

U.S. CITIZENSHIP: The Greatest Gift

by Megan Sprecher

Parents want to provide for their children as best they can. U.S. citizenship is something many of us take for granted. For those parents with children born abroad, the citizenship status of their children is often a primary concern. Below are three situations where foreign-born children become citizens through their U.S. citizen parent(s) pursuant to the Immigration and Nationality Act (INA).

Child Born Abroad to U.S. Citizen Parent(s)

"Other things may change us, but we start and end with the family."
-Anthony Brandt

Under INA §301, some children born outside the United States are considered citizens from birth. Factors determining whether the child is a citizen at birth include whether one or both parents are U.S. citizens, whether the child was born in wedlock, and length of the U.S. citizen parent's residence in the United States prior to the child's birth. The current version of INA §301 was enacted on November 14, 1986 and modified on February 27, 2001. Children born before then must look at the law in effect at the time of their birth.

Rafael, a citizen of the Dominican Republic, and Jane, a U.S. citizen, are married. Their child was born in the Dominican Republic on January 1, 2009. Under INA §301, the child is a U.S. citizen at birth if Jane, the sole U.S. citizen parent, was physically present in the United States for five years, two of which were after she reached age 14. The five years do not have to be consecutive, but they do have to take place before the child's birth. If these requirements are met, the child was a U.S.

citizen at birth. Proof of the child's U.S. citizenship is shown through a Consular Report of Birth (FS-240) issued by the U.S. consulate in the Dominican Republic, a Certificate of Citizenship issued by the U.S. Citizenship and Immigration Services (USCIS), or a U.S. passport issued by the U.S. Department of State.

Mai, a 22-year-old, has lived in China her whole life. Her mother, Li Mei, is a citizen of China. Her father, Paul, was a U.S. citizen. Paul lived in the United States continuously until he met and married Li Mei at age 30. Paul and Li Mei divorced before Mai turned a year old. Paul did not have any further contact with Mai and passed

away a few years later. Mai is now interested in living in the United States. Even though Mai is now an adult, her U.S. citizen parent is deceased, and neither Mai nor Paul ever filed any paperwork with the U.S. consulate or USCIS, because Mai met all the requirements for citizenship under INA §301 at birth, she has been a citizen since birth. Subsequent events such as the death of her U.S. citizen parent, turning 18, immigration infractions, and criminal convictions do not affect her status as a U.S. citizen.

Naturalization of Foreign-Born Parent(s)

"Let us at all times remember that all American citizens are brothers of a common country, and should dwell together in bonds of fraternal feeling."
-Abraham Lincoln

A child automatically becomes a U.S. citizen if at least one parent is a citizen by birth or naturalization, the child is under 18, and the child is a Lawful Permanent Resident living in the legal and physical custody of the U.S. citizen parent(s) in the United States. INA §320. This provision took effect when the Child Citizenship Act (CCA) became law on February 27, 2001. The CCA does not apply retroactively. INA §320 does apply to adopted children as long as the adopted child satisfies require-

I-130s are approved and the three successfully visa process through the U.S. consulate in Tanzania. Jitu's wife, daughter, and stepdaughter enter the United States as Lawful Permanent Residents and are reunited with Jitu. Jitu's daughter, Malenga, automatically becomes a U.S. citizen upon entering the United States pursuant to INA §320. Jitu's stepdaughter, Maijani, remains a Lawful Permanent Resident. Although she meets the other requirements under INA §320, Maijani does not automatically acquire citizenship through Jitu because he is her stepfather, not biological or adopted father. If Maijani is still under 18 when her mother naturalizes, Maijani may automatically acquire citizenship through her.

International Adoption

"Adoption comes from the heart, but the adoption process comes from the Law. You should follow your heart, but be sure you also follow the law."
-Irina O'Rear

The Child Citizenship Act greatly altered the citizenship process for children adopted abroad. Prior to the enactment of the CCA, U.S. citizen parents of children adopted abroad waited a substantial amount of time for USCIS to process their children's citizenship paperwork. There was a sizable backlog. Adopted children had to go through the oath ceremony and did not become citizens until they had done so. Now, after the enactment of the CCA, the


process is much more streamlined. An adopted child under INA §101(b)(1) automatically becomes a citizen once he or she meets the requirements under INA §320.

Jolene and James, a U.S. citizen couple, adopt a baby, Rosario, from Guatemala. When Rosario enters the United States, her adoption is already full and final. Upon entry, Rosario automatically acquires citizenship from her adopted U.S. citizen parents because she is under 18 years of age and is residing in the United States in Jolene and James' legal and physical custody.

Low-income individuals seeking immigration assistance with immigration matters in the Greater Cleveland area may contact The Legal Aid Society of Cleveland at 216-687-1900.

This Legal Aid intake number also serves to fa-

cilitate referrals to the Cleveland Metropolitan Bar Association's C. Lyonel Jones Pro Bono Immigration Program. If you are interested in being part of this or any other Pro Bono Program, please contact Ann McGowan Porath, of Legal Aid's Volunteer Lawyer's Program at 216-861-5332. ☛

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