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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

OFFICE: LOS ANGELES, CA

Date:

AUG 30 2007

IN RE:

APPLICANT:

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

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, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born in Mexico on July 29, 1991. The record does not contain a birth certificate issued at the time of the applicant's birth. Instead, the record contains a Mexican birth certificate issued seven years later, on August 7, 1998, stating that the applicant was born in Tijuana, B.C., Mexico to [REDACTED] and [REDACTED]. Statements contained in the record reflect, however, that although [REDACTED] is listed as the applicant's father on his birth certificate, [REDACTED] is not the applicant's natural father. The record contains no information relating to the applicant's natural father. The applicant's mother was born in Mexico and is not a U.S. citizen. The record reflects that [REDACTED] was born in Mexico and that he later became a naturalized U.S. citizen. [REDACTED] and the applicant's mother married on August 27, 1997, when the applicant was six years old. The applicant was admitted into the United States as a lawful permanent resident on August 28, 2001, pursuant to an immigrant visa petition filed by [REDACTED]. The applicant presently 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 determined that the applicant did not qualify for citizenship under section 320 of the Act because he failed to establish that [REDACTED] was his natural father, or that he had been adopted by [REDACTED]. The district director determined further that the applicant failed to establish that his mother was a U.S. citizen. The applicant thus did not qualify as the *child* of a U.S. citizen parent, as set forth in section 101 of the Act, 8 U.S.C. § 1101, or as required by section 320 of the Act. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that [REDACTED] legitimated him under California law by allowing his name to be placed on the applicant's Mexican birth certificate, and by publicly holding the applicant out as his child. Counsel for the applicant asserts that the applicant therefore meets the definition of *child*, as set forth in section 101(b)(1)(C) of the Act, 8 U.S.C. § 1101(b)(1)(C), and that the applicant is entitled to derive U.S. citizenship through [REDACTED].

Section 320 of the Act permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b) of the Act, 8 U.S.C. § 1101(b), provides in pertinent part that for Title I and II, immigrant and nonimmigrant visa purposes:

(1) The term "child" means an unmarried person under twenty-one years of age who is-

(A) a child born in wedlock;

(B) a **stepchild**, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) 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 or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a **child born out of wedlock**, by, through whom, or on whose behalf a status, privilege, or benefit is sought **by virtue of the relationship of the child to its natural mother or to its natural father** if the father has or had a bona fide parent-child relationship with the person;

(E) (i) a **child adopted** while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years (Emphasis added.)

It is noted that the definition of *child* contained in section 101(b)(1) of the Act, pertains to cases involving immigrant and nonimmigrant visas. While the definition of *child* contained in section 101(b)(1)(B) of the Act allows for a stepchild to qualify as a *child* for immigrant and nonimmigrant visa purposes, the definitions contained in section 101(b)(1) of the Act do not reflect that a child may be legitimated by someone who is not his or her natural father. Furthermore, the AAO notes that the definition of *child* for U.S. citizenship and naturalization cases is contained, not in section 101(b)(1) of the Act, but rather is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c).

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. (Emphasis added.)

The AAO notes that, unlike the specific provisions contained in section 101(b)(a)(B) of the Act, the provisions contained in section 101(c) of the Act do not allow for a person to be classified as a *child* for naturalization or citizenship purposes, based on a step-child relationship. In the present matter, the applicant indicates, through counsel that he was born out of wedlock in Mexico. In order to satisfy the definition of child as set forth in section 101(c) of the Act, the applicant must therefore establish that he was legitimated under the laws of the applicant's residence or the laws of his natural father's residence.

Under Article 130 of the Mexican Constitution, a child born out of wedlock in Mexico becomes legitimated upon the civil marriage of his or her parents. *See Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981.) The record contains no evidence or information to demonstrate that the applicant's mother and natural father married. The applicant therefore failed to establish that he was legitimated under the laws in Mexico. The applicant also failed to establish that he was legitimated under California law.

The applicant asserts, through counsel, that [REDACTED] legitimated him under California law by consenting to being named as the applicant's father on the applicant's birth certificate, and by receiving the applicant into his home and openly holding him out as his natural child. The applicant asserts that [REDACTED] compliance with California legitimation requirements satisfies the legitimation requirements set forth in the Act.

Section 7611 of the California Civil Code provides in pertinent part that:

A man is presumed to be the natural father of a child if he meets the conditions provided in Chapter 1 (commencing with Section 7540) or Chapter 3 (commencing with Section 7570) of Part 2 or in any of the following subdivisions:

- a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.
- b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:
 - 1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.
 - 2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.
- c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:
 - 1) With his consent, he is named as the child's father on the child's birth certificate.
 - 2) He is obligated to support the child under a written voluntary promise or by court order.
- d) He receives the child into his home and openly holds out the child as his natural child. . . .

While the provisions contained in section 7611 of the California Civil Code do not specify whether the legitimating person must be the child's natural father, the AAO finds the point to be irrelevant in the present matter, given the fact that the federal requirement contained in section 101(c) of the Act does not provide that a person who is not a child's natural father may legitimate a child. This point is further clarified in section 309 of the Act, 8 U.S.C. 1409, which applies to the transfer of citizenship from a father who is a U.S. citizen prior to a child's birth, to a child born out of wedlock.

Section 309 of the Act states in pertinent part that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

(1) a **blood relationship between the person and the father** is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court. (Emphasis added.)¹

The evidence in the present record reflects that the applicant failed to submit DNA blood relationship evidence requested by the district director, and that [REDACTED] clearly stated he is not the applicant's natural father. The record additionally contains no court order of paternity, or adoption order evidence to establish that [REDACTED] has been declared the legal father of the applicant. The AAO therefore finds that the applicant has failed to establish that [REDACTED] is the applicant's legal father, or his natural father, or that he was legitimated by his natural father.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant has not met his burden of proof of establishing that he qualifies as [REDACTED]'s *child* under section 101(c) of the Act.

¹ It is noted that the present matter is also distinguishable from the situations presented in the U.S. Ninth Circuit Court of Appeals cases, *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000) and *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005), in which the court essentially found that a blood relationship need not be established for section 309 of the Act, transfer of citizenship cases, when the child is born during the natural parent and U.S. citizen stepparent's marriage, and thus not "out of wedlock." In the present case, the applicant was born out of wedlock, seven years before his mother's marriage to [REDACTED]



The appeal will therefore be dismissed, and the application will be denied.²

ORDER: The appeal is dismissed. The application is denied.

² The present decision is without prejudice to the applicant's mother filing a Form N-600, Application for Certificate of Citizenship on the applicant's behalf, prior to the applicant's eighteenth birthday, if she becomes a naturalized U.S. citizen.