply 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, she 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 in 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 said 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 (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 18 years.

The applicant was born out of wedlock because her parents were not married to each other at the time of her birth. Former section 321(a)(3) allows for the derivation of U.S. citizenship by a child born out of wedlock upon the naturalization of the mother where “the paternity of the child has not been established by legitimation.” If the paternity of a child born out of wedlock has been established by legitimation, the child may derive U.S. citizenship only if both parents naturalized or one parent was deceased prior to the child’s eighteenth birthday under sections 321(a)(1) and (2) of the Act. The applicant did not derive U.S. citizenship under either section 321(a)(1) or (2). The first clause of former section 321(a)(3) of the Act, providing for derivation of U.S. citizenship in the case of a child whose parents were legally separated, does not apply to children who were born out of wedlock but were legitimated. *Lewis v. Gonzales*, 481 F.3d 125, 131 (2<sup>nd</sup> Cir. 2007). In this case, the applicant was born out of wedlock. Accordingly, the first clause of former section 321(a)(3) of the Act is inapplicable to this case. Further, even if it were applicable, the applicant did not derive U.S. citizenship by virtue of her mother having legal custody because her parents were never married, and never legally separated, as is required by the first clause of former section 321(a)(3) of the Act. *Id.* at 130.

The second clause of former section 321(a)(3) allows for the derivation of U.S. citizenship by a child born out of wedlock upon the naturalization of the mother where “the paternity of the child has not been established by legitimation.” Counsel cites *Matter of Hines*, *supra*, and *Matter of Rowe*, *supra*, maintaining that like in Jamaica and Guyana, respectively, the Colombian law eliminating the distinctions between children born in and out of wedlock did not eliminate the concept of legitimation. Counsel’s reliance on these cases is misplaced because they do not involve the law in

Colombia nor is there an analogous marriage requirement for legitimation in Colombia. Moreover, the Board precedent with respect to the legitimation law in Colombia, *Matter of Hernandez*, 19 I&N Dec. 14 (BIA 1983), has not been overruled or modified and remains binding. Pursuant to *Matter of Hernandez*, Colombian Law No. 29 became effective on March 9, 1982, and provided that all children have the same rights and obligations, abolishing all legal distinctions between legitimate and illegitimate children. According to a September 1994 advisory opinion from the Library of Congress entitled "Children Born out of Wedlock in Colombia" under Colombian Law, a natural child may be acknowledged by recording and signing the birth record as the father or the mother of the child. The birth record should include as the child's family name, the father's last name followed by that of the mother, if the child is legitimate or legitimated either by acknowledgement or judicially. The applicant's last name appears in her birth certificate as [REDACTED]. The listing of her father's name and inclusion of his last name in hers indicates that she was legitimated in accordance with Colombian law. The applicant's paternity was established by legitimation in this case. Therefore, she did not derive U.S. citizenship solely upon her mother's naturalization.

"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 burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. See Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has not met her burden of proof, and her appeal will be dismissed.

**ORDER:** The appeal is dismissed.