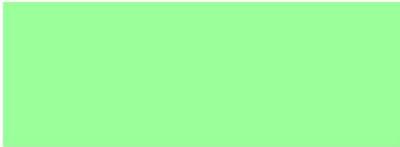


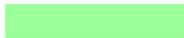


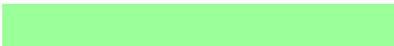
(b)(6)



Date: **FEB 27 2013**

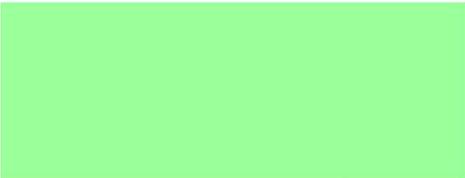
Office: HARTFORD, CT

FILE: 

IN RE: Applicant: 

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;


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Hartford, Connecticut. The matter came before the Administrative Appeals Office (AAO) on appeal, but was erroneously rejected as untimely filed. The matter will be reopened *sua sponte*. The previous decision of the AAO rejecting the appeal will be withdrawn. The appeal will be dismissed.

The record reflects that the applicant was born on March 1, 1987 in Jamaica. The applicant's mother is [REDACTED]. She is not a U.S. citizen. The applicant's father, [REDACTED], was added to his birth certificate in 1996. He became a U.S. citizen upon his naturalization on January 22, 1993. The applicant's parents were never married to each other. The applicant was admitted to the United States as a lawful permanent resident on July 18, 2002. The applicant's eighteenth birthday was on March 1, 2005. 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 field office director determined that the applicant did not automatically acquire U.S. citizenship through his father because he was not legitimated under Jamaican law and therefore not a "child" for citizenship purposes. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he was legitimated in accordance with Jamaican law. Counsel cites, in relevant part, an unpublished circuit court of appeals opinion remanding a case back to the Board of Immigration Appeals for reconsideration of its holding in *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). See Appeal Brief. Counsel alternatively argues that the applicant was legitimated in accordance with section 309 of the Act, 8 U.S.C. § 1409. *Id.*

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), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of the amended Act. 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.

(b)(6)

- (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. Jamaican law requires the marriage of the applicant's parents to establish legitimation. *See Matter of Hines, supra*. The applicant was not legitimated under the law of Jamaica because his parents were never married to each other. Legitimation in Connecticut, the applicant's father's state of residence, can be accomplished through a court order, a formal acknowledgement of paternity in accordance with the acknowledgment statute, or marriage of the natural parents. *See* Sections 45(a)-438 and 46b-172 of the Connecticut Code (1993). The applicant was not legitimated under either Jamaican or Connecticut law.

Counsel's reliance on an unpublished opinion is misplaced. The AAO is not bound by the unpublished decisions of any court. In contrast, the Board's determination in *Matter of Hines* remains binding precedent. Legitimation in Jamaica can only be accomplished through the marriage of a child's parents. Section 309 of the Act refers to legitimation requirements but, contrary to counsel's argument, it does not prescribe the legitimation law in the United States. The legitimation law applicable to the father's state of residence in this case is the law in Connecticut, discussed *supra*. Moreover, section 309 of the Act provides for acquisition of U.S. citizenship at birth by out of wedlock children, not derivation upon a parent's naturalization. Section 309 of the Act is not applicable or relevant to the applicant's case.

"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 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 matter is reopened *sua sponte*. The AAO previous decision is withdrawn. The appeal is dismissed.