



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041*

**DILLON, CHEDDI DESMOND JR  
A# 040-097-680  
20 BRADSTON STREET  
BOSTON, MA 02118**

**DHS/ICE Office of Chief Counsel - BOS  
P.O. Box 8728  
Boston, MA 02114**

**Name: DILLON, CHEDDI DESMOND JR**

**A040-097-680**

**Date of this notice: 10/24/2011**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Mullane, Hugh G.

Immigrant & Refugee Appellate Center | [www.irac.net](http://www.irac.net)

Falls Church, Virginia 22041

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File: A040 097 680 - Boston, MA

Date: OCT 24 2011

In re: CHEDDI DESMOND JR DILLON

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Gwendylan E. Tregerman  
Senior Attorney

APPLICATION: Termination; change of venue

The respondent, a native and citizen of Jamaica and a lawful permanent resident of the United States, has appealed from the decision of the Immigration Judge dated May 27, 2011, finding him removable pursuant to the charges listed in the Notice to Appear (“NTA”).<sup>1</sup> The respondent does not dispute the allegations in the NTA concerning his criminal convictions, or his removability on that basis; rather, he appeals the denial of his motion to terminate proceedings based on his claim that he is a United States citizen. He also appeals the Immigration Judge’s denial of his motion to change venue. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i) (2011). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

A person who claims derivative United States citizenship has the burden to establish it. *See Matter of Leyva*, 16 I&N Dec. 118, 119 (BIA 1977); *see also Walker v. Holder*, 589 F.3d 12, 21 (1st Cir. 2009) (alien has the burden to establish his claim to derivative U.S. citizenship by a preponderance of credible evidence). The respondent claims derivative citizenship through his father, who naturalized in 1993 (I.J. at 2). The parties do not dispute that the respondent’s claim is governed by former section 321(a) of the Immigration and Nationality Act (“Act”), 8 U.S.C. § 1432

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<sup>1</sup> The Immigration Judge issued two decisions concerning this case on the same date – one denying both of the respondent’s motions, and one explaining in further detail his denial of the motion to terminate based on the respondent’s claim to citizenship. We refer to the latter decision unless otherwise indicated.

(I.J. at 3). The respondent was born before February 27, 2011, the effective date of the law that replaced section 321(a), and the new law is not retroactive.<sup>2</sup>

The respondent argues that his circumstances fit paragraph (3) of section 321(a), which provides for derived citizenship when there has been, “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.” He contends that his parents had a common law marriage and were subsequently legally separated (Respondent’s Br. at 2).

The respondent offers no evidence to prove the existence of such a marriage. Even assuming a common law marriage, however, the respondent’s parents could not be legally separated under paragraph (3) of section 321(a) of the Act because they were not legally married. *See Matter of H-*, 3 I&N Dec. 742, 744 (BIA 1949) (“since the subject’s parents were not lawfully joined in wedlock, they could not have been legally separated.”); *see also Johnson v. Whitehead*, 647 F.3d 120 (4th Cir. 2011) (finding that “every circuit that has considered the issue has found a marriage requirement in the term “legal separation”); *Brissett v. Ashcroft*, 363 F.3d 130 (2d Cir. 2004) (recognizing legally separated for purposes of derivative citizenship under section 321(a)(3) requires marital relationship in the first instance); *Barthelemy v. Ashcroft*, 329 F.3d 1062 (9th Cir. 2003) (because the alien’s parents never married and thus could not legally separate, the alien did not derive citizenship under section 321(a)(3)). Therefore, we agree with the Immigration Judge that the respondent did not meet his burden of proof to establish his citizenship.

We also agree with the Immigration Judge that the respondent did not demonstrate good cause for a change of venue. 8 C.F.R. § 1003.20. Accordingly, the following order shall be entered.

ORDER: The respondent’s appeal is dismissed.

  
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FOR THE BOARD

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<sup>2</sup> See section 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631.

UNITED DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
Boston, Massachusetts

File A 040 097 680

May 27, 2011

In the Matter of

CHEDDI DESMOND DILLON, JR.,

Respondent

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)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES:           237(a)(2)(B)(i) - drug offense; 237(a)(2)(A)(iii)  
                      - aggravated felony, drug trafficking;  
                      237(a)(2)(C) - firearms offense.

APPLICATIONS:   Motion to terminate; change of venue.

ON BEHALF OF RESPONDENT:

Glenn Formica  
Hartford, Connecticut

ON BEHALF OF THE GOVERNMENT:

Mario Sturla, Assistant Chief  
Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE


The respondent is a native and citizen of Jamaica. The Government has charged the respondent in the Notice to Appear, as referenced above. Based upon review of all evidence in the record proceeding, included but not limited to the Notice to Appear, the respondent's pleadings, records of conviction, the Court finds by clear, convincing, and unequivocal evidence, the respondent is removable and directs the country of Jamaica as the country of removal.

The respondent seeks to terminate removal proceedings against him, claiming that he is a citizen of the United States. The Court finds that the respondent is not a citizen of the United States and incorporates by reference the detailed written decision of this date outlining the reasons why the Court declines to find that the respondent has a United States citizenship. The Court also notes that this matter was previously before the Immigration Court in November of last year, when the respondent made a similar claim. The DHS CIS reviewed his N-600 application and found that the respondent had not made a valid claim to United States citizenship. In this Court, reviewing both the respondent's claims, as well as a memo of law, which respondent's counsel offered in support of his claim to United States citizenship, found that the respondent was not a United States citizen.

In the Court's view, the respondent indicated that he wished to accept this as a final order, however, subsequent to the hearing and the order of removal, the respondent on his own behalf filed an appeal and the matter was remanded back to this Court for further consideration. Additionally, today the respondent seeks a change of venue to the State of Connecticut, as he wishes to have any appeals heard in the Second Circuit rather than the First Circuit and states that he is a long time resident of the state of Connecticut. However, due to his aggravated felony status, the respondent is a mandatory detainee

and is currently incarcerated. Accordingly, his request for change of venue is hereby denied, and the respondent is ordered removed to the country of Jamaica.

So ordered.

  
\_\_\_\_\_  
PAUL M. GAGNON  
Immigration Judge

CERTIFICATE PAGE

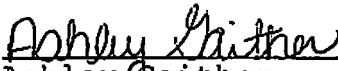
I hereby certify that the attached proceeding  
before PAUL M. GAGNON, in the matter of:

CHEDDI DESMOND DILLON, JR.

A 040 097 680

Boston, Massachusetts

was held as herein appears, and that this is the original  
transcript thereof for the file of the Executive Office for  
Immigration Review.

  
Ashley Gaither (Transcriber)

Deposition Services, Inc.  
12321 Middlebrook Rd., Suite 210  
Germantown, Maryland 20874  
(301) 881-3344

July 20, 2011  
(Completion Date)