



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF V-A-T-

DATE: SEPT. 30, 2016

APPEAL OF BALTIMORE, MARYLAND FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Vietnam, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000). An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. Generally, an individual claiming automatic U.S. citizenship after birth and who was born between December 24, 1952, and February 27, 1983, must meet the last of certain conditions by February 26, 2001. For individuals born to foreign national parents, only one of whom naturalized before the individual turned 18, the individual may become a U.S. citizen if one of three conditions are met. That individual's non-naturalized parent is deceased, the U.S. citizen parent has custody over the individual after a legal separation or divorce, or, if the individual was born to unmarried parents and is claiming to be a U.S. citizen through a naturalized mother, the father must not have made the individual his legitimate child.

The Field Office Director, Baltimore, Maryland, denied the application, concluding that the Applicant could not derive citizenship through his mother as his birth certificate demonstrated that he was legitimated at birth by his father.¹

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that he was not legitimated by his father, and that the Director erred in not approving his Form N-600, Application for Certificate of Citizenship.

Upon *de novo* review we will dismiss the appeal.

¹ The Director erroneously referred to derivative citizenship requirements set forth in section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000. The error does not affect our adjudication on appeal as we are reviewing the matter *de novo*.

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I. LAW

The Applicant seeks a Certificate of Citizenship indicating that he derived citizenship from his U.S. citizen mother. The Applicant was born in Vietnam in [REDACTED] to foreign national parents. His mother became a citizen through naturalization in February 1996. There is no evidence that the Applicant's father is a U.S. citizen. The Applicant was admitted to the United States as a lawful permanent resident in April 1983.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The Child Citizenship Act of 2000 (the CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the Applicant's citizenship claim must be considered under the provisions of former section 321 of the Act.

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

- (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 such 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 (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 18 years.

Because the Applicant was born abroad, he is presumed to be a foreign national 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).

II. ANALYSIS

The issue in this case is whether the Applicant has demonstrated that he was born out of wedlock and that his father did not establish paternity by legitimation, as required under former section 321(a)(3) of the Act.²

The Director determined that the Applicant was legitimated by his father. Specifically, the Director found that according to a Library of Congress report on legitimation procedures in Vietnam, the appearance of a father's name on the birth certificate of a child born out of wedlock indicated that the parents were married, the father had acknowledged the out of wedlock child, or a court had issued a certificate of filiation of the father and the child. Because the Applicant's father's name was on his birth certificate, the Director determined that the Applicant's paternity was established by legitimation in Vietnam.

On appeal, the Applicant does not contest that his birth certificate contains both his mother's and his father's names. The Applicant asserts, however, that the appearance of his father's name on the birth certificate is insufficient to demonstrate that paternity was established by legitimation under the law in Vietnam. He contends that his mother, not his father, recorded both parents' names when she registered his birth; that an affirmative act by his father was required in order for legitimation to take place; and that his father did not declare or take any action to acknowledge paternity over him. The Applicant also asserts that his father never held custody, and that his father was not involved in his life. In support of his claims, the Applicant submits evidence relating to his out of wedlock birth, information pertaining to Vietnamese birth registration requirements, sworn statements from his mother and brothers, and copies of Board of Immigration Appeals and Administrative Appeals Office decisions.

The entire record has been reviewed and considered. Upon review, we find that the Applicant has demonstrated that he was born out of wedlock. However, he did not show that his father's paternity was not established by legitimation under the law in Vietnam.

A. 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

² The Applicant does not claim derivative citizenship under former sections 321(a)(1) and (a)(2) of the Act, and the record does not reflect eligibility under these provisions. The record does not demonstrate that the Applicant's father is a naturalized U.S. citizen or that his parents married. The record also does not demonstrate that the Applicant has a deceased parent.

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As stated above, the Applicant may establish derivative citizenship through a U.S. citizen mother only if the Applicant was born out of wedlock, his paternity was not established by legitimation, and all of these requirements, including the mother's naturalization, were satisfied before the Applicant's 18th birthday on [REDACTED]. The Applicant has established that he meets several requirements for derivative citizenship under former section 321(a) of the Act.

1. Naturalized Citizen Mother

Certificate of Naturalization evidence contained in the record demonstrates that the Applicant's mother became a U.S. citizen through naturalization on February 3, 1995, when the Applicant was [REDACTED] years old. He therefore meets former section 321(a)(4) of the Act requirements.

2. Born Out of Wedlock

The Applicant's mother asserts in two sworn statements that she and the Applicant's father were not married at the time of the Applicant's birth, that they never married, and that she lost touch with the Applicant's father when she moved to the United States with the Applicant and his siblings. Statements by the Applicant's siblings also indicate that the Applicant's parents did not marry, and that the Applicant's father was not involved in the Applicant's life. In addition, the record contains a Certificate of No Marriage Record from the People's Committee in Vietnam, certifying that no registered marriages for the Applicant's mother exist between 1967 and 1983. The Applicant also submitted a copy of his family's Vietnamese Household Book Certificate Record of Residence reflecting that his mother lived at her parent's home with her children between 1976 and 1984, and that no spouse was registered as living with them.

The evidence sufficiently establishes that the Applicant's mother and father did not marry, and that the Applicant was born to unmarried parents. The Applicant has therefore demonstrated that he satisfied the out of wedlock birth condition mentioned in former section 321(a)(3) of the Act.

3. Reside in United States Pursuant to Lawful Admission for Permanent Residence

The Applicant's lawful permanent resident card, federal income tax evidence for his mother, and state court documents for the Applicant demonstrate that the Applicant resided in the United States with his mother from the time of his admission as a lawful permanent resident in April 1983 until 2014, when he was over the age of 18. He thus meets the former section 321(a)(5) of the Act requirement that he reside in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of his mother, and prior to his 18th birthday.

B. Legitimation in Vietnam

According to two Library of Congress (LOC) reports, legitimation in Vietnam before 1986 was governed by the Marriage and Family Law of 1959. See LOC Report 2014-010449 (March 2014) and LOC Report 2014-010684 (May 2014), both entitled, *Vietnam: Legitimation*. The record

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reflects that the Applicant was born in Vietnam on [REDACTED] and his birth certificate was registered in Vietnam on [REDACTED]. Accordingly, the law as set forth in the Marriage and Family Law of 1959 applies to him.³

The LOC reports reflect that the birth of a child born out of wedlock in Vietnam had to be registered at the People's Committee where the child resided. See LOC Report 2014-010449 (March 2014) and LOC Report 2014-010684 (May 2014).⁴ The reports state further that:

A father or a mother could acknowledge his/her child born out of wedlock at the People's Committee of his/her place of residence. . . . [The Law] did not separate acknowledgement from legitimation. When an out-of-wedlock child was acknowledged by his/her parents or through court proceedings, he/she had the same right and obligations as a child born in wedlock.

Id. (Citing arts. 21 and 23 of the Marriage and Family Law of 1959).

Article 21 of the Marriage and Family Law of 1959 states that "the father or the mother who recognizes a child born out of wedlock shall make a declaration with the basic administrative committee." Article 23 states that a "child born out of wedlock recognized voluntarily or judicially shall have the same rights and duties as a legitimate child."⁵

The March 2014 LOC report states that

[t]he People's Committee did not need to investigate the marital status of the parents of an illegitimate child. Even if the [mother] did not want to declare the name of the father, the Committee could still register the child. When a child was acknowledged by a parent or through a court judgment regarding filiation, the People's Committee recorded such information on the original birth register and the current birth certificate of the acknowledged child after the request for certification of acknowledgment by the parent or the court.

See LOC Report 2014-010449.

³ The LOC reports indicate that the Marriage and Family Law of 1959 was replaced in 1986 and again in 2000; however, the subsequent laws did not have retroactive effect on legitimation/acknowledgement before their effective dates. See LOC Report 2014-010449 (March 2014) and LOC Report 2014-010684 (May 2014).

⁴ The LOC reports cite to procedures for civil status registration as stipulated by Decree No. 04/CP of January 16, 1961, Circular No. 5-NV of January 21, 1961.

⁵ The quoted content for articles 21 and 23 is taken from the Marriage and Family Law of North Vietnam submitted by the Applicant on appeal. Specifically, the Applicant submits a March 2015 email sent to him by an LOC foreign law specialist, along with a copy of the Marriage and Family Law of North Vietnam provided to him by the Library of Congress. The LOC foreign law specialist indicates that the Marriage and Family Law of North Vietnam and the Marriage and Family Law of 1959 are the same.

The May 2014 LOC report states further:

As long as there were no disputes, the father of the out of wedlock child could acknowledge the child without a court procedure. *The only requirement applicable to acknowledgement was its registration on the child's birth certificate. If the father's name appeared on a child's birth certificate, it would indicate that the mother and father were married, the father had acknowledged the out of wedlock child, or a court had issued certificate of filiation of the father and the child.*

(emphasis added). In the present matter, the Applicant's birth certificate contains both his mother's and his father's names. Based on the above LOC report information, the appearance of his father's name on the birth certificate reflects that, as the Applicant's parents were not married, the Applicant's father acknowledged, and legitimated, the Applicant.

The Applicant indicates that an additional affirmative act is required in order to acknowledge paternity and legitimate a child in Vietnam, and that the appearance of his father's name on his birth certificate, alone, does not demonstrate that he was legitimated by his father. The Applicant does not, however, specify what affirmative act or additional procedure was required in Vietnam when he was born.

The Applicant refers to three Board of Immigration Appeals decisions and contends that the cases demonstrate that, for former section 321(a)(3) of the Act purposes, the existence of a father's name on a birth certificate is insufficient to demonstrate that paternity has been established by legitimation, where the laws of a country provide for a procedural mechanism to legitimate a child born out of wedlock. *See Matter of Cross*, 26 I&N Dec. 485 (BIA 2015), *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008) (overruled, in part, by *Matter of Cross*), *Matter of Rowe*, 23 I&N Dec. 962 (BIA 2006) (overruled, in part, by *Matter of Cross*). The *Matter of Cross* and *Matter of Hines* decisions discuss procedural mechanism requirements contained in the Jamaican Legitimation Act, which require parents to marry in order for a child born out of wedlock to be legitimated. Similarly, the *Matter of Rowe* decision discusses procedural mechanism requirements contained in Guyana's Legitimacy Ordinance, indicating that a child born out of wedlock may be legitimated only upon the marriage of the parents. The decisions do not, however, discuss legitimation laws in Vietnam, and the cases do not demonstrate that additional procedural mechanism requirements exist in Vietnam in order to legitimate a child born out of wedlock.

The Applicant also submits two non-precedent Administrative Appeals Office decisions, and indicates that we determined in past cases that the appearance of a father's name on a birth certificate, without additional evidence of acknowledgement of paternity, was insufficient to establish legitimation under the law in Vietnam; however, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all U.S. Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, the non-precedent decisions submitted by the Applicant do not reflect that we determined

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that a separate procedural mechanism exists for legitimating a child in Vietnam; or that a child born to unmarried parents in Vietnam was not legitimated, where evidence demonstrated that the father's name was recorded on a birth certificate issued at the time of the child's birth.

The Applicant also submits statements from his mother asserting that she provided his father's name when she registered the Applicant's birth, and that the Vietnamese Ministry of Justice did not require the Applicant's father to take any action in order for her to place his name on the birth certificate. She states that the Applicant's father did not participate in the registration process, did not submit a declaration of paternity, and did not take any action to recognize the Applicant as his son. She also indicates that the Applicant's father did not parent the Applicant and that they lost contact when the Applicant immigrated to the United States at the age of [REDACTED]. However, the mother's statements are uncorroborated by legal or other evidence, and alone do not establish that the Applicant was not legitimated by his father under the law in Vietnam.

Upon review, we find that the record is insufficient to demonstrate that the Applicant's father's paternity was not established by legitimation in Vietnam. Although the Applicant contends that the existence of his father's name on his birth certificate is insufficient to demonstrate that he was legitimated by his father in Vietnam, the Applicant did not provide evidence demonstrating that a separate procedural mechanism exists for legitimation of a child beyond acknowledgement by the child's father. We acknowledge that article 21 of the Marriage and Family Law of 1959 and the March 2014 LOC report indicates that the People's Committee recorded a father's declared acknowledgement information on the child's birth certificate. The LOC report specifies, however, that the acknowledgement information is recorded on the child's original birth certificate. In the present case, the birth certificate contained in the record is a 2007-issued extract of the Applicant's original birth certificate, which would explain why the acknowledgement information is not reflected on the birth certificate. Furthermore, the LOC reports reflect that the Applicant's mother was not required to provide the father's name in order to register the Applicant's birth, and the reports state that the appearance of the father's name on a child's birth certificate indicate that the father acknowledged the out of wedlock child.

Because the Applicant did not meet his burden of demonstrating that paternity was not established by legitimation at the time of his birth under the law in Vietnam, he did not satisfy the conditions set forth in former section 321(a)(3) of the Act.

III. CONCLUSION

In view of the above, the Applicant has not demonstrated that his father did not establish paternity by legitimation. Accordingly, the Applicant has not established eligibility for derivative citizenship pursuant to former section 321(a) of the Act.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

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ORDER: The appeal is dismissed.

Cite as *Matter of V-A-T-*, ID# 114231 (AAO Sept. 30, 2016)