

## **The ABC's of Immigration: Citizenship Rules for People Born Outside the United States**

by Greg Siskind

All persons born in the United States are citizens of the United States (with the very minor exception of certain children of diplomatic personnel). This is perhaps the only simple rule of US citizenship. One of the most complicated areas of US citizenship law involves the passage of citizenship to children born outside the US to one or more US citizen parents. While naturalized US citizens are treated like natural born citizens, which includes those who are deemed citizens even when born outside the US, in almost every respect, there is one important office that only natural born citizens can hold — the presidency (though expect to see efforts in Congress to change this if Governor Arnold Schwarzenegger decides to run for President). Also, a person who is a citizen from birth cannot be denaturalized (though denaturalization rarely ever occurs).

The rules determining when such children are citizens are extremely detailed, and vary a great deal depending on when the child was born since the laws changed several times in the 20<sup>th</sup> century.

### **What are the rules for people born before May 24, 1934?**

Persons born abroad before May 24, 1934 to a US citizen father who had resided in the US at any point before the birth are considered US citizens at birth. The status of the mother did not matter unless the child was born out of wedlock. There were numerous legal challenges to this rule, claiming that it violates equal protection by treating the children born to US citizen women different than those born to US citizen men. The issue was never fully resolved by the courts, but in 1994, Congress passed a law retroactively granting citizenship at birth to children born abroad to US citizen women.

In 1940, Congress passed a law making illegitimate children born abroad to US citizen women citizens if the mother had resided in the US. However, under this law, if the child was legitimated by the foreign national father before his or her eighteenth birthday, the child would not be considered a citizen. In 1998, the Supreme Court issued an opinion upholding the requirement that a child born out of wedlock to a US citizen woman be legitimated before his or her eighteenth birthday. The decision was reaffirmed in the 2001 US Supreme Court decision *Nguyen v. INS* which held that differing requirements for out-of-wedlock children of US citizen men versus US citizen women are constitutions.

The US citizen parent must have resided in the US prior to the birth. This residence can be in the US itself, or in certain US territories after certain dates. The residence can have been while the parent was a minor, and there is no length of time for which the parent must have resided in the US.

### **What are the rules for people born between May 24, 1934 and January 13, 1941?**

In 1934, Congress passed a law allowing US citizen parents, regardless of their gender, to pass citizenship to their children born abroad. If both parents were citizens, only one was required to have resided in the US, and as with the previous law, there was no required length of time that the parent must have resided in the US.

However, if one parent was a US citizen and the other a foreign national, the child would lose their citizenship if they did not either reside in the US for the five years immediately prior to their eighteenth birthday or, within six months of turning 21, take an oath of

allegiance to the US. These requirements were gradually relaxed between 1934 and 1940.

Illegitimate children born abroad between 1934 and 1941 became citizens under the general provision, and because the child was considered to have only one parent, no requirements were imposed that could result in the loss of citizenship.

### **What are the rules for people born between January 14, 1941 and December 23, 1952?**

As before, children born abroad to two US citizens, with one parent having resided in the US, the child was a US citizen at birth. No further action was required to maintain citizenship.

When one parent was a citizen and the other a foreign national, however, the rules changed substantially. To pass citizenship, the citizen parent must have resided in the US for at least 10 years before the birth of the child, and at least five of those years had to be after the parent turned 16. Because this rule made it impossible for parents under 21 to pass citizenship, in 1946 the requirement was amended to create an exception for parents who had served in World War Two.

Originally, for children born during this period to retain US citizenship, they had to reside in the US for five years between the age of 13 and 21. However, an exception was made for children of US citizens who were employed abroad by the US government or a US company.

Children born out of wedlock to a US citizen mother who met the residence requirements were automatically citizens, and they retained US citizenship even if legitimated by the foreign national father. For a child born out of wedlock to a US citizen father, to obtain US citizenship the child must have been legitimated before the age of 21.

### **What are the rules for people born between December 23, 1952 and November 13, 1986?**

Again, children born abroad to two US citizen parents were US citizens at birth, as long as one of the parents resided in the US at some point before the birth of the child.

When one parent was a US citizen and the other a foreign national, the US citizen parent must have resided in the US for a total of 10 years prior to the birth of the child, with five of the years after the age of 14. An exception for people serving in the military was created by considering time spent outside the US on military duty as time spent in the US.

While there were initially rules regarding what the child must do to retain citizenship, amendments since 1952 have eliminated these requirements.

Children born out of wedlock to a US citizen mother were US citizens if the mother was resident in the US for a period of one year prior to the birth of the child. Children born out of wedlock to a US citizen father acquired US citizenship only if legitimated before turning 21.

### **What are the rules for people born on or after November 14, 1986?**

Children born abroad to two US citizen parents, one of whom has resided in the US prior to the birth of the child, continue to be US citizens at birth, and need take no special actions to retain citizenship.

Children born to one citizen parent and one foreign national will obtain citizenship at birth if the citizen parent resided in the US for five years before the birth, with two of those years after the age of 14. The child does not need to take any special action to retain US citizenship.

Children born out of wedlock to a US citizen mother will be US citizens if the mother resided in the US for one year prior to the birth of the child. Children born out of wedlock to a US citizen father will acquire US citizenship if the following conditions are met:

- There is an established blood relationship between the father and the child,
- The father was a US citizen at the time of the birth,
- The father has agreed to financially support the child until it is 18, and
- Before the child is 18 it is legitimated, or the father acknowledges paternity in a document signed under oath

While these are general rules, Congress has continually amended and revised many laws relating to citizenship, particularly those dealing with the requirements for retention of citizenship. If a person believes that they have a claim to US citizenship, they should consult with an attorney for a full examination of that possibility.

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