

Automatic Acquisition of Citizenship By Steve Piraka

For children of U.S. citizens, there are several avenues to obtaining U.S. citizenship, including applying for naturalization (if age 18 or older), transmission at birth, and automatic acquisition. This article focuses on the automatic acquisition of citizenship, including pre- and post- Child Citizenship Act.

In general, for a child to automatically acquire citizenship prior to February 27, 2001, both parents had to be U.S. citizens. This either came about by both parents naturalizing at the same time or by one parent naturalizing, with the other already being a U.S. citizen. If the naturalization(s) occurred before the child's 18th birthday and the child was lawfully admitted to the U.S. for permanent residence, he or she would automatically acquire citizenship. For adopted children, the rule applied only if the child was: a) residing in the U.S. at the time of the adoptive parent(s) naturalization; b) in the adoptive parent(s) custody; and c) residing in the U.S. pursuant to permanent residence.

In cases where the child's parents were divorced, or one parent was deceased, or when the child was born out of wedlock, the rule was basically the same - the child automatically acquired citizenship when the surviving parent, or the parent having custody in legal separation, or the mother of the child born out of wedlock (the rule did not apply to fathers) naturalized, with the child lawfully admitted to the U.S. for permanent residence.

Effective February 27, 2001, the Child Citizenship Act of 2000 ("CCA") allowed additional foreign-born, biological and adopted children of American citizens to acquire American citizenship automatically when they entered the United States as lawful permanent residents ("LPR"). One of the results of the Act was that a child no longer needed to prove that his or her parents were legally separated or divorced if he or she is in the custody of one parent, as was required under the previous law. Additionally, if the child was born out of wedlock and in the custody of the father, he or she could now automatically acquire citizenship through him.

To meet the requirements of the CCA, the child must be: 1) under the age of 18; 2) have at least one parent who is an American citizen by birth or naturalization; 3) live in the legal and physical custody of the American citizen parent; and 4) be admitted to the U.S. as an LPR. Additionally, if the child is adopted, the adoption must be full and final [stepchildren are not eligible for citizenship under the CCA].

In order to show legal custody, the child must either live with both parents (who are married to each other), live with one parent (this parent must be a U.S. citizen) when the other is deceased, or, in cases where the child is born out of wedlock, live with the natural, U.S. citizen parent who has legitimized him or her. Additionally, for children of divorced parents legal custody depends on the terms

of the divorce decree, while legal custody for adopted children depends on the existence of a final adoption.

As has always been the case with automatic acquisition, the child automatically acquires citizenship on the date the last condition is fulfilled and there is no legal obligation for the child to make any positive affirmation of his or her status. In other words, upon automatic acquisition, the child becomes a U.S. citizen and nothing will change that, whether or not he or she has a piece of paper or other evidence stating this fact. However, for purposes of obtaining proof of this status, the child may apply for and obtain a Certificate of Citizenship, a U.S. Passport, or both.

If the child chooses to apply for a Certificate of Citizenship, he or she will need to provide evidence of legal and physical custody and relationship to the U.S. citizen parent, evidence of entry as a permanent resident, and evidence of age at entry. Custody may be shown through a number of documents, including, but not limited to, a copy of the marriage certificate, school records, affidavits, mortgage or lease documents, legitimation documents, divorce settlement/decreed documents, and so forth. For proof of relationship to the U.S. citizen parent(s) and for proof of age, a copy of the birth certificate may be presented; while proof of entry as a permanent resident may be shown by the I-551 stamp in the passport, along with a copy of the permanent residence card. Additionally, evidence of the parent's U.S. citizenship, such as a birth or naturalization certificate, must be provided with the application forms.

If you need assistance in filing the Certificate of Citizenship application, please contact our office.