U.S. Citizenship and Immigration Services

MENU

Chapter 1 - Purpose and Background

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A. Purpose

United States laws allow for children to acquire U.S. citizenship other than through birth in the United States.[1] Persons who were born outside of the United States to a U.S. citizen parent or parents may acquire or derive U.S. citizenship at birth. Persons, including adopted children,[2] may also acquire citizenship after birth, but before the age of 18, through their U.S. citizen parents.

Previously, acquisition of citizenship generally related to those persons who became U.S. citizens at the time of birth, and derivation of citizenship to those who became U.S. citizens after birth due to the naturalization of a parent.

In general, current nationality laws only refer to acquisition of citizenship for persons who automatically become U.S. citizens either at the time of birth or after. In general, a person must meet the applicable definition of child at the time he or she acquires citizenship and must be under 18 years of age.

B. Background

The law in effect at the time of birth determines whether someone born outside the United States to a U.S. citizen parent or parents is a U.S. citizen at birth. In general, these laws require a combination of at least one parent being a U.S. citizen when the child was born and having lived in the United States for a period of time. In addition, children born abroad may become U.S. citizens after birth. Citizenship laws have changed extensively over time with two major changes coming into effect in 1978 and 2001.

Before the Act of October 10, 1978, U.S. citizens who had acquired citizenship through birth abroad to one citizen parent had to meet certain physical presence requirements to retain citizenship.[3] This legislation removed all retention requirements.

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Before the Child Citizenship Act of 2000 (CCA),[4] effective February 27, 2001, the Immigration and Nationality Act (INA) had two provisions for derivation of citizenship, former INA 320 and former INA 321.[5] The CCA removed INA 321 and revised INA 320 making it the only statutory provision for children under 18 years of age in the United States to automatically acquire citizenship after birth.[6] The CCA also amended INA 322 to provide for applications for naturalization on behalf of foreign-born children who did not automatically acquire citizenship and who reside outside the United States with a U.S. citizen parent.[7]

C. Table of General Provisions

Children born outside the United States may acquire U.S. citizenship in multiple ways. The table below serves as a quick reference guide to the acquisition of citizenship provisions.[8] The chapters that follow the table provide further guidance.

General Provisions for Acquisition of Citizenship for Children Born Abroad

INA Section	Status of Parents	Residence or Physical Presence Requirements	Child is a U.S. Citizen
301(c) (Born in wedlock)	Both parents are U.S. citizens at the time of child's birth	At least one U.S. citizen parent has resided in the United States or its outlying possessions before child's birth	At birth
301(d)	One parent is a U.S. citizen; other parent is U.S. national	U.S. citizen parent was physically present in the United States or its outlying possessions for one year before child's birth	At birth
301(f)	Unknown parentage	Child is found in the United States while under 5 years of age	At birth
301(g)	One parent is a U.S. citizen; other parent is a noncitizen	U.S. citizen parent was physically present in United States or its outlying possessions for at least 5 years (2 after age 14) before child's birth	At birth
301(h)	Mother is a U.S. citizen and father is a noncitizen	U.S. citizen mother resided in the United States before child's birth	At birth (only applies to birth before 1934)

INA Section	Status of Parents	Residence or Physical Presence Requirements	Child is a U.S. Citizen
309(a) (Born out of wedlock)	Father is a U.S. citizen and mother is a noncitizen at the time of child's birth	Requirements depend on applicable provision: INA 301(e) or INA 301(g)	At birth
309(c) (Born out of wedlock after December 23, 1952, and before June 12, 2017)[9]	Mother is a U.S. citizen and father is a noncitizen at the time of child's birth	U.S. citizen mother continuously physically present in the United States or its outlying possessions for 1 year before the child's birth	At birth
309(c) (Born out of wedlock on or after June 12, 2017)	Mother is a U.S. citizen and father is a noncitizen at the time of child's birth	U.S. citizen mother physically present in the United States or its outlying possessions for at least 5 years (2 after age 14) before the child's birth[10]	At birth
320	At least one parent is a U.S. citizen (through birth or naturalization)	Child resides in the United States[11] as a lawful permanent resident	On the date all conditions are met before the child reaches the age of 18
321 Repealed by CCA on February 27, 2001	Both parents naturalize, or in certain cases, one parent naturalizes	Child resides in the United States as a lawful permanent resident[12]	On the date all conditions are met before the child reaches the age of 18
322	At least one parent is a U.S. citizen (through birth or naturalization)	Child resides outside of the United States and child's parent (or grandparent) was physically present in the United States or its outlying possessions for at least 5 years (2 after age 14)	At time oath is administered

D. Legal Authorities

- INA 101(c) – Definition of child for citizenship and naturalization
- INA 301 – Nationals and citizens of the United States at birth
- INA 309 – Children born out of wedlock
- INA 320; 8 CFR 320 – Children residing permanently in the United States
- INA 322; 8 CFR 322 – Children residing outside the United States

Footnotes

[^ 1] See INA 301, INA 309, INA 320, and INA 322.

[^ 2] For guidance on citizenship for adopted children, see Volume 5, Adoptions, Part F, Citizenship for Adopted Children [5 USCIS-PM F].

[^ 3] See Pub. L. 95-432 (PDF), 92 Stat. 1046 (October 10, 1978).

[^ 4] See Section 101 of the Child Citizenship Act (CCA) of 2000, Pub. L. 106-395 (PDF), 114 Stat 1631 (October 30, 2000). The amendments made under the CCA became effective on February 27, 2001.

[^ 5] These two provisions remain applicable to someone who already turned 18 years old before the CCA took effect on February 27, 2001, as the CCA is not retroactive. See *Matter of Rodriguez-Tejedor* (PDF), 23 I&N Dec. 153 (BIA 2001).

[^ 6] See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

[^ 7] See Chapter 5, Child Residing Outside the United States (INA 322) [12 USCIS-PM H.5].

[^ 8] Except for INA 321, the references in the table are to the current statutory requirements for citizenship. Previous versions of the law may apply.

[^ 9] For births before December 23, 1952, see Appendix: Nationality Chart 2 - Children Born Outside the United States Out of Wedlock [12 USCIS-PM H.3, Appendices Tab].

[^ 10] See *Sessions v. Morales-Santana* (PDF), 582 U.S. 47 (2017). See Chapter 3, U.S. Citizens at Birth (INA 301 and 309), Section C, Child Born Out of Wedlock [12 USCIS-PM H.3(C)].

[^ 11] For residence requirements of children of armed forces members or U.S. government employees or for children of the spouses of armed forces members or U.S. government employees, see Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320), Section C, Children of Armed Forces Members or U.S. Government Employees (or their Spouses) [12 USCIS-PM H.4(C)].

[^ 12] For cases in the Second Circuit or the Ninth Circuit, see Appendix: Nationality Chart 3 - Derivative Citizenship of Children [12 USCIS-PM H.3, Appendices Tab].

Current as of November 21, 2024

U.S. Citizenship and Immigration Services

MENU

Chapter 2 - Definition of Child and Residence for Citizenship and Naturalization

Guidance

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A. Definition of Child

The definition of "child" for citizenship and naturalization differs from the definition used for other parts of the Immigration and Nationality Act (INA).[1] The INA provides two different definitions of "child."

- One definition of child applies to approval of visa petitions, issuance of visas, and similar issues.[2]
- The other definition of child applies to citizenship and naturalization.[3]

One significant difference between the two definitions of child is that a stepchild is not included in the definition relating to citizenship and naturalization. Although a stepchild may be the stepparent's "child" for purposes of visa issuance, the stepchild is not the stepparent's "child" for purposes of citizenship and naturalization. A stepchild is not eligible for citizenship or naturalization through the U.S. citizen stepparent unless the stepparent adopts the stepchild and the adoption meets certain requirements.[4]

Below are definitions of child that apply to citizenship and naturalization.[5] The applicable definition depends in part on whether a child is claiming citizenship through the mother or father. A child generally must be under the age of 18[6] and unmarried to acquire citizenship after birth.

Definition of Child of a U.S. Citizen Mother

To be considered a child of a U.S. citizen mother, the child must be:

- The genetic child of a U.S. citizen mother who is recognized as the legal parent;[7]
- The adopted (including an orphan or Hague Convention adoptee) child of a U

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- The child of a non-genetic gestational U.S. citizen mother (person who carried and gave birth to the child) [9] who is recognized by the relevant jurisdiction as the child's legal parent;[10] or
- The child of a U.S. citizen mother who is married to the child's genetic or gestational parent at the time of the child's birth (even if no genetic or gestational relationship exists with the U.S. citizen mother) if both parents are recognized by the relevant jurisdiction as the child's legal parents.

Definition of Child of a U.S. Citizen Father

To be considered a child of a U.S. citizen father, the child must be:

- The legitimated[11] child of a U.S. citizen father who is recognized as the legal parent;[12]
- The adopted (including an orphan or Hague Convention adoptee) child of a U.S. citizen father;[13]
- The child of a U.S. citizen father who is married to the child's genetic or gestational parent at the time of the child's birth (even if no genetic or gestational relationship exists with the U.S. citizen father) if both parents are recognized by the relevant jurisdiction as the child's legal parents; or
- If the child was born out of wedlock and claiming U.S. citizenship at birth, then the evidence must demonstrate that the requirements under INA 309 are met.[14]

For citizenship purposes, a person is considered a "parent," "mother," or "father," where their child satisfies one of the definitions of child provided above.

The term "genetic child" refers to a child who shares genetic material with the parent, and "gestational parent"[15] is the person who carries and gives birth to the child. A genetic parent, as well as a non-genetic gestational parent who is recognized by the relevant jurisdiction as the child's legal parent, is included within the phrase "natural" parent as referenced in the INA.[16]

In general, absent other evidence to the contrary, USCIS considers a child's birth certificate as recorded by a proper authority as primary and sufficient evidence to determine a child's genetic or gestational relationship to the parent (or parents). The parental relationship may also be established under the paternity laws of the child or the father's residence, or if this evidence is not available, it could be established by DNA testing. USCIS cannot require DNA test results to verify the claimed biological relationship but may suggest that the applicant voluntarily submit DNA test results.

In addition to meeting the definition of a child (as described above), the child must also meet the particular requirements of the specific citizenship or naturalization provision, which may include references to birth in wedlock or out of wedlock, and which may require that certain conditions be met by 18 years of age.[17]

B. Legitimated Child

Legitimation means "placing a child born out of wedlock in the same legal position as a child born in wedlock."[18] Legitimation is a legal concept that generally refers to father-child relationships.

Generally, unless otherwise specified by the specific provision, if the father or child had various residences or domiciles before the child reached 16, 18, or 21 years of age (depending on the applicable provision), then the laws of the various places of residence or domicile must be analyzed to determine whether the requirements for legitimation have been met.[19] If the requirement for a child to be legitimated before a certain age is more generous in a particular citizenship statute than the requirement of legitimation before age 16 in the

definition of child, USCIS allows legitimation until the age requirement in the applicable citizenship statute.[20]

Depending on the applicable provision, the law of the child's residence or domicile, or the law of the father's residence or domicile, or both, may be the relevant law to determine whether a child has been legitimated.[21]

A child is considered the legitimated child of his or her parent if:

- The child is legitimated in the United States or abroad under the law of either the child's residence or domicile, or the law of the child's father's residence or domicile, depending on the applicable provision;[22]
- The child is legitimated before he or she reaches 16 years of age (except for certain cases where the child may be legitimated before reaching 18 or 21 years of age);[23] and
- The child is in the legal custody of the legitimating parent or parents at the time of the legitimation.[24]

A non-genetic gestational mother may legitimate her child. While legitimation has been historically applied to father-child relationships, the gestational mother of a child conceived through Assisted Reproductive Technology (ART) may be required to take action after the birth of the child to formalize the legal relationship. Whether such action is required depends on the law of the relevant jurisdiction.

Post-birth formalization of the legal relationship between a gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child's birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.[25]

An officer reviews the specific facts of a case when determining whether a child has been legitimated accordingly and to determine the appropriate citizenship provision.

C. Adopted Child

An adopted child is a child who has met the requirements applicable for adopted children[26] and has been adopted through a full, final, and complete adoption.[27]

D. Assisted Reproductive Technology

1. Background

Assisted Reproductive Technology (ART) refers to fertility treatments where either the egg or sperm, or both, is handled outside the body. ART includes intrauterine insemination (IUI) and in vitro fertilization (IVF), among other reproductive technology procedures.[28] In these procedures, the parent or parents may use a combination of their own genetic material or donated genetic material (donated egg, sperm, or both) in order to conceive a child.[29] ART allows a gestational parent to bear a child to whom the parent does not have a genetic relationship through the use of a donor egg. As such, a gestational parent could have a biological relationship to the child (by carrying and giving birth to the child) but not a genetic relationship.

Children Born Outside the United States Through ART

A parent who is the gestational and legal parent of a child under the law of the relevant jurisdiction at the time of the child's birth may transmit U.S. citizenship to the child if all other requirements are met.[30]

In addition, a non-genetic, non-gestational legal parent of a child born through ART may transmit U.S. citizenship to the child if the parent is married to the child's genetic or gestational parent at the time of the child's birth and both parents are recognized by the relevant jurisdiction as the child's legal parents.[31]

2. Child Born Outside the United States through Assisted Reproductive Technology to Legal Gestational Parent

A child born through ART may acquire U.S. citizenship from the non-genetic gestational parent at the time of birth, or after birth, depending on the applicable citizenship or naturalization provision, if:

- The child's gestational parent is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and
- The child meets all other applicable requirements under the relevant citizenship or naturalization provision.

The relevant jurisdiction must recognize the gestational parent-child relationship as the legal parental relationship. Whether a parent is recognized as the legal parent is generally assessed under the jurisdiction of the child's birth at the time of birth. In some jurisdictions, the non-genetic gestational parent is recognized as the legal parent without having to take any additional affirmative steps after birth. In other jurisdictions, a non-genetic gestational mother may be required to take certain action after the child's birth to establish the legal relationship.

Post-birth formalization of the legal relationship between a non-genetic gestational parent and the child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational parent and the child is based on the circumstances of the child's conception and birth, including that the gestational parent carried and bore the child and the gestational parent is recognized as that child's legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction, such as in an applicable court order.

The law of the relevant jurisdiction governs whether the non-genetic gestational parent is the legal parent for purposes of U.S. immigration law. Importantly, a non-genetic gestational parent who is not the legally recognized parent may not transmit U.S. citizenship to the child. USCIS follows any applicable court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS does not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a final determination by a proper authority. Therefore, USCIS may deny a case in which the legal parentage is in dispute, and the applicant may then file a motion to reopen[32] upon resolution by the proper authority.

E. Definitions of U.S. Residence and Physical Presence

The term residence is defined in the INA as the person's "principal actual dwelling place in fact, without regard to intent."[33] A person is not required to live in a particular place for a specific period of time in order for that place to be considered their "residence." However, the longer a person stays in a particular place, the more likely it is that they will establish that place as their residence.

By contrast, physical presence refers to the actual time a person is in the United States, regardless of whether that person has or had a residence in the United States.[34] U.S. citizen parents may count any time spent in the United States or its outlying possessions before the child's birth to meet the physical presence requirement, regardless of their citizenship status at the time they were present in the United States.[35] Even if the citizen parent was physically present in the United States without a lawful status or in any immigration status before the birth of the child, USCIS recognizes that period for purposes of the physical presence requirement.

Although some provisions related to naturalization and citizenship require specific time periods of physical presence, residence, or both,[36] in contrast, there is no specific time period of residence required for purposes of acquiring citizenship where a child is born in wedlock outside the United States to two U.S. citizen parents.[37]

For example, a person who spent time travelling in the United States for a year living in different hotel rooms in different cities or towns every week and who did not own or rent any property or have another principal dwelling place in the United States, would likely be able to establish 1 year of physical presence. However, without additional evidence of a principal actual dwelling place in the United States, that person could not establish residence in the United States. The table below provides a few examples on how travel would affect the physical presence and the residence requirements. However, the examples are not dispositive and individual cases will be determined based on the individual merits and evidence presented.

Examples Illustrating Physical Presence and Residence in the United States

Scenarios	Physical Presence	Residence
U.S. citizen parent owns a home and works in a foreign country. Parent travels to the United States and: • Stays 2 weeks with a cousin in New York, • Stays 2 weeks in New York with his or her parents, and • Travels to Florida on vacation for 2 weeks.	6 weeks	No U.S. residence (Residence is outside the United States)
Parent is a U.S. citizen born in a foreign country, who never lived in or visited the United States. His child moved to the United States as an adult and claimed U.S. citizenship.	No physical presence[38]	No U.S. residence
As a child, U.S. citizen parent came to the United States for 3 consecutive summers to attend a 2-month long camp. The parent lived and went to school in a foreign country for the rest of the year.	6 months	No U.S. residence (Residence is outside the United States)

Scenarios	Physical Presence	Residence
U.S. citizen parent worked in the United States for 9 months in a year for 8 years out of a 9-year period. (Parent returned to Mexico to spend the remaining 3 months of each year with family, who never visited the United States.)	9 months in a year for 8 years	U.S. residence established[39]

1. Special Considerations

Various circumstances may affect whether USCIS considers a person to be residing in or physically present in the United States, and therefore whether U.S. citizens may transmit citizenship to their children.

U.S. Citizens who were Born, But Did Not Reside, in the United States

A U.S. citizen may have automatically acquired U.S. citizenship based on birth in the United States,[40] but never actually resided in the United States. This U.S. citizen will not have established residence in the United States, and may be unable to transmit U.S. citizenship to his or her own children.

For example, if the U.S. citizen, still having never resided in the United States, subsequently marries another U.S. citizen who never resided in the United States, and they give birth to a child outside the United States, the child will not acquire citizenship at birth under INA 301(c) because neither U.S. citizen parent can show the requisite residence in the United States. However, if the U.S. citizen parent had returned to the United States after his or her birth and established residence before giving birth to the child outside the United States, then he or she may be able to meet the residence requirement based on that period of residence and transmit U.S. citizenship to his or her children.

Children of Armed Forces Members or U.S. Government Employees (or their Spouses)

Certain children of U.S. armed forces members or U.S. government employees (or their spouses) who are residing outside the United States are exempt from the requirement to be residing in the United States for purposes of acquiring citizenship under INA 320.[41]

Commuters and Temporary Visits to the United States

Residence is more than a temporary presence or a visit to the United States. Therefore, temporary presences and visits are insufficient to establish residence for the purposes of transmitting citizenship. For example, someone who resides along the border in Mexico or Canada, but works each day in the United States, cannot use his or her workplace to establish a residence.

Vacations or brief stays in the United States do not qualify as residence in the United States. However, attendance at school, college, or university in the United States for an extended period of time may be considered as residence in the United States depending upon the totality of the circumstances.[42]

Owning or Renting Property

A person does not need to own or rent property in the United States in order to establish residence. In addition, owning or renting property outside of the United States does not automatically establish lack of

residence in the United States. Owning and renting property in the United States may help to establish residence in the United States if the person also establishes that he or she actually lived in that property, for example. A person who owns property but never lived in the property would not be able to establish residence based on owning that property.

Physical Presence in U.S. Territorial Waters

A parent's physical presence in U.S. territorial waters[43] is determined based on the ports of departure and arrival and the nature of the voyage.[44] Officers determine the location of the ports of departure and arrival first, for the purpose of counting physical presence at a U.S. port. Officers then add any additional days for the portion of the voyage where there is evidence that the ship was in U.S. territorial waters, which includes U.S. coastal travel.

Officers use the following formula to calculate total physical presence in territorial waters:

Physical presence at a U.S. Port + physical presence during voyage =

Physical presence in territorial waters

The following tables show how USCIS calculates physical presence at a U.S. port and during a voyage.

Ports of Departure and Arrival	Physical Presence at a U.S. Port
From United States to United States	1 day if the duration of the voyage is 1 day; 2 days for voyages of more than 2 days
From United States to Foreign	1 day
From Foreign to United States	1 day
From Foreign to Foreign	0 days

Type of Voyage	Physical Presence During Voyage
Coastal (within U.S. territorial waters on a single coast)	Number of days of voyage (not including days physically present at a U.S. port, as determined above)
Coastwise (from a U.S. port to a U.S. port, but through foreign or international waters)	0 days (unless there is evidence that the ship was in U.S. territorial waters for additional days beyond days physically present at a U.S. port)
Foreign or International (to or from a U.S. port, but operated in foreign or international waters)	0 days (unless there is evidence that the ship was in U.S. territorial waters for additional days beyond days physically present at a U.S. port)

Type of Voyage	Physical Presence During Voyage
Intercoastal (between a U.S. port on the Atlantic Ocean and a U.S. port on the Pacific Ocean)	0 days (unless there is evidence that the ship was in U.S. territorial waters for additional days beyond days physically present at a U.S. port)
Other (for example, fishing voyages, voyages in the Great Lakes, or time spent in reduced operating status (time spent aboard ship while at a U.S. port))	• For fishing voyages and Great Lakes, number of days of voyage (not including days physically present at a U.S. port, as determined above) for those days operating in U.S. territorial waters. • For reduced operating status, all additional days spent at a U.S. port beyond the days physically present at a U.S. port calculated above.

2. Evidence

A U.S. citizen who was born in the United States generally meets the residence requirement as long as he or she can present evidence to demonstrate that his or her mother was not merely transiting through or visiting the United States at the time of his or her birth.[45] For example, a long form birth certificate is sufficient evidence if it shows a U.S. address listed as the mother's residence at the time of the U.S. citizen's birth.

If a U.S. citizen's birth certificate indicates that his or her mother's address was outside of the United States at the time of the birth, USCIS may find that the U.S. citizen does not meet the residence requirement unless the U.S. citizen can prove U.S. residence.

Documents that can help demonstrate residence include, but are not limited to, the following:

- U.S. marriage certificate indicating the address of the bride and groom;
- Property rental leases, property tax records, and payment receipts;
- Deeds;
- Utility bills;
- Automobile registrations;
- Professional licenses;
- Employment records or information;
- Income tax records and income records, including W-2 salary forms;
- School transcripts;
- Military records; and
- Vaccination and medical records.

Footnotes

[^ 1] See INA 101(b) and INA 101(c).

[^ 2] See INA 101(b).

[^ 3] See INA 101(c).

[^ 4] See *Matter of Guzman-Gomez* (PDF), 24 I&N Dec. 824 (BIA 2009) (the terms "child" and "parent" defined at INA 101(c) do not encompass stepchildren and stepparents; a person born outside the United States cannot derive U.S. citizenship under INA 320(a) by virtue of their relationship to a nonadoptive stepparent). See *Acevedo v. Lynch* (PDF), 798 F.3d 1167 (9th Cir. 2015). See Section C, Adopted Child [12 USCIS-PM H.2(C)].

[^ 5] Applicants who already filed an Application for Certificate of Citizenship (Form N-600) and were denied, but become eligible following a change in USCIS policy, may file a Notice of Appeal or Motion (Form I-290B) to request reopening of the prior USCIS denial of their Form N-600.

[^ 6] USCIS considers a child to be under the age of 18 years even if the last condition for acquisition of citizenship falls on the day of the child's 18th birthday. See *Matter of L-M- and C-Y-C-,* 4 I&N Dec. 617 (BIA 1952).

[^ 7] The relevant jurisdiction must recognize the parent-child relationship as the legal parental relationship. Whether a parent is recognized as the legal parent is generally assessed under the law of the jurisdiction where the child was born, as it existed at the time of birth. An egg donor generally would not be able to transmit citizenship because the donor typically relinquishes parental rights as part of the donation process and generally would not be considered a parent of a child under the applicable law.

[^ 8] The child must satisfy the requirements applicable to adopted children under INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).

[^ 9] A U.S. citizen transgender man who carries and gives birth to a child is considered to be a parent for immigration purposes, if recognized in the relevant jurisdiction as the legal parent. These cases should be adjudicated in the same manner as cases involving a U.S. citizen mother because the U.S. citizen has carried and birthed the child. See INA 309(c).

[^ 10] The law of the relevant jurisdiction governs whether the non-genetic parent is the legal parent for purposes of U.S. immigration law. A non-genetic U.S. citizen parent, who is not a legally recognized parent of the child, may not transmit U.S. citizenship to the child. USCIS follows any applicable court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS does not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a determination by a proper authority.

[^ 11] Depending on the applicable provision, the relevant law to determine whether a child has been legitimated may be the law of the child's residence or domicile, or the law of the father's residence or domicile, or both. See INA 101(c). A person's "residence" is the person's place of general abode, that is, the principal, actual dwelling place without regard to intent. See INA 101(a)(33). A person's "domicile" refers to a "person's true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere." See Black's Law Dictionary (11th ed. 2019). In most cases, a person's residence is the same as a person's domicile.

[^ 12] The relevant jurisdiction must recognize the parent-child relationship as the legal parental relationship. Whether a parent is recognized as the legal parent is generally assessed under the law of the jurisdiction where the child was born, as it existed at the time of birth. A sperm donor generally would not be able to

transmit citizenship because the donor typically relinquishes parental rights as part of the donation process and generally would not be considered a parent of a child under the applicable law.

[^ 13] The child must satisfy the requirements applicable to adopted children under INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).

[^ 14] See Chapter 3, U.S. Citizens at Birth (INA 301 and 309), Section C, Child Born out of Wedlock [12 USCIS PM H.3(C)].

[^ 15] A transgender man giving birth to a child is considered to be a parent, if recognized in the relevant jurisdiction as the legal parent.

[^ 16] See INA 101(b) and INA 101(c). A "natural" parent may be a genetic or a gestational parent (who carries and gives birth to the child) who is recognized by the relevant jurisdiction as the child's legal parent.

[^ 17] See Chapter 3, U.S. Citizens at Birth (INA 301 and INA 309) [12 USCIS-PM H.3]; Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4]; and Chapter 5, Child Residing Outside the United States (INA 322) [12 USCIS-PM H.5].

[^ 18] See *Matter of Moraga (PDF)*, 23 I&N Dec. 195, 197 (BIA 2001).

[^ 19] Importantly, certain citizenship provisions limit the place of legitimation to the child's residence. See INA 309(a)(4)(A). In such cases, only the law of the place of residence is analyzed to determine whether the requirements for legitimation have been met.

[^ 20] For example, the INA 320 requirements must be met before age 18, while the definition of child at INA 101(c) requires legitimation before age 16. In this case, USCIS would consider a child who was legitimated at age 17 to be eligible for citizenship under INA 320.

[^ 21] See INA 101(c)(1). However, for purposes of INA 309(a), the child must be legitimated under the laws of the child's residence or domicile.

[^ 22] See INA 101(a)(33), which defines the term "residence" as the "place of general abode." The place of general abode of a person means his or her "principal, actual dwelling place in fact, without regard to intent."

[^ 23] For example, the current version of INA 309 allows for legitimation until the age of 18, while INA 101(c) requires legitimation by the age of 16.

[^ 24] See INA 101(c)(1). See also *Matter of Rivers (PDF)*, 17 I&N Dec. 419, 422 (BIA 1980) (presuming a legitimated child to be in the legal custody of the legitimating parent).

[^ 25] See Section D, Assisted Reproductive Technology [12 USCIS-PM H.2(D)].

[^ 26] The child must meet the requirements for family-based adoption at INA 101(b)(1)(E), orphans at INA 101(b)(1)((F), or Hague Convention adoptees at INA 101(b)(1)(G). See Volume 5, Adoptions, Part E, Family-Based Adoption Petitions [5 USCIS-PM E]. See Volume 5, Adoptions, Part C, Child Eligibility Determinations (Orphan) [5 USCIS-PM C]. See Volume 5, Adoptions, Part D, Child Eligibility Determinations (Hague) [5 USCIS-PM D].

[^ 27] See 8 CFR 320.1. See 8 CFR 322.1. See Volume 5, Adoptions, Part F, Citizenship for Adopted Children, Chapter 2, Definitions [5 USCIS-PM F.2].

[^ 28] See Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), Pub. L. 102-493 (PDF), 106 Stat. 3146 (October 24, 1992).

[^ 29] In addition, a couple may use a gestational carrier (also called a gestational surrogate). A gestational surrogate is a person who gestates, or carries, an embryo that was formed from the egg of another person on behalf of the intended parent (or parents). The gestational carrier then gives birth to the child. The gestational carrier usually has a contractual obligation to return the infant to the intended legal parents. For additional information on ART, see the Centers for Disease Control (CDC) website.

[^ 30] Before USCIS implemented the gestational mother policy on October 28, 2014, a genetic relationship with a U.S. citizen parent was required in order for a child born outside the United States to acquire U.S. citizenship through that parent.

[^ 31] Children who meet the qualifications under this policy may acquire citizenship. If a Form N-600, Application for Certificate of Citizenship, or N-600K, Application for Citizenship and Issuance of Certificate Under Section 322, has been previously denied but the child now meets these requirements, the applicant may file a motion to reopen or reconsider the denied decision on a Notice of Appeal or Motion (Form I-290B). See 8 CFR 103.5. In order to naturalize under INA 322, a child must be under age 18.

[^ 32] If a Form N-600 or N-600K has been previously denied but the child now meets these requirements, the applicant may file a motion to reopen or reconsider the denied decision on a Notice of Appeal or Motion (Form I-290B). See 8 CFR 103.5.

[^ 33] See INA 101(a)(33). See *Savorgnan v. U.S.*, 338 U.S. 491, 506 (1950).

[^ 34] Examples of documentary evidence showing physical presence include academic transcripts, military records, official vaccination or other medical records, employment records, and lease agreements.

[^ 35] See *Matter of M*, 7 I&N Dec. 643 (BIA 1958) (holding that the parent's physical presence as a student, before he naturalized and became a U.S. citizen, counted towards the required period of residence in the United States, before the child's birth).

[^ 36] See INA 301 and INA 309. For more information on physical presence, see Part D, General Naturalization Requirements, Chapter 4, Physical Presence [12 USCIS-PM D.4].

[^ 37] See INA 301(c).

[^ 38] See *Madar v. USCIS*, 918 F.3d 120 (3rd Cir. 2019). In that case, the appellant argued that he was "constructively resident" in the United States because his U.S. citizen father lived during the relevant time in what was then Communist Czechoslovakia and was not free to leave the country. The court rejected that claim noting that physical presence requirements can be constructively satisfied only in extraordinary circumstances, such as, for example, when a U.S. government error causes citizenship to lapse, preventing the foreign-born parent from complying with the physical presence requirements.

[^ 39] See *Alcarez-Garcia v. Ashcroft*, 293 F.3rd 1155 (9th Cir. 2002).

[^ 40] See U.S. Const. amend XIV. See INA 301(a).

[^ 41] See Chapter 4, Section C, Children of Armed Forces Members or Government Employees (or their Spouses) [12 USCIS PM H.4(C)]. See INA 320(c) (added by the Citizenship for Children of Military Members and Civil Servants Act, Pub. L. 116-133 (PDF) (March 26, 2020)).

[^ 42] See *Matter of M--*, 4 I&N Dec. 418 (BIA 1951) (continuous stay in the United States as a college student for almost 3 years held to have residence in the United States for purposes of Section 201(g) of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137, 1139 (October 14, 1940)).

[^ 43] Territorial waters or territorial sea means the waters, 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline. See 33 CFR 2.22. See 46 U.S.C. 70054(2). See Territorial Sea of the United States, 54 FR 777, 103 Stat. 2981 (PDF) (Dec. 27, 1988).

[^ 44] This information is generally documented on a U.S. Coast Guard Certificate of Discharge to Merchant Mariner or some other documentation of the voyage such as a ship's logs.

[^ 45] For more information on how the rules may vary depending on whether the U.S. citizen is the mother or father of a child seeking to acquire citizenship, see Chapter 3, U.S. Citizens at Birth (INA 301 and 309), Section A, General Requirements for Acquisition of Citizenship at Birth [12 USCIS-PM H.3(A)] through Section C, Child Born Out of Wedlock [12 USCIS-PM H.3(C)].

Current as of November 21, 2024

U.S. Citizenship and Immigration Services

MENU

Chapter 3 - U.S. Citizens at Birth (INA 301 and 309)

Guidance

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A. General Requirements for Acquisition of Citizenship at Birth

A person born in the United States who is subject to the jurisdiction of the United States is a U.S. citizen at birth, to include a child born to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe.[1]

In general, a person born outside of the United States may acquire citizenship at birth if all of the following requirements are met at the time of the person's birth:

- The person is a child[2] of a U.S. citizen parent(s);
- The U.S. citizen parent meets certain residence or physical presence requirements in the United States or an outlying possession before the person's birth in accordance with the applicable provision;[3] and
- The person meets all other applicable requirements under either INA 301 or INA 309.

Until the Act of October 10, 1978, persons who had acquired U.S. citizenship through birth outside of the United States to one U.S. citizen parent had to meet certain physical presence requirements to retain their citizenship. This legislation eliminated retention requirements for persons who were born after October 10, 1952. There may be cases where a person who was born before that date, and therefore subject to the retention requirements, may have failed to retain citizenship.[4]

An officer should determine whether a person acquired citizenship at birth by referring to the applicable statutory provisions and conditions that existed at the time of the person's birth. These provisions have been modified extensively over the years.[5] In some cases, an officer may need to determine whether an applicant's parent or grandparent acquired citizenship before the officer can determine whether the applicant acquired citizenship. Officers may request additional evidence needed to establish the U.S. citizenship of the applicant's parent or grandparent. The following sections provide the current law.

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B. Child Born in Wedlock

USCIS must determine whether a child is born in wedlock[6] or out of wedlock at the time of birth in order to determine which citizenship provision is applicable.[7]

USCIS considers a child to be born in wedlock when the legal parents are married to one another at the time of the child's birth and at least one of the legal parents has a genetic or gestational relationship to the child.

USCIS views post-birth formalization of the legal relationship between a parent and a child as establishing the relationship from the time of the child's birth. This is because the relevant jurisdiction's recognition of the legal relationship between the parent and child is based on the circumstances of the child's conception and birth, including, for example, the existence of a valid surrogacy contract memorializing all parties' understanding of parental rights pre-conception. This rule applies unless otherwise specified in the law of the relevant jurisdiction or in the applicable court order.

A child born outside the United States acquires U.S. citizenship at birth under INA 301 if at the time of the child's birth:

- The person is a child[8] of a U.S. citizen parent(s);
- The child's legal parents are married to each other and at least one legal parent is the genetic or gestational parent of that child at the time of the child's birth; and
- The parent meets the residence or physical presence requirements under the applicable law and the child meets all other applicable requirements under INA 301.

The tables below provide examples of different relationships and whether USCIS considers the child to be born in or out of wedlock at the time of birth in each scenario.

In-Wedlock Determinations Sample Scenarios: Legal Genetic and Gestational Mother

Marriage Between[9] …	**… and**	**In or Out of Wedlock?**
Legal genetic and gestational mother	Legal genetic father	In wedlock
Legal genetic and gestational mother	Non-genetic legal mother or father	In wedlock
Legal genetic and gestational mother	Non-legal mother or father	Out of wedlock

In-Wedlock Determinations Sample Scenarios: Legal Genetic and Non-Gestational Mother[10]

Marriage Between[11] …	**… and**	**In or Out of Wedlock?**
Legal genetic and non-gestational mother	Legal genetic father	In wedlock

Marriage Between[11] …	… and	In or Out of Wedlock?
Legal genetic and non-gestational mother	Non-genetic legal mother or father	In wedlock
Legal genetic and non-gestational mother	Legal gestational mother	In wedlock
Legal genetic and non-gestational mother	Non-genetic and non-legal mother or father	Out of wedlock

In-Wedlock Determinations Sample Scenarios: Legal Gestational Mother

Marriage Between[12] …	… and	In or Out of Wedlock?
Legal gestational mother	Legal genetic mother or father	In wedlock
Legal gestational mother	Non-genetic legal mother or father	In wedlock
Legal gestational mother	Non-genetic and non-legal mother or father	Out of wedlock

In-Wedlock Determinations Sample Scenarios: Legal Genetic Father[13]

Marriage Between[14] …	… and	In or Out of Wedlock?
Legal genetic father	Legal genetic mother or legal gestational mother (or both)	In wedlock
Legal genetic father	Non-genetic, non-gestational legal mother or father	In wedlock
Legal genetic father	Non-genetic, non-gestational, and non-legal mother or father	Out of wedlock

In-Wedlock Determinations: Cases Involving Gestational Carriers[15]

Marriage Between[16]…	… and	In or Out of Wedlock?
Legal genetic mother or father	Legal genetic mother or father	In wedlock

Marriage Between[16]…	… and	In or Out of Wedlock?
Legal genetic mother or father	Legal non-genetic mother or father	In wedlock
Legal non-genetic mother or father	Legal non-genetic mother or father	Out of wedlock[17]

Parent's Residence and Physical Presence Requirements

Depending on the law applicable at the time, the U.S. citizen parent(s) also have residency or physical presence requirements in the United States to transmit citizenship to a child.[18] The following table provides the current requirements under INA 301 based on the parents' citizenship.

Residence and Physical Presence Requirements for Parents Before the Child's Birth

Parents' Citizenship Status	Residence or Physical Presence Requirement
Child of Two U.S. Citizen Parents	At least one parent had resided in the United States or one of its outlying possessions.
Child of a U.S. Citizen Parent and a U.S. Noncitizen National	The U.S. citizen parent was physically present in the United States or one of its outlying possessions for a continuous period of at least 1 year.
Child of A U.S. Citizen Parent and Noncitizen Parent who is NOT a U.S. National	The U.S. citizen parent was physically present in the United States for at least 5 years, including at least 2 years after 14 years of age.[19]

C. Child Born Out of Wedlock

1. Child of U.S. Citizen Father

General Requirements for Fathers of Children Born Out of Wedlock

The general requirements for acquisition of citizenship at birth[20] for a child born in wedlock also apply to a child born out of wedlock[21] outside of the United States (or one of its outlying possessions) who claims citizenship through a U.S. citizen father. Specifically, the provisions apply in cases where:

- A blood relationship between the child and the father is established by clear and convincing evidence;
- The child's father was a U.S. citizen at the time of the child's birth;
- The child's father (unless deceased) has agreed in writing to provide financial support for the child until the child reaches 18 years of age; and
- One of the following criteria is met before the child reaches 18 years of age:

- The child is legitimated under the law of his or her residence or domicile;
- The father acknowledges in writing and under oath the paternity of the child; or
- The paternity of the child is established by adjudication of a competent court.

In addition, the residence or physical presence requirements contained in the relevant paragraph of INA 301 continue to apply to children born out of wedlock, who are claiming citizenship through their fathers.

Written Agreement to Provide Financial Support

In order for a child born out of wedlock outside of the United States (or one of its outlying possessions) to acquire U.S. citizenship through his or her father, Congress included a requirement that the father agree in writing to provide financial support for the child until the child reaches the age of 18.[22] Congress included the language to prevent children from becoming public charges.[23] USCIS interprets the phrase in the statute "has agreed in writing to provide financial support"[24] to mean that there must be documentary evidence that supports a finding that the father accepted the legal obligation to support the child until the age of 18.

The written agreement of financial support may be dated at any time before the child's 18th birthday. If the child is under the age of 18 at the time of filing an Application for Certificate of Citizenship, the father may provide the written agreement of financial support either concurrently with the filing of the application or prior to the adjudication of the application. USCIS may request the written agreement of financial support at the time of issuance of a Request for Evidence or at the time of an interview (unless the interview is waived).

Alternatively, if the applicant is already over the age of 18, he or she may meet the requirement if one or more documents support a finding that the father accepted his legal obligation to support the child. In such cases, the evidence must have existed (and have been finalized) prior to the child's 18th birthday and must have met any applicable foreign law or U.S. law governing the child's or father's residence to establish acceptance of financial responsibility.[25]

In all cases, the applicant has the burden of proving the father has met any applicable requirements under the law to make an agreement to provide financial support. A written agreement of financial support is not required if the father died before the child's 18th birthday.[26]

Written Agreement Requirements

In order for a document to qualify as a written agreement of financial support under INA 309(a)(3), the document:

- Must be in writing and acknowledged by the father;[27]
- Must indicate the father's agreement to provide financial support for the child;[28] and
- Must be dated before the child's 18th birthday.

In addition, USCIS considers whether the agreement was voluntary.

Other Acceptable Documentation

A written agreement of financial support may come in different forms and documents. USCIS may consider other similar documentation in which the father accepts financial responsibility of the child until the age of 18. Some examples of documents USCIS may consider include:

- A previously submitted Affidavit of Support (Form I-134) or Affidavit of Support Under Section 213A of the INA (Form I-864);
- Military Defense Enrollment Eligibility Reporting System (DEERS) enrollment;
- Written voluntary acknowledgement of a child in a jurisdiction where there is a legal requirement that the father provide financial support;[29]
- Documentation establishing paternity by a court or administrative agency with jurisdiction over the child's personal status, if accompanied by evidence from the record of proceeding establishing the father initiated the paternity proceeding and the jurisdiction legally requires the father to provide financial support; or
- A petition by the father seeking child custody or visitation with the court of jurisdiction with an agreement to provide financial support and the jurisdiction legally requires the father to provide financial support.

2. Child of U.S. Citizen Mother

The rules that determine whether a child born out of wedlock outside of the United States derives citizenship at birth from the U.S. citizen mother vary depending on when the child was born.

Child Born On or After December 23, 1952 and Before June 12, 2017

A child born between December 23, 1952 and June 12, 2017 who is born out of wedlock outside of the United States and its outlying possessions acquires citizenship at birth if:

- The person is a child[30] of a U.S. citizen parent(s);
- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother was physically present in the United States or one of its outlying possessions for 1 continuous year before the child's birth.[31]

Child Born On or After June 12, 2017

A child born on or after June 12, 2017, who is born out of wedlock outside of the United States or one of its outlying possessions acquires citizenship at birth if:

- The person is a child[32] of a U.S. citizen parent(s);
- The child's mother was a U.S. citizen at the time of the child's birth; and
- The child's U.S. citizen mother was physically present in the United States or one of its outlying possessions for at least 5 years before the child's birth (at least 2 years of which were after age 14).[33]

Effect of Sessions v. Morales-Santana Decision

Prior to the U.S. Supreme Court's decision in *Sessions v. Morales-Santana*,[34] the physical presence requirements for children born out of wedlock were different for a child acquiring citizenship through a U.S. citizen mother than for those acquiring through a U.S. citizen father. An unwed U.S. citizen mother could transmit citizenship to her child if the mother was physically present in the United States for 1 continuous year prior to the child's birth.[35] An unwed U.S. citizen father, by contrast, was held to the longer physical presence requirement of 5 years (at least 2 years of which were after age 14) in the United States or one of its outlying possessions.[36]

On June 12, 2017, the U.S. Supreme Court held, in *Sessions v. Morales-Santana*, that the different physical presence requirements for an unwed U.S. citizen father and an unwed U.S. citizen mother violated the U.S. Constitution's Equal Protection Clause.[37] The U.S. Supreme Court indicated that the 5 years of physical presence (at least 2 years of which were after age 14)[38] requirement should apply prospectively to all cases involving a child born out of wedlock outside the United States to one U.S. citizen parent and one noncitizen parent, regardless of the gender of the parent.[39]

The U.S. Supreme Court decision effectively eliminated, prospectively, the 1 year continuous physical presence requirement that previously applied to unwed U.S. citizen mothers, and replaced it with the higher physical presence requirement that previously applied to unwed U.S. citizen fathers.[40] After *Sessions v. Morales-Santana*, the 1-year continuous physical presence requirement[41] remains in effect only for those children born prior to June 12, 2017 outside of the United States to unwed U.S. citizen mothers.

3. Child of Two U.S. Citizen Parents

For children born out of wedlock to two U.S. citizen parents, USCIS determines whether the child acquired citizenship from either parent individually. Once the child acquired from one of the parents, the child is a U.S. citizen, and the officer need not determine whether the child also acquired from the other U.S. citizen parent. Whether a child born out of wedlock outside the United States acquires citizenship at birth from two U.S. citizen parents depends on when the child was born.

Child Born Out of Wedlock On or After November 14, 1986[42]

A child born out of wedlock on or after November 14, 1986, is a U.S. citizen at birth, if:

- The person is the child[43] of two U.S. citizen parents;
- Both of the child's parents were U.S. citizens at the time of the child's birth; and
- Either the U.S. citizen father meets the requirements to transmit citizenship under INA 309[44] or the U.S. citizen mother was physically present in the United States or one of its outlying possessions for a continuous[45] period of 1 year before the child's birth.[46]

4. Summary of Physical Presence Requirements for Parents of Children Born Out of Wedlock

The following table outlines the physical presence requirements under INA 309 based on the parents' citizenship.

Physical Presence Requirements for U.S. Citizen Parents Before the Child's Birth

Parents' Citizenship Status	Period Child was Born	Physical Presence Requirement

Parents' Citizenship Status	Period Child was Born	Physical Presence Requirement
U.S. Citizen Father and Noncitizen Parent Who is Not a U.S. National	On or after December 24, 1952, and before November 14, 1986	The U.S. citizen father was physically present in the United States or its outlying possessions (OLP) for at least 10 years before the child's birth, including at least 5 years after the age of 14.
	On or after November 14, 1986	The U.S. citizen father was physically present in the United States or OLP for at least 5 years before the child's birth, including at least 2 years after the age of 14.
U.S. Citizen Mother and Noncitizen Parent Who is Not a U.S. National	On or after December 24, 1952, and before June 12, 2017	The child's U.S. citizen mother was physically present in the United States or OLP for 1 continuous year before the child's birth.
	On or after June 12, 2017	The child's U.S. citizen mother was physically present in the United States or OLP for at least 5 years before the child's birth, including at least 2 years after age 14.

Parents' Citizenship Status	Period Child was Born	Physical Presence Requirement
Two U.S. Citizen Parents	On or after November 14, 1986, and before June 12, 2017	• The child's U.S. citizen mother was physically present in the United States or OLP for 1 continuous year before the child's birth; or • The child's U.S. citizen father satisfies all of the requirements in INA 309(a), and at least one parent resided in the United States or OLP before the child was born. If the U.S. citizen father does not meet all the requirements for the child to acquire through the U.S. citizen father, then the U.S. citizen mother must satisfy 1 continuous year of physical presence in the United States or OLP before the child's birth. If the U.S. citizen mother does not meet the physical presence requirements, then the U.S. citizen father must satisfy all the requirements in INA 309(a), and at least one parent must have resided in the United States or OLP before the child was born.

Parents' Citizenship Status	Period Child was Born	Physical Presence Requirement
	On or after June 12, 2017	• The child's U.S. citizen mother was physically present in the United States or OLP for 1 continuous year before the child's birth; or • The child's U.S. citizen mother was physically present in the United States or OLP for at least 5 years before the child's birth, including at least 2 years after age 14; [47] or • The child's U.S. citizen father satisfies all of the requirements in INA 309(a), and at least one parent resided in the United States or OLP before the child was born. If the U.S. citizen father does not meet all the requirements for the child to acquire through the U.S. citizen father, then the U.S. citizen mother must satisfy 1 continuous year of physical presence in the United States or OLP before the child's birth, or 5 years of physical presence in the United States or OLP, at least 2 years of which were after age 14, before the child was born. If the U.S. citizen mother does not meet the physical presence requirements, then the U.S. citizen father must satisfy all the requirements in INA 309(a), and at least one parent must have resided in the United States or OLP before the child was born.

D. Application for Certificate of Citizenship (Form N-600)

1. Submission of Application

A person born outside the United States who acquires U.S. citizenship at birth is not required to have evidence of such status. However, if the person seeks documentation of U.S. citizenship status, the person may file an Application for Certificate of Citizenship (Form N-600) with USCIS.[48]

The Secretary of Homeland Security has jurisdiction over the administration and enforcement of the Immigration and Nationality Act (INA) within the United States, and the Secretary of State has jurisdiction over claims of U.S. citizenship made by persons who are abroad.[49] Therefore, generally, an Application for Certificate of Citizenship is submitted by persons who claim U.S. citizenship and are present within the United States. However, USCIS accepts a Form N-600 filed by a person who does not live in the United States, but USCIS does not adjudicate the application on the merits until the person is present in the United States in order to ensure that USCIS has jurisdiction over the application.[50]

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on their own behalf. A parent or a legal guardian may submit the application for a child who has not reached 18 years of age.

USCIS issues proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so.

USCIS does not mail Certificates of Citizenship outside the United States except when a military member is issued a Certificate of Citizenship under INA 320[51] or a military member's dependent child naturalizes under INA 322(d).

2. U.S. Passport or Consular Report of Birth Abroad as Evidence of Citizenship

A person may also apply for a U.S. passport with the U.S. Department of State (DOS) to serve as evidence of their U.S. citizenship.[52] A parent or legal guardian of a U.S. citizen child born outside the United States may also apply to the local U.S. embassy or consulate for a Consular Report of Birth Abroad (CRBA or Form FS-240).[53] A U.S. passport is valid for a limited time as established by DOS policies and standards on passport issuance.[54] Once a passport is expired, it is no longer conclusive evidence of citizenship.[55] Neither a CRBA nor a Certificate of Citizenship expires.

A valid, unexpired U.S. passport or a CRBA serves as evidence of a person's U.S. citizenship.[56] An applicant for a Certificate of Citizenship may submit a valid and unexpired U.S. passport or a CRBA as evidence of U.S. citizenship.[57] The officer must review the valid U.S. passport or CRBA and the documentation submitted with the application and contained in the record to determine if it was issued properly.

The officer approves the Application for Certificate of Citizenship if the applicant is a U.S. citizen and meets all requirements.

3. Request to Revoke U.S. Passport or Cancel Consular Report of Birth Abroad

If the officer determines that the applicant is not a U.S. citizen or has evidence indicating that a U.S. passport or CRBA submitted as evidence was obtained or issued illegally, fraudulently, or erroneously, the officer reviews the case with USCIS counsel. Then, if appropriate, the officer may request that DOS revoke the U.S. passport or cancel the CRBA.[58]

Only DOS has the authority to revoke a U.S. passport or cancel a CRBA.[59] DOS may revoke a U.S. passport or cancel a CRBA in cases where the passport or CRBA was obtained or issued illegally, fraudulently, or erroneously.[60]

USCIS provides the following information to DOS in the passport revocation or CRBA cancellation request:

- The applicant's complete biographic information, including name and any known aliases;
- The applicant's last known address;
- All previous unexpired U.S. passport numbers and alien registration numbers (A-numbers);
- A copy of the CRBA or of the biographical page of the U.S. passport submitted as evidence (if available);
- An explanation for requesting revocation or cancellation, including reasons for the request, analysis of the facts and dates used in determining that the passport or CRBA should be revoked or cancelled, and evaluation of evidence indicating that the applicant did not acquire U.S. citizenship;
- Copies of all documentary evidence in support of the request, including certified translations of any documents written or originally prepared in a foreign language; and
- The contact information of the USCIS office making the request.

Adjudication of Application with a U.S. Passport Revocation or Cancellation Request

After reviewing the case on the merits and requesting a revocation of a U.S. passport or a cancellation of a CRBA from DOS, the officer generally may not complete the adjudication of the Application for Certificate of Citizenship until DOS responds.

If DOS notifies USCIS that it does not intend to revoke the passport or cancel the CRBA, USCIS approves the Application for Certificate of Citizenship.[61] However, in cases with unusual or complex circumstances, USCIS may further consult with DOS.

If USCIS has evidence indicating that a U.S. passport submitted as evidence was obtained or issued illegally, fraudulently, or erroneously, and the passport was valid at the time of filing, but is expired at the time of adjudication, the officer should review the case with USCIS counsel and DOS before adjudicating.[62]

If DOS revokes the U.S. passport or cancels the CRBA, the officer denies the application in cases where the applicant does not otherwise meet the eligibility requirements for issuance of a Certificate of Citizenship.

E. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or legal guardian if the application is filed on behalf of a child under 18 years of age.[63] USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records, or if the application is accompanied by one of the following:

- Consular Report of Birth Abroad (FS-240);
- Applicant's unexpired U.S. passport issued initially for a full 5 or 10-year period; or
- Certificate of Naturalization of the applicant's parent or parents.[64]

F. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Form N-600, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[65]

However, the Immigration and Nationality Act (INA) permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[66] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

If an applicant does not take the Oath of Allegiance and is not eligible for a waiver, USCIS cannot issue a Certificate of Citizenship.[67]

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[68] An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

[^ 1] See INA 301(a) and INA 301(b). Children of certain diplomats who are born in the United States are not U.S. citizens at birth because they are not subject to the jurisdiction of the United States. See 8 CFR 101.3. For more information, see Volume 7, Adjustment of Status, Part O, Registration, Chapter 3, Foreign Nationals Born in the United States to Accredited Diplomats [7 USCIS-PM O.3].

[^ 2] For the definition of child, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 3] Any periods of honorable service in the U.S. armed forces, periods of employment with other qualifying organizations, or time spent outside the United States as the dependent unmarried son or daughter and member of the household of a person honorably serving in the U.S. armed forces or employed by another qualifying organization count towards that physical presence requirement. See INA 301(g).

[^ 4] The Act of October 10, 1978, Pub. L. 95-432 (PDF), repealed the retention requirements of former INA 301(b). The amending legislation was prospective only and did not restore citizenship to anyone who, prior to its enactment, had lost citizenship for failing to meet the retention requirements.

[^ 5] Officers should use the Nationality Charts to assist with the adjudication of these applications.

[^ 6] See INA 301. See Appendix: Nationality Chart 1 - Children Born Outside the United States in Wedlock [12 USCIS-PM H.3, Appendices Tab].

[^ 7] See INA 301 and INA 309.

[^ 8] For the definition of a child, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 9] Marriage must have existed at the time of birth.

[^ 10] In addition, see the chart entitled In-Wedlock Determinations: Cases Involving Gestational Carriers.

[^ 11] Marriage must have existed at the time of birth.

[^ 12] Marriage must have existed at the time of birth.

[^ 13] In addition, see the chart entitled In-Wedlock Determinations: Cases Involving Gestational Carriers.

[^ 14] Marriage must have existed at the time of birth.

[^ 15] Persons using ART may use a gestational carrier who is a person who gestates, or carries, an embryo that was formed from the egg of another person on behalf of the intended parent or parents. The gestational carrier is genetically unrelated to the child and usually has a contractual obligation to return the infant to his or her intended legal parents. For additional information on ART, see the Centers for Disease Control (CDC) website. A non-genetic gestational parent who is not the legally recognized parent may not transmit U.S. citizenship to the child (for example, a gestational carrier who is not a legal parent). USCIS follows any applicable court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS does not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a final determination by a proper authority.

[^ 16] Marriage must have existed at the time of birth.

[^ 17] An unmarried non-genetic, non-gestational legal parent may not transmit U.S. citizenship to the child.

[^ 18] Some children may also have retention requirements. See Appendix: Nationality Chart 1 - Children Born Outside the United States in Wedlock [12 USCIS-PM H.3, Appendices Tab] for additional information.

[^ 19] Time outside the United States counts as physical presence in the United States if the time spent outside the United States was:

- As a member of the U.S. armed forces in honorable status;
- Under the employment of the U.S. government or other qualifying organizations; or
- As a dependent unmarried son or daughter of the household of a person described in one of the above categories of such persons.

[^ 20] See INA 301(c), INA 301(d), INA 301(e), and INA 301(g). See Section A, General Requirements for Acquisition of Citizenship at Birth [12 USCIS-PM H.3(A)].

[^ 21] See INA 309. See Appendix: Nationality Chart 2 - Children Born Outside the United States Out of Wedlock [12 USCIS-PM H.3, Appendices Tab].

[^ 22] A separate agreement or contract is not required for the father to satisfy the requirement. See INA 309(a)(3). See the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653 (PDF) (November 14, 1986).

[^ 23] See the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653 (PDF) (November 14, 1986). The Immigration and Nationality Act (INA) was intended to keep families together and generally

construed in favor of family unity and the acceptance of responsibility by family members. See *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005).

[^ 24] See INA 309(a)(3).

[^ 25] In many cases, the issue of whether the father agreed to provide financial support depends on foreign law. The applicant bears the burden of proving the father has met any applicable requirements to make a binding agreement under the law. See *Matter of Annang (PDF)*, 14 I&N Dec. 502 (BIA 1973). Officers should consult USCIS counsel about any requirements under the law.

[^ 26] See INA 309.

[^ 27] A court document may be signed by a judge rather than the father, but may still serve as evidence to meet this requirement if there is an indication in the record of proceedings that the father consented to the determination of paternity.

[^ 28] Since the statute only provides for the agreement of the father to provide support and does not provide for any loss of citizenship if the agreement is not met, USCIS does not consider whether the father actually provided financial support.

[^ 29] For example, a birth certificate or acknowledgement document submitted and certified by the father. Under U.S. jurisdictions, a written voluntary acknowledgement of a child generally triggers a legal obligation to support the child. However, under foreign jurisdictions, a voluntary written agreement may not always trigger a legal obligation to support the child. The officer may consult with local USCIS counsel for questions regarding the effect of the law.

[^ 30] For the definition of a child, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 31] See INA 309(c).

[^ 32] For the definition of a child, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 33] See INA 301(g). See *Sessions v. Morales-Santana (PDF)*, 137 S.Ct. 1678 (2017).

[^ 34] See *Sessions v. Morales-Santana* (PDF), 137 S.Ct. 1678 (2017).

[^ 35] See INA 309(c).

[^ 36] See INA 301(g).

[^ 37] See *Sessions v. Morales-Santana (PDF)*, 137 S.Ct. 1678 (2017). See U.S. Constitution, amend. XIV.

[^ 38] See INA 301(g).

[^ 39] See *Sessions v. Morales-Santana (PDF)*, 137 S.Ct. 1678 (2017).

[^ 40] See INA 309(c).

[^ 41] See INA 309(c).

[^ 42] For periods before November 14, 1986, see Appendix: Nationality Chart 2 - Children Born Outside the United States Out of Wedlock [12 USCIS-PM H.3, Appendices Tab].

[^ 43] For the definition of a child, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 44] See Section C, Child Born out of Wedlock, Subsection 1, Child of U.S. Citizen Father [12 USCIS-PM H.3.(C)(1)].

[^ 45] The term “continuous” means that the physical presence in the United States is uninterrupted, without any absence.

[^ 46] If both parents of a child born out of wedlock are U.S. citizens, the mother’s physical presence requirement continues to be 1 year of continuous physical presence in the United States or outlying possessions (OLP) as INA 309(c) required before *Sessions v. Morales-Santana* (PDF), 582 U.S. 47 (2017). The Supreme Court decision in *Morales-Santana* did not address the situation where a child is born out of wedlock to two U.S. citizen parents.

[^ 47] On or after June 12, 2017, if the child’s U.S. citizen mother does not meet the requirement of being physically present in the United States or OLP for 1 continuous year before the child’s birth, the U.S. citizen mother may meet this requirement if she was physically present in the United States or OLP for at least 5 years before the child’s birth, including at least 2 years after age 14, consistent with *Sessions v. Morales-Santana* (PDF), 582 U.S. 47 (2017).

[^ 48] See 8 CFR 341.1.

[^ 49] See INA 103(a)(1) and INA 104(a)(3).

[^ 50] See INA 341(a).

[^ 51] See 8 U.S.C. 1443a.

[^ 52] See 22 CFR 50.4.

[^ 53] See 22 CFR 50.5. See 8 FAM 101.1-2, Introduction to Consular Reports of Birth Abroad.

[^ 54] See 8 FAM 101.1, Introduction to U.S. Passports and Consular Reports of Birth Abroad.

[^ 55] See 22 U.S.C. 2705.

[^ 56] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984) (Unless void on its face, a valid U.S. passport issued to a person as a citizen of the United States constitutes conclusive proof of the person’s U.S. citizenship). See 22 U.S.C. 2705 (A valid U.S. passport or CRBA has the same force and effect as proof of U.S. citizenship as Certificates of Naturalization or Certificates of Citizenship issued by USCIS). See 22 CFR 50.2.

[^ 57] A U.S. passport or CRBA does not serve as evidence of citizenship for noncitizen nationals.

[^ 58] See 22 U.S.C. 211a. See 22 CFR 51.60. See INA 361. See Rules Governing the Granting, Issuing, and Verifying of United States Passports, 31 FR 10603 (PDF) (Aug. 5, 1966).

[^ 59] The process to request cancellation of a CRBA to DOS is the same as that for a passport revocation. The same process should be followed to request the revocation of a parent’s or grandparent’s U.S. passport or

CRBA, when USCIS, while adjudicating an Application for Certificate of Citizenship, determines that it was issued illegally, fraudulently, or erroneously.

[^ 60] See INA 361.

[^ 61] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984).

[^ 62] An expired U.S. passport may not be accepted as sufficient evidence of citizenship. In these cases, officers may need to request other evidence of U.S. citizenship.

[^ 63] See 8 CFR 341.2(a)(2).

[^ 64] See 8 CFR 341.2(a).

[^ 65] See INA 337(a). See 8 CFR 341.5(b). See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

[^ 66] See INA 337(a). See 8 CFR 341.5(b).

[^ 67] See INA 341(a).

[^ 68] See 8 CFR 341.5(d) and 8 CFR 103.3(a).

Current as of November 21, 2024

U.S. Citizenship and Immigration Services

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Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)

Guidance

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A. General Requirements for Automatic Acquisition of Citizenship after Birth

The Child Citizenship Act of 2000 (CCA) amended INA 320 and removed INA 321 to create only one statutory provision and method for children in the United States to automatically acquire citizenship after birth.[1] According to INA 320, a child born outside of the United States automatically becomes a U.S. citizen when all of the following conditions have been met on or after February 27, 2001:[2]

- The person is a child[3] of a parent who is a U.S. citizen by birth or through naturalization (including an adoptive parent);[4]
- The child is under 18 years of age;[5]
- The child is a lawful permanent resident (LPR);[6] and
- The child is residing[7] in the United States in the legal and physical custody of the U.S. citizen parent.[8]

There is no specific order in which the conditions of the law must be satisfied for citizenship, so long as all conditions are met at a single point in time before the child's 18th birthday. A person born outside the United States is presumed to be a noncitizen.[9] As such, the person claiming U.S. citizenship has the burden of proof[10] to establish by a preponderance of the evidence[11] that they have met all requirements for citizenship.

B. Child in Legal and Physical Custody of U.S. Citizen Parent

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To automatically acquire citizenship through a U.S. citizen parent under INA 320, the child must reside in the legal and physical custody of the U.S. citizen parent while under the age of 18 years.[12]

1. Legal Custody

Legal custody refers to the responsibility for and authority over a child.[13] Legal custody is determined according to the relevant jurisdiction's law or is determined by a court decree or order. If there is a judicial determination[14] or a statutory grant of custody, then the parent to whom custody has been granted has legal custody of the child for INA 320 purposes.[15]

The child's parents (or parent) who are included on the birth certificate[16] are generally presumed to have legal custody of the child unless there is evidence to the contrary, such as a court order.[17]

The following sections explain how USCIS determines if a U.S. citizen parent has legal custody of a child for purposes of INA 320 in various situations.

Parents Are Married to Each Other

Unless there is evidence to the contrary, USCIS presumes that a U.S. citizen parent has legal custody of a biological child where the biological child has lived, or lives with married parents who live in marital union. This applies regardless of whether the child was born in wedlock.[18]

Child Residing with Surviving Parent

Unless there is evidence to the contrary, USCIS considers a child residing with a U.S. citizen surviving parent to be in the legal custody of the U.S. citizen surviving parent, if the other parent is deceased.[19]

Child Born Out of Wedlock and Parents Never Married Each Other

Unless there is evidence to the contrary, USCIS considers the parent with whom the biological child is residing (or did reside with before age 18) to have legal custody of the child where the child was born out of wedlock and the parents never married each other.[20] If the parent is a U.S. citizen father, the U.S. citizen father must also have legitimated[21] the child for the presumption of legal custody to apply.[22]

Divorce or Legal Separation of the Parents

In the case of a child of divorced or legally separated parents, USCIS considers a U.S. citizen parent to have legal custody of a child, for the purpose of INA 320, where a court with jurisdiction has awarded primary care, control, and maintenance of the child to the U.S. citizen parent under the laws of the state or country of residence.[23]

State law determines whether a parent has legal custody of a child.[24] As such, officers first look at the most recent judicial determination following a legal separation or a divorce in assessing legal custody for citizenship purposes. For purposes of INA 320, a judicial custody order can only be changed by a subsequent judicial proceeding.

Actual Uncontested Custody

If a child's parents divorced or legally separated, but the decree of divorce or legal separation order is silent on the custody determination and the relevant jurisdiction's law does not determine which parent had custody of the children, then USCIS considers the U.S. citizen parent who had actual uncontested (physical) custody of

the child to have had legal custody of the child.[25] Evidence showing the child was living with the U.S. citizen parent establishes "actual, uncontested custody."[26]

Joint Custody

Unless there is evidence to the contrary, both parents have legal custody for purposes of INA 320, where the child's parents are legally separated or divorced, and a court or other appropriate governmental entity has awarded the parents joint custody of the child.[27]

USCIS does not require a U.S. citizen parent to have sole custody to demonstrate legal custody of the child for purposes of INA 320.

Private Custody Agreement

Any private custody agreement between the parents is not an award of responsibility for and authority over the primary care, control, and maintenance of a minor child by a court of law or other appropriate government entity. As such, private custody agreements between parents generally do not impact the judicial custody determination following the divorce or legal separation for purposes of citizenship claims.[28] However, an applicant may provide documentation of a state law that recognizes an informal custody agreement between parents. If such a state law exists, an informal custody agreement may determine which parent has legal custody, if there is no court decree or the court decree is silent as to a formal custody agreement.[29]

Nunc Pro Tunc Custody Orders

Sometimes, evidence supporting a claim of citizenship may include a nunc pro tunc[30] correction of a judicial custody order that retroactively modifies a legal custody order. For purposes of derivative citizenship, USCIS does not recognize nunc pro tunc custody orders if entered after the child's 18th birthday that change the legal custody order from the time it was entered.[31]

Other Circumstances

There may be other factual circumstances under which USCIS may find the U.S. citizen parent to have legal custody for purposes of INA 320. These circumstances are determined on a case-by-case basis.[32]

2. Physical Custody

INA 320 also requires the child to reside in the physical custody of the U.S. citizen parent.[33] This requirement is "to ensure that the child's 'real interests' are in the United States through a genuine connection between the U.S. citizen parent and that parent's child."[34] In the context of derivative citizenship, the term "physical custody" means actual residence with the parent.[35] The term "residence" means a person's principal, actual dwelling place in fact, without regard to intent.[36] For purposes of INA 320, the parent the child resides with, or physically lives with, has physical custody of the child.

Evidence Establishing Physical Custody Requirement Under INA 320

As mentioned above, the child automatically acquires U.S. citizenship when the child meets all requirements before reaching the age of 18. This means that the evidence to establish that the child was residing in the physical custody of the U.S. citizen parent must be from the time when the child was under 18 years of age.

Evidence that may establish the child's residence, and therefore physical custody, with the U.S. citizen parent can include any of the following:

- The U.S. citizen parent's address on the application and in the record matches the address of the child (while the child was under 18 years of age);
- The child's school transcripts, records, or attendance reports showing the child's residential address to be the same as the U.S. citizen parent;
- The child's medical, hospital, or vaccination records showing the child's residential address to be the same as the U.S. citizen parent;
- The U.S. citizen parent's federal income tax transcripts showing that the child was listed as a dependent household member for tax purposes;
- A notarized affidavit from the U.S. citizen parent attesting that the child has lived in that parent's physical custody, specifying the period of time when the child lived with the U.S. parent; or
- A notarized affidavit from the non-U.S. citizen parent attesting that the child has lived in the physical custody of the U.S. citizen parent, specifying the period of time when the child lived with the U.S. parent.

C. Children of Armed Forces Members or U.S. Government Employees (or their Spouses)[37]

On March 26, 2020, the Citizenship for Children of Military Members and Civil Servants Act was enacted into law.[38] This Act provides that, under certain conditions, children of U.S. armed forces members or U.S. government employees (or their spouses)[39] who are residing outside the United States acquire citizenship under INA 320.[40] This applies to such children who were under the age of 18 on that date.[41]

A child born outside of the United States acquires automatic citizenship under INA 320 in cases where the child is an LPR and is in the legal and physical custody of his or her U.S. citizen parent who is:[42]

- Stationed and residing outside of the United States as a member of the U.S. armed forces;[43]
- Stationed and residing outside of the United States as an employee of the U.S. government;[44] or
- The spouse residing outside the United States in marital union[45] with a U.S. armed forces member or U.S. government employee who is stationed outside of the United States.[46]

In cases involving the child of a U.S. armed forces member residing outside the United States, the child must be authorized to accompany and reside with the U.S. armed forces member as provided by the member's official orders.[47] If the spouse of the U.S. armed forces member is the qualifying U.S. citizen parent, the spouse must be authorized to accompany and reside with the U.S. armed forces member as provided by the member's official orders.[48]

The official orders that authorize a child and, if applicable, his or her U.S. citizen parent, to accompany and reside with the member of the U.S. armed forces outside of the United States are a statutory requirement for that child to acquire citizenship under INA 320. If the child (and, if applicable, U.S. citizen parent) being added to the orders is the last action for the child to qualify for acquisition, then the date of the order becomes the date of acquisition. There is no statutory requirement for children of U.S. government employees or their spouses to be included on the employee's official orders.

The child of a U.S. armed forces member or a U.S. government employee (or his or her spouse) must meet the general requirements under INA 320(a)(1)-(2) in addition to being an LPR residing in the legal and physical custody of his or her U.S. citizen parent. All statutory requirements must be met before the child reaches the age of 18, including, if applicable, the issuance of the official orders for the child (and, if applicable, the U.S. citizen parent) to accompany and reside with the U.S. armed forces member who is stationed outside the United States.

D. Application for Certificate of Citizenship (Form N-600)

1. Submission of Application

A person born outside the United States who automatically acquires U.S. citizenship is not required to have evidence of such status. However, if the person seeks documentation of U.S. citizenship status, the person may file an Application for Certificate of Citizenship (Form N-600) with USCIS.[49]

The Secretary of Homeland Security has jurisdiction over the administration and enforcement of the INA within the United States, and the Secretary of State has jurisdiction over claims of U.S. citizenship made by persons who are abroad.[50] Therefore, generally, an Application for Certificate of Citizenship is submitted by persons who claim U.S. citizenship and are present within the United States. However, USCIS accepts a Form N-600 filed by a person who does not live in the United States, but USCIS does not adjudicate the application on the merits until the person is present in the United States in order to ensure that USCIS has jurisdiction over the application.[51]

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on the person's own behalf. There is no filing fee for Form N-600 for current or former members of the U.S. armed forces if they are filing on their own behalf. A U.S. citizen parent or a legal guardian must submit the application for a child who has not reached the age of 18 years.[52]

USCIS issues proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship (Form N-600) is approved and the person takes the Oath of Allegiance, if required to do so.[53]

USCIS does not mail Certificates of Citizenship outside the United States except when a military member is issued a Certificate of Citizenship under INA 320[54] or a military member's dependent child naturalizes under INA 322(d).

2. U.S. Passport or Consular Report of Birth Abroad as Evidence of Citizenship

A person may also apply for a U.S. passport with the U.S. Department of State (DOS) to serve as evidence of their U.S. citizenship.[55] A parent or legal guardian of a U.S. citizen child born outside the United States may also apply to the local U.S. embassy or consulate for a Consular Report of Birth Abroad (CRBA or Form FS-240).[56] A U.S. passport is valid for a limited time as established by DOS policies and standards on passport issuance.[57] Once a passport is expired, it is no longer conclusive evidence of citizenship.[58] Neither a CRBA nor a Certificate of Citizenship expires.

A valid, unexpired U.S. passport or a CRBA serves as evidence of a person's U.S. citizenship.[59] An applicant for a Certificate of Citizenship may submit a valid and unexpired U.S. passport or a CRBA as evidence of U.S.

citizenship.[60] The officer must review the valid U.S. passport or CRBA and the documentation submitted with the application and contained in the record to determine if it was issued properly.

The officer approves the Application for Certificate of Citizenship if the applicant is a U.S. citizen and meets all requirements.

3. Request to Revoke U.S. Passport or Cancel Consular Report of Birth Abroad

If the officer determines that the applicant is not a U.S. citizen or has evidence indicating that a U.S. passport or CRBA submitted as evidence was obtained or issued illegally, fraudulently, or erroneously, the officer reviews the case with USCIS counsel. Then, if appropriate, the officer may request that DOS revoke the U.S. passport or cancel the CRBA.[61]

Only DOS has the authority to revoke a U.S. passport or cancel a CRBA.[62] DOS may revoke a U.S. passport or cancel a CRBA in cases where the passport or CRBA was obtained or issued illegally, fraudulently, or erroneously.[63]

USCIS provides the following information to DOS in the passport revocation or CRBA cancellation request:

- The applicant's complete biographic information, including name and any known aliases;
- The applicant's last known address;
- All previous unexpired U.S. passport numbers and alien registration numbers (A-numbers);
- A copy of the CRBA or of the biographical page of the U.S. passport submitted as evidence (if available);
- An explanation for requesting revocation or cancellation, including reasons for the request, analysis of the facts and dates used in determining that the passport or CRBA should be revoked or cancelled, and evaluation of evidence indicating that the applicant did not acquire U.S. citizenship;
- Copies of all documentary evidence in support of the request, including certified translations of any documents written or originally prepared in a foreign language; and
- The contact information of the USCIS office making the request.

Adjudication of Application with Revocation or Cancellation Request

After reviewing the case on the merits and requesting a revocation of a U.S. passport or a cancellation of a CRBA from DOS, the officer generally may not complete the adjudication of the Application for Certificate of Citizenship until DOS responds.

If DOS notifies USCIS that it does not intend to revoke the passport or cancel the CRBA, USCIS approves the Application for Certificate of Citizenship.[64] However, in cases with unusual or complex circumstances, USCIS may further consult with DOS.

If USCIS has evidence indicating that a U.S. passport submitted as evidence was obtained or issued illegally, fraudulently, or erroneously, and the passport was valid at the time of filing, but is expired at the time of adjudication, the officer should review the case with USCIS counsel and DOS before adjudicating.[65]

If DOS revokes the U.S. passport or cancels the CRBA, the officer denies the application in cases where the applicant does not otherwise meet the eligibility requirements for issuance of a Certificate of Citizenship.

4. Photographs and Signature

USCIS may require the applicant (person seeking the Certificate of Citizenship), regardless of age, to appear at a local Application Support Center (ASC)[66] for photograph and signature submission.[67] A parent or legal guardian may sign for a child under the age of 14.[68] The parent or legal guardian of the person for whom the Certificate of Citizenship is sought does not submit any photographs of themself in connection with the Form N-600.

USCIS does not submit information collected in connection with Form N-600 to the Federal Bureau of Investigation (FBI) for a background check.

Photograph Submission Outside the United States

A person seeking a Certificate of Citizenship who is residing outside the United States only needs to submit two passport-style photographs with the properly submitted application. USCIS does not schedule overseas applicants for an ASC appointment. USCIS coordinates with military service members who are stationed outside of the United States, if necessary, to secure photographs.

Failure to Appear for the ASC Appointment

USCIS may consider the Form N-600 abandoned in cases where the person seeking a Certificate of Citizenship fails to appear for the ASC appointment, unless, by the appointment time, USCIS receives a change of address or rescheduling request that USCIS concludes warrants excusing the failure to appear.[69]

If USCIS denies the application due to abandonment, the person eligible for the Certificate of Citizenship, or the parent or legal guardian of the person eligible for the Certificate of Citizenship, or the parent or legal guardian who filed on behalf of a child seeking a Certificate of Citizenship, may submit a motion to reopen by filing a Notice of Appeal or Motion (Form I-290B).[70]

USCIS does not deny an application for abandonment for failure to provide photographs if USCIS has evidence that the applicant is a member of the U.S. armed forces who is permanently or temporarily outside the United States and unable to provide photographs or appear to submit a photograph and signature for reasons related to the individual's military service. USCIS coordinates with military service members in these circumstances.

E. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in the USCIS administrative record or do not apply:[71]

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
  - Divorce Decree; or
  - Death Certificate.
- Evidence of United States citizenship of parent:

  - Birth Certificate;
  - Naturalization Certificate;
  - Consular Report of Birth Abroad (FS-240);
  - A valid unexpired U.S. passport; or
  - Certificate of Citizenship.
- Documents verifying legitimation according to the laws of the child's residence or domicile or biological U.S. citizen father's residence or domicile if the child was born out of wedlock.
- Documentation that the U.S. citizen parent had legal custody of the child while the child was under the age of 18 years in the case of divorce, legal separation, or adoption.[72]
- Evidence that establishes that the child was residing in the United States in the physical custody of the U.S. citizen parent while under the age of 18 years.[73]
- If applicable, official orders (that is, a Permanent Change of Station (PCS)) from the respective department that authorized the child of the U.S. armed forces member, or the child of the spouse of such member and the spouse,[74] to accompany the U.S. citizen parent.
- Copy of Permanent Resident Card or Alien Registration Receipt Card or other evidence of lawful permanent resident status, such as an I-551 stamp in a valid foreign passport or travel document issued by USCIS.
- Copy of the full, final adoption decree, if applicable.[75]
- Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or
- An immigrant petition or application included in a USCIS administrative file.

If necessary, an officer may request additional documentation to make a decision on the application.

F. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.[76] USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if the required documentation is submitted along with the application.[77]

G. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If the applicant meets all the requirements for citizenship, USCIS approves the Form N-600. USCIS determines the date of citizenship based on when the applicant met the last requirement.

If an officer approves the Form N-600, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[78]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[79] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

If an applicant does not take the Oath of Allegiance and is not eligible for a waiver, USCIS cannot issue a Certificate of Citizenship.[80]

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[81] An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

[^ 1] See INA 320. See Appendix: Nationality Chart 3 - Derivative Citizenship of Children [12 USCIS-PM H.3, Appendices Tab].

[^ 2] February 27, 2001 is the effective date for these CCA amendments.

[^ 3] For the definition of a child, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 4] For cases based on an adoptive relationship, the requirements of INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G) must be met. For guidance on citizenship for adopted children, see Volume 5, Adoptions, Part F, Citizenship for Adopted Children [5 USCIS-PM F].

[^ 5] USCIS considers a child to be under the age of 18 years even if the last condition for acquisition of citizenship falls on the day of the child's 18th birthday. See *Matter of L. M. and C. Y. C.,* 4 I&N Dec. 617 (BIA 1952).

[^ 6] A person is generally considered to be an LPR once USCIS approves the adjustment application or once the person enters the United States with an immigrant visa. See INA 245(b). For certain classifications, however, the effective date of becoming an LPR is a date that is earlier than the actual approval of the status (commonly referred to as a "rollback" date). See Part D, General Naturalization Requirements, Chapter 2, LPR Admission for Naturalization, Section A, LPR at Time of Filing and Naturalization [12 USCIS-PM D.2(A)]. A person who is born a U.S. national and is the child of a U.S. citizen may establish eligibility for a Certificate of Citizenship without having to establish LPR status.

[^ 7] For the definition of residence, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section E, Definitions of U.S. Residence and Physical Presence [12 USCIS-PM H.2(E)].

[^ 8] See INA 320. See 8 CFR 320.2. Certain children of U.S. armed forces members or U.S. government employees (or their spouses) who are residing outside the United States may acquire citizenship under INA 320. See Section C, Children of Armed Forces Members or U.S. Government Employees (or their Spouses) [12 USCIS-PM H.4(C)]. See INA 320(c) (added by the Citizenship for Children of Military Members and Civil Servants Act, Pub. L. 116-133 (PDF) (March 26, 2020)).

[^ 9] See *Matter of Tijerina-Villarreal* (PDF), 13 I&N Dec. 327, 330 (BIA 1969).

[^ 10] See INA 341(a). See 8 CFR 341.2(c).

[^ 11] To meet this burden, the child, or the U.S. citizen parent or legal guardian acting on the child's behalf, must submit relevant, probative, and credible evidence that the claim is "probably true" or "more likely than not." See *Matter of E-M-* (PDF), 20 I&N Dec. 77 (Comm. 1989).

[^ 12] The U.S. citizen parent is not required to have legal and physical custody of the child when the child seeks a certificate of citizenship. Rather, USCIS must determine if the parent had legal and physical custody of the child at any time while the child was under the age of 18 years and all the other requirements for citizenship had been met.

[^ 13] See 8 CFR 320.1.

[^ 14] Determination of custody for citizenship purposes may be different than the custody determination for adoptions. For more information, see Volume 5, Adoptions [5 USCIS-PM].

[^ 15] See *Matter of M-*, 3 I&N Dec. 850 (BIA 1950).

[^ 16] Officers must also review birth certificates that have been amended following the initial registration.

[^ 17] The child's parent or parents who are named on the birth certificate may not have legal custody of the child in some cases, such as when the child is in the legal custody of a state or federal entity, a third party, or the child has been adopted. For example, in certain cases, a court may terminate a parent's parental rights, or a parent may relinquish parental rights depending on the laws of the relevant jurisdiction.

[^ 18] See 8 CFR 320.1(1)(i).

[^ 19] See 8 CFR 320.1(1)(ii).

[^ 20] See 8 CFR 320.1(1)(iii).

[^ 21] See Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section B, Legitimated Child [12 USCIS-PM H.2(B)].

[^ 22] See 8 CFR 320.1(1)(iii). See *Matter of Rivers* (PDF), 17 I&N Dec. 419 (BIA 1980) (a natural father is presumed to have legal custody over the child at the time of legitimation in the absence of affirmative evidence indicating otherwise).

[^ 23] See 8 CFR 320.1(2).

[^ 24] See *Fierro v. Reno*, 217 F.3d 1, 3-4 (1st Cir. 2000) (legal relationships between parents and children are typically governed by state law, there being "no federal law of domestic relations"). See *Bagot v. Ashcroft*, 398 F.3d 252, 256 (3rd. Cir. 2005). See *Pina v. Mukasey*, 542 F.3d 5 (1st Cir. 2008) ("legal custody" for purposes of the CCA is determined by reference to the relevant state law).

[^ 25] See *Matter of M-*, 3 I&N Dec. 850 (BIA 1950).

[^ 26] See *Bagot v. Ashcroft*, 398 F.3d 252, 259 (3rd Cir. 2005) (father had legal custody of the child under the "actual uncontested custody" standard where the child lived with the father, and no one contested the father's custody). See *Garcia v. USICE*, 669 F.3d 91, 97 (2nd Cir. 2011) (holding that two predominant indicators of "actual uncontested custody" are the child's physical residence, and consent to custody by the non-custodial parent).

[^ 27] See 8 CFR 320.1(2).

[^ 28] For example, a notarized letter from the mother granting custody of the child to the father is insufficient to change a pre-existing judicial custody determination granting legal custody to the mother, unless state law provides otherwise.

[^ 29] See *Pina v. Mukasey*, 542 F.3d 5 (1st Cir. 2008), which found derivative citizenship where the father was a U.S. citizen, the child was living with the mother, but there was an informal agreement to share custody, and Massachusetts statutes and cases favored agreements between the parents as to legal custody of the child.

[^ 30]The Latin phrase "nunc pro tunc," translated as "now for then," denotes that an act has retroactive legal effect through a court's inherent power. See Black's Law Dictionary (12th ed. 2024).

[^ 31] See *Padilla Carino v. Garland*, 997 F.3d 1053 (9th Cir. 2021) (holding that Congress did not intend for this type of nunc pro tunc order). See *Fierro v. Reno*, 217 F.3d 1 (1st Cir. 2000) (refusing to recognize a nunc pro tunc change of custody for purposes of derivative citizenship because it would "allow ... state court[s] to create loopholes in the immigration laws on grounds of perceived equity or fairness" and a "nunc pro tunc order … is not binding under federal law"). See *Bustamante-Barrera v. Gonzales*, 447 F.3d 388, 401 (5th Cir. 2006) ("a nunc pro tunc order to recognize derivative citizenship would create the potential for significant abuse and manipulation of federal immigration and naturalization law"). See *United States v. Esparza*, 678 F.3d 389 (5th Cir. 2012) (nunc pro tunc divorce decree obtained in 2010 purporting to retroactively rearrange Esparza's custody status in 1994 does not raise a reasonable doubt as to his alienage). However, in *Minasyan v. Gonzales*, 401 F.3d 1069, 1079 (9th Cir. 2005), the court found that a dissolution of marriage order entered after the petitioner's 18th birthday "establishes the date of the legal separation for purposes of California law, … it is [also] sufficient to establish the date for purposes of Minasyan's derivative citizenship under [Section] 321(a)." These cases relate to former INA 321 but provide guidance for nunc pro tunc orders in INA 320 cases as well. A child acquires citizenship so long as all requirements are met before the child turns 18.

[^ 32] See 8 CFR 320.1(2).

[^ 33] See INA 320(a)(3). See 8 CFR 320.2.

[^ 34] See *Khalid v. Sessions*, 904 F.3d 129, 137-38 (2nd Cir. 2018).

[^ 35] However, in the Second Circuit, a "brief, temporary separation" does not terminate physical custody if there is still a strong connection between the child and the parent during the separation. See *Khalid v. Sessions*, 904 F.3d 129 (2nd Cir. 2018).

[^ 36] See INA 101(a)(33).

[^ 37] For information about USCIS policies pertaining to this group of children before March 26, 2020, see Appendix: History of Acquiring Citizenship under INA 320 for Children of U.S. Citizens who are Members of the U.S. Armed Forces, U.S. Government Employees, or their Spouses[12 USCIS-PM H.4, Appendices Tab].

[^ 38] See Pub. L. 116-133 (PDF) (March 26, 2020) (codified at INA 320(c)).

[^ 39] Spouses must be U.S. citizens if the child seeks to acquire citizenship under INA 320 based on the child's residence with that spouse.

[^ 40] The Citizenship for Children of Military Members and Civil Servants Act, Pub. L. 116-133 (PDF) (March 26, 2020), did not redefine "residence in the United States" for these children. Instead, it created an exception to the U.S. residence requirement by providing that INA 320(a)(3) is deemed satisfied in applicable cases.

[^ 41] These provisions do not affect children who have already been recognized by USCIS or the Department of State as having acquired U.S. citizenship under INA 320 through the issuance of a Certificate of Citizenship or passport.

[^ 42] This provision would also apply to a child adopted by a U.S. citizen parent if the child satisfies the requirements applicable to adopted children under INA 101(b)(1) and INA 320(b).

[^ 43] See INA 320(c)(2)(A)(i). For a list of qualifying military branches, see Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328), Section B, Honorable Service [12 USCIS-PM I.2(B)] and Section C, National Guard Service [12 USCIS-PM I.2(C)]. Service is not required to be "honorable" for the purposes of INA 320(c)(2)(A)(i) and a Request for Certification of Military or Naval Service (Form N-426) is not required as evidence.

[^ 44] See INA 320(c)(1)(A). An "employee of the U.S. government" means a person employed by the U.S. government and does not include a person employed under contract with the U.S. government. Because there is no statute or regulation defining employee or "employee of the Government of the United States" in the citizenship and naturalization context, the common law definition of employee applies. See *Clackamas Gastroenterology Assoc., P.C., v. Wells*, 538 U.S. 440, 448 (2003). See *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-23 (1992). The concept of "control" is the key to determining whether a person is an employee under the common law. See *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992). Further, the plain language of the Citizenship for Children of Military Members and Civil Servants Act, Pub. L. 116-133 (PDF) (March 26, 2020), does not include persons employed under contract with the Government of the United States, in contrast to INA 316(b), which applies more specifically to persons "employed by or under contract with the Government of the United States."

[^ 45] Temporary orders, such as to serve in a combat zone or for mission support performance, do not affect the marital union between a military member and his or her spouse and would not impact acquisition of citizenship provisions under INA 320(c).

[^ 46] See INA 320(c)(2)(A)(ii) (spouses of U.S. armed forces member) and INA 320(c)(1)(B) (spouses of U.S. government employees).

[^ 47] See INA 320(c)(2)(B). For guidance on "official orders," see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section A, General Provisions for Spouses, Children, and Parents of Military Members, Subsection 2, Documenting "Official Orders" [12 USCIS-PM I.9(A)(2)].

[^ 48] See INA 320(c)(2)(A)(ii).

[^ 49] See 8 CFR 341.1. However, certain adopted children automatically receive a Certificate of Citizenship without having to file Form N-600. If an adopted child is admitted on an IR-3 or IH-3 visa (because the child's adoption was finalized before entering the United States), is residing in the United States in the U.S. citizen

parent's legal and physical custody before the child reaches the age of 18, and otherwise fulfills the conditions of INA 320, USCIS automatically issues the child a Certificate of Citizenship. For additional information, see the USCIS Adoption webpage.

[^ 50] See INA 103(a)(1) and INA 104(a)(3).

[^ 51] See INA 341(a).

[^ 52] See 8 CFR 320.3(a).

[^ 53] See Section H, Decision and Oath of Allegiance [12 USCIS-PM H.4(G)]. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

[^ 54] See 8 U.S.C. 1443a.

[^ 55] See 22 CFR 50.4.

[^ 56] See 22 CFR 50.5. See 8 FAM 101.1-2, Introduction to Consular Reports of Birth Abroad.

[^ 57] See 8 FAM 101.1, Introduction to U.S. Passports and Consular Reports of Birth Abroad.

[^ 58] See 22 U.S.C. 2705.

[^ 59] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984) (Unless void on its face, a valid U.S. passport issued to a person as a citizen of the United States constitutes conclusive proof of the person's U.S. citizenship). See 22 U.S.C. 2705 (A valid U.S. passport or CRBA has the same force and effect as proof of U.S. citizenship as Certificates of Naturalization or Certificates of Citizenship issued by USCIS). See 22 CFR 50.2.

[^ 60] A U.S. passport or CRBA does not serve as evidence of citizenship for noncitizen nationals.

[^ 61] See 22 U.S.C. 211a. See 22 CFR 51.60. See INA 361. See Rules Governing the Granting, Issuing, and Verifying of United States Passports, 31 FR 10603 (PDF) (Aug. 5, 1966). See Chapter 3, United States Citizens at Birth (INA 301 and 309), Section D, Application for Certificate of Citizenship (Form N-600), Subsection 3, Request to Revoke U.S. Passport or Cancel Consular Report of Birth Abroad [12 USCIS-PM H.3(D)(3)].

[^ 62] The process to request cancellation of a CRBA to DOS is the same as that for a passport revocation. The same process should be followed to request the revocation of a parent's or grandparent's U.S. passport or CRBA, when USCIS, while adjudicating an Application for Certificate of Citizenship, determines that it was issued illegally, fraudulently, or erroneously.

[^ 63] See INA 361.

[^ 64] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984).

[^ 65] An expired U.S. passport may not be accepted as sufficient evidence of citizenship. In these cases, officers may need to request other evidence of U.S. citizenship.

[^ 66] Military service members may appear at any stateside USCIS ASC with or without an appointment. See Part I, Military Members and their Families, Chapter 6, Required Background Checks, Section C, Ways Service Members may Meet Fingerprint Requirements [12 USCIS-PM I.6(C)].

[^ 67] See 8 CFR 103.2(b)(9). See Volume 1, General Policies, and Procedures, Part C, Biometrics Collection and Security Checks, Chapter 2, Biometrics Collection [1 USCIS-PM C.2].

[^ 68] See 8 CFR 103.2(a)(2). See Volume 1, General Policies, and Procedures, Part B, Submission of Benefit Requests, Chapter 2, Signatures [1 USCIS-PM B.2].

[^ 69] See 8 CFR 103.2(b)(13)(ii). See Volume 1, General Policies and Procedures, Part C, Biometrics Collection and Security Checks, Chapter 2, Biometrics Collection, Section A, Biometric Services Appointments [1 USCIS-PM C.2(A)].

[^ 70] See 8 CFR 103.5 and 8 CFR 341.5(e). Although a person may file a motion to reopen a denial due to abandonment, they may not appeal a denial to the Administrative Appeals Office. See 8 CFR 103.2(b)(15). Moreover, USCIS rejects any subsequent Form N-600, and instructs the applicant to submit a motion to reopen. See 8 CFR 341.5(e) and 8 CFR 320.5(c).

[^ 71] See 8 CFR 320.3(b).

[^ 72] Generally, USCIS considers the adoption decree or order to be evidence of legal custody.

[^ 73] For more information on evidence of physical custody, see Section B, Child in Legal and Physical Custody of U.S. Citizen Parent, Subsection 2, Physical Custody [12 USCIS-PM H.4(B)(2)].

[^ 74] For guidance on “official orders,” see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section A, General Provisions for Spouses, Children, and Parents of Military Members, Subsection 2, Documenting “Official Orders” [12 USCIS-PM I.9(A)(2)].

[^ 75] For more information see Volume 5, Adoptions, Part F, Citizenship for Adopted Children, Chapter 3, Eligibility, Documentation and Evidence, Section B, Child Residing in the United States [5 USCIS-PM F.3(B)].

[^ 76] See 8 CFR 320.4.

[^ 77] See 8 CFR 341.2. See Section G, Documentation and Evidence [12 USCIS-PM H.5(G)].

[^ 78] See 8 CFR 320.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

[^ 79] See INA 337(a). See 8 CFR 341.5(b).

[^ 80] See INA 341(a).

[^ 81] See 8 CFR 320.5(b) and 8 CFR 103.3(a).

Current as of November 21, 2024

U.S. Citizenship and Immigration Services

MENU

Chapter 5 - Child Residing Outside the United States (INA 322)

Guidance

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A. General Requirements: Child Residing Outside the United States

The Child Citizenship Act of 2000 (CCA) amended the Immigration and Nationality Act (INA) to cover foreign-born children who did not automatically acquire citizenship under INA 320 and who reside outside the United States with a U.S. citizen parent.[1]

A child who regularly resides outside the United States is eligible for naturalization if all of the following conditions have been met:

- The person is a child[2] of a parent who is a U.S. citizen by birth or through naturalization (including an adoptive parent);[3]
- The child's U.S. citizen parent or citizen grandparent meets certain physical presence requirements in the United States or an outlying possession;[4]
- The child is under 18 years of age;[5]
- The child is residing outside the United States in the legal and physical custody[6] of the U.S. citizen parent, or of a person who does not object to the application if the U.S. citizen parent is deceased; and
- The child is lawfully admitted, physically present, and maintaining a lawful status in the United States at the time the application is approved and the time of naturalization.

There are certain exceptions to these requirements for children of U.S. citizens in the U.S. armed forces accompanying their parent outside the United States on official orders.[7]

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B. Eligibility to Apply on the Child's Behalf

Typically, a child's U.S. citizen parent files a Certificate of Citizenship application on the child's behalf. If the U.S. citizen parent has died, the child's citizen grandparent or the child's U.S. citizen legal guardian may file the application on the child's behalf within 5 years of the parent's death.[8]

C. Physical Presence of the U.S. Citizen Parent or Grandparent[9]

1. Physical Presence of Child's U.S. Citizen Parent

A child's U.S. citizen parent must meet the following physical presence requirements:

- The parent has been physically present in the United States or its outlying possessions for at least 5 years; and
- The parent met such physical presence for at least 2 years after he or she reached 14 years of age.

A parent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the parent was not a U.S. citizen.

2. Exception for U.S. Citizen Member of the U.S. Armed Forces

The child's U.S. citizen service member parent may count any period of time he or she has resided abroad on official orders as physical presence in the United States.[10]

3. Reliance on Physical Presence of Child's U.S. Citizen Grandparent

If the child's parent does not meet the physical presence requirement, the child may rely on the physical presence of the child's U.S. citizen grandparent to meet the requirement. In such cases, the officer first must verify that the citizen grandparent, the citizen parent's mother or father, is a U.S. citizen at the time of filing. If the grandparent has died, the grandparent must have been a U.S. citizen and met the physical presence requirements at the time of his or her death.

Like in the case of the citizen parent, the officer also must ensure that:

- The U.S. citizen grandparent has been physically present in the United States or its outlying possessions for at least 5 years; and
- The U.S. citizen grandparent met such physical presence for at least 2 years after he or she reached 14 years of age.

Like the citizen parent, a grandparent's physical presence is calculated in the aggregate and includes time accrued in the United States during periods when the grandparent was not a U.S. citizen.

D. Temporary Presence by Lawful Admission and Status in United States

1. Temporary Presence and Status Requirements

In most cases, the citizenship process for a child residing abroad cannot take place solely overseas.

- The child is required to be lawfully admitted to United States, in any status, and be physically present in the United States;[11]
- The child is required to maintain the lawful status that he or she was admitted under while in the United States;[12] and
- The child is required to take the Oath of Allegiance in the United States unless the oath requirement is waived.[13]

2. Exception for Child of U.S. Citizen Service Member of the U.S. Armed Forces

Certain children of U.S. citizen members of the U.S. armed forces are not required to be lawfully admitted to or physically present in the United States.[14]

E. Children of U.S. Government Employees and Members of the Armed Forces Employed or Stationed Outside the United States

In addition to certain provisions for children of U.S. armed forces members and U.S. government employees stationed or employed outside the United States under INA 320, such U.S. citizen parents may apply for U.S. citizenship under INA 322 on behalf of their children under age 18 (if the children have not acquired citizenship under INA 320).[15] Children of members of the U.S. armed forces who are accompanying their parents outside of the United States on official orders may be eligible to complete all aspects of the naturalization proceedings outside the United States. This includes interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[16]

F. Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)

1. Submission of Application

A U.S. citizen parent of a child[17] born outside of the United States who did not acquire citizenship automatically may file an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) for the child to become a U.S. citizen and obtain a Certificate of Citizenship. The application may be filed from outside of the United States.

If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than 5 years after the death of the U.S. citizen parent.[18]

The child of a U.S. citizen member of the U.S. armed forces accompanying their parent outside the United States on official orders may be eligible to become a U.S. citizen and obtain a Certificate of Citizenship under INA 322 without having to travel to the United States for any part of the naturalization process.[19]

USCIS issues proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Citizenship and Issuance of Certificate under Section 322 is approved and the person takes the Oath of Allegiance, if required to do so.[20] The Certificate of Citizenship evidences the date of citizenship as of the date of the applicant's naturalization, which is the date of taking the Oath of Allegiance (unless waived).

USCIS does not mail Certificates of Citizenship outside the United States except when a military member is issued a Certificate of Citizenship under INA 320[21] or a military member's dependent child naturalizes under INA 322(d).

2. U.S. Passport or Consular Report of Birth Abroad as Evidence of Citizenship

A valid, unexpired U.S. passport or a Consular Report of Birth Abroad (CRBA) issued by the Department of State (DOS) is conclusive proof of U.S. citizenship.[22] A person who holds a valid, unexpired U.S. passport or a CRBA has conclusive evidence that they are already a U.S. citizen, so they are not eligible for naturalization under INA 322.

The officer must review the valid U.S. passport or CRBA and the documentation submitted with the application and contained in the record to determine if it was issued properly.

3. Request to Revoke U.S. Passport or Cancel Consular Report of Birth Abroad

If USCIS has evidence indicating that a U.S. passport or CRBA submitted as evidence was obtained or issued illegally, fraudulently, or erroneously, the officer reviews the case with USCIS counsel and, if appropriate, submits a formal request for revocation of the passport or cancellation of the CRBA[23] to DOS.

Only DOS has the authority to revoke a U.S. passport or cancel a CRBA.[24] DOS may revoke a U.S. passport or cancel a CRBA in cases where the passport or CRBA was obtained or issued illegally, fraudulently, or erroneously.[25]

USCIS provides the following information to DOS in the passport revocation or CRBA cancellation request:

- The applicant's complete biographic information, including name and any known aliases;
- The applicant's last known address;
- All previous unexpired U.S. passport numbers and alien registration numbers (A-numbers);
- A copy of the CRBA or of the biographical page of the U.S. passport submitted as evidence (if available);
- An explanation for requesting revocation or cancellation, including reasons for the request, analysis of the facts and dates used in determining that the passport or CRBA should be revoked or cancelled, and

evaluation of evidence indicating that the applicant did not acquire U.S. citizenship;

- Copies of all documentary evidence in support of the request, including certified translations of any documents written or originally prepared in a foreign language; and
- The contact information of the USCIS office making the request.

Adjudication of Application with Revocation or Cancellation Request

After reviewing the case on the merits and requesting a revocation of a U.S. passport or a cancellation of a CRBA from DOS, the officer generally may not complete the adjudication of the Application for Citizenship and Issuance of Certificate Under Section 322 until DOS responds.

If DOS notifies USCIS that it does not intend to revoke the passport or cancel the CRBA, USCIS cannot naturalize a U.S. citizen and must deny the Application for Citizenship and Issuance of Certificate under Section 322.[26] However, a child with a properly issued U.S. passport or CRBA who has met all of the requirements for acquisition of citizenship under a different section of law may file an Application for Certificate of Citizenship (Form N-600) to obtain a Certificate of Citizenship.[27]

If the passport was valid at the time of filing but is expired at the time of adjudication, the officer should review the case with USCIS counsel and, if appropriate, consult with DOS before adjudicating.[28]

If DOS revokes the U.S. passport or cancels the CRBA, the applicant may become eligible for naturalization under INA 322. After the U.S. passport is revoked or the CRBA is cancelled, the officer may then approve the Application for Certificate of Citizenship and Issuance of Certificate under Section 322, if all other eligibility requirements are met.[29]

G. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in USCIS administrative record or do not apply.[30]

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
  - Divorce Decree; or
  - Death Certificate.
- Evidence of United States citizenship of parent:
  - Birth Certificate;
  - Naturalization Certificate;
  - Consular Report of Birth Abroad (FS-240);
  - A valid unexpired U.S. passport; or
  - Certificate of Citizenship.
- Documents verifying legitimation according to the laws of the child's residence or domicile or biological U.S. citizen father's residence or domicile if the child was born out of wedlock.

- Documentation of legal custody in the case of divorce, legal separation, or adoption.
- Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements, such as school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations.
- Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status or evidence establishing that the child qualifies for an exception to these requirements as provided for children of members of the U.S. armed forces.[31] Such evidence may be presented at the time of interview when appropriate.
- Copy of the full, final adoption decree, if applicable.[32]
- Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent or U.S. citizen legal guardian.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or
- An immigrant petition or application included in a USCIS administrative file.

If necessary, an officer may request additional documentation to make a decision on the application.

H. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K). This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.[33] USCIS, however, waives the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if any of the following documentation is submitted along with the application.[34]

I. Decision and Oath of Allegiance

1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Form N-600K, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.[35]

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.[36] USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

If an applicant does not take the Oath of Allegiance and is not eligible for a waiver, USCIS cannot issue a Certificate of Citizenship.[37]

2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[38] An applicant may file an appeal within 30 days of service of the decision.

Footnotes

[^ 1] See INA 322. See Appendix: Nationality Chart 4 - Children of U.S. Citizens Regularly Residing Outside United States (INA 322) [12 USCIS-PM H.3, Appendices Tab].

[^ 2] For the definition of a child, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 3] For cases based on an adoptive relationship, the requirements of INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G) must be met. See Volume 5, Adoptions, Part E, Family-Based Adoption Petitions [5 USCIS-PM E]. See Volume 5, Adoptions, Part C, Child Eligibility Determinations (Orphan) [5 USCIS-PM C]. See Volume 5, Adoptions, Part D, Child Eligibility Determinations (Hague) [5 USCIS-PM D]. For information on citizenship for adopted children, see Volume 5, Adoptions, Part F, Citizenship for Adopted Children [5 USCIS-PM F].

[^ 4] See Section C, Physical Presence of U.S. Citizen Parent or Grandparent [12 USCIS-PM H.5(C)].

[^ 5] USCIS considers a child to be under the age of 18 years until the end of the day on the child's 18th birthday. See *Matter of L. M. and C. Y. C.,* 4 I&N Dec. 617 (BIA 1952).

[^ 6] For information on legal and physical custody, see Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320), Section B, Child in Legal and Physical Custody of U.S. Citizen Parent [12 USCIS-PM H.4(B)]. See 8 CFR 322.1(1)-(2).

[^ 7] See INA 322(d).

[^ 8] As of November 2, 2002, a U.S. citizen grandparent or U.S. citizen legal guardian became eligible to apply for naturalization under this provision on behalf of a child. See the 21st Century Department of Justice Appropriations Authorization Act for Fiscal 2002, Pub. L. 107-273 (PDF) (November 2, 2002), which amended INA 322 to permit U.S. citizen grandparents or U.S. citizen legal guardians to apply for naturalization on behalf of a child if the child's U.S. citizen parent has died.

[^ 9] See INA 322(a)(2). See 8 CFR 322.2(a)(2).

[^ 10] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)]. See INA 322(d). See 8 CFR 322.2(c).

[^ 11] See INA 322(a)(5). See 8 CFR 322.2(a)(5).

[^ 12] See INA 322(a)(5).

[^ 13] See INA 322(b). See Section I, Decision and Oath of Allegiance [12 USCIS-PM H.5(I)].

[^ 14] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9]. See INA 322(d). See 8 CFR 322.2(c).

[^ 15] See INA 322(a). To be eligible for citizenship under INA 322, the child must be under 18 and "residing outside of the United States in the legal and physical custody of the applicant." If the child has already acquired U.S. citizenship under INA 320, USCIS denies the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K).

[^ 16] See INA 322(d).

[^ 17] For more information about citizenship for adopted children, see Volume 5, Adoptions, Part F, Citizenship for Adopted Children, Chapter 3, Eligibility, Documentation and Evidence, Section C, Child Residing Outside of the United States [5 USCIS-PM F.3(C)].

[^ 18] See 8 CFR 322.3(a).

[^ 19] See Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)].

[^ 20] See Section I, Decision and Oath of Allegiance [12 USCIS-PM H.5(I)]. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

[^ 21] See 8 U.S.C. 1443a.

[^ 22] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984) (Unless void on its face, a valid U.S. passport issued to a person as a citizen of the United States constitutes conclusive proof of the person's U.S. citizenship). See 22 U.S.C. 2705 (A valid U.S. passport or CRBA has the same force and effect as proof of U.S. citizenship as Certificates of Naturalization or Certificates of Citizenship issued by USCIS).

[^ 23] The process to request cancellation of a CRBA to DOS is the same as that for a passport revocation. The same process should be followed to request the revocation of a parent's or grandparent's U.S. passport or CRBA, when USCIS, while adjudicating an Application for Citizenship and Issuance of Certificate under Section 322, determines that it was issued illegally, fraudulently, or erroneously.

[^ 24] See 22 U.S.C. 211a. See 22 CFR 51.60. See INA 361. See Rules Governing the Granting, Issuing, and Verifying of United States Passports, 31 FR 10603 (PDF) (Aug. 5, 1966).

[^ 25] See INA 361.

[^ 26] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984).

[^ 27] See INA 301, INA 309, and INA 320. See Chapter 3, United States Citizens at Birth (INA 301 and 309), Section D, Application for Certificate of Citizenship (Form N-600) [12 USCIS-PM H.3(D)]. See Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [12 USCIS-PM H.4].

[^ 28] An expired U.S. passport is not sufficient evidence of citizenship. See 22 U.S.C. 2705.

[^ 29] See INA 361.

[^ 30] See 8 CFR 322.3(b).

[^ 31] See INA 322(d)(2).

[^ 32] For more information see Volume 5, Adoptions, Part F, Citizenship for Adopted Children, Chapter 3, Eligibility, Documentation and Evidence, Section C, Child Residing Outside of the United States [5 USCIS-PM F.3(C)].

[^ 33] See 8 CFR 322.4.

[^ 34] See 8 CFR 341.2. See Section G, Documentation and Evidence [12 USCIS-PM H.5(G)].

[^ 35] See 8 CFR 322.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

[^ 36] See INA 337(a). See 8 CFR 341.5(b).

[^ 37] See INA 322(b).

[^ 38] See 8 CFR 322.5(b) and 8 CFR 103.3(a).

Current as of November 21, 2024

U.S. Citizenship and Immigration Services

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Chapter 6 - Special Provisions for the Naturalization of Children

Guidance

Resources (6)

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History (1)

A. Children Subjected to Battery or Extreme Cruelty

In general, the spouse of a U.S. citizen who resides in the United States may be eligible for naturalization based on his or her marriage under section 319(a) of the Immigration and Nationality Act (INA). On October 28, 2000, Congress expanded the naturalization provision based on a family relationship to a U.S. citizen. The amendments added that children of U.S. citizens may naturalize if they obtained lawful permanent resident (LPR) status based on having been battered or subjected to extreme cruelty by their citizen parent.[1]

1. Eligibility for Special Provision

A child[2] is eligible for naturalization under the spousal naturalization provisions[3] if he or she obtained LPR status based on:

- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive U.S. citizen;
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the self-petitioning child of an abusive LPR, if the abusive parent naturalizes after USCIS approves the petition;[4]
- An approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) as the derivative child[5] of a self-petitioning spouse of a U.S. citizen who was battered or subjected to extreme cruelty by a U.S. citizen spouse;[6] or
- Cancellation of removal where the applicant was the child of a U.S. citizen who subjected him or her to battery or extreme cruelty.[7]

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A child is also eligible for naturalization under the spousal naturalization provisions if he or she had the conditions on his or her residence removed based on:

- An approved battery or extreme cruelty waiver of the joint filing requirement for the Petition to Remove Conditions on Residence (Form I-751).[8]

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant is at least 18 years of age at the time of filing.

Stepchildren may also naturalize under this provision if otherwise eligible.[9] Under this provision, a stepchild's relationship with the U.S. citizen stepparent does not need to continue to exist at the time of the application for naturalization.

2. Exception to General Naturalization Requirements

An applicant subjected to battery or extreme cruelty by his or her U.S. citizen parent is exempt from the following naturalization requirements:[10]

- Living with the U.S. citizen parent for at least 3 years at the time of filing the naturalization application; and
- The applicant's U.S. citizen parent, who petitioned for him or her, has U.S. citizenship from the time of filing until the time the applicant takes the Oath of Allegiance.[11]

These exceptions also apply to derivative children.

B. Surviving Child of Members of the U.S. Armed Forces

On November 24, 2003, Congress amended certain military-related immigration provisions of the INA. This included extending certain immigration benefits to surviving spouses, children, and parents of deceased U.S. citizen service members.[12]

1. Eligibility for Special Provision

A surviving child, who has not already acquired U.S. citizenship, may be eligible for naturalization.[13] In addition, the child may qualify for certain exemptions from the general naturalization requirements. To qualify for this special provision, the applicant must be the child[14] of a U.S. citizen service member who died during a period of honorable service in an active duty status in the U.S. armed forces.[15] This includes service members who were not U.S. citizens at the time of their death but were later granted posthumous U.S. citizenship.

The applicant must meet all other eligibility requirements for naturalization, including the requirement that the applicant be over the age of 18 at the time of filing. The applicant must be the genetic, legitimated, or adopted son or daughter of a U.S. citizen, or the son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child's legal parent.[16] A person who is the surviving stepchild of a member of the U.S. armed forces is not eligible to naturalize under this provision.

2. Exceptions to General Naturalization Requirements

Under the special provision, the qualified surviving child is exempt from the following requirements:

- Continuous residence;
- Physical presence; and
- Three-month physical presence within the state or jurisdiction.

Footnotes

[^ 1] See the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (PDF) (October 28, 2000). For more information regarding battered spouses or spouses subjected to extreme cruelty, see Part G, Spouses of U.S. Citizens, Chapter 3, Spouses of U.S. Citizens Residing in the United States, Section F, Eligibility for Persons Subjected to Battery or Extreme Cruelty [12 USCIS-PM G.3(F)].

[^ 2] The child must be 18 years of age or older to apply for naturalization.

[^ 3] Under spousal naturalization provisions, the child is required to show 3 years of continuous residence and physical presence at least half of that time. See INA 319(a).

[^ 4] See INA 204(a)(1)(B)(ii). The definition of child includes certain stepchildren. See INA 101(b)(1).

[^ 5] A derivative child is an unmarried child who can accompany the principal beneficiary based on a parent-child relationship.

[^ 6] See INA 319(a). See INA 204(a)(1)(A)(iii), INA 204(a)(1)(A)(iv), for inclusion of the derivative child in the VAWA self-petitioning provisions. See INA 319(a).

[^ 7] See INA 240A(b)(2)(A)(i)(I) or INA 240A(b)(2)(A)(i)(III).

[^ 8] The waiver must be based on either the parent being subjected to battery or extreme cruelty by the petitioning citizen or LPR spouse, or the child being subjected to battery or extreme cruelty by the conditional permanent resident parent or the petitioning citizen or LPR spouse. See INA 216(c)(4)(C).

[^ 9] See INA 101(b)(1).

[^ 10] See INA 319(a).

[^ 11] See INA 204(a)(1)(A)(iii)(II)(aa)(CC)(bbb). See INA 204(a)(1)(A)(iv).

[^ 12] See the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108-136 (PDF) (November 24, 2003). See INA 319(d). See INA 329A.

[^ 13] See INA 319(d). For information on eligibility for surviving parents and spouses, see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits [12 USCIS-PM I.9].

[^ 14] See INA 101(c)(1). The child must meet the definition of child applicable to citizenship and naturalization. See Part H, Children of U.S. Children, Chapter 2, Definition of Child [12 USCIS-PM H.2].

[^ 15] See Part H, Children of U.S. Citizens, Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

[^ 16] For further guidance on the definition of child for citizenship and naturalization purposes, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization [12 USCIS-PM H.2].

Current as of November 21, 2024

Chapter 7 - Deriving Citizenship Before the Child Citizenship Act of 2000 (Former INA 321 and 320)

Guidance

Resources (6)

Appendices (1)

Updates (9)

History (0)

A. General Requirements for Deriving Citizenship After Birth (Before February 27, 2001)

The Child Citizenship Act of 2000 (CCA) applies only to children born on or after February 27, 2001, or those who were under 18 years of age as of that date.[1] Persons who were 18 years of age or older before February 27, 2001, do not qualify for citizenship under current Section 320 of the Immigration and Nationality Act (INA). However, such persons may have derived citizenship through the relevant law in effect before the CCA.

In general, former INA 321[2] applies to persons who reached the age of 18 years on or after December 24, 1952, but before February 27, 2001. Former INA 320 may also apply to these children.[3]

According to former INA 321, a child born outside of the United States to two noncitizen parents (or one noncitizen parent and one U.S. citizen parent who subsequently lost U.S. citizenship) becomes a U.S. citizen if all of the following conditions were met before the child was 18 years of age:

- The child's parent or parents met one of the following conditions:
  - Both parents naturalized;
  - One surviving parent naturalized if the other parent was deceased;
  - One parent naturalized who had legal custody of the child if there was a divorce or legal separation of the parents; or
  - The child's mother naturalized if the child was born out of wedlock and paternity was not established by legitimation.

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- The child was under 18 years of age when the parent or parents naturalized; and
- The child was residing in the United States following a lawful admission for permanent residence at the time the parent or parents naturalized or thereafter began to reside permanently in the United States while under the age of 18.

The sections below explain each of these requirements. There is no specific order in which the requirements of the law must have been satisfied for citizenship, as long as all requirements were satisfied before the child's 18th birthday.[4]

B. Naturalization of Both Parents

Unlike the CCA, which requires only one parent to be a U.S. citizen by birth or naturalization, former INA 321 generally required both parents to naturalize before the child turned 18 for the child to derive citizenship.[5] This includes two noncitizen parents who naturalized, or one noncitizen parent and a U.S. citizen parent who lost U.S. citizenship, and later both parents naturalized. In certain circumstances, discussed below, the child could derive citizenship when only one of the parents naturalized.

C. Naturalization of Surviving Parent

A child born outside the United States derived U.S. citizenship under former INA 321 when the surviving parent naturalized if the other parent was deceased.[6] The surviving parent did not necessarily have to naturalize after the death of the other parent. The surviving parent could have been a U.S. citizen through naturalization before the other parent died. A child whose noncitizen parent died after the naturalization of the surviving parent derived citizenship on the date of the death of the noncitizen parent, if the child was under the age of 18, and met all other requirements for derivation.

D. Naturalization of Parent Having Legal Custody Where There Has Been a Legal Separation of the Parents

Former INA 321 also provided for a child to derive citizenship if there was a legal separation of the parents and the parent having legal custody of the child naturalized.[7]

1. Legal Separation or Divorce of the Parents

In order for parents to legally separate, they must be married or in a legally recognized relationship, from which they could legally separate. If parents were never lawfully married there can be no "legal separation" or divorce. The term "legal separation" means "a formal, judicial alteration of the marital relationship."[8]

An informal separation is not sufficient to render the parties legally separated.[9] For purposes of former INA 321, a relevant court must have determined the legal separation (or the divorce).

Under former INA 321(a)(3), it is not a requirement that children be born in wedlock to derive citizenship based upon the naturalization of the parent who had legal custody of the child where there was a legal separation of the parents. Children born out of wedlock could derive citizenship if their parents later married and then legally separated before the child reached the age of 18.[10] As long as the child met all requirements before the age of 18 years, legal separation did not need to occur before the parent's naturalization.[11]

2. Legal Custody

Legal custody, which refers to the responsibility for and authority over a child, is determined according to the relevant jurisdiction's law or is determined by a court decree or order. If there was a judicial determination or judicial or statutory grant of custody, then the parent to whom custody was granted had legal custody for former INA 321 purposes.[12]

A child of a naturalized U.S. citizen and a noncitizen, whose parents divorced or legally separated, derived citizenship under former INA 321 on the date the naturalized U.S. citizen parent was awarded custody of the child, if all other conditions were met.[13]

If the parent naturalized after the date that custody was awarded to the naturalizing parent, the child would derive citizenship under former INA 321(a) on the date of the naturalization of the custodial parent, provided that the child was under the age of 18 and all other conditions were met. If the child resided outside the United States when the U.S. citizen parent was awarded custody and naturalized, the child would derive citizenship after beginning to reside permanently in the United States while under the age of 18.[14]

Actual Uncontested Custody

If a child's parents divorced or legally separated, but the decree of divorce or legal separation order was silent on the custody determination and the relevant jurisdiction's law did not determine which parent had custody of the children, then USCIS considers the U.S. citizen parent who had actual uncontested (physical) custody of the child to have had legal custody of the child.[15] Evidence showing the child was living with the U.S. citizen parent establishes "actual, uncontested custody."[16]

Joint Custody

For purposes of former INA 321, unlike current INA 320, some courts have held that "legal custody" does not include joint custody and instead requires sole legal custody. In particular, sole legal custody is required for applicants residing within the jurisdiction of the Fifth and Ninth Circuits of the U.S. Courts of Appeals.[17] If there is no controlling law in a particular jurisdiction stating that sole legal custody is required, joint custody is sufficient to satisfy the legal custody requirement under former INA 321.

Private Custody Agreement

A private custody agreement between the parents generally does not impact the judicial custody determination following the divorce or legal separation for purposes of citizenship claims.[18] However, an applicant may provide documentation of a state law that recognized an informal custody agreement between parents. If such a state law existed, an informal custody agreement may determine which parent had legal custody, if there was no court decree or the court decree was silent as to a formal custody agreement.[19]

Nunc Pro Tunc Custody Orders

Sometimes, evidence supporting a claim of citizenship may include a nunc pro tunc[20] correction of a custody order that retroactively modifies a legal custody order. For purposes of derivative citizenship, USCIS does not recognize nunc pro tunc custody orders if entered after the child's 18th birthday that change the legal custody order from the time it was entered.[21]

E. Naturalization of Mother When Child Was Born Out of Wedlock and Paternity Not Established by Legitimation

A child born out of wedlock whose mother naturalized, and whose paternity was not established by legitimation, derived citizenship under former INA 321[22] on the date the mother naturalized, if the child was under the age of 18, and if the child was residing in the United States following a lawful admission for permanent residence. If the child resided outside the United States, the child would derive citizenship after beginning to reside permanently[23] in the United States while under the age of 18.

Officers should review the legitimation laws of the father's and child's residence or domicile, whether in the United States or outside the United States, to determine if a child's paternity was established by legitimation. [24]

1. Paternity Not Established by Legitimation

If the child was legitimated, generally paternity was established by legitimation, and therefore the naturalization of the mother was not sufficient for the child to meet the requirements of the second clause of former INA 321(a)(3).[25] However, there are cases where a child was legitimated, yet the child's paternity was not established by legitimation.

Many countries have eliminated legal distinctions between legitimate and illegitimate children based on the marital status of their parents. In these countries, all children have equal rights and as such they are considered legitimate; therefore, paternity has generally been established by legitimation. However, some countries that have eliminated the legal distinctions between children born in wedlock and those born out of wedlock, may also have retained formal means of legitimation (for example, legitimation through the marriage of the parents).

In these cases, for purposes of former INA 321(a)(3), paternity was established by legitimation only if legitimation was achieved through the formal affirmative act required by the law.[26] If such act did not occur (for example, the child's parents never married), then paternity was not established by legitimation, even if the country eliminated legal distinctions between legitimate and illegitimate children. Therefore, in these cases, the child may have derived U.S. citizenship from the mother if all other requirements were satisfied. The burden is on the applicant to establish the requirements for derivative citizenship by a preponderance of evidence.[27]

Retention of U.S. Citizenship

A child who derived U.S. citizenship because the child's mother naturalized and paternity had not been established by legitimation does not lose citizenship if the father later legitimated the child and paternity was established under this clause of former INA 321.

F. Definition of Reside Permanently

Generally, a child must be lawfully admitted for permanent residence to derive U.S. citizenship under former INA 321. However, former INA 321 also states that the child may derive citizenship if the child "begins to reside permanently in the United States" after the parent or parents' naturalization while under the age of 18 years. [28]

Some circuit courts of appeals have defined "reside permanently" to not require a lawful admission for permanent residence. In the Second Circuit (New York, Connecticut, and Vermont), and the Ninth Circuit (Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii, and Northern Mariana Islands), the child is not required to become a lawful permanent resident before the age of 18, provided that the child shows some objective official manifestation of permanent residence in the United States while under age 18.[29] In these jurisdictions, a child begins to reside permanently in the United States when the child is physically in the United States, intends to reside in the United States permanently, and has taken some official action to accomplish that, such as applying for lawful permanent residence.[30]

Outside the Second and Ninth Circuits, USCIS follows Board of Immigration Appeals (BIA) precedent that interprets "reside permanently" as requiring a lawful admission for permanent residence.[31]

G. Adopted Children

As originally enacted in 1952, former INA 321 did not apply to adopted children[32] of naturalized citizens. Adopted children could not derive U.S. citizenship from adoptive parents. However, adopted children could still derive from their biological parents if they met all other requirements, provided that the child's adoption did not terminate the parental relationship with the naturalizing parent or parents.[33]

On October 5, 1978, Congress amended former INA 321 to allow an adopted child to derive citizenship if the child was residing in the United States in the custody of the adoptive parent or parents, following a lawful admission for permanent residence at the time the adoptive parent or parents naturalized.[34]

H. Application for Certificate of Citizenship (Form N-600)

1. Submission of Application

A person born outside the United States who claims to have derived U.S. citizenship is not required to have evidence of such status. However, if the person chooses to seek documentation of U.S. citizenship status, the person may file an Application for Certificate of Citizenship (Form N-600) with USCIS.[35]

The Form N-600 must be submitted in accordance with the form instructions and filed with the required fee.[36] There is no filing fee for Form N-600 for current or former members of the U.S. armed forces if they are filing on their own behalf.

Jurisdiction

The Secretary of Homeland Security has jurisdiction over the administration and enforcement of the INA within the United States, and the Secretary of State has jurisdiction over claims of U.S. citizenship made by persons who are outside of the United States.[37] Therefore, generally, an Application for Certificate of Citizenship is submitted by persons who claim U.S. citizenship and are present within the United States. However, when a person who does not live in the United States files Form N-600, USCIS accepts and processes the application, but does not make a decision on the merits until the person is present in the United States in order to ensure that USCIS has jurisdiction over the application.[38]

2. Photographs and Signature

USCIS may require the applicant (person seeking the Certificate of Citizenship), regardless of age, to appear at a local Application Support Center (ASC)[39] for photograph and signature submission.[40] A parent or legal guardian may sign for a mentally incompetent person.[41]

USCIS does not submit information collected in connection with Form N-600 to the Federal Bureau of Investigation (FBI) for a background check.

Failure to Appear for the ASC Appointment

USCIS may consider the Form N-600 abandoned in cases where the person seeking a Certificate of Citizenship fails to appear for the ASC appointment, unless, by the appointment time, USCIS receives a change of address or rescheduling request that USCIS concludes warrants excusing the failure to appear.[42]

If USCIS denies the application due to abandonment, the person eligible for the Certificate of Citizenship may submit a motion to reopen by filing a Notice of Appeal or Motion (Form I-290B).[43]

USCIS does not deny an application for abandonment for failure to provide photographs if USCIS has evidence that the applicant is a member of the U.S. armed forces who is permanently or temporarily outside the United States and unable to provide photographs or appear to submit a photograph and signature for reasons related to the individual's military service. USCIS coordinates with military service members in these circumstances.

3. U.S. Passport or Consular Report of Birth Abroad as Evidence of Citizenship

A person may also apply for a U.S. passport with the U.S. Department of State (DOS) to serve as evidence of their U.S. citizenship.[44] A U.S. passport is valid for a limited time as established by DOS policies and standards on passport issuance.[45] Once a passport expires, it is no longer conclusive evidence of citizenship.[46] However, a Certificate of Citizenship never expires.

A valid, unexpired U.S. passport or a Consular Report of Birth Abroad (CRBA) serves as evidence of a person's U.S. citizenship.[47] An applicant for a Certificate of Citizenship may submit a valid and unexpired U.S. passport as evidence of U.S. citizenship.[48] The officer must review the valid U.S. passport and the documentation submitted with the application and contained in the record to determine if it was issued properly.

The officer approves the Form N-600 if the applicant is a U.S. citizen and meets all requirements.

4. Request to Revoke U.S. Passport or Cancel Consular Report of Birth Abroad

If the officer determines that the applicant is not a U.S. citizen or USCIS has evidence indicating that a U.S. passport submitted as evidence was obtained or issued illegally, fraudulently, or erroneously, the officer reviews the case with USCIS counsel. Then, if appropriate, the officer may request that DOS revoke the U.S. passport.[49]

Only DOS has the authority to revoke a U.S. passport or cancel a CRBA.[50] DOS may revoke a U.S. passport in cases where the passport was obtained or issued illegally, fraudulently, or erroneously.[51]

USCIS provides the following information to DOS in the passport revocation request:

- The applicant's complete biographic information, including name and any known aliases;
- The applicant's last known address;
- All previous unexpired U.S. passport numbers and alien registration numbers (A-numbers);
- An explanation for requesting revocation, including reasons for the request, analysis of the facts and dates used in determining that the passport should be revoked, and evaluation of evidence indicating that the applicant did not acquire U.S. citizenship;
- Copies of all documentary evidence in support of the request, including certified translations of any documents written or originally prepared in a foreign language; and
- The contact information of the USCIS office making the request.

Adjudication of Application with Revocation Request

After reviewing the case on the merits and requesting a revocation of a U.S. passport from DOS, the officer generally may not complete the adjudication of the Form N-600 until DOS responds.

If DOS notifies USCIS that it does not intend to revoke the passport, USCIS approves the Form N-600.[52] However, in cases with unusual or complex circumstances, USCIS may further consult with DOS.

If USCIS has evidence indicating that a U.S. passport submitted as evidence was obtained or issued illegally, fraudulently, or erroneously, and the passport was valid at the time of filing, but is expired at the time of adjudication, the officer should review the case with USCIS counsel and DOS before adjudicating.[53]

If DOS revokes the U.S. passport, the officer denies the application in cases where the applicant does not otherwise meet the eligibility requirements for issuance of a Certificate of Citizenship.

I. Documentation and Evidence

The applicant must submit the following required documents unless the USCIS administrative record already contains such documents, or they do not apply:

- The applicant's birth certificate or record;
- Marriage certificate of applicant's parents, if applicable;
- Death certificate of applicant's parent or parents, if applicable;
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed. For example, this could include a divorce decree, a legal separation order, or a death certificate;
- Evidence of U.S. citizenship of applicant's parent or parents, such as a birth certificate showing birth in the United States, Certificate of Naturalization, Consular Report of Birth Abroad (FS-240), a valid unexpired U.S. passport, or a Certificate of Citizenship;
- Documents verifying legitimation according to the laws of the applicant's residence or domicile or biological U.S. citizen father's residence or domicile if the child was born out of wedlock;
- Documentation of legal custody in the case of divorce, legal separation, or adoption;[54]

- Copy of the applicant's Permanent Resident Card or Alien Registration Receipt Card or other evidence of lawful permanent resident status, such as an Alien Documentation, Identification and Telecommunication stamp in a valid foreign passport or travel document issued by USCIS;
- Copy of the full, final adoption decree, if adopted.[55] If the child did not have a foreign adoption that is considered full, final, and complete, the applicant must submit evidence of the final adoption decree or order, or, if the U.S. jurisdiction of the adoptive parent or parents' residence recognizes the foreign adoption decree or order as full and final, evidence establishing this under state law[56] together with the foreign adoption order;[57] and
- Evidence of all legal name changes, if applicable, for the applicant and U.S. citizen parent.[58]

An applicant does not need to submit documents that were submitted in connection with applicant's prior applications, petitions or requests, such as:

- An immigrant visa application retained by a U.S. consulate for inclusion in the immigrant visa package; or
- An immigrant petition or application included in a USCIS administrative file.

If necessary, an officer may request additional documentation to make a decision on the application.

J. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing Form N-600. USCIS, however, may waive the interview requirement if USCIS administrative records already include all the required documentation necessary to establish the applicant's eligibility or if the applicant submits the required documentation along with the application.[59]

K. Decision and Oath of Allegiance

1. Approval of Application and Oath of Allegiance

Once the applicant has met all the requirements for citizenship, USCIS approves the Form N-600. USCIS determines the date of citizenship based on when the applicant met the last requirement.

USCIS issues proof of U.S. citizenship in the form of a Certificate of Citizenship if USCIS approves the Form N-600 and the person takes the Oath of Allegiance, if required to do so.[60]

USCIS does not mail Certificates of Citizenship outside the United States except when USCIS issues a Certificate of Citizenship to a military member.

If an applicant does not take the Oath of Allegiance and is not eligible for a waiver, USCIS cannot issue a Certificate of Citizenship.[61]

2. Denial of Application

If an officer denies the Form N-600, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.[62] An applicant may file an appeal within 30

calendar days after service of the decision (33 days if the decision was mailed).

Footnotes

[^ 1] Persons born on or after February 28, 1983, were under the age of 18 on February 27, 2001.

[^ 2] Section 321 of the INA, immediately before it was repealed by the CCA, provided 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 eighteen years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.
>
> (b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

See Section 321 of the INA of 1952, Pub. L. 82–414 (PDF), 66 Stat. 163, 245 (June 27, 1952), as amended by Pub. L. 95-417 (PDF), 92 Stat. 917, 918 (October 5, 1978), the INA Amendments of 1981, Pub. L. 97-116 (PDF), 96 Stat. 1611, 1620 (December 29, 1981), the INA Amendments of 1986, Pub. L. 99-653 (PDF), 100 Stat. 3655, 3658 (November 14, 1986), and the Immigration Technical Corrections Act of 1988, Pub. L. 100-525 (PDF), 102 Stat. 2609, 2617-18 (October 24, 1988). For more information on specific requirements during different historical periods before the CCA, see Appendix: Nationality Chart 3 - Derivative Citizenship of Children [12 USCIS-PM H.3, Appendices Tab]. For more information on applicability to adopted children, see Appendix: How Previous Citizenship Provisions Apply to Adopted Children [5 USCIS-PM F, Appendices Tab].

[^ 3] Former Section 320 of the INA, before amendment by the CCA, provided that:

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when-
>
> (1) such naturalization takes place while such child is under the age of eighteen years; and
>
> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while

under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

For more information on applicability to adopted children, see Appendix: How Previous Citizenship Provisions Apply to Adopted Children [5 USCIS-PM F, Appendices Tab].

[^ 4] See *Matter of Baires-Larios* (PDF), 24 I&N Dec. 467, 470 (BIA 2008).

[^ 5] See former INA 321(a)(1).

[^ 6] See former INA 321(a)(2).

[^ 7] See former INA 321(a)(3) (the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents).

[^ 8] See *Nehme v. INS*, 252 F.3d 415, 425–26 (5th Cir.2001) (holding that legal separation under former INA 321(a)(3) means "a formal, *judicial* alteration of the marital relationship" (emphasis in original)). See *Johnson v. Whitehead*, 647 F.3d 120, 125-26 (4th Cir. 2011) (citing cases that parents had to be married at one time to meet legally separated requirement). See *Barthelemy v. Ashcroft*, 329 F.3d 1062 (9th Cir. 2003) (natural parents never married and therefore could not legally separate). See *Thompson vs. Lynch*, 808 F.3d 939 (1st Cir. 2015).

[^ 9] See *Nehme v. INS*, 252 F.3d 415, 425–26 (5th Cir.2001). See *Brissett v. Ashcroft,* 363 F.3d 130, 133-34 (2nd Cir. 2004).

[^ 10] See *United States v. Mayea-Pulido*, 946 F.3d 1055, 1064 (9th Cir. 2020), where the Court held that "a nonmarital child would automatically derive citizenship under [former INA 321(a)(3)] if his parents later married and then legally separated, the same as a marital child whose parents were married at his birth but later separated." See *Levy v. U.S. Attorney Gen.*, 882 F.3d 1364, 1368 (11th Cir. 2018), holding that "the clause does not require that a child be born into wedlock: a child born out of wedlock whose parents later marry and legally separate qualifies" under former INA 321(a)(3).

[^ 11] See *Matter of Baires-Larios* (PDF), 24 I&N Dec. 467 (BIA 2008), reaffirmed by *Matter of Douglas* (PDF), 26 I&N Dec. 197 (BIA 2013).

[^ 12] See *Matter of M-*, 3 I&N Dec. 850 (BIA 1950).

[^ 13] See former INA 321(a)(3) (the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents).

[^ 14] See Section F, Definition of Reside Permanently [12 USCIS-PM H.7(F)].

[^ 15] See *Matter of M-*, 3 I&N Dec. 850 (BIA 1950).

[^ 16] See *Bagot v. Ashcroft*, 398 F.3d 252, 259 (3rd Cir. 2005) (father had legal custody of the child under the "actual uncontested custody" standard where the child lived with him and no one contested the father's custody). See *Garcia v. USICE*, 669 F.3d 91, 97 (2nd Cir. 2011).

[^ 17] See *Bustamante-Barrera v. Gonzales,* 447 F.3d 388, 396 (5th Cir. 2006). See *U.S. v. Casasola,* 670 F.3d 1023, 1029 (9th Cir. 2012). See the Geographic Boundaries of United States Courts of Appeals and United States

District Courts (PDF) website.

[^ 18] For example, a notarized letter from the mother granting custody of the child to the father is insufficient to change a pre-existing judicial custody determination granting legal custody to the mother, unless state law provides otherwise.

[^ 19] See, for example, *Pina v. Mukasey*, 542 F.3d 5 (1st Cir. 2008), which found derivative citizenship where the father was a U.S. citizen, child was living with the mother, but there was an informal agreement to share custody, and Massachusetts statutes and cases favored agreements between the parents as to legal custody of the child.

[^ 20] The Latin phrase "nunc pro tunc," translated as "now for then," denotes that an act has retroactive legal effect through a court's inherent power. See Black's Law Dictionary (12th ed. 2024).

[^ 21] See *Padilla Carino v. Garland*, 997 F.3d 1053 (9th Cir. 2021) (holding that Congress did not intend for this type of nunc pro tunc order). See *Fierro v. Reno*, 217 F.3d 1 (1st Cir. 2000) (refusing to recognize a nunc pro tunc change of custody for purposes of derivative citizenship because it would "allow ... state court[s] to create loopholes in the immigration laws on grounds of perceived equity or fairness" and "a nunc pro tunc order … is not binding under federal law"). See *Bustamante-Barrera v. Gonzales*, 447 F.3d 388, 401 (5th Cir. 2006) ("a nunc pro tunc order to recognize derivative citizenship would create the potential for significant abuse and manipulation of federal immigration and naturalization law"). However, in *Minasyan v. Gonzales*, 401 F.3d 1069, 1079 (9th Cir. 2005), the court found that a dissolution of marriage order entered after the petitioner's 18th birthday "establishes the date of the legal separation for purposes of California law, … it is [also] sufficient to establish the date for purposes of Minasyan's derivative citizenship under [Section] 321(a)." A person derived citizenship under former INA 321 so long as all requirements were met before the person turned 18.

[^ 22] See former INA 321(a)(3) (the naturalization of the mother when the child was born out of wedlock and paternity has not been established by legitimation).

[^ 23] See Section F, Definition of Reside Permanently [12 USCIS-PM H.7(F)].

[^ 24] See INA 101(c)(1). See Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section B, Legitimated Child [12 USCIS-PM H.2(B)].

[^ 25] The second clause of former INA 321(a)(3) referred to "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."

[^ 26] See *Matter of Cross* (PDF), 26 I&N Dec. 485 (BIA 2015).

[^ 27] See 8 CFR 341.2(c).

[^ 28] Former INA 320 also states that the child may derive citizenship if the child "begins to reside permanently in the United States while under the age of eighteen years."

[^ 29] See *Nwozuzu v. Holder*, 726 F.3d 323 (2nd Cir. 2013) ("[B]egins to reside permanently" does not require "lawful permanent resident" status… [but requires]… "some objective official manifestation of the child's permanent residence." Also holding that failure to become a lawful permanent resident before turning 18 years old does not bar the child from claiming derivative citizenship from his parents.). See *Cheneau v. Garland*, 997 F.3d 916, 918 (9th Cir. 2021) (holding that an immigrant could derive citizenship if the parent was naturalized and the child thereafter began to reside permanently in the United States, irrespective of whether

the child had been lawfully admitted for permanent residence and "the phrase 'or thereafter begins to reside permanently in the United States,' does not require that the child have necessarily been granted lawful permanent residency, although the child must have demonstrated an objective official manifestation of permanent residence.").

[^ 30] For questions about which other circumstances may qualify as an objective official manifestation of permanent residence, officers should contact their local counsel in the Office of Chief Counsel (OCC).

[^ 31] See *Matter of Nwozuzu* (PDF), 24 I&N Dec. 609 (BIA 2008). See 8 CFR 103.10(b).

[^ 32] Although many adopted children could not derive citizenship, adoptive parents could apply for naturalization on behalf of certain adopted children. For more information, see Appendix: How Previous Citizenship Provisions Apply to Adopted Children [5 USCIS-PM F, Appendices Tab].

[^ 33] For example, a child who was born out of wedlock to noncitizen parents, whose paternity was not established by legitimation, who was adopted by the stepfather, and whose mother later naturalized, could still derive citizenship from the mother because the adoption did not alter the child's legal relationship with the mother. See Appendix: Nationality Chart 3 - Derivative Citizenship of Children [12 USCIS-PM H.3, Appendices Tab].

[^ 34] See Section 5 of Pub. L. 95-417 (PDF), 92 Stat. 917, 918 (October 5, 1978). The 1978 amendment limited this benefit to a child adopted while under 16 years of age. This restriction was removed by the INA Amendments of 1981, Pub. L. 97-116 (PDF), 96 Stat. 1611 (December 29, 1981), but is also included in the definition of "child" in INA 101(c).

[^ 35] See 8 CFR 341.1.

[^ 36] See 8 CFR 103.2(a)(1).

[^ 37] See INA 103(a)(1) and INA 104(a)(3).

[^ 38] See INA 341(a).

[^ 39] Military service members may appear at any stateside USCIS ASC with or without an appointment. See Part I, Military Members and their Families, Chapter 6, Required Background Checks, Section C, Ways Service Members may Meet Fingerprint Requirement [12 USCIS-PM I.6(C)].

[^ 40] See 8 CFR 103.2(b)(9). See Volume 1, General Policies and Procedures, Part C, Biometrics Collection and Security Checks, Chapter 2, Biometrics Collection [1 USCIS-PM C.2].

[^ 41] See 8 CFR 103.2(a)(2). See Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 2, Signatures [1 USCIS-PM B.2].

[^ 42] See 8 CFR 103.2(b)(13)(ii). See Volume 1, General Policies and Procedures, Part C, Biometrics Collection and Security Checks, Chapter 2, Biometric Collection, Section A, Biometric Services Appointments [1 USCIS-PM C.2(A)].

[^ 43] See 8 CFR 103.5 and 8 CFR 341.5(e). Although a person may file a motion to reopen a denial due to abandonment, such a denial may not be appealed to the Administrative Appeals Office. See 8 CFR 103.2(b)(15). Moreover, USCIS rejects any subsequent Form N-600, and instructs the applicant to submit a motion to reopen. See 8 CFR 341.5(e).

[^ 44] See 22 CFR 50.4.

[^ 45] See 8 FAM 101.1, Introduction to U.S. Passports and Consular Reports of Birth Abroad.

[^ 46] See 22 U.S.C. 2705.

[^ 47] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984) (Unless void on its face, a valid U.S. passport issued to a person as a citizen of the United States constitutes conclusive proof of the person's U.S. citizenship.). See 22 U.S.C. 2705 (A valid U.S. passport or CRBA have "the same force and effect as proof of United States citizenship" as Certificates of Naturalization or Certificates of Citizenship issued by USCIS.). See 22 CFR 50.2.

[^ 48] A U.S. passport or CRBA does not serve as evidence of citizenship for noncitizen nationals.

[^ 49] See 22 U.S.C. 211a. See 22 CFR 51.60. See INA 361. See Rules Governing the Granting, Issuing, and Verifying of United States Passports, 31 FR 10603 (PDF) (Aug. 5, 1966). See Chapter 3, U.S. Citizens at Birth (INA 301 and 309), Section D, Application for Certificate of Citizenship (Form N-600), Subsection 3, Request to Revoke U.S. Passport or Cancel Consular Report of Birth Abroad [12 USCIS-PM H.3(D)(3)].

[^ 50] The process to request cancellation of a CRBA to DOS is the same as that for a passport revocation. The same process should be followed to request the revocation of a parent's or grandparent's U.S. passport or CRBA, when USCIS, while adjudicating Form N-600, determines that it was issued illegally, fraudulently, or erroneously.

[^ 51] See INA 361.

[^ 52] See *Matter of Villanueva* (PDF), 19 I&N Dec. 101 (BIA 1984).

[^ 53] Officers may not accept an expired U.S. passport as sufficient evidence of citizenship. In these cases, officers may need to request other evidence of U.S. citizenship.

[^ 54] Generally, USCIS considers the adoption decree or order to be evidence of legal custody.

[^ 55] For more information about evidence for adopted children, see Volume 5, Adoptions, Part F, Citizenship for Adopted Children, Chapter 3, Eligibility, Documentation, and Evidence, Section B, Child Residing in the United States, Subsection 2, Certificate of Citizenship [5 USCIS-PM F.3(B)(2)]

[^ 56] For example, a certificate of recognition of adoption from the state court, or a copy of the state statute indicating that the state recognizes all foreign adoptions. To determine if the adopted child meets the requirements applicable to adopted children, USCIS reviews the file, including any evidence indicating that the child was admitted to the United States as a lawful permanent resident (LPR) through an adoption-based petition. See Volume 5, Adoptions, Part C, Child Eligibility Determinations (Orphan) [5 USCIS-PM C]. See Volume 5, Adoptions, Part D, Child Eligibility Determinations (Hague) [5 USCIS-PM D]. See Volume 5, Adoptions, Part E, Family-Based Adoption Petitions [5 USCIS-PM E].

[^ 57] As long as the state recognizes the adoption before the age of 18, the child has met this requirement for derivation under former INA 321.

[^ 58] See the instructions for the Application for Certificate of Citizenship (Form N-600).

[^ 59] See 8 CFR 341.2(a)(1). See Section I, Documentation and Evidence [12 USCIS-PM H.7(I)].

[^ 60] See 8 CFR 341.5(b) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

[^ 61] See INA 341(a).

[^ 62] See 8 CFR 341.5(d) and 8 CFR 103.3.

Current as of November 21, 2024