

NATURALIZATION, ACQUISITION, AND DERIVATION OF U.S. CITIZENSHIP

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NATIONALITY LAWS

- Immigration and Nationality Act (INA) – Title III
- INA Sections 301 through 361
- 8 Code of Federal Regulations – 8 CFR
- 8 CFR Sections 301 through 349, 392, 499

OVERVIEW OF CITIZENSHIP

- **Three ways a person *automatically* becomes a citizen:**
 - Birth -- INA §301(a) & (b) & 14th Amend. Jus Soli and Jus Sanguine
 - Acquisition – INA §§301 & 309
 - Derivation -- INA §320
 - <https://www.ilrc.org/acquisition-derivation-quick-reference-charts>

OVERVIEW OF CITIZENSHIP

- **Two ways a person can *apply* to become a citizen**
 - Naturalization – INA §§101(a)(23) & 316
 - Naturalization of children - INA § 322

ACQUISITION VS. DERIVATION

- Acquisition = at birth
- Derivation = later event

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Poll: 1. Which of these statements is true?



BORN IN THE U.S.A

The 14th Amendment of the United States Constitution provides that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” The INA at 301(a) codifies this right stating “a person born in the United States, and subject to the jurisdiction thereof” is a national and citizen of the United States at birth.

- Birth in one of 50 states (not to diplomat)
- Birth in one of the territories (Puerto Rico, Guam, Virgin Islands)
- For some, birth in Panama, Canal Zone, Northern Mariana Islands

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Poll: 2. True or False: A child born outside the U.S. automatically acquires U.S. citizenship at birth as long as at least one parent is a U.S. citizen.

FACTORS IN ACQUISITION

- Where was person born?
- When was the person born?
- Was one or both parents a U.S. citizen?
- Were the parents married?
- Was the child born through ART?

CHILDREN BORN OUTSIDE THE U.S.

Two U.S. citizen parents married at the time of birth: automatic acquisition of citizenship if one of the U.S. citizen parents resided in the U.S. prior to the child's birth.

One U.S. citizen parent or two unmarried U.S. Citizen parents: automatic acquisition....but more complicated.

**United States Citizenship and Immigration Services
Policy Manual – Part H – Children of U.S. Citizens
Appendix: Nationality Chart 1
Children Born Outside the U.S. to Married Parents**

PERIOD IN WHICH CHILD WAS BORN – STEP 1: <i>Determine period in which child was born</i>	CITIZENSHIP OF PARENTS AT TIME OF CHILD’S BIRTH – STEP 2: <i>Determine parents’ citizenship at time of child’s birth</i>	PARENTS’ RESIDENCE AND PHYSICAL PRESENCE PRIOR TO CHILD’S BIRTH – STEP 3: <i>Did U.S. citizen (USC) parent meet residence or physical presence requirement prior to birth? (If yes, child was a USC at birth)</i>
<i>On or After Dec. 24, 1952 and Prior To Nov. 14, 1986</i>	Both parents USCs	At least one USC parent resided in the U.S.
	One USC parent and one noncitizen parent	USC parent physically present in the United States for 10 years, at least 5 years of which were after age 14
<i>On or After Nov. 14, 1986</i>	Both parents USCs	At least one USC parent resided in the United States
	One USC parent and one noncitizen parent	USC parent physically present in the United States for 5 years, at least 2 years of which were after age 14

**United States Citizenship and Immigration Services
Policy Manual – Part H – Children of U.S. Citizens
Appendix: Nationality Chart 2**

Children Born Outside the U.S. to Two U.S. Citizen Parents – Unmarried

PERIOD IN WHICH CHILD WAS BORN	ELIGIBILITY REQUIREMENTS
On or After Dec. 24, 1952 and Prior To Nov. 14, 1986	<p>If both parents are U.S. citizens, the child may qualify under either parent. The child must meet the requirements for acquisition of citizenship under the mother OR the father; the child does not need to meet both requirements.</p> <p><i>Citizenship through U.S. Citizen Mother</i></p> <ul style="list-style-type: none"> • The mother had at least 1 year of continuous physical presence in the United States at any time prior to the child’s birth. <p><i>Citizenship through U.S. Citizen Father</i></p> <ul style="list-style-type: none"> •The child was legitimated before age 21 under the laws of the father’s domicile; •The child was legitimated PRIOR TO Nov. 14, 1986; •The child must be unmarried; and •Either parent resided in the United States at any time prior to the child’s birth.
On or After Nov. 14, 1986 and Prior To June 12, 2017	<p><i>Citizenship through U.S. Citizen Mother</i></p> <ul style="list-style-type: none"> •The mother had at least 1 year of continuous physical presence in the United States at any time prior to the child’s birth. <p><i>Citizenship through U.S. Citizen Father</i></p> <ul style="list-style-type: none"> •The child was legitimated OR acknowledged before age 18* (legitimated under the laws of the child’s residence or domicile; or paternity acknowledged in writing under oath; or paternity established by court order); •A blood relationship between the child and father was established; •The father, unless deceased, has agreed in writing to provide financial support until child reaches age 18; •The child must be unmarried; and •Either parent resided in the United States at any time prior to the child’s birth. <p>*A child age 18 or over on Nov. 14, 1986 could use the old law. A child at least age 15, but under 18, could use either law (date of birth on or after Nov. 15, 1968).</p>
On or After June 12, 2017	<p><i>Citizenship through U.S. Citizen Mother</i></p> <ul style="list-style-type: none"> •The mother . citizen father) was physically present in the U.S. for at least 5 years prior to the child’s birth (at least 2 years of which were after age 14). <i>Citizenship through U.S. Citizen Father</i> •The child was legitimated OR acknowledged before age 18 (legitimated under the laws of the child’s residence or domicile; or paternity acknowledged in writing under oath; or paternity established by court order); •A blood relationship between child and father was established; •The father, unless deceased, has agreed in writing to provide financial support until child reaches age 18; •The child must be unmarried; and •Either parent resided in the United States at any time prior to the child’s birth.

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Appendix: Nationality Chart 2**

Children Born Outside the U.S. to U.S. Citizen Mother & Noncitizen Father - Unmarried

PERIOD IN WHICH CHILD WAS BORN	ELIGIBILITY REQUIREMENTS
Prior To May 24, 1934	The mother resided in the United States at any time before the child's birth.
On or After May 24, 1934 and Prior To Dec. 24, 1952	The mother resided in the United States or OLP at any time prior to the child's birth.
On or After Dec. 24, 1952 and Prior To June 12, 2017	The mother maintained at least 1 year of continuous physical presence in the United States or OLP at any time prior to the child's birth.

United States Citizenship and Immigration Services
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Appendix: Nationality Chart 2

Children Born Outside the U.S. to U.S. Citizen Father & Noncitizen Mother - Unmarried

PERIOD IN WHICH CHILD WAS BORN	ELIGIBILITY REQUIREMENTS
On or After May 24, 1934 and Prior To Jan. 13, 1941	<ul style="list-style-type: none"> • The child was legitimated at any time after birth under the laws of the father's domicile; • The USC father resided in the United States prior to the child's birth; and • The child met retention requirements.
On or After Jan. 13, 1941 and Prior To Dec. 24, 1952	<ul style="list-style-type: none"> • The child was legitimated before age 21 under the laws of the father's domicile; • The USC father resided in the United States for at least 10 years, at least 5 years of which were after age 14, at the time of the child's birth; and • The child met retention requirements.
On or After Dec. 24, 1952 and Prior To Nov. 14, 1986	<ul style="list-style-type: none"> • The child was legitimated before age 21 under the laws of the father's domicile; • The child was legitimated PRIOR TO Nov. 14, 1986; • The child must be unmarried; • The USC father was physically present in the United States for 10 years, at least 5 years of which were after age 14, at the time of the child's birth; and • No residence required for the child to retain U.S. citizenship.

DERIVATION OF CITIZENSHIP (INA §320)

- Concept: Automatic citizenship conferred on LPR child by virtue of USC status of parent or parents.
- Order in which qualifying events take place is irrelevant, as long as they occur before child turns 18
- Laws governing derivation have changed several times – may need to refer to the old law

DERIVATION OF CITIZENSHIP ISSUES

- Child defined under INA §101(c)
- Residence in the US and with USC parent
- Legal Custody

CHILDREN BORN OUTSIDE THE U.S. & RESIDING IN THE U.S.

The Child Citizenship Act of 2000 (CCA) codified at INA 320 provides a statutory provision and method for the acquisition of U.S. citizenship for children who were under 18 years old on February 27, 2001 or born on or after this date.

- Child automatically becomes a citizen when ***all*** of the following requirements are met:
 - ❑ At least one parent is a citizen either by birth or by naturalization
 - ❑ Child is under age 18
 - ❑ Child is not married
 - ❑ Child is a lawful permanent resident
 - ❑ Child is residing in the U.S. in the legal and physical custody of the citizen parent

BENEFITS OF U.S. CITIZENSHIP

- Right to vote
- Get a US Passport
- Apply for some jobs in the government
- Bring close family members to the US
- Expansion of Benefits
- You can never be deported

UNDER WHAT CIRCUMSTANCES SHOULD YOU NOT FILE FOR NATURALIZATION

- Fraud issues
- Criminal issues
- Tax and estate planning
- Travel
- Documents eligibility
- Others...

NATURALIZATION

INA 316

- Be at least 18 years old
- Be a permanent resident of the U.S. for at least 5 years
- Speak, read and write basic English
- Pass a Civics test on U.S. History and Government
- Have good moral character
- Take an Oath of Allegiance to the U.S.

NATURALIZATION

- INA 319 – spouses of U.S. citizens and employees of nonprofits
- Continuous residence for three years (including CPR)
- Certain spouses of U.S. citizens and certain nonprofit employees employed abroad by the U.S. government, American corporations, public international organizations, or religious workers do not need to meet residence or physical presence requirements
- Certain surviving spouses, children, or parents of USCs who die in active duty of U.S. armed forces

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Poll: 3. According to USCIS data, 91% of naturalization applicants pass the civics portion of the naturalization exam. According to a June 2022 YouGov study, how did Americans fare on this test without advanced preparation?

EXPEDITED NATURALIZATION

The child

- Is residing outside of the U.S. in the legal and physical custody of the parent, is temporarily and legally present in the U.S. and
- Is temporarily and legally present in the U.S. and

The child's U.S. citizen parent

- Has been physically present in the U.S. or its outlying possessions for a good or periods totaling not less than five years. At least two of which were after attaining the age of 14, or
- Has a citizen parent who has been physically present in the U.S. or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of 14

WHAT CAN YOU DO IF AN APPLICATION IS NOT APPROVED?

- Depending on the type of application and where it was filed you may be able to :
 - Appeal
 - Apply for review
 - Sue in Federal Court
 - Refile

QUESTIONS?