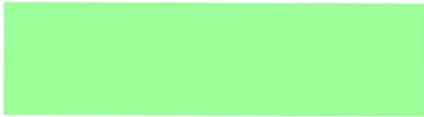




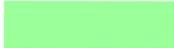
U.S. Citizenship
and Immigration
Services

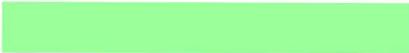
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DATE: **OCT 15 2013**

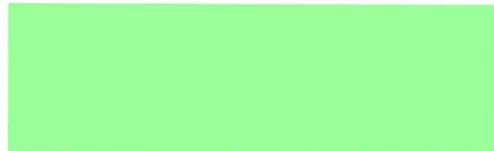
OFFICE: ST. ALBANS, VT

FILE: 

IN RE: 

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

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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, St. Albans, Vermont (the director), 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 to unmarried parents on March 16, 1980. The applicant was admitted into the United States as a lawful permanent resident on June 18, 1992, when he was 12 years old. His mother became a naturalized U.S. citizen on July 18, 1997, when the applicant was 17 years old. His father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he derived U.S. citizenship through his mother.

The record reflects that the applicant initially filed his Form N-600 in March 1999. The Form N-600 was denied on October 19, 1999, based on a determination that the applicant was legitimated under the Jamaican Status of Children Act of 1976, and that he therefore failed to meet requirements that he be both, born out of wedlock and not legitimated, in order to derive citizenship through his naturalized mother. The applicant filed another Form N-600 on March 12, 2013. The regulation at 8 C.F.R. § 341.6 states that after an application for a certificate of citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant shall be instructed to file a motion to reopen or reconsider the denial of the first application. In this case, the director appears to have treated the applicant's second Form N-600 as a motion to reopen and reconsider. In a decision dated June 24, 2013, the director again found that the applicant was legitimated under the Jamaican Status of Children Act of 1976, and that he therefore failed to establish that he qualified for derivative citizenship under section 321 of the former Act. The application remained denied accordingly.

On appeal the applicant asserts, through counsel, that the director's decision was erroneous in light of the Board of Immigration Appeals (Board) decision, *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). In support of the assertion counsel submits a copy of the *Matter of Hines* decision. The record also contains birth certificate and lawful permanent residence evidence for the applicant, U.S. academic records for the applicant, and a copy of the applicant's mother's naturalization certificate.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 321 of the former Act provided, in pertinent part, that:

(a) 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
 - (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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

An individual born abroad is presumed to be an alien and bears the burden of establishing his or her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The “preponderance of the evidence” standard requires that the record demonstrate that the individual’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, the individual will meet this standard if she or he submits relevant, probative and credible evidence that the claim is “more likely than not” or “probably” true. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)).

In the present matter, it is uncontested that the applicant’s father did not become a U.S. citizen. The record further establishes that the applicant’s parents did not marry, that the applicant was born out of wedlock, and that the applicant’s father acknowledged him before the civil authorities in Jamaica by appearing before the Civil Registry and signing the applicant’s birth registration shortly after the applicant’s birth. In order to derive U.S. citizenship solely through his naturalized mother, the applicant must therefore demonstrate that his father’s acknowledgment of paternity did not constitute legitimation under Jamaican law. Former section 321(a)(3) of the Act.

The Board held in its June 2008 decision, *Matter of Hines*, 24 I&N Dec. at 547-48, that the Jamaican Status of Children Act of 1976 did not supersede the marriage requirement set forth in the Jamaican Legitimation Act, and that the sole means of legitimation of a child born out of wedlock in Jamaica is the marriage of the child’s parents. In making its decision, the Board explicitly overruled its previous holding in *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), which found that the 1976, Jamaican Status of Children Act eliminated all legal distinctions between legitimate and illegitimate children once paternity over a child was established. The Board specifically stated, however, that the ruling in *Matter of Hines* would apply only to future cases:

Thus, in future cases, and subject to relevant changes in Jamaican law, we will deem a child born out of wedlock in Jamaica to have had his or her paternity established ‘by legitimation’ only upon proof that the child’s parents married at some time after the child’s birth.

Matter of Hines at 548, and:

Thus, for purposes of both preference allocation and derivative citizenship, we will hereafter deem a child born out of wedlock in Jamaica to be the “legitimated” child of his biological father only upon proof that the petitioner was married to the child's biological mother at some point after the child's birth.

Id.

The holding in *Matter of Hines* therefore applies only to cases where an applicant can establish all the requirements for derivation of citizenship on or after June 4, 2008, the date the decision was issued. In the present matter, the applicant turned 18 on March 16, 1998, ten years before the *Matter of Hines* decision was issued. The holding in *Matter of Clahar*, 18 I&N Dec. 1, was in effect prior to, and at the time of, the applicant's 18th birthday. The Board ruling in *Matter of Clahar* is therefore applicable to the applicant's claim for derivative citizenship under section 321 of the former Act.

The Board held in *Matter of Clahar*, that the 1976 Jamaican Status of Children Act eliminated all legal distinctions between legitimate and illegitimate children once paternity over a child was established. The present record establishes that the applicant's father acknowledged the applicant before the civil authorities in Jamaica by appearing before the Civil Registry and signing his birth registration shortly after the applicant's birth. The applicant was therefore considered to be legitimated under the Board's ruling in *Matter of Clahar*. Because the applicant was legitimated under the Jamaican Status of Children Act of 1976, he has failed to establish that he qualifies for derivative citizenship under section 321(a)(3) of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in this case has not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.