



U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: CHICAGO, IL

DATE:

MAY 31 2006

IN RE:

APPLICANT:

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:

SELF-REPRESENTED

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois. 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 in the Philippines on August 14, 1978. The applicant's mother was born in the Philippines, and she became a naturalized U.S. citizen on April 2, 1996, when the applicant was seventeen years old. The record indicates that the applicant's father was born in the Philippines and that he is not a U.S. citizen. The applicant claims that his parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on August 14, 1990, when he was twelve years old. He presently seeks a Certificate of Citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The district director concluded that the applicant's parents were married at the time of the applicant's birth. On this basis, the district director determined that the applicant did not qualify for citizenship under section 321 of the former Act. The district director determined further that the applicant did not qualify for citizenship under section 320 of the amended Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because he was over the age of eighteen on February 27, 2001, when the provision went into effect. The application was denied accordingly.

On appeal, the applicant asserts evidence contained in the record establishes his parents did not marry, and that he meets the requirements for citizenship under section 321 of the former Act.

The AAO notes that section 320 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), and 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). Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of section 320 of the Act. Nevertheless, all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a Certificate of Citizenship at any time. *Matter of Rodriguez-Tejedor*, *supra*.

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

¹ Section 320 of the Act states in pertinent part that:

- (a) 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.

(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.

(Emphasis added.) The record contains the following evidence relating to the marital status of the applicant's mother at the time of the applicant's birth, and the legitimation status of the applicant:

A Republic of the Philippines, Civil Registrar Birth Certificate reflecting that the applicant was born in Baguio City, Philippines to [REDACTED] and [REDACTED] (father). The birth certificate states that the date and place of the applicant's parent's marriage was April 12, 1975 in Butuan City. The birth certificate reflects further that the informant for the birth certificate was the applicant's father, [REDACTED].

An April 27, 1990, letter from the Office of the Civil Registrar-General, in Manila, the Philippines, certifying that the applicant's mother's name, [REDACTED] does not appear in the National Index of Marriages for the years 1973 and 1975 to 1987, and stating that the Office "[h]as no national index of marriages for brides for the years prior to 1973 and for the years 1974 and 1988 up to the present."

A Marriage Contract reflecting that the applicant's mother married [REDACTED] (the applicant's stepfather) in the Philippines on July 19, 1989. The marriage certificate reflects that [REDACTED] was divorced at the time of the marriage, and that [REDACTED] was single.

A May 7, 1990 sworn affidavit signed by the applicant's mother stating that the applicant was born out of wedlock on August 14, 1978, and that his father was her common-law-husband, [REDACTED]. The applicant's mother states that she was never married to the applicant's father, and that the applicant is illegitimate under Philippine law.

A May 1990 affidavit signed by the applicant's mother stating that she was single when the applicant was born and that the applicant's father is [REDACTED].

Immigrant visa documentation reflecting that the applicant was admitted into the United States as a lawful permanent resident pursuant to a family-based (stepson) petition filed by the applicant's U.S. citizen husband, [REDACTED].

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 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 cumulative evidence presented in the applicant's case establishes, by a preponderance of the evidence that the applicant's parents did not marry, and that the applicant was born out of wedlock.

Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c) provides that for Title III, citizenship and naturalization 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, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption

In order to legitimate a child under Philippine law, the parents of the child must marry one another. *See Matter of Blancaflor*, 14 I&N Dec. 427, 428 (BIA 1973) (discussing legitimation requirements set forth in the Civil Code of the Republic of Philippines). Because the present record reflects that the applicant's parents never married, the applicant was not legitimated under Philippine law.

The evidence in the record indicates that the applicant resided and was domiciled in Illinois subsequent to his admission into the United States in 1990. Under Illinois state law, the parents of a child must marry one another for legitimation of the child to occur. *See* Illinois Revised Statutes, Section 40-303. Because the applicant's parents never married, the applicant was not legitimated under Illinois state law.

The AAO finds that the applicant has established by a preponderance of the evidence that he was born out of wedlock, and that he was not legitimated by his father under Illinois state or Philippine law prior to his sixteenth birthday. The applicant has established further that his mother became a naturalized U.S. citizen prior to his eighteenth birthday, and that he resided in the United States pursuant to a lawful admission for permanent residence prior to his eighteenth birthday. The applicant has therefore established that he meets the requirements for citizenship under section 321 of the former Act. The appeal will be sustained accordingly.

ORDER: The appeal is sustained.