



U.S. Department of Justice

Immigration and Naturalization Service



Public Copy

OFFICE OF ADMINISTRATIVE APPEALS  
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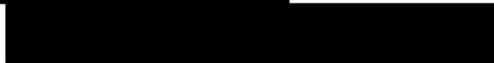
FILE:



Date:

APR 28 2000

IN RE: Applicant:



APPLICATION:



IN BEHALF OF APPLICANT: Self-represented

Identifying &...  
prevent clearly and...  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 3, 1986 in Santo Domingo, Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic on December 2, 1957 and became a naturalized U.S. citizen on January 15, 1997. The applicant's birth certificate lists the name of [REDACTED] as his mother. There is no indication that she ever became a United States citizen.

The record contains a divorce decree which reflects that the applicant's parents married each other on February 2, 1989 and they were divorced on September 19, 1989. The court granted custody of their four children to their mother. The applicant's father married a naturalized United States citizen on July 2, 1990. The applicant was last admitted to the United States as a nonimmigrant visitor on January 29, 1994 and he became a lawful permanent resident on August 17, 1995 based on his classification as the step-son of a U.S. citizen. The applicant claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined the record failed to establish that the applicant met the requirements in that he failed to establish that he was in the legal custody of the naturalizing parent. The district director then denied the application accordingly.

On appeal, the applicant disagrees with this decision. The applicant requests 30 days in which to submit additional documentation. More than 30 days have passed since the applicant filed the appeal, and no new documentation has been received into the record. Therefore, a decision will be rendered based on the present record.

Section 321(a) of the Act provides, in pertinent part, that:

A child born outside of the United States of alien parents,...becomes a citizen of the United States upon fulfillment of the following conditions, and it is immaterial which of the actions occurred last:

- (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.

The record establishes that (1) the applicant's father became a naturalized U.S. citizen prior to the applicant's 18th birthday, (2) the applicant was legitimated when his parents married each other and (3) he was residing in the United States pursuant to a lawful admission for permanent residence at the time of his father's naturalization. However, he was not residing in the United States in his father's legal custody as a lawful permanent resident when his father naturalized. The divorce decree contained in the record clearly shows that the court awarded custody of the applicant to his mother, and the record fails to contain any documentation to show that the court order has been rescinded or superseded.

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through his father's naturalization. Therefore, the appeal will be dismissed, and the district director's decision will be affirmed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

**ORDER:** The appeal is dismissed.