



CITIZENSHIP FOR CHILDREN

*Web-Based Conference Call Training
for Refugee Service Providers*

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NATIONALITY LAWS

- Immigration and Nationality Act (INA) – Title III
- INA Sections 301 through 361
- 8 Code of Federal Regulations – 8 CFR
- 8 CFR Sections 301 through 349, 392, 499

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OVERVIEW OF CITIZENSHIP

- **Three ways a person *automatically* becomes a citizen:**
 - Birth -- INA §301(a) & (b) & 14th Amend.
 - Acquisition – INA §§301 & 309
 - Derivation -- INA §320
- **Two ways a person can *apply* to become a citizen**
 - Naturalization -- §§101(a)(23) & 316
 - Naturalization of Children --§ 322

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CITIZENSHIP AT BIRTH

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

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ACQUISITION VS. DERIVATION

- Acquisition = at birth
- Derivation = later event

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FACTORS IN ACQUISITION

- Where was person born?
- Was one or were both parents a U.S. citizen?
- Was either parent a U.S. national?
- Was the person born in wedlock?
- If not, was he/she legitimated?
- Did the U.S. citizen parent ever reside in the U.S.?
- If so, for how long and at what ages?

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ACQUISITION OF CITIZENSHIP (CHILD BORN IN WEDLOCK)

- **Current Requirements** (for children born on/after November 14, 1986)
- **Child with Two Citizen Parents:**
 - One parent must have resided in the U.S. or possessions at any time before the child's birth
 - INA §301(c).

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Child with One Citizen Parent and One National Parent:

- The citizen parent must have been physically present in the U.S. for one continuous year before the child was born -- INA §301(d).
- **Child with One Citizen Parent:**
 - The citizen parent must have been physically present in the U.S. for five years before the child's birth. At least two of the five years must be after age 14.
 - INA §301(g).

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EXAMPLE OF ACQUISITION

- Susana was born in San Diego on May 11, 1966. She lived in the United States until she was 18 and then moved to Mexico with her parents. In 1992 she married Juan, a Mexican citizen and they had a daughter Rosa born on June 1, 1995. Can Rosa claim US citizenship?

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EXAMPLE OF ACQUISITION

- Rosa has one citizen parent, Susana, who was physically present in the U.S. for 5 years before Rosa was born, at least 2 of the years after age 14.
- Rosa acquired U.S. citizenship at birth.

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EXAMPLE OF ACQUISITION

Minh was born in Vietnam in 1970. He was admitted to the U.S. as a refugee with his parents in 1985 and became a naturalized U.S. citizen in 1997. In 1998 he went back to Vietnam to marry Lan a Vietnamese citizen. In 1999, Minh and Lan gave birth to their son Loc in Vietnam. Can Loc claim U.S. citizenship?

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EXAMPLE OF ACQUISITION

- Loc has one citizen parent, Minh, who was physically present in the U.S. for 5 years at least 2 after age 14.
- Loc is a U.S. citizen.

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DERIVATION OF CITIZENSHIP (INA §320)

- Concept: Automatic citizenship conferred on LPR child by virtue of USC status of parent or parents.
- 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 the old law

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DATE OF LAST ACT

- Look at law in effect at the time all requirements for derivation met.
- Prior to 5/24/34
- 5/24/34 to 1/12/41
- 1/13/41 to 12/23/52
- 12/24/52 to 10/5/78
- 10/5/78 to 2/26/01
- On or after 2/27/01

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Current Requirements: (on/after 2/27/01)

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

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EXAMPLE OF DERIVATION

- Lillian was born in Argentina on June 27, 1995. In 1998 Lillian and her parents entered the US as lawful permanent residents based on a 4th preference petition (USC for sibling) filed by her father's brother. On October 1, 2007 Lillian's mother naturalized. Her father is still a lawful permanent resident. Lillian has always lived with her parents in the US. Can Lillian claim U.S. citizenship?

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EXAMPLE OF DERIVATION

- Lillian entered the U.S. as a lawful permanent resident.
- Lillian's mother naturalized on October 1, 2007 so she has at least one parent who is a U.S. citizen.
- Lillian was under 18 when her mother naturalized (12 years old) and is not married.
- Lillian is living in the legal and physical custody of her U.S. citizen mother.
- Lillian derived U.S. citizenship.

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EXAMPLE OF DERIVATION

- Simon was born in Sudan on April 15, 1990. Simon and his family were admitted to the U.S. as refugees on December 1, 2000 and they adjusted status to permanent residents on August 3, 2004. Simon's mother naturalized on July 4, 2007. Simon's father is still a lawful permanent resident. Simon has always lived with his parents in the U.S. Can Simon claim U.S. citizenship?

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EXAMPLE OF DERIVATION

- Simon adjusted to lawful permanent residence.
- Simon's mother naturalized on July 4, 2007 so he has at least one parent who is a U.S. citizen.
- Simon was under 18 (17 years old) when his mother naturalized.
- Simon living in legal and physical custody of parents.
- Simon derived U.S. citizenship.

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EXAMPLE OF DERIVATION

- Sophie was born in Liberia on September 21, 1988. She entered the US with her mother on a B-2 visitor visa on June 17, 1995. Sophie's father had died in 1994 during the civil war in Liberia. In 1996 Sophie's mother was granted asylum in the US and Sophie was granted derivative asylee status. On March 15, 2000, Sophie and her mother adjusted status to permanent residence. On September 1, 2006, Sophie's mother became a US citizen. Can Sophie claim US citizenship?

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EXAMPLE OF DERIVATION

- Sophie adjusted to lawful permanent residence in 2000.
- Sophie's mother naturalized when Sophie was under 18 (17 years old).
- Sophie's only living parent had legal custody.
- Sophie derived U.S. citizenship.

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DERIVATION OF CITIZENSHIP before 2/27/01

- Under law in effect before 2/27/01, LPR child derived USC status where **both** parents became USCs before LPR child turned 18 or one parent with custody, in the case of death or divorce.

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EXAMPLE OF DERIVATION

- Gemma was born in Italy on September 21, 1982. She immigrated to the US on June 17, 1992 based on a 2nd preference (2A) relative petition filed by her father, a lawful permanent resident. Gemma's mother also immigrated at that time. On May 1, 1998, Gemma's father became a US citizen. Gemma's mother is still a lawful permanent resident. Can Gemma claim US citizenship?

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EXAMPLE OF DERIVATION

- Gemma entered the U.S. as a lawful permanent resident.
- Gemma's father naturalized when she was under 18 (15 years old).
- Gemma's mother was still a lawful permanent resident. Needed both parents to be U.S. citizens or one with legal custody.
- Gemma did not derive U.S. citizenship.

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DERIVATION OF CITIZENSHIP ISSUES

- Child defined under INA §101(c)
- Residence in the US and with USC parent
- Legal Custody

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Child - § 101 (c)

- Unmarried, under 21 includes:
 - Child legitimated under the law of child's or father's residence or domicile before child reaches 16 years old, and child is in the legal custody of the legitimating parent
 - Child adopted under the age of 16 (or sibling under 18), and in the legal custody of the adopting parent (s) (other requirements for adoption must be met)
 - Does not include step-children

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Legal Custody -8 CFR § 320.1

- A biological child living with married parents or surviving parent if other deceased
- If parents divorced or legally separated: an award of primary care, control and maintenance by a court or other appropriate government entity according to laws of the state or country of residence (includes joint custody)

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Legal Custody Issues (continued)

- Child born out of wedlock who has been legitimated and currently resides with the natural parent
- There may be other factual circumstances under which the Service will find the US citizen parent to have legal custody

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PROOF OF CITIZENSHIP

- Certificate of Citizenship
- U.S. Passport
- Consular Report of Birth Abroad of U.S. Citizen (FS-240)
 - For child living outside the U.S.
 - Must be submitted before child's 18th birthday

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Certificate of Citizenship (N-600) – For Acquisition:

- \$460 Filing Fee
- Three photos of applicant
- Copy of applicant's birth certificate
- Copy of parents' marriage certificate
- Proof of termination of prior marriages
- Copy of birth certificate(s), Certificate of Citizenship, or Certificate of Naturalization for parent(s)
- Evidence of parent's residence/presence in U.S.

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Proof of age and residency of parents

- Birth certificate
- Old passports
- School records
- Bank receipts
- Employer records
- CIS/DHS records
- Census records

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**Certificate of Citizenship (N-600)
For Derivation:**

- Filing fee of \$460 fee
- Three photos of applicant
- Child's birth certificate or record
- Parents' marriage certificate
- Proof of termination of any previous marriage (death certificate or divorce decree)
- Evidence of U.S. citizenship of parent
- If child born out of wedlock, documents verifying legitimation according to laws of child's residence or domicile or father's residence or domicile

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In case of divorce, legal separation, or adoption, documentation of legal custody

- Proof child in the physical custody of parent
- Copy of green card or other evidence of LPR status
- Evidence of all legal name changes, if applicable, for child and U.S. citizen parent

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N-600 PROCESS

- Filed at USCIS Office having jurisdiction over place of residence
- All applicants must appear for interview unless waived
- All applicants must take oath of renunciation and allegiance unless waived due to mental incapacity or young age

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DENIAL OF N-600

- Appeal on Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU)
- Appeal must be filed within 30 days of decision

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