U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

PUBLIC COPY

FILE: [redacted] Office: Seattle Date: FEB 22 2001

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:

[redacted]

identification 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Seattle, Washington, 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 April 4, 1978 in Eritrea. The applicant's father, [redacted], was born in Eritrea in 1950 and never had a claim to U.S. citizenship. The applicant's mother, [redacted], was born in 1959 in Eritrea and became a naturalized United States citizen in May 1995. According to the applicant's application, his parents never married each other. The applicant was lawfully admitted for permanent residence on January 12, 1984 as a refugee. The applicant claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432, as a child born outside of the United States of an alien parent having legal custody of the child when there has been a legal separation of the parents who subsequently naturalizes while the child is under the age of 18 years.

The district director noted that the applicant's mother (hereafter referred to as [redacted] indicated on her Application for Naturalization, Form N-400, that she had married the applicant's father (hereafter referred to as [redacted]. The district director noted that, although [redacted] had obtained an administrative child support order against [redacted], that finding did not constitute "legal separation" as that term is defined in Matter of H--, 3 I&N Dec. 742 (BIA 1949). The district director also determined that the record failed to establish that the applicant met the requirements under § 322 of the Act, as he was over the age of 18 years when he filed the application. The district director then denied the application accordingly.

On appeal, counsel states that whether the applicant's parents were or were not married is inconsequential because they were obviously separated and the "administrative child support order" is sufficient to meet the standard required.

Section 321. CHILD BORN OUTSIDE OF UNITED STATES OF ALIEN PARENT; CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

> (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:
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> (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, 21 I&N Dec. 893 (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 (1) [redacted] became a naturalized U.S. citizens prior to the applicant's 18th birthday, (2) [redacted] has been determined to be the applicant's natural father and (3) the applicant was residing in the United States in [redacted] legal custody as a lawful permanent resident when [redacted] naturalized.

However, in order for the applicant to receive the benefits of § 321 of the Act, there must have been a legal separation of the parents. Matter of H--, 3 I&N Dec. 742 (C.O. 1949), held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings, and where the actual parents of the child were never lawfully married, there could be no "legal separation," of such parents. Therefore, [redacted] was not legally separated from [redacted] when [redacted] naturalized. If the parents were never lawfully married, there can be no legal separation, as such, and an award of custody or in this matter "administrative child support order" to a naturalized parent under such circumstances does not result in derivation even though other requisite conditions are satisfied. See INTERP 320.1(a)(6).

8 C.F.R. 322.2(a) provides that to be eligible for "expeditious naturalization" under § 322 of the Act, 8 U.S.C. 1433, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must: (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship.

The applicant was over the age of 18 years when he filed his own application on May 9, 2000; therefore he is ineligible for the benefits of § 322 of the Act.

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through his mother's naturalization. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.