



BIRTHS ABROAD – ELIGIBILITY FOR CITIZENSHIP USCIS POLICY CHANGE

Purpose. This Practice Advisory explains the recent Immigration and Naturalization Services (USCIS) policy change regarding citizenship of children born abroad. Recent news media has implied that children born abroad to U.S. citizen parents do not automatically acquire U.S. citizenship. This is inaccurate as explained below. The policy change primarily affects a small number of children born abroad to non-citizen parents and children born abroad to non-citizen parents and later adopted by U.S. citizens.

Background. Citizenship can be acquired automatically through place of birth (i.e., residing in the U.S.) OR through the citizenship of a child's parents. Until recently, USCIS policy treated a birth abroad to a U.S. service member or U.S. government employee the same as being born in the United States. In other words, when a U.S. service member gave birth abroad, the child could obtain citizenship through place of birth, even though the birth did not actually occur in the U.S.. New USCIS policy, effective 29 October 2019, no longer will treat a birth abroad to a service member as a birth occurring in the U.S. (see encl. (1)). Consequently, a child born abroad will be eligible to acquire citizenship only through the citizenship of the parent(s).

Scenarios Most Likely to Affect Service Members.

1. When both parents are U.S. citizens, at least one of whom has had residence in the U.S., a child born abroad automatically acquires citizenship through their parents. The USCIS Policy change does not affect them. The parents can apply for a Consular Report of Birth Abroad with the Department of State or Certificate of Citizenship from the USCIS.
2. When only one parent is a U.S. citizen and the other is a lawful permanent resident (LPR), a child born abroad in wedlock is eligible for citizenship if the U.S. citizen parent has been physically present in the U.S. for periods totaling not less than five years, two of which were after attaining the age of fourteen. The U.S. citizen parent can count honorable military service as the parent's physical presence in the U.S..
3. When the parents are both LPRs, at least one parent must naturalize before the child born abroad is eligible to acquire citizenship. The naturalized parent must establish five years of physical residence in the U.S. (at least two of which were after they turned fourteen years old) and apply for lawful admission of the child to the U.S.. If the child is residing abroad on their parent's official military orders, the parent can count that time as the parent's physical presence in the U.S..
4. When at least one parent is a U.S. citizen, whether by birth or naturalization, the child born abroad is eligible for U.S. citizenship if the child is under the age of eighteen and the child is residing in the U.S. in the legal and physical custody of the citizen parent pursuant to lawful admission for permanent residency.
5. When a child is born overseas to non-citizen parents and is later adopted by U.S. citizens, the child must go through the immigration process and then acquire citizenship by residing with the adoptive U.S. citizen parents in the U.S..
6. There are other scenarios described in enclosure (1).

Practical Implications. When LPR parents anticipate a child being born abroad, it would be in their best interest to delay orders overseas or cut short an overseas tour to enable their child to be born in the U.S. and have automatic citizenship. If the LPR parents are not able to have their child born physically in the U.S., LPRs are encouraged to naturalize as soon as possible, so their child can acquire citizenship through the parent.

Additional Information. Enclosure (2) provides a more detailed look at the USCIS Policy Manual Update.

Enclosures: (1) USCIS Policy Manual Change
(2) Code 16 Immigration Advisory 2-19 of 30 Aug 19

Points of Contact: General immigration and naturalization questions should be directed to Ms. Mary Hostetter, Head, Legal Assistance Branch (JLA), Judge Advocate Division (JAD), at mary.hostetter@usmc.mil or (703) 692-7442. Case specific questions should be directed to installation Legal Assistance offices or SJAs.

POLICY MANUAL UPDATE

RESIDENCE RELATED TO CITIZENSHIP

How does this update affect children of U.S. government employees and members of the armed forces who are employed or stationed outside of the United States?

Who This Policy Update Does Not Affect



This policy does not affect children born outside the United States who were citizens at birth or who have already acquired citizenship, including children who:

Were born to two U.S. citizen parents, at least one of whom has had a residence in the United States or one of its outlying possessions before the child's birth;

Were born to married parents, one of whom is a U.S. citizen and one a foreign national, if the U.S. citizen parent was physically present in the U.S. or one of its outlying possessions for at least five years, at least two of which were after they turned 14 years old;

Were born to unmarried parents, one of whom is a U.S. citizen and one a foreign national, if the U.S. citizen parent meets the requirements listed in INA 309;

Are otherwise eligible to receive a Consular Report of Birth Abroad (CRBA) or a Certificate of Citizenship documenting U.S. citizenship acquired at birth; or

Are residing in the United States in the legal and physical custody of their U.S. citizen parent after being lawfully admitted to the U.S. for permanent residence.

Who this Policy Affects

This policy may affect children residing outside the United States who were born outside the United States to:



Non-U.S. citizen parents and adopted by a U.S. citizen U.S. government employee or U.S. service member after their birth;

Non-U.S. citizen parents, such as a lawful permanent resident U.S. government employee or U.S. service member, who naturalized only after the child's birth; or

Two U.S. citizen government employee or U.S. service member parents who do not meet the residence or physical presence requirements to transmit citizenship to their child at birth (or one non-U.S. citizen parent and one U.S. citizen parent who does not meet these requirements).



U.S. Citizenship and Immigration Services

Please see the USCIS Policy Manual, Volume 12, Citizenship and Naturalization, Part H, Children of U.S. Citizens, for specific requirements on acquiring citizenship.

For more information, you can connect with the USCIS Contact Center (uscis.gov/contactcenter) or send us a secure message through your USCIS online account (myaccount.uscis.gov).



U.S. Citizenship and Immigration Services

USCIS Policy Manual Update

U.S. Citizenship and Immigration Services (USCIS) issues policy guidance on “residence” requirements for acquiring citizenship

Release Date: Aug. 28, 2019

Introduction

Our latest update to the [USCIS Policy Manual](#) defines “residence” as it relates to citizenship for children of certain U.S. government employees and members of the U.S. armed forces who are employed or stationed outside the United States, to conform with the definition of residence in the Immigration and Nationality Act (INA). This guidance rescinds previously established USCIS policy, which stated that certain children who were living outside the United States were considered “residing in” the United States.

As a result, it changes the process that parents of such children must follow to obtain a Certificate of Citizenship for their children. Under the previous policy, parents of those children could file either [Form N-600, Application for Certificate of Citizenship](#), or [Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322](#), on behalf of their children. As of Oct. 29, 2019, these parents must file Form N-600K to obtain U.S. citizenship for any child who did not acquire citizenship at birth or while residing in the United States. Therefore, we will apply current guidance to all applications filed before Oct. 29, 2019.

Policy Update at a Glance

The updates to the [USCIS Policy Manual, Volume 12, Citizenship and Naturalization, and Part H, Children of U.S. Citizens](#):

- Clarify that temporary visits to the U.S. do not establish U.S. residence;
- Explain the distinction between residence and physical presence in the United States; and
- Explain that USCIS no longer considers children who are living abroad with a parent who is a U.S. government employee or U.S. service member as “residing in the United States” for purposes of acquiring citizenship under INA 320.

How Children Acquire Citizenship

U.S. laws allow children to acquire U.S. citizenship other than through birth in the United States. Children who were born outside of the United States to a U.S. citizen parent or parents may acquire U.S. citizenship at birth under INA 301 or 309. Children may also acquire citizenship after birth, but before the age of 18, through their U.S. citizen parent(s) under INA 320.

Policy Update Regarding Children of U.S. Government Employees or Service Members Employed or Stationed Abroad Who Were Born Outside the United States

Who This Policy Update Affects

This policy may affect children residing outside the United States who were born outside the United States to:

- Non-U.S. citizen parents and adopted by a U.S. citizen U.S. government employee or U.S. service member after their birth;
- Non-U.S. citizen parents, such as a lawful permanent resident U.S. government employee or U.S. service member who naturalized only after the child's birth; or
- Two U.S. citizen government employee or U.S. service member parents who do not meet the residence or physical presence requirements to transmit citizenship to their child at birth (or one non-U.S. citizen parent and one U.S. citizen parent who does not meet these requirements).

For more information on this policy update contact uscispolicymanual@uscis.dhs.gov. For case-specific inquiries, call the [USCIS Contact Center](#).

Who This Policy Update Does Not Affect

This policy does not affect children born outside the United States who were citizens at birth or who have already acquired citizenship, including children who:

- Were born to two U.S. citizen parents, at least one of whom has had a residence in the United States or one of its outlying possessions before the child's birth;
- Were born to married parents, one of whom is a U.S. citizen and one a foreign national, if the U.S. citizen parent was physically present in the U.S. or one of its outlying possessions for at least five years, at least two of which were after they turned 14 years old;
- Were born to unmarried parents, one of whom is a U.S. citizen and one a foreign national, if the U.S. citizen parent meets the requirements listed in INA 309;
- Are otherwise eligible to receive a Consular Report of Birth Abroad (CRBA) or a Certificate of Citizenship documenting U.S. citizenship acquired at birth; or
- Are residing in the United States in the legal and physical custody of their U.S. citizen parent after being lawfully admitted to the U.S. for permanent residence.

For more information, see [Policy Manual, Volume 12, Part H, Children of U.S. Citizens, Chapter 3, United States Citizens at Birth \(INA 301 and 309\)](#), or email uscispolicymanual@uscis.dhs.gov.

Reason for the Policy Update

We are updating this policy because it conflicts with the definition of "residence" in the INA and also with INA 322(d), which was enacted in 2008 after this policy was instituted, and refers to children who are residing abroad with members of the armed forces of the United States as "residing outside of the United States." In addition, the previous guidance conflicts with Department of State guidance. Having conflicting policies can lead to inconsistent decisions on citizenship claims by USCIS and the Department of State and can cause confusion as to the date children of U.S. service members and government employees stationed abroad become U.S. citizens.

General Provisions for Eligibility

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for children of U.S. citizen service members. A person eligible under INA 320 would file Form N-600, and a parent filing for a child under 18 residing outside of the United States would file Form N-600K.

Residence, Lawful Admission, and Overseas Naturalization for Children of Members of the U.S. Armed Forces

INA Section	Place of Residence	Lawful Admission	Residence Requirement	Automatic Citizenship or Overseas Naturalization
320	United States	The child must be lawfully admitted for permanent residence.	The child must reside with U.S. citizen parent in the United States.	The child may acquire automatic citizenship (must take the Oath of Allegiance in the United States to obtain a Certificate of Citizenship).
322(d)	Outside the United States	Lawful admission is not required for the child.	The child must reside with U.S. citizen parent serving abroad.	The parent must apply for citizenship, but the child may complete the entire naturalization process from outside the United States if they are authorized to accompany their U.S. citizen parent who is on official military orders (the child must take the Oath of Allegiance before their 18th birthday, unless we waive this requirement during an interview).

When a Parent Should Not File Form N-600K

U.S. government employees and U.S. service members who are employed or stationed outside the United States should not file Form N-600K if:

- The child has already acquired citizenship under INA sections 301, 309, or 320, or on or before Feb. 27, 2001, under the repealed INA section 321;
- They are a U.S. citizen whose only relationship to the child is as a stepparent;
- They are not the U.S. citizen parent of the child, unless that parent has died; or
- The child is over the age of 18.

The chart below provides additional examples of when parents should or should not file Form N-600K.

If the child is residing outside the United States and:

Then:

If the child is residing outside the United States and:

The child is born to two U.S. citizen parents on a military base or at an off-base hospital outside of the United States

The child is born to two lawful permanent resident (LPR) parents on a military base or at an off-base hospital outside of the United States

The child is born in wedlock to a U.S. citizen parent and an LPR parent on a military base or at an off-base hospital outside of the United States on or after Nov. 14, 1986

Then:

The parents can apply for a Consular Report of Birth Abroad (CRBA) with the Department of State or a Certificate of Citizenship from USCIS using Form N-600. At least one parent must prove residence in the U.S. before the child's birth. The parent should not file Form N-600K.

See the [Department of State Birth of U.S. Citizens Abroad webpage](#) for more information

At least one parent must naturalize before the child is eligible to acquire citizenship. The U.S. citizen parent must establish five years of physical presence in the United States (at least two of which were after they turned 14 years old) before the parent may file an N-600K on the child's behalf.

However, in the case of a child of a U.S. service member who is residing abroad on their parent's official military orders, the parent can count any period of time residing abroad on official orders as physical presence in the United States.

See [our website](#) for more information.

The U.S. citizen parent must prove physical presence in the United States for a period of not less than five years (at least two of which were after they turned 14 years old). However, the U.S. citizen parent can count any of the following periods as physical presence in the United States:

- Honorable service in the U.S. armed forces;
- Employment with the U.S. government or certain international organizations; or
- Being physically present abroad as the dependent unmarried son or daughter of:
 - A service member honorably serving in the U.S. military;
 - A U.S. government employee; or
 - An employee of a qualifying international organization.

If the parent meets the physical presence requirement, they can apply for a Consular Report of Birth Abroad (CRBA) with the Department of State or a Certificate of

If the child is residing outside the United States and:

Then:

Citizenship from USCIS using Form N-600. The parent should not file Form N-600K.

The child was born to an LPR parent who then naturalizes after the birth of the child

The U.S. citizen parent must establish five years of physical presence in the United States (at least two of which were after they turned 14 years old) before they may file an N-600K on the child's behalf.

However, in the case of a child of a U.S. service member who is residing abroad with them on their official orders, the parent can count any period of time residing abroad on official orders as physical presence in the United States.

The child is living on a military base outside of the United States when their parent(s) naturalize on that military base

The U.S. citizen parent must establish five years of physical presence in the United States (at least two of which were after they turned 14 years old) before the parent may file an N-600K on the child's behalf.

However, in the case of a child of a U.S. service member who is residing abroad with them on their official orders, the parent can count any period of time residing abroad on official orders as physical presence in the United States.

See [our website](#) for more information.

- The child was born outside of the United States;
- The child later becomes an LPR and resides in the United States in the legal and physical custody of their parents when one of them naturalizes in the United States; and
- The child subsequently resides outside of the United States with the parents

The child became a U.S. citizen upon the parent's naturalization. The family may file an N-600 for the child, but must return to the United States for an interview to obtain the Certificate of Citizenship. The family may also apply for a passport for the child from the Department of State from outside of the United States. The parent should not file Form N-600K.

The child is the stepchild of the U.S. citizen service member and a biological child of an LPR parent

The U.S. citizen service member must adopt the child before the child could qualify for citizenship through the stepparent. Or, once the LPR parent naturalizes and establishes five years of physical presence (at least two of which were after they turned 14 years old), they can file Form N-600K for the child.

**If the child is residing outside
the United States and:**

Then:

See [our website](#) for more information.

Important Facts to Know

- Military bases outside of the United States are not considered “in the United States” in relation to birthright citizenship. Therefore, the only way children born abroad can acquire citizenship at birth is through their parents.
- If you were a U.S. citizen when you gave birth to your child while outside the United States on military orders, your child is most likely a U.S. citizen. As long as you met certain physical presence or residence requirements before your child’s birth, this policy update does not affect you, and you can apply for a Consular Report of Birth Abroad (CRBA) for your child at a U.S. Consulate and/or a Certificate of Citizenship from USCIS using Form N-600.
- Military members stationed outside the United States who file a Form N-600K on behalf of their child will not need to travel to the United States to get a Certificate of Citizenship for their child.
- Stepchildren cannot acquire U.S. citizenship through a U.S. citizen stepparent. A stepchild is ineligible for citizenship or naturalization through the U.S. citizen stepparent, unless the stepchild is adopted and the adoption meets certain requirements (See [Policy Manual Chapter 2, Definition of Child for Citizenship and Naturalization, Section C, Adopted Child](#)).

Last Reviewed/Updated: 08/28/2019

COORDINATION PAGE

<u>Office/Dept</u>	<u>Point of Contact/Title</u>	<u>Phone</u>	<u>Date</u>
OJAG (Code 16)	CAPT David Gonzalez	(202) 685-5393	30 Aug 19
CMC (JAD)	Ms. Mary Hostetter Head, Legal Assistance Branch	(703) 692-7442	30 Aug 19