

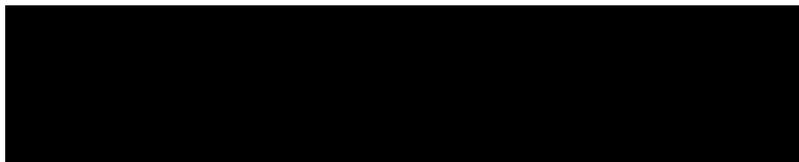
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services



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Date: **MAY 10 2012**

Office: PHILADELPHIA, PA

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:

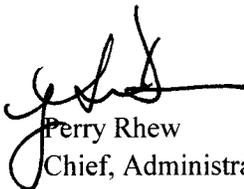
SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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 Field Office Director, Philadelphia, Pennsylvania, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The record reflects that the applicant was born out of wedlock in Jamaica [REDACTED] 1985. The applicant was admitted to the United States as a lawful permanent resident on October 8, 1993. The applicant's father became a U.S. citizen by naturalization [REDACTED]. The applicant's mother is not a U.S. citizen. The applicant's biological parents have never married. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director determined that the applicant was ineligible for derivative citizenship under section 320 of the Act because he was not legitimated by his father and therefore did not meet the definition of a child for citizenship purposes. On appeal, the applicant claims that he was legitimated by his father and is eligible for citizenship under section 320(a) of the Act.

Applicable Law

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); accord *Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). 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 on February 27, 2001, the 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.

For naturalization and citizenship purposes, section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), defines the term "child" as, in pertinent part:

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

Analysis

In this case, the director determined that the applicant did not qualify as his father's child under section 101(c) of the Act because he was born out of wedlock and not legitimated. The director cited *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), in which the Board of Immigration Appeals (BIA) held that the sole means of legitimating a child born out of wedlock in Jamaica is through the subsequent marriage of the child's biological parents. On appeal, the applicant claims *Matter of Hines* is inapplicable and that under prior caselaw he was legitimated because his Jamaican birth certificate was amended on May 12, 1988 to identify his biological father. The applicant relies on cases that were issued prior to the BIA's decision in *Matter of Hines*, which remains the binding precedent in this case. See *Matter of Hines*, 24 I&N Dec. at 548 (stating that the decision would apply to all future cases). Because the applicant's biological parents never married, he cannot be considered legitimated under Jamaican law. The applicant has also presented no evidence that he was legitimated by his father under New York State law before he reached the age of 16. Consequently, the applicant has not established that he was legitimated, as required to meet the definition of a child under section 101(c)(1) of the Act.

Even if the applicant had demonstrated his legitimation, the present record does not establish his eligibility for citizenship for other reasons.¹ Section 101(c)(1) of the Act requires that the child be in the legal custody of the legitimating parent at the time of legitimation. Legal custody of a biological child born out of wedlock will be presumed where a U.S. citizen parent has legitimated and resides with the child. 8 C.F.R. § 320.1 (definition of *legal custody*). Apart from that presumption and in the absence of a judicial determination or a judicial or statutory grant of custody, "the parent having actual uncontested custody is to be regarded as having 'legal custody' of the person concerned for the purpose of determining that person's status[.] . . ." *Matter of M-*, 3 I&N Dec. 850, 856 (CO 1950). Here, the record indicates that the applicant's father was not residing with the applicant and did not have actual custody of him at the time his birth certificate was amended in 1988. In his July 26, 2010 affidavit submitted on appeal, the applicant's father states that the applicant resided with him upon his arrival in the United States in 1993, but he does not indicate that they resided together prior to that time. The record also contains a 2007 Presentence Investigation Report submitted in the applicant's criminal court proceedings which states that the applicant told his probation officer that he was raised by his mother and grandmother in Jamaica until 1993. Accordingly, the present record does not demonstrate that the applicant was in his father's legal custody at the time of his

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

legitimation in 1988. Consequently, the applicant did not meet the definition of a child at section 101(c)(1) of the Act for this additional reason.

The present record also fails to satisfy subsection 320(a)(3) of the Act. The relevant evidence does not establish that the applicant was in his father's legal and physical custody at the time of his father's naturalization in 2000 or anytime thereafter and prior to the applicant's eighteenth birthday. Although the applicant's father asserts in his July 26, 2010 affidavit that the applicant resided with him from his arrival in the United States in 1993 throughout "his formative years while under the age of eighteen," the record contains no evidence, such as school records, tax returns or other documentation of the applicant's legal and physical custody at the time of his father's naturalization and prior to his eighteenth birthday. The aforementioned Presentence Investigation Report cites the applicant as stating that he resided with his father and stepmother in Brooklyn from 1993 to 1998, then resided with an uncle in Florida for approximately one year; and alternated residency between his father in Brooklyn and his mother in Jamaica from 2001 until 2006. Consequently, the present record does not establish that the applicant was residing in the legal and physical custody of his father, as required for him to derive citizenship pursuant to subsection 320(a)(3) of the Act.

Conclusion

The applicant bears the burden of proof to establish his eligibility for derivative citizenship. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. §§ 320.3, 341.2(c). On appeal, the applicant has failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.