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



U.S. Citizenship
and Immigration
Services

DATE: **AUG 22 2013**

OFFICE: BUFFALO, NY

FILE: [REDACTED]

IN RE: [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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a horizontal line.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Buffalo, New York (director), and the decision was affirmed by the Administrative Appeals Office (AAO). The AAO now moves to reopen the matter *sua sponte* based on new evidence. The August 4, 2008, director decision, and September 17, 2008, AAO decision will be withdrawn, and the applicant's Form N-600 will be approved. The matter is returned to the Buffalo, New York Field Office for issuance of a certificate of citizenship.

The applicant was born in Jamaica to unmarried parents on November 17, 1984, and he was admitted into the United States as a lawful permanent resident on August 4, 1998, when he was 13 years old. The applicant's father was born in Jamaica, and became a naturalized U.S. citizen on September 17, 2002, when the applicant was 17 years old. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he derived U.S. citizenship through his father.

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 matter because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320 of the Act provides, 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.

Under section 101(c) of the Act, 8 U.S.C. § 1101(c)(1), the term "child" means, for naturalization and citizenship purposes:

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 director denied the applicant's Form N-600, on the basis that the applicant had failed to establish that he was legitimated by his father. The AAO affirmed the director's decision on

September 17, 2008. Specifically, the AAO found that the law in New York, where the applicant's father resided, required the parents of a child born out of wedlock to marry in order for the child to become legitimated. See *Matter of Vizcaino*, 19 I&N Dec. 644 (BIA 1988); see also, *Matter of Bullen*, 16 I&N Dec. 378 (BIA 1977); *Matter of Archer*, 10 I&N Dec. 92 (BIA 1962). Because the applicant's parents did not marry, the applicant was not legitimated under New York law. The AAO found further, pursuant to the Board of Immigration Appeals (Board) decision, *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), that the sole means of legitimating a child born out of wedlock in the applicant's country of residence, Jamaica, was through the marriage of the child's parents. Because the applicant's parents did not marry, the applicant was therefore also not legitimated under Jamaican law.

The record now contains new evidence submitted into the record after issuance of the September 2008, AAO decision. The evidence reflects that on January 24, 2013, the Board of Immigration Appeals issued a decision pertaining to the applicant's removal proceedings in which it distinguished section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, legitimation requirements as set forth in *Matter of Hines, supra*, from requirements for legitimation under section 101(c) of the Act.¹ Based on its analysis, the Board concluded that the applicant was legitimated under Jamaican law, and that the applicant derived U.S. citizenship through his father pursuant to section 320 of the Act. Specifically, the Board stated that:

The issue in *Hines* was whether the respondent had established 'paternity by legitimation' under former section 321(a)(3) of the Act [8 U.S.C. § 1432(a)(3)], not whether the alien was a 'legitimated' child under section 101(c) of the Act. Therefore *Matter of Hines, supra*, does not govern this case which arises under a different provision of the Act.

The Board indicated that the term "legitimation", as used in section 101(c) of the Act, is not as restrictive as the term "paternity by legitimation" and the Board concluded that:

A child born in Jamaica after 1976, whose father has acknowledged [the child] on the birth registration form, would be considered legitimized under the [Jamaican Status of Children Act of 1976] [.]

¹ The applicant was placed into removal proceedings on or about April 10, 2008. On November 13, 2008, an immigration judge found, with regard to the applicant's U.S. citizenship claim, that the applicant had failed to establish that he was legitimated by his father. The Board affirmed the decision on February 5, 2009. Both the immigration judge and Board decisions relied on the holding in *Matter of Hines, supra*, to support their findings. The applicant appealed the February 2009 Board decision to the Second U.S. Circuit Court of Appeals. The Circuit Court of Appeals noted the Board's previous holding in *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), under which the applicant would have been considered legitimated pursuant to the Jamaican Status of Children Act of 1976, and on May 31, 2011, the Court of Appeals remanded the matter to the Board for clarification of its legitimation findings in light of *Matter of Clahar, supra*.

The record in the present matter contains the applicant's Jamaican birth certificate reflecting that at the time of the applicant's birth, his father acknowledged the applicant as his child. The applicant was therefore legitimated at birth under Jamaican law. *See Matter of Clahar, supra.*

Evidence in the record reflects further that the applicant's father became a naturalized U.S. citizen on September 17, 2002, when the applicant was 17 years old, and that the applicant was admitted into the United States as a lawful permanent resident on August 4, 1998, when he was 13 years old. U.S. residence evidence indicates that the applicant resided in his father's physical custody before and after his father's naturalization as a U.S. citizen. The applicant also established that he was in his father's legal custody at the time of legitimation and at the time of his father's naturalization as a U.S. citizen.² The applicant has therefore established that the conditions for derivative citizenship under section 320 of the Act have been met.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has met his burden of proof. Accordingly, the director's decision, dated August 4, 2008, and the AAO decision, dated September 17, 2008, will be withdrawn, and the Form N-600 application will be approved.

ORDER: The Field Office Director, Buffalo, New York decision, dated August 4, 2008, and the AAO decision, dated September 17, 2008, will be withdrawn. The Form N-600 application will be approved. The matter is returned to the Buffalo, New York Field Office for issuance of a certificate of citizenship.

² The regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1.

For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of . . . a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.