

OUR PRACTICE

Eligibility for Citizenship

Who is or can become a U.S. citizen? There are four paths to citizenship:

- **Birth in the United States**
- **Birth abroad from at least one U.S. citizen parent**
- **Naturalization**
- **Derivative citizenship arising after birth (usually through adoption)**

Birth in the U.S.

Anyone born in the geographical U.S. is a citizen, even if born to parents illegally present in the U.S. The only exception is the child of a foreign diplomat, who is born a permanent resident and may become a citizen before long. The "geographical United States" for this purpose includes the 50 states, Puerto Rico, the U.S. Virgin Islands, and Guam. Some people born in or having ties to the U.S. "outlying possessions" of American Samoa and Swains Island are not citizens but nationals, by birth, and they may obtain a variation of U.S. passport to reflect this status.

Birth Abroad

In essence, these days, a child has become automatically a U.S. citizen at birth if, by the time of birth, either of the following situations applied to the biological parents:

- Both parents were U.S. citizens, and at least one of them had ever "had a residence" in the U.S., even for a moment; OR
- One parent was an alien, and one parent was a U.S. citizen who had been physically present in the U.S. for at least 5 years, and at least 2 of those years were after age 14. For children born out of wedlock, different rules apply. For births before Nov. 14, 1986, the rules are different for many cases, depending on the date of birth and the parents' past presence in the U.S. (and/or their U.S. military or government service abroad). For births before 1952, the child could have lost citizenship by failing to meet certain U.S. physical presence requirements by age 28, but a 1994 law allowed citizenship to be restored non-retroactively upon the taking of an oath of allegiance. The analysis of these cases can become quite complex, and assistance of an immigration lawyer is recommended.

Naturalization

A person who has become and remained a U.S. permanent resident for 5 years (3 years for those who have remained married to a U.S. citizen) may be eligible to "naturalize" to U.S. citizenship, achieving the same prospective rights as those who were citizens at birth. In most cases, the process is simple and happy, but in a few cases there can be serious problems that can even lead to deportation.

Derivative Citizenship After Birth

Following enactment of the Child Citizenship Act of 2000, two categories of children can derive U.S. citizenship through their parents after birth. For one group, the process is automatic; for the other, an application is required. The definition of "child" is essentially the same as for family-based immigration to permanent residence, except that step-child relationships do not qualify. Adopted children (including orphans) are the

most likely to qualify. Fact sheets have been published on these provisions both by USCIS and the State Department.

Automatic Citizenship for Children in the U.S. Citizenship is automatically conferred upon someone at the moment that all of the following conditions have been met and remain met:

- One parent is a U.S. citizen (by birth or through naturalization ostensibly not through derivation after birth).
- The child is under the age of 18.
- The child is residing in the United States as a lawful permanent resident alien and is in the legal and physical custody of the U.S. citizen parent.
- If the child is adopted, the adoption is final.

Children Outside the U.S. A child residing abroad (i.e., who has not processed for U.S. permanent residence) may travel to the U.S., usually as a nonimmigrant, for the purpose of applying to USCIS for a certificate of citizenship. The child qualifies if all of the following conditions are met:

- At least one parent of the child is a U.S. citizen (by birth or naturalization).
- The U.S. citizen parent has been physically present in the U.S. for a total of at least 5 years, at least two of which were after the age of 14. If the child's U.S. citizen parent cannot meet this requirement, it is enough if one of the child's U.S. citizen grandparents can meet it.
- The child is under the age of 18.
- The child resides abroad in the legal and physical custody of the U.S. citizen parent
- The child has been lawfully admitted into the U.S. and is maintaining lawful status (as a nonimmigrant, TPS, refugee– whatever).

How We Can Help

The Baker Donelson Immigration Group helps clients evaluate, develop and present claims to citizenship through passport, certificate of citizenship, naturalization, and other applications. On several occasions we have been meeting with a client seeking permanent residence and informed them of their claim to citizenship (these are happy cases indeed!). We have helped clients assert a claim to U.S. citizenship in defense of removal proceedings in Immigration Court. We represent families who enjoy the opportunity to adopt children from other countries, arranging immigration, adoption and re-adoption (cooperating with adoption lawyers in their country or state), and citizenship. We represent clients in appeals of application denials, in both administrative and court proceedings. We represent people who (before coming to us) have found themselves in removal proceedings, or even under criminal indictment, arising from a poorly calculated naturalization application. We help clients in urgent situations, such as when their passport and identity documents are stolen while they are traveling abroad. We help evaluate the prospects of dual citizenship and its numerous ramifications and help preserve it when desired. We help defend government actions to cancel someone's citizenship.

Important Links

- [DOS: Citizenship and Nationality](#)
- [USCIS: Naturalization](#)
- [USCIS: Citizenship of Children](#)