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U.S. Citizenship for Children Born Abroad: In Brief

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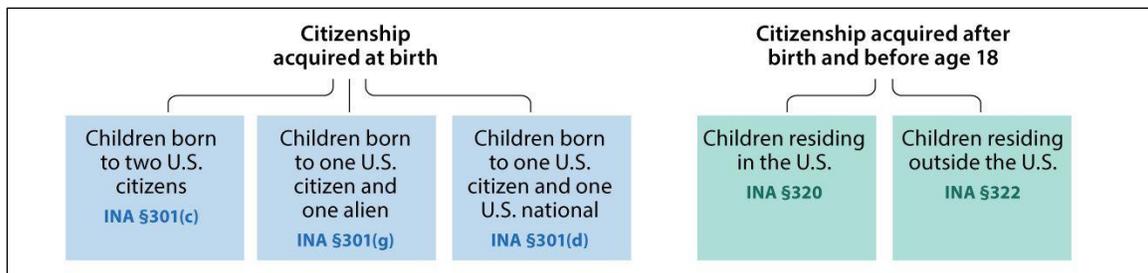
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Introduction

Persons born within the United States, on federally recognized tribal lands, and in designated territories generally are U.S. citizens at birth, regardless of the citizenship or immigration status of their parents.¹ These include persons born to members of Native American tribes and those born in certain U.S. territories (currently, Puerto Rico,² the U.S. Virgin Islands,³ Guam,⁴ and the Commonwealth of the Northern Mariana Islands⁵).6

Children⁷ born to a U.S. citizen parent(s) outside the United States, federally recognized tribal lands, and the territories may acquire U.S. citizenship through their parent(s) either at birth or after birth and before age 18 under provisions enumerated in Title 3 of the Immigration and Nationality Act (INA) as shown in **Figure 1**. In 2020, approximately 3.2 million U.S. citizens who were born abroad to American parent(s) resided in the United States.⁸

Figure 1. Overview of INA Citizenship Provisions for Children Born Abroad



Source: CRS analysis of the INA.

Child citizenship laws have changed over time. The applicable laws for an individual are generally those that were in place at the time of his or her birth. The laws described in this report are those in place as of the cover date of this report.⁹

¹ The Citizenship Clause of the Fourteenth Amendment to the Constitution and the Immigration and Nationality Act (§301(a)) state more specifically that the person must be “subject to the jurisdiction” of the United States. As such, exceptions include children whose parents are foreign diplomats. For more information, see CRS Legal Sidebar LSB10214, *The Citizenship Clause and “Birthright Citizenship”*: A Brief Legal Overview.

² INA §302; 8 U.S.C. §1402.

³ INA §306; 8 U.S.C. §1406.

⁴ INA §307; 8 U.S.C. §1407.

⁵ 48 U.S.C. §1801.

⁶ Persons born in the U.S. territory of American Samoa are not automatically citizens at birth. See the “Citizenship Acquired at Birth” section below.

⁷ For purposes of citizenship, *children* include the genetic and adopted children of U.S. citizen mothers and/or U.S. citizen fathers. A stepchild is not considered a *child* for purposes of citizenship and naturalization unless they have been formally adopted by the U.S. citizen parent.

⁸ U.S. Census Bureau, American Community Survey, Table B05001, “Nativity and Citizenship Status in the United States,” available at <https://data.census.gov/cedsci/table?q=B05001>. The number of U.S. citizens who were born abroad to American parents and are now residing abroad is unknown to CRS.

⁹ For a summary of citizenship acquisition laws applicable to persons born during different periods, see U.S. Citizenship and Immigration Services (USCIS), *Policy Manual*, Volume 12, Chapter 3, “Appendix: Nationality Chart 1 - Children Born Outside the United States in Wedlock.”

Citizenship Acquired at Birth

Citizenship acquisition for children born outside the United States relies on having one or more U.S. citizen parent(s) who meet specified U.S. *residence* and *physical presence* requirements at the time of the child's birth.

The INA defines *residence* as “the place of general abode of a person,” meaning the person’s “principal, actual dwelling place in fact, without regard to intent.”¹⁰ *Physical presence* is time a person has spent in the United States, regardless of whether they had a U.S. residence during that period.¹¹ For children’s citizenship acquisition, residence, and physical presence requirements vary depending on whether one or both parents are U.S. citizens.

INA Section 301 generally contains three provisions for U.S. citizenship acquisition at birth for children born abroad, respectively pertaining to

1. children born to two U.S. citizens,
2. children born to one U.S. citizen and one *alien* (someone who is not a citizen or a national of the United States),¹² and
3. children born to one U.S. citizen and one U.S. *national*.

U.S. nationals are persons who owe permanent allegiance to the United States.¹³ Most U.S. nationals are also U.S. citizens, but persons born in *outlying possessions* (American Samoa and Swains Island)¹⁴ are generally considered noncitizen U.S. nationals.¹⁵

Children Born to Two U.S. Citizen Parents

Under INA Section 301(c), a child born outside the United States and its *outlying possessions* (American Samoa and Swains Island)¹⁶ to two U.S. citizen parents is a U.S. citizen at birth if at least one of the parents has had a residence in the United States or one of its outlying possessions prior to the child’s birth.

Children Born to One U.S. Citizen Parent and One Alien Parent

Under INA Section 301(g), a child born to one U.S. citizen parent and one alien parent acquires citizenship automatically at birth if the U.S. citizen parent was physically present in the United States or one of its outlying possessions for a total of five years prior to the child’s birth, including at least two years of physical presence after the parent’s 14th birthday (the five years are not required to be continuous).

¹⁰ INA §101(a)(33); 8 U.S.C. §1101(a)(33)

¹¹ For more information about the difference between residence and physical presence, see USCIS, *Policy Manual*, Volume 12, Part H, Chapter 2(E), “Definition of U.S. Residence.”

¹² INA §101(a)(3); 8 U.S.C. §1101(a)(3).

¹³ INA §101(a)(22); 8 U.S.C. §1101(a)(22).

¹⁴ INA §101(a)(29); 8 U.S.C. §1101(a)(29).

¹⁵ INA §308; 8 U.S.C. §1408.

¹⁶ INA §101(a)(29); 8 U.S.C. §1101(a)(29).

Time spent abroad during periods of honorable service with the Armed Forces and employment with the U.S. government or an international organization¹⁷ may count toward the physical presence requirement.¹⁸

The INA makes certain distinctions for children born *out-of-wedlock* to one U.S. citizen parent. Per U.S. Citizenship and Immigration Services (USCIS),¹⁹ a child is born *in wedlock* “when the child’s legal parents are married to one another at the time of the child’s birth and at least one of the legal parents has a genetic or gestational relationship to the child.”²⁰ Otherwise, the child is considered to be born out-of-wedlock.

In the case of children born out-of-wedlock to a U.S. citizen *mother*,²¹ INA Section 301(g) provisions apply.²² Children born out-of-wedlock to a U.S. citizen *father* may acquire citizenship under INA Section 301(g), but the following additional requirements apply, as specified at INA Section 309:

- “clear and convincing evidence” of a blood relationship between the child and father;
- a written agreement by the father (unless deceased) to provide financial support for the child until the child is 18; and
- before the child turns 18, paternity is acknowledged in writing under oath or established in court, or the child is legitimated under the law of his or her residence or domicile.

Children Born to One U.S. Citizen Parent and One U.S. National Parent

Under INA Section 301(d), children born to one U.S. citizen parent and one noncitizen U.S. national parent acquire citizenship automatically at birth if the U.S. citizen parent was physically present in the United States or one of its outlying possessions for a continuous period of at least one year prior to the child’s birth. Children born in outlying possessions of the United States to

¹⁷ As defined at 22 U.S.C. §288.

¹⁸ The U.S. citizen parent may also count time abroad as the dependent unmarried son or daughter in the household of a person serving honorably in the Armed Forces or employed by the U.S. government or an international organization.

¹⁹ USCIS, a component of the Department of Homeland Security (DHS), oversees lawful immigration to the United States, including adjudicating citizenship eligibility and naturalization applications.

²⁰ In 2021, USCIS and the U.S. State Department (DOS) adopted this interpretation of the INA to account for the births abroad of children born using assisted reproductive technology (ART), such as surrogacy. See USCIS, “Assisted Reproductive Technology and In-Wedlock Determinations for Immigration and Citizenship Purposes,” policy alert, August 5, 2021; and DOS, “U.S. Citizenship Transmission and Assisted Reproductive Technology,” press statement, May 18, 2021. Per USCIS, “The term *genetic child* refers to a child who shares genetic material with the parent. The term *gestational parent* refers to the person who carries and gives birth to the child”; see USCIS, *Policy Manual*, Volume 6, Part B, Chapter 8, “Children, Sons, and Daughters.”

²¹ USCIS adjudicates cases for U.S. citizen transgender men who carry and give birth to a child in the same manner as cases involving a U.S. citizen mother. See USCIS, *Policy Manual*, Volume 12, Part H, Chapter 2, footnote 6.

²² This is the case for children born on or after June 12, 2017, pursuant to a Supreme Court decision (*Sessions v. Morales-Santana*), which found that different statutory physical presence requirements for mothers and fathers violated equal protection requirements under the Constitution. For more information, see CRS Report R44949, *Supreme Court October Term 2016: A Review of Select Major Rulings*. Children born prior to that date, and on or after December 23, 1952, may acquire citizenship under INA §309(c) if the U.S. citizen mother had been physically present in the United States or its outlying possessions for one continuous year before the child’s birth. See also USCIS, *Policy Manual*, Volume 12, Part H, Chapter 3(C)(2), “Child of a U.S. Citizen Mother.”

parents who are noncitizen nationals are considered U.S. nationals but not U.S. citizens (INA §308).

Documenting Citizenship at Birth

The U.S. Department of State (DOS) instructs U.S. citizen parents to report a child's birth abroad at the nearest U.S. embassy or consulate as soon as possible and to file for a Consular Report of Birth Abroad (CRBA) with required documentation.²³ The CRBA is an official record documenting that a child was a U.S. citizen at birth and may be used to obtain a U.S. passport. Parents may apply for a CRBA by filling out Form DS-2029. There is a \$100 fee. In the case of a child born out-of-wedlock to a U.S. citizen father, the father must also file an Affidavit of Physical Presence or Residence, Parentage, and Support (Form DS-5507).

Citizenship Acquired After Birth and Before Age 18²⁴

Other children born abroad may not qualify for citizenship at the time of their birth but may qualify before reaching age 18—for example, if a child's lawful permanent resident (LPR) parent *naturalizes* and becomes a U.S. citizen. Unlike adults, children may not independently apply to naturalize; naturalization applicants generally must be at least 18 years old.²⁵ The applicable INA provision depends on whether the child is residing in or outside the United States.

Children Residing in the United States

Under INA Section 320, if a child is residing permanently in the United States, he or she acquires citizenship automatically if at least one parent (including an adoptive parent) is a U.S. citizen by birth or naturalization. The child must be an LPR and in the legal and physical custody²⁶ of their U.S. citizen parent. For adopted children, the adoption process must be legally complete and recognized by the U.S. state/territory in which the child is residing.

For purposes of INA Section 320, a child is considered to be residing in the United States if he or she is in the custody of a U.S. citizen parent who is

- stationed and residing abroad as a member of the U.S. Armed Forces;
- stationed and residing abroad as an employee of the U.S. government; or

²³ For more information, see DOS, "Birth of U.S. Citizens and Non-Citizen Nationals Abroad," at <https://travel.state.gov/content/travel/en/international-travel/while-abroad/birth-abroad.html>.

²⁴ These provisions apply to children who were under age 18 on or after February 27, 2001, pursuant to the Child Citizenship Act of 2000 (P.L. 106-395). For individuals who were already age 18 as of that date but were under 18 in 1952, former INA Section 321 generally applies. For more information, see USCIS Policy Manual, Volume 12, Part H, Chapter 4(D), "Acquiring Citizenship Before the Child Citizenship Act of 2000."

²⁵ For more information, see CRS Report R43366, *U.S. Naturalization Policy*.

²⁶ For more information, see USCIS Policy Manual, Volume 12, Part H, Chapter 4, "B. Legal and Physical Custody of U.S. Citizen Parent."

- residing outside the United States and is married to a U.S. Armed Forces member or government employee stationed outside the United States.²⁷

Children Residing Outside the United States

Under INA Section 322, a child residing outside the United States may naturalize and acquire a Certificate of Citizenship if they have a U.S. citizen parent (by birth or naturalization) who has been physically present for at least five years in the United States, two of which must have been after the parent's 14th birthday (includes time residing abroad as a member of the U.S. Armed Forces pursuant to official orders). The child must be residing in the legal and physical custody of their U.S. citizen parent, be temporarily present in the United States pursuant to a lawful admission, and remain in lawful status. Typically, the citizenship process must take place in the United States (e.g., while the child is present on a visitor visa).

Children authorized to accompany U.S. service member parents abroad, however, are not required to be present in the United States pursuant to a lawful admission to obtain citizenship. They must be authorized to accompany the service member and reside abroad with them pursuant to the member's official orders.

Section 322 also accommodates children whose parents are deceased. For example, if the U.S. citizen parent has died within the last five years, the child's U.S. citizen grandparent or legal guardian may apply for a Certificate of Citizenship on the child's behalf.

Documenting Citizenship After Birth and Before Age 18

Children who obtain U.S. citizenship automatically under INA Section 320 may apply for a U.S. passport with DOS.²⁸ They are not required to apply for a Certificate of Citizenship. However, they may elect to do so to document their citizenship by filing form N-600 with USCIS.²⁹ Children residing abroad who obtain citizenship under INA Section 322 must first obtain a Certificate of Citizenship by filing Form N-600K before applying for a passport.

Parents must submit N-600/N-600K applications for children under age 18; persons age 18 and older may file on their own behalf. Both applications have a \$1,170 filing fee.³⁰ Applicants (including U.S. citizen parent(s) for children under 18) may be required to appear for an in-person interview with a USCIS officer; however, USCIS may waive the interview requirement. USCIS generally administers an Oath of Allegiance for children ages 14 and older and waives the oath for children under age 14.

Children residing outside the United States with a U.S. service member and applying to naturalize under INA Section 322 may complete the process abroad.³¹

²⁷ INA Section 320 was amended to include these provisions for the children of military and federal government personnel residing abroad in 2020 under P.L. 116-133. The provisions apply to eligible children who were under age 18 on March 26, 2020.

²⁸ For more information, see DOS, "FAQ: Child Citizenship Act of 2000," at https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-FAQs/child-citizenship-act-of-2000.html.

²⁹ See USCIS, "N-600, Application for Certificate of Citizenship," at <https://www.uscis.gov/n-600>.

³⁰ Fee waivers are available for eligible individuals. See USCIS, "Additional Information on Filing a Fee Waiver," at <https://www.uscis.gov/forms/filing-fees/additional-information-on-filing-a-fee-waiver>.

³¹ As specified at 8 U.S.C. §1443a. This provision requires DHS, DOS, and the Department of Defense to "ensure that any applications, interviews, filings, oaths, ceremonies, or other proceedings ... are available through United States embassies, consulates, and as practicable, United States military installations overseas."

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