

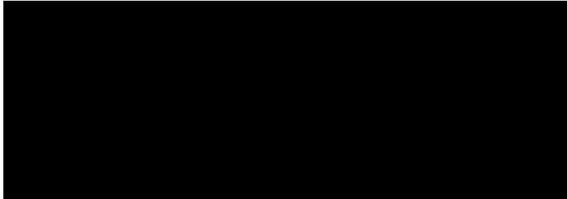
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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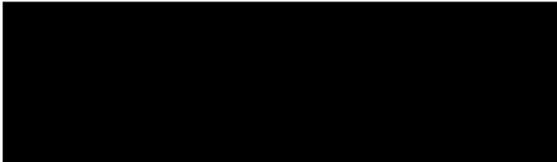
FILE: [REDACTED] Office: YAKIMA, WASHINGTON

Date: **SEP 28 2010**

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF PETITIONER:

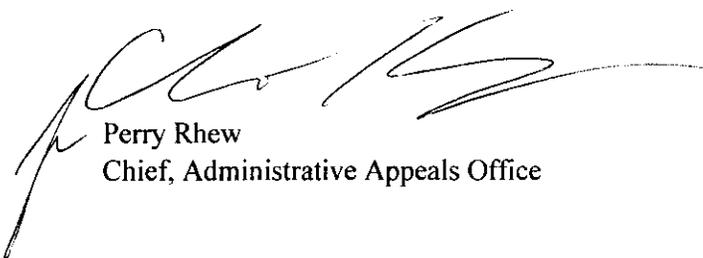


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Yakima, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Vietnam to married parents [REDACTED] and [REDACTED]. The applicant was admitted to the United States as a refugee on February 4, 1982. On May 24, 1983, the former Immigration and Naturalization Service granted the applicant status as a lawful permanent resident as of his date of admission. The applicant's parents divorced on December 4, 1984, and the applicant's mother became a U.S. citizen by naturalization on February 6, 1998. The applicant seeks a Certificate of Citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship through his mother.

The director determined that the applicant was not eligible for derivative citizenship under former section 321 of the Act because he was over the age of 18 at the time his mother naturalized, and denied the application accordingly. *See Decision of the Director*, dated Dec. 28, 2009. On appeal, the applicant contends through counsel that he meets the requirements for derivative citizenship under former section 321 of the Act. *See Form I-290B, Notice of Appeal*, filed Feb. 1, 2010; *Brief in Support of Appeal*. Specifically, the applicant claims that the evidence presented shows that he was 17 years old at the time of his mother's naturalization. *Id.*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act, in effect at the time of the applicant's mother's naturalization in 1998, is applicable in this case.

Former section 321 of the Act provided, in pertinent part:

(a) A child born outside of the United States of alien parents . . . 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 such child is unmarried and under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

The applicant's immigration record indicates that he was born on [REDACTED], which would make him over the age of eighteen years at the time of his mother's naturalization on February 6, 1998. The documents reflecting a [REDACTED] date of birth include: an Application for Classification as a Refugee (Form I-590); a Form I-94 Arrival Record; a Memorandum of Creation of Record of Lawful Permanent Residence (Form I-181); a Biographic Information Form (Form G-325); and a Record of Deportable Alien (Form I-213). Additionally a medical examination conducted on August 19, 1981, states that the applicant was two years old at the time of the examination. Finally, the applicant's parents' divorce decree, filed in Seattle, Washington on December 4, 1984, indicates the applicant's date of birth as [REDACTED].

In these proceedings, the applicant claims that the [REDACTED] date is in error, and that his actual date of birth is [REDACTED]. *See Brief on Appeal*. In support of this contention, the applicant submitted declarations from his mother and his cousin, and a copy of a Vietnamese birth certificate. *See Declaration of [REDACTED]*, dated Sep. 1, 2009; *Declaration of [REDACTED]*, dated Aug. 18, 2009; *Birth Certificate for [REDACTED]*, registered Aug. 27, 1980. The applicant's mother states that the incorrect year of birth was recorded on the applicant's immigration forms at a refugee camp in Thailand. *See Declaration of [REDACTED]*. She believes that the error may have occurred because she did not have a copy of her son's birth certificate, she could not read the English forms, and because age is calculated differently under the lunar calendar. *Id.* The applicant's cousin states that she obtained the applicant's original birth certificate when she traveled to Vietnam in 2008. *See Declaration of [REDACTED]*. The applicant's cousin also remembers "hearing in passing that [the applicant's] year of birth was incorrect on his immigration documents." *Id.* Although counsel claims that the applicant's birth certificate was authenticated by the U.S. Department of State, *see Brief on Appeal* at 3, the copy of the State Department letter in the record does not reference the applicant's birth certificate, *see U.S. Department of State Letter*, dated March 5, 2009¹.

Here, the applicant has not established that he was under the age of eighteen years when his mother naturalized. First, the preponderance of the evidence in the record indicates that the applicant's date of birth is [REDACTED]. Second, the applicant's medical exam indicated that he was two years old in August, 1981, which is consistent with the [REDACTED] date of birth. Third, although the applicant's mother states that she discovered the erroneous year of birth after arrival in the United

¹ The letter verifies that [REDACTED] was a consular officer at the Embassy of Vietnam in Washington, District of Columbia at the time he signed an unidentified document. The letter references an attached document, but the applicant's birth certificate is not signed by [REDACTED].

States, there is no evidence in the record that the applicant or his mother attempted to correct the applicant's date of birth in his official records. Fourth, the applicant's parents' divorce certificate indicates that the applicant was born on [REDACTED].

The applicant bears the burden of proof to establish his eligibility for citizenship under the Act. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established by a preponderance of the credible evidence that he is eligible for derivative citizenship pursuant to former section 321 of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.