

CHAPTER NINE

CITIZENSHIP THROUGH ACQUISITION, NATURALIZATION AND DERIVATION

III. OVERVIEW

U.S. citizenship status may be conferred in several ways:

- By birth in the U.S.;
- By birth abroad to a U.S. citizen parent or parents (acquisition);
- By naturalization;
- By derivation, where a lawful permanent resident child under 18 resides in the U.S. with at least one citizen parent

In this chapter we will review the basic requirements for establishing citizenship through acquisition, naturalization and derivation.

II. ACQUISITION OF CITIZENSHIP

Children can acquire citizenship at birth when they are born outside of the United States to a U.S. citizen parent or parents. The laws for acquiring citizenship at birth have changed over the years; much depends on the date of birth and what laws for acquisition of citizenship were in effect at that time. A State Department memo summarizing the rules of acquisition of citizenship is found in the appendix to this chapter. Current requirements, applying to children born after November 14, 1986, are listed below.

A. **Child with Two Citizen Parents (INA § 301(c))**

One parent must have lived in the United States or possessions at any time before the child's birth.

B. **Child with One Citizen Parent and One National Parent (INA § 301(d))**

The citizen parent must have lived in the United States or possessions for at least one continuous year before the child was born. (Note: non-citizen nationals are citizens of certain U.S. territories).

C. **Child with One Citizen Parent and One Alien Parent (INA § 301(g))**

The child is a citizen if the citizen parent lived in the United States for five years before the child's birth. At least two of the five years must be after the citizen parent was 14 years old. However, if the child was born in a possession, the citizen parent must have lived in the United States or its territories for at least one continuous year before the child was born.

D. Child Born Out of Wedlock to United States Citizen Mother (INA § 309(c))

The citizen mother must have lived in the United States or its possessions for one continuous year before the child's birth.

Example: Antonio, age 12, was born in Mexico to a USC mother and a Mexican father. His parents never married. When Antonio was ten, his mother returned to the U.S. Antonio and his father have entered the U.S. without inspection to reunite with Antonio's mother. Even though Antonio may think he is in the U.S. illegally, he is a USC as long as he can prove that his mother lived in the U.S. for at least one year before his birth.

E. Child Born Out of Wedlock to United States Citizen Father (INA § 309(a), (b))

The child is a citizen if all of the following conditions are met:

- The father meets the United States residency requirements outlined on the previous page for the appropriate situation: Two citizen parents, one citizen parent and one national parent, or one citizen parent.
- There is clear evidence identifying the child's father.
- The father was a citizen at the time of the child's birth.
- The father has agreed in writing to provide financial support for the child until age 18.
- Before the child is age 18, the child is legitimated; or the father states in writing that he is the father of the child under oath; or the paternity of the child is established by a competent court.

III. NATURALIZATION

A. Overview

Naturalization is the way for immigrants to become US citizens through fulfilling certain substantive and procedural requirements. Unlike acquisition, discussed above, naturalization requires USCIS to specifically determine eligibility and approve an application. Benefits of naturalization include protection against deportation, the right to vote, freedom to travel and remain abroad without abandonment of status, and greater ability to immigrate family members.

B. General Requirements (INA § 316)

LPR Status: An applicant for naturalization must be a lawful permanent resident. The one exception to this requirement is for persons who performed active duty military service during a period of declared war.

Age: You must be at least 18 years of age to file an application for citizenship.

Continuous Residence: Most permanent residents must establish that they have continuously resided in the U.S. as an LPR for at least five years prior to applying for naturalization. LPRs who have been married to and living with a USC for three years, where the spouse has been a USC for that 3 year period, need only show 3 years of continuous residence as an LPR. Other continuous residence exceptions exist for certain LPRs including persons serving in the military, spouses of military personnel and other government employees. In general, continuous residence is broken by absences of one year or more, and there is a presumption that absences of six months or more disrupt continuous residence unless the applicant can prove otherwise. Persons with very lengthy absences from the U.S. also need to consider whether their time outside the U.S. may constitute abandonment of residency, which could lead to removal proceedings and loss of LPR status.

Example: *Kevin, from Panama, became an LPR in 2005. In 2006, Kevin travelled to Brazil to study gymnastics; he obtained a re-entry permit before he left because he knew his course of study would last more than one year. With the prior permission he obtained, Kevin will not be seen as having abandoned his residency status. However, he did break his continuous residence for citizenship purposes. He will need to re-accrue the required continuous residence if he wants to apply to naturalize.*

Example: *Lucia, from Mexico, has been an LPR for 15 years. Eight years ago, when she was 30, Lucia returned to Mexico to live with her family after a bitter divorce from her husband. Lucia sold her belongings before she left, and she then found a place to live in her hometown in Mexico. She lived and worked there for 3 years before returning to the U.S. five years ago. Although Lucia has been continuously residing in the U.S. for the past 5 years, she will have to disclose her 3 year absence on her naturalization application. This may expose Lucia to removal proceedings based on abandonment of residency.*

Physical Presence: An applicant for citizenship must show that s/he has been present in the U.S. for half the required period of continuous residence. Some groups of applicants, including persons who served in the military, may count time abroad as time in the U.S. for the physical presence requirement.

Example: *Kurt, an LPR from Germany, has been married to his USC wife Nina for 4 years. Kurt became an LPR in April 2008. To be eligible for naturalization in April 2011, Kurt will need to show that he has been physically present in the U.S. for 18 of the last 36 months, i.e. half of the required 3 year period of continuous residence for spouses of U.S. citizens.*

Difference Between Continuous Residence and Physical Presence Requirements: The continuous residence requirement focuses on the amount of time an applicant was outside the U.S. on a single trip. The physical presence requirement involves looking at the total number of days a naturalization applicant was outside the U.S. on all of his or her trips.

Example: In the hypothetical above, Kevin had the required physical presence to qualify for citizenship because he was in the U.S for more than half of the past five years. However, Kevin's one-year absence interrupted his continuous residence, so that he needs to wait four years and one day after his return to meet the five-year continuous residence requirement and be eligible for citizenship.

Good Moral Character: Naturalization requires that the applicant be a person of good moral character for the period of required continuous residence. By statute and regulation, certain persons are precluded from establishing good moral character; this includes many individuals with criminal convictions. In certain situations, a criminal record may only bar an applicant from qualifying for citizenship until 5 years after the offense. In other situations, a conviction may constitute a permanent bar to establishing good moral character, and the application for citizenship listing the conviction may expose the applicant to removal proceedings. Other good moral character bars include smuggling and willful failure to support dependents. The regulations relating to good moral character for naturalization purposes are found at 8 CFR Section 316.10 and are included in the appendix to this chapter.

Oath of Allegiance (INA § 337): Naturalization applicants must take an oath of allegiance to the U.S., declaring their willingness to support and defend the U.S.. Persons who have religious or moral objections to military service may take a modified oath. The oath requirement is waived for persons who cannot understand the meaning of the oath because of a physical or developmental disability or a mental impairment.

Literacy and Knowledge of History and Government (INA § 312): All adult applicants, with one exception, must pass an exam showing basic knowledge of U.S. civics, and with a few exceptions, all adult applicants must show some ability to read, write, speak and understand phrases in English. Only the disabled are exempt from this requirement.

LPRs who have resided in U.S. for 20 years and are over age 50, or have resided in the U.S. for 15 years and are over 55 are exempt from the literacy requirement; they must still pass a civics test, but may do it in their own language.

Applicants who are over 65 and have been LPRs for 20 years are not required to read, write or speak English. They may take a simpler version of the civics test in the language of their choice.

Under the Hmong Naturalization Act, certain Laotian war veterans and their spouses or widows are exempt from the English language requirements and may take the simpler civics test available to LPRs over 65 who have had residency status for 20 years. This testing exception applies to soldiers and their spouses who applied for citizenship by November 26, 2001, and to widows who apply by May 1, 2002.

Disability Exception: Physically or developmentally disabled applicants are exempted from both the English and civics requirement. This exemption was created by the Immigration and Nationality Technical Corrections of 1994. Applicants must submit a "Medical Certification for Disability Exceptions" (Form N-648) to establish eligibility for a disability exception to the testing requirements.

A. Procedure

An application for citizenship is filed on Form N-400 (September 2013 Edition). The application should be mailed to the USCIS Service Center covering the state of residence of the applicant; interviews are scheduled by mailed appointment letters, and in many parts of the country there are considerable backlogs in scheduled interviews and swearing-in ceremonies. An application may be submitted up to 90 days before fulfilling the continuous residence requirement for naturalization.

B. New Form N-400 (Dated September 13, 2013)

In February 2014, USCIS released a revised Form N-400. The new form consists of 21 pages, which is significantly longer than the old 10-page form. The new form contains about 40 additional questions related to the following: good moral character, military service, group membership, and past involvement in terrorism, persecution, torture, and genocide. The new N-400 also includes some useful features that help identify eligibility for the English languages exemption and simplified civics test, and for derivative and acquired citizenship. Note that while the form has changed, the eligibility guidelines for naturalization did not change. Old forms are being accepted through May 2, 2014. After this date, only the new form dated September 13, 2013 will be accepted.

Practice Pointer: It is important to realize that an applicant for citizenship may expose information to USCIS in the application process that will cause DHS to institute removal proceedings. This will happen when USCIS discovers facts which may support a charge of deportability. For this reason, it is very important to refer an applicant for further legal counseling from an experienced immigration attorney or accredited representative if there is any concern that the application process may reveal problems about the applicant's residency status.

IV. DERIVATION OF CITIZENSHIP (INA § 320)

A. Overview and Requirements

Derivation of citizenship is when a child automatically becomes a citizen on the basis of one parent's citizenship. The parent may be a citizen by birth or by naturalization. As with acquisition of citizenship, the laws have changed over time. Much depends on when the person was born and what law was in effect before the child turned 18 years old. With the passage of the Child Citizenship Act of 2000, a child automatically becomes a citizen when all of the following conditions are met:

- At least one parent is a citizen, either by birth or by naturalization;
- The child is under age 18;
- The child is not married;
- The child is a lawful permanent resident; and
- The child is in the legal and physical custody of the citizen parent.

Note: Derivation of citizenship does not apply where the USC parent is a stepparent.

Example: *Ibrahim, age 10, is an LPR from Somalia who lives with his parents in Atlanta. They came to the United States as refugees in 2005. Ibrahim's father recently became a U.S. citizen, but his mother is still an LPR. Ibrahim automatically derived citizenship from his father. Ibrahim's sister Aminata, age 19, is also an LPR but she did not acquire citizenship because she was over age 18 when her father naturalized.*

Example: *Tuan, age 15, lives in Vietnam. His parents are divorced, and his father lives in the United States. When Tuan's father became a U.S. citizen, he filed an I-130 to bring Tuan to the United States to live with him. When Tuan enters the United States in March of 2011 at the age of 16, joins his father (father has physical and legal custody), and receives LPR status, he will automatically become a U.S. citizen by derivation.*

Example: *Tricia, a 14 year-old from Ireland, immigrated to the U.S. with her mother Mary, through petitions filed by her mother's USC spouse George. Even though Tricia is an LPR, under age 18, unmarried, and residing in the custody of her mother and stepfather George, she will not derive citizenship because her USC parent is a stepparent.*

The effective date of the Child Citizenship Act was February 27, 2001. LPRs who turned 18 before this date may still have derived citizenship but only where both parents became citizens before their LPR child turned 18 or one parent with custody, in the case of death or divorce.

A. Documenting Derivation of Citizenship

Derivation of citizenship can be documented by applying for a U.S. passport or a certificate of citizenship. In general, it is easier, faster, and cheaper to apply for a U.S. passport than a certificate of citizenship. To get either of these documents, the derivative citizen will need to prove that s/he met the legal requirements that were in effect before reaching age 18.

Note: There is no deadline when applying for documentation of derivative citizenship. Derivation happens automatically, by operation of law.

Example: *Maria is 30 years old, but she has lived in the United States as an LPR since the age of 5. When Maria was 10, both of her parents became U.S. citizens, and she automatically derived citizenship from them. She has been a citizen since the age of 10, even if she never applied for proof of citizenship nor was aware of her citizenship status.*

C. NATURALIZATION OF CHILDREN

When a child of a U.S. citizen does not qualify for automatic citizenship by acquisition or derivation, a citizen parent may apply to naturalize the child. The parent applies for naturalization on the child's behalf using Form N-600K. The process may only apply where the following requirements are met:

- At least one parent is a citizen, either by birth or by naturalization;
- The citizen parent must have lived in the United States for a total of five years, at least two of which were after age 14, or the U.S. citizen parent of the citizen parent (child's grandparent) must have lived in the United States for a total of five years, two of which were after age 14;
- The child is under age 18, and remains under age 18 until the naturalization process is completed;
- The child is not married;
- The child is residing outside of the United States in the legal and physical custody of the citizen parent; and
- The child is temporarily present in the United States under a lawful admission, and remains in lawful status until the naturalization process is completed.

The child does not become a citizen until the USCIS approves the application.

Example: *Erika, an orphan from Thailand, was adopted by two U.S. citizen parents who went overseas after college as Peace Corps volunteers. After finishing in the Peace Corps, they decided to remain overseas and find permanent jobs there. Erika has never lived in the United States, so she is not an LPR. Therefore, she does not qualify for derivative citizenship. Erika's parents first apply to naturalize her using Form N-600K, then apply for Erika's lawful entry into the United States to attend the naturalization interview. They travel with her to the United States, then return with her to their home overseas. Later, Erika's mother becomes pregnant and has a child, a boy named Adrian. Adrian acquires U.S. citizenship at birth through his parents.*