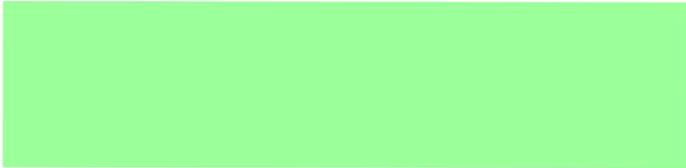




U.S. Citizenship
and Immigration
Services

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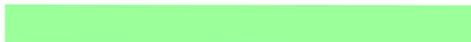


Date: **JUN 10 2013**

Office: NEW YORK, NY

FILE: 

IN RE:

Applicant: 

APPLICATION: Application for a Certificate of Citizenship under former Section 321(a) of the Act, 8 U.S.C. § 1432(a) (repealed).

ON BEHALF OF APPLICANT:

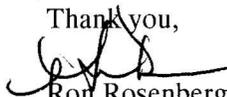


INSTRUCTIONS:

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 District Director, New York, New York. 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 on January 23, 1975 in Jamaica. The applicant's mother, as indicated on his birth certificate, is [REDACTED]. The applicant's father's name is not listed on the birth certificate. The applicant was born out of wedlock. In 1980, the applicant's mother married [REDACTED]. On October 18, 1981, the applicant was admitted to the United States as a [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization on November 6, 1990, when the applicant was 15 years old. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed).

The district director determined that the applicant could not derive U.S. citizenship under former section 321 of the Act solely through his mother because, in relevant part, he could not establish that his parents were divorced prior to his eighteenth birthday. The director, citing *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), also noted that the applicant was legitimated upon his mother's marriage to [REDACTED]. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that [REDACTED] is not his biological father. He states further that he was never legitimated by his biological father, whose identity and whereabouts are unknown. Thus, the applicant claims that he derived U.S. citizenship solely upon his mother's naturalization pursuant to the second clause of former section 321(a)(3) of the Act as the out of wedlock child whose paternity has not been established by legitimation. See Appeal Brief.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The applicant was over the age of 18 years when the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), took effect. Thus, former section 321 of the Act, as in effect prior to the CCA's effective date is applicable to his case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former section 321 of the Act, stated, in pertinent part, that:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record indicates that the applicant obtained lawful permanent residency and that his mother naturalized prior to the applicant's eighteenth birthday. The applicant's father is not a U.S. citizen. The applicant does not claim that his father is deceased. Thus, the applicant did not derive U.S. citizenship under subsections (1) or (2) of former section 321 of the Act. The applicant was born out of wedlock. Former section 321(a)(3) of the Act, *supra*, provides for derivation of U.S. citizenship by a child born out of wedlock solely upon the mother's naturalization only where paternity was not established by legitimation. *See Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007). Former section 321(a)(3) of the Act, *supra*, further provides for the derivation of U.S. citizenship through a custodial parent where the parents have legally separated.

The applicant's birth certificate does not list his father's name. Nevertheless, the applicant's mother married [REDACTED] subsequent to the applicant's birth, the applicant bears [REDACTED] last name, and [REDACTED] name appears listed as the applicant's father's name on the applicant's immigrant visa application. The applicant's mother now states that "[i]t could be possible that [REDACTED] is not [the applicant's] father." *See* Affidavit of [REDACTED] at ¶ 6. The applicant's mother's statement is inconclusive, and does not establish that [REDACTED] was not the applicant's father. The AAO finds that the applicant has failed to meet his burden of proof to establish, by a preponderance of the evidence, that his paternity was not established by legitimation upon his mother's marriage to [REDACTED]. Moreover, the AAO finds that there is no evidence to establish that the applicant's parents divorced prior to the applicant's eighteenth birthday such that he could derive U.S. citizenship solely upon his mother.

The evidence in the record indicates that the applicant's father was [REDACTED] that he married the applicant's mother and thereby legitimated the applicant, and that they were not legally separated. Thus, the applicant did not derive U.S. citizenship upon his mother's naturalization under former section 321 of the Act, or any other provision of law.

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“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 in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.