

## **WHY YOUR FOREIGN-BORN ADOPTED CHILD SHOULD HAVE PROOF OF U.S. CITIZENSHIP**

As a result of the Child Citizenship Act of 2000 (CCA), many foreign born children by adoption who reside in the U.S. have or will become U.S. citizens under the CCA either when they enter the U.S. or when they are readopted or their adoption finalized in the U.S.<sup>1, 1b</sup>

### **1. WHO IS ELIGIBLE FOR CITIZENSHIP UNDER THE CCA?**

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)<sup>2</sup>, 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<sup>1a</sup>, and; 4) if adopted, the adoption must be “final”, under the laws of the foreign country and U.S. immigration.

### **2. WHAT DO THE VISA CLASSIFICATIONS IR3 AND IR4 MEAN?<sup>2a</sup>**

Basically, if the adoption abroad was final under the laws of the foreign country and U.S. immigration, your child will be issued an “IR3” classified immigration visa (“Immediate Relative -- Orphan Adopted Abroad by USC.”) to immigrate to the U.S. If they otherwise qualify under the CCA, most children who immigrate on an “IR3” visa automatically become USC’s when they enter the U.S. (but see notes 1a and 2).

However, if the adoption was not completed abroad or considered “final”, either by the country abroad, or by U.S. immigration, the child will enter the U.S. on an “IR4” classified visa.<sup>2b</sup> (“Immediate Relative – Orphan to be Adopted in the U.S. by a USC.”). If so, additional action will have to be taken for the child to become a USC, such as finalization or readoption in a U.S. State court, before the child will become a U.S. citizen.

### **3. WHAT IF YOUR CHILD IS ADOPTED UNDER THE HAGUE ADOPTION CONVENTION?**

The *Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption* (Hague Adoption Convention) entered into effect in the U.S. on April 1, 2008. As of that date, the U.S. *Intercountry Adoption Act of 2000* (IAA) and regulations issued as a result of the Hague Adoption

Convention will generally govern adoptions between the U.S. and other “Convention Countries” such as China, Guatemala, India, Mexico, Philippines and Thailand. Amongst many things, an adoption under the Hague Convention will involve different U.S. visa classifications: the “IH3”, for adoptions that are final abroad and “IH4” for adoptions that will be completed in the U.S. Those that enter on an “IH4” visa will not be USC’s until the adoption is finalized in the U.S. Adoptions governed by the Hague Adoption Convention will be much more complicated and will involve many additional requirements that are beyond the scope of these Comments.<sup>3, 3a</sup>

#### **4. WILL YOUR CHILD AUTOMATICALLY RECEIVE ANY OFFICIAL DOCUMENTATION OF HIS OR HER U.S. CITIZENSHIP?**

It depends. Basically, since January 2004, children who enter the United States on an “IR3”, or now on an “IH3” visa as a result of the Hague Convention, and who otherwise qualify under the CCA, will receive a Certificate of Citizenship (COC) from the CIS in the mail free of cost.<sup>3e</sup> However if your child entered the United States before January 2004, you will not receive a COC and will have to apply for one. If your child entered or will enter on an “IR4” or an “IH4” visa, he or she will not receive a COC and will have to apply for one from the USCIS when the readoption or finalization requirement is met.

#### **5. DO YOU HAVE TO OBTAIN A COC OR USP TO PROVE U.S. CITIZENSHIP FOR YOUR CHILD?**

No. You are not required to get an official document that proves your child’s citizenship. Once the qualifications are met, your child becomes a USC without any further action on your part, and is entitled to all the benefits of being a USC whether or not you ever obtain a document that proves U.S. citizenship.

#### **6. SHOULD YOU OBTAIN DOCUMENTARY PROOF OF YOUR CHILD’S U.S. CITIZENSHIP?**

Yes and I strongly recommend it. 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 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.<sup>4</sup> 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 through naturalization, the Certificate of Naturalization is issued to them as documentation of citizenship. Your child should have similar documentation.
- For families who live abroad, there have been times when the Department of State and the CIS disagree on whether a child is a citizen.
- 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.
- Remember, that the point of getting this evidence is to protect your child and to make your child's life easier.
- The cost will not get any cheaper and in fact is increasing from \$550 to \$1170 on December 23, 2016. (See <https://www.uscis.gov/forms/our-fees> for list of forms and fee increases on December 23, 2016.)

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

Your child was not born in the U.S. 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.

## **8. HOW DO YOU GET PROOF THAT YOUR CHILD IS A CITIZEN?**

You have two choices:

- a) Obtain a COC by filing the N-600 Application and/or
- b) Obtain a U.S. Passport (USP).

## **9. WHICH TYPE OF PROOF OF CITIZENSHIP SHOULD YOU OBTAIN?**

Under U.S. law, U.S. citizenship can be proven through a COC or USP.<sup>4a</sup> However, I recommend that you get both. The COC is advantageous because it is universally recognized, only one-page long, indicates the date of citizenship 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 Passport 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 CIS to provide the COC.

## **10. 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. I am surprised at the number of teenage adoptees who either do not know or understand this. You should also mention that sometimes 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.

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Notes

<sup>1</sup> Public Law No. 106-395. See also Immigration and Nationality Act (“INA”) sections 320, 322 and 341. <https://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies/child-citizenship-act.html>

<sup>1b</sup> The CCA will also apply to give automatic citizenship to children who are adopted in the U.S. and adjust status to lawful permanent resident, after two years of legal custody and residency, assuming the other qualifications are met (for example, under 18 when the I-485 is approved.) See Comment number 1.

<sup>2</sup> Unfortunately, the CCA does not apply if the child was 18 or older on February 21, 2001 or if the child entered or will enter the U.S. after turning 18 years of age. In this situation, the child will have to acquire U.S. citizenship through the N-400 naturalization process. Until your child becomes a USC, he or she may be subject to adverse CIS action if involved in criminal or certain other activities. An immigration

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attorney should also be contacted before the application for naturalization is filed to evaluate any potential risks from this action.

<sup>1a</sup> If you and your child are not permanently residing in the U.S., your child is still entitled to become a USC however you will need to apply for citizenship, using the Form N-600K. See also INA section 322. Citizenship will not be acquired until the date that the COC application is granted.

<sup>2a</sup> You can determine what classification of visa your child was issued by looking at the I-551 visa stamp in your child's foreign country passport.

<sup>2b</sup> The first IR4 situation arises when the adoption is not completed abroad and/or the adoption is not considered final by the foreign country. This is often seen in adoptions of children from Pakistan, India, or Korea in which only a guardianship or custodial relationship is established between the child and parent(s) or the child and the agency. In this situation, an adoption must take place in the U.S. according to the law of the applicable U.S. state court where the parents, or sole parent, as applicable, reside, or where the court otherwise has jurisdiction. This is frequently referred to as an adoption "finalization". Once the adoption is "finalized", the child automatically becomes a USC as of that date.

Prior to January 2014, an adoption was not considered final by the USCIS unless both parents or the sole parent, as applicable, "saw and met" the child before or during the adoption abroad, even if the adoption was considered final under the law of the foreign country where the adoption took place. This requirement that both parents in a two parent adoption travel to see the child before or during the adoption was eliminated in January 2014 to only require that one of the parents travel.

In order for the IR4 adoption in this situation to be final for purposes of citizenship, the CIS has generally required a readoption of the child in a U.S. state court. The readoption requirement may be waived if evidence is provided to the USCIS that the applicable state "recognizes" the foreign adoption as full and final under that state's adoption laws. Most professionals still recommend a readoption in this IR4 situation rather than risk uncertainty regarding a child's citizenship, and I agree. However, should you decide not to readopt because your state recognizes foreign adoptions as valid under its law, do not assume that your child is a citizen. Make sure that you take the next step and obtain a COC to confirm that the USCIS has accepted the proof of state recognition that you have submitted and has waived the readoption requirement. Otherwise, and not until then, will you be certain that your child has acquired U.S. citizenship.

<sup>3</sup> For more information re the I-800 Hague process see the CIS website at: <https://www.uscis.gov/adoption/immigration-through-adoption/hague-process> and the Department of State (DOS) website at: [http://adoption.state.gov/hague\\_convention.php](http://adoption.state.gov/hague_convention.php)

<sup>3a</sup> Examples of countries that are not Hague Countries are Ethiopia, South Korea, Russia, and Taiwan. A country's status can change however so that the Hague website at <http://hcch.net> (click "Specialized Sections" on the left side then "Intercountry Adoption" to get to the chart for the Hague Convention re adoption, that is actually one of a number of "Conventions.") should be checked to be certain. When reviewing the chart, be aware that the country is not a "Hague Country" unless the chart indicates that it has "Entered Into Force" (EIF). Signing the Convention is a first step but not enough. The DOS also has a list on its website however the Hague website is the most accurate.

<sup>3c</sup> The COC will be issued in the name on your child's visa. If your child's name is changed through readoption, etc., a replacement COC can be obtained through the N-565 form at the CIS website. The

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current CIS fee is \$345 but will be increasing to \$555 on December 23, 2016. See <https://www.uscis.gov/forms/our-fees>

<sup>4</sup>After you get the COC or USP go back to the Social Security Office with the proof of citizenship to be sure that the Social Security records accurately reflect that your child is a USC.

<sup>4a</sup> 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.

Please note that these are general comments and are not intended to be comprehensive. They are not legal advice nor should they be relied upon as legal advice. They are based on various publications and information that were found on the USCIS and DOS websites, and related sources, applicable law and my experience.

Feel free to contact me if you have any questions or need assistance in this process.

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