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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: DALLAS, TEXAS Date: SEP 12 2003

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:
SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas. An appeal is now before the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant was born on September 27, 1993, in Vietnam. The applicant's mother, [redacted] was born in Vietnam on October 23, 1969, and she became a naturalized United States (U.S.) citizen on July 20, 2002. The applicant's natural parents were never married and the applicant's father is unknown. The record indicates that the applicant was lawfully admitted to the United States for permanent residence on March 15, 1994. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant had failed to meet the definition of "child" as defined in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1). The application was denied accordingly.

On appeal, the applicant, through her mother, asserts that she meets the requirements for obtaining U.S. citizenship pursuant to section 320 of the Act.

Section 101(c)(1) 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,** and except as otherwise provided in section 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 . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

INS Interpretations section 320.1(c) relates to unlegitimated children and states in pertinent part that:

> The mother's naturalization as a citizen of the United States subsequent to the birth of her child born out of wedlock and the child's lawful admission to the United States for permanent residence [confers] citizenship upon the unlegitimated child . . . . under the current statute if both the events . . . occur before the unlegitimated child attains sixteen years of age,

> and one of them occurs, or both of them occur, on or after December 24, 1952 . . . citizenship vests as of the date on which the last qualifying condition is met, whichever is later in point of time.

See INS Interp. Ltr., 320.1, 2001 WL 1333885 (INS).

Moreover, a recent advisory U.S. Department of Justice, Office of Legal Counsel, opinion written in response to a Service [Bureau] request for clarification states that the term "child" includes unmarried persons under the age of 21 who were born out of wedlock to a U.S. citizen mother and who are unlegitimated. *See Memorandum for Dea D. Carpenter, Acting Principal Legal Advisor, Bureau of Citizenship and Immigration Services Department of Homeland Security, Re: Eligibility of Unlegitimated Children for Derivative Citizenship,* dated July 24, 2003, and signed by M. Edward Whelan III, Acting Assistant Attorney General, U.S. Department of Justice, Office of Legal Counsel ("OLC Memo") at 6.

After discussing the possibility of various competing definitions of "child" under section 101(c)(1) of the Act, the OLC states further that:

> An alien child who was born out of wedlock and has not been legitimated is eligible for derivative citizenship under new section 320. Specifically, when the mother of such child becomes a naturalized citizen, the child satisfies the condition that "[a]t least one parent of the child is a citizen of the United States, whether by birth or naturalization."[1]

Id. at 5.

The AAO adopts the reasoning and conclusion set forth in the OLC Memo.

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[1] The OLC reasoned that:

> Because former section 321(a)(3) specifically contemplated the situation where a "*child* was born out of wedlock and the paternity of the *child* has not been established by legitimation" (emphasis added), it is indisputable that before enactment of the CCA the term "child" in section 101(c)(1) included unmarried persons under the age of 21 who were born out of wedlock and unlegitimated. And because the CCA did not modify the definition of "child" in section 101(c)(1), it follows *a fortiori* that the term "child" continues to include unmarried persons under the age of 21 who were born out of wedlock and who are unlegitimated.

OLC Memo at 5-6.

In the present case, the record contains a birth certificate establishing the applicant's out of wedlock birth to her mother on September 27, 1993. The applicant also established that she is unmarried and that she is under 21 years old. She therefore meets the definition of "child" as set forth in section 101(c)(1) of the Act.

The applicant has additionally established that her mother is a naturalized U.S. citizen, that she is under the age of eighteen, and that she is residing in the U.S. in the legal and physical custody of her mother pursuant to a lawful admission for permanent residence. The applicant is therefore entitled to automatic citizenship pursuant to section 320 of the Act.

ORDER: The appeal is sustained.