

U.S. Citizenship
and Immigration
Services



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APR 11 2005

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FL

Date:

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship pursuant to section 320 of the Immigration and Nationality Act, 8 U.S.C. §1431.

ON BEHALF OF APPLICANT:

[Redacted]

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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, 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 August 23, 1986, in France. The applicant's father [REDACTED] was born in France on April 10, 1947, and he became a naturalized United States (U.S.) citizen on July 29, 2003. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents did not marry. The record reflects that the applicant was admitted into the United States as a lawful permanent resident on October 26, 1995, when he was nine years old. He seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act, (the Act) 8 U.S.C. § 1431.

The district director concluded that the applicant was ineligible for U.S. citizenship pursuant to section 320 of the Act because he did not meet the definition of "child" as set forth in section 101(c) of the Act.

On appeal, the applicant, through counsel, asserts that the applicant has been legitimated under French law and that the applicant therefore meets the definition of "child" as set forth in the Act. Counsel submits two letters, entitled Advisory Opinions, written by attorneys in France, discussing legitimation and legal provisions contained in the French Civil Code.

Section 320 of the Act states that a "child" born outside of the U.S. may automatically become a citizen of the United States upon fulfillment of the following conditions:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 101(c) of the Act states that:

(c) As used in title III-

- (1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere. . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

The applicant was born to unmarried parents in France in 1986, and he resided in France until 1995, when he moved to Florida. The record reflects that since the applicant's birth, the applicant's father has resided in France and Florida.

Counsel asserts that the applicant's birth certificate contains his father's name, and that recognition of the applicant's father [REDACTED] the birth certificate constitutes legitimation of the applicant pursuant to applicable French Civil Code provisions. Counsel asserts further that French law makes no legal distinction between the rights of a child born in or out of wedlock.

To support his assertion that the applicant was legitimated under French law, counsel submits two letters,

entitled Advisory Opinions, written by French attorneys. The AAO notes that the letters, signed on July 19, 2001, by attorneys, [REDACTED] are identical in content. The letters state that under Section 329 of the French Civil Code (FCC), "[t]he legitimation can benefit to all children born out of wedlock; as long as their parental ascendance has been legally established." The letters state further that, Section 334 of the FCC provides that, "[t]he child born out of wedlock has the same rights than [sic] the child born in wedlock in his relationship with the father and mother". The letters additionally state that under Section 334-1 of the FCC, "the child born out of wedlock acquires the name of the one of his parents with who, the ascendance has been established first; if such has been established simultaneously he acquires the name of the father."

The AAO finds that the Advisory Opinion letters submitted on appeal fail to establish that the applicant has been legitimated under French law. The AAO notes that the record does not contain the actual or full FCC provisions referred to by the attorneys, and the legal provisions discussed in the letters appear to refer to legitimation in general or collateral terms. Moreover, the Board of Immigration Appeals decision, *Matter of J*, 7 I&N Dec. 338, 339 (1956) held that, "[l]egitimation is regulated by the French Civil Code in Articles 331-333" (not discussed in the letters submitted by the applicant). *Matter of J* states further that "Article 331 of the French Civil Code (Law of April 25, 1924) provides that children born out of wedlock other than those born of incestuous or adulterous intercourse are legitimated by the subsequent marriage of their father and mother, when the latter have lawfully acknowledged them before their marriage, or when they acknowledge them at the time of its celebration." See also 63 A.L.R. Fed 520 § 66 (1983-2004) (discussing the FCC legitimation requirements of marriage and acknowledgement by the father of a child born out of wedlock).

In the present matter, the applicant's parents did not marry. The AAO therefore finds that the applicant has failed to establish by a preponderance of the evidence that he was legitimated under French law. The AAO notes further that pursuant to Florida Statutes § 742.091, a child becomes legitimated only through the marriage of his or her parents. The applicant has thus also failed to establish that he was legitimated under Florida legitimation laws. Accordingly, the AAO finds that the applicant does not qualify as a "child for section 320 of the Act purposes.

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. The applicant has not met his burden. The appeal will therefore be dismissed.¹

ORDER: The appeal is dismissed.

¹ The AAO notes that the present decision is without prejudice to the applicant's filing, if eligible, an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.