

**CHART B: ACQUISITION OF CITIZENSHIP
DETERMINING IF CHILDREN BORN OUTSIDE THE U.S. AND
BORN OUT OF WEDLOCK ACQUIRED U.S. CITIZENSHIP AT BIRTH**

PART 1 — Mother was a U.S. citizen at the time of the child's birth.

PART 2 — Mother was not a U.S. citizen at the time of the child's birth and the child was legitimated or acknowledged by a U.S. citizen father.

Please Note: A child cannot acquire citizenship at birth through an adoption.¹

PART 1: MOTHER IS A U.S. CITIZEN AT THE TIME OF THE CHILD'S BIRTH

Date of Child's Birth:	Requirements:
Prior to 12/24/52: ²	<p>Mother was a U.S. citizen who had resided in the U.S. or its outlying possessions at some point prior to birth of child</p> <p>EXCEPTION: The child will not acquire citizenship through the U.S. citizen mother if he or she was legitimated by the father under the following circumstances:³</p> <ol style="list-style-type: none"> 1. The child was born before 5/24/34; 2. The child was legitimated before turning 21; <u>AND</u> 3. The legitimation occurred before 1/13/41.
On/after 12/24/52:	Mother was U.S. citizen physically present in the U.S. or its outlying possessions for a continuous period of 1 year at some point prior to birth of child.

PART 2: MOTHER WAS NOT A U.S. CITIZEN AT THE TIME OF THE CHILD'S BIRTH AND THE CHILD HAS BEEN LEGITIMATED OR ACKNOWLEDGED BY FATHER,⁴ WHO WAS A U.S. CITIZEN WHEN CHILD WAS BORN⁵

Date of Child's Birth:	Requirements:
Prior to 1/13/41:	<ol style="list-style-type: none"> 1. Child legitimated at any time after birth, including adulthood, under law of father's domicile. 2. Use CHART A for residency requirements to determine if child acquired citizenship at birth.
On/after 1/13/41 and prior to 12/24/52:	<ol style="list-style-type: none"> 1. Child legitimated before age 21 under law of father's domicile, or paternity established through court proceedings before 12/24/52. 2. Use CHART A for residency requirements to determine if child acquired citizenship at birth unless paternity established through court proceeding.⁶
On/after 12/24/52 and prior to 11/15/68:	<ol style="list-style-type: none"> 1. Child legitimated before age 21 under law of father or child's domicile.⁷ 2. Use CHART A for residency requirements to determine if child acquired citizenship at birth.
On/after 11/15/68 and prior to 11/15/71:	<p style="text-align: center;">OPTION A:</p> <ol style="list-style-type: none"> 1. Child legitimated before age 21 under law of father or child's domicile. 2. Use CHART A for residency requirements to determine if child acquired citizenship at birth. <p style="text-align: center;">OPTION B:⁸</p> <ol style="list-style-type: none"> 1. Child/father blood relationship established by clear and convincing evidence;⁹ 2. Father must have been a U.S. citizen at the time of child's birth; 3. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until s/he reaches 18;¹⁰ and 4. While child is under age 18, child must be legitimated under law of child's residence or domicile,¹¹ <u>or</u> father must acknowledge paternity of child in writing under oath, <u>or</u> paternity must be established by competent court. 5. Use CHART A for residency requirements to determine if child acquired citizenship at birth.
On/after 11/15/71: ¹²	<ol style="list-style-type: none"> 1. Child/father blood relationship established by clear and convincing evidence;⁸ 2. Father must have been a U.S. citizen at the time of child's birth; 3. Father, unless deceased, must provide written statement under oath that he will provide financial support for child until s/he reaches 18; and 4. While child is under age 18, child must be legitimated under law of child's residence or domicile, <u>or</u> father must acknowledge paternity of child in writing under oath, <u>or</u> paternity must be established by competent court. 5. Use CHART A for residency requirements to determine if child acquired citizenship at birth.

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Please Note: This Chart is intended as a general reference guide and the ILRC recommends practitioners research the applicable laws and INS Interpretations for additional information.

Endnotes for Chart B

¹ See *Marquez-Marquez v. Gonzales*, 455 F.3d 548 (5th Cir. 2006) (holding that petitioner did not obtain citizenship at birth based on adoption by U.S. citizen since INA § 301(g) did not address citizenship through adoption); see also *Colaianni v. INS*, 490 F.3d 185 (2d Cir. 2007) (same); but see *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000) (explaining that a child acquired U.S. citizenship at birth even though neither of his biological parents were citizens, but at the time of his birth his mother was married to a U.S. citizen); *Solis-Espinoza v. Gonzales*, 401 F.3d 1091 (9th Cir. 2005); see also 7 FAM 1131.4(a) (requiring an actual blood relationship; birth in wedlock insufficient to presume paternity for acquisition).

² A qualifying child born before 5/24/34 acquired U.S. citizenship when the Nationality Act of 1940, effective 1/13/41, bestowed citizenship upon the child retroactively to the date of birth.

³ *Matter of M-*, 4 I&N Dec. 440, 443–44 (BIA 1951).

⁴ Many of the criteria for “legitimation” look to the law of the child or father’s domicile. Note that the Fifth Circuit recently held that a child was “legitimated” under Mexican law when his father “acknowledged” him by placing his name on the child’s birth certificate. *Iracheta v. Holder*, 730 F.3d 419 (5th Cir. 2013) (reversing more than three decades of previous interpretation of Mexican requirements).

⁵ If the child did not acquire citizenship through his or her mother, but was legitimated by a U.S. citizen father under the listed conditions, apply the acquisition law pertinent to legitimate children born in a foreign country. (CHART A) Please note that the United States Supreme Court ruled that even though the laws treat children born out of wedlock to U.S. citizen fathers differently than the laws treat children born out of wedlock to U.S. citizen mothers, those laws do not violate equal protection. See *Tuan Anh Nguyen v INS*, 533 U.S. 53 (2001). In *United States v. Flores-Villar*, 536 F.3d 990 (9th Cir. 2008), the Ninth Circuit held that the legitimation requirements under 8 U.S.C. § 1409 for citizen fathers, but not for citizen mothers, did not offend principles of equal protection. The Supreme Court split 4-4 on the issue leaving the Ninth Circuit ruling in place. 131 S. Ct. 2312 (2011) (J. Kagan recused).

⁶ The patchwork of amended laws in this period, some of which did not cross-reference existing laws, has produced several avenues for fulfilling the residency requirements during this period for legitimated children. In this period, if the father legitimates the child before the age of 21, the applicant can apply either the residency requirements set by § 201(g) of the Nationality Act or set by § 301(a)(7) of the former INA. 7 FAM 1134.5-3. Under the INA, one can qualify if the father has 10 years residence in the U.S., 5 of which are after the age of 16 and the child must reside in the U.S. for a period or periods totaling 5 years between the ages of 13 and 21. See 7 FAM 1134.2 (NA). (Or, if the father served honorably in the U.S. Armed Services after Dec. 7, 1941 and before December 31, 1946, then the father must have 10 years in the U.S., 5 of which after the age of 12. In this scenario the child need not be legitimated but must satisfy the INA’s retention requirements. See INA §201(i)). Under the INA, the father must have 10 years residence in the U.S., 5 after the age of 14. The child must have been in the U.S. for 5 years between ages 14 and 28. 7 FAM 1133.2-2 (former INA). However, if the paternity is established through court proceedings, he may only comply with the residence requirements of § 201(g) of the Nationality Act of 1940. Additionally, children of U.S. veterans born in this period may be eligible for citizenship under either the NA or the INA. *Y.T. v. Bell*, 478 F. Supp. 828 (W.D. Pa. 1979); 7 FAM 1134.4.

⁷ For children born out of wedlock, legitimation under the statute in effect during this period, 8 U.S.C. § 1409(a) (1952), must be by the biological father. See *United States v. Marguet-Pillado*, 560 F.3d 1078 (9th Cir. 2009) (holding that a child born out of wedlock, neither of whose natural parents was a U.S. citizen at the time of his birth, cannot acquire citizenship at birth because of a subsequent action by a U.S. citizen); *Martinez-Madera v. Holder*, 559 F.3d 937 (9th Cir. 2009) (explaining that a person born out of wedlock who claims citizenship by birth should actually share a blood relationship with U.S. citizen).

⁸ Individuals born in this range can elect whether to establish citizenship either under Option A, “old” INA § 309, or Option B, “new” INA § 309, amended by the INAA, Pub. L. 99-653 (Nov. 14, 1986). The decision can be based on which requirements are easier for the individual to prove. See 7 FAM 1133.4-2(a)(3).

⁹ Under the clear and convincing standard, INA § 309 does not require a blood test or any other specific type of evidence; the fact-finder must only come to “a firm belief in the truth of the facts asserted.” 7 FAM 1133.4-2; see, e.g., *Miller v. Albright*, 523 U.S. 420, 437 (1977) (noting that clear and convincing standard of proof of paternity does not require DNA evidence) (plurality opinion). Certainly DNA evidence would suffice, but it is unclear how much less convincing evidence could be and still overcome the “clear and convincing” hurdle. Practitioners would be prudent to have DNA testing conducted if possible.

¹⁰ The statutory language does not technically require that the letter be written before the child was 18. *See* 8 U.S.C. § 1409(a)(3). Although there is no case law on point, advocates can nevertheless try to argue that a letter written by the father after the child reaches 18, coupled with proof of actual support while the child was under 18, should still satisfy this requirement. *See Miller v. Albright*, 523 U.S. 420, 432 (1998) (declining to interpret 8 U.S.C. § 1409(a)(3)); *U.S. v. Gomez-Orozco*, 188 F.3d 422 (7th Cir. Aug 05, 1999) (reversing to allow petitioner to explore claim to U.S. citizenship under, among others, 8 U.S.C. 1409(a) even where there was no written statement).

¹¹ Note that if a legitimation occurred, Option A provides the more favorable approach for acquisition of citizenship, not Option B. *See* Endnote 7.

¹² Note that if the child was born on or after 11/15/86, the residence requirement for the U.S. citizen father under CHART A changes.