

Derivation of U.S. Citizenship

After Birth Abroad

Introduction

United States law provides for the legal permanent resident children of U.S. citizen parents to automatically become citizens of the U.S. under certain circumstances. U.S. citizenship is derived based on operation of law, and an application for naturalization is not required. While the children of U.S. citizens born abroad may **acquire** U.S. citizenship at the time of their birth, derivation of citizenship occurs after the child's birth where the child is a legal permanent resident. Although the laws affecting derivation of citizenship have changed over the course of time, in general the laws governing derivation have required a combination of qualifying events to occur before the child reaches a specific age. The law that applies to the person seeking to demonstrate derivation of citizenship is the law that was in effect at the time that the "last qualifying act" took place.

Law in Effect for Children Who Were Under 18 on or after February 27, 2001:

The law currently in effect, the Child Citizenship Act of 2001, INA § 320, took effect on February 27, 2001, and instituted three major requirements for automatic derivation of citizenship. The child must (1) have at least one U.S. citizen parent, the child must (2) be under the age of 18 and the child must (3) be residing in the U.S. as a legal permanent resident in the physical and legal custody of the U.S. citizen parent.

The regulations at 8 CFR § 320.1 specify the circumstances under which the U.S. citizen parent is presumed to have the necessary legal custody of a child **born in wedlock**. (1) Where the parents are married and living together, both parents will be deemed to have legal and physical custody. (2) Where one of the parents is deceased, and the child lives with the remaining parent, that parent will be deemed to have legal and physical custody. (3) Where the child was born out-of-wedlock, the parent lives with the child, and the parent has legitimated the child while the child was under 16 according to the laws of the legitimating parent of child's domicile, the parent will be deemed to have legal custody. (4) Where the child's parents are legally separated or divorced and a court or other entity has awarded the parents joint custody, both parents will be deemed to have legal custody. (5) Where the parents are divorced or legally separated, the parent that has been awarded custody of the child by a court will be deemed to have legal custody.

The regulations also require that a parent have legal custody of a child born **out-of-wedlock** if the child has been legitimated before the child's 16th birthday and under the laws of the parent or child's domicile. However, a child born out of wedlock to a U.S. citizen mother will be able to derive citizenship through the U.S. citizen mother regardless of whether the child has been legitimated.

A child born out-of-wedlock must be legitimated by and residing with the U.S. citizen parent. Legitimation must occur pursuant to the laws of either the father's or the child's residence or domicile.

Adopted children may also derive citizenship through a U.S. citizen parent, provided that the adoption conforms to the requirements of INA 101(b)(1). However stepchildren may not derive citizenship through a U.S. citizen step-parent, unless they are also adopted.

Law in Effect for Children Who Were Under 18 on or after October 5, 1978 and prior to February 26, 2001:

Prior to the Child Citizenship Act of 2001, a permanent resident child derived citizenship if both parents naturalized, the child was under age 18, and the child was not married. If both parents did not naturalize, the child could also derive citizenship if one of the following took place: (1) the other parent was or became a U.S. citizen prior to the child's 18th birthday, (2) the child was born out-of-wedlock and not legitimated before the age of 16 and the naturalized parent was the mother, (3) the child's other parent was deceased, or (4) the parents were divorced or separated and the naturalized parent had legal custody of the child following divorce or separation.

If the child is born out-of-wedlock and is legitimated, the child can derive only if both parents naturalize, or if the non-naturalizing parent is dead.

Adopted children may derive citizenship if the child is residing in the U.S. at the time of the adoptive parent's naturalization, is in the legal custody of the adoptive parent, is a lawful permanent resident and the adoption occurred before the child turned 18. Stepchildren cannot derive citizenship.

Law in Effect for Children Who Were Under 18 on or after December 24, 1952 and prior to October 5, 1978:

The law in effect between December 24, 1952 and October 5, 1978 contained the same requirements as the law in effect from October 5, 1978 to February 26, 2001, with one exception. The law in effect from December 24, 1952 through October 5, 1978 did **not** provide for derivation of citizenship for adopted children.

For Derivation Requirements in Earlier Statutes, see Chart C.