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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: **AUG 06 2012**

Office: NEW YORK, NY

FILE: 

IN RE: 

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

ON BEHALF OF PETITIONER:

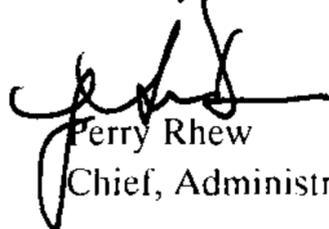
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 March 30, 1984 in Guyana. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on June 22, 1999, when the applicant was 15 years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident in 1994, when he was 10 years old. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant did not automatically acquire U.S. citizenship through his father because he was born out of wedlock and was not legitimated, and therefore not a "child" for citizenship purposes. The application was accordingly denied.

On appeal, the applicant maintains that he was residing in his father's custody and that he was under 18 years old when his father naturalized. See Statement Accompanying Form I-290B, Notice of Appeal to the AAO.

The applicable law for derivative citizenship purposes 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). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), is applicable to the applicant's case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act, as amended, 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 record shows that the applicant was born out of wedlock. At the outset, the AAO must determine if the applicant was legitimated under the law of the applicant's or his father's residence or domicile. The law in Guyana requires the marriage of the applicant's parents to establish legitimation. *See Matter of Rowe*, 23 I&N Dec. 962 (BIA 2006). The applicant was not legitimated under the law of Guyana because his parents were never married to each other. Legitimation in the State of New York, the applicant's father's state of residence, also requires marriage of the parents. *See Matter of Archer*, 10 I&N Dec. 92 (BIA 1962); *see also Matter of Levy*, 17 I&N Dec. 539 (BIA 1980). The applicant was not legitimated under either the law of Guyana or New York state law. The applicant therefore did not acquire U.S. citizenship upon his father'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 these proceedings is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has not met his burden of proof and his appeal will be dismissed.

ORDER: The appeal is dismissed.