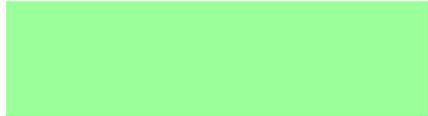


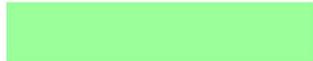


U.S. Citizenship  
and Immigration  
Services

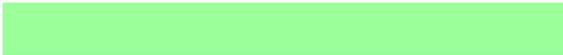
(b)(6)



Date: MAR 25 2014 Office: PHILADELPHIA, PA



IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 or establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Philadelphia, Pennsylvania Field Office Director (the director) denied the Application for Certificate of Citizenship (Form N-600) and reaffirmed that decision when deciding the applicant's subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be sustained and the matter returned to the director for issuance of the applicant's certificate of citizenship.

I. *Pertinent Facts and Procedural History*

The applicant was born out of wedlock in Jamaica on October 11, 1985, and his parents, [REDACTED] have never been married to each other. The applicant's father acknowledged the applicant as his son on July 25, 1989, by placing his name on the applicant's birth certificate. The applicant was admitted to the United States as a lawful permanent resident on June 4, 1992 when he was six years old. The applicant's father became a U.S. citizen upon the father's naturalization on December 12, 1997, when the applicant was twelve years old. The applicant's eighteenth birthday was on October 11, 2003.

On May 31, 2011, the applicant filed a Form N-600 with U.S. Citizenship and Immigration Services (USCIS), seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The applicant claimed that he derived citizenship from his father because his father naturalized when the applicant was under the age of 18 and the applicant was in his father's legal and physical custody at that time as required by section 320 of the Act.<sup>1</sup>

In the denial and motion decisions, the director found the applicant ineligible for a certificate of citizenship. In so concluding, the director noted that the applicant had to meet the definition of "child" under section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), in order for section 320 to apply. In the applicant's case, because he was born out of wedlock, he had to show that he had been "legitimated" under the law of his residence or domicile, or under his father's residence or domicile, whether in the United States or elsewhere. The director concluded that the applicant had not been legitimated under the laws of Jamaica or the State of Connecticut, the relevant places of residence or domicile, and, therefore, did not qualify as the "child" of his natural father for purposes of section 320 of the Act. On appeal, the applicant contends that he was legitimated and hence meets the

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<sup>1</sup> The Child Citizenship Act of 2000 was enacted on Oct. 30, 2000, and became effective 120 days after the date of enactment, or February 27, 2001, and applies to "individuals who satisfy the requirements of section 320 . . . [of the INA] as in effect on such effective date." Because the applicant did not meet the requirements for derivative citizenship under the precursor provision to section 320, he could not have derived citizenship from his father before February 27, 2001, when the provisions of section 320 would have become applicable to him. The implementing regulation at 8 C.F.R. § 320.2(a) clarifies that the conditions in section 320 of the Act must have been met after February 26, 2001. *See also Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001), discussed below.

definition of “child” under section 101(c)(1) of the Act, thereby automatically deriving U.S. citizenship through his natural father as of the effective date of the CCA.

## II. *Applicable Law*

Section 320 of the Act states, in pertinent part:

- (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.

For naturalization and citizenship purposes under subchapter III of the Act, section 101(c) of the Act defines the term “child” as:

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. . . .

## III. *Analysis*

This case is governed by section 320 of the Act and not by its precursor, former section 321 of the Act.<sup>2</sup> The record reflects that the applicant was under the age of 18 when his father naturalized and that he was living in the legal and physical custody of his U.S. citizen father on the effective date of the Child Citizenship Act (i.e., February 27, 2001).<sup>3</sup> See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (holding that section 320 applies to the conditions for derivative citizenship that take place only on or after the CCA effective date). The remaining question, therefore, is whether the applicant qualifies as a “child” under section 101(c) of the Act, which in turn requires us to

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<sup>2</sup> Former section 321 of the Act, in distinction to the current section 320 of the Act, allowed for the derivation of citizenship for children born out of wedlock through the naturalization of the *mother* if the paternity of the child had *not* been established by legitimation. 8 U.S.C. § 1432(a)(3) (1999).

<sup>3</sup> The applicant previously met the age, lawful permanent residency, custody, and citizen-parent criteria, whereas the ability to derive citizenship through his natural father arose on the effective date of the CCA.

resolve whether he was legitimated by his father under the laws of his or his father's residence or domicile. The applicant claims legitimation under Jamaican law.<sup>4</sup>

Of relevance to this case, the Board of Immigration Appeals (the Board) has issued two precedent decisions and a recent non-precedent decision construing relevant Jamaican law with respect to legitimation of children. In *Matter of Clahar*, 18 I&N Dec. 1 (BIA 1981), the Board, considering the definition of child under 101(b) of the Act in the context of preference visa allocations, held that the Jamaican Status of Children Act (JSCA) of 1976 had, eliminated all distinctions between children born in and out of wedlock. Thus, under *Clahar*, a child born out of wedlock who was under eighteen years of age on the effective date of the JSCA, or born on or after that date, qualified as the legitimated child of his or her father if the requirements for acknowledgment under Jamaican law were met before the child's eighteenth birthday.

In *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), however, the Board overruled *Clahar*, determining that even though the JSCA eliminated the distinctions between legitimate and illegitimate children, it did not invalidate section 2 of the Jamaican Legitimation Act, which provides for legitimation of a child solely through the subsequent marriage of the parents. The Board specified that its holding applied equally to questions of preference visa allocations and derivative citizenship. *Id.* at 545. It is important to note that, in *Matter of Hines*, the Board was not dealing with a case involving preference visas but instead was interpreting the requirement for acquisition of citizenship under former section 321(a)(3) of the Act. That provision states that, when a child is born out of wedlock, he or she can only acquire citizenship through his or her mother if paternity has not been established by legitimation.

More recently, the U.S. Court of Appeals for the Second Circuit remanded a similar Jamaican legitimation case to the Board to "(1) clarify precisely how it interprets the concept of legitimation as it is used [in § 101(c)(1) of the Act] and (2) justify how it arrived at that particular interpretation." *Watson v. Holder*, 643 F.3d 367, 370 (2d Cir. 2011). In that case, the respondent argued that he had derived citizenship through his father, who naturalized when the respondent was 17 years old. In its initial *Watson* decision, the Board had applied *Matter of Hines* to current section 320 of the Act and concluded that the respondent did not derive citizenship through his father because his biological parents never married.

Upon remand from the Second Circuit, the Board issued a new, non-precedent decision, concluding that the holding in *Matter of Hines* was limited to derivation of citizenship under former section 321 of the Act and thus inapplicable to Mr. Watson's claim under section 320 of the Act. *Matter of Davino Hopeton Watson*, A046633823 (BIA Jan. 24, 2013). Noting that *Hines* involved "paternity by legitimation" under former section 321(a)(3) of the Act, not whether the respondent was a "legitimated" child under section 101(c)(1), the Board in *Watson* concluded that it was not necessary to apply *Hines*' interpretation of the word "legitimated" outside of the legal framework of that case.

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<sup>4</sup> The applicant does not assert, and we do not need to address, whether he was legitimated under the law of Connecticut, the place of his and his father's current residence since we have determined that the applicant was legitimated under Jamaican law.

Specifically, the Board stated that “it was not necessary to the decision in *Hines* to hold that the meaning of “legitimate” in section 321(a)(3) of the Act must be extended throughout the Act.” *Id.* at 4. The Board went on to say “as we previously have recognized, a child born in Jamaica after 1976, whose father has acknowledged her on the birth registration form, would be considered legitimized [under the JSCA],” and concluded that the respondent in *Watson* therefore met the definition of a legitimated child under section 101(c) of the Act, and derived citizenship through his father’s naturalization pursuant to section 320 of the Act.

Although the Board’s decision is non-precedential, it is obvious that the applicant in this case is in precisely the same circumstances as the respondent in *Watson*. It is also significant to note that the Board expressly stated that it was not necessary to the holding in *Hines* to extend that case’s interpretation of “legitimated” throughout the Act, and went on to limit that interpretation to questions of “paternity by legitimation” under former section 321 of the Act. Accordingly, it is clear that the Board now views its statements in *Hines* regarding that case’s universal applicability as dictum, and, while not expressly applying its earlier decision in *Matter of Clahar*, effectively did so when it found that the respondent met the definition of “child” under section 101(c) of the Act.

Turning then to our case, the applicant, as in *Watson*, claims to have derived citizenship through his naturalized father under operation of section 320 of the Act. As the Board noted in *Watson*, legitimation may be established in Jamaica by the biological father’s subsequent acknowledgment of the child on the child’s birth certificate. *Id.*, citing *Matter of Pagan*, 22 I&N Dec. 547 (BIA 1999). The record here demonstrates that the applicant’s biological father acknowledged the applicant as his child in accordance with Jamaican law when he added his name to the applicant’s birth certificate in 1989. As such, the applicant has established that he is the legitimated child of his natural father for purposes of section 101(c)(1) of the Act, and hence derived citizenship as a matter of law from his father on the effective date of the CAA. The applicant’s appeal will accordingly be sustained.

Before closing, however, it is worth noting that this case presents an example of temporal complexity that warrants clarification. As is clear from the discussion above, changes in laws, both statutory changes and changes in interpretation by courts, can take place over time that have a direct bearing on the question of whether an applicant automatically acquired citizenship in a particular case. For example, Congress significantly amended the requirements for automatic acquisition of citizenship after birth in the CCA in 2000. Prior to that date, this applicant, based on the facts of his case, could not have acquired citizenship from his father. Likewise, prior to the effective date of the JSCA in 1976, “legitimation” in the context of immigration benefits would have required the marriage of the biological parents subsequent to the birth of the child in all instances.

The Board speaks to this fact in *Matter of Fuentes-Martinez*, 21 I&N Dec. 893 (BIA 1997):

A child’s acquisition of citizenship on a derivative basis occurs by operation of law and not by adjudication. No application is filed, no hearing is conducted, and no certificate is issued when such citizenship is acquired. The actual determination of derivative citizenship under section 321(a) of the Act may occur long after the fact, in the context of

a passport application or a claim to citizenship made in deportation proceedings.

(Footnote omitted)

As the Board stated, the acquisition of citizenship occurs by operation of law and not adjudication, but “the actual determination” occurs after the fact. For example, in our case the applicant became a citizen by operation of the CCA when it became effective in 2001, a determination that is made in the present time. Prior to *Matter of Hines*, U.S. Citizenship and Immigration Services (USCIS) would have applied *Matter of Clahar* to this case, and found that the applicant had derived citizenship from his father under the facts presented here. Because his case arose after *Matter of Hines*, however, USCIS followed that precedent and reached the opposite conclusion on the same set of facts. Now, in the wake of *Matter of Watson*, it is clear that the holding in *Hines* does not apply to this case, meaning the applicant has indeed been legitimated under Jamaican law, which in turn results in deriving citizenship from his father.

In each of those scenarios, the correct result is reached only by applying the interpretation of the law in effect at the time of the adjudication to events and substantive laws that existed in the past. For example, in this case, we look to the CCA as in effect on and after February 27, 2001 and the JSCA as effective in 1976. We then apply the best current interpretation of those laws (for example, the present-day Board interpretation of the JSCA) in adjudicating whether an applicant has established that he or she acquired citizenship at some point in the past. To find otherwise would lead to absurd results, where an adjudicator would be compelled to apply case law that is now overturned because at one point that case law would have allowed an applicant to meet the legal requirements for derivative citizenship. The contrary would equally apply: the fact that an applicant was for years ineligible for derivative citizenship based on the case law in effect at that time is immaterial when a change in that law confers derivative status at the time of the adjudication.

#### IV. Conclusion

In these proceedings, the applicant bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *See* 8 C.F.R. § 320.3(b)(1); *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, the applicant has met his burden of establishing that he is a U.S. citizen.

**ORDER:** The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.