



ACQUISITION OF **U.S. CITIZENSHIP** BY A **CHILD BORN ABROAD**





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Birth Abroad to **Two U.S. Citizen Parents** in Wedlock

A child born abroad to two U.S. citizen parents acquires U.S. citizenship at birth under section 301(c) of the Immigration and Nationality Act (INA) provided that one of the parents had a

residence in the United States or one of its outlying possessions prior to the child's birth. The child is considered to be born in wedlock for the purposes of citizenship acquisition when the genetic and/or gestational parents are legally married to each other at the time of the child's birth and both parents are the legal parents of the child under local law at the time and place of birth.

Birth Abroad to **One Citizen and One Alien Parent** in Wedlock

A child born abroad to one U.S. citizen parent and one alien parent acquires U.S. citizenship at birth under Section 301(g) of the INA provided the U.S. citizen parent was physically present in the United States or one of its outlying possessions for the time period required by the law applicable at the time of the child's

birth. (For birth on or after November 14, 1986, a period of five years physical presence, two after the age of fourteen, is required. For birth between December 24, 1952 and November 13, 1986, a period of ten years, five after the age of fourteen, is required for physical presence in the United States or one of its outlying possessions to transmit U.S. citizenship to the child.) The U.S. citizen parent must be the genetic or the gestational parent and the legal parent of the child under local law at the time and place of the child's birth to transmit U.S. citizenship.

Birth Abroad Out-of-Wedlock to a **U.S. Citizen Mother**

A child born abroad out-of-wedlock to a U.S. citizen mother may acquire U.S. citizenship under Section 309(c) of the INA if the mother was a U.S. citizen at the time

of the child's birth and if the mother was physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the child's birth. The U.S. citizen mother must be the genetic or the gestational mother and the legal parent of the child under local law at the time and place of the child's birth to transmit U.S. citizenship.

Birth Abroad Out-of-Wedlock to a **U.S. Citizen Father** – **«New» Section 309(a)**

A child born abroad out-of-wedlock to a U.S. citizen father may acquire U.S. citizenship under Section 301(g) of the INA, as made applicable by the «new» Section 309(a) of the INA provided:

- 1** | A blood relationship between the child and the father is established by clear and convincing evidence;
- 2** | The father had the nationality of the United States at the time of the child's birth;
- 3** | The father was physically present in the United States or its outlying possessions prior to the child's birth for five years, at least two of which were after reaching the age of 14;
- 4** | The father (unless deceased) has agreed in writing to provide financial support for the child until the child reaches the age of 18 years; and
- 5** | While the child is under the age of 18 years:
 - the child is legitimated under the law of his/her residence or domicile,
 - the father acknowledges paternity of the child in writing under oath, or
 - the paternity of the child is established by adjudication of a competent court.

Birth Abroad Out-of-Wedlock to a U.S. Citizen Father – «Old» Section 309(a) of the INA – A child born out-of-wedlock to a U.S. citizen father may acquire U.S. citizenship under the former Section 301(a)(7) of the INA as made applicable by the «old» Section 309(a) of the INA if the U.S. citizen father, prior to the child's birth, had been physically present in the United States or one of its outlying possessions for ten years, five of which were after the age of 14, and if the paternity of the child had been established by legitimation prior to the child reaching the age of 21. The «old» Section 309(a) of the INA is applicable to individuals who were 18 on November 14, 1986 and to individuals whose paternity had been established by legitimation prior to that date. Individuals who were at least 15 on November 14, 1986, but under the age of 18, could opt to have their claim determined in accordance with the provisions of either the «old» or the «new» Section 309(a).

CHART TO DETERMINE **U.S. CITIZENSHIP RULES**

Birth Date of Child	Parent's Residence Requirement to Transmit Citizenship	Child's Residence Requirement to Retain Citizenship
Before 5/24/1934	Parent is a citizen who resided in the U.S. before the child's birth.	None.
Between 5/24/1934 and 1/13/1941	If both parents are U.S. citizens, at least one resided in the U.S. before the child's birth.	None.
	If one parent is a U.S. citizen, the U.S. citizen parent must have resided in the U.S. before the child's birth.	None.
Between 1/13/41 and 12/24/1952	If both parents are U.S. citizens, at least one resided in the U.S. before the child's birth.	If both parents are U.S. citizens, no retention requirement.
	If one parent is a U.S. citizen, the U.S. citizen parent must have resided in the U.S. for 10 years, at least 5 of which were after age 16.	2 years continuous presence in the United States between the ages of 14 and 28. However, there is no retention requirement if born on or after 10/10/1952.
Between 12/24/1952 and 11/13/1986	If both parents are U.S. citizens, at least one resided in the U.S. before the child's birth.	None.
	If one parent is a U.S. citizen, the U.S. citizen parent must have resided in the U.S. for 10 years, at least 5 of which were after age 14.	None.
After 11/13/1986	If both parents are U.S. citizens, at least one resided in the U.S. before the child's birth.	None.
	If one parent is a U.S. citizen, the U.S. citizen parent must have resided in the U.S. for 5 years, at least 2 of which were after age 14.	None.

Source: Adapted from INA, Appendix L, Exhibit 1, Summary of Retention Provisions

Please don't hesitate to contact us for a consultation, if you have any questions. Tel.: +41 (0)44 212 40 60
We are looking forward to hearing from you.