

A Child is a Child—Or Is It? Legitimation Under Foreign Law and Its Immigration Consequences

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The Immigration and Nationality Act limits the number of persons who may enter the United States as immigrants in any given year and establishes a preference system for those who may so enter. This article analyzes the criteria established by the courts and the Immigration and Naturalization Service for determination of preference classification as a legitimated child where the legitimation occurs outside the United States. In the appendix, the author indexes all Board of Immigration Appeals decisions relating to legitimation under the laws of other countries. The author concludes that a statutory amendment and the promulgation of additional regulations would resolve present inconsistencies and would better effectuate the original purpose of existing immigration legislation.

INTRODUCTION

The Immigration and Nationality Act (INA) limits to 270,000 the number of immigrants who may be admitted to the United States in any given year,¹ exclusive of immediate relatives,² special immi-

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1. Immigration and Nationality Act § 201(a), 8 U.S.C. § 1151(a) (1982).

2. "Immediate relatives" refers to "the children, spouses, and parents of a citizen of the United States: *Provided*, That in the case of parents, such citizen must be at least twenty-one years of age." § 201(b), 8 U.S.C. § 1151(b) (1982).

The immigration and nationality laws of the United States classify the children of United States citizens in three ways: (1) Certain children of United States citizens are citizens of the United States at birth. § 301, 8 U.S.C. § 1401. (2) Certain children of

grants,³ refugees,⁴ and asylees.⁵ Individuals subject to the 270,000-person quota system fall into two categories: those who qualify for treatment under the INA's system of six preferences,⁶ and those who do not so qualify for preferential treatment. Visas are available to nonpreference applicants only to the extent that the annual supply has not been exhausted by applicants within the six preference categories.⁷ Because of the great demand within the preference categories, nonpreference visas have been unavailable since mid-1978; projections indicate that they will continue to be unavailable indefinitely.⁸ Thus, an alien's only real chance of obtaining immigrant status is to qualify for a preferential classification.

Qualifying for preferential classification is not an easy task; the law presumes that an applicant for immigrant status does not qualify unless he demonstrates otherwise.⁹ The INA favors family relationships, however, and an alien may thereby qualify for preferential classification. Four of the six preference categories are based upon family relationships.¹⁰ Further, spouses and children accompanying

United States citizens, who are not United States citizens at birth but are unmarried and under the age of twenty-one, qualify as "immediate relatives." As such, they are not subject to the quota restrictions of the Immigration and Nationality Act. § 201(b), 8 U.S.C. § 1151(b). *See also* § 101(b)(1), 8 U.S.C. § 1101(b)(1) (defining "child" as "an unmarried person under twenty-one years of age"). (3) Certain children of United States citizens, who are not United States citizens at birth but are either married or over twenty-one, are subject to the quota restrictions of the Act. These children may be eligible for priority status in the allocation of available immigrant visas because they fall within the preference system. § 203(a)(1),(4), 8 U.S.C. § 1153(a)(1),(4).

3. The term "special immigrant" refers to an individual within any of the following categories: (1) previously lawfully-admitted, permanent residents returning from temporary foreign visits; (2) certain former United States citizens; (3) certain ministers of religion; (4) certain former and current employees of the United States Government; and (5) certain former employees of the Panama Canal Company, the Canal Zone Government, or the United States Government in the Canal Zone. § 101(a)(27), 8 U.S.C. § 1101(a)(27).

4. § 207, 8 U.S.C. § 1157.

5. § 208, 8 U.S.C. § 1158.

6. § 203(a), 8 U.S.C. § 1153(a).

7. § 203(a)(7), 8 U.S.C. § 1153(a)(7).

8. NATIONAL LAWYERS GUILD, IMMIGRATION LAW AND DEFENSE § 4.6(g), at 4-16 (2d ed. 1982).

9. § 203(d), 8 U.S.C. § 1153(d).

10. The Immigration and Nationality Act as codified provides:

...
(1) Visas shall be first made available, in a number not to exceed over 20 per centum of the number of specified in section 1151(a) of this title to qualified immigrants who are the unmarried sons or daughters of citizens of the United States.

(2) Visas shall next be made available, in a number not to exceed 26 per centum of [270,000], plus any visas not required for the classes specified in paragraph (1) of this subsection, to qualified immigrants who are the spouses, unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence.

...
(4) Visas shall next be made available, in a number not to exceed 10 per

or following to join the principal alien are entitled to the same status as the principal alien.¹¹ Illegitimate children have a special problem, because the approval of an illegitimate child's application for preferential classification may depend upon whether he or she ultimately qualifies as a "child" within the meaning of the INA,¹² and establishes the relevant familial relationship. The issue of legitimation is vitally important to the child's classification under the INA's definition of a child.

The INA includes within its definition of "child" an unmarried person under the age of twenty-one who has been legitimated under the law of either the child's or the father's residence or domicile prior to the child's eighteenth birthday at a time when the child was in the legal custody of the legitimating parent.¹³ Whether an illegitimate child has been legitimated within the meaning of the INA is a question of federal law and is determined by examining the child's

centum of [270,000], plus any visas not required for the classes specified in paragraphs (1) through (3) of this subsection, to qualified immigrants who are the married sons or the married daughters of citizens of the United States.

(5) Visas shall next be made available, in a number not to exceed [270,000], plus any visas not required for the classes specified in paragraphs (1) through (4) of this subsection, to qualified immigrants who are the brothers or sisters of citizens of the United States, provided such citizens are at least twenty-one years of age.

§ 203(a), 8 U.S.C. § 1153(a).

11. § 203(a)(8), 8 U.S.C. § 1153(a)(8).

12. The statute refers in its preference classifications to "sons or daughters" so as to avoid the statutory definition of "child," because any person qualifying as the "child" of a United States citizen is not subject to quota restrictions. 1 C. GORDON & H. ROSENFELD, IMMIGRATION LAW AND PROCEDURE § 2.27b, at 2-194 (rev. ed. 1982). Because the Immigration and Nationality Act does not define "son or daughter," the courts and the Immigration and Naturalization Service have determined who is a "son or daughter" of a United States citizen by reference to the statutory definition of "child," except for the provisions regarding age and marital status. *Id.* § 2.27c, at 2-196.

13. § 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C). Unless local law dictates to the contrary, the father's "natural right" to the custody of a child he has legitimated is equal to the mother's "natural right" to custody. *In re Rivers*, 17 I. & N. Dec. 419, 421 (1980), *modifying In re Harris*, 15 I. & N. Dec. 39 (1970); *In re Dela Rosa*, 14 I. & N. Dec. 728 (1974). Although the effect of legitimation is retroactive and confers the full status and rights of a legitimate child as of the date of birth, 32 Op. Att'y Gen. 162 (1920), the child must have met all of the requirements for legitimation at the time the visa petition is filed, in order to qualify for relative preference classification under section 203(a) of the Immigration and Nationality Act. *In re Bardouille*, I.D. No. 2880, slip op. at 4 (BIA 1981). For a discussion of the conflict of laws problem associated with the issue of legitimation, see Note, *Ending Discrimination Against Unwed Fathers and Their Illegitimate Children Under Immigration Laws*, 56 N.Y.U. L. REV. 146 (1981).

The Act also defines "child" to include legitimate children, stepchildren, adopted children, certain orphans, and illegitimate children claiming immigration benefits by virtue of their relationship to their mothers. § 101(b)(1), 8 U.S.C. § 1101(b)(1).

filial rights under the laws of the child's and the father's domicile and residence.¹⁴

Various courts¹⁵ and the Board of Immigration Appeals¹⁶ have construed the statute as requiring that the illegitimate child's rights equal the rights of legitimate children in the jurisdiction of the child's or the father's domicile or residence. These decisions have been inconsistent where the legitimation of the child has been in accordance with foreign law.¹⁷ As case holdings evidence, the Immigration and Naturalization Service (INS) has not always satisfactorily construed the INA's relevant provisions in light of the legislative intent.¹⁸ This article explores the validity of the current construction of "legitimation" in cases involving foreign law and recommends modifications of existing legislation.¹⁹

BUILDING BLOCKS TO A WORD: STATUTORY CONSTRUCTION OF "LEGITIMATION"

Several basic principles govern the interpretation of a statute. The starting point of any such examination is the language of the statute itself.²⁰ Unless the statute defines its words otherwise, they will be interpreted as having their ordinary, contemporary, common meaning.²¹ The circumstances surrounding the statute's enactment may convince a court, however, that the legislature did not intend a word to have its ordinary meaning.²² Further, the courts will give substantial deference to the construction given to a statute by a department charged with its administration,²³ particularly where that construc-

14. *de los Santos v. INS*, 525 F. Supp. 655, 660 n.5 (S.D.N.Y. 1981), *aff'd* 690 F.2d 56 (2d Cir. 1982). Where an act is insufficient to establish the legitimacy of an illegitimate child under the enumerated laws, the child remains illegitimate for immigration purposes even though the same act in another country would have established legitimacy. See *In re Rodriguez*, I.D. No. 2854 (RC 1980).

15. *E.g.*, *de los Santos v. INS*, 690 F.2d 56 (2d Cir. 1982); *Peignand v. INS*, 440 F.2d 757 (1st Cir. 1971).

16. *E.g.*, *In re Reyes*, 17 I. & N. Dec. 512 (1980); *In re Clahar*, 16 I. & N. Dec. 484 (1978); *In re Remy*, 14 I. & N. Dec. 183 (1972).

17. Compare *In re Reyes*, 17 I. & N. Dec. 512 (1980) with *In re Lee*, 16 I. & N. Dec. 305 (1977).

18. See *Reyes v. INS*, 478 F. Supp. 63, 65-66 (E.D.N.Y. 1979); *Delgado v. INS*, 473 F. Supp. 1343, 1348 (S.D.N.Y. 1979).

19. This article does not include an examination of foreign laws which abolish all distinctions between legitimate and illegitimate children. Children to whom such a law applies would be legitimate under section 101(b)(1)(A) of the INA, rather than "legitimated" within the meaning of section 101(b)(1)(C). See *infra* note 42.

20. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

21. *Perrin v. United States*, 444 U.S. 37, 42 (1979).

22. See, *e.g.*, *United States v. Ryan*, 284 U.S. 167, 175 (1931).

23. *United States v. Rutherford*, 442 U.S. 544, 553-54 (1979). See K. DAVIS, *ADMINISTRATIVE LAW: CASES, TEXT, PROBLEMS* 120-21 (6th ed. 1977). The courts have shown such deference to interpretations of the Immigration and Nationality Act made by the Department of Justice, which includes the Immigration and Naturalization Service

tion has been consistent over a long period of time.²⁴

The Courts' Struggle to Define "Legitimation"

In their attempts to ascertain the meaning of the word "legitimated," the courts have reviewed the legislative history behind the enactment of section 101(b)(1)(C).²⁵ Prior to the enactment of the INA, the United States immigration laws contained no provision for regularizing the immigration status of legitimated children. The determination as to when an illegitimate child constituted a "child" for immigration purposes remained the province of administrative agencies.²⁶ In 1952, Congress included section 101(b)(1)(C) as part of the INA²⁷ based upon a recommendation by the Senate Committee on the Judiciary that illegitimate children be eligible for preferential classification if they had been legitimated.²⁸ The recommendation was essentially a statutory codification of a Department of State regulation classifying legitimated children as children within the meaning of the immigration laws.²⁹ The Senate Committee understood a "legitimated" child to be an illegitimate child who had received all

and the Board of Immigration Appeals, and by the Department of State. *See, e.g., Oloteo v. INS*, 643 F.2d 679, 683 (9th Cir. 1981). The Immigration and Nationality Act itself provides for such deference:

The Attorney General shall be charged with the administration and enforcement of this [Act] and all other laws relating to the immigration and naturalization of aliens, except insofar as this [Act] or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however*, that determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

§ 103(a), 8 U.S.C. § 1103(a).

24. *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 600 n.17 (1981).

25. *E.g., de los Santos v. INS*, 525 F. Supp. 655, 663-66 (S.D.N.Y. 1980).

26. *Id.* at 663-64.

27. Pub. L. No. 82-414, § 101(b)(1)(C), 66 Stat. 163 (1952) (codified as amended at 8 U.S.C. 1101(b)(1)(C) (1982)).

28. S. REP. NO. 1515, 81st Cong., 2d Sess. 468 (1950).

29. The regulation provided:

A petition for nonquota status for an illegitimate child who is an alien may be filed with the Department of Justice when the petition is executed by the mother, if she is a citizen of the United States, or by the father, if he has subsequently married the mother of the illegitimate child and thereby conferred on the child the rights of legitimacy or has legitimated the child under the law of his domicil, and if he is an American citizen.

22 C.F.R. § 42.209 (1949). The report recommended that the statutory term "child" include illegitimate children "if legitimated under the law of either the child's or the father's residence or domicile [and] if the legitimation takes place before the child reaches the age of 16 and while in the custody of the legitimating parent." S. REP. NO. 1515, *supra* note 28.

of the benefits of legitimacy, the same meaning given the word by the Department of State regulation.

The courts have also interpreted the INA's use of the word "legitimated" by reference to the prevailing interpretation of other statutes that share the same language or general purpose, or that deal with the same subject.³⁰ The United States nationality laws are closely related to the immigration laws.³¹ The nationality laws, codified in the INA, define "child" to include children who have been legitimated.³² The INA also provides for derivative citizenship for illegitimate children of United States citizens where paternity has been established by legitimation.³³ United States nationality law first addressed the status of illegitimate children as part of the Nationality Act of 1940.³⁴ Congress substantially re-enacted these provisions as part of the INA, which is still in effect.³⁵ Prior to the passage of the Nationality Act of 1940, the citizenship of foreign-born children of United States citizens was governed by section 1993 of the Revised Statutes of the United States.³⁶ Under this provision, the courts and administering agencies resolved the question of eligibility of illegitimate children for derivative citizenship. The Department of State maintained that a child qualified if he or she had been legitimated under the laws of the father's domicile.³⁷ Although the Department of Justice endorsed this approach,³⁸ the courts maintained that "child," within the context of section 1993, referred only to legitimate children.³⁹

30. *Northcross v. Board of Educ. of the Memphis City Schools*, 412 U.S. 427, 428 (1973) (per curiam).

31. Nationality law and immigration law in the United States were at one time enacted in separate legislation. Congress merged the two bodies of law into a single statutory scheme in 1952. 3 C. GORDON & H. ROSENFELD, *IMMIGRATION LAW AND PROCEDURE* § 11.6b, at 11-18 to 21 (rev. ed. 1982).

32. Immigration and Nationality Act § 101(c)(1), 8 U.S.C. § 1101(c)(1). For a complete discussion of the rights of legitimated children under United States nationality laws, see 3 C. GORDON & H. ROSENFELD, *IMMIGRATION LAW & PROCEDURE* §§ 13.11(a)-(b), at 13-47 to -54 (rev. ed. 1982).

33. § 309, 8 U.S.C. § 1409.

34. Pub. L. No. 76-853, 54 Stat. 1137 (1940).

35. *de los Santos v. INS*, 525 F. Supp. 655, 666 (S.D.N.Y. 1981).

36. Section 1993, as amended, provided that:

Any child hereafter born out of the limits and jurisdiction of the United States whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child.

As amended by the Act of May 24, 1934, Pub. L. No. 73-250 § 1, 48 Stat. 797.

37. *To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code: Hearings on H.R. 6127 Before the Comm. on Immigration and Naturalization*, 76th Cong., 1st Sess. 431 (1940) [hereinafter cited as *Hearings*].

38. 39 Op. Att'y Gen. 556, 558-59 (1937).

39. See, e.g., *Mason ex rel. Chin Suey v. Tillinghast*, 26 F.2d 558, 589 (1st Cir.

The Nationality Act of 1940 resolved this dispute between the Department of Justice and the courts by allowing illegitimate children to receive derivative citizenship if they were legitimated under the law of their domicile while in the custody of the legitimating parent.⁴⁰ Testimony during the hearings on this legislation indicates that Congress understood a legitimated child to be one whom the law treated "as if it had been born legitimately."⁴¹

The Board's Interpretation of "Legitimation"

The Board of Immigration Appeals has generally construed section 101(b)(1)(C), the statutory provision governing legitimation, as requiring that an illegitimate child possess all the legal attributes of a legitimate child to be deemed legitimated.⁴² This interpretation is consistent with the ordinary meaning of "legitimation"⁴³ and with

1928); *Ng Suey Hi v. Weedin*, 21 F.2d 801, 802 (9th Cir. 1927).

40. Nationality Act of 1940, Pub. L. No. 76-853, §§ 102(h), 205, 54 Stat. 1138, 1139-40 (current version at 8 U.S.C. §§ 1101(c)(1), 1409 (1982)).

41. *Hearings*, *supra* note 37, at 62 (remarks of R.W. Flournoy, Assistant Legal Advisor, Department of State). Congress' adoption of this definition of "legitimated" is reflected in its rejection of a proposal by the National Council on Naturalization and Citizenship, providing for the derivative citizenship of children who, although acknowledged by their fathers, did not enjoy all of the rights of legitimate children. *See id.* at 392-94.

42. *See, e.g., In re Remy*, 14 I. & N. Dec. 183 (1972); *In re Greer*, 14 I. & N. Dec. 16 (1972); *In re Gouveia*, 13 I. & N. Dec. 604 (1970); *In re Doble-Pena*, 13 I. & N. Dec. 366 (1969); *In re Monma*, 12 I. & N. Dec. 265 (1967); *In re Lauer*, 12 I. & N. Dec. 210 (1967); *In re Mandewirth*, 12 I. & N. Dec. 199 (1967); *In re Anastasiadis*, 12 I. & N. Dec. 99 (1967); *In re Van Pamelon*, 12 I. & N. Dec. 11 (1966); *In re Maungca*, 11 I. & N. Dec. 885 (1966); *In re The*, 10 I. & N. Dec. 744 (1964); *In re Archer*, 10 I. & N. Dec. 92 (1962); *In re C—*, 9 I. & N. Dec. 597 (1962); *In re C—*, 9 I. & N. Dec. 268 (1961); *In re J—*, 9 I. & N. Dec. 246 (1961); *In re W—*, 9 I. & N. Dec. 223 (1961); *In re F—*, 7 I. & N. Dec. 448 (1957); *In re D—*, 7 I. & N. Dec. 438 (1957); *In re J—*, 7 I. & N. Dec. 338 (1956). Where a country abolishes all legal distinctions between children born in and out of wedlock, the children are deemed to be "legitimate" within the meaning of section 101(b)(1)(A) of the INA. *See, e.g., In re Pavlovic*, 17 I. & N. Dec. 407 (1980); *In re Hernandez*, 17 I. & N. Dec. 7 (1979) (the foreign equalization law already existed at the time of the child's birth). *See also* 60 INTERPRETER RELEASES 204 (1983); 59 INTERPRETER RELEASES 358 (1982). *But see, In re G—*, 9 I. & N. Dec. 518 (1961) (BIA found child legitimated rather than legitimate even though equalizing law in effect at time of child's birth). However, where the foreign equalization law is enacted after the child's birth, it is a legitimatizing law even if retroactive, and the child is considered "legitimated" within the meaning of section 101(b)(1)(C). *E.g., In re Martinez*, I.D. No. 2941 (BIA 1983) (Cuba); *In re Campuzano*, I.D. No. 2940 (BIA 1983) (Ecuador); *In re Clarke*, I.D. No. 2935 (BIA 1983) (Barbados). *See also* 60 INTERPRETER RELEASES 204 (1983).

43. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1291 (unabridged ed. 1981) defines the adjective "legitimate" as "born in wedlock" and the verb as "to put [a bastard] in the position or state of a legitimate child."

other legal authority.⁴⁴ The Board has departed, however, from this construction on several occasions.

The Board of Immigration Appeals considered whether "recognition" under Korean law constituted "legitimation" under section 101(b)(1)(C) in *In re Lee*.⁴⁵ Korean law provides that the oldest legitimate son succeed any "recognized" son in assuming the role of "Head of Family." Succession to this role entitles that child to greater inheritance rights than his siblings. The Board noted that "the concept of 'Head of Family' is entirely foreign to United States common law, and has no parallel in United States parent-child relations."⁴⁶ At first, the Board concluded that such "recognition" constituted "legitimation." The Board found that since "all the remaining rights and duties are identical, [the distinction in inheritance rights] should be deemed irrelevant to the issue of immigration benefits, as beyond the twin goals of family unity and the prevention of immigration fraud."⁴⁷ Although the Board ultimately withdrew from the *Lee* construction of section 101(b)(1)(C),⁴⁸ its conclusions in other cases refute any claim to consistency.

The Board initially found in *In re Clahar*⁴⁹ that Jamaica's Status of Children Act of 1976 did not establish for children born out of wedlock rights coextensive with those of children born in wedlock or with children legitimated by the marriage of their natural parents. This decision rested upon the existence of various legal distinctions between children born in and out of wedlock, including differences in rights to property from *inter vivos*, testamentary, and intestate dispositions.⁵⁰ The Board distinguished *In re Lee*,⁵¹ finding the Jamaican statute "significantly different" from the Korean statute "because the Jamaican statute provides for fundamental exceptions which affect the substantial rights of children born out of wedlock."⁵² The Board subsequently modified its original *Clahar* holding,⁵³ finding that a child within the scope of the Jamaican Status of Children Act could be included within the section 101(b)(1)(C) definition of a "legitimated" child, notwithstanding the legal differences in inheritance rights.⁵⁴ This decision was based upon a memorandum

44. BLACK'S LAW DICTIONARY 811 (rev. ed. 1979) defines the verb "legitimate" as "To make lawful, to confer legitimacy; to place a child born before marriage on the footing of those born in lawful wedlock."

45. 16 I. & N. Dec. 305 (1977).

46. *Id.* at 307.

47. *Id.*

48. *In re Reyes*, 17 I. & N. Dec. 512, 517 (1980).

49. 16 I. & N. Dec. 484 (1978).

50. *Id.* at 488-89.

51. 16 I. & N. Dec. 305 (1977).

52. 16 I. & N. Dec. at 489.

53. *In re Clahar*, I.D. No. 2852 (BIA 1981).

54. *Id.*, slip op. at 3-4.

prepared by the Jamaican Justice Ministry, indicating that the statutory distinctions in question resulted "from a legislative attempt to minimize the problems associated with determining rights and status in an area where difficulties may arise in identifying the natural father of a child rather than from any intent to treat children born out of wedlock less favorably than those born in wedlock."⁵⁵

*In re Jancar*⁵⁶ presented the Board with a similar issue, requiring it to consider whether acknowledgement of paternity under Yugoslav law⁵⁷ was the equivalent of legitimation under section 101(b)(1)(C). In this case, also, the inheritance rights of an acknowledged child differed from those of a legitimate child. The Board emphasized the similarities in the status of legitimate and acknowledged children⁵⁸ and concluded, despite the distinction in inheritance rights, that the child met the requirements of section 101(b)(1)(C).

The Board's inconsistent interpretations of the ordinary meaning of "legitimated" have prompted the courts to resolve this dilemma by looking to the purpose that Congress sought to serve by its enactment of section 101(b)(1)(C).⁵⁹ In *Lee*,⁶⁰ the Board recognized that the preference system incorporated in the immigration laws of the United States reflects a congressional recognition of the desirability of maintaining or fostering the unity of immigrant families.⁶¹ More

55. *Id.*, slip op. at 3.

56. 11 I. & N. Dec. 365 (1965). The Board, in reliance upon Article 58 of the Yugoslav constitution, later overruled *Jancar* and concluded that all distinctions between legitimate and illegitimate children had been abolished and children born out of wedlock are considered equal at birth to those born in wedlock with respect to the rights and duties of the parents towards them. *In re Pavlovic*, 17 I. & N. Dec. 407 (1980).

57. The Yugoslav law provided that a child born out of wedlock would acquire the status or a status similar to that of a child born in wedlock by three methods: legitimation by the subsequent marriage of the natural parents, by court decree, or by acknowledgement of the natural father. *In re Jancar* 11 I. & N. Dec. 365, 367.

58. "[L]egitimation through acknowledgement of paternity is effective with respect to everyone . . . family relations thenceforth exist between the child and the natural father . . . both the father and the mother exercise parental power over the child." *Id.* at 368.

59. *de los Santos v. INS*, 525 F. Supp. 655, 669 (S.D.N.Y. 1981) (citing *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 608 (1979)). Even where the statute's meaning is clear, the court will not interpret a provision according to its plain meaning where to do so "would lead to a result that conflicts with common sense and that is unreasonable in light of the evident statutory purpose." *Id.* (citing *In re Adamo*, 619 F.2d 216, 222 (2d Cir. 1979), *cert. denied*, 449 U.S. 843 (1980)).

60. 16 I. & N. Dec. 305 (1977).

61. See S. REP. NO. 1515, 81st Cong., 2d Sess. (1950). See also *Lau v. Kiley*, 563 F.2d 543 (2d Cir. 1977). But see *In re Reyes*, 17 I. & N. Dec. 512, 516 (1980), in which the Board noted that "although one must be mindful of the purpose of the immigration laws to preserve the family unit, it must also be recognized that section 101(b) in fact embodies the Congressional conclusions as to which familial relationships warrant

than one court has extrapolated from this a concurrent congressional desire to reduce the incidence of fraudulent preference petitions,⁶² reasoning that a reduction in fraudulent preference classifications creates additional visas for members of bona fide families and thereby effectuates Congress' intent to unify families.⁶³ The INS has argued that fraud is averted by requiring that legitimated children have *all* of the rights of legitimate children because individuals will be less likely to claim as children those persons upon whom they must confer full filial rights.⁶⁴ Several courts, although recognizing agency expertise in this area,⁶⁵ and an INS need to prevent fraudulent schemes,⁶⁶ have commented upon the irrationality of this reasoning⁶⁷ and the inconsistency of its application.⁶⁸ However, the

recognition."

62. See, e.g., *de los Santos v. INS*, 525 F. Supp. 655, 669 (S.D.N.Y. 1981).

63. *Id.* at 669-70.

64. *de los Santos v. INS*, 690 F.2d 56, 59 (2d Cir. 1982).

65. It is not the province of the courts to insist that the INS' interpretations of the Act result in the perfect immigration scheme, or even that they be the best interpretations possible; rather, the INS is given a fair amount of latitude to exercise its judgment as to what interpretations will best effectuate the goals of the Act.

Id. at 60. See also *Delgados v. INS*, 473 F. Supp. 1343, 1348 (S.D.N.Y. 1979).

66. *Delgado v. INS*, 473 F. Supp. 1343, 1349 (S.D.N.Y. 1979).

67. The *Delgado* court found the Board's rulings with respect to a legitimation provision questionable. The Board in that case had found that the beneficiary, although legitimated under the law of the Dominican Republic, was not legitimated within the meaning of section 101(b)(1)(C) because his right to inherit intestate would be less than that of a legitimate child. The court criticized the Board's reasoning with respect to this particular provision.

It hardly seems likely that persons will more readily lend themselves to fraudulent legitimations because their fraudulently acknowledged "children" would thereby be entitled to only half the inheritance of a natural child in an intestate distribution. Furthermore, even assuming a significant number of fraudulent "parents" could in theory be affected by a difference in the acknowledged child's right to inherit intestate, what possible basis short of pure speculation could justify the supposition that these individuals would find acceptable the right of children acknowledged under Law 985 to inherit 50% of the statutory share of their natural children?

...

The rule adopted has no reasonable relation to preventing fraud, and it ignores the "foremost policy underlying the granting of preference visas under our immigration laws, the reunification of families . . ." (citation omitted).

473 F. Supp. 1343, 1348 (S.D.N.Y. 1979). The same court further noted:

A person so aware of the consequences of fraudulently legitimating a child as to be affected by intestate inheritance rights, could readily avoid any risk of the legitimated child's inheriting any part of his or her property by cutting off the "child" in a will. Under the Board's view, a legitimation law that allowed an individual to disinherit a legitimated child is entitled to respect, even though it presents far more substantial possibilities of fraud than the aspect of Dominican law that merely reduces the acknowledged child's intestate rights.

Id. at 1348 n.6. See also *Reyes v. INS*, 478 F. Supp. 63, 66 (E.D.N.Y. 1979). But see *de los Santos v. INS*, 525 F. Supp. 655, 670 (S.D.N.Y. 1981):

[T]hat the deterrent effect of requiring an illegitimate child to show that it has filial rights coextensive with those of a legitimate child can only be appreciated

courts have consistently upheld the INS' construction of section 101(b)(1)(C), limiting their own function to an examination of "whether the statute, so interpreted, is *reasonably calculated* to serve these purposes,"⁶⁹ and thereby avoiding a determination of whether the INS' construction best effectuates the purposes of the statute.⁷⁰

The legislative history of section 101(b)(1)(C), the Board of Immigration Appeals' general, although somewhat inconsistent, interpretation of the term "legitimated," and the ordinary meaning of that word provide strong ammunition in the INS' battle to avert fraud by limiting the definition of "legitimation." However, a reading which is both more humane and more cognizant of the existence of varying systems of foreign law is supported by the verbalized congressional purpose behind the provision's enactment and the Board's acknowledgement of that purpose in various decisions.

A REALISTIC APPRAISAL OF SECTION 101(b)(1)(C)

The courts⁷¹ and the Board of Immigration Appeals⁷² have acknowledged Congress' intent to facilitate family reunification. Each adjudicative body is cognizant, as well, of legitimation requirements in various countries which mandate the marriage of the natural parents and thereby render legitimation by the natural father impossible in some cases.⁷³ Despite a desire to define the relevant provisions of the immigration laws in such a way as to recognize all bona fide familial relationships,⁷⁴ and despite Congress' continual emphasis on family reunification as a major component of any immigration legis-

by taking a broad view of the scope of such rights and also by considering how such rights are conferred on an illegitimate child As a practical matter, then, the requirement that an illegitimate child have the full rights of legitimacy to be eligible for a preferential immigration classification is, in a great number of cases, really a requirement that the parents of the child marry. Such a requirement is reasonably calculated to deter fraud: the willingness of a person to commit fraud in order to gain preferential immigration status for a child is certainly likely to be lessened if the fraud can only be accomplished by marrying the child's mother.

68. *Reyes v. INS*, 478 F. Supp. 63, 66 (E.D.N.Y. 1979); *Delgado v. INS*, 473 F. Supp. 1343, 1348 n.7 (S.D.N.Y. 1979).

69. *de los Santos v. INS*, 525 F. Supp. 655, 670 (S.D.N.Y. 1981).

70. *Id.*

71. *E.g.*, *Lau v. Kiley*, 563 F.2d 543, 545 (2d Cir. 1977); *de los Santos v. INS*, 525 F. Supp. 655, 669 (S.D.N.Y. 1981).

72. *E.g.*, *In re Lee*, 16 I. & N. Dec. 305 (1977).

73. *See, e.g.*, *de los Santos v. INS*, 525 F. Supp. 655, 669 n.11 (S.D.N.Y. 1981); *In re Reyes*, 17 I. & N. Dec. 512, 517 n.3 (1980).

74. *In re Reyes*, 17 I. & N. Dec. 512, 517 n.3 (1980).

lation,⁷⁵ the Board⁷⁶ and the courts⁷⁷ are reluctant to construe section 101(b)(1)(C) more broadly absent a redrafting of the existing legislation. Unfortunately, recent sentiment in Congress has been of a restrictive, rather than expansive nature,⁷⁸ rendering unlikely any move by Congress which would ultimately increase the number of persons eligible for preferential classification.

Whether the expansion of the meaning of "child" would result in a greater number of petitions or eligible persons is questionable. Under existing legislation, the father's wife, if a United States citizen or lawfully admitted permanent resident alien, can petition for the child as a stepchild,⁷⁹ even though the father is unable to petition for the child as a legitimated child. In actuality, the expansion of the meaning of "child" for immigration purposes would merely facilitate the petition process.

75. See, e.g., Interview with Senator Alan K. Simpson, *reprinted in* IV UNITED STATES IMMIGRATION NEWS 1-2 (April 1983); Letter from Congressman Peter W. Rodino, Chairman of the House Judiciary Committee, to the Editor of the New York Times, *reprinted in part in* II UNITED STATES IMMIGRATION NEWS 1-2 (September 3, 1982); Letter from Bill Archer, Member of the House of Representatives to F. S. Halim, Esq., Houston, Texas (July 23, 1982).

76. Legitimation requirements which mandate marriage of the natural parents often make legitimation by the natural father impossible. This can of course be true even where a strong family tie exists between the father and child. That such relationships cannot be recognized under the clear terms of section 101(b)(1) tempts one to define the provisions therein so that all bona fide familial relationships can be recognized. *We believe this result can only be lawfully accomplished, however, by a redrafting of the law in question by Congress.* *In re Reyes*, 17 I. & N. Dec. 512, 517 n.3 (1980) (emphasis added).

77. The Court tends to agree . . . that a rule requiring something less than full rights of legitimacy as a predicate to receiving preferential immigration classification would effectively deter fraud and at the same time would permit unification of bona fide immigrant families where, as a practical matter, the illegitimate child cannot be given the full rights of legitimacy . . . Plaintiff's persuasive argument that a better means of serving the goals of the INA is available should, in the final analysis, be addressed to Congress. *de los Santos v. INS*, 525 F. Supp. 655, 670-71 (S.D.N.Y. 1981). This court's conclusion is not surprising as the courts have consistently found the power of Congress to determine what classes of aliens may enter the United States to be plenary and unqualified. *Kleindienst v. Mandel*, 408 U.S. 753 (1972). For a discussion of the constitutionality of this premise as it relates to illegitimate children, see Comment, *Discrimination Based on Sex and Illegitimacy Is Permissible in the Immigration Area—Fiallo v. Bell*, 27 DE PAUL L. REV. 515 (1977); Comment, *"Legitimate" Discrimination Against Illegitimates: A Look at Trimble v. Gordon and Fiallo v. Bell*, 16 J. FAM. L. 57 (1977).

78. See *supra* note 75.

79. Immigration and Nationality Act § 101(b)(1)(B), 8 U.S.C. § 1101 (b)(1)(B) (1982). For example, suppose father *F* had an illegitimate child *C* in country *X*, with Mother *M*. Suppose further that *F* had acknowledged *C* under the laws of *X*, but because *F* was married to wife *W* at the time of *C*'s birth, full legitimation is not possible. Pursuant to the current construction of "child," *F* can not petition for *C* as a legitimated child under section 101(b)(1)(C). However, *W*, if a United States citizen or lawfully admitted permanent resident, can petition for *C* within the meaning of section 101(b)(1)(B). *Palmer v. Reddy*, 622 F.2d 463 (9th Cir. 1980); *Andrade v. Esperdy*, 270 F. Supp. 516 (S.D.N.Y. 1967); *Nation v. Esperdy*, 239 F. Supp. 531 (S.D.N.Y. 1965).

The inclusion of a greater number of children within section 101(b)(1)(C) need not result in a reduction of available visas due to fraudulent petitions. Various regulations now provide checks on other types of applications.⁸⁰ The Immigration and Naturalization Service could promulgate similar regulations to govern the adjudication procedure of such petitions. Further, such a statutory revision would recognize the importance of other family relationships in the cultures of many countries,⁸¹ and would better serve the goal of family reunification.

80. See, e.g., 8 C.F.R. §§ 204.1, 204.2, 214.2 (1983).

81. See, e.g., Mailman, *Immigration Law: Simpson-Mazzoli Bill*, 70 N.Y.L.J. 1 (1982).

APPENDIX*

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
Austria	<i>In re</i> Mandewirth, 12 I. & N. Dec. 199 (1967)	Sec. 165, par. 1, Austrian Civil Code, <i>Das allgemeine bürgerliche Gesetzbuch</i> (ABGB) Sec. 3 of the Nationality Act, <i>Staatsbürgerschaftsgesetz, Bundesgesetzblatt</i> (BGBl) No. 276/1949 sec. 165, par. 1 of ABGB sec. 72 of the Law of August 1, 1895, as amended, on the Jurisdiction of the Regular Courts in Civil Matters	(a) A child conceived in a marriage concluded by a valid formal act, but void due to an impediment, shall be considered legitimate if the said marriage was subsequently validated, or if at least one of the parents was bona fide unaware of the impediment (sec. 160). This is applicable in cases of the concealed bigamy of one of the spouses, or their error in considering separation as divorce, or in taking the declaration of the death of a person's spouse as the final act terminating the marriage. This method is applicable today only in rare instances, in view of later legislation. (b) A child born out of wedlock may be legitimated by the subsequent marriage of its parents (sec. 161). This is the most common case of legitimation. (c) A child may be legitimated by a rescript of grace of the President of the Republic on the petition of both parents (sec. 162 of the ABGB in conjunction with Art. 65, par. 2, subpar. (d), of the Austrian Constitution).
Barbados	<i>In re</i> Clarke, I.D. No. 2935 (BIA 1983).	Barbados Status of Children Reform Act of August 13, 1979	Part II of the Status of Children Reform Act 1979 -32, of Barbados provides that: 3. For the purposes of the law of Barbados the distinction at common law between the status of

* The provisions under foreign law and the requirements for legitimation indexed in this appendix are shown as they are cited in the relevant cases.

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
British Guiana	<i>In re J--</i> , 9 I. & N. Dec. 246 (1961)	Legitimacy Ordinance, Chapter 165, Laws of British Guiana, May 14, 1932	<p>children born within or outside of marriage is abolished, and all children shall, after the commencement of this Act, be of equal status; and a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born within or outside of marriage.</p> <p>4. The parent and child relationship as determined in accordance with section 3 shall for all purposes be followed in the determination of other kindred relationships flowing therefrom.</p> <p>5. Unless a contrary intention appears any reference in an enactment or instrument to a person or class of persons described in terms of relationships by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of the relationship of parent and child as determined in accordance with sections 3 and 4.</p> <p>6. This Act applies to all children whether born before or after the commencement of this Act and to all dispositions and instruments made after such commencement.</p>

NOTE: A careful reading of this case demonstrates the confusion which exists between section 101(b)(1)(A), governing legitimate children, and section 101(b)(1)(C), governing legitimated children. See *supra* note 42.

Marriage of the parents where the father of the illegitimate person was or is at the date of the marriage domiciled in British Guiana.

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
Cuba	<i>In re</i> Martinez, I.D. No. 2941 (BIA 1983).	Article 65, Family Code (Gaceta Oficial, February 15, 1975).	<p>"All children are equal and for this reason they all have the equal rights and the same duties with regard to their parents, regardless of the civil state of the latter."</p> <p>All children have equal rights, regardless if they are born in or out of wedlock. All qualifications on the nature of filiation are abolished. There shall not be any statements whatsoever on differences of birth on the civil status of parents in the birth registration acts of the children or in any other document where parentage is referred to.</p>
<p>NOTE: The Cuban law is an equalizing law which is <i>not</i> retroactive. The Board of Immigration Appeals has construed the law as legitimating where the child was under the age of eighteen at the time of the law's enactment and at the time of acknowledgement.</p>			
Curacao, Netherlands Antilles	<i>In re</i> Mourillon, I.D. No. 2882 (BIA 1981)	Title XII, Book I of the Civil Code § 2, arts. 321, 323, 324, 326; § 3 art. 329.	Subsequent marriage of the natural parents together with prior or contemporaneous acknowledgement of the child. In the event that the parents neglected to acknowledge their natural child at or before the time of their marriage, or where one of the parents dies before their intended marriage, legitimation can occur by "letter of legitimation" issued by the Governor, after consultation with the "high court of justice."
Dominica, British West Indies	<i>In re</i> James, 15 I. & N. Dec. 544 (1975).	Legitimation Ordinance, III laws of Dominica, Chapter 196	3. (1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Ordinance the

REQUIREMENTS FOR LEGITIMATION

marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in the Colony, render that person, if living, legitimate from the commencement of this Ordinance, or from the date of the marriage, whichever last happens.

(2) Nothing in this Ordinance shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born.

Art. 1. Natural filiation established according to law produces the same [legal] effect as legitimate filiation, except for the distinctions made in matters of inheritance.

Art. 2. . . With respect to the father, it [natural filiation] is established by acknowledgement or by judicial decision.

Art. 10 . . . If there is legitimate descentance, the natural child or his descendants have the right to one half of the inheritance attributed to a legitimate child or the the descendants of these . . .

Dominican law also provides for legitimation by marriage of the child's natural parents subsequent to its birth.

Acknowledgement of filiation by both parents and the subsequent marriage of the child's parents to each other. The *ipso jure* effect of the subsequent

PROVISION UNDER FOREIGN LAWRELEVANT CASE(S)COUNTRY

Law 985 of August 31, 1945.

de los Santos v. INS, 690 F.2d 56 (2d Cir. 1982), *aff'd* 525 F. Supp. 655 (S.D.N.Y. 1981) .
Peignand v. INS, 440 F.2d 757 (1st Cir. 1971)
Reyes v. INS, 478 F. Supp. 63 (E.D.N.Y. 1979) (remanding 16 I. & N. Dec. 475 (1978)).
Delgado v. INS, 473 F. Supp. 1343 (S.D.N.Y. 1979)
In re Doble-Pena, 13 I. & N. Dec. 366 (1969)

Civil Code, as amended by Supreme Decree 94 of Nov. 21, 1935, *R. del E. Compilación del Reformas al Código Civil, Leyes y*

Ecuador

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
	<i>In re Campuzano</i> , I.D. No. 2940 (BIA 1983)	<i>Reglamentos Conexos</i> 17 [Talleres Gráficos de Ministerio de Gobierno, Quito, 1942] Decree 278 of April 2, 1976, R.O., April 21, 1976, Article 129 Code of Minors, R.O., June 14, 1976	marriage of the parents is granted with limitations. "[F]or all legal purposes, acknowledgement and legitimation of children shall be considered equivalent."
	<p>NOTE: <i>In re Campuzano</i> is retroactive as it applies to a child under eighteen years of age on August 7, 1970, the date on which the Ecuadorean law governing legitimation changed. To that extent, a child under the age of eighteen on that date and acknowledged before his eighteenth birthday would be considered legitimated within the meaning of section 101(b)(1)(C). The <i>Campuzano</i> construction of Ecuadorean legitimation governs in lieu of the <i>Gomez</i> construction only where the new Ecuadorean law itself applies.</p>		
El Salvador	<i>In re Ramirez</i> , 16 I. & N. Dec. 222 (1977)	Civil Code, arts. 214-19, 225-26, 279-80, contained in <i>Código Civil de El Salvador</i> [C. Civil] [Instituto de Cultura Hispánica, Madrid, Spain, 1959]; <i>Constitución y Códigos de la Republica de El Salvador</i> [Imprenta Elzeviriana y Librería Camí, S.A., Barcelona, Spain, 1926]	<i>Ipsa jure</i> legitimation as a result of parents' subsequent marriage provided that: 1/ the child was not conceived in an adulterous relationship between his parents; 2/ the child's parents were legally married or at least had contracted a putative marriage, with one of them in good faith; and 3/ the child was acknowledged not only by his father, but also by his mother, or at least her name was included in the birth record signed by his father.
France	Memorandum prepared by Dr. M. Tahar Ahmedouamar, Senior Legal Specialist, European Law Division, Law Library, Library of Congress, Sept. 1982	CODE CIVIL, arts. 331, 333 at 201-02 (Daloz, Paris, 1978-79) See also C. COLOMBET, <i>et al.</i> , LA FILIATION LEGITIME ET NATURELLE 11 (Daloz, Paris, 1973).	Subsequent marriage of the natural father and mother (art. 331) or court decision (art. 333). Article 333 further provides that: If it appears that the marriage is impossible between the two parents, the benefit of legitimation should also be conferred upon the child by authority of the court provided that the child has the status of an illegitimate

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
			child in relation to the parent who requests the legitimation.
	<i>In re J--</i> , 7 I. & N. Dec. 338 (1956)	CODE CIVIL, arts. 331-33 (Law of April 25, 1924)	Acknowledgement of child and subsequent marriage of the parents. Acknowledgement may also occur at the time of the marriage.
Germany	<i>In re Lauer</i> , 12 I. & N. Dec. 210 (1967)	German Civil Code, sec. 1719, 1723	Subsequent marriage of the natural parents or upon application by the natural father that the child be declared legitimate by order of the court or state.
Greece	<i>In re Anastasiadis</i> , 12 I. & N. Dec. 99 (1967)	Greek Civil Code of 1940, Articles 1530, 1532, 1537, 1556-67.	An illegitimate child is legitimate with respect to its mother. Legitimation by father recognized by subsequent marriage of the parents or by judicial decree.
Guadeloupe, French West Indies	<i>In re Julianus</i> , 14 I. & N. Dec. 435 (1973)	French Civil Code, Article 331	Article 331 of the French Civil Code (Law of April 25, 1924) provides: Children born outside of marriage, other than those born of adulterous intercourse shall be legitimated by the subsequent marriage of their father and mother when the latter have acknowledged them before their marriage or when they acknowledge them at the time of its celebration . . . Article 331 of the French Civil Code (Law of January 3, 1973) provides that All children born outside of marriage shall be legitimated by operation of law by the subsequent marriage of their father and mother. If their filiation was not already established,

COUNTRY	RELEVANT CASE(S)	PROVISION UNDER FOREIGN LAW	REQUIREMENTS FOR LEGITIMATION
Guyana	<i>In re</i> Gouveia, 13 I. & N. Dec. 604 (1970)	Volume IV, the Laws of British Guiana, Chapter 165 (May 14, 1932). Under the Guyana Independence Act of 1966, all laws in force as part of the law of British Guiana continue to have effect as part of the law of Guyana.	these children shall be the object of the acknowledgement at the time of celebration of marriage Section 3(1) of the Legitimacy Ordinance of British Guiana provides that: Subject to the provisions of this section where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Ordinance, the marriage did or shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in British Guiana, render that person, if he is or was living, legitimate from the date of marriage.
Haiti	<i>In re</i> Mesias, I.D. No. 2919 (BIA 1982)	Decree Law 466 of January 27, 1959 (<i>Le Moniteur</i> , January 29, 1959). Decree Law 466 of December 23, 1944 (<i>Le Moniteur</i> , December 25, 1944).	Children born out of wedlock prior to January 27, 1959 but acknowledged by their natural father after that date have the same rights and obligations as legitimate children.
	<i>In re</i> Richards, I.D. No. 2898 (BIA 1982)	Civil Code, Articles 1, 302, 305, 306, 307, 308 as amended by Presidential Decree of January 27, 1959 (<i>Le Moniteur</i> January 29, 1959).	
	<i>In re</i> Levy, 17 I. & N. Dec. 539 (1980)	Civil Code Article 302 as amended by Presidential Decree of January 27, 1959 (<i>Le Moniteur</i> January 29, 1959).	
	<i>In re</i> Remy, 14 I. & N. Dec. 183 (1972)	Civil Code, Article 302, as amended by Decree Law 466 of December 22, 1944 (<i>Le Moniteur</i> , December 25, 1944).	Article 302, as amended, provides that: Children born out of marriage, regardless if they are incestuous or adulterous, are

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
		Civil Code, Article 304	<p>legitimated by the subsequent marriage of their father and mother, provided they are acknowledged before the marriage or during the act of marriage</p> <p>Legitimation shall be recorded at the margin of the birth registration of the legitimated child</p> <p>Article 304 provides that "Children legitimated by the subsequent marriage [of their parents] have the same rights as if they were born in marriage."</p>
Honduras	<i>In re Sanchez</i> , 16 I. & N. Dec. 671 (1979)	Civil Code Constitution of 1965 Constitution of 1957	<p>Under the 1957 Constitution, previously born "natural" children were not made "legitimate" from date of birth, but from 1957 onward their status as "natural children" was abolished and they were accorded the same "rights and duties" of children born in wedlock.</p>
Indonesia	<i>In re The</i> , 10 I. & N. Dec. 744 (1964)	Article 275 of the Civil Code of April 30, 1947	<p>Legal acknowledgement and declaration of the Governor-General. Article 862 <i>et seq.</i> entitle an acknowledged child to a lesser portion of the inheritance than a legitimate child.</p>
Italy	<i>In re C--</i> , 9 I. & N. Dec. 268 (1961) <i>In re D--</i> , 7 I. & N. Dec. 438 (1957) <i>In re D--M--</i> , 7 I. & N. Dec. 441 (1957)	Article 280, Italian Civil Code of 1948. Article 252, Italian Civil Code of 1942, Italian Civil Code of 1865	<p>Marriage of the natural parents to each other, or by royal or presidential decree.</p> <p>Acknowledgement of a child born out of wedlock by an unmarried parent at any time and by a married parent after that marriage is dissolved by the death of that parent's spouse, plus the subsequent marriage of the two natural parents.</p>

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
Jamaica	<i>In re Clahar</i> , I.D. No. 2852 (BIA 1981) <i>modifying</i> 16 I. & N. Dec. 484 (1978)	Legitimation Act of Jamaica, II Jamaica Laws, c. 217 (rev. ed. 1953), as amended by the 1961 Jamaica Laws, No. 18. Jamaican Status of Children Act of 1976	The Legitimation Act provides that a child born before the marriage of his parents shall be considered their legitimate child from the date of the marriage and shall be entitled to all the rights of a legitimate child. The Jamaican Status of Children Act establishes greater equality between legitimate and illegitimate children, although it provides for various exceptions to this general proposition.
Japan	<i>In re Monma</i> , 12 I. & N. Dec. 265 (1967)	Japanese Civil Code Law #222, amended 1947	Marriage of parents and entry of marriage and acknowledgement of child in official family register
Korea	<i>In re Lee</i> , 16 I. & N. Dec. 305 (1977), <i>overruled in In re Reyes</i> , 17 I. & N. Dec. 512 (1980) <i>In re Kim</i> , 14 I. & N. Dec. 561 (1974)	Korean Civil Code of 1960, Articles 781-82, 859, 909, 974, 985, 1000, 1008, 1014	"Recognition" through registration in the Korean Family Registry. The inheritance rights of a "recognized" child are less than those of a legitimate child.
Liberia	<i>In re Duncan</i> , 15 I. & N. Dec. 272 (1975)	Title 18, section 530, Liberian Code of Laws (1956)	Registration of birth, court order certifying father as the natural father, and court order of legitimation.
Mexico	<i>In re Reyes</i> , 16 I. & N. Dec. 436 (1978) <i>In re Leon</i> , 15 I. & N. Dec. 248 (1975)	Article 314 of the Constitution of 1917 Article 313 of the Civil Code of Michoacan	Subsequent marriage of parents Marriage of parents and acknowledgement of both parents, together or separately, prior to the marriage, during the act of marriage, or during the maintenance of the marriage.

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
Montserrat, West Indies	<i>In re</i> Greer, 14 I. & N. Dec. 16 (1972)	The Laws of Montserrat (Revised Edition 1962), Title XXXIII, Chapter 298 (July 4, 1929).	Section 3(1) of the Legitimacy Act provides that: Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in the Colony, render that person, if living, legitimate from the commencement of this Act, or from the date of the marriage, whichever last happens.
Netherlands	<i>In re</i> Van Pamelan, 12 I. & N. Dec. 11 (1966)	Article 327 of the Civil Code	Acknowledgement and subsequent marriage of natural parents
Nigeria	<i>In re</i> Coker, 14 I. & N. Dec. 521 (1974)		Subsequent marriage of parents or by father's acknowledgement. Acknowledgement requires an act or conduct by the father that indicates definitely that the child is his own.
Panama	<i>In re</i> Maloney, 16 I. & N. Dec. 650 (1978) <i>In re</i> Sinclair, 13 I. & N. Dec. 613 (1970)	Constitution of March 1, 1946	Acknowledgement of paternity, with or without marriage, for those born before March 2, 1946. Where paternity has not been acknowledged, rectification of the birth records will preserve the right of legitimation. Article 58 of the Constitution provides that: Parents have the same duties with respect to their children born out of wedlock as they do toward children born in wedlock. All children are equal before the law and have the same rights of inheritance in intestate succession.

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
Peru	<i>In re</i> Rodriguez, I.D. No. 2854 (BIA 1980) <i>In re</i> Quispe, 16 I. & N. Dec. 174 (1977)	Peruvian Civil Code Articles 314, 316, 319-21, 348, 350, 354, 361, 761-62. <i>See</i> M. Balarezo Gamarra, <i>Codigo Civil Peruano</i> (Editorial Juris, Lima, 1974).	Subsequent marriage of the natural parents or judicial declaration after the legitimating parent has filed a petition. The Code distinguishes between legitimate and illegitimate children with respect to inheritance from a common parent.
Philippines	<i>In re</i> Espiritu, 16 I. & N. Dec. 426 (1977) <i>In re</i> Blancaflor, 14 I. & N. Dec. 427 (1973) <i>In re</i> Maungca, 11 I. & N. Dec. 885 (1966)	Articles 269-71 of the Civil Code of 1950	To effect the legitimation of a child born out of wedlock, 1/ the child must qualify as a "natural" child, <i>i.e.</i> , one born out of wedlock to parents who were free to marry each other at the time of conception; 2/ the child must be acknowledged or recognized by its parents; and 3/ the parents of the child must marry one another.
Poland	<i>In re</i> Kubicka, 14 I. & N. Dec. 303 (1972) <i>In re</i> Chojnowski, 11 I. & N. Dec. 287 (1965) <i>In re</i> K--, 8 I. & N. Dec. 73 (1958)	Article 67 of the Constitution Law of Domestic Relations (January 22, 1946) Decree of January 22, 1946 Code of Domestic Relations (Kodeks Rodzinny), promulgated by the statute of June 27, 1950, eff. Oct. 1, 1950, amended 1953.	Acknowledgement by natural father
Portugal	<i>In re</i> C--, 9 I. & N. Dec. 242 (1961) <i>In re</i> F--, 7 I. & N. Dec. 448 (1957)	Civil Code of Portugal Articles 119, 122, 129, 1785, 1989, 1992	Subsequent marriage of parents if 1/ children are acknowledged (<i>perfilhado</i>) by the parents in the marriage record; or a record of acknowledgement is made in the birth certificate of the child, or in a will or public (notarial) document either prior to or subsequent to the marriage; or 2/ if the children can prove their filiation through a judicial action and judgment

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
Spain	<i>In re C--</i> , 9 I. & N. Dec. 597 (1962)	Article 120, Civil Code of Spain of 1889, as amended	Subsequent marriage of natural parents
Surinam	<i>In re W--</i> , 9 I. & N. Dec. 223 (1961)	Surinam Civil Code, Article 325	Subsequent marriage of natural parents when parents before the marriage acknowledged the child
Trinidad, West Indies	<i>In re Archer</i> , 10 I. & N. Dec. 92 (1962)	Chapter 5, No. 13 (1940) Revised Ordinances, Trinidad and Tobago (1950) (Vol. 1)	3. (1) Subject to the provisions of this section, where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Ordinance, the marriage shall, if the father of the illegitimate person was or is at the date of the marriage domiciled in the Colony, render that person, if living, legitimate from the commencement of this Ordinance, or from the date of the marriage, whichever last happens. (2) Nothing in this Ordinance shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born. (4) The provisions contained in the schedule to this Ordinance shall have effect with respect to the re-registration of the births of legitimated persons. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes
Virgin Islands	<i>In re Rivers</i> , 17 I. & N. Dec. 419 (1980) <i>In re Obando</i> , 16 I. & N. Dec. 278 (1977) <i>In re Peters</i> , 11 I. & N. Dec. 691 (1966)	Title 16, section 462 of the Virgin Islands Code	

<u>COUNTRY</u>	<u>RELEVANT CASE(S)</u>	<u>PROVISION UNDER FOREIGN LAW</u>	<u>REQUIREMENTS FOR LEGITIMATION</u>
Yugoslavia	<i>In re Jancar</i> , 11 I. & N. Dec. 365 (1965), <i>overruled in In re</i> <i>Pavlovic</i> , 17 I. & N. Dec. 407 (1980)	1947 Law on Parent and Child Relations	<p>legitimate from the time of its birth.</p> <p>Under the law relied upon by the BIA in rendering the <i>Jancar</i> decision, a child born out of wedlock could acquire the status or a status similar to that of a legitimate child by one of three methods: legitimation by subsequent marriage of the parents, by court decree, or by acknowledgement of the natural father. The BIA in <i>Pavlovic</i>, in reliance upon Article 58 of the Yugoslav Constitution, concluded that all distinctions between legitimate and illegitimate children had been abolished and children born out of wedlock are considered equal to those born in wedlock with respect to the rights and duties of the parents toward them.</p>