

U.S. Department of Homeland Security
Citizenship and Immigration Services

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OFFICE OF ADMINISTRATIVE APPEALS
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



SEP 04 2003

FILE: [Redacted] Office: BUFFALO, NY Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (2000).

ON BEHALF OF APPLICANT:
[Redacted]

PUBLIC COPY

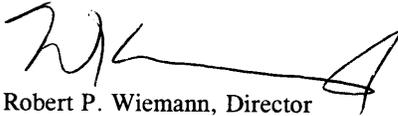
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant was born on January 2, 1968, in Guyana. The applicant's mother was born in Guyana and became a naturalized United States (U.S.) citizen on October 23, 1985. The applicant's father was also born in Guyana. He died on March 5, 1988 and there is no indication that he ever became a U.S. citizen. The applicant's parents married in 1963. The applicant entered the U.S. pursuant to a lawful admission on September 24, 1978. The applicant seeks automatic citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (2000).

The district director found that the applicant failed to establish that his parents had ever been divorced or legally separated and he was thus statutorily ineligible for citizenship pursuant to section 321 of the former Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant was in the legal and physical custody of his mother at the time of her naturalization as required by section 321 of the Act. Counsel cites an unpublished AAO decision that he states shows that the custody requirements of the applicant were met.

Section 321 of the Act was repealed on February 27, 2001. An applicant who was over the age of 18 on that date is ineligible to obtain the benefits of the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18. The provisions of the CCA are not retroactive. *Matter of Rodriguez-Trejedor*, 23 I&N Dec. 153 (BIA 2001). However, as noted in the publication of the interim rule implementing the CCA, all persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time.

Former section 321 of the Act states in pertinent part that:

- (a) A child born outside of the United States of alien parents . . . 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 such child is under the age of eighteen 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 eighteen years.

[Emphasis added.] The AAO decision cited by counsel is a case where the parents of the applicant were divorced and the legal and physical custody of the applicant was in question. The appeal was ultimately decided in favor of the applicant. In the present case, there is no indication of a divorce or legal separation, as required by the statute, so custody is not the issue.

Although evidence in the record establishes that the applicant was under the age of 18 when his mother became a naturalized U.S. citizen and he was residing in the U.S. pursuant to a lawful admission for permanent residence, there is no evidence in the record to indicate that the applicant's parents ever divorced or legally separated. Thus, since his father never became a U.S. citizen, and died after the applicant reached the age of 18 years, the applicant is not eligible to derive citizenship under former section 321 of the Act.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. See also § 341 of the Act, as amended, 8 U.S.C. § 1452.

Because the applicant has failed to establish that he meets the requirements for citizenship as set forth in former section 321 of the Act, his appeal will be dismissed.

ORDER: The appeal is dismissed.