

# **Acquisition of U.S. Citizenship – Children Born Abroad to U.S. Citizen Parents**

## **Introduction**

United States law grants citizenship at birth to children born abroad to U.S. citizen parents provided that the U.S. citizen parent meets specific requirements. The requirements for the transmission of U.S. citizenship to children born outside the United States, “acquisition” of citizenship, have changed over the years. The laws in effect at the time of the child's birth determine whether citizenship is transmitted in a particular case. In addition to varying requirements due to the enactment of distinct statutes, acquisition requirements distinguish between legitimate and illegitimate children for the purposes of citizenship eligibility. Also, depending upon when the child was born, he or she may have been subject to certain conditions required for retention of citizenship.

## **Requirements – Children Born in Wedlock -- Residence of Parent**

All of the statutes granting citizenship at birth to the children born abroad to a U.S. citizen parent have required the parent to have resided in the U.S. prior to the birth of the child. The period of residence has varied considerably based on the year of the statute's enactment as well as other factors. The other factors governing residency requirements include whether the child was born in wedlock; whether the child was born to two U.S. citizens; whether the child was born to one U.S. citizen and one national parent; or whether the child was born to one U.S. citizen and one non-citizen “alien” parent.

For purposes of counting residence in the U.S., the Foreign Affairs Manual states that where the U.S. citizen parent has the sufficient number of years, citizenship may be acquired even where the exact months or days are unknown. In addition, if the parent is a naturalized U.S. citizen, the time both **before** and after naturalization may be considered.

The most recent amendment of the law on acquisition of citizenship affects children **born in wedlock on or after November 14, 1986**. The residency requirements of Sections 301 and 309 of the Immigration and Nationality Act are:

**Child with Two Citizen Parents:** One parent must have resided in the U.S. or its possessions at any time before the child's birth -- INA §301(c).

**Child with One Citizen Parent and One National Parent:** The citizen parent must have been physically present in the U.S. for one continuous year before the child was born -- INA §301(d).

**Child with One Citizen Parent and One Non-Citizen “Alien” Parent:** The citizen parent must have been physically present in the U.S. for **five years before** the child’s birth. **At least two** of the five years must be after age 14 -- INA §301(g).

**Example of acquisition for children born in wedlock on or after November 14, 1986:**

Eva and Jaime were born and raised in Los Angeles, California and are U.S. citizens. In 1986, when both were age 22, they married. In 1989 they moved to Costa Rica where their daughter Carmen was born on March 5, 1990. Is Carmen a U.S. citizen?

Carmen was born in wedlock on or after November 14, 1986 to two U.S. citizen parents. Under the law in effect when Carmen was born, at least one of her parents must have resided in the U.S. or its possessions at any time prior to Carmen’s birth. Since both Eva and Jaime are U.S. citizens and were born and raised in Los Angeles, either one of them meets the requirement of residence at any time prior to Carmen’s birth. Carmen is a U.S. citizen.

The prior version of the statute on acquisition of citizenship that affects children **born in wedlock on or after December 24, 1952 and prior to November 14, 1986**. The residency requirements for this statute are:

**Child with Two Citizen Parents:** One parent must have resided in the U.S. or its possessions at any time before the child’s birth.

**Child with One Citizen Parent and One National Parent:** The citizen parent must have been physically present in the U.S. for one continuous year before the child was born.

**Child with One Citizen Parent and One Non-Citizen “Alien” Parent:** The citizen parent must have been physically present in the U.S. for **ten years before** the child’s birth. **At least five years** must be after age 14.

The residency requirements in current law on acquisition of citizenship are the same as the December 24, 1952 to November 14, 1986 version of the law for a child with two citizen parents **and** for a child with one citizen parent and one national parent. However, the December 24, 1952 to November 14, 1986 law contains more stringent residency requirements in the case of the child born to one citizen parent and one non-citizen parent. In that instance, the citizen parent is required to reside in the U.S. **for ten years** before the child’s birth, at least **five** of which must be after the age of **14**.

**Example of acquisition for children born in wedlock on or after December 24, 1952 and prior to November 14, 1986:**

Paula, a citizen of Mexico, married John, a U.S. citizen in February 1953. John was born in the U.S. but moved to Mexico at age 16. John was living in Mexico when he met and married Paula.

Shortly after their marriage, Paula and John moved to Ireland where their son Sean was born on December 23, 1954. Is Sean a U.S. citizen?

Sean was born in wedlock on December 23, 1954 to one U.S. citizen parent and one non-citizen parent. In order for Sean's U.S. citizen father John to transmit U.S. citizenship to Sean, John must have resided in the U.S. for at least ten years, at least five of which were after the age of 14. Although John resided in the U.S. for 16 years, only 2 of those years was after the age of 14. John does not meet the residency requirements in effect for children born between December 24, 1952 and November 14, 1986. Sean is not a U.S. citizen.

The prior version of the statute on acquisition of citizenship that affects children **born in wedlock on or after January 14, 1941 and prior to December 24, 1952**. The residency requirements of this statute are:

**Child with Two Citizen Parents or Child with One Citizen Parent and One National Parent:** One parent must have resided in the U.S. or its possessions at any time before the child's birth.

**Child with One Citizen Parent and One Non-Citizen "Alien" Parent:** The citizen parent must have been physically present in the U.S. for **ten years before** the child's birth. At **least five years** must be after age **16**. The residency requirements are reduced if the U.S. citizen parent served honorably in the U.S. Armed Forces. If service was between December 7, 1941 and December 31, 1946, five of the required 10 years of residency may have been after the age of 12. If the service was between January 1, 1947 and December 24, 1952, the U.S. citizen parent must have resided ten years in the U.S. at least five of which were after the age of 14.

**Retention Requirement:**

In addition to the residency requirement for the U.S. citizen parent, **children** born abroad between May 24, 1934 and October 10, 1952 to one citizen parent and one non-citizen parent were also required to reside in the U.S. for specific periods of time. However, successive amendments to the law allowed children born abroad who lost their U.S. citizenship by failing to comply with the retention requirements to regain U.S. citizenship by taking an oath of allegiance to the U.S.

**Example of acquisition for children born in wedlock on or after January 14, 1941 and prior to December 24, 1952:**

George was born in England in June 14, 1946. His mother Emma is a citizen of the U.K. who married Albert, a U.S. citizen, in 1941. Albert was born and raised in New York and moved to England in 1937 when he was 22. Is George a U.S. citizen?

George was born in wedlock on June 14, 1946 to one U.S. citizen parent and one non-citizen parent. In order for George's U.S. citizen father Albert to transmit U.S. citizenship to George, Albert must have resided in the U.S. for at least ten years, at least five of which were after the age of 16. Since Albert was born and raised in New York and lived there until he was 22, he has the required ten years of residency in the U.S., at least five of which were after the age of 16. Therefore Albert meets the residency requirements.

But if George did not fulfill the retention requirements imposed on children born abroad can he still acquire U.S. citizenship through Albert? Even if George did not reside in the U.S. for the required period, he can still acquire U.S. citizenship by taking an oath of allegiance.

**For Residency and Retention Requirements in Earlier Statutes, see Chart A.**

**Requirements – Children Born Out-of-Wedlock**

**Child Out-of-Wedlock to a U.S. Citizen Mother:**

The statute in effect for a child born out-of-wedlock on or after **December 24, 1952 to a U.S. citizen mother** requires the mother to be a U.S. citizen at the time of the child's birth and the mother to be physically present in the United States or one of its outlying possessions for a continuous period of **one year prior** to the child's birth. The mother must be genetically related to the child in order to transmit U.S. citizenship.

The statute in effect for a child born out-of-wedlock **prior to December 24, 1952** to a U.S. citizen mother has the same requirements as the current statute regarding the mother's physical presence but limits acquisition of U.S. citizenship if the father legitimated the child. In that case, the child does not acquire U.S. citizenship through the U.S. citizen mother if the child was born before May 24, 1934, the child was legitimated before turning 21, and the legitimation took place before January 13, 1941.

**Child Out-of-Wedlock to a U.S. Citizen Father:**

A child born abroad out-of-wedlock to a U.S. citizen father **on or after November 15, 1971** may acquire U.S. citizenship under Section 301(g) of the INA, as made applicable by Section 309(a) of the INA provided:

1. A blood relationship between the child and the father is established by clear and convincing evidence;
2. The father was a citizen of the United States at the time of the child's birth;

3. The father met the physical presence requirements indicated above based on the child's date of birth;
4. The father (unless deceased) agreed in writing to provide financial support for the child until the child reaches the age of 18 years, and
5. While the child is under age 18 --
  - the child is legitimated under the law of his/her residence or domicile,
  - the father acknowledges paternity of the child in writing under oath, or
  - the paternity of the child is established by adjudication of a competent court.

A child born abroad out-of-wedlock to a U.S. citizen father **on or after November 15, 1968 and prior to November 15, 1971** may acquire U.S. citizenship under the same standards set forth in the current statute **except** the child must be legitimated before **age 21** under the law of the father or the child's domicile.

**For Requirements Affecting Children Born Out-of-Wedlock to U.S. Citizen Fathers Prior to November 15, 1968, see Chart B.**

*Children born out-of-wedlock may acquire citizenship at birth. However, adopted and stepchildren born abroad can never acquire citizenship.*

*Laws of legitimation vary from country to country and from state to state. The child must be legitimated under the law of the child's residence or domicile. Where there is no distinction in the law between legitimate and illegitimate children, legitimation is deemed to have occurred by operation of law.*