



## Introduction to Immigration Law Practice Week Five

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### Today's Webinar

- U.S. Citizenship: Acquisition, Derivation and Naturalization
- BIA Recognition and Accreditation
- Exercise Review

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### Citizenship

- By birth in U.S.
- Through parents
- By naturalization

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## Benefits of Citizenship

- Travel on U.S. passport
- Vote
- May reside outside U.S.
- No immigration public benefits limits
- Sponsor more family members
- Not subject to deportation

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## Citizenship at Birth in U.S.

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

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## Citizenship Through Parent: Acquisition and Derivation

- Acquisition =  
at birth outside U.S.



- Derivation = event after birth confers  
citizenship



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## Acquisition of Citizenship

- At least one USC parent when child born
- USC parent(s) must have fulfilled residence requirements before child's birth
- Different rules depending on when child born
- Different rules if child born in or out of wedlock
- For some, child had to fulfill residence requirements

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## Requirements if Born on/after 11/14/86 (born in wedlock)

- **Two USC Parents:**
  - One parent must have resided in U.S. or possessions at any time before child's birth
- **One USC Parent and One National Parent:**
  - USC parent must have been physically present in U.S. for one continuous year before child born
- **One USC Parent:**
  - Citizen parent must have been physically present in U.S. for five years before child's birth. At least two of five years must be after age 14.

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## Is Irene a U.S. Citizen ?

- Irene is the daughter of Pearl and Joseph. Pearl was born in U.S. in 1968. When Pearl was 21 years old she moved to Jamaica to live with her boyfriend Joseph. Pearl and Joseph married in 1990 and in 1992 Irene was born in Kingston, Jamaica.
- Is Irene a U.S. citizen ?

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## Requirements if Born Out of Wedlock

- **Child of U.S. Citizen Mother (on/after 12/24/52):**
  - The citizen mother must have lived in the U.S. or its possessions for one continuous year before the child's birth
- **Child of USC Father(on/after 11/15/71):**
  - Citizen father must meet U.S. residency requirements for appropriate situation
  - Clear evidence identifying the child's father
  - Father is USC at child's birth
  - Father agreed in writing to provide financial support for the child until age 18, and
  - Child is legitimated before age 18; or father states in writing under oath; or paternity of child is established by a competent court

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## Derivation of Citizenship

- Concept: Automatic citizenship conferred on **Lawful Permanent Resident** child by virtue of USC parent or parents.
- Different from Acquisition : Doesn't happen at birth
- 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 old law

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## CURRENT REQUIREMENTS (on or after 2/27/2001)

- Child automatically becomes USC when **all** following requirements met:
  - At least one parent is USC either by birth or naturalization
  - Child under age 18
  - Child not married
  - Child is LPR
  - Child residing in U.S. in legal and physical custody of USC parent

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## IS MONIQUE A US CITIZEN ?

- Monique was born in Haiti on June 30, 1990. In 1995 Monique and her parents entered US as LPRs based on 4<sup>th</sup> preference petition filed by her father's brother. On July 1, 2005 Monique's mother naturalized. Her father is still an LPR. Monique has always lived with her parents in the US.
- Is Monique a USC?

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## PROOF OF ACQUISITION AND DERIVATION

- N-600 Certificate of Citizenship
- U.S. Passport



- For Acquisition:
- Consular Report of Birth Abroad of U.S. Citizen (FS-240)
  - For child living outside U.S.
  - Must be submitted before child's 18<sup>th</sup> birthday

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## NATURALIZATION REQUIREMENTS

- At least 18 years old
- LPR (obtained lawfully; not deportable)
- LPR for at least 5 years
- Exceptions:
  - Spouse of USC (3 years as LPR)
  - Refugee/Asylee
  - Members of USAF



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## NATURALIZATION REQUIREMENTS

- Continuous residence
- Physical presence
- Good moral character
- Speak, read, and write basic English
- Pass test on U.S. history, government
- Loyalty oath to U.S.



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## RESIDENCY REQUIREMENTS

- Five years of continuous lawful residence as LPR
- Three years if married to USC
- Physically present for ½ time period
- Three months of local residency
- Continuous residency after application



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## ABSENCES → DISRUPTIONS

- Absences of less than 6 months OK
- 6 months to 1 year presumed to break continuity – prove did not break
- More than 1 year breaks continuity
- Preservation of residence for some
  - Intent irrelevant
  - Certain government employees and religious workers



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## GOOD MORAL CHARACTER

### STATUTORY BARS

- Murder conviction at any time = lifetime bar
- Aggravated felony on/after 11/29/90 = lifetime bar
- Engaged in prostitution
- Alien smuggling
- Polygamy
- Crime(s) of moral turpitude
- Drug crimes
- Multiple crimes with total sentence of more than 5 years
- Drug trafficking



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## GMC Statutory Bars

- Habitual drunkard
- Income principally from illegal gambling
- Two gambling offenses
- Confined to penal institution for more than 180 days
- False testimony to obtain immigration benefit
- Nazis, genocide, torture, extrajudicial killings, violations of religious freedom
- Unlawful voting
- False claim to USC



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## REGULATORY FACTORS

- Willfully failing or refusing to support dependents
- Extramarital affair that destroys existing marriage
- Unlawful acts including minor arrests and convictions
- Probation



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## BY USCIS POLICY

- Fraudulent receipt of public benefits
- Selective Service \*\*
- Taxes



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## ENGLISH LITERACY

### Exemptions:

1. Developmentally or physically disabled, mentally impaired
2. Over 50 years old and more than 20 years as LPR
3. Over 55 years old and more than 15 years as LPR



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## KNOWLEDGE OF U.S. HISTORY

- Exemption if developmentally or physically disabled, mentally impaired
- People over 65 years old with more than 20 years as an LPR can take test in native language from shorter list of questions



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## MEDICAL EXEMPTIONS

- Medically determinable
- Lasted or will last over one year
- Because of impairment, unable to demonstrate knowledge of English and / or civics
- Cannot be resolved through medication
- N-648



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## Naturalization Quiz Review

- John is an LPR who has been married to his U.S. citizen wife for 4 years. He has had his green card for 2 years. He satisfies the residency requirement for naturalization based on his marriage to a U.S. citizen.
- Mario is an LPR who obtained his green card in 2002. In 2011 he traveled to his family home in Honduras, intending to remain for 2 months. Following his father's illness, he stayed in Honduras for 13 months to help his mother. He satisfies the residency requirement for naturalization.
- Frank is an LPR from Poland who was convicted of shoplifting in 2005 and 2011. He is on probation. He is eligible for naturalization.

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## Naturalization Quiz Review

- Andrew is a sixteen year old LPR from Scotland who immigrated to the U.S. with his parents when he was five years old. He got in trouble last year after destroying school property and has a juvenile delinquency disposition. He is not eligible for naturalization.
- Annick is a 45 year old LPR from France who has had her green card since 2005. She works at a day care for French speaking children and most of her friends are from home. She has struggled to learn English and although she is able to understand some, she reads and writes English very poorly. She qualifies for naturalization.
- Kim is a 60 year old citizen of Korea who has been an LPR since 1996. She does not speak or write English. She is eligible for naturalization.

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## BIA RECOGNITION AND ACCREDITATION

- What is it about: authorized practice of immigration law by non-attorneys
- How does it work: nonprofit agency employer applies for recognized agency status, and for accredited representative status for non-attorney staff

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## BIA RECOGNITION AND ACCREDITATION

- Avoid accusations of engaging in unauthorized practice of law
- Only way for non-attorneys to practice
- Indication that office/staff are knowledgeable, competent, experienced
- CLINIC will help get your packets together by providing toolkit, available on Resources section of our website

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## REQUIREMENTS FOR AGENCY RECOGNITION

- Nonprofit religious, charitable, social service, or similar organization
- Only nominal fees
- Must not charge excessive membership dues to persons receiving services
- Adequate immigration knowledge, information and resources
- Independent existence apart from its proposed representative

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## INCLUDE IN APPLICATION FOR RECOGNITION:

- Completed Form EOIR 31, request for recognition – no fee for application
- Copies of organization’s charter, articles, bylaws
- Copy of fee schedule for services
- Evidence of tax exempt status – 501(c)(3) letter or state tax exempt status
- Statement of sources of funding including client fees – only put sources funding immigration legal services



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## REQUIREMENTS FOR STAFF ACCREDITATION

- Experience and knowledge of immigration law
- Attendance at formal immigration law overview training  
*Matter of Central California Legal Services*  
*26 I&N Dec. 105 (BIA 2013)*
- Good moral character
- Only recognized organization (or an organization applying for recognition) can apply for individual’s accreditation

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## TYPES OF ACCREDITATION

- Partial – allows individual to represent people at USCIS, USCBP, USICE interviews and examinations
- Full - allows individual to represent people before the USCIS, USCBP, USICE, EOIR and the BIA
- Duration: Must apply for accreditation renewal every three years

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## INCLUDE IN REQUEST FOR STAFF ACCREDITATION:

- Letter from agency director requesting accreditation. Letter should include
  - Statement that staff person has adequate experience and knowledge and has good moral character
  - Description of types of work staff person has done and training
  - Names of staff person's supervisors
- Individual's resume, documenting in detail their experience and knowledge of immigration law

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## INCLUDE IN REQUEST FOR STAFF ACCREDITATION:

- List all immigration trainings attended (if possible, attach training agendas) including overview training
- Any other supporting documentation, including:
  - Educational diplomas
  - Certificates showing completion of immigration trainings
  - Letters of support
  - Letters of recommendation

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## What's Up for Week Six

- Topics: Removal Proceedings, TPS, DACA
- Reading
- Exercises

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# Questions?



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