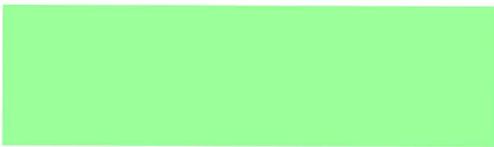




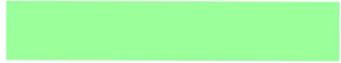
U.S. Citizenship  
and Immigration  
Services

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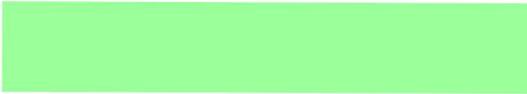
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Office: BOSTON, MA



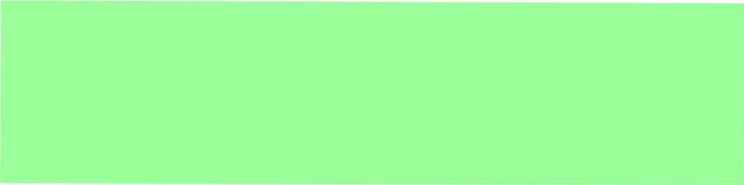
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

ON BEHALF OF APPLICANT:



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,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Boston, Massachusetts, denied the application for a certificate of citizenship. 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 December 17, 1982. The applicant was admitted to the United States as lawful permanent resident on August 28, 1997, when he was 14 years old. The applicant's father became a U.S. citizen upon his naturalization on August 4, 1992, when the applicant was nine years old. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he derived citizenship upon his father's naturalization.

The field office director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432. The director noted further that the applicant was not eligible for the benefits of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), because he was over the age of 18 on its effective date (February 27, 2001).

On appeal, the applicant asserts that his parents were in a common law marriage in Jamaica that was dissolved upon the termination of their cohabitation. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. Counsel also asserts that denial of the application violates the Constitution. *Id.*<sup>1</sup>

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). The CCA, which repealed former section 321 of the Act, and amended sections 320 and 322 of the Act, is not retroactive and applies only to individuals who were under the age of 18 on its effective date, February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). The applicant was over the age of 18 on the effective date of the CCA and is therefore ineligible for the benefits of the amended Act. Former section 321 of the Act, was in effect at the time of the applicant's father's naturalization and prior to the applicant's eighteenth birthday, and is therefore applicable in this case.

Former section 321(a) of the Act provided, in pertinent part:

A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or

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<sup>1</sup> The jurisdiction of the AAO is limited to the authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. Counsel's constitutional due process and equal protection claims go beyond the purview of this administrative appeal and are outside the jurisdiction of this office.

- (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 such child is unmarried and under the age of eighteen 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 eighteen years.

Here, the applicant satisfied several of the requirements for derivative citizenship set forth in former section 321(a) of the Act before his eighteenth birthday. Specifically, prior to the applicant's eighteenth birthday, he was admitted to the United States as a lawful permanent resident and his father naturalized. However, the applicant's mother is not a U.S. citizen. Thus, the applicant did not derive U.S. citizenship under former section 321(a)(1) of the Act, which requires the naturalization of both parents. The record also does not indicate that the applicant's mother was deceased prior to the applicant's eighteenth birthday and he is consequently ineligible to derive U.S. citizenship from his father alone under former section 321(a)(2) of the Act. The applicant is also ineligible to derive citizenship through his father under the first clause of former section 321(a)(3) of the Act because his parents were never married, and therefore never "legally separated." Former section 321(a)(3) of the Act allows for the derivation of U.S. citizenship by a child born out of wedlock only upon the naturalization of the mother. *See Lewis v. Gonzales*, 481 F.3d 125, 130 (2<sup>nd</sup> Cir. 2007). Consequently, the applicant did not derive citizenship upon his father's naturalization under former section 321(a) of the Act, or any other provision of law.

Counsel asserts that the applicant was legitimated under the laws of Jamaica. *See Appeal Brief at 5.* Legitimation in Jamaica, however, is accomplished only by the marriage of the natural parents. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). Counsel's reliance on an unpublished Second Circuit Court of Appeals 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.

Referencing the Jamaican Property Rights of Spouses Act of Jamaica (2003), counsel maintains that the applicant's parents were in a common law marriage that was terminated when their cohabitation ended. Thus, counsel states that the applicant's parents were "legally separated" for purposes of the first clause of former section 321(a)(3) of the Act. *See Appeal Brief at 6.* The record does not contain sufficient evidence to establish that the applicant's parents were in a

common law marriage, or that such marriage was formally terminated as would be required to be deemed a "legal separation" for derivation of citizenship purposes. The applicant indicated that his parents were not married when he was born. See Form N-600, Application for Certificate of Citizenship. The applicant's immigrant visa petition (Form I-130) reflects that the applicant's father was married in 1983 to a woman other than the applicant's mother, and that he had never previously been married. The party relying on foreign law must plead and prove it. *Matter of Soleimani*, 20 I&N Dec. 99 (BIA 1999). The applicant failed to establish the relevant Jamaican law, as in effect at the time of his parents' cohabitation. He failed to establish that they cohabitated.

The term legal separation means "either a limited or absolute divorce obtained through judicial proceedings." *Afeta v. Gonzales*, 467 F.3d 402, 406 (4th Cir. 2006) (affirming the Board of Immigration Appeals' construction of the term legal separation as set forth in *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949)) (internal quotation marks omitted). A married couple, even when living apart with no plans of reconciliation, is not legally separated. *Matter of Mowrer*, 17 I&N Dec. 613, 615 (BIA 1981); see also *Nehme v. INS*, 252 F.3d 415 (5<sup>th</sup> Cir. 2001). The applicant's parents were never formally married. Even if the applicant's parents were in a common law relationship, there is no indication it was formally dissolved such that it could be established that they were "legally" separated. Whether the applicant's parents are deemed to be unwed or in a common law relationship, the record contains no evidence of a legal separation. Consequently, the applicant did not derive citizenship upon his father's naturalization under former section 321(a)(3) of the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.