U.S. Department of Homeland Security U.S. Citizenship and Immigration Services Office of the Director Camp Springs, MD 20588-0009



November 19, 2024

PA-2024-29

Policy Alert

SUBJECT: Custody in Acquisition of Citizenship Context

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding the legal and physical custody requirements for purposes of acquisition of U.S. citizenship under Section 320 and naturalization under Section 322 of the Immigration and Nationality Act (INA). USCIS is also expanding guidance on derivation of citizenship before the Child Citizenship Act (CCA), under former INA 321.¹

Background

To acquire citizenship under INA 320, or naturalize under INA 322, a child of a U.S. citizen generally must be residing in the legal and physical custody of the U.S. citizen parent.² Legal custody may also be a requirement to obtain citizenship under former INA 321.

For purposes of acquisition of U.S. citizenship, legal custody is determined according to judicial decree or the law of the relevant jurisdiction and refers to the responsibility for and authority over a child.³ Child custody cases include many types of custody arrangements and are often complicated. Laws governing arrangements for children following their parents' divorce or legal separation produce different outcomes that impact legal custody determinations for purposes of citizenship acquisition. The law also provides that the child must be in the physical custody of the U.S. citizen parent for purposes of INA 320 and INA 322.

This update addresses stakeholder feedback USCIS received in response to a Request for Public Input⁴ requesting USCIS clarify its guidance on the legal and physical custody requirements for citizenship purposes. USCIS is updating guidance in the Policy Manual to expand the current guidance on determining legal and physical custody for citizenship purposes.

³ See 8 CFR 320.1.

¹ Former INA 321 was repealed by Section 101 of the Child Citizenship Act (CCA) of 2000, Pub. L. 106-395, 114 Stat. 1631 (October 30, 2000). The CCA became effective on February 27, 2001.

² See INA 320 and INA 322. See 8 CFR 320.2 and 8 CFR 322.1.

⁴ On April 19, 2021, USCIS issued the Identifying Barriers Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request for Public Input, to seek public opinion regarding how to reduce administrative barriers and burdens that impede access to immigration benefits. See 86 FR 20398 (April 19, 2021).

PA-2024-29: Custody in Acquisition of Citizenship Context Page 2

Further, this update expands guidance on adjudicating derivation of U.S. citizenship under the law in effect before the CCA by providing detailed clarification on each of the requirements of former INA 321, including the legal custody requirement.

The update also clarifies that USCIS cannot issue a Certificate of Citizenship if an applicant does not take the Oath of Allegiance unless the applicant is eligible for a waiver.

This guidance, contained in Volume 12 of the Policy Manual, is effective immediately and applies to applications pending or filed on or after November 19, 2024. The guidance contained in the Policy Manual is controlling and supersedes any related prior guidance on the topic.

Policy Highlights

- Expands guidance on when USCIS considers a child to be in the legal custody of the U.S. citizen parent, clarifies the effect of a *nunc pro tunc* (retroactive) correction of a custody order, and clarifies when USCIS may recognize private custody agreements.
- Clarifies that USCIS considers a U.S. citizen parent who has actual uncontested custody of a child to have legal custody for purposes of acquisition of citizenship when there is no judicial determination on legal custody and the relevant jurisdiction's law does not determine which parent has legal custody of the child.
- Provides that a U.S. citizen parent has physical custody of a child when the child resides or physically lives with the parent.
- Expands the existing guidance in adjudicating citizenship claims under former INA 321.
- Clarifies that USCIS cannot issue a Certificate of a Citizenship to any applicant who does not take the oath of allegiance unless the applicant is eligible for an oath waiver.

Summary of Changes

Affected Section: Volume 12 > Part H > Chapter 1 > Section B, Background

• Revises the second paragraph.

Affected Section: Volume 12 > Part H > Chapter 2, Definition of Child and Residence for Citizenship and Naturalization

• Revises the second to last paragraph of Section A (Definition of a Child) and the footnote in the third paragraph of Section B (Legitimated Child).

Affected Section: Volume 12 > Part H > Chapter 3 > Section F, Decision and Oath of Allegiance

• Adds new final sentence to Subsection 1 (Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age).

PA-2024-29: Custody in Acquisition of Citizenship Context Page 3

Affected Section: Volume 12 > Part H > Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320)

- Adds a new final paragraph to Section A (General Requirements: Child Automatically Acquiring Citizenship after Birth).
- Revises Section B (Legal and Physical Custody of U.S. Citizen Parent) in its entirety and retitles Section title (Child in Legal and Physical Custody of U.S. Citizen Parent).
- Revises and retitles Section D (Acquiring Citizenship Before the Child Citizenship Act of 2000) as new Chapter 7 (Deriving Citizenship Before the Child Citizenship Act of 2002 (Former INA 321 and 320)).
- Redesignates Sections D-G.
- Revises the bulleted list in newly redesignated Section E (Documentation and Evidence).
- Adds new introductory paragraph and final sentence to Subsection 1 (Approval of Application, Oath of Allegiance, and Waiver for Children under 14 Years of Age) under newly redesignated Section G (Decision and Oath of Allegiance).

Affected Section: Volume 12 > Part H > Chapter 5, Child Residing Outside the United States (INA 322)

• Adds new final sentence to Subsection 1 (Approval of Application, Oath of Allegiance, and Waiver for Children Under 14 Years of Age) in Section I (Decision and Oath of Allegiance).

USCIS may also make other minor technical, stylistic, and conforming changes consistent with this update.

Citation

Volume 12: Citizenship and Naturalization, Part H, Children of U.S. Citizens [12 USCIS-PM H] (Chapters 1, 2, 4, 5, 7).