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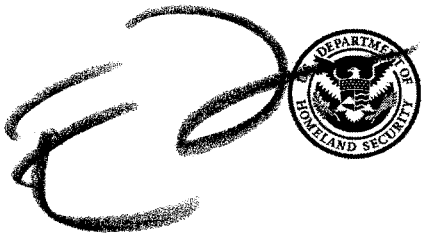

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: FEB 17 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409.

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania on May 18, 2000. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on September 26, 2000. The matter is now before the AAO on a motion to reopen. The previous September 26, 2000, AAO decision will be affirmed.[1]

The applicant was born in Vietnam, on August 16, 1972, and he came to the United States (U.S.) as a legal permanent resident in June 1990. The applicant's natural father, (Mr. was born in the U.S. in May 1932. The applicant's mother, was born in Vietnam in 1946. She became a naturalized U.S. citizen on August 11, 1997. The applicant's parents never married. The applicant seeks a certificate of citizenship under § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409, based on the claim that he acquired U.S. citizenship through his natural father.

A May 18, 2000, decision by the acting district director determined that the applicant had failed to establish a blood relationship between himself and his natural father. The acting district director additionally determined that the applicant had failed to establish that he was legitimated by his natural father prior to his 18th birthday. Pursuant to a second N-600, Application for Certificate of Citizenship filed by the applicant on June 27, 2003, the interim district director determined on August 20, 2003, that based on new DNA evidence obtained in June 2003, the applicant had established proof of Mr. paternity. However, the interim district director concluded that the applicant had failed to establish that paternity had been established prior to the applicant's 18th birthday, in 1990, and that the applicant had also failed to establish that he had been legitimated by his father prior to his 18th birthday. The second application was denied accordingly.

On appeal, counsel asserts that Mr. publicly acknowledged the applicant as his son between 1972 and 1975, by sending several letters to the applicant's mother that offered to bring the applicant to the United States. Counsel asserts generally that Mr. also helped to support the applicant financially in Vietnam, and that he searched for the applicant in California refugee camps after the mid 1970s. Counsel concludes that Mr actions meet legitimation requirements as set forth in California law as it existed between 1972 and 1975.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted).

Prior to November 14, 1986, section 309 of the former Act required that paternity be established by legitimation while the child was under twenty-one. Subsequent amendments made to the Act in 1986 provided that a new section 309(a) would apply to persons who had not attained 18 years of age as of the November 14, 1986 date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments provided further that the former section 309(a) applied to any individual who had attained 18 years of age as of November 14, 1986, and that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to

[1] The AAO notes that, based on information contained in the record, the applicant filed a second N-600 Application for Certificate of Citizenship with the Philadelphia CIS district office in June 2003. Although the interim district director issued a new denial decision based on the subsequent filing, the second application was improperly filed, and the applicant's assertions and evidence should instead have been treated as a motion to reopen.

November 14, 1986. *See section 13 of the INAA, supra. See also section 8(r) of the Immigration Technical Corrections Act of 1988*, Pub. L. No. 100-525, 102 Stat. 2609.

In the present case, the applicant was born prior to November 14, 1986, and he was under 15 years of age on November 14, 1986. Moreover, counsel asserts that Mr. legitimated the applicant between 1972 and 1975. The AAO will therefore assess the applicant's claim pursuant to section 309(a) requirements under the former Act. Accordingly, the AAO will look to legitimation requirements as they existed in the former Act, prior to November 14, 1986.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

> 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

In the present matter, the record reflects that Mr. is the applicant's natural father and that he was born a U.S. citizen on May 18, 1932. The evidence fails to reflect, however, that Mr. legitimated the applicant prior to his 21st birthday. The AAO notes that the record contains no evidence to indicate that the applicant was legitimated in accordance with Vietnamese paternity laws prior to his 21st birthday. Moreover, the AAO finds that the applicant also failed to establish that he was legitimated by Mr. in accordance with California paternity laws prior to his 21st birthday.

Section 230 of the California Civil Code (C.C.C.) was in effect at the time the claimed legitimation occurred between 1972 and 1975, it provided:

> The father of an illegitimate child by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth.

Counsel asserts that section 230 of the C.C.C. was replaced by section 7611 of the California Family Code (C.F.C.) in 1975. The AAO notes that section 230 of the C.C.C. was replaced in 1975, by section 7004 of the C.C.C. rather than by section 7611 of the C.F.C. Nevertheless, the pertinent provision that legitimation can be accomplished if a natural father of a child receives the child into his home and openly hold out the child as his natural child, is the same in both section 7004 of the C.C.C. and section 7611 of the C.F.C. Because counsel asserts that Mr. legitimating actions occurred in 1975, the AAO will also examine the applicant's legitimacy claim pursuant to provisions set forth in section 7004 of the C.C.C.

Counsel asserts that Mr. publicly acknowledged that he was the applicant's father in personal letters sent to the applicant's mother between 1972 and 1975. Counsel asserts further that, in his letters, Mr. offered to bring the applicant to live at his home in California, and that Mr. additionally helped to support the applicant financially between 1972 and 1975. Counsel asserts that Mr. lost contact with the applicant and his mother due to war events in Vietnam, and that he subsequently looked for the applicant, without success, in California refugee camps. Counsel asserts further that requirements that the applicant establish that he lived with Mr. should be disregarded, as Mr. had no opportunity to establish a home and family for the applicant after 1975, due to the war in Vietnam.

The AAO notes that the record contains no copies of the letters exchanged between Mr. and the applicant's mother. Moreover, the AAO finds that statements made in personal letters to the applicant's mother, regarding paternity and Mr. desire to bring the applicant to California, do not satisfy the § 230 C.C.C. requirement that a father *publicly acknowledge, receive into his family, and otherwise treat a child as if it were his legitimate child.* The AAO finds further that the statements made in personal letters between Mr and the applicant's mother fail to satisfy the section 7004 of the C.C.C. requirement that a father *receive the child into his home and openly hold out the child as his natural child.* The AAO notes further that, even if counsel's assertion that requirements that a child actually live with its father have been relaxed are accepted, the record reflects that Mr. did not meet the applicant personally until the applicant was 27 years old. The AAO finds that the acknowledgement of paternity through statements in personal letters and the possibility that Mr inquired about the applicant at California refugee camps after 1975, fails to demonstrate that Mr. publicly acknowledged the applicant as his son prior to his 21st birthday, or that he treated the applicant as if he were legitimate and / or openly held the applicant out as his natural child prior to the applicant's 21st birthday.

The AAO finds that the applicant has failed to establish that he was legitimated as required by section 309 of the former Act. He is therefore statutorily ineligible to derive citizenship under section 309 and 301 of the Act.

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 failed to meet his burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.