

OUTLINE OF TOPIC AND CITATIONS
September 2, 2010

Generally, it is mandatory to look to the law in effect at the time of the person's birth and/or to the place of the individual's birth:

- Numerous Applicable Statutes range from March 26, 1790 until today.
- Most commonly used are:
 - Section 1993 R.S
 - Act of May 24, 1934 (an amendment to RS1993)
 - Nationality Act of 1940 ("NA")
 - Immigration and Nationality Act of 1952, as amended ("INA")

Example of importance of date of birth for instance:

- If person born on or after November 13, 1941 but before December 23, 1952, look to the Nationality Act of 1940. If on or after December 24, 1952, look to the INA.
- If person born before December 24, 1952, retention of citizenship may be a requirement for certain people. INA § 324 (d) is a remedy.

Some statutes require prerequisite acts on the part of the USC parent (s):

- If residence required as a prerequisite to acquisition of citizenship, defined by INA §101 (a) (33) the term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.
- If physical presence is a prerequisite to person's acquisition of citizenship, parent's body must be actually in U.S. (territories and outlying possessions included) unless for instance as specified in INA §301 (g), USC parent abroad in the employ of the U.S. G. or honorable service in the U.S. Military, etc.
- (Note: Physical presence requirement of INA §322 does not contain similar language.)
- The Definition of "Child" for Citizenship Purposes as it differs from the Definition of "Child" for Other Immigration Purposes
 - Title II---INA §101 (b) (1) ---For immigration purposes, under 21 and can be a stepchild or adopted child
 - Title III---INA §101 (c) (1)---For citizenship purposes, under 21 unless otherwise specified in the pertinent statute such as in INA §320 and §322 (under 18), but in any event, does not include stepchildren and does include adopted children.

Examples of special situations:

- Certain women married to USC husbands between February 10, 1855 and September 22, 1922 acquired U.S. citizenship at marriage.
- USC women could not transmit citizenship to their children until May 24, 1934 and finally retroactively to 1790 by INA § 301 (h)
- Because of this major special situation, looking back at the ability of women to transmit citizenship retroactively created many more U.S. citizens by tracing the family trees.

- Subsequent laws can be retroactive if so specified in the law [see above INA §301 (h)] or if made retroactive by USG regulation or policy or if applied retroactively by the Courts' interpretation.

JUS SOLI

- 14th Amendment of the U.S. Constitution
- INA §301(a)
- Born in the United States (including its territories or U.S. outlying possessions) and subject to the jurisdiction. Includes born at sea or even in the air. Includes birth in the Commonwealth of Northern Mariana Islands effective June 1, 2009.
- Subject to the jurisdiction generally bars children born in the U.S. to foreign diplomats (Diplomatic List)

JUS SANGUINIS

Birth abroad to USC parent (s):

- Applicable Statutes contemplate a blood relationship

Children Born In Wedlock

- Two USC parents---one merely must have resided in the U.S. prior to birth of child i.e., one parent must have had a residence in the U.S. prior to birth of child for no particular time period.
- One USC parent---must have been physically present in the U.S. for a specified period prior to birth of the child.
- On or after 12/24/1952 but on or before 11/13/1986, 10 years of physical presence, 5 years after age 14.
- On or after 11/14/1986, 5 years of physical presence, 2 after age 14.
- This change in the amount of physical presence was **not** retroactive.

Children Born Out of Wedlock (BOW)

USC Mom---child acquires U.S. Citizenship if USC mom had one (1) continuous year of U.S. physical presence prior to birth of the child.

USC Dad---under current law:

- Must establish a blood relationship between USC dad and child by clear and convincing evidence,
- USC dad must, while child is under age 18,
 - legitimate child under law of child's residence or domicile, or
 - acknowledge paternity of child in writing or under oath, or
 - have paternity adjudicating in a competent court

AND

■ USC dad, unless deceased, must agree in writing to financially support child until age 18.

- If above requirements are met, the provisions of INA §§301(c), (d), (e) and (g) must then be satisfied (must have been accomplished prior to birth of child) and if so, citizenship is acquired as of the child's date of birth.

PRACTICE TIPS:

- INA §309(a), concerning birth to USC dads changed on November 14, 1986.

- Therefore, the requirements for acquiring U.S. citizenship must be met according to the law in effect at the time of the child's birth.
- However, if child was born after 11/14/1968 but on or before 11/14/1971, one can use either old or new version of INA §309(a) for establishing claim.

Automatic Acquisition---INA §320

- Effective date of Child Citizenship Act (CCA) is February 27, 2001
- Applies to children who do not acquire U.S. citizenship at birth and are:
 - Under age 18; and
 - In the legal and physical custody of USC parent (joint legal custody is permitted); and
 - Child entered the U.S. as Lawful Permanent Resident (“LPR”)
- Applies to both Natural children and Adopted children
- Children adopted by USC parent (s) must be IR-3 at time of entry to the U.S. in order to automatically acquire U.S. Citizenship
- Adopted Children of a USC parent who enters the U.S. as IR-4 automatically acquires U.S. citizenship as soon as adoption is completed.
- Child can apply for a U.S. Passport or a Certificate of Citizenship
- Note: Since the effective date of the Child Citizenship Act is February 27, 2001, children who met these requirements on that date automatically became American citizens.
- Children who were 18 years of age or older on the effective date of the Child Citizenship Act (February 27, 2001) did not acquire U.S. citizenship
- The Child Citizenship Act is not retroactive.

“Expedited” Naturalization—INA §322

- Applies to both natural born and adopted children who do not acquire U.S. citizenship at birth and are:
 - Under age 18; and
 - In the legal and physical custody of the USC parent
- If USC parent does not meet the physical presence requirement of 5 years, 2 after age 14, look to USC Grandparent clause. This physical presence requirement must be satisfied before application made for child.
- USC parent must apply to USCIS on N-600K for Certificate of Citizenship and can be sent to any USCIS Field Office for adjudication.
- Look to prior statutes concerning automatic acquisition of citizenship for LPR minor children of naturalized parent (s).
- Former INA Section 321 was repealed by the CCA but it still is operable if person met requirements before February 27, 2001 repeal while under 18.
- There may be many people out there who do not know they are citizens.

22 U.S.C. § 2705 : US Code - Section 2705: Documentation of citizenship

The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction:

- (1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.
- (2) The report, designated as a "Report of Birth Abroad of a Citizen of the United States", issued by a consular officer to document a citizen born abroad. For purposes of this paragraph, the term "consular officer" includes any United States citizen employee of the Department of State who is designated by the Secretary of State to adjudicate nationality abroad pursuant to such regulations as the Secretary may prescribe.