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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **DEC 15 2011**

Office: PHILADELPHIA, PA

File: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

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 \$630. 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 for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Philadelphia, Pennsylvania, and the Field Office Director dismissed a subsequent motion to reopen or reconsider. 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 in Haiti on October 8, 1978. The applicant's mother became a naturalized U.S. citizen on June 11, 1991. The applicant's father was born in Haiti and is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on August 16, 1989. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his mother.

The director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321 of the Act, and denied the application accordingly. *See Decision of the Field Office Director*, dated February 8, 2010. The director determined that the applicant had failed to meet the requirements for a motion to reopen or reconsider and dismissed the applicant's motion to reopen or reconsider. *See Decision of the Field Office Director*, dated April 13, 2011. On appeal, the applicant contends that the applicant's natural parents were divorced in 1990 and he can therefore derive citizenship through his mother. *See Form I-290B*, dated May 2, 2011.

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The applicable law for derivative citizenship purposes 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); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act is therefore applicable in this case.

Former section 321(a) of the Act provided, in pertinent part:

A child born outside of the United States of alien parents . . . 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 unmarried and 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 order in which the requirements are fulfilled is irrelevant, as long as all requirements are satisfied before the applicant's 18th birthday. *Matter of Baires-Larios*, 24 I&N Dec. at 470.

The term legal separation means "either a limited or absolute divorce obtained through judicial proceedings." *Afeta v. Gonzales*, 467 F.3d 402, 406 (4th Cir. 2006) (affirming the Board of Immigration Appeals' construction of the term legal separation as set forth in *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949)) (internal quotation marks omitted); *see also Minasyan v. Gonzales*, 401 F.3d at 1076 (stating that term legal separation refers to a separation recognized by law; considering the law of California, which had jurisdiction over the applicant's parents' marriage).

On appeal, the applicant contends that he qualifies for derivative citizenship based on the naturalization of his mother because his natural parents were divorced in 1990 and he was in his mother's custody since his entry into the United States.

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, the applicant was admitted to the United States as a lawful permanent resident when he was ten years old, and the applicant's mother became a naturalized U.S. citizen when he was twelve years old. However, while the applicant was born out of wedlock, the applicant was legitimated under Haitian law and cannot derive citizenship under section 321(a)(3) of the Act.

The applicant contends that his natural parents were divorced in 1990; however, the record reflects that the applicant's natural parents were never married and that he was born out of wedlock. The record further reflects that the applicant's mother married [REDACTED] a U.S. citizen on June 26, 1984, from whom she was divorced on June 28, 1990. While the applicant's mother divorced [REDACTED] in 1990, [REDACTED] is not the applicant's natural father.

Under the Civil Code of Haiti, as amended by a 1959 Presidential Decree, children born out of wedlock after January 27, 1959, and acknowledged by their natural father have the same rights and obligations as legitimate children. *Matter of Richard*, 18 I&N Dec. 208 (BIA 1982). The record contains an excerpt from the Birth Certificate Registers of the Commune of Jacmel indicating that, on September 25, 1984, upon judgment of the Civil Court of Jacmel, the applicant's late declaration of birth was accepted and was reported by the applicant's natural father, [REDACTED], who appeared in person and presented the applicant, declaring him to be his legitimate son. The applicant's father, therefore, officially acknowledged the applicant as his child under Haitian law and the applicant was legitimated by his father at the time his birth was registered. Consequently, the applicant was legitimated and cannot derive citizenship through his mother under former section 321(a)(3) of the Act.

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The applicant is also ineligible to derive citizenship under any other subsection of former section 321(a) of the Act.

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to former section 321 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.