

ADULT/CHILD RESIDENCE REQUIREMENTS FOR CITIZENSHIP

Issue:

The below FAQs attempt to identify and address concerns regarding the new US Citizenship and Immigration Services (USCIS) policy for children born or adopted overseas to US Soldiers and Government Employees. Understandably, parents and prospective parents serving our nation overseas may be concerned about how the new USCIS policy will impact their future child's US citizenship status. However, please be aware that this new policy is a USCIS policy, not a Department of Defense (DOD) policy. DOD will comply with the implementation of the USCIS policy by assisting all Servicemembers and US government employees serving overseas who have questions about the policy or require assistance regarding the policy.

Question: How is US citizenship acquired? And how does this policy change effect that?

US law allows children to acquire citizenship in one of two ways: (1) through birthright (the child is either born in the United States, or born outside the United States to a US citizen parent who can prove residence in the United States before the child's birth); or (2) through naturalization.

Birthright citizenship can be acquired through place of birth (i.e., – the child is born in the United States) OR through the citizenship of a child's parents.

Question: What was the prior USCIS policy for children born abroad to US Servicemembers and US government employees?

Prior USCIS policy considered a child's birth abroad to a US Servicemember or US government employee to be birth "in the United States." In other words, when a U.S. Servicemember or US government employee gave birth abroad, the child could attain citizenship through place of birth, even though the birth did not actually occur in the United States.

Question: How does the new USCIS policy change that?

Under the new USCIS policy, which becomes effective 29 October 2019, USCIS will no longer consider a child's birth or adoption abroad to a US Servicemember or US government employee to be "in the United States" for birthright citizenship purposes. Therefore, children born or adopted overseas to US Servicemembers and US government employees will no longer attain citizenship automatically through place of birth. Instead, they will need to achieve citizenship through the citizenship of their parents or through naturalization.

Question: What does this new policy mean for my future children born while I am serving overseas?

If you are a US citizen when you give birth to your child overseas, your child is most likely a US citizen. As long as you met proof of residence requirements before your child's birth (discussed below), this policy update does not affect you. As was the case before the new USCIS policy, you can apply for a Consular Report of Birth Abroad (CRBA) for your child at a US Consulate and/or a Certificate of Citizenship from USCIS using Form N-600.

Question: Who does this policy change affect?

This policy change affects children born overseas who do not have at least one biological parent who is a US citizen who can prove residence before the child's birth. For example:

- Biological children of lawful permanent residents who have not yet obtained naturalization;
- Children, born overseas to non-US citizens, who are adopted abroad by US Servicemembers and US government employees.

Question: What Residency Requirement Must a US Citizen Meet to Convey Citizenship to their Child Born Abroad?

The US citizen parent must prove past physical presence in the United States for a total period of five years (at least two of which were after they turned 14 years old). However, the US citizen parent can count any of the following periods as physical presence in the United States, regardless of actual location:

- Honorable service in military; or
- Employment with the US government or certain international organizations; or
- Being physically present abroad as the dependent child of: (a) a US Servicemember, (b) a US government employee, or (c) an employee of certain international organizations.

Please note that the vast majority of US Servicemember and US government employees will meet these basic residency and physical presence requirements.

Question: I do not meet the new USCIS policy requirements for my child to obtain birthright citizenship. Does this mean that my child cannot become a US citizen?

NO. Children born to US citizens who do not meet residence requirements, or children born to lawful permanent resident parents who later obtain naturalized US citizenship, may become US citizens through naturalization. The parent(s) serving overseas must apply for their child's naturalization by filing a USCIS Form N-600K.

Question: Who can assist me in determining whether my child meets the requirements for birthright citizenship? Who can assist me in filing the Form N-600K for my child?

Your local Legal Assistance Office, military Personnel Office, U.S. Consulate, or USCIS (877-247-4645).

Question: When Will The New USCIS Policy Take Effect?

According to USCIS, their new policy will take effect on 29 October 19. Please refer to the USCIS website for the latest timeline, as that date is subject to change.

Legal Assistance Can Help

If you have questions concerning this matter, please call the Presidio of Monterey Legal Assistance Office to schedule an appointment. Our office numbers are: (831) 242-5084/5083.