

CHAPTER 5

CITIZENSHIP AND NATURALIZATION

5.1 INTRODUCTION

5.101 In General. The Fourteenth Amendment to the Constitution states, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” For personal as well as corporate strategic reasons, foreign personnel immigrating to the United States are often concerned about obtaining United States citizenship. Many employment opportunities with the United States government are available only to citizens. There are also a wide variety of business opportunities that, under the umbrella of national security, are not available to permanent residents. Frequently these opportunities involve the defense industry and classified high-tech research. However, one of the most important reasons to be a citizen is protection against removal from the United States, especially since immigration laws change all the time and there is no prohibition on ex post facto laws. Now, more than ever, becoming a U.S. citizen is a very important consideration; United States Citizenship and Immigration Services (USCIS) has been so flooded with applications that at the end of 2019 there were 750,000 pending applications for naturalization.

5.102 Principles Governing Citizenship. The common law rule known as *jus soli* states that a person’s citizenship is determined by the country of birth. As discussed below, the United States generally adheres to this rule today. Most civil law countries base citizenship upon the theory of *jus sanguinis*, by which a person’s citizenship at birth is determined by the citizenship of the parents. In certain circumstances, the United States also adheres to this rule. In fact, the first step in analyzing any immigration case is to determine whether the client may already be a United States citizen as a result of the citizenship of his or her parents or grandparents. It is only after this determination that the need for nonimmigrant and immigrant visa planning becomes necessary.

There are other ways by which an individual can become a United States citizen. Those who were not deemed citizens at birth may petition for “naturalization” if they meet the residency, language, and good moral character requirements discussed below.

5.2 CITIZENSHIP BASED ON PLACE OF BIRTH

The following individuals are nationals and citizens of the United States at birth:¹

1. A person born in the United States and subject to its jurisdiction;²
2. A person born of an American aboriginal tribe;³
3. A person of unknown parentage found in the United States while under five years of age, unless it is shown before the person's 21st birthday that he or she was not born in the United States;⁴
4. A person born in Puerto Rico on or after April 11, 1899;⁵
5. A person born in the Canal Zone on or after February 26, 1904, whose father or mother was a United States citizen at the time of the person's birth;⁶
6. A person born in the Republic of Panama on or after February 26, 1904, whose father or mother was at the time of the person's birth a United States citizen who

¹ Some of these provisions, such as those pertaining to Puerto Rico, Alaska, Hawaii, the Virgin Islands, the Panama Canal, and Guam, have date restrictions dependent upon when the areas became subject to the jurisdiction of the United States. Refer to the relevant section of the Immigration and Nationality Act (INA) for further details.

² INA § 301. Because accredited diplomats and their families are not considered subject to the jurisdiction of the United States, children born in the United States to those diplomats do not acquire United States citizenship at birth. 8 C.F.R. § 101.3(a)(1). These children may, however, be considered lawful permanent residents. *Id.*

³ INA § 301(b).

⁴ INA § 301(f).

⁵ INA § 302.

⁶ INA § 303.

was employed by the United States government or the Panama Railroad Company, or its successor in title;⁷

7. A person living in and born in the Virgin Islands;⁸ and
8. A person living in and born in Guam.⁹

5.3 CITIZENSHIP ACQUIRED THROUGH PARENTS

Individuals who are not citizens based on their place of birth may still acquire citizenship through their parents. The following is a brief overview of possible methods of acquiring citizenship based on the citizenship of one's parents. Due to various changes in the law, extensive research often needs to be done to determine whether citizenship was in fact transmitted, depending on the status of the law at the time of the person's birth.

Individuals who were born outside of the United States and its outlying possessions are United States citizens at birth if they fall into any of the following categories:¹⁰

1. A person whose parents are both United States citizens, one of whom has had a residence in the United States or its outlying possessions before the person's birth;¹¹
2. A person who has one parent who is a national of the United States and one parent who is a United States citizen who has been physically present in the United States or its outlying possessions continuously for one year at any time before the person's birth;¹² and

⁷ *Id.*

⁸ INA § 306.

⁹ INA § 307.

¹⁰ These provisions regarding citizenship based on the citizenship or nationality of a person's parents also apply in certain circumstances to children born out of wedlock. *See* INA § 309.

¹¹ INA § 301(c).

¹² INA § 301(d).

3. A person born in a United States territory, not one of the fifty states, one of whose parents is a United States citizen who has been physically present in the United States or its territories for a continuous period of one year before the person's birth.¹³
4. A person with one alien parent and one United States citizen parent who, before the person's birth, was physically present in the United States or its outlying possessions for an aggregate of five years, at least two of which were after the United States citizen parent reached 14 years of age.¹⁴ Under the Child Citizenship Act of 2000, those children automatically acquire United States citizenship upon their entrance to the United States as permanent residents even if a parent did not meet the physical presence requirement or became a United States citizen after the child's birth.

The Child Citizenship Act of 2000 permits foreign-born children, including adopted children, to acquire citizenship automatically if they meet the following requirements:

1. At least one parent must be a United States citizen;
2. The child must be under 18 years of age;
3. The child must be residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence; and
4. An adopted child must meet all of the requirements to qualify as an "adopted" or "orphan" child.¹⁵

¹³ INA § 301(e).

¹⁴ INA § 301(g).

¹⁵ INA § 320.

Most foreign-born children adopted by United States citizens automatically acquire United States citizenship on the date they immigrate to the United States.¹⁶

5.4 DOCUMENTARY PROOF OF UNITED STATES CITIZENSHIP

For individuals who qualify under the above circumstances, official determinations of United States citizenship are made either through passport applications to the Department of State or applications for a certificate of citizenship to the USCIS on Form N-600. If the Department of State issues the passport, generally based on a United States birth certificate, the passport becomes conclusive evidence of United States citizenship and cannot be attacked collaterally in administrative proceedings.¹⁷ Adjudication of passport applications can take from a few days to several months, depending on the nature of the case. At some USCIS offices, N-600 applications can take years to be adjudicated. Passport applications do not always involve personal interviews, whereas N-600 applications do, thus affecting procedural decisions where witness credibility could be important in winning the case.

5.5 CITIZENSHIP ACQUIRED THROUGH NATURALIZATION

5.501 Eligibility Requirements. Individuals who do not qualify under any of the above provisions may still petition for judicial naturalization if they meet the following requirements:

1. An applicant for naturalization must be at least 18 years old at the time of filing the application;¹⁸
2. The applicant must demonstrate the ability to read, write, and speak words ordinarily used in English;¹⁹

¹⁶ Title I of the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631.

¹⁷ 22 U.S.C. § 2705; *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984).

¹⁸ INA § 334(b).

¹⁹ INA § 312(a)(1). This requirement does not apply to a person unable to speak English because of a physical or developmental disability; a person who, as of the date of filing the petition, is over 50 years of age and has been living in the United States as a lawful permanent resident for at least 20 years; or one who, as of the date of filing the petition, is over 55 years of age and has been living in the United States as a lawful permanent resident for at least 15 years. INA § 312(b).

3. The applicant must demonstrate his or her knowledge and understanding of United States history and government;²⁰
4. The applicant must have resided continuously in the United States as a lawful permanent resident for at least five years immediately preceding the date of filing his or her application for naturalization and must have been physically present for at least half of that time.²¹ Applicants who are spouses of United States citizens must have resided within the United States for at least three years in lawful permanent resident status (during half of which time the applicant spouse was physically present in the United States) and during the three years immediately preceding the date of filing his or her application must have been living in marital union with the citizen spouse.²² The citizen spouse must have been a citizen during this entire three-year period;²³
5. The applicant must have resided for at least three months within the state or USCIS district where he or she filed the application;²⁴
6. The applicant must reside continuously within the United States from the date of filing the application until he or she is admitted as a citizen;²⁵

²⁰ INA § 312(a)(2). The government may, in its discretion, waive this requirement for persons who are over 65 years of age and have been living in the United States in lawful permanent resident status for at least 20 years. INA § 312(b)(3).

²¹ INA § 316(a). Absences of more than six months presumptively break continuity of residence for citizenship purposes, but this can be overcome by evidence of not having abandoned the person's United States residence. INA § 316(b). Absences of one year or more definitely break continuity of residence except in the case of certain employment abroad by United States government offices and United States corporations. *Id.*

²² INA § 319(a).

²³ *Id.*

²⁴ INA § 316(a)(1).

²⁵ *Id.*