



BE IN THE KNOW ABOUT FALSE CLAIMS TO CITIZENSHIP

What is a false claim to U.S. citizenship?

A person makes a false claim to U.S. citizenship when they falsely represent or have falsely represented themselves to be a U.S. citizen for “any purpose or benefit” under the Immigration and Nationality Act (INA) or “any other federal or state law.” A person who makes a false claim to U.S. citizenship on or after Sept. 30, 1996, is inadmissible. An individual who has already been admitted to the United States who thereafter makes a false claim to citizenship on or after the effective date of the provision is deportable.

What is a “benefit under the INA?”

A benefit under the INA includes entry into the United States, a certificate of naturalization, or a certificate of citizenship.

What is “any other federal or state law?”

A benefit under federal law could include a U.S. passport, a Social Security card, or a federal loan or public benefit if citizenship is a requirement for eligibility. A benefit under state law could include registration to vote, a driver’s license, or a state public benefit if citizenship is a requirement for eligibility.

When does this ground of inadmissibility apply?

The ground of inadmissibility for false claims to U.S. citizenship applies to an applicant for adjustment of status, an immigrant or nonimmigrant visa, or other immigration benefits that require admissibility. The ground does not apply to applicants for special immigrant juvenile status or applicants for registry when applying for adjustment of status. It went into effect on Sept. 30, 1996; however, a false claim to U.S. citizenship made before that date could still result in fraud or willful misrepresentation inadmissibility finding but only if made for the purpose of an immigration benefit.

Is intent to falsely claim to be a U.S. citizen required?

No. The BIA has held that under the plain language of the INA, it is not necessary to show intent to establish that a person is deportable and/or inadmissible for making a false representation of U.S. citizenship. *Matter of Zhang*, 27 I&N Dec. 569 (BIA 2019). Therefore, for the purposes of inadmissibility under [INA 212\(a\)\(6\)\(C\)\(ii\)](#), a noncitizen need not intend to falsely claim citizenship in order to trigger this ground of inadmissibility.

What about the employment eligibility verification Form I-9?

Before April 3, 2009, the employment eligibility verification Form I-9 asked the person whether he or she was a “citizen or national” of the United States and required checking a box corresponding to that answer. Marking “yes” on this edition of the form did not necessarily make to the person inadmissible for falsely claiming U.S. citizenship, because the form did not distinguish between a “national” or a “citizen.” However, the current Form I-9 clearly differentiates between a U.S. citizen and a national. Therefore, individuals who check the box falsely indicating they are a U.S. citizen would be inadmissible.

Is there a waiver?

There is no waiver available for a false claim to citizenship made on or after Sept. 30, 1996. However, if the applicant made a false claim to U.S. citizenship before that date for the purpose of an immigration benefit, they may qualify for a fraud waiver.

Are there any exceptions?

Yes. The exception only applies to false claims to U.S. citizenship if the applicant satisfies the following requirements:

1. Each parent of the applicant (or each adoptive parent in case of an adopted child) is or was a U.S. citizen, whether by birth or naturalization;
2. The applicant permanently resided in the United States prior to attaining the age of 16; and
3. The applicant reasonably believed at the time of the representation that he or she was a U.S. citizen.

Each of the applicant’s parents had to be a U.S. citizen at the time of the false claim to U.S. citizenship to meet the first requirement of this exception.

What about a timely retraction?

The U.S. Citizenship and Immigration Services (USCIS) policy manual states that if a person timely retracted or recanted the false claim, it would not give rise to inadmissibility. The retraction must be voluntary and timely to be effective. The applicant must correct the representation before an officer or U.S. government official challenges the applicant’s truthfulness and before the conclusion of the proceeding during which the applicant gave false testimony. A retraction can be voluntary and timely if made in response to an officer’s question during which the officer gives the applicant a chance to explain or correct a potential misrepresentation.

What about mental/legal capacity?

The USCIS Policy Manual recognizes an affirmative defense as to legal or mental capacity to making a knowing false claim. The government will look to age, level of education, background, mental capacity, level of understanding, ability to appreciate the difference between true and false, and other relevant circumstances. Mentally incompetent persons and small children are deemed to be incapable of independently forming the required intent and arguably should not be deemed inadmissible if applications submitted on their behalf contain false claims of U.S. citizenship. This is a case-by-case analysis.

There seems to be a conflict between the Policy Manual, which acknowledges age, mental capacity, and other factors as an affirmative defense to misrepresentations, and *Matter of Zhang*, which stands for the proposition that intent is not a requirement to make a false claim to U.S. citizenship. Practitioners should advocate that this affirmative defense applies to their client by distinguishing the relevant factors from *Matter of Zhang*.

Does entering the United States by falsely claiming to be U.S. citizen satisfy the requirement that an applicant be “inspected and admitted or paroled” for adjustment of status purposes?

No. A person who makes a false claim of U.S. citizenship at a port of entry and is allowed to enter is not considered to have been admitted to the United States. Therefore, this person may be inadmissible for making a false claim to U.S. citizenship and for entering the United States without inspection.