



U.S. Department of Justice
Immigration and Naturalization Service

DD

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[Redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [Redacted] Office: Charlotte (ATL)

Date: JAN 24 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

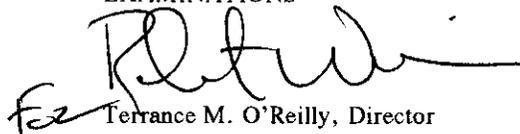
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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, Atlanta, Georgia, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 5, 1965 in Georgetown, Guyana, out of wedlock to a mother, [REDACTED] aka [REDACTED] a native of Guyana who became a naturalized U.S. citizen on August 26, 1980. The applicant was lawfully admitted to the United States for permanent residence on June 6, 1976 to join his mother. He 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 that the statute does not provide for the derivation of U.S. citizenship through a mother's naturalization for a child born out of wedlock if the paternity of the child has been established by legitimation. The district director indicated that by virtue of the Children Born out of Wedlock (Removal of Discrimination) Act, effective May 18, 1983, Guyana has eliminated all legal distinctions between legitimate and illegitimate children and thus established paternity by legitimation of children born out of wedlock. Children born out of wedlock in Guyana after May 18, 1983 and children who were under the age of 18 prior to that date are deemed to be legitimate and legitimated children, respectively pursuant to §§ 101(b)(1)(A) and (C) of the Act, 8 U.S.C. 1101(b)(1)(A) and (C). See Matter of Goorahoo, 20 I&N Dec. 782 (BIA 1994). The applicant is considered to be a legitimate child at birth; therefore, he has two legal parents. The district director then denied the application accordingly.

On appeal, the applicant states that he satisfied all the requirements of § 321 of the Act prior to the enactment of the Removal of Discrimination Act of 1983 in Guyana.

Section 321(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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes-Martinez, Interim Decision 3316 (BIA 1997), the Board stated the following; "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that the applicant was residing in the United States in the legal custody of his mother as a lawful permanent resident as of June 1976 when the applicant was 10 years old.

Section 321 of the Act was amended by Pub. L. No. 95-417, Sec. 7, 92 Stat. 918, (Oct. 5, 1978) when the applicant was 13 years old.

The applicant's mother became a naturalized U.S. citizen when the applicant was 15 years old and the applicant was still recognized as an illegitimate child in Guyana.

The applicant derived U.S. citizenship at the age of 15 years when his mother was naturalized in 1980. The applicant had satisfied all the statutory requirements prior to his 18th birthday and prior to the enactment of the Guyanese Removal of Discrimination Act in 1983 which recognized him as a legitimated child. Once the applicant became a U.S. citizen in 1980, he could only lose such citizenship by voluntarily performing certain act specified in §§ 349 and 356 of the Act, 8 U.S.C. 1481 and 1488. The passage of a foreign law or regulation over which the applicant had no control is not one of the acts included in those sections.

It was held in Matter of Villanueva, 16 I&N Dec. 84 (BIA 1976), that an illegitimate child who acquired United States citizenship under prior law, as the child of a United States citizen mother, does not lose that citizenship upon legitimation. Therefore, the appeal will be sustained and the district director's decision will be withdrawn.

ORDER: The appeal is sustained. The district director's decision is withdrawn and the application is approved.