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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

E2

[redacted]

Date: SEP 12 2012 Office: HARTFORD, CT FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 appeal was denied by the Field Office Director, Hartford, Connecticut, and 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 Jamaica on July 3, 1988. The applicant's became a U.S. citizen upon his naturalization on August 3, 2001. The applicant was admitted to the United States as a lawful permanent resident on September 2, 2000. The applicant's mother is not a U.S. citizen. The applicant's parents were never married. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, claiming that he derived citizenship upon his father's naturalization.

The field office director denied the application upon finding that the applicant was not legitimated by his father under either Jamaican or Connecticut law. Thus, the director concluded that the applicant was not the "child" of a U.S. citizen as the term is defined in section 101(c) of the Act, 8 U.S.C. § 1101(c), and did not acquire U.S. citizenship.

On appeal, the applicant, through counsel, contends that the director erred in applying *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), to decide the question of his legitimation because he was over the age of 18 and had already automatically derived U.S. citizenship when *Hines* was decided.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). 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), applies to this 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 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. Thus, 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. Jamaican law requires the marriage of the applicant's parents to establish legitimation. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008).[1] The applicant was not legitimated under the law of Jamaica because his parents were never married to each other. Legitimation in the State of Connecticut can be accomplished through the parents' marriage as well as through a written affirmation of paternity by the father or by court decree. *See* Section 45(a)-438 of the Connecticut Code. There is no evidence in the record that the applicant was acknowledged by his father pursuant to the laws of the State of Connecticut. *Id.*; *see also* Section 46b-172(3) of the Connecticut Code. The applicant was not legitimated and thus did not automatically acquire U.S. citizenship upon his father's naturalization.

The applicant, through counsel, contends that *Matter of Hines* is inapplicable to his case because he was over the age of 18 when *Hines* was decided. The AAO is bound by the Board's interpretation of Jamaican law stated in *Hines*, a precedent decision. *See* Section 103(a)(1) of the Act, 8 U.S.C. § 1103(a)(1) (providing that the "determination and ruling by the Attorney General with respect to all questions of law shall be controlling"). Pursuant to the regulation at 8 C.F.R. § 1003.1(g), decisions of the Board "shall be binding on all officers and employees of the Department of Homeland Security" and "selected decisions designated by the Board . . . shall serve as precedents in all proceedings involving the same issue or issues." The AAO is therefore bound by the Board's precedent decision in *Matter of Hines*.

Counsel also claims that the applicant was legitimated under Connecticut state law. *See* Appeal Brief at 6-8. Contrary to counsel's claim, however, the listing of the applicant's father's name on the applicant's birth certificate is not an acknowledgment of paternity as defined by Title 46b of the Connecticut Code. Connecticut state law requires a written affirmation of paternity by the father or by court decree. *See* Section 46b-172, Connecticut Code. A father's written affirmation must be "accompanied by (A) an attested waiver of the right to a blood test, the right to a trial and the right to an attorney, and (B) a written affirmation of paternity executed and sworn to by the mother of the child." *Id.* Moreover, Connecticut state law requires that all written notices, waivers, affirmations and acknowledgments "shall be on forms prescribed by the Department of Public Health . . . ." The AAO must therefore conclude that the listing of the applicant's father's name on his birth certificate is not sufficient to establish his legitimation under Connecticut law.

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[1] The Board in *Matter of Hines*, a precedent decision, overruled *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981). Under *Clahar*, children born in or out of wedlock were deemed legitimate for immigration purposes by virtue of the Jamaican collective legitimation laws.

The AAO must therefore conclude that the applicant was not legitimated by his father and therefore did not automatically acquire U.S. citizenship pursuant to section 320 of the Act.

Having found that the applicant was not legitimated, the AAO need not address the question of whether he was residing in his father's legal and physical custody prior to his eighteenth birthday.

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); 8 C.F.R. § 320.2. Here, the applicant has not established that he met all of the conditions for the automatic acquisition of U.S. citizenship under section 320 of the Act before his eighteenth birthday. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.