

## 7 FAM 1140

# ACQUISITION OF NONCITIZEN U.S. NATIONALITY BY BIRTH ABROAD

*(CT:CON-131; 04-07-2006)*  
*Office of Origin CA/OCs/PRI)*

## 7 FAM 1141 INTRODUCTION

*(CT:CON-131; 04-07-2006)*

- a. The acquisition of non-citizen U.S. nationality by **birth abroad** is governed by treaty or congressional legislation. The law in effect when a person was born governs that person's acquisition of non-citizen U.S. nationality, unless the legislation specifically provides otherwise such as retroactive application. See 7 FAM 1120 regarding acquisition of U.S. nationality by birth in U.S. territories and possessions. See 7 FAM 1330 regarding documentary evidence to establish a citizenship claim.
  - (1) The national or nationals through whom a child claims non-citizen U.S. nationality must have been U.S. non-citizen nationals when the child was born and previously must have resided or been physically present in the United States or one of its outlying possessions as required by the applicable law.
  - (2) See 7 FAM 1125 regarding acquisition of U.S. non-citizen nationality by persons born in American Samoa and Swains Island and 7 FAM 1126 regarding the non-citizen national option provided for persons born in the Commonwealth of the Northern Mariana Islands in Section 302 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Public Law 94-241, 90 Stat. 263)("Covenant") of March 24, 1976, entered fully into force November 3, 1986.
- b. **Blood Relationships:** The considerations in 7 FAM 1131, relating to blood relationships, and 7 FAM 1161, concerning posthumous children also apply to persons claiming non-citizen U.S. nationality through their parents.
- c. **Retention Provisions:** Persons who acquired non-citizen U.S. nationality at birth were never subject to special requirements for retaining their U.S. nationality.
- d. **Birth to One U.S. Citizen and One U.S. Non-Citizen National:** A child born to one U.S. citizen parent and one U.S. non-citizen national

parent acquires U.S. citizenship if the parent meets the requirements of INA 301(d) (8 U.S.C. 1401(d)) (or prior statutes) and, in cases of children born out of wedlock, INA 309 (8 U.S.C. 1409) (or prior statutes). The person may not opt for U.S. non-citizen national status. A person cannot be both a citizen and non-citizen national. Non-citizenship nationality under Section 308 of the INA is only acquired when there is no U.S. citizen parent.

e. **Certificate of Non-Citizen National Status:** See INA 395 (8 U.S.C. 1502) and 22 CFR 50.10(a).

**Note:** Only persons who acquired U.S. non-citizen national status pursuant to INA 308 (8 U.S.C. 1408) or Section 204 NA are eligible for such a certificate. The Department implements INA 359 (8 U.S.C. 1502) by annotating the person’s U.S. passport to indicate that he or she is a non-citizen national and not a citizen, using endorsement code 09. (See 7 FAM Appendix B).

**Endorsement Code 09**

**Text:**

THE BEARER IS A UNITED STATES NATIONAL AND NOT A UNITED STATES CITIZEN.

**Explanation:**

**Placed in a passport issued to a U.S. national who is not a citizen**

f. **Naturalization of a U.S. Non-Citizen National:** A person who is a U.S. non-citizen national may apply for naturalization as a U.S. citizen pursuant to INA 325 (8 U.S.C. 1436) and 8 CFR 325.

## 7 FAM 1142 CHART

*(CT:CON-131; 04-07-2006)*

<b>Date of Birth</b>	<b>Place of Birth</b>	<b>Status of Parents</b>	<b>Notes</b>	<b>Laws, Regulations Applicable</b>
On or after January 13, 1941 and prior to December 24, 1952	In an outlying possession of the United States	One U.S. non-citizen national parent	<b>U.S. Non-Citizen Nationality Acquired</b>	Section 204(a) of the Nationality Act

	(definition changed in NA and INA. See 7 FAM 1144 c)). (See also 7 FAM 1120).			
On or after January 13, 1941 and prior to December 24, 1952	Outside the U.S. and outlying possessions	Both U.S. non-citizen nationals	Both parents resided in the U.S. or possession prior to the child’s birth – <b>U.S. non-citizen Nationality acquired</b>	Section 204(b) of the Nationality Act
Prior to January 13, 1941 and Prior to December 24, 1952	Outside the U.S. or its outlying possessions	Non-citizen national mother	<b>Birth Out of Wedlock:</b> Second Paragraph, Section 205 of the Nationality Act was retroactive. Children born out of wedlock to a U.S. non-citizen national mother who had U.S. non-citizen nationality at the time of the child’s birth and who had resided in the U.S. or an outlying possession	Section 205 of the Nationality Act

			prior to the birth of the child acquired U.S. non-citizen national status.	
Prior to January 13, 1941 and Prior to December 24, 1952	Outside the U.S. or its outlying possessions	U.S. non-citizen national father	The first paragraph of Section 205 NA regarding establishment of paternity by legitimation or adjudication by a competent court <b>has not been applied retroactively. A child born abroad prior to January 13, 1941 out of</b> to an alien mother and a <b>father who had U.S. non-citizen nationality</b> at the time of the child’s birth, and met the legitimation and transmittal requirements, did not acquire U.S. non-citizen nationality under Section 204 of the Nationality Act	Section 205 NA (Nationality Act)

			as made applicable by Section 205 of the Nationality Act	
On or after January 13, 1941 and prior to December 24, 1952	Outside the U.S. or its outlying possessions	Non-citizen national father	<p><b>Birth Out of Wedlock:</b></p> <p><b>First Paragraph:</b></p> <p>The provisions of Section 201 of the Nationality Act, subsections (c), (d), (e) and (g) and Section 204 (a) and (b) NA (Nationality Act), apply as of the date of birth, to a child born out of wedlock, provided the paternity is established during minority, by legitimation, or adjudication of a competent court.</p>	Section 205 of the Nationality Act
On or after December 24, 1952 (INA)	Outside the U.S. or its outlying possessions	Both parents are U.S. non-citizen nationals	Both parents have had a residence in the United States, or one of its outlying possessions prior to the	INA 308(2)

			birth of such person– <b>U.S. non-citizen Nationality acquired.</b>	
Before August 27, 1986	Outside the U.S. or its outlying possessions	One parent a U.S. non-citizen national; one alien parent	U.S. nationality is conferred <b>on the date the passport or Consular Report of Birth Abroad application is approved;</b> i.e., non-citizen nationality is <b>not</b> retroactive to the birth date or the date of the act's enactment.	Act of August 27, 1986, Public Law 99-396, Section 15 (Public Laws Amending the INA USCIS web page)
On or after August 27, 1986	Outside the U.S. or its outlying possessions	One parent a U.S. non-citizen national; one alien parent	U.S. non-citizen national parent was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years, five after the age	Act of August 27, 1986, Public Law 99-396, Section 15 (Public Laws Amending the INA USCIS web page)

			<p>of 14. And parent was not outside the U.S. or its possessions for a continuous period more than one year.</p> <p>The proviso of INA 301(g) (8 U.S.C. 1401(g)) shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.</p> <p>In the case of a person born abroad after August 27, 1986, whose U.S. passport or Consular Report of Birth of Abroad application is approved, non-citizen U.S. nationality is deemed to have been conferred retroactively to the date of</p>	
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			birth.	
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## 7 FAM 1143 BEFORE JANUARY 13, 1941

*(CT:CON-131; 04-07-2006)*

- a. Until the Nationality Act of 1940 (NA), there was no comprehensive law under which a person born in a foreign country to a non-citizen U.S. national could acquire the parent's nationality status at birth, "the law of **jus sanguinis** being applicable to United States citizens" only.
- b. Section 204(b) NA(Nationality Act), which went into effect on January 13, 1941, was **prospective in application** and **did not give non-citizen U.S. nationality to persons previously born abroad to non-citizen U.S. nationals**. (See 7 FAM 1143).
- c. Acquisition of U.S. nationality by birth abroad before January 13, 1941, however, was possible.
  - (1) Certain children born abroad to Puerto Rican U.S. nationals could acquire non-citizen U.S. nationality at birth. (See 7 FAM 1122.3).
  - (2) Because the **second paragraph** of Section 205 of the Nationality Act was **retroactive, children born out of wedlock before its effective date** to non-citizen U.S. national women who previously had resided in the United States or one of its outlying possessions could claim non-citizen U.S. nationality. (See 7 FAM 1134).

## 7 FAM 1144 JANUARY 13, 1941 THROUGH DECEMBER 23, 1952

*(CT:CON-131; 04-07-2006)*

- a. Section 204 (b) NA stated that: Unless otherwise provided in Section 201 NA(Nationality Act), the following shall be nationals, but not citizens, of the United States:

"A person born outside the United States and its outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have resided in the United States or one of its outlying possessions prior to the birth of such person."

- b. Section 205 of the Nationality Act specified the ways in which children born abroad out of wedlock to non-citizen U.S. nationals could acquire the parent's nationality status
- c. Section 101(e) of the Nationality Act provides that "the term "outlying



possessions” means all territory, other than as specified in subsection (d), over which the United States exercises rights of sovereignty, except the Canal Zone.” Section 101(d) of the Nationality Act provides the term “United States” when used in a geographical sense means the continental United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands of the United States.”

## **7 FAM 1145 CURRENT LAW**

*(CT:CON-131; 04-07-2006)*

- a. The provisions of INA 308(2) (8 U.S.C. 1408(2)), which replaced those of Section 204(b) of the Nationality Act on December 24, 1952, were virtually identical.
- b. INA 308(2) applies only to persons born on or after December 24, 1952. INA 101(2) (8 U.S.C. 1101) provides “outlying possessions of the United States means American Samoa and Swains Island.”
- c. INA 308(4) (8 U.S.C. 1408(4)), which was added to the INA by Section 15(a) of Public Law 99-396 of August 27, 1986 (100 Statutes at Large 842), the Omnibus Territories Act, provides, for the first time, for acquisition of U.S. nationality (not citizenship) by birth abroad to one U.S. national parent. See Public Laws Amending the INA USCIS web page.
- d. Section 15 of Public Law 99-396, the Omnibus Territories Act of 1986, (Public Laws Amending the INA USCIS web page) which added INA 308(4) contained similar provisions.
- e. Thus, for a person born abroad prior to the effective date of INA 308(4) (8 U.S.C. 1408), August 27, 1986, U.S. nationality is conferred on the date the passport or Consular Report of Birth Abroad application is approved; i.e., non-citizen nationality is **not** retroactive to the birth date or the date of the Act's enactment.
- f. In the case of a person born abroad on or after August 27, 1986, whose application is approved, non-citizen U.S. nationality is deemed to have been conferred retroactively to the date of birth.
- g. INA 309 (8 U.S.C. 1409) specifies the circumstances under which INA 308(2) (8 U.S.C. 1408(2)) applies to a child born out of wedlock to a non-citizen U.S. national.

## **7 FAM 1146 PROOF OF CLAIM TO NONCITIZEN U.S. NATIONALITY BY BIRTH ABROAD**

*(CT:CON-131; 04-07-2006)*

- a. **Evidence of Claim to U.S. Non-Citizen Nationality – Birth to Two U.S. National Parents:** Evidence to prove a claim to non-citizen U.S. nationality under Section 204(b) of the Nationality Act or INA 308(2) (8 U.S.C. 1408) by birth abroad to two U.S. nationals consists of:
- (1) A certified copy of the applicant's birth certificate;
  - (2) Proof of both parents' U.S. nationality status such as a U.S. passport indicating that the parents are U.S. nationals, or other documentation establishing nationality;
  - (3) The parents' marriage certificate; and
  - (4) Proof that both parents previously had resided in the United States or one of its outlying possessions.
- b. **Evidence of Claim to U.S. Non-Citizen Nationality – Birth to One U.S. National Parent:** Evidence to prove a claim to non-citizen U.S. nationality by birth abroad to one U.S. national parent under INA 308(4) (8 U.S.C. 1408(4)) consists of:
- (1) A certified copy of the applicant's birth certificate;
  - (2) Proof of one parent's acquisition of U.S. nationality (ordinarily a U.S. passport indicating that the parent is a U.S. national) or documentation establishing parent's claim to U.S. nationality;
  - (3) The parents' marriage certificate; and
  - (4) **Evidence of Physical Presence of U.S. National Parent Prior to the Birth of the Applicant:** Evidence that, prior to the applicant's birth, the U.S. national parent was physically present in the United States or an outlying possession (American Samoa, Swains Island) for a total of seven years drawn from any continuous ten-year period (allowing for absences of not more than one year), and five of those seven years must have been after the applicant's parent was age 14.
    - (a) The evidence submitted to establish physical presence of a parent may consist of records available from churches, schools, employees, immigration authorities, medical sources, and government agencies (e.g., tax and census records). In addition, a person may provide receipts for payment of utilities, auto registration fees, mortgage and rent receipts, and so forth.
    - (b) Affidavits may be used to supplement the documentation mentioned above but affidavits alone will not suffice. In order to be helpful, such an affidavit should be from a person having first-hand knowledge of the applicant's physical

presence during particular time periods as reflected in specific recollections.

- (c) In assessing such evidence, the consular officer is reminded that the quality of the evidence is more important than the quantity, and no rigid mechanical formula (e.g. one item of evidence for each year claimed) should be applied. The legislative history of this law offers guidance. The Congressional Record of August 1, 1986 states:

“Many of the individuals who would qualify for U.S. nationality under this provision are older, and desirable records may not exist to substantiate the residency of their parents. In these cases, officials of the Department of State should rely on whatever information can be provided and use liberal discretion as they do to qualify every individual who can reasonably be presumed to be eligible. (132 Congressional Record, part. 13 (1986) page 18619).”

- c. Persons who lack sufficient evidence should be so advised so that they can attempt to present additional documentation.
- d. **Birth Out of Wedlock:** If a child was born abroad out of wedlock to a U.S. national mother, the necessary evidence would be the child's birth certificate and proof that the mother had U.S. non-citizen nationality status and met the applicable residence requirement of Section 205 of the Nationality Act (for children born prior to December 24, 1952) or the physical presence requirement of INA 309(c) (8 U.S.C. 1409(c))(for children born on or after December 24, 1952).
- e. If a child born out of wedlock to two non-citizen U.S. nationals did not acquire U.S. nationality at birth because the mother did not have the required one year continuous U.S. physical presence to transmit, the child would need to present evidence of birth to the two nationals, evidence of the parents' prior residence in the United States or one of its outlying possessions, and evidence of fulfillment of the conditions of INA 309(a) (8 U.S.C. 1409(a)), as amended. (See 7 FAM 1133).
- f. A child born out of wedlock to an alien mother and a U.S. non-citizen national father would need to present:
- (1) Evidence of the U.S. non-citizen nationality;
  - (2) Evidence of the father's identity (See 7 FAM 1320);
  - (3) Certified copy of the child's birth certificate;
  - (4) Evidence that the father met the applicable residence requirement of Section 205 of the Nationality Act (for children born prior to December 24, 1952) or the physical presence requirement of INA 309(c) (8 U.S.C. 1409(c))(for children born on or after December

24, 1952); and

- (5) Evidence that the father met the legitimation requirements of Section 205 of the Nationality Act (for children born prior to December 24, 1952) or the conditions of INA 309(a) (8 U.S.C. 1409(a))(for children born on or after December 24, 1952).

## **7 FAM 1147 INTERPRETATION OF SECTION INA 308**

*(CT:CON-131; 04-07-2006)*

- a. CA/OCS/ACS and U.S. embassies and consulates should consult CA/OCS/PRI (ASKPRI@state.gov) for interpretations of INA 308 (8 U.S.C. 1408) and previous statutes.
- b. U.S. Passport Agencies and Centers should consult CA/PPT/PAS for interpretations of INA 308 (8 U.S.C. 1408) and previous statutes.
- c. CA/OCS/PRI and CA/PPT/PAS will coordinate with each other and with L/CA as appropriate.
- d. See USCIS Interpretations INA 308 for additional information.

## **7 FAM 1148 THROUGH 1149 UNASSIGNED**