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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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AUG 13 2012

Date:

Office: NEW YORK, NEW YORK

File:



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:



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 for Certificate of Citizenship (N-600) was denied by the District Director, New York, 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 in Jamaica on October 23, 1991, to unmarried parents [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on July 11, 2003. The applicant's father became a U.S. citizen upon his naturalization on February 13, 2009. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to section 320(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431(a).

The director determined that the applicant did not meet the definition of the term "child" in the Act because he was not legitimated by his father under the laws of Jamaica or New York. The application was denied accordingly. On appeal, the applicant contends through counsel that he has been legitimated by his father under Jamaican law.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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.

The term "*Child*" means a person who meets the requirements of section 101(c)(1) of the Act." 8 C.F.R. § 320.1. Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1) provides in pertinent part:

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[.]

The applicant contends that although his parents never married each other, he has been legitimated under the laws of Jamaica. Specifically, the applicant claims that his father's signature on his birth certificate constitutes legitimation under section 8 of the *Jamaican Status of Children Act of 1976*. *Brief on Appeal* at 3.

In 2008, the Board of Immigration Appeals (Board) held that "a child born out of wedlock in Jamaica [will] be the 'legitimated' child of his biological father only upon proof that the petitioner was married to the child's biological mother at some point after the child's birth." *Matter of Hines*, 24 I&N Dec. 544, 548 (BIA 2008). The Board determined that the Jamaican Status of Children Act

of 1976 did not supersede the marriage requirement set forth in the Jamaican Legitimation Act. *Id.* at 547-48.

The applicant claims that *Matter of Hines* is inapplicable because it involved derivation of citizenship through a mother under former section 321(a)(3) of the Act, and did not involve a biological father requesting derivative citizenship for a child under section 320(a) of the Act. *Brief on Appeal* at 2. However, the applicant presents no legal basis to support an inconsistent interpretation of the legitimation concept. See *Matter of Hines*, 24 I&N Dec. at 548 (“[A]bsent a specific congressional directive to the contrary, our interpretation of the legitimation concept must be consistent throughout the immigration laws.”). *Matter of Hines* applies to cases where all the requirements for the derivation or acquisition of citizenship were met on or after June 4, 2008, the date the decision was issued. *Matter of Hines* is binding on the applicant’s case because his father naturalized in 2009.

The applicant’s reliance on the Seventh Circuit’s decision in *Wedderburn v. INS*, 215 F.3d 795, 797 (7th Cir. 2000), which found that a Jamaican child was legitimated when his father’s name was added to the child’s birth certificate, is not controlling here because: (1) this case arises in the Second Circuit; and (2) U.S. Citizenship and Immigration Services is bound by the Board’s precedent decision in *Matter of Hines*. See *Ithaca College v. NLRB*, 623 F.2d 224, 228 (2d Cir. 1980) (holding that administrative agencies are bound to follow the law of the relevant judicial circuit); 8 C.F.R. § 1003.1(g) (“Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board . . . shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States.”).

The applicant also has not shown that his father legitimated him under the laws of New York, which require the marriage of a child’s biological parents. See *Matter of Patrick*, 19 I&N Dec. 726, 728 (BIA 1988) (“Under the law of New York, the legitimation of a child born out of wedlock requires the marriage of the child’s natural parents.”).

Because the applicant has not shown that he was legitimated under the laws of Jamaica or New York, he does not meet the definition of a child under section 101(c)(1) of the Act, and therefore cannot meet the requirements of section 320(a) of the Act. The applicant bears the burden of proof to establish his eligibility for citizenship under section 320 of the Act. 8 C.F.R. § 320.3. Here, the applicant has not established by a preponderance of the evidence that all the conditions for the automatic acquisition of U.S. citizenship pursuant to section 320(a) of the Act have been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.