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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: NEW YORK, NY

Date: JAN 06 2011

IN RE:

Respondent:



APPLICATION: Cancellation of Certificate of Citizenship under Section 342 of the Immigration and Nationality Act; 8 U.S.C. § 1453.

ON BEHALF OF RESPONDENT:



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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The respondent's Certificate of Citizenship was cancelled by the District Director, New York, New York, and the director's decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On September 30, 2010, the district director issued a decision cancelling the respondent's Certificate of Citizenship. The district director's decision was based on a finding that the applicant had not been legitimated under either the laws of the Dominican Republic or the State of New York, and therefore had not derived U.S. citizenship upon his father's naturalization pursuant to former section 321 of the Act, 8 U.S.C. § 1432 (repealed).<sup>1</sup>

On appeal, the respondent maintains that the district director erred in cancelling his Certificate of Citizenship. Specifically, the respondent, through counsel, maintains that the director erred in requiring the subsequent marriage of his parents to establish legitimation under New York state law. See Counsel's Letter in Support of Appeal.

Section 342 of the Act, 8 U.S.C. § 1453, provides, in relevant part, that:

The [Secretary of the Department of Homeland Security] is authorized to cancel any certificate of citizenship . . . if it shall appear to [his] satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel such document or record with the reasons therefore and shall be given at least sixty days in which to show cause why such document or record should not be canceled. The cancellation under this section of any document purporting to show the citizenship status of the person to whom it

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<sup>1</sup> 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.

was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.

The regulations at 8 C.F.R. § 342 outline the process for cancellation of a certificate of citizenship under the Act. The AAO notes that the district director properly notified the respondent of her intent to cancel the Certificate of Citizenship and afforded him an opportunity to respond as required by the Act and the regulations.

The respondent was born on December 6, 1968 in the Dominican Republic. The applicant's parents [REDACTED] and [REDACTED]. The respondent's father became a U.S. citizen upon his naturalization in 1980. The applicant's mother passed away in 1976. The applicant was admitted to the United States as a lawful permanent resident in 1978. The respondent maintains that he is entitled to a certificate of citizenship because he derived U.S. citizenship upon his father's naturalization pursuant to former section 321(a)(2) of the Act.

At issue is whether the respondent can establish that he was legitimated by his father as is required by the applicable definition of "child" in section 101(c) of the Act, 8 U.S.C. § 1101(c).<sup>2</sup> 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 director properly concluded that the applicant was not legitimated under New York law. See *Matter of Patrick*, 19 I&N Dec. 726 (BIA 1988) (holding that the subsequent marriage of biological parents is required for legitimation); see also *Matter of Espinoza*, 17 I&N Dec. 522 (BIA 1980) and New York Domestic Relations Law, Section 24.<sup>3</sup> The applicant also was not legitimated under the laws of the Dominican Republic. Prior to the enactment of the 1995 Code for the Protection of Children, legitimation in the Dominican Republic required the subsequent marriage of a child's parents and acknowledgment. See *Matter of Reyes*, 17 I&N Dec. 512 (BIA 1980) and *Matter of Doble-Pena*, 13 I&N Dec. 366 (BIA 1969). Article 2 of the Civil Code of the Dominican Republic states that the Code for the Protection of Children, which eliminated all legal distinctions between

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<sup>2</sup> Section 101(c) of the Act provides, in relevant part, the following definition of child for purposes of Title III of the Act:

...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, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

<sup>3</sup> The AAO is bound by the Board of Immigration Appeals' precedent decisions cited above regarding New York legitimation. See 8 C.F.R. § 1003.1(g). Any previous decision finding that an applicant was legitimated pursuant to section 4-1.2(a)(2)(C) of the New York Estates, Powers and Trust Law was issued in error. The New York Estates, Powers and Trusts Law relates solely to a child's rights in inheritance matters, and not to paternity or legitimation for immigration purposes.

children born in and out of wedlock and took effect on January 1, 1995, is not retroactive. The applicant therefore does not meet the definition of "child" found in section 101(c) of the Act, and thus did not derive U.S. citizenship pursuant to former section 321 of the Act or any other provision of law.

The burden of proof in cancellation proceedings is on the government, and cancellation of a Certificate of Citizenship is authorized "if it shall appear to [the] satisfaction" of the Secretary of the Department Homeland Security" that the Certificate was illegally or fraudulently obtained. The AAO finds that the district director has met her burden of proof and that the respondent's Certificate of Citizenship was properly cancelled. The respondent's appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.