



# Chapter 4 - Automatic Acquisition of Citizenship after Birth (INA 320)

## Guidance

[Resources \(7\)](#).

[Appendices \(1\)](#).

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## A. General Requirements: Genetic, Legitimated, or Adopted Child Automatically Acquiring Citizenship after Birth<sup>[1]</sup>

A child born outside of the United States automatically becomes a U.S. citizen when all of the following conditions have been met on or after February 27, 2001:<sup>[2]</sup>

- The child has at least one parent, including an adoptive parent<sup>[3]</sup> who is a U.S. citizen by birth or through naturalization;
- The child is under 18 years of age;
- The child is a lawful permanent resident (LPR);<sup>[4]</sup> and
- The child is residing<sup>[5]</sup> in the United States in the legal and physical custody of the U.S. citizen parent.<sup>[6]</sup>

A child born outside of the United States through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother may acquire U.S. citizenship under [INA 320](#) if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and

- The child meets all other requirements under [INA 320](#), including that the child is residing in the United States in the legal and physical custody of the U.S. citizen parent.<sup>[7]</sup>

A stepchild of a U.S. citizen who has not been adopted and does not have another U.S. citizen parent does not qualify for citizenship under this provision.

## B. Legal and Physical Custody of U.S. Citizen Parent

Legal custody refers to the responsibility for and authority over a child. For purposes of this provision, USCIS presumes that a U.S. citizen parent has legal custody of a child and recognizes that the parent has lawful authority over the child, absent evidence to the contrary, in all of the following scenarios:<sup>[8]</sup>

- A biological child who currently resides with both biological parents who are married to each other, living in marital union, and not separated;
- A biological child who currently resides with a surviving biological parent, if the other parent is deceased;
- A biological child born out of wedlock who has been legitimated and currently resides with the parent;
- An adopted child with a final adoption decree who currently resides with the adoptive U.S. citizen parent;<sup>[9]</sup>
- A child of divorced or legally separated parents where a court of law or other appropriate government entity has awarded primary care, control, and maintenance of the child to a parent under the laws of the state or country of residence.

USCIS considers a U.S. citizen parent who has been awarded “joint custody” to have legal custody of a child. There may be other factual circumstances under which USCIS may find the U.S. citizen parent to have legal custody to be determined on a case-by-case basis.

## C. Children of Armed Forces Members or U.S. Government Employees (or their Spouses)<sup>[10]</sup>

On March 26, 2020, the Citizenship for Children of Military Members and Civil Servants Act was enacted into law.<sup>[11]</sup> This Act provides that, under certain conditions, children of U.S. armed forces members or U.S. government employees (or their spouses)<sup>[12]</sup> who are residing outside the United States acquire citizenship under [INA 320](#).<sup>[13]</sup> This applies to such children who were under the age of 18 on that date.<sup>[14]</sup>

A child born outside of the United States acquires automatic citizenship under INA 320 in cases where the child is an LPR and is in the legal and physical custody of his or her U.S. citizen parent who is:<sup>[15]</sup>

- Stationed and residing outside of the United States as a member of the U.S. armed forces;<sup>[16]</sup>
- Stationed and residing outside of the United States as an employee of the U.S. government;<sup>[17]</sup>  
or

- The spouse residing outside the United States in marital union<sup>[18]</sup> with a U.S. armed forces member or U.S. government employee who is stationed outside of the United States.<sup>[19]</sup>

In cases involving the child of a U.S. armed forces member residing outside the United States, the child must be authorized to accompany and reside with the U.S. armed forces member as provided by the member's official orders.<sup>[20]</sup> If the spouse of the U.S. armed forces member is the qualifying U.S. citizen parent, the spouse must be authorized to accompany and reside with the U.S. armed forces member as provided by the member's official orders.<sup>[21]</sup>

The official orders that authorize a child and, if applicable, his or her U.S. citizen parent, to accompany and reside with the member of the U.S. armed forces outside of the United States are a statutory requirement for that child to acquire citizenship under INA 320. If the child (and, if applicable, U.S. citizen parent) being added to the orders is the last action for the child to qualify for acquisition, then the date of the order becomes the date of acquisition. There is no statutory requirement for children of U.S. government employees or their spouses to be included on the employee's official orders.

The child of a U.S. armed forces member or a U.S. government employee (or his or her spouse) must meet the general requirements under INA 320(a)(1)-(2) in addition to being an LPR residing in the legal and physical custody of his or her U.S. citizen parent. All statutory requirements must be met before the child reaches the age of 18, including, if applicable, the issuance of the official orders for the child (and, if applicable, the U.S. citizen parent) to accompany and reside with the U.S. armed forces member who is stationed outside the United States.

## D. Acquiring Citizenship Before the Child Citizenship Act of 2000

The Child Citizenship Act (CCA) applies only to those children born on or after February 27, 2001, or those who were under 18 years of age as of that date. Persons who were 18 years of age or older on February 27, 2001, do not qualify for citizenship under [INA 320](#). For such persons, the law in effect at the time the last condition was met before reaching 18 years of age is the relevant law to determine whether they acquired citizenship.<sup>[22]</sup>

In general, former INA 321 applies to children who were already 18 years of age on February 27, 2001, but who were under 18 years of age in 1952, when the current Immigration and Nationality Act became effective.

In general, a child born outside of the United States to two alien parents, or one alien parent and one U.S. citizen parent who subsequently lost U.S. citizenship, acquires citizenship under former INA 321 if:

- The child's parent(s) meet one of the following conditions:
  - Both parents naturalize;
  - One surviving parent naturalizes if the other parent is deceased;
  - One parent naturalizes who has legal custody of the child if there is a legal separation of the parents; or

- The child's mother naturalizes if the child was born out of wedlock and paternity has not been established by legitimation.
- The child is under 18 years of age when his or her parent(s) naturalize; and
- The child is residing in the United States pursuant to a lawful admission for permanent residence at the time the parent(s) naturalized or thereafter begins to reside permanently in the United States.

As originally enacted in 1952, this section did not apply to adopted children of naturalized citizens. <sup>[23]</sup> Beginning on October 5, 1978, however, INA 321 became generally applicable to an adopted child if the child was residing in the United States at the time the adoptive parent or parents naturalized and the child was in the custody of his or her adoptive parents pursuant to a lawful admission for permanent residence. <sup>[24]</sup>

## E. Application for Certificate of Citizenship (Form N-600)

A person who automatically obtains citizenship is not required to file an Application for Certificate of Citizenship (Form N-600). A person who seeks documentation of such status, however, must submit an application to obtain a Certificate of Citizenship from USCIS. A person may also apply for a U.S. passport with the Department of State to serve as evidence of his or her U.S. citizenship.

A person who is at least 18 years of age may submit the Application for Certificate of Citizenship on his or her own behalf. If the application is for a child who has not reached 18 years of age, the child's U.S. citizen biological parent, adoptive parent, or legal guardian must submit the application. <sup>[25]</sup>

USCIS will issue proof of U.S. citizenship in the form of a Certificate of Citizenship if the Application for Certificate of Citizenship is approved and the person takes the Oath of Allegiance, if required to do so. <sup>[26]</sup>

## F. Documentation and Evidence

The applicant must submit the following required documents unless such documents are already contained in the USCIS administrative record or do not apply: <sup>[27]</sup>

- The child's birth certificate or record.
- Marriage certificate of child's parents, if applicable.
- Proof of termination of any previous marriage of each parent if either parent was previously married and divorced or widowed, for example:
  - Divorce Decree; or
  - Death Certificate.
- Evidence of United States citizenship of parent:
  - Birth Certificate;

- Naturalization Certificate;
- Consular Report of Birth Abroad (FS-240);
- A valid unexpired U.S. passport; or
- Certificate of Citizenship.
- Documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile if the child was born out of wedlock.
- Documentation of legal custody in the case of divorce, legal separation, or adoption.
- If applicable, official orders (that is, a Permanent Change of Station (PCS)) from the respective department that authorized the child of the U.S. armed forces member, or the child of the spouse of such member and the spouse,<sup>[28]</sup> to accompany the U.S. citizen parent.
- Copy of Permanent Resident Card or Alien Registration Receipt Card or other evidence of lawful permanent resident status, such as an I-551 stamp in a valid foreign passport or travel document issued by USCIS.
- Copy of the full, final adoption decree, if applicable:
  - For an adopted child (not orphans or Hague Convention adoptees), evidence that the adoption took place before the age of 16 (or 18, as appropriate) and that the adoptive parent(s) had custody of, and lived with, the child for at least 2 years.<sup>[29]</sup>
  - For an adopted orphan, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen).<sup>[30]</sup>
  - For a Hague Convention adoptee, a copy of the notice of approval of Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen).<sup>[31]</sup>
  - If the child was admitted as an LPR as an orphan or Hague Convention adoptee<sup>[32]</sup> (this evidence may already be in the child's A-file).
- Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

An applicant does not need to submit documents that were submitted in connection with:

- An immigrant visa application retained by the American Consulate for inclusion in the immigrant visa package; or
- An immigrant petition or application and included in a USCIS administrative file.

If necessary, an officer may continue the application to request additional documentation to make a decision on the application.

## G. Citizenship Interview and Waiver

In general, an applicant must appear in person for an interview before a USCIS officer after filing an Application for Certificate of Citizenship. This includes the U.S. citizen parent or parents if the application is filed on behalf of a child under 18 years of age.<sup>[33]</sup> USCIS, however, may waive the interview requirement if all the required documentation necessary to establish the applicant's eligibility is already included in USCIS administrative records or if the required documentation is submitted along with the application.<sup>[34]</sup>

## H. Decision and Oath of Allegiance

### 1. Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age

If an officer approves the Application for Certificate of Citizenship, USCIS administers the Oath of Allegiance before issuing a Certificate of Citizenship.<sup>[35]</sup>

However, the INA permits USCIS to waive the taking of the Oath of Allegiance if USCIS determines the person is unable to understand its meaning.<sup>[36]</sup> USCIS has determined that children under the age of 14 are generally unable to understand the meaning of the oath.

Accordingly, USCIS waives the oath requirement for a child younger than 14 years of age. If USCIS waives the oath requirement, USCIS issues a Certificate of Citizenship after the officer approves the application.

### 2. Denial of Application

If an officer denies the Certificate of Citizenship application, the officer must notify the applicant in writing of the reasons for denial and include information on the right to appeal in the notice.<sup>[37]</sup> An applicant may file an appeal within 30 calendar days after service of the decision (33 days if the decision was mailed).

## Footnotes

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1. [^] See [INA 320](#). See Nationality Chart 3 [[12 USCIS-PM H.3, Appendices Tab](#)].

2. [^] These provisions were created by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000), which amended earlier provisions of the Immigration and Nationality Act (INA) regarding acquisition of citizenship after birth for foreign-born children who have U.S. citizen parent(s). These CCA amendments became effective on February 27, 2001.



3. [^] As long as the child meets the requirements to be considered an adopted child for immigration purposes, as outlined in [INA 101\(b\)\(1\)\(E\)](#), [INA 101\(b\)\(1\)\(F\)](#), or [INA 101\(b\)\(1\)\(G\)](#).
4. [^] A person is generally considered to be an LPR once USCIS approves his or her adjustment application or once he or she enters the United States with an immigrant visa. See [INA 245\(b\)](#). For certain classifications, however, the effective date of becoming an LPR is a date that is earlier than the actual approval of the status (commonly referred to as a “rollback” date). See Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident (LPR) Admission for Naturalization, Section A, Lawful Permanent Resident (LPR) at Time of Filing and Naturalization [[12 USCIS-PM D.2\(A\)](#)]. In addition, a person who is born a U.S. national and is the child of a U.S. citizen may establish eligibility for a Certificate of Citizenship without having to establish LPR status.
5. [^] For the definition of residence, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section F, Definition of U.S. Residence [[12 USCIS-PM H.2\(F\)](#)].
6. [^] See [INA 320\(a\)\(3\)](#). See [8 CFR 320.2](#). Certain children of U.S. armed forces members or U.S. government employees (or their spouses) who are residing outside the United States may acquire citizenship under [INA 320](#). See Section C, Children of Armed Forces Members or U.S. Government Employees (or their Spouses) [[12 USCIS-PM H.4\(C\)](#)]. See [INA 320\(c\)](#) (added by the Citizenship for Children of Military Members and Civil Servants Act, [Pub. L. 116-133 \(PDF\)](#) (March 26, 2020)).
7. [^] For a more thorough discussion, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [[12 USCIS-PM H.2\(E\)](#)].
8. [^] See [8 CFR 320.1](#).
9. [^] If the requirements of [INA 101\(b\)\(1\)\(E\)](#), or [INA 101\(b\)\(1\)\(F\)](#), or [INA 101\(b\)\(1\)\(G\)](#) are met.
10. [^] For information about USCIS policies pertaining to this group of children before March 26, 2020, see Appendix: History of Acquiring Citizenship under [INA 320](#) for Children of U.S. Citizens who are Members of the U.S. Armed Forces, U.S. Government Employees, or their Spouses [[12 USCIS-PM, Appendices Tab](#)].
11. [^] See [Pub. L. 116-133 \(PDF\)](#) (March 26, 2020) (codified at [INA 320\(c\)](#)).
12. [^] Spouses must be U.S. citizens if the child seeks to acquire citizenship under [INA 320](#) based on the child’s residence with that spouse.
13. [^] The Citizenship for Children of Military Members and Civil Servants Act, [Pub. L. 116-133 \(PDF\)](#) (March 26, 2020), did not redefine “residence in the United States” for these children. Instead, it created an exception to the U.S. residence requirement by providing that [INA 320\(a\)\(3\)](#) is deemed satisfied in applicable cases.
14. [^] These provisions do not affect children who have already been recognized by USCIS or the Department of State as having acquired U.S. citizenship under [INA 320](#) through the issuance of a Certificate of Citizenship or passport.
15. [^] This provision would also apply to a child adopted by a U.S. citizen parent if the child satisfies the requirements applicable to adopted children under [INA 101\(b\)\(1\)](#) and [INA 320\(b\)](#).

16. [^] See [INA 320\(c\)\(2\)\(A\)\(i\)](#). For a list of qualifying military branches, see Part I, Military Members and their Families, Chapter 2, One Year of Military Service during Peacetime (INA 328), Section B, Honorable Service [[12 USCIS-PM I.2\(B\)](#)] and Section C, National Guard Service [[12 USCIS-PM I.2\(C\)](#)]. Service is not required to be “honorable” for the purposes of [INA 320\(c\)\(2\)\(A\)\(i\)](#) and a Request for Certification of Military or Naval Service ([Form N-426](#)) is not required as evidence.
17. [^] See [INA 320\(c\)\(1\)\(A\)](#). An “employee of the U.S. government” means a person employed by the U.S. government and does not include a person employed under contract with the U.S. government. Because there is no statute or regulation defining employee or “employee of the Government of the United States” in the citizenship and naturalization context, the common law definition of employee applies. See *Clackamas Gastroenterology Assoc., P.C., v. Wells*, 538 U.S. 440, 448 (2003). See *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 322-23 (1992). The concept of “control” is the key to determining whether a person is an employee under the common law. See *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992). Further, the plain language of the Citizenship for Children of Military Members and Civil Servants Act, [Pub. L. 116-133 \(PDF\)](#) (March 26, 2020), does not include persons employed under contract with the Government of the United States, in contrast to [INA 316\(b\)](#), which applies more specifically to persons “employed by or under contract with the Government of the United States.”
18. [^] Temporary orders, such as to serve in a combat zone or for mission support performance, do not affect the marital union between a military member and his or her spouse and would not impact acquisition of citizenship provisions under [INA 320\(c\)](#).
19. [^] See [INA 320\(c\)\(2\)\(A\)\(ii\)](#) (spouses of U.S. armed forces member) and [INA 320\(c\)\(1\)\(B\)](#) (spouses of U.S. government employees).
20. [^] See [INA 320\(c\)\(2\)\(B\)](#). For guidance on “official orders,” see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section A, General Provisions for Spouses, Children, and Parents of Military Members, Subsection 2, Documenting “Official Orders” [[12 USCIS-PM I.9\(A\)\(2\)](#)].
21. [^] See [INA 320\(c\)\(2\)\(A\)\(ii\)](#).
22. [^] See Chapter 3, United States Citizens at Birth (INA 301 and 309) [[12 USCIS-PM H.3](#)].
23. [^] See Section 321(b) of INA of 1952, [Pub. L. 82-414 \(PDF\)](#), 66 Stat. 163, 245 (June 27, 1952).
24. [^] See Section 5 of the Act of October 5, 1978, [Pub. L. 95-417 \(PDF\)](#). The 1978 amendment limited this benefit to a child adopted while under 16 years of age. This restriction was removed in 1981 by the Act of December 21, 1981, [Pub. L. 97-116 \(PDF\)](#), but is also included in the definition of “child” in [INA 101\(c\)](#).
25. [^] See [8 CFR 320.3\(a\)](#).
26. [^] See Section G, Decision and Oath of Allegiance [[12 USCIS-PM H.4\(G\)](#)]. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [[12 USCIS-PM J.2](#)].
27. [^] See [8 CFR 320.3\(b\)](#).
28. [^] For guidance on “official orders,” see Part I, Military Members and their Families, Chapter 9, Spouses, Children, and Surviving Family Benefits, Section A, General Provisions for Spouses, Children,



and Parents of Military Members, Subsection 2, Documenting “Official Orders” [12 USCIS-PM I.9(A)(2)].

29. [^] See INA 101(b)(1)(E). See Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section C, Adopted Child [12 USCIS-PM H.2(C)].

30. [^] If admitted as an IR-4 because there was no adoption abroad, the parent(s) must have completed the adoption in the United States. If admitted as an IR-4 because the parent(s) obtained the foreign adoption without having seen the child, the parent(s) must establish that they have either “readopted” the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.

31. [^] If admitted as an IH-4, the parent(s) must have completed the adoption in the United States.

32. [^] See INA 101(b)(1).

33. [^] See 8 CFR 320.4.

34. [^] See 8 CFR 341.2. See Section G, Documentation and Evidence [12 USCIS-PM H.5(G)].

35. [^] See 8 CFR 320.5(a) and 8 CFR 337.1. See INA 337. See Part J, Oath of Allegiance, Chapter 2, The Oath of Allegiance [12 USCIS-PM J.2].

36. [^] See INA 337(a). See 8 CFR 341.5(b).

37. [^] See 8 CFR 320.5(b) and 8 CFR 103.3(a).

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