CHART C: DERIVATIVE CITIZENSHIP -- LAWFUL PERMANENT RESIDENT CHILDREN GAINING CITIZENSHIP THROUGH PARENTS' CITIZENSHIP[1]

Date of Last Act	Requirements
Prior to 5/24/34:[2]	a. Either one or both parents must have naturalized prior to the child's 21st birthday;[3] b. Child must be lawful permanent resident before the child's 21st birthday;[4] c. Illegitimate child may derive through mother's naturalization only; d. Legitimated child must have been legitimated according to the laws of the father's domicile;[5] e. Adopted child and stepchild cannot derive citizenship.
5/24/34 to 1/12/41:	a. Both parents must have naturalized and begun lawful permanent residence in the U.S. prior to the child's 21st birthday; b. If only one parent naturalized and s/he is not widowed or separated, the child must have 5 years lawful permanent residence in the U.S. commencing before the 21st birthday, unless the other parent is already a U.S. citizen;[6] c. Child must be lawful permanent resident before the child's 21st birthday; d. Illegitimate child may derive through mother's naturalization only, in which case the status of the other parent is irrelevant; e. Legitimated child must have been legitimated according to the laws of the father's domicile;[7] f. Adopted child and stepchild cannot derive citizenship.
1/13/41 to 12/23/52:	a. Both parents must naturalize, or if only one parent naturalizes, the other parent must be either a U.S. citizen at the time of the child's birth and remain a U.S. citizen, or be deceased, or the parents must be legally separated[8] and the naturalizing parent must have legal custody;[9] b. Parent or parents must have naturalized prior to the child's 18th birthday; c. Child must have been lawfully admitted for permanent residence before the child's 18th birthday; d. Illegitimate child can derive only if while s/he was under 16, s/he became a lawful permanent resident and his/her mother naturalized and both of those events (naturalization of mother and permanent residence status of child) occurred on or after 1/13/41 and before 12/24/52;[10] e. Legitimated child must be legitimated under the law of the child's residence or place of domicile before turning 16 and be in the legal custody of the legitimating parent;[11] f. Adopted child and stepchild cannot derive citizenship.[12]
12/24/52 to 10/5/78:[13]	a. Both parents must naturalize, or if only one parent naturalizes, the other parent must either be a U.S. citizen at the time of the child's birth and remain a U.S. citizen,[14] or be deceased, or the parents must be legally separated[15] and the naturalizing parent must have custody; [16] b. In the case of a child who was illegitimate at birth, the child must <u>not</u> be legitimated, and it must be the mother who naturalizes.[17] If the child is legitimated, s/he can derive only if both parents naturalize, or the non-naturalizing parent is dead;[18] c. Parent or parents must have naturalized prior to the child's 18th birthday;[19] d. Child must have begun to reside permanently in U.S. (defined in most places as having been admitted for lawful permanent residence) before the child's 18th birthday;[20] e. Child must be unmarried;[21] f. Adopted child and stepchild cannot derive citizenship.[22]
10/5/78 to 2/26/01:	a. Both parents must naturalize, or if only one parent naturalizes, the other parent must either be a U.S. citizen at the time of the child's birth and remain a U.S. citizen,[23] or be deceased,[24] or the parents must be legally separated[25] and the naturalizing parent must have legal custody;[26] b. In the case of a child who was illegitimate at birth, the child must <u>not</u> be legitimated, and it must be the mother who naturalizes. If the child is legitimated, s/he can derive only if both parents naturalize, or the non-naturalizing parent is dead;[27] c. Parent or parents must have naturalized prior to the child's 18th birthday;[28] d. Child must have begun to reside permanently in U.S. (defined in most places as having been admitted for lawful permanent residence) before the 18th birthday;[29] e. Child must be unmarried;[30] f. Adopted child may derive citizenship if the child is residing in the U.S. at the time of the adoptive parent(s)' naturalization,[31] is in the custody[32] of the adoptive parent(s), is a lawful permanent resident, and adoption occurred before s/he turned 18.[33] Stepchild cannot derive citizenship.[34]
Anyone who, on or after 2/27/01, meets the following requirements, is a U.S. citizen.[35] Another way to look at it is anyone born on/after 2/28/83 and meets the following requirements is a U.S. citizen.	a. At least one parent is a U.S. citizen either by birth or naturalization;[36] b. In the case of a child who was born out of wedlock, the mother must be the one who is or becomes a citizen[37] OR, if the father is a U.S. citizen through naturalization or other means then the child must have been legitimated by the father under either the law of the child's or father's residence or domicile and the legitimation must take place before the child reaches the age of 16;[38] c. Child is under 18 years old;[39] d. Child must be unmarried;[40] e. Child is a lawful permanent resident;[41] f. Child is residing in the U.S. in the legal and physical custody of the citizen parent;[42] g. Adopted children qualify so long as s/he was adopted before the age of 16 and has been in the legal custody of, and has resided with, the adopting parent(s) for at least two years.[43] An adopted child who qualifies as an orphan under INA § 101(b)(1)(F) also will qualify for derivation.

Endnotes for Chart C:

The information in these charts comes from case law, statutory language, the CIS policy manual, the Adjudicator's Field Manual, the Foreign Affairs Manual, and INS interpretations. Although the CIS policy manual supersedes previous policy memos and the Adjudicator's Field Manual, the CIS policy manual is silent on many subjects discussed at length in prior CIS policy statements and INS Interpretations. In the absence of guidance to the contrary from the CIS policy manual, the ILRC believes advocates should continue to use helpful clarifications and guidance from prior CIS policy statements and INS Interpretations.

[1] Congress has passed many laws on derivation of citizenship, including the Act of May 24, 1934, the Nationality Act of 1940, the Immigration and Nationality Act sections 320 and 321, the Act of October 5, 1978, the Act of December 29, 1981, the Act of November 14, 1986, and the Child Citizenship Act of 2000. In any claim for derivative citizenship, the burden is on the applicant to show that she is a citizen by a preponderance of the evidence. 8 C.F.R. § 341.2(c); see, e.g., *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001); *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327 (BIA 1969).

[2] Prior to 1907 a mother could transmit citizenship only if she was divorced or widowed. See Levy, *U.S. Citizenship and Naturalization* § 5:12 (ed. 2013–14).

[3] It is the ILRC's position, and the ILRC believes that all advocates should argue, that the definition of "prior to the 18th birthday" or "prior to the 21st birthday" means prior to or on the date of the birthday. See *Duarte-Ceri v. Holder*, 630 F.3d 83 (2d Cir 2010); *Matter of L-M- and C-Y-C-*, 4 I&N Dec. 617 (BIA 1952) (finding that "prior to" included "prior to or on" the date with respect to retention requirements for acquisition of citizenship). Although the CIS Policy Manual is silent on the subject, CIS officers may not agree. See INS Interpretations 320.2.

[4] Prior to 1907 the child could take up residence in the U.S. after turning 21 years of age. See Levy, *U.S. Citizenship and Naturalization* § 5:12 (ed. 2013–14) (citing Sec. 5, Act of March 2, 1907).

[5] Legitimation could take place before or after the child turns 21. The child derives citizenship upon the naturalization of the parent(s) or upon the child taking up residence in the U.S. See 7 FAM 1135.3; INS Interpretations 320.1(b).

[6] The five-year period can commence before or after the naturalization of the parent and can last until after the child turns 21 and until after 1941. See Sec. 5, Act of March 2, 1907 as amended by Sec. 2, Act of May 24, 1934 and INS Interpretations 320.1(a)(3).

[7] See Note 5, *supra*.

[8] See *U.S. v. Casasola*, 670 F.3d 1023 (9th Cir. 2012) (rejecting equal protection challenge that "legal separation" requirement irrationally distinguished between married and legally separated parents).

The case law governing what constitutes a "legal separation" is complicated, and courts differ both on what is required for a "legal separation" as well as how much weight to give to the law of the state or country with jurisdiction over the marriage. 12-11 Bender's Immigr. Bull. 2 (2007). The Third, Fourth, Fifth, and Seventh Circuits, as well as the BIA, all seem to require a judicial decree of limited or absolute divorce or separation. See *Afeta v. Gonzales*, 467 F.3d 402 (4th Cir. 2006); *Nehme v. INS*, 252 F.3d 415, 422 (5th Cir. 2001); *Wedderburn v. INS*, 215 F.3d 795, 799 (7th Cir. 2000); see also *Matter of H-*, 3 I&N Dec. 742 (BIA 1949) (requiring some sort of limited or absolute divorce through judicial proceedings). The Second, Third, and Ninth Circuits have held that other legal actions may suffice to show "legal separation." *Morgan v. A.G.*, 432 F.3d 226, 231–32 (3d Cir. 2005); *Minasyan v. Gonzales*, 401 F.3d 1069 (9th Cir. 2005); *Brissett v Ashcroft*, 363 F.3d 130 (2d. Cir. 2004). Still other circuits have explicitly declined to weigh in. *Claver v. U.S. Attn'y Gen.*, 245 F. App'x. 904 (11th Cir. 2007) (finding it unnecessary to "resolve-or add to-this disagreement among circuits" about what constitutes a "legal separation" because even under the most lenient standard, petitioner's parents were not legally separated); *Batista v. Ashcroft*, 270 F.3d 8 (1st Cir. 2001) (transferring case to district court to hold a hearing on whether Dominican Republic "Divorce Sentence" raised an issue of material fact as to whether petitioner's parents obtained a "legal separation").

The circuit courts also differ on the role that the governing state or foreign law should play in the determination. The Third, Seventh, Ninth, and Eleventh Circuits look to the law of the state or country with jurisdiction over the marriage to determine whether a "legal separation" has occurred. *Claver v. U.S. Attn'y Gen.*, 245 F. App'x. 904 (11th Cir. 2007) (holding that "whether Petitioner's parents were 'legally separated' should be informed by the law of the state or country with jurisdiction over Petitioner's parents' marriage"; because the petitioner's parents were not legally separated under Jamaican law, he did not derive citizenship); *Morgan v. A.G.*, 432 F.3d 226, 231–32 (3d Cir. 2005) (finding that a "legal separation" for derivation purposes did not occur because there was no formal governmental action under the laws of Pennsylvania or Jamaica that altered the parties' marital status); *Wedderburn v. INS*, 215 F.3d 795, 799 (7th Cir. 2000) (finding that although "legal separation" is a federal term, courts should look to the governing state or foreign law for its meaning; because the parties were not separated under Jamaican law, the petitioner did not derive citizenship). It is unclear based on current case law whether the Seventh Circuit would recognize something lesser than a formal judicial decree if it constituted "legal separation" under the applicable state or foreign law. In *Minasyan v. Gonzales*, 401 F.3d 1069 (9th Cir. 2005), the Ninth Circuit viewed state law as dispositive; where a marriage dissolution order issued in 2001 said that the legal separation took place in 1993, the Court found the petitioner derived citizenship because the effective date of separation as a matter of state law was 1993.

By contrast, the Second, Fourth, and Fifth Circuits have a more restrictive view of the role of state or foreign law and interpret "legal separation" as a distinct federal term. See *Afeta v. Gonzales*, 467 F.3d 402 (4th Cir. 2006) (finding that a voluntary legal separation agreement did not constitute "legal separation" for derivation purposes even though it may have been recognized under Maryland law); *Nehme v. INS*, 252 F.3d 415, 422 (5th Cir. 2001) (rejecting the notion that state law is determinative and holding that the parties needed a formal, judicial alteration to constitute "legal separation"). In *Brissett v Ashcroft*, 363 F.3d 130, 133-134 (2d. Cir. 2004), the Second Circuit found that "legal separation" for derivation purposes is a federal term and may include more situations than state law

recognizes; the Court rejected the notion that a formal judicial decree is required and reasoned that there may be some formal acts that may not constitute legal separation under state law, but may effect a sufficiently drastic alteration in the marital status of the parties to be "legal separation" for derivation.

The BIA and every circuit court to confront the issue have all found that where the actual parents of the child were never lawfully married, there could be no legal separation. See, e.g., *Lewis v. Gonzales*, 481 F.3d 125, 130–32 (2d Cir. 2007); *Barthelemy v. Ashcroft*, 329 F.3d 1062, 1065 (9th Cir. 2003); *Wedderburn v. INS*, 215 F.3d 795, 799 (7th Cir. 2000); *Matter of H-*, 3 I&N Dec.742 (BIA 1949). In *Henry v. Quarantillo*, 684 F. Supp. 2d 298 (E.D.N.Y. 2010), although the district court noted the possibility of "legal separation" of unwed parents according to a change to Jamaican law in 2005, it found a *nunc pro tunc* order establishing such legal separation of unwed parents insufficient to show legal custody for derivation purposes.

[9] See 7 FAM 1156.8. Until recently, the general rule was that if the parents have a joint custody decree (legal document), then both parents have legal custody for purposes of derivative citizenship. See Passport Bulletin 96-18 (Nov. 6, 1996). Yet the Ninth and Fifth Circuits ruled that the naturalizing parent must have sole legal custody for the child to derive citizenship; thus, at least in the Ninth and Fifth Circuits, a joint legal custody decree will not be sufficient to allow a child to derive citizenship. See *U.S. v. Casasola*, 670 F.3d 1023 (9th Cir. 2012); *Bustamante-Barrera v. Gonzales*, 447 F.3d 388 (5th Cir. 2006) (requiring naturalized citizen parent to have sole legal custody of the child for derivative citizenship); *Rodrigues v. Att'y Gen. of U.S.*, 321 F. App'x 166 (3d Cir. 2009); but see *In Re: Rabanal Puertas*, 2010 WL 4500862 (BIA 2010) (finding that joint custody is sufficient to show legal custody pre-CCA and specifically declining to follow the reasoning of *Bustamante*).

Although the CIS Policy Manual is silent on the subject, numerous authorities have found that in the absence of a state law or court adjudication determining legal custody, the parent having actual uncontested custody of the child is regarded as having the requisite legal custody for derivation purposes, provided the required "legal separation" of the parents has taken place. See *Kamara v. Lynch*, 786 F.3d 420 (5th Cir. 2015) (clarifying that in the absence of a custody order, "actual uncontested custody" is the standard across all circuits); *Matter of M-*, 3 I&N Dec. 850 (BIA 1950); INS Interpretations 320.1(a)(6); Passport Bulletin 96-18 (Nov. 6, 1996) (referencing Passport Bulletin 93-2 (Jan. 8, 1993)). The Fifth Circuit has held that a *nunc pro tunc* order retroactively awarding the naturalized parent custody is not sufficient to show legal custody for purposes of derivation. See *U.S. v. Esparza*, 678 F.3d 389 (5th Cir. 2012). Where the actual parents of the child were never lawfully married, there can be no legal separation. See INS Interpretations 320.1(a)(6) (citing *In the Matter of H-*, 3 I&N Dec. 742 (BIA 1949)). Thus, illegitimate children cannot derive citizenship through a father's naturalization unless the father has legitimated the child, the child is in the father's legal custody, and the mother was either a citizen (by birth or naturalization) or the mother has died. For more on this topic, see *Bagot v. Ashcroft*, 398 F.3d 252 (3d Cir. 2005), and *Nehme v. INS*, 252 F.3d 415 (5th Cir. 2001).

Citizenship derived through the mother by a child who was illegitimate at birth will not be lost due to a subsequent legitimation. See 7 Gordon, Mailman, and Yale-Lohr, *Immigration Law and Procedure*, § 98.03[4](e) (ed. 2012).

The Administrative Appeals Office (AAO) has found that a Rabbinical Court decree awarding custody of a child to the child's mother can establish that the mother had legal custody of the child for purposes of INA § 321. See *Matter of [redacted]*, A18 378 029 (AAO Sept. 27, 2010); see also 87 *Interpreter Releases* 2120 (Nov. 1, 2010).

[10] See INS Interpretations 320.1(c).

[11] See INS Interpretations 320.1(a)(6) (explaining that in the absence of a state law or court adjudication dealing with the issue of legal custody, the parent having actual uncontested custody of the child is regarded as having the requisite legal custody for derivation purposes, provided the required "legal separation" of the parents has taken place); *Matter of M-*, 3 I&N Dec. 850 (BIA 1950); see also Note 9, *supra*. The only way that an illegitimate child can derive citizenship through a father's naturalization is if 1) the father legitimates the child, and 2) both parents naturalize (unless the mother is already a citizen, or the mother is dead). Under any other circumstances, an illegitimate child never derives from a father's naturalization. In 2015, the BIA found that a person born abroad to unmarried parents in a jurisdiction that has eliminated all legal distinctions between children based on the marital status of their parents or who has a residence or domicile in that jurisdiction is considered a legitimate "child" under INA § 101(c)(1). *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015). The definition of a legitimate "child" under the Nationality Act of 1940, the law in effect from 1/13/41 to 12/23/52, is nearly identical to INA § 101(c)(1), and advocates should argue (when it would be beneficial) that this holding applies to the Nationality Act of 1940 as well.

[12] Although both CIS and the State Department take the position that adopted children during this period could not derive citizenship, an argument can be made that children who were adopted before turning 16 and who were in the custody of the adopting parent(s) could derive citizenship. See Levy, *U.S. Citizenship and Naturalization* § 5:14 (ed. 2013–14).

[13] Traditionally, the view has been that as long as all the conditions in this section are met before the child's 18th birthday, the child derived citizenship regardless of the order in which the events occurred. See Department of State Passport Bulletin 96-18, *New Interpretation of Claims to Citizenship Under Section 321(a) of the INA*, (Nov. 6, 1996); see also *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008); *In re Fuentes-Martínez*, 21 I&N Dec. 893 (BIA 1997); CIS, Dep't of Homeland Sec., Adjudicators' Field Manual, ch. 71, § 71.1(d)(2) (Feb. 2008) ("Since the order in which the requirements [of former § 321(a)] were satisfied was not stated in the statute, as long as the applicant meets the requirement of the statute before age 18 the applicant derives U.S. citizenship."). But in *Jordon v. Att'y Gen. of the U.S.*, 424 F.3d 320 (3d Cir. 2005), the Third Circuit disagreed, finding that where the separation occurred after the parent naturalized, the child did not derive citizenship. The BIA has repeatedly criticized and declined to follow the Third Circuit, arguing that it did not matter whether the naturalized parent obtained legal custody of the child before or after naturalization, so long as the statutory requirements were satisfied before the child turned 18 years old.

See *Matter of Douglas*, 26 I&N Dec. 197 (BIA 2013); *Matter of Baires-Larios*, 24 I&N Dec. 467 (BIA 2008). *Jordon* is only in effect in the Third Circuit. Levy, *U.S. Citizenship and Naturalization*, § 5:3 (ed. 2013–14). Although the order of the events does not matter outside of the Third Circuit, there still has to be a point in time before the child turns 18 when all of the requirements are satisfied. See *Joseph v. Holder*, 720 F.3d 228 (5th Cir. 2013) (finding that when a mother withdrew divorce decree and sole custody order before her naturalization, the child did not derive citizenship because at no point was the mother a citizen with sole custody of the child).

[14] See 7 FAM 1156.9 and 1156.10 for a general description of the law.

[15] See Note 8, *supra*.

[16] See Note 9, *supra*.

[17] In order for an illegitimate child to derive citizenship through her mother she must not have been legitimated prior to obtaining derivation of citizenship. See INA § 321(a)(3), as amended by Pub. L. No. 95-417. If the father legitimated the child before derivation, then both parents must naturalize in order for the child to qualify unless the mother is a U.S. citizen or is deceased. See INA § 321(a)(1) as amended by Pub. L. No. 95-417. If legitimation occurs after the child has derived citizenship, the child remains a U.S. citizen even if the father did not naturalize. See 7 Gordon, Mailman, and Yale-Lohr, *Immigration Law and Procedure*, § 98.03[4](e). In 2015, the BIA held in *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015) that although Jamaican law has eliminated any difference between the rights of children born in and out of wedlock, and thus all children born out of wedlock are considered "legitimate" for purposes of being a "child" in INA § 101(b)(1) and § (c)(1), "legitimation" for purposes of former INA § 321(a)(3) is defined differently. Because Jamaican law nonetheless provides a way to legitimate a child, a child will not be considered "legitimate" for former INA § 321(a)(3) absent an affirmative act by the parent. *Id*. It is unclear how this interpretation of former INA § 321(a)(3) will apply in jurisdictions that have eliminated all legal distinctions between children born in and out of wedlock where there is no way to legitimate the child.

[18] See INS Interpretations 320.1(c). Because the CIS Policy Manual is silent on this subject, advocates should argue that this rule still applies. 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). In *Tavares v. AG*, 398 Fed. App'x 773 (3d Cir. 2010), the Third Circuit found that the applicant derived citizenship from his mother because he was not legitimated by his father under either Massachusetts or Cape Verde law.

[19] The 1952–1978 law required the naturalization of the parent(s) prior to the child's 16th birthday. The 1978 law requiring the naturalization of the parent(s) prior to the 18th birthday is retroactively applied to 12/24/52. See *In re Fuentes-Martínez*, 21 I&N Dec. 893 (BIA 1997) (citing Passport Bulletin 96-18).

[20] There is currently a circuit split on whether INA § 321(a)(5)'s requirement that a child "reside permanently" in the United States means that the child must be a lawful permanent resident. The Ninth Circuit, the Eleventh Circuit, and the BIA have all held that this language requires the child to have become a lawful permanent resident before she turned 18 in order to obtain derivative citizenship. See *Romero-Ruiz v. Mukasey*, 538 F.3d 1057 (9th Cir. 2008); *U.S. v. Forey-Quintero*, 626 F.3d 1323 (11th Cir. 2010); *Matter of Nwozuzu*, 24 I&N Dec. 609 (BIA 2008). But the Second Circuit reversed *Nwozuzu*, holding that a child may derive citizenship if both parents naturalized while the child was still under 18 years old and was unmarried *even if the child was not a lawful permanent resident.* The Second Circuit found that "reside permanently" could include "something lesser." *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013); see also *United States v. Juarez*, 672 F.3d 381 (5th Cir. 2012) (declining to interpret "reside permanently" but recognizing multiple interpretations).

[21] See INA § 101(c)(1).

[22] See Note 12, *supra*. In *Martinez-Madera v. Holder*, 559 F.3d 937 (9th Cir. 2009), the Ninth Circuit held that an individual could not derive U.S. citizenship from his stepfather by virtue of the state's legitimation statute.

[23] See 7 FAM 1156.11 (Foreign Affairs Manual) for a general description of the law.

[24] "Death" includes "brain death" but not comas or persistent vegetative states. See *Ayton v. Holder*, 686 F.3d 331 (5th Cir. 2012).

[25] See Note 8, *supra*.

[26] See Note 9, *supra*.

[27] See Notes 11, 17 *supra*.

[28] See Note 19, *supra*.

[29] See Note 20, *supra*.

[30] See Note 21, *supra*.

[31] Adopted children must be residing in the U.S. pursuant to a lawful admission for permanent residence at the time of the adoptive parent(s)' naturalization. See Passport Bulletin 96-18. Thus, in derivation cases for adopted children, the sequence of events can be important. This is different than the practice in derivation cases for biological children. See Note 13, *supra*.

[32] The 1978 amendment provided adopted children the opportunity to derive citizenship when they met the above criteria and were in the "custody" of the adoptive parent. In other amendments, Congress has specified whether the custody had to be legal, physical, or both. Given that Congress did not specify here whether legal custody or physical custody is required, advocates should argue that either should suffice. How "custody" is defined in this context will likely only come up where the adoptive parents are legally separated, or where the child has been living with someone other than the parents.

[33] Between 10/5/78 and 12/29/81, adopted children could only derive citizenship if adoption occurred before the child turned 16. See 12 USCIS-PM H(4)(C) n.10; INS Interp. 320.1 (d)(2).
[34] See *Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009) (holding that a child born outside the United States cannot obtain derivative citizenship by virtue of her relationship to a nonadoptive stepparent).
[35] People born between 2/27/83 and 2/26/01 may derive citizenship by satisfying the requirements of either this row or the "10/5/78 to 2/26/01" row. Note that the law is not retroactive, so individuals who are 18 years or older on February 27, 2001 do not qualify for citizenship under this law. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).
[36] INA § 320 as amended by the Child Citizenship Act of 2000.
[37] See CIS, *Eligibility of Children Born out of Wedlock for Derivative Citizenship* (Sept. 26, 2003). The memo mentions only that naturalized mothers can confer citizenship upon their not yet legitimated children born out of wedlock under INA § 320. ILRC assumes that mothers who are U.S. citizens by other means also can confer citizenship under INA § 320 to such children.
[38] The text of INA § 320 as amended by the Child Citizenship Act of 2000 does not mention illegitimacy, but INA § 101(c)(1) excludes illegitimate children from the definition of "child," unless legitimated by the father under either the law of the child's domicile or the law of the father's domicile. A person born abroad to unmarried parents in a jurisdiction that has eliminated all legal distinctions between children based on the marital status of their parents or has a residence or domicile in that jurisdiction is considered a legitimate "child" under INA § 101(c)(1). *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015). In jurisdictions where legal distinctions remain, the legitimation requirement is a hurdle for two reasons. First, the legitimation must take place before the child turns 16. Once s/he turns 16, it is too late for the legitimation to count for § 320 citizenship purposes. (Note that there is an argument, based on the fact that neither INA § 320 nor 8 CFR § 320.1 states the legitimation must occur before the 16th birthday, that such a legitimation could take place even between the 16th and 18th birthdays; however, this argument may be undermined by the definition of child found in INA §101(c), which applies to the citizenship and naturalization contexts.) Second, the legitimation process can be complicated. The CIS Memo *Eligibility of Children Born out of Wedlock for Derivative Citizenship*, (Sept. 26, 2003), mentions only that naturalized mothers can confer citizenship upon their unlegitimated children born of wedlock under INA § 320. ILRC assumes that mothers who are U.S. citizens by other means such as birth in the U.S. also can confer citizenship under INA § 320 to such children.
[39] INA § 320 as amended by the Child Citizenship Act of 2000.
[40] INA § 320 as amended by the Child Citizenship Act of 2000.
[41] INA § 320 as amended by the Child Citizenship Act of 2000. In *Walker v. Holder*, 589 F.3d 12 (1st Cir. 2009), the First Circuit held that an individual has not satisfied the requirement for "lawful admission for permanent residence" if that person obtained a green card through fraud or misrepresentation, even if the individual was a child when he first entered the United States with no control over the actions of his guardians.
[42] INA § 320 as amended by the Child Citizenship Act of 2000. It is the ILRC's interpretation that for purposes of the Child Citizenship Act of 2000, CIS will presume that a child who was born out of wedlock and has not been legitimated and whose mother has naturalized or is a U.S. citizen through any other means (i.e., birth in U.S, acquisition or derivation) would be considered to be in the legal custody of the mother for § 320 citizenship. See CIS, *Eligibility of Children Born out of Wedlock for Derivative* Citizenship (Sept. 23, 2003). Additionally, 8 CFR § 320.1 sets forth several different scenarios in which CIS presumes, absent evidence to the contrary, that the parent has the necessary legal custody to apply for § 320 citizenship for her child: 1) both parents have legal custody where their biological child currently resides with them and the parents are married, living in marital union, and not separated; 2) a parent has legal custody where her biological child lives with her, and the child's other parent is dead; 3) a parent has legal custody if 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 and according to the laws of the legitimating parent or child's domicile; 4) both parents have legal custody where the child's parents are legally separated or divorced and a court or other appropriate governmental entity has legally awarded the parents joint custody of the child; 5) a parent has legal custody of the child where the parents of the child have divorced or legally separated and there has been an award of primary care, control, and maintenance of a minor child to a parent by a court or other appropriate government agency pursuant to the laws of the state or county of residence; and 6) the regulations state there may be other factual circumstances under which CIS will find that a U.S. citizen parent has legal custody for purposes of § 320 citizenship. Advocates and their clients should be creative in thinking of other ways to prove that CIS should determine that a U.S. citizen parent has legal custody if the parent-child relationship does not fit into one of the categories listed above.
[43] INA § 320 as amended by the Child Citizenship Act of 2000 and INA § 101(b)(1).