



U.S. Citizenship
and Immigration
Services

EA 2



APR 11 2014

FILE: [REDACTED] Office: HOUSTON, TEXAS Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on February 24, 1978, in Laos. The applicant's father, [REDACTED] was born on March 6, 1952 in Laos, and he became a naturalized U.S. citizen on May 1, 1987, when the applicant was nine years old. The applicant's mother was born in Laos on October 20, 1960, and she is not a U.S. citizen. The record reflects that the applicant's parents married in Laos in 1977, and that they obtained a Laotian refugee camp sanctioned divorce in Thailand on May 1, 1979, when the applicant was one year old. The applicant remained with his father, and he and his father were admitted into the United States as refugees less than a year later, in January 1980. The applicant presently seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The director determined that the applicant was ineligible for U.S. citizenship under section 321 of the former Act because his parents did not obtain a "legal separation" prior to the applicant's eighteenth birthday.

On appeal, counsel asserts that the applicant's parents did not have access to the legal system in Thailand or Laos at the time of their divorce. Counsel asserts that the applicant's parents complied with the only legal procedures available for obtaining a divorce within their refugee camp, and that the divorce should therefore be considered legal for section 321 of the former Act purposes.

Section 321 of the former Act provides, in pertinent part, that:

(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.

The applicant does not claim that his mother is deceased or that she became a naturalized U.S. citizen prior to his eighteenth birthday, and the record contains no evidence to indicate that either event occurred. The AAO

therefore finds that the requirements set forth in section 321(a)(1) and 321(a)(2) of the former Act have not been met.

The AAO additionally finds that the applicant has failed to establish he meets the “legal separation” requirements set forth in section 321(a)(3) of the former Act. The Board of Immigration Appeals (Board) stated clearly in *Matter of H*, 3 I&N Dec. 742 (1949), that **“legal separation” means either a limited or absolute divorce obtained through judicial proceedings.** (Emphasis added). Counsel asserts, in part, that the fact that the applicant’s parents had no recourse to the Thai or Laotian legal system at the time that they divorced, in essence mandates that refugee camp divorce procedures should be recognized as judicial proceedings. Counsel asserts further that by not recognizing the refugee camp divorce, the Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, CIS) is holding the applicant to an impossible standard of performance.

Counsel asserts that affidavits from experts on refugee issues confirm that the applicant’s parents had no access to the legal system in Thailand or Laos, and that the divorce obtained by the applicant’s parents was in accordance with refugee camp procedures. The AAO finds, however, that the affidavits do not address the issue of whether a divorce obtained in a refugee camp may subsequently meet the definition of a “legal separation” as interpreted for section 321 of the former Act purposes. Moreover, the AAO finds that the evidence in the record reflects that the affiants are not qualified to make such a legal determination.

The AAO finds that the evidence contained in the record establishes that the refugee camp sanctioned divorce obtained by the applicant’s parents was not recognized as a judicial proceeding in either Thailand or Laos at the time that it was obtained and that it therefore does not constitute a divorce obtained through a judicial proceeding, as set forth in *Matter of H*, *supra*. The record contains a December 1997, Library of Congress letter (Letter) addressing the question of whether the applicant’s parents’ divorce in the refugee camp was “[v]alid under the laws of Thailand, the laws of Laos, or under international treaty to which the United States is a party”. The letter concluded that each law required that the applicant’s parents comply with a formal action before a government official. *See generally*, December 1997, Library of Congress letter prepared by Senior Legal Specialist, Directorate of Legal Research, Phuong-Khanh Nguyen.¹

An October 6, 1997, United Nations High Commissioner for Refugees letter (UNHCR letter) contained in the record, discusses the legal validity of refugee camp sanctioned divorces obtained in Laotian refugee camps in Thailand. The UNHCR letter reflects that such documents were obtained through *informal* processes of the Laotian Refugee Committee, with the endorsement of the Thai Camp Commander, and that the documents were *tacitly* (informally) recognized *for refugee resettlement purposes only*. *See generally*, October 6, 1997, UNHCR letter, written by Senior Legal Counselor, Regina Germain.

Based on the evidence in the record, the AAO finds that the applicant has failed to establish his parents obtained a “legal separation”, as defined by *Matter of H*, *supra*, and as required under section 321(a)(3) of the former Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden. The appeal will be dismissed accordingly.

ORDER: The appeal is dismissed.

¹ The letter states that a divorce by mutual consent must be registered under Thai law and must receive an official seal under Laotian law. Moreover, the letter reflects that the Library of Congress was unable to locate a relevant international treaty on the issue.