U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: ATLANTA, GA DATE: JUL 12 2006

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 309 and 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. §§ 1409 and 1401(a)(7).

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on October 11, 1968, in Vietnam. The applicant's father, [redacted] was born in the United States on May 18, 1940, and he is a U.S. citizen. The applicant's mother was born in Vietnam, and she became a naturalized U.S. citizen on April 19, 2000, when the applicant was thirty-one years old. The applicant's parents did not marry. The record reflects that the applicant was admitted into the United States as a refugee in March 1984, when he was fourteen years old. The applicant presently seeks a Certificate of Citizenship pursuant to sections 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The district director determined the applicant had failed to establish that he was legitimated by his father under Vietnamese or Georgia state law prior to his eighteenth birthday, or that he qualified for U.S. citizenship under section 320 of the amended Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The application was denied accordingly.

Counsel asserts on appeal that the applicant's father's name is on the applicant's birth certificate, and that Mr. Henry acknowledged the applicant as his son at birth and supported him financially. Counsel concludes that the applicant was therefore legitimated by his father, and that he meets the requirements for acquisition of citizenship through his father.

The AAO notes that section 320 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), took effect on February 27, 2001.[1] The provisions of the CCA are not retroactive and the amended provisions of section 320 of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. *Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). The applicant was over the age of eighteen on February 27, 2001. He is therefore not eligible for the benefits of section 320 of the Act.

Because the applicant was born out of wedlock to a U.S. citizen father, the citizenship provisions set forth in section 309 of the Act, 8 U.S.C. § 1409, apply to his U.S. citizenship claim.

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 applied to persons who had not attained eighteen years of age as of the November 14, 1986 enactment date of the Immigration and Nationality Act Amendments of 1986, Pub. L.

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[1] Section 320(a) of the Act states in pertinent part that:

> A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (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.

No. 99-653, 100 Stat. 3655 (INAA). The amendments provided further that section 309 of the former Act provisions applied to any individual who had attained eighteen years of age as of November 14, 1986. Section 309 of the former Act provisions also applied to any individual with respect to whom paternity had been established by legitimation prior to 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 matter, the applicant was born prior to November 14, 1986, and he was over the age of eighteen on November 14, 1986. The AAO will therefore assess the applicant's claim pursuant to section 309 of the former Act (pre-November 14, 1986) requirements.

Section 101(c) of the former Act, 8 U.S.C. § 1101(c), provided, 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 [21] years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.[2]

The AAO notes that Vietnamese law does not distinguish between children born out of wedlock and legitimate children, and that the law allows for the legitimation of a child if the father officially acknowledges or recognizes the child, and the father's acknowledgement is recorded on the child's birth certificate. *See generally* U.S. Department of State Vietnamese birth registration information contained at: http://travel.state.gov/visa/reciprocity/Country%20Folder/V/Vietnam.htm.[3] In the present matter, the applicant's birth certificate, registered in Saigon, Vietnam on October 19, 1968, reflects that [redacted] was recorded as the applicant's father. Affidavit evidence signed by [redacted] and the applicant's mother reflects further that [redacted] acknowledged the applicant as his child at the time of the applicant's birth in October 1968. Accordingly, the applicant was legitimated by [redacted] prior to his twenty-first birthday pursuant to Vietnamese legitimation laws. The AAO therefore finds that the applicant was legitimated for section 101(c) and section 309 of the former Act purposes. He thus qualifies as a "child" for immigration purposes, and his acquisition of citizenship claim may be assessed pursuant to section 301 of the former Act provisions.

"[T]he 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,*

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[2] The AAO notes the Board of Immigration Appeals finding in *Matter of Rivers,* 17 I&N Dec. 419, 422-23 (BIA 1980), that a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise. The AAO notes further that the applicant falls within a narrow statutory age bracket which allows him to satisfy section 309 of the former Act legitimation requirements upon showing that he was legitimated prior to the age of twenty-one rather than the age of sixteen. *See Miller v. Christopher,* 96 F.3d 1467, 1468 (U.S. App. D.C. 1996.)

[3] The district director's decision states that Vietnamese legitimation laws between 1959 and March 24, 1977, required **acknowledgment by either parent and contemporaneous marriage in order for legitimation of the child to occur.** The AAO was unable to verify the district director's statement, as no evidence of this law or its source is contained in the record. The AAO notes however, that the applicant turned twenty-one on October 11, 1989. The AAO finds that the legitimation information provided by the U.S. Department of State therefore applies to the applicant's case.

247 F.3d 1026,1029 (9th Cir. 2000) (Citations omitted). The applicant was born on October 11, 1968. Section 301(a)(7) of the former Act is therefore applicable to his acquisition of citizenship claim.[4]

Section 301(a)(7) of the former Act states in pertinent part that:

> The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided,* That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirement of this paragraph.

In the present matter, the applicant must establish that his father was physically present in the U.S or its outlying possessions, and/or that he served honorably in the U.S. Armed Forces, for ten years between May 18, 1940 and October 11, 1968, at least five years of which occurred after May 18, 1954.

The record contains a birth certificate reflecting that [redacted] was born in the state of Tennessee in May 1940. The record also contains U.S. Military Service information reflecting that [redacted] joined the U.S. military in 1959, and that he served honorably in the U.S. Armed Forces for over thirty years.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-,* 20 I&N Dec. 77 (Comm. 1989).

The AAO finds that the evidence presented in the applicant's case establishes by a preponderance of the evidence that [redacted] was physically present in the United States, and/or that he served honorably in the U.S. Armed Forces for ten years between May 18, 1940 and October 11, 1968, at least five years of which occurred after May 18, 1954. The applicant has therefore met his burden of establishing U.S. citizenship pursuant to section 301(a)(7) of the former Act, and the appeal will be sustained.

ORDER: The appeal is sustained.

[4] It is noted that on November 14, 1986, section 301(a)(7) of the former Act was superceded by section 301(g) of the Act, 8 U.S.C. § 1401(g).