

STARTING WITH THE TOPIC OF CITIZENSHIP:

HERE ARE SOME FAQ RE WHY YOUR FOREIGN-BORN ADOPTED CHILD SHOULD HAVE PROOF OF U.S. CITIZENSHIP

As a result of a U.S. law called the Child Citizenship Act of 2000 (CCA), many foreign born children by birth and adoption have or will become U.S. citizens automatically either when they enter the U.S. or, if adopted, when they are readopted or their adoption finalized in the U.S.¹

However, while a child may automatically become a U.S. citizen (USC) under the law, not all children will receive a document proving that they are U.S. citizens.

If your child does not have proof of his or her U.S. citizenship, I strongly recommend that you get your child proof of his or her U.S. citizenship.

1. WHY SHOULD YOU OBTAIN PROOF OF YOUR CHILD'S U.S. CITIZENSHIP?

Here are some reasons why you should do this.

- Having a right or entitlement to something is only half the battle. The other half is to be able to quickly and easily prove the entitlement when necessary or if it is challenged. When an individual is not born in the U.S., the question of whether the individual is a USC will inevitably, and sometimes repeatedly, be raised at some point. Even if your child has become a USC under the CCA as a matter of law, and would ultimately prevail on this issue if it were challenged, you or your child will still be faced with the problem of having to convince others that he or she is a USC. Having clear and tangible evidence immediately on hand will save you and/or your child from having to produce numerous documents, and probably having to re-explain the CCA, every time it is necessary to prove citizenship.
- More and more situations are requiring that a person be able to supply a document proving that he or she is a USC or is in the U.S. in lawful status. For example, Social

Security Offices require proof of U.S. citizenship before they will classify your child as a USC in their system. Proof of U.S. citizenship is now required or being proposed as a requirement in other contexts, for example, to show eligibility for Medicaid, eligibility to vote, etc. Proof of U.S. citizenship or lawful immigration status is required to comply with employment eligibility verification, and in some states, to obtain a state driver's license.

- For adult foreign born individuals who become USC's as adults through naturalization, the Certificate of Naturalization is issued to them as documentation of citizenship. Your child should have similar documentation.
- Once you have obtained the proof of citizenship, there will be no doubt that your child has met all of the requirements under the CCA and indeed is a USC. If for some reason, you are told by the USCIS that your child is not a USC, it is better to find this out sooner than later so that it can be remedied.

Remember, the point of getting this evidence is to protect your child and to make your child's life easier.

2. WHAT DOCUMENTS WILL PROVE U.S. CITIZENSHIP FOR A FOREIGN BORN CHILD BY ADOPTION?

You can obtain a Certificate of Citizenship (COC) from the USCIS (previously the INS) through submitting the Form N-600 and/or obtain a U.S. Passport (USP).

3. WHY CAN'T YOU USE YOUR CHILD'S U.S. STATE-ISSUED BIRTH CERTIFICATE TO PROVE U.S. CITIZENSHIP?

Many of you will be able to get your child a birth certificate issued from your state. However, the birth certificate will still reflect the actual place where your child was born. If your child was not born in the U.S., a birth certificate, even if issued by a U.S. state, is not proof of U.S. citizenship. Only the birth certificate of an individual born in the U.S. or in certain territories can serve as proof of U.S. citizenship for that individual.

4. CAN YOU GET A “CONSULAR REPORT OF BIRTH ABROAD (FS-240) OR A CERTIFICATION OF REPORT OF BIRTH (DS-1350) AT THE OVERSEAS CONSULATE TO PROVE YOUR CHILD’S U.S. CITIZENSHIP?”

No. These documents are only available to certain children who are U.S. citizens at birth and not available for a child who becomes a U.S. citizen through adoption.

5. WHICH SHOULD YOU OBTAIN – A COC OR A USP?

Under U.S. law, U.S. citizenship can be proven through a COC or a USP.^{4a} However, I recommend that you get both. The COC is advantageous because it is universally recognized, only one-page long and does not need to be renewed. It is very similar to the one page Certificate of Naturalization that is used by a naturalized USC to prove U.S. citizenship. Unfortunately the USCIS response time for issuing a COC after the application has been submitted has been very slow. The USP can usually be obtained fairly quickly and will be necessary if you travel outside of the United States with your child. (See comment below.) If at all possible, start the process for both. You can then wait for the USCIS to provide the COC.

6. IS A COC REQUIRED BEFORE YOU CAN OBTAIN A USP FOR YOUR CHILD?

You should not have to obtain a COC before you can obtain a USP and the current information sheet from the Department of State website regarding the CCA is in accord. However the Department of State website regarding what documents are required to obtain a USP indicates otherwise. Because of this conflict, some offices are requiring a COC before they accept the USP application. If unsuccessful, you should try another designated office that accepts Passport applications. Some are more knowledgeable than others.

7. DOES YOUR CHILD NEED A USP TO TRAVEL OUTSIDE OF THE UNITED STATES ONCE HE OR SHE BECOMES A USC?

Yes. Once your child becomes a USC he or she should enter and leave the U.S. on a USP.

8. WHAT IF YOUR CHILD MET THE QUALIFICATIONS OF THE CCA BUT NEVER APPLIED FOR A COC? CAN HE OR SHE STILL GET A COC AFTER HE OR SHE BECOMES AN ADULT?

Yes. Once your child becomes a USC under the CCA, your child remains a USC after becoming an adult. There is no time limit on when he or she can apply for the COC and the N-400 naturalization process is not applicable.

9. FINALLY, MAKE SURE THAT YOUR CHILD UNDERSTANDS THAT HE OR SHE IS A USC AND WHAT THIS MEANS.

You should tell your child that while he or she was born outside of the U.S., he or she is a USC under U.S. law. Explain what it means to be a citizen, along with the benefits and the responsibilities. I am surprised at the number of people who either do not know or understand this. You should also mention that sometimes his or her U.S. citizenship may be questioned. Show the COC and/or USP to your child so that he or she knows that you have proof of citizenship should the need arise. Do not forget to tell your child or a responsible adult where the documents are kept.

Notes

¹ Public Law No. 106-395. See also Immigration and Nationality Act (“INA”) sections 320, 322 and 341. The Child Citizenship Act of 2000 (CCA) provides for the “automatic” acquisition, that is acquisition as a matter of law, of U.S. citizenship to many foreign born children (adopted and not adopted) of U.S. citizens, provided that the following qualifications are met: 1) at least one parent of the child is a U.S. Citizen (USC), 2) the child is under the age of eighteen years when he or she enters the U.S.; or was under the age of 18 at the time of the effective date of the CCA (that is, February 27, 2001), 3) the child is residing in the U.S. in the legal and physical custody of the USC parent pursuant to a lawful admission for permanent residence, and; 4) if adopted, the adoption must be “final”, under the laws of the foreign country and U.S. immigration.

^{4a} 22 U.S.C.A. sec. 2705. However, even if under U.S. law, both documents are proof of U.S. citizenship, this does not mean that either has to or will be accepted as such, particularly abroad. For example, I have received occasional reports from families that a U.S. Passport was not accepted abroad by foreign country consulates in various situations because of the potential of document fraud. While this should not occur, it further supports the recommendation that both documents be obtained and carried abroad.