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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: **AUG 18 2014**

Office: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under former sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409.

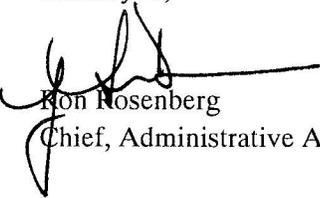
ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Philadelphia, Pennsylvania Field Office (the director) dismissed the applicant's motion to reopen and reconsider the denial of his Application for Certificate of Citizenship (Form N-600). The director certified her decision to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The application will remain denied.

Pertinent Facts and Procedural History

The applicant's temporary birth certificate indicates that he was born in Vietnam on [REDACTED]. He claims that his father, [REDACTED] was born in the United States on [REDACTED]. The applicant's father served in the U.S. Armed Forces and was stationed in Vietnam between 1967 and 1969. The applicant's parents were never married. The applicant seeks a certificate of citizenship, claiming that he acquired U.S. citizenship from his father pursuant to former sections 301(a)(7) and 309(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401(a)(7) and 1409(a).

The director denied the Form N-600 for the applicant's failure to establish that he was legitimated by his father while under the age of 21. On appeal, counsel states, in part, that a preponderance of the testimonial and documentary evidence establishes that the applicant was legitimated under the laws of Vietnam before the applicant turned 21.² According to counsel, the director erroneously focused on the lack of an original birth certificate for the applicant instead of analyzing and discussing the other relevant evidence to establish the applicant's legitimation.

Applicable Law

We review these proceedings *de novo*. 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); See also 8 C.F.R. § 341.2(c). The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

¹ The applicant now claims that he was born on [REDACTED] and that the date in his temporary birth certificate is incorrect. As noted by the director, because his father's military duty in Vietnam ended in October 1969 and the record contains DNA evidence establishing paternity, the applicant could not have been born in [REDACTED]. The [REDACTED] date of birth also appears on the applicant's *Laissez-Passer*, which was issued by Vietnamese authorities in 1983, and in the applicant's immigration record. The [REDACTED] date of birth is also listed on the applicant's Pennsylvania driver's license.

² Although the director also analyzed the legitimation requirements in Mississippi, Pennsylvania and New Jersey, counsel states that the applicant is only claiming to have been legitimated under the laws of Vietnam and, therefore, will not offer any rebuttal evidence to the discussion of U.S. state legitimation laws.

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), is applicable in this matter, and stated, 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 requirements of this paragraph.

The applicant was born out of wedlock. Former section 301(a)(7) of the act, *supra*, is applicable to children born out of wedlock only upon proof of legitimation prior to the age of 21. *See* Former section 309(a) of the Act, 8 U.S.C. § 1409(a), as in effect prior to 1986.³

Analysis

The sole issue certified for our review is whether the applicant was legitimated under Vietnamese law prior to the age of 21.

According to a report issued by the Library of Congress (LOC) in May 2014, legitimation in Vietnam until 1986 was governed by the Marriage and Family Law of 1959. *See* LOC Report 2014-010684. Legitimation could be accomplished, *inter alia*, by acknowledgment by the parent in the child's birth certificate. *Id.*

The applicant's mother and father each prepared separate affidavits in which they claim that the applicant's father placed his name on the applicant's birth certificate at the time of his birth on [REDACTED] Vietnam. The record does not, however, contain a copy of this

³Amendments made to the Act in 1986 included a new section 309(a) applicable to persons who had not attained 18 years of age as of the [REDACTED] date of the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. No. 99-653, 100 Stat. 3655 (INAA). The amendments further provided, however, that former section 309(a) applied to any individual with respect to whom paternity had been established by legitimation prior to November 14, 1986. *See* section 23(e)(2) 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 (ITCA). Individuals who were between the age of 15 and 18 on [REDACTED] could choose to have either the pre or post-amendment provisions apply to them. *See* section 23(e)(3) of the INAA, added by section 8(r) of the ITCA. With a claimed date of birth of [REDACTED] the applicant would have been six days shy of his eighteenth birthday on [REDACTED] he, however, has made no claim to having satisfied current section 309(a) of the Act.

birth certificate or any other birth record issued contemporaneously with the applicant's birth. According to the applicant's mother, when she was forced to relocate within Vietnam in 1975, she was unable to bring any documents with her, including a birth certificate for the applicant. Consequently, the applicant's mother claims to have obtained a temporary birth certificate in [REDACTED] or 14 years after the applicant's birth, for the purpose of emigrating from Vietnam to the United States. This temporary birth certificate states the applicant's date of birth as [REDACTED] and lists both of his parents' names.

The Board of Immigration Appeals (the Board) has published several decisions that discuss the evidentiary value to be given a delayed birth certificate. Notably, the Board, in *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1032-33 (BIA 1997), stated the following:

In prior cases, we have been reluctant to accord delayed birth certificates the same weight we would give birth certificates issued at the time of birth due to the potential for fraud. See, e.g., *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991). In *Matter of Serna*, 16 I&N Dec. 643 (BIA 1978), a case involving the establishment of United States citizenship through the presentation of a delayed United States birth certificate, we explained this approach. We acknowledged that a delayed birth certificate might be the only type of birth certificate available to some applicants and noted that it would be unjust to penalize these persons; however, we recognized that "there can be little dispute that the opportunity for fraud is much greater with a delayed birth certificate." *Matter of Serna, supra*, at 645. Given these competing concerns, we ruled that a delayed birth certificate, even when unrebutted by contradictory evidence, will not in every case establish the [applicant's] status as a United States citizen. Each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *Id.*

The temporary birth certificate that the applicant proffers to establish his legitimation was issued in 1982, fourteen years after the applicant's claimed date of birth on [REDACTED]. This certificate also contains an incorrect date of birth, noting that the applicant was born on [REDACTED].

In her affidavit, dated July 8, 2012, the applicant's mother claims that in 1982 she went to the local officials in [REDACTED] to obtain a birth certificate for the applicant because she wanted to apply for refugee status to leave Vietnam. According to the applicant's mother, the local officials told her that they would produce a birth certificate for the applicant and that: "[b]ecause there were no real records left after the war, the officials used whatever information they had to put together the birth certificate, including asking around people in the neighborhood." The applicant's mother asserts that when she went to obtain the certificate, she noticed that the date of birth was wrong but she didn't argue with the officials because she wanted to leave the country.

As noted earlier in this decision, legitimation under Vietnamese law may be accomplished by "acknowledgement of the parent on the birth record." It is evident from the mother's statements and the English translation of the temporary birth certificate that the applicant's father did not acknowledge the applicant's birth on the temporary birth record in 1982, or that the People's Committee, who issued the temporary birth certificate, verified the information that the temporary birth certificate contained against any official records. The temporary birth certificate

lists two witnesses to the facts contained therein, identifying them as neighbors; however, there is no evidence that these witnesses had personal knowledge of the applicant's birth or could attest that the applicant's father acknowledged the applicant on the applicant's birth record that, according to the applicant's parents, was issued contemporaneous to the applicant's birth.

On appeal, counsel maintains that the unavailability of the applicant's original birth certificate should not preclude a finding that he was acknowledged by his father, citing that the information in the applicant's parents' affidavits provides probative and credible evidence of the applicant's father's acknowledgement at the time of the applicant's birth. When primary evidence does not exist, the regulation at 8 C.F.R. § 103.2(b)(2) states the following about submitting secondary evidence and affidavits:

(i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth . . . certificate, does not exist or cannot be obtained, an applicant . . . must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant . . . must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed *by persons who are not parties to the petition* who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(Emphasis added). The applicant has sufficiently demonstrated the unavailability of both primary and secondary evidence. However, according to the regulation at 8 C.F.R. § 103.2(b)(2)(i), an affidavit submitted to prove an event must come from "persons who are not parties to the petition who have direct personal knowledge of the event and circumstances." The only two affidavits in the record were executed by the applicant's parents, both of whom are interested parties in these proceedings. Furthermore, beyond their simple assertions that the applicant's father registered his name on the applicant's birth record at the hospital, the applicant's parents have provided no probative details of the facts surrounds the father's alleged acknowledgement of the applicant.

We recognize that a claim of derivative citizenship that has reasonable support cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then we need not accept the evidence proffered by the applicant. *See Matter of Tijerina-Villarreal*, 13 I&N Dec. 327 (BIA 1969).

The preponderance of the evidence does not establish that the applicant was legitimated by his father while he was under the age of 21. The temporary birth certificate contains an incorrect date of birth, the information contain therein was not based on any official records regarding the applicant's birth, and the applicant's father did not personally acknowledge the applicant as his son on the document. Similarly, the applicant's parents' affidavits lack probative value, as they contain only brief assertions about the beneficiary's birth and the birth record, and the applicant's parents are interested parties in these proceedings. "Citizenship is a high privilege,

and when doubts exist concerning a grant of it . . . they should be resolved in favor of the United States and against the claimant.” *U.S. v. Manzi*, 48 S. Ct. 328, 467 (1928). Here, the evidence that the applicant has submitted to establish his legitimation is insufficient to satisfy former section 309(a) of the Act, and as such, we will not discuss whether his father had the required years of physical presence in the United States to transmit U.S. citizenship to him under former section 301(a)(7) of the Act.

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision is affirmed. The application remains denied.