7 FAM 1130
ACQUISITION OF U.S. CITIZENSHIP BY BIRTH ABROAD TO U.S. CITIZEN PARENT

(TL:CON-68; 04-01-1998)

7 FAM 1131 BASIS FOR DETERMINATION OF ACQUISITION

7 FAM 1131.1 Authority

7 FAM 1131.1-1 Federal Statutes

(TL:CON-68; 04-01-1998)

a. Acquisition of U.S. citizenship by birth *abroad to a U.S. citizen parent* is governed by Federal statutes. *Only insofar as Congress has provided in such statutes, does the United States follow the traditionally Roman law principle of "jus sanguinis" under which citizenship is acquired by descent [see 7 FAM 1111.2 b(2)].*

b. Section 104(a) of the Immigration and Nationality Act gives the Secretary of State the responsibility for the administration and enforcement of all nationality laws relating to "the determination of nationality of a person not in the United States."

7 FAM 1131.1-2 Applicable Statute

(TL:CON-68; 04-01-1998)

The law *applicable in the case of a person born abroad who claims citizenship* is the law in effect when the person was born, unless a later law applies retroactively to persons who had not already become citizens. *Instructions in 7 FAM 1130 will note when a law is retroactive.*

7 FAM 1131.1-3 Delegation of Authority

(TL:CON-68; 04-01-1998)

Consular officers may decide cases involving acquisition of citizenship by birth abroad. Designated nationality examiners may also do so in connection with providing passport and related services. If guidance is needed, a case may be submitted to the Department (CA/OCS) for decision or advisory opinion.

7 FAM 1131.2 Prerequisites for Transmitting U.S. Citizenship

(TL:CON-68; 04-01-1998)

Since 1790, there have been *two* prerequisites for transmitting U.S. citizenship to children born abroad:

(1) At least one *natural* parent must have been a U.S. citizen when the child was born. The only exception is for a posthumous child.

(2) The U.S. citizen parent(s) must have resided or been physically present in the United States for the time required by the law in effect when the child was born.

7 FAM 1131.3 Adoption Does Not Confer U.S. Citizenship

(TL:CON-68; 04-01-1998)

a. Adoption of an alien minor by an American does not confer U.S. citizenship on the child. *Adoption, however, is one way in which a U.S. citizen father can legitimate his natural child born out of wedlock for purposes of transmitting citizenship [see 7 FAM 1133.4-2 c(4)].*

b. For provisions that govern the naturalization of adopted children, see *7 FAM 1153.4.*

7 FAM 1131.4 Blood Relationship Essential

7 FAM 1131.4-1 Establishing Blood Relationship

(TL:CON-68; 04-01-1998)

a. The laws on acquisition of U.S. citizenship through a parent have always contemplated the existence of a blood relationship between the child and the parent(s) through whom citizenship is claimed. It is not enough that the child is presumed to be the issue of the parents' marriage by the laws of the jurisdiction where the child was born. Absent a blood relationship between the child and the parent on whose citizenship the child's own claim is based, U.S. citizenship is not acquired. The burden of proving a claim to U.S. citizenship, including blood relationship and legal relationship, where applicable, is on the person making such claim.

b. Applicants must meet different standards of proof of blood relationship depending on the circumstances of their birth:

(1) The statutes do not specify a standard of proof for persons claiming birth in wedlock to a U.S. citizen parent or out of wedlock to an American mother. The Department's regulations also do not explicitly establish a standard of proof. The Department applies the general standard of a preponderance of the evidence. This standard means that the evidence of blood relationship is of greater weight than the evidence to the contrary. It is credible and convincing and best accords with reason and probability. It does not depend on the volume of evidence presented.

(2) Section 309(a) INA, as amended on November 14, 1986, specifies that the blood relationship of a child born out of wedlock to a U.S. citizen father must be established by clear and convincing evidence. This standard generally means that the evidence must produce a firm belief in the truth of the facts asserted that is beyond a preponderance but does not reach the certainty required for proof beyond a reasonable doubt. There are no specific items of evidence that must be presented. Blood tests are not required, but may be submitted and can help resolve cases in which other available evidence is insufficient to establish the relationship. For the procedures for establishing legal relationship to or legitimation by a citizen father once blood relationship has been proven, see 7 FAM 1133.4.

c. Children born in wedlock are generally presumed to be the issue of that marriage. This presumption is not determinative in citizenship cases, however, because an actual blood relationship to a U.S. citizen parent is required. If doubt arises that the citizen "parent" is related by blood to the child, the consular officer is expected to investigate carefully. Circumstances that might give rise to such a doubt include:

(1) Conception or birth of a child when either of the alleged *biological* parents was married to another.

(2) Naming on the birth certificate, as father and/or mother, person(s) other than the alleged *biological* parents.

(3) *Evidence or indications that the child was conceived at a time when the alleged father had no physical access to the mother.*

d. If the child was conceived or born when the mother was married to someone other than the man claiming paternity, a statement from the man to whom *the mother* was married disavowing paternity, a divorce or custody decree mentioning certain of her children but omitting or specifically excluding the child in question, or credible statements from neighbors or friends having knowledge of the circumstances leading up to the birth *may be required as evidence bearing on actual natural paternity*.

e. Suggestions for developing cases that involve questionable blood relationships are given in the following sections.

7 FAM 1131.4-2 Citizenship in Artificial and In Vitro Insemination Cases

(TL:CON-68; 04-01-1998)

a. A child born abroad to a foreign surrogate mother who is the natural/blood mother (i.e., who was the egg-donor) and whose claimed father was a U.S. citizen is treated for citizenship purposes as a child born out of wedlock. The procedures for proving citizenship under section 309(a) INA, as amended apply [see 7 FAM 1133.4-3 b]. The blood relationship between the child and the putative U.S. citizen father must be proven. Additional evidence beyond the child's birth certificate and statement of the parents is required. Certification by appropriate medical authorities of all facts and circumstances surrounding the entire insemination procedure is required. Examples of appropriate supporting documentation include hospital records from the facility where the sperm donation was made, affidavit from the doctor who performed the operation, and possibly blood tests.

b. A child born abroad to a foreign surrogate mother who was not the egg-donor and whose claimed mother (egg-donor) and/or claimed father was a U.S. citizen is treated for citizenship purposes either as a child born out of wedlock to a U.S. citizen mother (if the sperm donor was not a U.S. citizen) or as the child of two U.S. citizens. The applicable sections of law generally are sections 309(c) and 301 INA.

c. The status of the surrogate mother is immaterial to the issue of citizenship transmission. The child is considered the offspring of the biological parents and the appropriate INA section is applied. Evidence to establish the blood relationship between the child and the biological parents would be similar to that mentioned in 7 FAM 1131.4-2 a.

7 FAM 1131.5 Suspected False or Fraudulent Citizenship Claim of Minor Child

7 FAM 1131.5-1 Types of False or Fraudulent Claims

(TL:CON-68; 04-01-1998)

False or fraudulent citizenship claims involving children not related by blood to the U.S. citizens claiming to be their parents *can involve false claims of paternity or false claims of maternity. When a married couple falsely claims that a child is theirs for purposes of citizenship documentation, it is sometimes referred to as adoption fraud. These fraudulent claims are often detected when the alleged parents apply on behalf of a child for a Consular Report of Birth Abroad or other documentation as a U.S. citizen.*

7 FAM 1131.5-2 General Guidance

(TL:CON-68; 04-01-1998)

Parentage fraud issues must be handled sensitively. Necessary efforts to enforce the citizenship laws may result in the Department being accused of threatening the family unit and of jeopardizing the welfare of the child. Cases of this kind often have public relations ramifications *or* give rise to congressional interest. All such cases must be handled in a timely manner with consideration for the family. Posts should provide information on visa eligibility in cases where it has been proven that the child has no claim to U.S. citizenship and the parents wish to take the child to the United States.

7 FAM 1131.5-3 Paternity Issues

(TL:CON-68; 04-01-1998)

a. *Issues of False or Fraudulent Paternity Claims*

Paternity fraud is a false claim to citizenship filed on behalf of a child said to have been born to a U.S. citizen father who is not, in fact, the *biological* father of the child. *Because a child born out of wedlock to a U.S. citizen mother generally acquires U.S. citizenship through the mother, paternity fraud is usually an issue only in cases where the claimed natural mother is an alien.* In some cases, the alleged father is convinced that he is the *biological father in which case the claim is properly considered false rather than fraudulent*. In other cases, he knows that he is not *the father, and conscious fraud is involved*. The *following* factors may indicate the possibility of paternity fraud:

(1) The child was conceived or born out of wedlock.

(2) *There is doubt that* the child was conceived at a time when the father had physical access to the mother.

(3) The mother admits, or there are other indications, that she had physical relationships with other men around the time of conception.

(4) The child allegedly was born prematurely, but its weight at birth appears to indicate that it was a full-term baby.

(5) The physical characteristics of the child and of the alleged father do not seem compatible.

(6) There are discrepancies in the birth records.

b. *How to Resolve Doubts*

To ascertain the true circumstances surrounding the child's conception and birth, the consular officer may wish to:

(1) Obtain available records showing periods of time when the alleged father had physical access to the mother.

(2) Interview the parents separately to determine any differences in their respective stories as to when and where the child was conceived. Often, in separate interviews, one party will admit that the American citizen is not the *father*.

(3) Interview neighbors and friends to determine the facts as understood within the local community.

(4) *Advise blood testing* if the couple continues to pursue the claim even though the facts as developed seem to disprove it The propriety of requesting blood or DNA testing is discussed in *7 FAM 1131.5-5 c*. If the post disapproves the application, forward the case to the Department (CA/OCS) *for review under cover of a lookout request form (Form DS-1589) [see 7 FAM 1337.8].*

7 FAM 1131.5-4 Maternity Issues

(TL:CON-68; 04-01-1998)

a. *Indications of Fraudulent Maternity Claims; "Adoption Fraud"*

Cases in which an unmarried U.S. citizen woman falsely claims a child as her natural child for citizenship purposes are relatively rare but can occur. False maternity claims are more often made by married couples, where the wife is a U.S. citizen. The husband may or may not be a U.S. citizen. The couple falsely claims that a foreign-born child is their natural child, when typically, in fact, they have adopted the child or, otherwise, obtained physical custody of it. The false claim that the child is theirs is made to avoid adoption and/or visa procedures and to fraudulently document the child as a U.S. citizen. This is often referred to as "fraud by adoption"—a false claim to citizenship filed on behalf of a child by the alleged biological parents, who, in fact, share no blood relationship with the child and, therefore, could not confer citizenship on the child. An interview with the alleged parents may disclose some or all of these fraud indicators:

(1) The alleged mother arrived in the foreign country a few days before the child's birth.

(2) The alleged mother is middle-aged and this is a first child/or the couple has been married for many years without children.

(3) The child was born in a private home with the mother unattended or with only a midwife present.

(4) The alleged mother claims to have had no prenatal care and not to have known the baby's due date.

(5) The alleged mother claims that the child was born prematurely.

(6) The physical characteristics of the child and of the alleged parents do not seem compatible.

b. How To Resolve Doubts

If the post has any doubts about the child's parentage, further inquiry and documentation are required. Posts should take as many of the following steps as seem appropriate or necessary:

(1) Establish that pregnancy did exist. Request copies of prenatal *and post-natal* records.

(2) Request the authorization letter, if any, given to the woman by her physician stating that she could fly without endangering her health. Airlines usually refuse to assume responsibility for a woman who has reached her seventh month of pregnancy and often request such a letter before allowing a pregnant woman on board.

(3) Investigate the clinic or hospital where the birth allegedly occurred to determine if it is a legitimate medical facility. Request medical records to determine whether the woman was a patient and is the *biological* mother of the child.

(4) When the consular officer strongly suspects that a newborn child was adopted, request that the woman undergo a physical examination as soon as possible by a physician whom the post believes to be reliable. Physical evidence of pregnancy and childbirth may be obvious for only a few weeks after the birth.

(5) Contact the midwife or doctor who attended the birth to confirm statements given by the alleged parents.

(6) If doubts remain about the child's blood relationship to the alleged parents, blood *or DNA* tests might be useful [see 7 FAM 1131.5-5 c].

(7) If the post disapproves a Report of Birth application [see 7 FAM 1400] or passport application [see 7 FAM 1300] due to the lack of a blood relationship between the parents and child, refer the case to the Department (CA/OCS) *for review under cover of a lookout request form (Form DS-1589) [see 7 FAM 1337.8]*.

7 FAM 1131.5-5 Parentage Blood Testing

(TL:CON-68; 04-01-1998)

The following information is provided to aid consuls in understanding the blood and DNA testing process:

a. What is Parentage Blood Testing?

Parentage tests involve laboratory procedures performed on blood samples or other genetic material obtained from the child and putative parent or parents. The statistical analysis of the blood test results provides a likelihood of parentage if the putative parent is not excluded. There are four basic tests. The laboratory begins by conducting the first test. If parentage cannot be ruled out based upon the results of that test, it then conducts the second test. The process continues with only as many of the tests as are required to either absolutely rule out a putative relationship or to provide a good statistical probability that the relationship is bona fide. The four types of tests are:

(1) Basic red cell antigens - ABO, MN, CDE.

The groups of blood factors which have been known for the longest time are composed of bio-chemicals which are bound to red blood cells. These factors are referred to as red blood cell antigens because they provide antibodies when they are introduced into blood that does not contain the same factors. These factors are called ABO, MN and CDE. A test may be made for each set of these factors. The cumulative exclusion rate of ABO, MN and CDE tests is approximately 59 percent. Thus in approximately 41 percent of the cases, it will be necessary to proceed with another stage of testing, either to rule out or establish the relationship.

(2) Extended red cell antigens.

These group systems test specific red cell antigens through the use of antisera which define specific markers on the red blood cells. The procedure is quite simple to perform and relatively inexpensive. The exclusion rate of red cell antigen tests is approximately 77 percent.

(3) White cell antigens (human leukocyte antigen or HLA).

HLA tests the histocompatibility system of white blood cells and can only be performed by a laboratory capable of doing tissue typing for transplants. HLA testing involves the exposure of living human leukocytes to antibodies specific to the various antigens. Antibodies that cause cell death are specific to antigens present in the individual leukocyte sample. Because HLA testing involves a very wide range of possibilities and because the leukocytes must be handled while they are still living (generally within 24 hours after they are drawn from the body), the procedure is significantly more expensive than red blood cell testing. Cumulative probability of exclusion is 90 percent.

(4) Red cell enzymes and serum proteins.

Numerous types of proteins either are bound to the surface of red blood cells or suspended in the nonparticular component of the blood known as serum. Scientists have identified many variations of each of these proteins. The variations manifest themselves as observable differences of shape and electrical charge. Electrophoresis is a laboratory process that identifies protein variations. Because electrophoretic testing does not require living tissue, procedures for handling samples are quite flexible. When electrophoesis is combined with red blood cell testing the probability of excluding a person can exceed 95 percent. When electrophoresis is combined with red cell antigen and HLA the exclusion rate is 99.98 percent.

b. DNA Testing

DNA (deoxyribonucleic acid) parentage testing provides an alternative to more conventional parentage blood testing methods. Unlike HLA testing, it does not require the use of live blood cells. DNA testing can often provide conclusive results even when not all parties are available for testing. Although the use of blood samples is preferable, buccal (cheek or mouth cavity) swabs are an alternative specimen collection technique sometimes used in DNA testing. A person must be specially trained to collect tissue samples using buccal swabs and specimens must be packed and shipped correctly or test results could be effected.

c. When to Request Parentage Blood Tests

Blood tests may be requested by the post without Department authorization but should be requested on a very limited basis. All other evidence should be examined before testing is recommended. The competence, integrity, and availability of blood testing physicians and facilities vary around the world, and blood testing can be very costly for the applicants. Blood tests can *prove that the child is not the biological* issue of the alleged parents, but compatibility does not positively confirm the blood relationship. This gives rise to a question about the fairness of requesting blood tests when results showing compatibility would not persuade the Department to document the child in the face of other convincing evidence to the contrary. Moreover, in some places, adopted children and prospective parents already have been matched by blood tests administered by black-market baby vendors; in such cases, blood tests would have minimal utility.

d. Testing Procedures

(1) Once a determination is made by the consul that blood tests would be useful, a testing facility must be chosen by the applicant. The facility can either be in the United States or abroad depending on the location of the persons to be tested. Parentage blood testing should be done by a laboratory that adheres to the quality and control standards set by the American Association of Blood Banks (AABB). See 7 FAM 1131 Exhibit 1131.5-5 for a listing of these standards. The Department maintains a list of laboratories in the United States the AABB has accredited for this purpose that can be provided to posts or applicants upon request. Posts should obtain information on the quality control and security procedures of various laboratories in their consular district and make a list of local laboratories that meet these basic standards. The panel physician can assist in the selection of qualifying laboratories but the applicants, not the consular officer, must choose the laboratory they wish to use.

(2) All fees are borne by the applicants, who should request directly from the laboratory, not through the consul, information on costs and procedures for depositing fees.

(3) The laboratory will either, draw the blood sample itself or opt to provide a local physician with the testing kit and instructions. The physician in this case must be a panel physician who should schedule an appointment for drawing the blood directly with the parties, not through the consul. Department medical officers and facilities may not be used for drawing the blood.

(4) Consular officers must work directly with the laboratory and any involved panel physician to verify that the individuals whose blood is drawn are, in fact, the persons applying for documentation. The laboratory or panel physician should be advised of the need for careful comparison of the identities of all donors with the photographs in the passports or other identity documents to prevent potential fraud. Posts should also guard against fraud by panel physicians, including, if necessary, being present at the time blood is drawn and taking physical custody of the blood samples for transmission to the laboratory.

(5) In all phases of the actual testing and reporting of results, communication must be directly between the laboratory or panel physician and the consular post. Under no circumstances should any other party including those being tested be permitted to transport blood samples, testing equipment or test results. The laboratory or panel physician should ensure that all test results are delivered to the consular officer in a manner which precludes tampering. The Department has no objection to the applicant also receiving test results from the laboratory or physician.

7 FAM 1131.6 Nature of Citizenship Acquired by Birth Abroad to U.S. Citizen Parents

7 FAM 1131.6-1 Status Generally

(TL:CON-68; 04-01-1998)

Persons born abroad who acquire U.S. citizenship at birth by statute, generally have the same rights and are subject to the same obligations as citizens born in the United States who acquire citizenship pursuant to the 14th Amendment to the Constitution. *One exception is that they may be subject to citizenship retention requirements.*

7 FAM 1131.6-2 Eligibility for Presidency

(TL:CON-68; 04-01-1998)

a. It has never been determined *definitively by a court* whether a person who acquired U.S. citizenship by birth abroad to U.S. citizens is a natural-born citizen within the meaning of Article II of the Constitution and, therefore, eligible for the Presidency.

b. Section 1, Article II, of the Constitution states, *in relevant part* that

“No Person except a natural born Citizen...shall be eligible for the Office of President;”

c. The Constitution does not define "natural born". The “Act to establish an Uniform Rule of Naturalization”, enacted March 26, 1790, (1 Stat. 103,104) provided that,

"...the children of citizens of the United States, that may be born ... out of the limits of the United States, shall be considered as natural born citizens: *Provided that the right of citizenship shall not descend to persons whose fathers have never been resident in the United States."*

d. This statute is no longer operative, however, and its formula is not included in modern nationality statutes. In any event, the fact that someone is a natural born citizen pursuant to a statute does not necessarily imply that he or she is such a citizen for Constitutional purposes.

7 FAM 1131.6-3 Not Citizens by "Naturalization"

(TL:CON-68; 04-01-1998)

Section 201(g) NA and section 301(g) INA (formerly section 301(a)(7) INA) both specify that naturalization is "the conferring of nationality of a state upon a person after birth." Clearly, then, Americans who acquired their citizenship by birth abroad to U.S. citizens are not considered naturalized citizens under either act.

7 FAM 1131.7 Citizenship Retention Requirements

(TL:CON-68; 04-01-1998)

a. Persons who acquired U.S. citizenship by birth abroad were not required to take any affirmative action to keep their citizenship until May 24, 1934, when a new law imposed retention requirements on persons born *abroad on or after that date to one U.S. citizen parent and one alien parent.*

b. *Retention requirements* continued in effect until October 10, 1978, when section 301(b) INA was repealed. Because the repeal was prospective in application, it did not benefit persons born on or after May 24, 1934, and before October 10*, 1952 [see 7 FAM 1133.5-13].*

c. Persons *born abroad on or after October 10, 1952*, are not subject to any conditions beyond those that apply to all citizens.

d. Persons whose citizenship ceased as a result of the operation of former section 301(b) were provided a means of regaining citizenship in March 1995 by an amendment to section 324 INA. A more detailed discussion of the retention requirements and remedies for failure to comply with them is provided in 7 FAM 1133.5.

7 FAM 1131.8 Report on Applicant Who Has Not Acquired U.S. Citizenship

(TL:CON-68; 04-01-1998)

When the post determines that a person *applying for documentation as a U.S. citizen has no claim to U.S. citizenship at birth, the post should prepare a lookout form (Form DS-1589) for entry into the Department's lookout system. A discussion of the various types of lookouts and instructions for preparing lookout forms are found in 7 FAM 1337.8*.

7 FAM 1131.9 Birth in Panama; Special Provisions

(TL:CON-68; 04-01-1998)

a. Congress has enacted special legislation governing the conditions under which U.S. citizenship may be acquired by *birth in Panama [see also 7 FAM 1120 for legislation relating to the Canal Zone]*. This legislation does not apply to all children born *in Panama*, but only to those born to U.S. citizens employed by the U.S. Government or the Panama Railroad Company. Section 303(b) INA (8 U.S.C. 1403(b)) states that:

Any person born in the Republic of Panama on or after February 26, 1904, and whether before or after the effective date of this Act, whose father or mother or both at the time of birth of such person was or is a citizen of the United States employed by the Government of the United States or by the Panama Railroad Company, or its successor in title, is declared to be a citizen of the United States.

b. *This* provision *is* the same as those in section 203(b) NA and Section 2 of the Act of August 4, 1937 (50 Stat. 558*). Because it applies retroactively, it is not necessary to refer to the prior versions for citizenship adjudication purposes; they are of historical interest only.* Under all three sections, a child born in Panama on or after February 26, 1904, to a U.S. citizen employee of the U.S. Government or the Panama Railroad Company is automatically a U.S. citizen at birth even if the citizen parent had never previously resided or been physically present in the United States. The child *is* not required to take any particular steps in order to retain citizenship.

c. Legitimation is required for a child born out of wedlock to a male U.S. citizen engaged in qualifying employment. A child born out of wedlock to an American woman employed by the U.S. Government or the Panama Railroad Company acquires U.S. citizenship at birth.

d. Until August 4, 1937, there was no special law relating to Americans born in Panama. Acquisition of citizenship was governed by Section 1993, Revised Statutes *which on* May 24, 1934, was amended to *include* retention requirements. *Those retention requirements were superseded by the August 4, 1937 Act, however, because it applied retroactively, as does its modern version, section 303(b) INA.*

e. In cases outside the scope of section 303(b) INA, the general laws that govern the acquisition of U.S. citizenship by birth abroad apply.

f. Evidence to prove a claim to U.S. citizenship under section 303(b) INA would *include*:

(1) The child's Panamanian birth certificate or other proof of the child's birth to a U.S. citizen *(the blood relationship must be established)*;

(2) The parents' marriage certificate, if applicable; and

(3) Proof of the citizen parent's employment by the U.S. Government or the Panama Railroad Company at the time of the child's birth.

7 FAM 1132 EVOLUTION OF KEY ACQUISITION STATUTES

7 FAM 1132.1 March 26, 1790

(TL:CON-68; 04-01-1998)

a. The First Congress enacted "An Act to Establish an Uniform Rule of Naturalization" (1 Stat. 103,*104*) that stated, in part, that:

...the children of citizens of the United States, that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural born citizens; Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States.

b. This Act was repealed by the Act of January 29, 1795.

7 FAM 1132.2 January 29, 1795

(TL:CON-68; 04-01-1998)

a. This Act (1 Stat. 414) repealed the Act of March 26, 1790, but *in section 3*, adopted *essentially the same* provision for acquiring U.S. citizenship by birth abroad.

b. This Act was *repealed* by the Act of April 14, 1802.

7 FAM 1132.3 April 14, 1802

(TL:CON-68; 04-01-1998)

a. Section 4 of this Act (2 Stat. 153,*155*) stated, in part, that:

...the children of persons who now are, or have been citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens of the United States: Provided, That the right of citizenship shall not descend to persons whose fathers have never resided within the United States.

b. *This Act's formula of permitting transmission of citizenship by "persons who now are, or have been citizens" raised a question whether persons who subsequently became citizens by birth or naturalization could transmit citizenship to their children born abroad. The right of such persons to transmit was clearly provided in the Act of February 10, 1855.*

7 FAM 1132.4 February 10, 1855

(TL:CON-68; 04-01-1998)

a. On this date, Congress enacted "An Act to Secure the Right of Citizenship to Children of Citizens of the United States Born Out of the Limits Thereof," *(10 Stat.604)*.

b. It stated, in part, that:

...persons heretofore born, or hereafter to be born, out of the limits *and jurisdiction* of the United States, *whose fathers were or shall be at the time of their birth citizens of the United States, shall be deemed and considered and are hereby declared to be citizens of the United States:* Provided*, however, that the rights of citizenship shall not descend to persons whose* fathers *never* resided in the United States.

c. *The Act of February 10, 1855 did not repeal the Act of April 14, 1802.*

7 FAM 1132.5 Section 1993, Revised Statutes of 1878

(TL:CON-68; 04-01-1998)

a. *The provisions of the Act of 1802 and the Act of 1855 were codified as Section 1993 of the Revised Statutes of 1878. From 1878 to 1934, Section 1993, Rev. Stat., stated that:*

All children heretofore or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

b. Section 1993 *permitted the transmission of citizenship only by U.S. citizen fathers until it was amended prospectively on May 24, 1934, to permit transmission by U.S. citizen mothers. (The similar rights of women were also addressed by the 1994 amendment to section 301 INA [see 7 FAM 1133.2-1].)*

7 FAM 1132.6 May 24, 1934

(TL:CON-68; 04-01-1998)

a. Section 1993 *(48 Stat. 797)* was amended by the Act of May 24, 1934, to permit American women to transmit U.S. citizenship to their children born abroad, *regardless of the father's citizenship.*

b. *The amended Section 1993 was in effect from May 24, 1934, at noon Eastern Standard Time until January 12, 1941.* The text of the amended law is shown in 7 FAM 1135.6-1. It was repealed, *and superseded by the Nationality Act of 1940.*

7 FAM 1132.7 January 13, 1941

(TL:CON-68; 04-01-1998)

a. The Nationality Act of 1940 (NA) (54 Stat. 1137) went into effect on January 13, 1941*. Section 201 NA addressed acquisition of citizenship by birth abroad.* The pertinent text of Section 201 NA is shown in 7 FAM 1134*.2*.

b. The NA was *repealed and* superseded by the Immigration and Nationality Act of 1952.

7 FAM 1132.8 December 24, 1952

(TL:CON-68; 04-01-1998)

a. The Immigration and Nationality Act (INA) of 1952, the current law, has been in effect since December 24, 1952.

b. For original and amended provisions of this act, *see 7 FAM 1133.2-1 and 7 FAM 1133.2-2.*

7 FAM 1132.9 1986, 1988, 1994 and 1997 Amendments of INA

(TL:CON-68; 04-01-1998)

a. The citizenship provisions of the INA have been amended by the following significant Public Laws:

(1) The Immigration and Nationality Act Amendments of 1986 (Pub. L 99-653), effective November 14, 1986;.

(2) The Immigration Technical Corrections Act of 1988 (Pub. L. 100-525), effective October 24, 1988;

(3) The Immigration and Nationality Technical Corrections Act of 1994 (Pub. L. 103-416), effective October 25, 1994; and,

(4) Pub. L.105-38 of August 8, 1997, which amended Section 102 of Pub. L. 103-416.

b. The relevant parts of these statutes:

(1) Reduced the amount of U.S. physical presence required to transmit citizenship to children born abroad;

(2) Changed the procedures by which children born abroad out of wedlock to an American father can acquire citizenship;

(3) Enabled children born abroad prior to May 24, 1934, to acquire U.S. citizenship through U.S. citizen mothers;

(4) Provided a means for persons whose citizenship ceased through failure to comply with the retention requirements to have their citizenship restored; and

(5) Specified the effective dates of various amended provisions.

7 FAM 1133 IMMIGRATION AND NATIONALITY ACT (INA) OF 1952

7 FAM 1133.1 Effective Date

(TL:CON-51; 2-15-91)

The Immigration and Nationality Act, as originally enacted, went into effect at 12:01 a.m., Eastern Standard Time, on December 24, 1952.

7 FAM 1133.2 Citizenship at Birth Abroad Under INA

(TL:CON-68; 04-01-1998)

Section 301 INA replaced section 201 NA on acquisition of citizenship and nationality at birth abroad. In particular, section 301(a)(7) INA, now section 301(g), replaced section 201(g) NA on acquisition of citizenship by birth abroad to a U.S. citizen parent and an alien parent.

7 FAM 1133.2-1 Section 301 Text as of October 25, 1994

(TL:CON-68; 04-01-1998)

a. As amended by Pub. L. 103-416 on October 25, 1994, section 301 states as follows with respect to persons born abroad:

Sec. 301. The following shall be nationals and citizens of the United States at birth:

x x x

(c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;

(d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;

x x x

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than *five years, at least two* of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the Interna-

tional Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and

(h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such a person, had resided in the United States.

b. Sections 301(c) and (d) were numbered 301(a)(3) and (4), respectively, before October 10, 1978. Section 301(g) is an amended version of former 301(a)(7). Pursuant to section 23(d) of Pub. L. 99-653, the Immigration and Nationality Act Amendments of 1986, the provisions of section 301(g) quoted in 7 FAM 1133.2-2 a apply to persons born on or after November 14, 1986.

c. Section 101(a) of Pub. L. 103-416 (Immigration and Nationality Technical Corrections Act of 1994) (INTCA) added paragraph (h) to section 301 INA for the purpose of providing equal treatment to women in conferring citizenship to children born abroad. Since new paragraph (h) is retroactive, subsections (b) through (d) of section 101 of INTCA also addressed questions that arise as a result as follows:

(b) WAIVER OF RETENTION REQUIREMENTS - Any provision of law (including section 301(b) of the Immigration and Nationality Act (as in effect before October 10, 1978) and the provisos of section 201(g) of the Nationality Act of 1940 that provided for a person's loss of citizenship or nationality if the person failed to come to, or reside or be physically present in, the United States shall not apply in the case of a person claiming United States citizenship based on such person's descent from an individual described in section 301(h) of the Immigration and Nationality Act (as added by subsection (a)).

(c) RETROACTIVE APPLICATION - (1) Except as provided in paragraph (2), the immigration and nationality laws of the United States shall be applied (to persons born before, on, or after the date of the enactment of this Act) as though the amendment made by subsection (a), and subsection (b), had been in effect as of the date of their birth, except that the retroactive application of the amendment and that subsection shall not affect the validity of citizenship of anyone who has obtained citizenship under section 1993 of the Revised Statutes (as in effect before the enactment of the Act of May 24, 1934 (48 Stat. 797)).

(2) The retroactive application of the amendment made by subsection (a), and subsection (b), shall not confer citizenship on, or affect the validity of any denaturalization, deportation or exclusion action against, any person who is or was excludable from the United States under section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182 (a)(3)(E)) (or predecessor provision) or who was excluded from, or who would not have been eligible for admission to, the

United States under the Displaced Persons Act of 1948 or under section 14 of the Refugee Relief Act of 1953.

(d) APPLICATION TO TRANSMISSION OF CITIZENSHIP - This section, the amendments made by this section, and any retroactive application of such amendments shall not effect [sic] any residency or other retention requirements for citizenship as in effect before October 10, 1978, with respect to the transmission of citizenship.

7 FAM 1133.2-2 Original Provisions and Amendments to Section 301

(TL:CON-68; 04-01-1998)

a. Section 301 as Effective on December 24, 1952

When enacted in 1952, section 301 required a U.S. citizen married to an alien to have been physically present in the United States for ten years, including five after reaching the age of fourteen, to transmit citizenship to foreign-born children. The ten-year transmission requirement remained in effect from 12:01 a.m. EDT December 24, 1952, through midnight November 13, 1986, and still is applicable to persons born during that period. As originally enacted, section 301(a)(7) stated:

Section 301. (a) The following shall be nationals and citizens of the United States at birth:...

(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

b. Extension of Section 301 to Certain Children of Armed Forces Persons

Pub. L. 430 of March 16, 1956 (70 Stat. 50, 8 U.S.C. 1401a) extended the application of Section 301(a)(7) (without amending it) to certain children of a citizen who served in the Armed Forces. It provides as follows:

..."Section 301(a)(7) [now 301(g)] of the Immigration and Nationality Act shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201 (g) or (i) of the Nationality Act of 1940. [The reference to section 301(a)(7), was changed to 301(g) by *Section 18(u)(2) of the Immigration and Nationality Act Amendments of 1981, Public Law 97-116 (Dec. 29, 1981).]*

c. November 6, 1966, *Addition of Proviso Relating to Compilation of Physical Presence For Transmission*

The Act of November 6, 1966, Public Law 89-770, (80 Stat. 1322) added additional qualifying U.S. physical presence categories to the 301(a)(7) proviso [see 7 FAM 1133.2-1].

d. October 10, 1978, *Elimination of Retention Requirements*

Public Law 95-432, *(92 Stat. 1046)*, effective October 10, 1978, repealed subsections (b), (c), and (d) of section 301 thus eliminating the physical presence requirement for retention of U.S. citizenship. This change was prospective in nature. It did not reinstate as citizens those who had ceased to be citizens by the operation of section 301(b) as previously in effect. Sections 301(a)(3), (4), and (7) were renumbered 301(c), (d), and (g), respectively.

e. November 14, 1986, Liberalization of Retention Requirements

Section 12 of the Immigration and Nationality Act Amendments of 1986 (INAA) (Public Law 99-653 of November 14, 1986, 100 Stat. 3657) changed the parental citizenship transmission requirements from ten years of U.S. physical presence, five of which were after the age of 14, to five years of U.S. physical presence, two of which were after age 14. These provisions apply only to persons born on or after November 14, 1986.

f. October 24, 1988, Retroactivity of Amendment

(1) The Immigration Technical Corrections Act of 1988 (Public Law 100-525 of October 24, 1988) added a new section 23 to the Immigration and Nationality Act Amendments of 1986 which states:

SEC. 23. ... (d) The amendment made by section 12 shall apply to persons born on or after November 14, 1986.

(2) The effect of this amendment is to apply the reduced physical presence transmission requirements of the amended section 301(g) INA to persons born anywhere outside the United States at any time on November 14, 1986, rather than just to those born after 2:07 p.m. EST when the INAA originally was effective.

g. October 25, 1994, Equalization of Treatment of Women and Provisions for Restoration of Citizenship

The Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103-416 of October 25, 1994) added paragraph (h) to section 301 INA allowing persons born abroad prior to May 24, 1934, to U.S. citizen mothers who had previously resided in the United States to acquire U.S. citizenship at birth with no retention requirements. This Act also added subsection (d) to section 324 INA allowing persons whose citizenship had ceased by operation of the former section 301(b) INA to have their citizenship restored prospectively by taking an oath of allegiance to the United States. The amendment to section 324 went into effect on March 1, 1995.

7 FAM 1133.3 Residence and Physical Presence Requirement

(TL:CON-51; 2-15-91)

The INA specifies that residence or a period of physical presence in the United States is required for transmitting U.S. citizenship on or after December 24, 1952.

7 FAM 1133.3-1 Requirements of Section 301 INA

(TL:CON-68; 04-01-1998)

a. Birth to Two Americans

(1) The content of Section 301(c) INA (formerly section 301(a)(3) INA) is virtually identical to that of section 201(c) NA, which it *replaced.*

(2) A child born abroad to two U.S. citizens acquires U.S. citizenship at birth if, before the child's birth, one of the parents had a residence in the United States or its outlying possessions. *No specific period of residence is required.*

b. Birth to Citizen and National

(1) To transmit U.S. citizenship to a foreign born child under section 301(d) INA (formerly section 301(a)(4) INA), a U.S. citizen parent married to a U.S. national (a person owing permanent allegiance to the United States who is neither a U.S. citizen nor an alien) must have been in the United States or an outlying possession *for a continuous period of* 1 year at any time before the child's birth.

(2) Any absence, even for U.S. military service, breaks the continuity of the period of physical presence.

c. Birth to Citizen and Alien

Unlike section 301(d), section 301(g) (formerly section 301(a)(7) INA) does not require a continuity of stay. However, on the whole, its requirements for transmitting U.S. citizenship to the foreign-born child of a U.S. citizen and an alien are much more stringent: *for children born prior to November 14, 1986, the U.S. citizen parent must have had ten years of physical presence, five of which were after reaching age 14, in the United States or its outlying possessions; for children born on or after November 14, 1986, to transmit citizenship the U.S. citizen parent needs five years of physical presence, two of which were after age 14, in the United States or one of its possessions.*

7 FAM 1133.3-2 Reasons for Requiring Parent's U.S. Physical Presence

(TL:CON-68; 04-01-1998)

a. Based on the *1940* Nationality Act's definition of "residence," a person could transmit U.S. citizenship to a foreign-born child after 10 years' "residence" in the United States or its outlying possessions even though that person may have been in the United States or its outlying possessions for only a small part of that time.

b. The substitution of 10 years "physical presence" *(or 5 years for children born on or after November 14, 1986)* required by the Immigration and Nationality Act of 1952 for the 10 years "residence" required by the Nationality Act of 1940 was another attempt to ensure that a foreign-born U.S. citizen would grow up subject to American influences. With *a long period* of physical presence, *Congress deemed that* the citizen parent would have spent enough time in the United States to absorb American customs and values which, in turn, would be transmitted to the child.

7 FAM 1133.3-3 What Constitutes U.S. Physical Presence

(TL:CON-68; 04-01-1998)

a. *Current Practice*

(1) The Immigration and Nationality Act does not define "physical presence," but the Department interprets it as actual bodily presence. Any time spent in the United States or its outlying possessions, even without maintaining a U.S. residence, may be counted toward the required physical presence.

(2) Naturalized citizens may count any time they spent in the United States or its outlying possessions both before and after being naturalized, regardless of their status. Even citizens who, prior to lawful entry and naturalization, had spent time in the United States illegally can include that time.

(3) Residents of Canada and Mexico who commute daily to school or work in the United States may count the time they spend in the United States each day toward the requirement. Conversely, absences, no matter how short, from the United States and its outlying possessions cannot be counted as U.S. physical presence even if a U.S. residence is maintained, unless *the proviso of 301(g) applies (i.e., the absence is as a result of U.S. military service, employment with the U.S. Government or an international organization as provided therein).*

(4) The Department cannot waive *or reduce* the required period of physical presence.

(5) For methods of computing a person's periods of physical presence in the United States, see 7 FAM 1133.3-4.

b. What Can and Cannot Be Counted as Residence or Physical Presence in the United States or Its Outlying Possessions

For purposes of the various subsections of section 301 INA, the Department holds that:

(1) Residence or physical presence in the Philippines from April 11, 1899, to July 4, 1946, (when those islands were an outlying possession of the United States) and in other U.S. possessions (except the Canal Zone) before December 24, 1952, can be counted toward the residence or physical presence required under the subsections of section 301 INA;

(2) After December 24, 1952, physical presence in the U.S. territories or possessions named in section 101(a)(38) INA is considered physical presence in the United States or its outlying possessions;

(3) The U.S. possessions not named are considered as foreign countries *for citizenship purposes*;

(4) Effective November 3, 1986, physical presence in the Commonwealth of the Northern Mariana Islands constitutes physical presence in the United States for purposes of section 301(g) INA;

(5) Time spent on ships located within U.S. internal waters can be counted as physical presence in the United States. There is a legal question as to whether time spent in waters within the 3-mile limit of the U.S. territorial sea can be counted as U.S. physical presence. Cases in which this issue arises should be referred to the Department (CA/OCS) for guidance [see 7 FAM 1116.1];

(6) Time spent on a U.S.-registered ship outside U.S. territorial waters cannot be counted as physical presence in the United States [Section 330 INA permits time spent on U.S.-registered ships to count as U.S. residence or physical presence for purposes of naturalization but not for other purposes]; *and that*

(7) Time spent on voyages defined as "coastal" by the Coast Guard (which maintains records of U.S. seamen's voyages) is open to legal interpretation. "Coastal" voyages are those between ports in the same State or adjacent States, which usually do not go outside the 3-mile limit of the territorial sea. Cases in which this issue arises should be referred to the Department (CA/OCS) for guidance. Time spent on voyages defined by the Coast Guard as "foreign" or "coastwise" (those from one U.S. port to another in a non-adjacent State in which the vessel travels outside U.S. territorial waters) are not considered physical presence in the United States.

c. Employment Qualifying as Physical Presence in the United States

(1) When the Immigration and Nationality Act went into effect, the only absences from the United States that could be counted toward the physical presence required to transmit U.S. citizenship *under 301(a)(7), now 301(g) INA* were those due to assignments abroad in the U.S. Armed Forces. At the Department's request, section 301(a)(7) INA was amended in 1966 to include the proviso shown in 7 FAM 1133.2-1 extending this benefit to employees of the U.S. Government and designated international organizations and dependent children. *The 1966 amendment was retroactive, benefiting any qualified person born on or after December 24, 1952.*

(2) Since 1966, many questions have arisen about the proper interpretation of various parts of the proviso of section 301(g) INA. Notwithstanding any prior conflicting decisions about how the proviso applies in particular cases, the following interpretations should be followed [see 7 FAM 1133.3-3 d, 7 FAM 1133.3-3 e, 7 FAM 1133.3-3 f, and 7 FAM 1133.3-3 g]. Any cases in which a previous decision appears to conflict with this guidance may be referred to the Department (CA/OCS) for review.

(3) Residence abroad in any capacity mentioned in the proviso can *count toward and even completely satisfy* the required *period* of physical presence in the United States. A citizen who has never been in the United States *may therefore* transmit citizenship if the citizen has *met the physical presence requirement as a result of operation of the proviso*.

d. Interpretation of "Periods of Honorable Service in the Armed Forces of the United States"

(1) The phrase "any periods of honorable service in the Armed Forces of the United States," *includes all periods of honorable foreign service in the U.S. Armed Forces from the date of enlistment, whether the enlistment occurred in the United States or abroad.*

(2) A naturalized U.S. citizen who, as an alien, served honorably abroad in the U.S. Armed Forces may count the overseas service as physical presence in the United States for purposes of transmitting citizenship.

(3) The Department and the Immigration and Naturalization Service hold that members of Reserve components of the U.S. Armed Forces may count as U.S. physical presence all time served abroad on active duty, except for training, provided the service was honorable. *Non-duty* periods of foreign residence or travel while in the Reserves do not qualify (*5* U.S.C. 2105(d)). Other members of uniformed services are considered U.S. Government employees pursuant to 5 U.S.C. 2105(a).

(4) Only periods of honorable U.S. military service abroad count as periods of physical presence in the United States. However, some persons who have received other than honorable discharges may have some periods of honorable service that can be confirmed by the military authorities.

(5) In 1977, the General Counsel, Selective Service System, informed the Department that alternate service performed by conscientious objectors is not considered military service or employment by the U.S. Government. Such persons receive no pay from the U.S. Government, receive no Government compensation if injured on the job, and are not entitled to veterans' benefits.

e. Interpretation of "Employment with the United States Government"

(1) General *Interpretation*. In considering what constitutes "employment with the United States Government", the Department takes into account 5 U.S.C. 2105 and other sections of the U.S. Code and the Code of Federal Regulations that define the status of certain types of personnel. Factors *are* whether the person occupies an allocated position, whether the person's name appears on the payroll of a Department or agency, whether the person *has* a security clearance or took an oath of office, and whether the Government has the right to hire and fire the person and to control the input and the end result of the employee's work. Qualifying U.S. Government employment abroad is not determined by the type of passport which someone bears.

(2) Nonappropriated Fund Instrumentalities. Persons who work abroad for nonappropriated fund instrumentalities (such as post exchanges, *Stars and Stripes*, and the Armed Forces Radio and Television Network) are U.S. Govern-

ment employees for the purposes of section 301(g) INA. Pursuant to 5 U.S.C. 2105(c), they are Federal employees for all purposes except those specifically stated.

(3) Local Hire. There is no requirement that an employee must have been sent abroad by the U.S. Government in order to have time spent abroad in Government service count as physical presence in the United States. Persons employed abroad under local hire by the U.S. Government can count such periods of employment toward the physical presence required by section *301(g)* INA.

(4) Peace Corps

(a) Peace Corps volunteers are not U.S. Government employees for the purposes of section 301(g) INA. *Pursuant to* section 5(a) of the Peace Corps Act (22 U.S.C. 2504(a)), they are not Federal employees except for limited purposes specified in the Act.

(b) Peace Corps personnel, *other than volunteers*, who are members of the Civil Service or Foreign Service can *count* time spent abroad on official assignments that entitled them to diplomatic or official passports.

(5) Contract Employment and Grants Not Qualifying

(a) A person employed by a company that has accepted a U.S. Government contract to undertake a certain project abroad is not a U.S. Government employee. Such a person cannot count as U.S. physical presence any time spent abroad working on the project.

(b) A person working at a foreign university on a grant administered by the Department of State is not a U.S. Government employee for the purposes of section 301*(g)* INA.

f. Interpretation of "Employment....With an International Organization as That Term Is Defined in ...22 U.S.C. 288"

(1) Section 288, Title 22, U.S. Code states that:

...the term "international organization" means a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation, and which shall have been designated by the President through appropriate Executive order as being entitled to enjoy the privileges, exemptions, and immunities provided in this subchapter.

(2) *See* 7 FAM 1133 *Exhibit 1133.3-3 for a list of* the organizations designated by Executive Orders, on the dates shown, as public international organizations *pursuant to 22 U.S.C. 288*. If the designation has been revoked, information about the revocation has been included. Employment abroad with any of the listed organizations while the *designation was* in effect may be counted as physical presence in the United States. However, some of the organizations listed may have ceased to exist [without having their demise noted] by revocation of the Executive Order designating them as international organizations. *Posts should be*

sure to confirm the existence of the organization during the pertinent time period with the Department.

(3) No missionary groups or commercial ventures qualify as international organizations. Service abroad by personnel of such groups cannot be counted as physical presence in the United States.

g. Interpretation of "Dependent Unmarried Son or Daughter and a Member of the Household"

(1) General *Interpretation*. A citizen *son or daughter* of any *parent* whose employment abroad with the U.S. Armed Forces, the U.S. Government, or a designated international organization qualifies as physical presence in the United States may count as physical presence in the United States any time spent abroad with such parent during the parent's employment as long as the *son or daughter* was an unmarried, dependent member of the parent's household. Whether the parent was a citizen or an alien at the time of employment is immaterial.

(2) "Dependent". The Department holds that, as used in section 301(g) INA, "dependent" means relying on one's parents for more than half of one's support. If the supporting parent dies during a foreign assignment, the status as a dependent ceases; thus foreign residence after the parent's death cannot be counted as physical presence in the United States.

(3) "Unmarried". "Unmarried" means single, divorced, or widowed.

(4) "Son or Daughter". "Son or daughter" includes, *regardless of age*, a(n):

(a) Legitimate son or daughter;

(b) Legitimated son or daughter (from the date of legitimation);

(c) Adopted son or daughter (from the date of adoption);

(d) Stepson or stepdaughter;

(e) Biological son or daughter of a woman engaged in employment of the type specified in section 301(g) INA; and

(f) Biological son or daughter of a man who has acknowledged paternity of the son or daughter.

NOTE: Use of the words "son or daughter" does not imply an age limit as the use of the term "child" (defined in section 101(c)(1) INA) might have. A person who, at any age, was the dependent, unmarried, son or daughter and a member of the household of someone abroad in qualifying military or civilian employment may count as physical presence in the United States any time during which the person maintained that status.

(5) "Member of the Household"

(a) Generally, "a member of the household" of a person in qualifying employment abroad would live with that person, but in some situations the Department has considered sons or daughters living elsewhere to be members of the

parents' household. These situations occur most often when the parent accepts an unaccompanied tour abroad or the child attends school in another foreign country during a parent's tour of duty abroad and is away from home for most, if not all, of the year.

(b) A person whose parents maintained separate foreign residences for convenience or necessity but were not estranged can count as physical presence in the United States time during which that person lived at *either* of those residences while the qualifying parent was employed within the scope of section 301(g) INA.

(c) If the parents are estranged or divorced and the parent engaged in qualifying employment has physical custody of a child, the child may count the time spent abroad during the parent's official assignment if all conditions of the proviso have been met.

(d) Periods of visitation with a noncustodial *qualifying* parent can be counted as time spent in the United States if, during the visit, the child is unmarried and dependent on the *qualifying* parent. The same considerations apply if the parent being visited is the spouse of a person engaged in qualifying employment.

7 FAM 1133.3-4 Method of Counting Physical Presence

(TL:CON-68; 04-01-1998)

a. Only time actually spent in the United States, in its outlying possessions, *the Commonwealth of the Northern Mariana Islands on or after November 3, 1986,* or abroad for reasons within the scope of section 301(g) INA may be counted toward the physical presence required to transmit U.S. citizenship. *For children born prior to November 14, 1986, the transmitting parent's physical presence must total 10 years, at least 5 of which were after reaching age 14. For children born on or after November 14, 1986, the transmitting parent must have 5 years' physical presence, at least 2 of which were after age 14. Illustrative examples discussed below are for the 5-year requirement. The same principles, however, apply to the 10-year requirement in effect before November 14, 1986.*

b. Usually, it is not necessary to compute U.S. physical presence down to the minute. For example, a parent who was in the United States from *1970 to 1988* has met the current transmission requirements even if the exact months, days, or hours are unknown. It would appear that a person who was in the United States from *1970 to 1986* would also be qualified to transmit citizenship to a foreign-born child; however, if the transmitting parent was born on December 31, *1970*, and left the United States on January 1, *1986*, that person would be missing almost *1 year* of the required *2* years of physical presence after age 14.

c. If it is not clear that the parent has more than enough physical presence in the United States, it is important to obtain the exact dates of the parent's entries and departures. *Expired passports showing entries into or departures from the United States and other countries, school and employment records, tax withholding statements, and other such documents may be helpful in establishing periods of U.S. physical presence.* In some cases, it is important to know the number of hours a parent spent in the United States on a particular day. For example, a U.S.-citizen resident of Mexico or Canada who commuted to the United States

each day to work would be credited not with a whole day in the United States but only with the number of hours actually spent in the United States.

d. It is possible to come to several equally valid conclusions about the amount of time between two dates. The Department favors the simplest approach and considers that a calendar year is a year whether it has 365 or 366 days and a calendar month is a month regardless of whether it has 28, 29, 30, or 31 days.

Using the period of time, September 10, *1987*, to July 28, *1991*, the Department considers that from September 10, *1987*, to the same time in *1990* is 3 full years. From September 10, *1990*, to July 10, *1991*, is 10 full months. From a certain time on July 10 to the same time on July 28 is 18 days but, depending on exactly when the person left the United States, it might be slightly more or less. Unless times of entry and departure are known, the Department credits the person with 18 days for that period of time. The period of time, February 18, 1991-March 5, 1991, totals 16 days because February had 29 days in that year.

e. The totals of 3 years, 10 months, and 18 days for the first period of time and 16 days for the second would be added to other periods of physical presence. The initial total might look something like this: 6 years, 45 months, 172 days. By dividing the number of months by 12 and the number of days by 30, one arrives at a total of 10 years, 2 months, and 22 days. If at least *2* of these years were after the parent's 14th birthday in a given case, the parent would be able to transmit U.S. citizenship to a child *born abroad on or after November 14, 1986*. If the total number of days is more than 365, the first step should be to divide the number by 365, because a more accurate final figure will be obtained.

7 FAM 1133.4 Children Born Out of Wedlock On or After December 24, 1952

7 FAM 1133.4-1 Section 309 INA (Old and New)

(TL:CON-68; 04-01-1998)

a. Effect of Amendments

Section 309 was substantively amended effective November 14, 1986 by the Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653 (Nov. 14, 1986)(INAA). As originally enacted there were no specifically provided effective dates in the INAA for the 309 amendments. In 1988, however, Congress retroactively added effective dates to the INAA as if they had been included in the INAA as originally enacted. The effective dates for the amendments to section 309 were included in a new section 23(e) of the INAA. As a result of the amendments to section 309 INA, and the operation of INAA 23(e), there are now three categories of persons for purposes of section 309 INA:

(1) persons covered by "new" 309.

(2) persons covered by "old" 309.

(3) persons who may elect to have either old or new 309 apply.

"Old" 309 is defined as section 309 as in effect prior to November 14, 1986, and "new" 309 as 309 as in effect thereafter.

b. Text of "new" 309 INA

SEC. 309. (a) The provisions of paragraphs (c), (d), (e), and (g) of section 301, and of paragraph (2) of section 308, shall apply as of the date of birth to a person born out of wedlock if—

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years—

(A) the person is legitimated under the law of the person's residence or domicile, (or)

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

(b) Except as otherwise provided in section 405, the provisions of section 30l(g) shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

c. Text of "old" Section 309 INA

(a) The provisions of paragraphs *(3), (4), (5) and (7) of section 301(a) [now paragraphs(c), (d), (e), and (g) of section 301]*, and of paragraph (2) of section 308, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.

(b) Except as otherwise provided in section 405, the provisions of section 301*(a)(7) (now section 301*(g)) shall apply to a child born out of wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before or after the effective date of this Act and while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provisions of subsection (a) of this section, a person born, on or after the effective date of this Act, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

7 FAM 1133.4-2 Birth Out of Wedlock to American Father

(TL:CON-68; 04-01-1998)

a. Applicable Law: Whether to Apply Old or New 309(a) INA

(1) "New" section 309(a) INA applies to all persons born on or after November 14, 1986, its effective date, and, by virtue of section 23(e) of the INAA of 1986 (Pub. L. 99-653), to persons who had not attained age 18 as of November 14, 1986, except those who had previously been legitimated, to whom "old" section 309 applies. (Persons born after November 14, 1968, had not attained the age of 18 when the new 309 came into effect.)

(2) "Old" section 309(a) applies to persons who had attained age 18 as of November 14, 1986 and to any persons whose paternity was established by legitimation prior to that date. (Persons born on or before November 14, 1968, had attained age 18 when the new 309 came into effect.)

(3) Either old or new 309(a) can be applied to persons who were at least 15 but under the age of 18 on November 14, 1986. These applicants may elect to have the old section 309(a) INA apply instead of the new section 309(a) if that law is simpler for them or more beneficial to them. (Persons born after November 14, 1968 but on or before November 14, 1971 are in this category.)

b. Establishing Citizenship Under "New" 309(a) INA

In adjudicating claims of persons to whom new section 309(a) INA applies, consular officers must adhere to the following guidance:

(1) Blood Relationship

The consular officer must be satisfied by clear and convincing evidence that a blood relationship exists between the applicant and the alleged U.S. citizen father. This evidence must produce in the fact-finder a firm belief in the truth of the facts asserted, but does not need to reach the level of certainty required for proof beyond a reasonable doubt. No blood test or any other specific type of evidence is required by the Act [see 7 FAM 1131.4 and 7 FAM 1131.5-5 c]. Whether or not evidence produced by an applicant meets the "clear and convincing" standard is a question of fact which varies in each case. Consular officers should keep the above in mind when requesting and reviewing evidence.

(2) Evidence of the Father's Identity and Citizenship

The evidence must show that the father was a U.S. citizen when the child was born.

(3) Father's Statement of Support

(a) A statement of financial support is required except when the father is deceased. A father who refuses to sign a statement of support prevents his child from acquiring U.S. citizenship. A child who cannot present a written support agreement by the father cannot be documented as a U.S. citizen unless it is proven that the father is dead. This is true even if the father cannot be located; unless dead, the father must be located and comply with the requirements of section 309(a), as amended, before the child's 18th birthday.

(b) Since section 309(a) specifies that the father must agree in writing to support the child, a local law obliging fathers to support children born out of wedlock is not sufficient to meet the requirement of that section.

(c) The affidavit in 7 FAM 1445 Exhibit 1445.5-3 contains a statement of support which satisfies the requirements of new section 309(a). The statement may be in any form, however, as long as it complies with the following:

(i) It must include an agreement to provide financial support;

(ii) It must specify that such support will continue until the child's 18th birthday;

(iii) It must be in writing;

(iv) It must be signed by the father under oath or affirmation before a consular officer or before any other U.S. or foreign official authorized to register births or administer oaths; and

(v) It must be dated before the child's 18th birthday. It may be dated any time prior to that date, including prior to November 14, 1986.

(d) The statement of support is not required when the father is deceased. The applicant has the burden of proving the father's death, and should provide a death certificate or other acceptable evidence of the father's death.

(e) If the father signs a statement of support and subsequently fails to support the child, the child's U.S. citizenship is not taken away. The Department has no authority to obtain support payments from fathers or otherwise to enforce the support agreement executed pursuant to section 309(a) INA. This does not mean, however, that it could not be enforced by the child against the father, or pursuant to laws administered by other government entities.

(4) Evidence of Legitimation or Acknowledgement of Paternity

"New" section 309(a) provides for three alternatives: legitimation under the laws of the applicant's residence or domicile; acknowledgement of paternity under oath; and court adjudication of paternity (see following paragraphs). Any of the three actions is sufficient, as long as the action occurs while the applicant is under the age of 18.

(a) Legitimation

(i) "New" section 309(a) provides for legitimation by the father as an alternative means of establishing legal relationship. (Under "old" 309, it is/was the only method authorized). If the applicant was legitimated while under the age of eighteen, by affirmative act or by operation of law under the child's residence or domicile on or after November 14, 1986, he or she need only submit the statement of support discussed in 7 FAM 1133.4-2 b(3), unless such a statement was part of the legitimating act and evidence to that effect is submitted.

(ii) Legitimation is the giving, to a child born out of wedlock, the legal status of a child born in wedlock, who traditionally has been called a "legitimate" child. Thus, legitimacy is a legal status in which the rights and obligations of a child born out of wedlock are identical to those of a child born in wedlock. This status is generally relevant primarily to the rights of the child vis-a-vis its natural father. Many foreign countries may not use the term "illegitimate", but nonetheless recognize that a child born in wedlock has greater rights than a child born out of wedlock, for instance under local inheritance laws. The out of wedlock child in such countries is not legitimated within the meaning of new section 309(a).

(iii) "New" section 309(a) requires that legitimation occur under the laws of the residence or domicile of the child, not the father. (As discussed in the following sections, under old 309, it may be the laws of the residence or domicile of either the father or the child.)

(iv) Posts in countries where legitimation laws are unclear, unknown, or nonexistent should obtain the father's statement of support and acknowledgement [7 FAM 1445 Exhibit 1445.5-3] rather than expend resources in attempting to determine whether legitimation occurred. If a legal interpretation of a legitmation law is needed, posts should request the Department's (CA/OCS) assistance.

(v) Legitimation is best used to establish relationship only in cases where the legitimating act has already taken place and evidence is readily available. Do not inconvenience applicants by requiring them to submit extensive evidence of legitimation or expend resources to research or interpret foreign legitimation laws. Encourage the use of the simpler alternative of acknowledgement of paternity discussed in 7 FAM 1133.4-2 b(4).

(vi) Posts must be satisfied in cases of previous legitimation that the child was resident or domiciled in the country where the legitimating act occurred. In most cases, a child's residence is the same as its domicile, and both usually coincide with those of the parents. Posts should question the applicant and parents regarding residence and domicile in the same manner as for legitimation under the original version of section 309(a) discussed in 7 FAM 1133.4-2 c.

(vii) Legitimation may occur by automatic operation of law at birth, by some affirmative act of the father (for instance, marrying the mother), or by court order. Although the legitimation status goes back to birth, it is the date of the legitimating act which must be considered in a citizenship claim.

(b) Acknowledgement of Paternity

(i) Acknowledgement of paternity is the simplest means of establishing legal relationship under the new 309(a) and should be used in most cases. It may have

occurred either before or after November 14, 1986, as long as it was done while the child was under age 18.

(ii) Acknowledgement may be made under oath or affirmation in any form before a consular officer or other official authorized to administer oaths. An acknowledgement made by the father on the child's birth certificate or otherwise under foreign procedures is acceptable if it was under oath or affirmation.

(iii) Fathers of applicants not already legitimated, acknowledged, or subject to court decrees of paternity may execute an acknowledgement and the statement of support in the same instrument for the sake of simplicity, provided the applicant is under 18 at the time the joint document is signed. The affidavit of parentage in 7 FAM 1445 Exhibit 1445.5-3 may be used for this purpose.

(c) Court Adjudication of Paternity

(i) Establishment of legal relationship by the alternative of court adjudication of paternity will be extremely rare. It need not be pursued unless the father is unable or unwilling to acknowledge the child.

(ii) Such adjudication must have occurred before the child reached age 18. It is irrelevant whether it was before or after November 14, 1986.

(iii) Fathers of applicants who are already the subject of such adjudications need only submit the statement of support (unless it was previously presented in the court proceeding and evidence to that effect is submitted). Consular officers should presume that the court had jurisdiction over the case. Consuls should keep in mind that court paternity decrees only establish a legal relationship, not a blood relationship. Individuals presenting paternity decrees must still present evidence of a blood relationship as required by Section 309(a). If there is evidence which draws into question a court's findings, the post should not accept the court order as establishing a legal relationship (paternity) between the father and child without consulting the Department (CA/OCS).

(5) Father's PhysicalPresence in the United States

If the applicant was born prior to November 14, 1986, the U.S. citizen father is subject to the original requirements of section 301(g) INA to transmit citizenship to the applicant. Thus, he must show that he was physically present in the United States for 10 years, at least 5 of which were after reaching the age of 14, prior to the birth of the applicant. For applicants born on or after November 14, 1986, the most recent physical presence requirements of section 301(g) apply. In this instance, the U.S. citizen father must show that, prior to the birth of the applicant, he was physically present in the United States for 5 years, at least two of which were after reaching the age of 14.

c. Establishing Citizenship Under "Old" Section 309(a) INA

When adjudicating cases under old section 309(a) INA, consular officers must adhere to the following guidance:

(1) Blood Relationship

The consular officer must be satisfied that a blood relationship exists between the child and the U.S. citizen father. Absent such a relationship, the child of an alien mother cannot acquire U.S. nationality at birth [see *7 FAM* 1131.4].

(2) Legitimation: Law of Residence and Domicile

(a) Under Old 309(a), the place for legitimation was not specified. Old 309(a) was applied to permit legitimation to take place pursuant to laws of the U.S. or foreign residence or domicile of the father or child [see 7 FAM 1133 Exhibit 1133.4-2 for various State legitimation laws]. The consular officer should learn which foreign countries or States of the United States qualify as either the father's residence or domicile or the child's residence or domicile for purposes of establishing legitimation.

(b) The Immigration and Nationality Act defines "residence" as the place of general abode of a person; *his* principal, actual dwelling place in fact, without regard to intent. *Under this definition, a military base where a person is stationed, even for a short period of time such as a training assignment at an appropriate place, can be considered a residence and the laws of the state or country where the base is located can be considered for legitimation purposes.*

(c) "Domicile" is generally defined as the place of a person's true, fixed, and permanent home or ties, and to which whenever absent, the person intends to return.

(d) In attempting to determine residence or domicile, the consular officer may ask such questions as: Where *did* you own property? Where *did* you pay taxes? Where *were* you registered to vote? Where *have you had* bank accounts? What State issued you a driver's license or other license? *What ties do you have to the place of residence or domicile?*

(3) Legitimation: Marriages

The consular officer should ask whether the child's father and mother have ever been married to each other. *A valid intermarriage of a child's natural parents subsequent to a child's birth serves to legitimate a child in most jurisdictions. The validity of a marriage is governed by the law of the place where it was performed and may be a determining issue in a child's claim to citizenship under section 309(a). A marriage that is void or voidable may also serve to legitimate a child in some circumstances, particularly if the child was born after the marriage.*

(a) Valid marriages

See 7 FAM 1133 Exhibit 1133.4-2 for a list of the states in which a subsequent marriage of the parents will serve to legitimate a child. If the laws of the state or the country where the father or the child resided or were domiciled provide for legitimation by subsequent marriage, those laws may be applied if there was a valid marriage of the parents while the child was under 21. In general, the place of marriage and the place of residence or domicile must be the same. There are exceptions to this general rule, however, and a post may find it necessary to submit questions of this nature to the Department (CA/OCS).

(b) Voidable and Void Marriages

(i) A marriage that did not conform to the laws of the country or state in which it was performed may be a void marriage, but only after declared so by an appropriate authority, usually a court in the jurisdiction where the marriage occurred. Prior to such judicial declaration, the marriage may be considered voidable. A voidable marriage is considered valid for all purposes unless and until annulled or voided by the court. Even after a marriage is voided, there is every likelihood that the children's status will not be affected. Every state in the United States, for example, considers children of a void marriage to be legitimate [see 7 FAM 1133 Exhibit 1133.4-2, Part II].

(ii) Posts should have available a copy of the consular district's local laws on marriage and legitimation. If for any reason a marriage does not appear to have been valid and legitimation is a determining factor in the citizenship claim, consular officer's may need to consult local law, if a U.S. domicile cannot be identified, to determine if children born of a void marriage are considered legitimate. If they would not be considered legitimate, the consular officer must determine that the marriage was, in fact, declared void by an appropriate authority before denying the claim. A post that is considering a case involving legitimation in a third country may seek information on the laws of that country from the embassy of that country or from the U.S. embassy in that country.

(iii) A law that declares legitimate a child born during a void marriage presumes that the marriage ceremony took place before the child's birth unless the law specifically mentions children born before the marriage. Cases that involve void marriages that occurred after a child's birth should be referred to the Department (CA/OCS).

(c) Absence of a Marriage

(i) If no marriage has occurred between the child's U.S. citizen father and the child's natural mother, the consular officer, after determining the appropriate domicile or residence, should consult the applicable U.S. or foreign laws to learn whether *the* child *was* legitimated by *other* means. In most countries or States where legitimation is possible without subsequent intermarriage of the biological parents, certain conditions must be met (such as formal acknowledgment of the child by the father, acceptance into the father's household, consent of the father's wife). For a summary of U.S. laws on legitimation without marriage, see *7 FAM 1133 Exhibit 1133.4-2, Part III.*

(ii) Some states and countries grant all children equal rights, regardless of the parent's marital status. In such cases, the child *may be considered to have established paternity by legitimation under old 309(a)* if the blood relationship between the father and child was established before the child's 21st birthday, *and* the law concerning the equality of all children was in effect before the child's 21st birthday.

(iii) Some states and countries do not provide any specific way for fathers to legitimate their children. Persons born out of wedlock who had to rely on the legitimation laws of those places could not acquire U.S. citizenship through their fathers if they were age 18 prior to the 1986 amendment of section 309(a) INA.

(4) Legitimation: Adoption by Biological Father

(a) If a father adopts his *biological* child while the child is under age 21, the Department regards the child as legitimated for purposes of old 309(a) regardless of the law of the father or child's residence or domicile.

(b) Before any documents are issued, cases that involve adoption by the *biological* parent should be referred to the Department (CA/OCS) by telegram or memorandum *requesting advisory opinion.*

(5) Father's Physical Presence in the United States

An applicant acquiring citizenship under the old 309(a) must show that his or her father was physically present in the United States for 10 years, at least 5 of which were after the age of 14, prior to the birth of the applicant.

7 FAM 1133.4-3 Birth Out of Wedlock to American Mother

(TL:CON-68; 04-01-1998)

a. Claims Under Section 309(c) INA

A child born abroad out of wedlock on or after December 24, 1952, to a U.S. citizen mother acquires U.S. citizenship if the mother was physically present continuously for 1 year in the United States or its outlying possessions at any time prior to the child's birth*. This did not change under any of the amendments to Section 309 INA.* Thus a woman who had spent only a very short time every year outside the United States would be unable to transmit citizenship under section 309(c) INA even though she might *have qualified* to transmit U.S. citizenship under section 301(g) INA *if she had been married to the father of the child. The 1966 amendment to section 301 INA allowing members of the U.S. armed forces, employees of the U.S. Government and certain international organizations, and their dependents to count certain periods outside the United States as U.S. physical presence does not apply to section 309(c) INA. For this reason, the mother of a child born out of wedlock cannot use time spent abroad as a military dependent, for example, to satisfy all or part of the requirement of continuous physical presence in the United States for 1 year. Subsequent legitimation or the establishment of a legal relationship between an alien father and* a person who acquired U.S. citizenship at birth under section 309(c) does not alter that person's citizenship.

b. Claims under Old 309(a)

Prior to the November 14, 1986, amendments to section 309(a), section 309(a) did not apply exclusively to the out of wedlock children of U.S. citizen fathers, but could also be applied to the out of wedlock children of U.S. citizen mothers. As a result, a person born out of wedlock to a U.S. citizen mother who could not transmit citizenship under section 309(c) because she had not been physically present in the United States or outlying possessions for the continuous 1-year period may claim citizenship under old 309(a). As discussed previously, under old 309(a) the child's paternity must have been established by legitimation before the child's 21st birthday. If this condition is met, old 309(a) permits acquisition through section 301(g) (formerly 301(a)(7)), which requires that the citizen parent (mother or father), before the child's birth, have amassed the 10 years of U.S. physical presence, including 5 after age 14. Persons born out of wedlock to alien fathers and U.S. citizen mothers on or after November 14, 1986 cannot claim citizenship under

309(a) because new 309(a) requires that the father have been a U.S. citizen at the time of the child's birth.

c. Retention requirements

The retention requirements of former section 301(b) INA did not apply to children *who acquired U.S. citizenship under section 309(c) INA by birth* out of wedlock to American mothers.

7 FAM 1133.5 Requirements for Retaining U.S. Citizenship

7 FAM 1133.5-1 No Current Requirements

(TL:CON-68; 04-01-1998)

The retention provisions of the INA were repealed by Pub. L. 95-432 on October 10, 1978. Persons born on or after October 10, 1952, who acquired U.S. citizenship through birth abroad to one U.S. citizen parent are not required to be physically present in the United States to retain U.S. citizenship. The repeal was not retroactive and did not restore citizenship to those whose citizenship had already ceased by operation of the repealed law. However, on March 1, 1995, persons whose citizenship had ceased as a result of failure to comply with the retention requirements were provided a means to resume citizenship through the taking of an oath of allegiance [see 7 FAM 1133.5-15].

7 FAM 1133.5-2 Original Requirements of Former Sections 301(b), (c) and (d) INA

(TL:CON-68; 04-01-1998)

a. When the retention requirements were repealed in 1978, section 301 was renumbered. Section 301(a)(1) became section 301(a), section 301(a)(2) became section 301(b) and so on. Therefore, the current sections 301(b), (c) and (d) no longer relate to retention requirements. For purposes of the following discussion, sections 301(b), (c) and (d), when mentioned, will refer to those sections of law which dealt with retention requirements, i.e. the sections as they were written prior to the 1978 renumbering. The word "former", therefore, is assumed.

b. Section 301(b) INA

(1) To keep their citizenship, persons who acquired U.S. citizenship under section 301(a)(7) *INA [quoted in 7 FAM 1133.2-2]* were required to be physically present in the United States continuously for 5 years between ages 14 and 28. *A two-year retention requirement was substituted retroactively in 1972. In 1978, the retention requirement was repealed for all persons born on or after October 10, 1952. The purpose of the retention provisions was to reduce divided loyalties and ensure that foreign-born citizens with only one citizen parent would absorb American influences and regard themselves as Americans after having spent several years in the United States as teenagers or young adults.*

(2) In an effort to make certain that the person would actually be in the United States for a substantial period of time, the INA required physical presence

rather than the residence specified in the Nationality Act of 1940 and section 1993 of the Revised Statutes, as amended.

(3) The text of section 301(b) INA, as originally enacted, stated that:

Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following any such coming be continuously physically present in the United State[s] at least five years: Provided, That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.

c. Section 301(c) INA

Section 301(c) applied the requirements of section 301(b) to persons born between May 24, 1934, and December 24, 1952, who were subject to, but had not complied with, and did not later comply with, the retention requirements of section 201(g) or (h) NA. The text of section 301(c), as originally enacted, said:

Subsection (b) shall apply to a person born abroad subsequent to May 24, 1934: Provided, however, That nothing contained in this subsection shall be construed to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this Act, has taken up a residence in the United States before attaining the age of sixteen years, and thereafter, whether before or after the effective date of this Act, complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended.

d. Compliance Option

Persons already in the process of complying with the requirements of section 201(g) NA when the INA became effective or who, prior to December 24, 1952, had taken up residence in the United States before reaching age 16 could opt to comply with the requirements of either section 201(g) NA or section 301(b) INA.

7 FAM 1133.5-3 Absences Totaling Less Than 12 Months Permitted by 1957 Statute

(TL:CON-68; 04-01-1998)

a. Section 16 of the Act of September 11, 1957, *Pub. L. 85-316* (71 Stat. 644) provided that absences totaling less than 12 months would not break the continuity of the *period of physical presence in the United States required by the original provisions of section 301(b) INA.* It stated that:

In the administration of section 301(b) of the Immigration and Nationality Act, absences from the United States of less than twelve months in the aggregate, during the period for which continuous physical presence in the United States is required, shall not be considered to break the continuity of such physical presence.

b. Absences from the United States could not include the first day of the 5-year period for which physical presence in the United States was claimed but were

permitted at any time after the person had begun compliance. For example, a person who entered the United States after reaching age 14 and before reaching age 23 and who remained in the United States for 4 years and 1 day was regarded as having complied with the retention requirements in full and was not required to remain in the United States any longer.

c. Persons under age 23 who broke the continuity of their U.S. physical presence by leaving the United States for periods aggregating more than one year could return to the United States and recommence compliance; however, no period of the prior absences could be considered constructive physical presence in the United States.

7 FAM 1133.5-4 Absence in U.S. Armed Forces Did Not Break Continuity

(TL:CON-68; 04-01-1998)

Absences from the United States in the U.S. Armed Forces after a person had begun to comply with the retention requirements were considered equivalent to U.S. physical presence and did not break the continuity of the person's physical presence.

7 FAM 1133.5-5 Method of Totaling Absences

(TL:CON-68; 04-01-1998)

The Department and the Immigration and Naturalization Service agreed that, for retaining citizenship, the total length of a person's absences from the United States is determined by adding up the number of hours actually spent outside the United States. For this reason, a person who had begun to comply with the original five-year retention requirements could leave the United States at 7 p.m. on a certain day, return to the United States at 2:15 p.m. 1 year later, and, unless the person later left the United States for an additional 4 hours, keep U.S. citizenship by staying in the United States until the 5th anniversary of the date the person began to comply with the retention requirements.

7 FAM 1133.5-6 Date on Which Citizenship Ceased Under Section 301(b) INA

(TL:CON-68; 04-01-1998)

a. Until section 301(b) was amended in 1972, the Department held that persons subject to section 301(b), as originally enacted, ceased to be U.S. citizens on their 23rd birthday if they did not enter the United States to begin compliance with the retention requirements before reaching age 23.

b. Persons who had begun to comply with the retention requirements but who returned abroad and remained there until it was no longer possible for them to amass a total of 5 years of continuous physical presence in the United States forfeited their citizenship on the date on which it was no longer possible for them to meet the requirements of section 301(b), whether it was on their 23rd birthday or later.

c. After the 1972 amendment of section 301(b), it was held that the date on which U.S. citizenship ceased because of failure to comply with the retention requirements would be changed retroactively to the person's 26th birthday [see 7 FAM 1133.5-8].

7 FAM 1133.5-7 1972 Amendment of Section 301(b) INA

(TL:CON-68; 04-01-1998)

Public Law 92-584 amended section 301(b) INA effective Oct. 27, 1972*, to read as follows* (86 Stat. 1289):

Any person who is a national and citizen of the United States under paragraph (7) of subsection (a) shall lose his nationality and citizenship unless-- (1) he shall come to the United States and be continuously physically present therein for a period of not less than two years between the ages of fourteen years and twenty-eight years; or (2) the alien parent is naturalized while the child is under the age of eighteen years and the child begins to reside permanently in the United States while under the age of eighteen years. In the administration of this subsection absences from the United States of less than sixty days in the aggregate during the period for which continuous physical presence in the United States is required shall not break the continuity of such physical presence.

7 FAM 1133.5-8 Amended Requirements Applied Retroactively

(TL:CON-68; 04-01-1998)

a. The amended requirements were applied retroactively. Persons who had been in the United States for 2 continuous years between ages 14 and 28 were considered to have retained citizenship, even if they had been held to have lost it by failing to comply with the 5-year requirement.

b. Persons then between ages 23 and 28 who had lost their citizenship under the original section 301(b) were restored to citizenship and could retain it by complying with the amended requirements.

c. The Department holds that the retroactivity of the amendment extended also to persons who had failed to comply with any retention requirements and who, at the time of the amendment, were over age 26 and ineligible to comply with the new requirements. Such persons were previously held to have lost their citizenship *at age 23 but now are held to have ceased to be U.S. citizens* upon reaching age 26.

7 FAM 1133.5-9 Savings Clause Added by Section 301(d) INA

(TL:CON-68; 04-01-1998)

a. Section 301(d) was added when section 301(b) was *amended on October 27, 1972*. The new subsection stated that:

Nothing contained in subsection (b), as amended, shall be construed to alter or affect the citizenship of any person who has come to the United States prior to the effective date of this subsection and who, whether before or after the effective date

of this subsection, immediately following such coming complies or shall comply with the physical presence requirements for retention of citizenship specified in subsection (b) prior to its amendment and the repeal of section 16 of the Act of September 11, 1957.

b. This new subsection protected the citizenship of persons who already had complied with the original retention requirements. It also allowed persons who were in the midst of complying with section 301(b), as originally enacted, but *who* had no 2-year periods of continuous U.S. physical presence, to continue compliance with the original requirements. Such persons could also opt to stay in the United States until they had completed a continuous period of 2 years and retain their citizenship under the amended requirements.

7 FAM 1133.5-10 Absences Totaling Less Than 60 Days Permitted Under Revised Section 301(b) INA

(TL:CON-51; 2-15-91)

a. Section 16 of the Act of September 11, 1957, was repealed by Public Law 92-584 on October 27, 1972 (8 U.S.C. 1401; 86 Stat. 1289). The amended section 301(b) INA provided that absences of less than 60 days in the aggregate would not break the continuity of the 2-year period of physical presence. The Department interpreted the phrase "less than sixty days in the aggregate" to mean 59 days.

b. Congress clearly intended to make the allowable periods of absence from the United States available only to persons who had begun to comply with the retention requirements; thus, persons who failed to enter the United States before age 26 to begin compliance could not claim to have complied with the retention requirements if they had entered the United States within 60 days after reaching that age and remained until reaching age 28.

7 FAM 1133.5-11 Exemption Based on Naturalization of Alien Parent

(TL:CON-68; 04-01-1998)

a. Besides reducing to 2 years the amount of U.S. physical presence required to retain citizenship, the amended section 301(b) codified what had been only an administrative exception to the requirements of section 301(b)—an exemption based on the naturalization of the person's alien parent under circumstances that would have conferred unconditional citizenship on an alien child pursuant to section 320(a) INA.

b. The Department believed it unjust to apply the retention requirements to children who, if they had not acquired U.S. citizenship at birth, would have acquired unconditional citizenship automatically upon the naturalization of their alien parent *under section 320(a) INA,* assuming that they were under age 18 and residing in the United States at the time of their parent's naturalization or that, after their parent's naturalization, they took up residence in the United States while still under age 18.

7 FAM 1133.5-12 Rogers v. Bellei

(TL:CON-68; 04-01-1998)

a. Constitutionality of Section 301(b) INA

In *Rogers* v. *Bellei*, 401 U.S. 815 (1971), the Supreme Court upheld the constitutionality of section 301(b) INA and held that the case of a person who had ceased to be a U.S. citizen by failing to comply with section 301(b) was distinguishable from cases involving loss of nationality by performance of an act expatriating by statute and in which the issue of intent was pertinent.

b. *14th Amendment Definition*

(1) Persons who acquire U.S. citizenship by birth abroad do not come within the 14th Amendment's definition of citizenship.

(a) On May 29, 1967, in *Afroyim* v. *Rusk*, the Supreme Court held that:

...the Fourteenth Amendment was designed to, and does, protect every citizen of this nation against a congressional, forcible destruction of his citizenship, whatever his creed, color, or race....

(b) In *Bellei*, however, the Court held that the constitutional definition of citizenship in the 14th Amendment does not include persons who acquired citizenship by birth abroad to a citizen parent. This definition—

...was one restricted to the combination of three factors, each and all significant: birth in the United States, naturalization in the United States, and subjection to the jurisdiction of the United States....

(c) The Court also stated that:

Our National Legislature indulged the foreign-born child with presumptive citizenship, subject to the satisfaction of a reasonable residence requirement, rather than to deny him citizenship, outright, as concededly it had the power to do....

(d) The Court held that:

Congress has the power to impose the condition subsequent of residence in the United States [on persons who do] not come within the Fourteenth Amendment's definition of citizens as those "born or naturalized in the United States," and its imposition is not unreasonable, arbitrary, or unlawful.

(2) *Because retention requirements are a condition subsequent to acquisition, 301(b) subjects who failed to comply are considered to have ceased to be U.S. citizens rather than to have lost U.S. citizenship as per 349 INA. Intent in 301(b) cases is immaterial. Persons who did not fulfill the 301(b) requirements ceased to be U.S. citizens regardless of their desire to keep their citizenship. 301(b) cases are not appealable to the Board of Appellate Review but can be administratively reviewed in CA/OCS.*

7 FAM 1133.5-13 Effect of Repeal of Retention Requirements

(TL:CON-68; 04-01-1998)

a. On October 10, 1978, sections 301(b), (c), and (d) INA were repealed by Public Law 95-432. Persons born on or after October 10, 1952 (who would be age 26 or younger on the repeal date), therefore, are not required to come to the United States in order to keep their U.S. citizenship (are not subject to the retention provisions). Citizens who were in the United States complying with the requirements of section 301(b) INA on October 10, 1978, were relieved of all obligations to remain in the United States; those who had begun compliance but were temporarily absent from the United States on October 10, 1978, were not required to return to the United States.

b. The Report of the House Judiciary Committee (House Report 95-1493, p. 2) indicates that the intent of Congress was to repeal section 301(b) only prospectively and states that:

...those citizens who have lost their United States citizenship under those provisions before the enactment of this bill will not be restored to citizenship....

c. *Some individuals* did not benefit from the repeal of section 301(b):

(1) Persons who were subject to section 301(b) and reached age 26 before October 10, 1978, without entering the United States to begin compliance with the retention requirements lost their citizenship on their 26th birthday.

(2) Persons who had begun to comply with the retention requirements but who had left the United States 60 or more days before October 10, 1978, without completing compliance and who had reached age 26 before that date lost their citizenship on the 60th day of their absence.

7 FAM 1133.5-14 Remedies for Failure to Comply With Former Section 301(b) INA

(TL:CON-68; 04-01-1998)

a. The Immigration and Nationality Act itself provides no exemption or means other than those discussed in 7 FAM 1133.5-11 and 7 FAM 1134.6-2 by which a person subject to retention provisions before October 10, 1952, may be excused from the retention requirements. Moreover, the Department has no administrative discretion to waive the retention requirements.

b. The Department does accept several defenses which render those requirements inapplicable and which individuals may assert to excuse their noncompliance. Those defenses, which involve unawareness of a claim to citizenship, impossibility of complying with the retention requirements, and official misinformation, are discussed in 7 FAM 1133.5-16, 7 FAM 1133.5-17, and 7 FAM 1133.5-18 through 7 FAM 1133.5-19. Prior to 1995, these defenses were the only available means, other than naturalization, by which persons whose citizenship ceased under the former section 301(b) INA could have their citizenship restored.

c. In 1994, The Immigration and Nationality Technical Corrections Act amended section 324 INA (effective March 1, 1995) to permit persons who had ceased to be U.S. citizens for failure to comply with former section 301(b) to have their citizenship restored by taking a prescribed oath of allegiance to the United States. This method of citizenship restoration is discussed in 7 FAM 1133.5-15.

7 FAM 1133.5-15 Restoration of Citizenship Under Section 324(d)(1) INA

(TL:CON-68; 04-01-1998)

a. Section 324(d) INA, effective March 1, 1995, added by section 103 of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103-416, provides for the restoration of U.S. citizenship to those persons who did not fulfill the physical presence retention requirements of section 301(b). Section 324(d)(1) INA allows a person to regain U.S. citizenship upon application and upon the taking of a prescribed oath of allegiance, provided such person would not be ineligible for naturalization under section 313 INA, which makes ineligible for naturalization persons who advocate totalitarian forms of government. Section 324(d) does not restore citizenship retroactively to those who take the oath. Therefore, a person whose citizenship is restored under section 324(d) cannot use that restoration as a basis for the transmission of U.S. citizenship to any of his or her children born abroad during the period between the cessation and restoration of U.S. citizenship.

b. Restoration of citizenship under section 324(d) is now the preferred vehicle for establishing and documenting citizenship of persons who failed to meet applicable retention requirements of 301(b) INA. The defenses of unawareness, impossibility of performance and misinformation require more complex analysis to develop and should not normally be pursued where retention of citizenship is the core issue. The consular officer is not required to discuss the option of employing one of the defenses unless the applicant provides information in an interview or in documentation that clearly suggests that such a defense may be viable. Moreover, an applicant who is eligible to employ one of the defenses may waive the defense option and choose to take the 324(d) oath. In fact, there will likely be very limited circumstances when an applicant would want to establish a defense rather than take the oath, the main one being the ability to transmit citizenship to children born during the time citizenship had ceased. Once the oath is taken, the Department will assume the applicant was either not eligible or waived any right to employ a defense.

c. The following procedures should be followed for eligible persons applying for restoration of U.S. citizenship under section 324(d)(1) INA:

***NOTE:** Eligible persons are persons born abroad between May 24, 1934, and October 10, 1952 to one American citizen and one alien parent who (1) lost their citizenship for failure to satisfy retention requirements and received an official determination to that effect by the Department, or, (2) did not fulfill the retention requirements and are making a first time claim for U.S. citizenship, and (3) do not advocate totalitarian forms of government per section 313 INA.*

(1) Accept an application. Have the applicant execute Form DSP-11 (Application For Passport/Registration), and the Information For Determining U.S. Citizenship Form [see 7 FAM 1217 Exhibit 1217.3 e], submitting all required supporting citizenship documentation.

(2) Adjudicate citizenship acquisition. Determine that the applicant acquired U.S. citizenship.

(3) Determine whether the applicant was subject to and failed to comply with applicable retention provisions.

(4) Prepare the statement and oath. If a determination is made that the person failed to comply with 301(b), prepare a statement on post letterhead using the format and wording shown in 7 FAM 1133 Exhibit 1133.5-15. Have the applicant fill out and sign the top portion of the statement. Upon signature, the consular officer or any other person duly authorized to take an oath shall administer the oath of allegiance. The consular officer should then sign and date the statement. It is not necessary to include a consular seal. The applicant should be provided a copy of the completed oath at no charge.

(5) Conduct a name clearance. As always, the Department passport policy requires all applicants for passport services to be cleared against the Passport Namecheck Database before issuance. Because many of the 324(d)(1) namechecks will result in a loss of nationality hold, arrangements have been made with CA/PPT to handle these cases in an expeditious manner. For processing 324(d)(1) reacquisition cases, when there is a loss of nationality hold (L-F Lookout) for persons born abroad between May 24, 1934, and October 10, 1952, the Department will, without prior review of the file, send back a message to post, via CLASS (or telegram for non-CLASS posts), stating "LOSS OF NATIONALITY: OK TO ISSUE AFTER 324(d) OATH IS TAKEN. Upon receipt of this message, post may approve the documentation for the 324(d)(1) applicant. Post should then follow the steps in item six to remove the lookout.

***NOTE:** The Department considers that the risk of issuing a passport to a person whose L-F lookout is for anything but 301(b) is small using this procedure since the consular officer is able, during the application process, to determine that the subject of the hold is a 324(d)(1) candidate and has not lost citizenship for another reason. Consular officers should delay final adjudication when doubts arise.*

(6) Remove the LOOKOUT if applicable. To remove the L-F lookout from the CLASS system, send a follow-up CLASS administrative message to CA/PPT/TD/PT giving subject's name, date of birth and the statement "OATH OF ALLEGIANCE ADMINISTERED ON (DATE)". Posts not on the CLASS system should send a telegram to CA/PPT/TD/PT providing the same information. Submit passport applications, including all supporting documentation to CA/PPT/TD/R. In submitting the applications to the Department, place the 324(d)(1) passport applications on top of, or separate from the non-324(d)(1) applications, and mark accordingly. CA/PPT/TD/R will double-check that the lookout was removed on those names.

7 FAM 1133.5-16 Developing Defenses in Section 301(b) INA Cases

(TL:CON-68; 04-01-1998)

a. There follows a discussion of the acceptable defenses for failure to comply with section 301(b) INA; unawareness, impossibility of performance and official misinformation. An applicant who successfully establishes one of these defenses will be considered, in effect, not to be subject to the retention requirements and to have never ceased to be a U.S. citizen. Such a determination would allow the individual to transmit citizenship to children born after the date citizenship would have otherwise ceased had the retention requirements not been fulfilled and therefore may be preferable to restoration of citizenship under section 324(d)(1) which only restores citizenship as of the date the oath is taken, similar to a naturalization. Please note that these defenses cannot be used to provide constructive U.S. physical presence to persons who lack sufficient time in the United States to transmit citizenship.

b. While most 301(b) restoration requests will, and should, be resolved under section 324(d)(1), applicants who assert a desire to have their claims adjudicated under one of the defenses should be accommodated even if no benefit would accrue to their children. The adjudication of a case under one of the defenses does not preclude a subsequent adjudication under 324(d) should the defense be judged invalid.

c. Posts may encounter persons who ceased to be U.S. citizens under section 301(b) INA and who do not wish to have their citizenship restored. Posts need take no action in these cases other than to prepare a lookout if one does not exist for entry into the Department's computer [see 7 FAM 1337.8].

7 FAM 1133.5-17 Defense of Unawareness of U.S. Citizenship

(TL:CON-68; 04-01-1998)

a. Origin of the Unawareness Doctrine

The doctrine set forth in the Attorney General's opinion of May 24, 1962, in the case of Freddie Norman Chatty-Suarez, 9 I. & N. Dec. 670 (1962), and by the courts of appeals in various cases such as Perri v. *Dulles, 206 F.2d 586 (3rd Cir. 1953); Petition of Acchione, 213 F.2d 845 (3rd Cir. 1954); and Rogers* v. *Patokoski, 271 F.2d 858 (9th Cir. 1959), that potentially expatriating acts performed while a person was unaware of a possible claim to U.S. citizenship do not cause loss of nationality, has also been applied to cases involving section 301(b) INA. Under that doctrine, any person wholly unaware of a possible claim to U.S. citizenship should not be held to have ceased to be a citizen by failure to meet the retention requirements.*

b. Knowledge of Parent's Citizenship Does not Preclude Unawareness Defense

In Rogers v. *Patokoski the Court held that expatriating acts committed by an individual while he was unaware of his claim to U.S. citizenship did not cause him to lose his U.S. citizenship. Despite the applicant's admission in that case that he*

knew that his father was a U.S. citizen, the Court accepted his claim of unawareness of his own citizenship since there was no evidence to the contrary. His lack of awareness was demonstrated by evidence that he had entered the United States on several occasions as a nonimmigrant. In effect, the Court stated that the applicant met the burden of proof on the basis of his own credible and convincing testimony. (Although this case does not directly relate to the retention requirements, its development of the notion of unawareness can be applied by analogy in this context.) The INS Administrative Appeals Unit also has held that awareness of a claim to U.S. citizenship requires more than the knowledge of the birthplace or citizenship of the parent.

c. Current Policy on Unawareness

Unless there is direct evidence of an applicant's awareness of his claim to U.S. citizenship, the Department will accept the applicant's credible and convincing statements of unawareness. Persons who learned of their possession of U.S. citizenship after reaching age 26 are held not to have forfeited their U.S. citizenship by failing to enter the United States before their 26th birthday to begin compliance with the retention requirements. There is no requirement that such persons later enter the United States in order to keep their citizenship. An individual who was aware before age 26 that he or she was a U.S. citizen but assumed that such citizenship had been lost cannot claim unawareness as a defense against the operation of section 301(b) INA.

d. Persons Awa re of Citizenship But Unaware of Retention Provisions

Ignorance of the retention requirements does not excuse an individual's failure to comply with them if that person was aware of a claim to U.S. citizenship before the date on which that person would have been required to begin compliance with the retention provisions. For instance:

(1) *Rucker* v. *Saxbe*, 552 F.2d 998 (1977), indicates that unawareness of the requirements of section 301(b), when accompanied by an awareness of a claim to U.S. citizenship, does not prevent application of the retention requirements [for text of the opinion, see 7 FAM 1174]. The Supreme Court declined to review *Rucker*.

(2) In *Rucker*, the court found that the Government has no affirmative duty to inform citizens residing abroad of changes in U.S. nationality laws on a continuing basis, and that it was not *barred* from applying the retention requirements to Mr. *Rucker* by its failure to inform him directly of the amendments to those requirements. This opinion coincides with the Department's longtime belief that citizens are obliged to keep themselves informed of the duties imposed on them by their citizenship.

e. Evidence In Support Of Unawareness

(1) The consular officer should conduct an interview with the applicant but it is not necessary to conduct an in-depth investigation into the applicant's background in order to determine if he/she has a valid unawareness claim. There is no requirement, for example, for family members to be interviewed. The applicant's statement under oath should be accepted absent direct evidence contradicting it. Examples of direct evidence could include, but are not limited to:

(a) The applicant was previously documented as a U.S. citizen;

(b) The applicant previously applied for documentation, and the application was disapproved; and

(c) The applicant previously inquired regarding acquisition of U.S. citizenship.

(2) In some cases, knowledge of a claim could be imputed to the applicant if an applicant's sibling previously inquired or applied for documentation as a U.S. citizen. The use of such evidence to counter a claim to unawareness would require not only a statement from the sibling, but a thorough development of the sibling's awareness case as well. There is no requirement to query each sibling and parent of the applicant. Posts should attempt to develop only that evidence which would appear to refute the applicant's statements. In most cases, it should not be necessary to require a personal appearance by any sibling but the post should inquire whether any siblings have been documented as U.S. citizens.

(3) Posts may consider evidence which is circumstantial but nevertheless probative in assessing a claim of unawareness. For example, there has been a substantial American presence in the Philippines since late in the 19th century. An unawareness claim from an applicant from the Philippines with an English surname might raise questions that a similar claim in the United Kingdom would not raise. Thus, there may be historical or cultural factors which should be taken into consideration.

f. Developing An Unawareness Case

(1) Have applicants complete Form DSP-11 (Application for Passport/Registration) and the Citizenship Questionnaire [see 7 FAM 1217 Exhibit 1217.3e], and document in further detail as necessary when and under what circumstances they learned of their claim to U.S. citizenship. The application should be supported by the required evidence of the acquisition of U.S. citizenship.

(2) Once acquisition of U.S. citizenship is established, determine whether the applicant was subject to but failed to comply with applicable retention provisions. If retention requirements were not applicable or were complied with, then the issue of unawareness is not relevant and should be disregarded. If applicable retention requirements were not complied with, confirm that the applicant wishes to develop an unawareness defense rather than seek citizenship restoration under section 324(d) INA [see 7 FAM 1133.5-15].

(3) *Interview the applicant and conduct any checks deemed necessary, such as lookout, post and/or Department records which may assist in determining the validity of the unawareness claim [see 7 FAM 1133.5-17 e].*

(4) Resolve any loss of nationality issue, per 7 FAM 1200.

(5) If the consular officer finds unawareness credible, and all acquisition and loss of nationality issues are satisfactorily resolved, citizenship can be documented based on the unawareness doctrine without prior Department approval. Upon determining that the evidence is sufficient to support the holding that the ap-

plicant was unaware of a claim to U.S. citizenship until after the date on which citizenship would have ceased for failure to meet the retention requirements, the consular officer should execute a certification along the following lines:

I have reviewed the case of (name of applicant) and determined that (he/she) was unaware of (his/her) claim to U.S. citizenship before (date). I have therefore determined that (he/she) should be regarded as having constructively complied with the retention requirements of (applicable section of law) and may be documented as a U.S. citizen.

Date of Certification — *Consular Officer's Signature, Officer's Typed Name, Officer's Title, Name of Post,*

(6) Attach this certification to the passport or registration application. After approval and/or issuance at post, the post should route the file to the Department (CA/OCS) for review prior to filing. The post should provide a copy of the certification to the applicant.

(7) If the consular officer finds a claim of unawareness is not [see 7 FAM 1133.5-15].

7 FAM 1133.5-18 Defense of Impossibility of Performance

(TL:CON-68; 04-01-1998)

a. Circumstances Giving Rise to Impossibility of Performance

A second defense to failure to fulfill retention requirements is impossibility of performance. "Impossibility of performance" means that a U.S. citizen subject to the retention provisions was prevented from complying with those provisions by forces over which he or she had no control. This excuse is most likely to be substantiated in totalitarian states where government permission was required to depart the country. (This is not to be confused with an instance in which a person considered the possibility of his or her relocation to the United States to be merely difficult, inconvenient, or financially disadvantageous.)

b. Evidence of Impossibility of Performance

In general terms, claims of impossibility of compliance with retention requirements should be supported by evidence that compliance was attempted prior to the claimant's 26th birthday. Since claims of inability often require evidence of positive action on the part of the applicant, they have generally been easier to prove than unawareness claims (which require proving a negative). However, it is not sufficient to merely assert that compliance was attempted. While cases may not be adjudicated solely under a blanket acceptance of inability for periods during which compliance is known to have been impossible, posts may have knowledge that, during certain periods, persons would not have been permitted to leave a country, and that it was common knowledge during those periods that efforts to leave the country would entail substantial risk. For example, we know that emigration from most Eastern European countries was extremely difficult after the Second World War. Thus, should a former American citizen present an application based on a credible claim that he would have traveled to the United States to comply with retention requirements but found such travel forbidden, directly or indi-

rectly, the consular officer should accept that claim as an effective defense to the retention requirements.

c. Handling Cases Involving Impossibility of Performance

Cases involving impossibility of performance should be handled in the same general manner as unawareness cases [see 7 FAM 1133.5-17 (f)]. Evidence of the inability to comply with the retention requirements should be attached to the application submitted to the Department. Such evidence should include a statement describing the applicant's claims, the post's knowledge of objective conditions in the applicant's area of residence during the period of time in question or evidence supporting the applicant's assertions, and the officer's evaluation of the case. If the claim is accepted by the post, a consular officer's certification similar to the one shown in 7 FAM 1133.5-17 (f)(5) should be made a part of the file. If the claim is found not credible, the consular officer may proceed with administration of the 324(d) oath.

7 FAM 1133.5-19 Defense of Official Misinformation

(TL:CON-68; 04-01-1998)

a. Circumstances Giving Rise to Defense of Official Misinformation

Noncompliance with the retention requirements may also be excused in cases in which the applicant can affirmatively demonstrate that he (she) was misinformed by an agent of the Federal Government regarding the retention requirements or, in rare cases, the underlying claim to citizenship. (In this context, an agent is an employee of the Federal Government who might reasonably be expected to have knowledge of citizenship matters.) Such cases arise very infrequently. It is incumbent upon the applicant to provide convincing evidence of misinformation beyond a simple self-serving statement.

b. Examples of Official Misinformation

(1) One example of a possible misinformation defense is a case where the applicant was issued a full-validity passport when, in fact, the passport should have been limited to the last day on which the person could have complied with the retention of citizenship provisions.

(2) Conversely, an incorrect denial of a legitimate claim to citizenship could lead to a failure to comply with retention requirements. The denial of passport services, for example, could result in a citizen's inability to meet retention requirements. That denial would anchor a strong affirmative defense on retention in the event of a correct adjudication of the underlying claim at some later date.

(3) On occasion, applicants may present official correspondence which appears to have inadvertently misrepresented retention requirements or other laws, policies, or procedures, resulting in a failure to comply.

c. Handling Cases Involving Official Misinformation

Posts do not have to submit to the Department for advisory opinion cases in which an applicant subject to the retention provisions of former section 30l(b) INA

claims that non-compliance was a direct result of misinformation by an employee of the Federal Government. However, an applicant claiming official misinformation must provide convincing evidence of the misinformation, such as official correspondence, previously issued documentation of U.S. citizenship, and the like. Post may wish to check Department citizenship files for evidence supporting or disproving the applicant's claims. Cases involving official misinformation should be handled in the same manner as unawareness and impossibility of performance cases [see 7 FAM 1133.5-17 f and 7 FAM 1133.5-18 c].

7 FAM 1133.5-20 Persons Subject to Retention Provisions Who Apply for Visas

(TL:CON-68; 04-01-1998)

a. Visa Application May Reveal Claim to U.S. Citizenship

Persons who are unaware of a claim to U.S. citizenship, who were misinformed about their status, or who were prevented from complying with the retention provisions may come to the post's attention when they apply for visas. 22 CFR 40.2(a) states: "A national of the United States shall not be issued a visa or other documentation as an alien for entry into the United States." Guidance on handling a visa applicant who may be or may have been a U.S. citizen follows.

b. Persons Applying for NIVs

(1) When a possible claim to U.S. citizenship is discovered in the course of an application for a nonimmigrant visa, the applicant should be informed of the possible claim and referred to the post citizenship unit. The citizenship unit should process the case as indicated in 7 FAM 1133.5-14.

(2) Posts sometimes find that visa applicants, who usually are prepared to travel immediately, are confused or resentful when informed that they cannot be issued a visa until the possibility of their possession of U.S. citizenship is resolved. If the person is unable or unwilling to delay travel until the citizenship claim is proven and the *301(b) issue resolved*, the post may consider the applicant an alien and may proceed with the nonimmigrant visa application. Such persons should be advised to pursue the possible claim to citizenship upon their return from the United States.

(3) If the citizenship unit is satisfied, after reviewing the questionnaire and any other information obtained, that the applicant did not acquire U.S. citizenship, it shall promptly refer the applicant (or applicant's file) back to the post's visa unit for continued processing of the visa application.

(4) 22 CFR 40.2(a) states: "A former national of the United States who seeks to enter the United States must comply with the documentary requirements applicable to aliens under the INA."

(a) Therefore, the application of a person who forfeited citizenship through failure to comply with the retention provisions or in whose name a Certificate of Loss of Nationality was approved should be treated as that of an alien unless and until citizenship is restored through the various means discussed in this chapter (for 301(b) cases) or chapter 1200 (for loss of nationality cases). Applications of

such persons who have immediate travel plans or who do not wish their status reviewed should be treated as those of aliens. Such persons should not be required to delay their travel.

(b) A person whose U.S. citizenship was held to have ceased through failure to comply with the retention provisions can usually be documented as a citizen most quickly by taking the 324(d)(1) INA oath of allegiance. Persons who were held to have expatriated themselves by performing one of the acts listed in section 349 of the INA or similar provisions of earlier laws must apply for a review of their status by following the procedures for administrative review of a Certificate of Loss of Nationality detailed in 7 FAM 1200.

(5) If the consular officer determines that the readily available evidence supports a finding that the visa applicant acquired citizenship at birth and satisfied the retention requirements, but there is not enough time for the person to gather certified copies of the documents needed to prove the claim, the applicant may be issued a limited emergency passport provided the applicant is not the subject of a Certificate of Loss of Nationality and the applicant's name has cleared the passport lookout system. See 7 FAM 1300 for the description of the procedures relating to the issuance of emergency passports. Use Endorsement Code 46 for this limitation.

(6) See 9 FAM PART IV Appendix A (22 CFR 41.25) for a discussion of the issuance of pro forma visas to U.S. citizens under some circumstances.

c. Persons Applying for *IVs* Who May Have a Claim to U.S. Citizenship

The citizenship status of applicants for immigrant visas must be resolved in every case without exception. Whenever an applicant for an immigrant visa appears to have a claim to U.S. citizenship, the *visa* application must be delayed pending determination of citizenship status. If the person appears to have a claim to citizenship, the case should be processed as outlined in 7 FAM *1133.5-14*. Meanwhile, action on the visa application *must be* suspended.

7 FAM 1133.6 Evidence of Claim to U.S. Citizenship Under Sections 301 and 309 INA

(TL:CON-68; 04-01-1998)

a. *The evidence to establish citizenship claims is described briefly in 22 CFR 50.2-50.5 and in more detail in 22 CFR 51.44(b). 22 CFR 51.54 specifies that an applicant may be required "to submit other evidence deemed necessary to establish his or her U.S. citizenship or nationality."*

b. Evidence in support of a claim to U.S. citizenship through birth abroad to one or both U.S. citizen parents under the provisions of sections 301 and/or 309 INA includes but is not limited to:

(1) A birth certificate or other proof of the child's birth to a U.S. citizen mother, father, or both;

(2) The parents' marriage certificate, if *the child was born in wedlock or if the child claims legitimation through the marriage of the parent;*

(3) *An affidavit of paternity and support [see 7 FAM 1445 Exhibit 1445.5-3], or other evidence of the child's legitimacy or legitimation, if the child was born out of wedlock (unless the claim is through the mother under section 309(c));*

(4) *Evidence that* at least *one parent was a U.S. citizen at the time of the child's birth;* and

(5) Evidence of that parent's physical presence in the United States, in qualifying employment abroad, or as the dependent unmarried son or daughter and a member of the household of a person so employed, prior to the child's birth for the length of time required by the section of law under which the child is claiming U.S. citizenship.

c. Those persons born before October 10, 1952, who acquired U.S. citizenship pursuant to section 301(a)(7), as made applicable by the Act of March 16, 1956, must also prove that they complied with or *were* exempted from the applicable retention requirements [see *7 FAM 1133.5 and 7 FAM 1134.6].*

d. Adults wishing to have their citizenship status adjudicated should complete an Application for Passport or Registration (Form DSP-11) and Citizenship Questionnaire [see 7 FAM 1217 Exhibit 1217.3e]. Citizenship claims of a person under the age of 18 may be adjudicated on the basis of a passport/registration application signed, as appropriate, by the applicant, a parent, legal guardian, or person acting in loco parentis or on the basis of an application for a Report of Birth completed by a parent or legal guardian.

7 FAM 1134 NATIONALITY ACT (NA) OF 1940

7 FAM 1134.1 Effective Date

(TL:CON-68; 04-01-1998)

The Nationality Act of 1940 (54 Stat. 1137) went into effect on January 13, 1941. *It also:*

a. Repealed Section 1993, Revised Statutes; *and,*

b. Was in most, **but not all**, respects superseded by the Immigration and Nationality Act of 1952 (INA), effective December 24, 1952, at 12:01 a.m., Eastern Standard Time.

7 FAM 1134.2 Text of Section 201 NA

(TL:CON-68; 04-01-1998)

Selected portions of section 201 NA, which is not readily available for reference at many posts, are provided here:

The following shall be nationals and citizens of the United States at birth:...

(c) A person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has resided in the United States or one of its outlying possessions, prior to the birth of such person;

(d) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;...

(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: Provided, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

The preceding provisos shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States or a bona fide American educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation;

(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934;

(i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has served or shall serve honorably in the Armed Forces of the United States after December 7, 1941, and before the date of the termination of hostilities in the present war as proclaimed by the President or determined by a joint resolution by the Congress and who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five years of which were after attaining the age of twelve years, the other being an alien: Provided, that in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease. [Added by the Act of July 31, 1946.]

NOTE: By Proclamation No. 2714 of December 31, 1946, the President publicly announced the cessation of hostilities effective 12 o'clock noon, December 31, 1946 (see section 201(i) NA).

7 FAM 1134.3 Residence Requirement for Transmitting U.S. Citizenship (January 13, 1941, through December 23, 1952)

7 FAM 1134.3-1 Basic Elements

(TL:CON-68; 04-01-1998)

a. The Nationality Act's requirements for acquiring U.S. citizenship by birth abroad differed from those of Section 1993, *Revised Statutes (R.S.)*. To transmit citizenship to foreign-born children, the NA required a U.S. citizen married to an alien to have had a much longer residence in the United States or its outlying possessions than one married to a U.S. citizen or national.

b. "United States" and "outlying possessions" were defined as the continental United States, Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and all other territory, except the Canal Zone, over which the United States exercised sovereignty (section 101 NA).

c. If both parents were U.S. citizens or if one was a citizen and the other a U.S. national (defined by section 101(b) NA in this context as a person, not a U.S. citizen or an alien, who owes permanent allegiance to the United States), the length of residence required to transmit citizenship was not specified, and any period of presence accompanied by the maintenance of a place of general abode in the United States or its outlying possessions would satisfy the requirement. Section 201(g) NA specified, however, that if one parent was an alien, the citizen parent must have resided in the United States or one of its outlying possessions before the child's birth for a total of 10 years, including 5 years after the citizen parent's 16th birthday, in order to transmit citizenship.

d. This lengthy residence was a way to ensure that there would not be successive generations of Americans residing abroad with no ties to the United States. It also meant that citizens under age 21 and married to aliens could not transmit citizenship under section 201(g) NA even if the citizen parents had resided in the United States since birth. The Department has no authority to waive any part of the required residence.

7 FAM 1134.3-2 What Constituted Residence in United States Under Section 201 NA

(TL:CON-68; 04-01-1998)

a. Section 104 of the Nationality Act stated that, for the purposes of Section 201, "the place of general abode shall be deemed the place of residence." Thus, it required more than the temporary presence that was sufficient under earlier laws. Visits to the United States by citizen parents prior to the birth of the child were insufficient to confer citizenship under section 201(c). Persons who commuted daily to work or school in the United States from Canada and Mexico could not include the time which they spent in the United States each day as residence in the United States.

b. A technical domicile did not satisfy the residence requirement in the absence of the necessary principal dwelling place. For this reason, citizens who, as

minors, lived abroad while their parents resided in the United States could not be considered as having resided in the United States during the period of their parents' residence although, generally, the parents' residence would have been considered to be the children's residence also.

c. Citizens who had been left in the United States when their parents took up residence abroad or who came to live in the United States while attending school or college and while their parents remained abroad would be able to count each period of time spent in the United States toward the satisfaction of the residence requirement for transmission of citizenship.

d. In a 1948 opinion, the Legal Advisor of the Department of State held that section 201 NA did not require the parents to remain continuously and uninterruptedly in the United States during the prescribed period, but required the parents to maintain their place of abode in the United States during any absences. Residence was not terminated by visits abroad but was terminated by the establishment of a dwelling place abroad. Absence from the United States as a member of the U.S. Armed Forces was counted as residence in the United States, provided the service was honorably performed. Absences from the United States due to employment or schooling abroad could also be included as residence in the United States as long as the persons involved maintained their place of general abode in the United States.

7 FAM 1134.4 Special Provisions for Children of Veterans

(TL:CON-68; 04-01-1998)

a. Section 201(g) NA precluded transmission of citizenship by persons under age 21. Because persons under that age who had served in the U.S. Armed Forces during World War II and were married to aliens found themselves unable to transmit citizenship to their foreign-born children, the Nationality Act of 1940 was amended to include section 201(i). This permitted citizens who had served honorably in the U.S. Armed Forces after December 7, 1941, and before December 31, 1946, to transmit citizenship to their foreign-born children if, prior to the child's birth, the citizen parent had resided in the United States for 10 years, 5 of which were after the citizen parent's 12th birthday. Thus, section 201(i) NA reduced to age 17 the minimum age at which a citizen parent who served in the U.S. Armed Forces during the statutorily prescribed period could transmit citizenship.

b. As noted in *7 FAM 1134.3-2 d,* honorable U.S. military service counted as residence in the United States. A child of a U.S. citizen whose U.S. military service was dishonorable could not benefit from section 201(i) NA.

c. A child born between January 13, 1941 and December 23, 1952, inclusive, whose U.S. citizen parent met the transmission requirements of section 201(i) NA was considered to have acquired U.S. citizenship at birth, whether the parent's military service was before or after the child's birth.

d. Originally, it was held that section 205 NA applied to cases of children who were born out of wedlock and claimed citizenship under section 201(i) NA. However, in *Y.T.* v. *Bell*, 478 F. Supp. 828 (W.D. Pa 1979), the court ruled that section 201(i) NA does not require the child to be legitimated in accordance with

section 205 NA in order to acquire U.S. citizenship. It was sufficient that the child was the blood issue of the serviceman (established in *Y.T.* by an affidavit of paternity) and later complied with applicable retention requirements. The court reached its conclusion on two grounds:

(1) Section 205 NA does not specifically refer to Section 201(i); and

(2) Equal protection.

e. The use of section 201(i) NA should be considered only if it was not possible to acquire citizenship under section 201(g) NA. All children who became U.S. citizens under section 201(i) NA were subject to that section's requirements for retaining U.S. citizenship, but, because in 1952 none of them were old enough to begin to comply with section 201(i)'s retention requirements, they all became subject to those of Section 301(b) INA [see *7 FAM 1133.5-2*].

f. Under the Act of March 16, 1956 (70 Stat. 50), the child of a citizen who did not have enough U.S. residence to transmit citizenship under section 201 (g) or (i) NA but who had served honorably in the U.S. Armed Forces between December 31, 1946 and December 24, 1952, and who, before the child's birth, had met the physical presence requirement of section 301(a)(7) INA, as originally enacted, acquired U.S. citizenship under section 301(a)(7) INA and was subject to the retention requirements of section 301(b) INA, as originally enacted.

7 FAM 1134.5 Children Born Out of Wedlock (January 13, 1941, through December 23, 1952)

7 FAM 1134.5-1 Text of Section 205 NA

(TL:CON-68; 04-01-1998)

Unlike older *nationality* laws, the Nationality Act of 1940 specified how children born out of wedlock to U.S. citizens could acquire U.S. citizenship. Section 205 NA stated that:

The provisions of section 201, subsections (c), (d), (e), and (g), and section 204, subsections (a) and (b), hereof 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.

In the absence of such legitimation or adjudication, the child, whether born before or after the effective date of this Act, if the mother had the nationality of the United States at the time of the child's birth, and had previously resided in the United States or one of its outlying possessions, shall be held to have acquired at birth her nationality status. (8 U.S.C. 605; 54 Stat. 1139-1140.)

7 FAM 1134.5-2 Birth to American Father, With Paternity Established Before December 24, 1952

(TL:CON-68; 04-01-1998)

a. For a person to have acquired U.S. citizenship at birth abroad out of wedlock to an alien mother and a U.S. citizen father:

(1) The father must have met the qualifications for transmitting U.S. citizenship; and

(2) The person's paternity must have been established while under the age of 21 by legitimation under an applicable U.S. or foreign law or by the adjudication of a court of competent jurisdiction.

b. Under section 205 NA, a child could acquire U.S. citizenship without legitimation by the U.S. citizen father if, during the child's minority, a court of competent jurisdiction ruled that the father was the parent of the child.

c. Section 205 NA was not revised when section 201 NA was amended by adding subsection (i). In *Y.T.* v. *Bell*, 478 F. Supp. 828 (W.D. Pa 1979), the court held that section 205 did not apply to subsection 201(i). Therefore, legitimation or adjudication by a competent court was not necessary for acquisition of U.S. citizenship under section 201(i) INA [see *7 FAM 1134.2 and 7 FAM 1134.4 d*].

7 FAM 1134.5-3 Birth to American Father From 1941 to 1952 With Paternity Established on December 24, 1952

(TL:CON-68; 04-01-1998)

a. Section 309(b) of the Immigration and Nationality Act (INA) states that:

Except as otherwise provided in section 405, the provisions of section 301(a)(7) shall apply to a child born out of wedlock on or after January 13, 1941, and prior to the effective date of this Act, as of the date of birth, if the paternity of such child is established before or after the effective date of this Act while such child is under the age of twenty-one years by legitimation.

NOTE: On December 29, 1981, Pub. L. 97-116 (95 Stat. 1620; 8 U.S.C. 1409) changed "301(a)(7)" to "301(g)."

b. The Department has found this section of law somewhat ambiguous. The law clearly provided the possibility for children born after January 13, 1941, and legitimated before December 24, 1952, who did not acquire citizenship under section 201 NA, to acquire U.S. citizenship under section 301(a)(7) INA. However, it is not clear whether it was intended to be the sole way a person born out of wedlock after January 13, 1941, and legitimated on or after December 24, 1952, could acquire U.S. citizenship. If so, it runs counter to the time-honored principle that legitimation is retroactive to the date of birth and confers the full status and rights of a legitimate child (32 Op. Atty. Gen. 162), and that acquisition of U.S. citizenship depends on the law in force at the time of the applicant's birth.

c. Despite this, the Department originally interpreted section 309(b) INA strictly and applied it to all cases that involved legitimation after December 24, 1952, of children born during the life of the Nationality Act. *Later*, departures from this strict standard occurred in individual cases, mainly because of the inequities possible when section 309(b) INA is construed narrowly and not as the remedial law it apparently was intended to be.

d. In view of the retroactive effect of legitimation, the Department holds that persons born during the life of the Nationality Act, but legitimated after its repeal, can be considered to have acquired U.S. citizenship under section 201 (c), (d), or (g) NA, as made applicable by section 205 NA, if their fathers met the requirements for transmitting U.S. citizenship. As noted in *7 FAM 1134.4 d and 7 FAM 1134.5-2 c*, section 205 NA was not applicable to section 201(i) NA. Persons whose legitimation before age 21 did not enable them to claim citizenship under section 201 could acquire citizenship under section 301(a)(7) INA, as made applicable by section 309(a) INA, if their fathers were capable of transmitting citizenship under that section. For persons born out of wedlock to American fathers during the life of the Nationality Act but legitimated after its repeal, the section of law most beneficial to the applicant should be applied.

7 FAM 1134.5-4 Birth Out of Wedlock to American Mother

(TL:CON-68; 04-01-1998)

a. Under *the second paragraph of* section 205 NA, persons born out of wedlock to U.S. citizen mothers on or after January 13, 1941, acquired U.S. citizenship at birth if their mothers previously had resided in the United States [see 7 FAM 1134.5-1].

b. Paragraph two of section 205 NA also was retroactive, but the Department held that it did not apply to a child born abroad out of wedlock to a U.S. citizen mother if the child had been legitimated before the Nationality Act became effective.

c. The citizenship status of persons who acquired U.S. citizenship at birth abroad out of wedlock to a U.S. citizen mother was not affected by legitimation after January 13, 1941, and no retention requirement applied.

7 FAM 1134.6 REQUIREMENTS FOR RETAINING U.S. CITIZENSHIP (JANUARY 13, 1941, THROUGH DECEMBER 23, 1952)

7 FAM 1134.6-1 Persons Subject to Retention Requirements

(TL:CON-68; 04-01-1998)

a. To retain U.S. citizenship acquired under section 201(g) NA, a person had to reside in the United States or its outlying possessions for periods totaling 5 years between ages 13 and 21 unless they were exempted from having to do so by the second paragraph of section 201(g) NA.

(1) The law stated that persons forfeited U.S. citizenship if they failed to enter the United States by age 16 or, if, after entering the United States before that age, they abandoned their U.S. residence and remained abroad until it was no longer possible for them to complete a total of 5 years residence between ages 13 and 21.

(2) The same provisions and exemptions applied to persons in whose cases section 201(g) NA was made applicable by the first paragraph of section 205 NA.

b. Section 201(h) NA applied the retention requirements of section 201(g) NA to persons who had acquired U.S. citizenship under Section 1993, R.S., as amended by the Act of May 24, 1934, and had been born to one citizen and one alien parent. Similar requirements applied to persons who acquired citizenship under section 201(i) NA, but no exemptions were provided for those persons.

c. The residence requirements of section 201 NA were less restrictive than the ones they replaced, and the requirement of an oath of allegiance at age 21 was eliminated.

d. For information on changes in the retention provisions caused by the enactment of the Immigration and Nationality Act, see 7 FAM 1134.6-3. Detailed information on the retention provisions appears in 7 FAM 1133.5. See in particular sections 7 FAM 1133.5-2 b and 7 FAM 1133.5-2 c which discuss the applicability of the retention provisions of section 301(b) INA to certain persons born before the INA went into effect and 7 FAM 1133.5-14 concerning remedies for failure to comply with the retention requirements.

7 FAM 1134.6-2 Persons Exempted From Retention Requirements

(TL:CON-68; 04-01-1998)

a. The retention requirements of section 201(g) NA did not apply if the person's citizen parent was, at the time of the child's birth, serving in the U.S. Armed Forces or engaged in certain specified employment abroad.

(1) For the exemption to apply, the citizen parent must have been, at the time of the child's birth:

...residing abroad solely or principally in the employment of the Government of the United States or a *bona fide* American educational, scientific, philanthropic, religious, commercial, or financial organization, having its principal office or place of business in the United States, or an international agency of an official character in which the United States participates, for which he receives a substantial compensation.

(2) The Department has held that a child born after the citizen parent's death cannot be exempted from the retention requirements because that parent was not residing abroad or employed at the time of the child's birth.

b. In 1981, the Department determined that the child of an employee of a company founded by an association of American corporations to carry out a single business venture abroad for joint profit was exempt from the retention requirements of section 201(g) NA because—

(1) Such joint ventures are not separate legal entities for all purposes; and

(2) All of the contracting organizations had their principal offices in the United States, even though the sole office and the place of business of the joint venture were in a foreign country.

c. Cases in which it is not clear whether the retention requirements apply should be referred to the Department (CA/OCS).

7 FAM 1134.6-3 Effect of Repeal of Section 201 NA

(TL:CON-68; 04-01-1998)

a. By the time the Nationality Act of 1940 was repealed on December 24, 1952, some persons subject to the retention requirements of section 201(g) NA, as made applicable by section 201(h), had reached the age of possible compliance with those requirements.

(1) Section 301(c) INA, as originally enacted, stated that section 301(b) INA applied to persons born abroad after May 24, 1934 *[see 7 FAM 1133.5-2 b].*

(2) Section 301(c) INA also indicated that the substitution of the retention provisions of section 301(b) INA for those of section 201(g) NA on December 24, 1952, did not affect the citizenship of persons who already had complied with section 201(g) NA.

b. Persons under age 16 who had been born subject to the retention requirements of section 201(g) or (i) NA, and had not taken up residence in the United States, but who wished to keep their U.S. citizenship had no choice but to comply with section 301(b) INA.

c. Persons who had begun compliance with section 201(g)'s requirements could complete 5 years residence in the United States before reaching age 21 and retain their U.S. citizenship. However, if they failed to do so, they could opt to comply with the new retention requirements.

d. The Department originally held that section 301(c) INA did not restore U.S. citizenship to persons who:

(1) Had reached age 16 without taking up residence in the United States or had otherwise failed to comply with section 201(g) NA before December 24, 1952; and

(2) Had, pursuant to Section 201(g) NA, ceased to be U.S. citizens.

e. This position was overruled by the Supreme Court on November 18, 1957, in *Lee You Fee* v. *Dulles*, 355 U.S. 61. The Court affirmed the Solicitor General's confession of error and his new opinion that:

(1) Congress had intended to cover all persons born after May 24, 1934, and

(2) If a person had lost (ceased to retain) U.S. citizenship under sections 201(g) and (h) INA by failing to take up residence in the United States before reaching age 16, the effect of sections 301(b) and (c) INA was to restore U.S. citizenship and permit the person to retain it by complying with section 301(b) INA.

7 FAM 1134.6-4 Summary

(TL:CON-68; 04-01-1998)

a. Section 301(b) INA applied to everyone who had acquired U.S. citizenship by birth abroad to one citizen and one alien parent from May 24, 1934, through December 23, 1952, unless:

(1) The exemption set forth in the second paragraph of section 201(g) NA applied to them;

(2) They were born out of wedlock to a U.S. citizen mother and were not legitimated before January 13, 1941; or

(3) They had complied with the requirements of section 201(g) NA by December 24, 1952, or were on that date in the process of complying and ultimately did comply with the retention requirements of section 201(g) NA.

b. For more information on section 301(b)s retention requirements, additional exemption, and repeal, see 7 FAM 1133.5.

c. Detailed information on how to handle cases in which a person failed to comply with the retention provisions appears in 7 FAM 1133.5-14 through 7 FAM 1133.5-20.

7 FAM 1134.7 Proof of Claim to U.S. Citizenship Under Sections 201 (c), (d), (g), and (i) and 205 NA

(TL:CON-68; 04-01-1998)

a. *The evidence to prove citizenship claims is described briefly in 22 CFR 50.2 - 50.5 and in more detail in 22 CFR 51.44(b). 22 CFR 51.54 specifies that an applicant may be required "to submit other evidence deemed necessary to establish his or her U.S. citizenship or nationality."*

b. Evidence in support of a claim to U.S. citizenship through birth abroad to one or both U.S. citizen parents under the provisions of sections 201 and/or 205 NA includes, but is not limited to:

(1) A birth certificate or other proof of the child's birth to a U.S. citizen mother, father, or both;

(2) If applicable, the parents' marriage certificate or other proof of the child's legitimacy or legitimation;

(3) Proof of at least one parent's U.S. citizenship; and

(4) Evidence of that parent's residence in the United States before the child's birth for the length of time required by the section of law under which the child is claiming U.S. citizenship.

c. Persons who acquired U.S. citizenship under section 201 (g) or (i) NA must also prove that they have complied with or have been exempted from applicable retention requirements [see *7 FAM 1134.6*].

7 FAM 1135 SECTION 1993, REVISED STATUTES OF 1878

7 FAM 1135.1 Text as Originally Enacted

(TL:CON-68; 04-01-1998)

a. As originally enacted, Section 1993 provided for transmission of citizenship only through fathers. It stated:

All children heretofore or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

b. Congress rectified the inequity in this law through the enactment of section 301(h) INA which specifically provides for acquisition of U.S. citizenship by children born abroad prior to 1934 to U.S. citizen mothers who had previously resided in the United States [see 7 FAM 1132.9 and 7 FAM 1133.2-1].

7 FAM 1135.2 Residence Requirement for Transmitting U.S. Citizenship Before January 13, 1941

7 FAM 1135.2-1 Purpose

(TL:CON-51; 2-15-91)

a. The aim of the residence requirements of Section 1993, R.S., and of earlier laws was to prevent the residence abroad of successive generations of persons claiming the privileges of U.S. citizenship while evading its duties.

b. No citizenship law before the Nationality Act of 1940 explained what was meant by "resided in the United States" or when the parent's residence in the United States must have occurred.

7 FAM 1135.2-2 Residence May be of Short Duration But Must Have Preceded Birth

(TL:CON-68; 04-01-1998)

a. The Department held that the U.S. residence had to precede the child's birth.

b. This position was confirmed by the Supreme Court in 1927 in *Weedin* v. *Chin Bow*, 274 U.S. 657 [see excerpts in 7 FAM *1170*].

c. Any temporary residence or physical presence before the child's birth, save a mere transit presence of a few hours, satisfied the residence requirement of Section 1993, *R.S.*, and earlier laws.

7 FAM 1135.2-3 Territories Considered Part of United States for Purposes of Section 1993 R.S.

(TL:CON-68; 04-01-1998)

a. The early citizenship laws did not define "United States." However:

(1) It was clear that States admitted to the Union *were* included; and

(2) The incorporated territories of the western continental United States, Alaska, and Hawaii, to which the Constitution had been made fully applicable, *were also* considered to be part of the United States from the time when they *were incorporated.*

b. The *status of persons born in* Hawaii *prior to its incorporation by* the Hawaii Organic Act (31 Stat. 141) *was addressed in Section 100 of that Act, 31 Stat 161, which* stated:

That for the purposes of naturalization under the laws of the United States residence in the Hawaiian Islands prior to the taking effect of this Act shall be deemed equivalent to residence in the United States. ...

c. *Statutes confirming citizenship by birth abroad are* enacted pursuant to the power of Congress "to establish an uniform rule of naturalization," *and are* considered to be "naturalization laws" e.g., *U.S.* v. *Wong Kim Ark*, 169 U.S. 649, 672,702-704 (1898). *The reference to naturalization laws in the Hawaii Organic Act just quoted is considered to encompass such statutes including sections 301 and 309 of the INA.* Therefore, residence in the Hawaiian Islands before their annexation on August 12, 1898, counts as residence in the United States for the purpose of transmitting U.S. citizenship. e.g., *Wong Kam Wo et al* v. *Dulles*, 236 F.2d 622 (1956).

d. *There are no similar statutory provisions regarding residence in other unincorporated territories.* The Department generally held that residence in unincorporated territories and possessions *other than Hawaii* could not be counted as residence in the United States for purposes of Section 1993 *R.S*. However:

(1) In individual cases, residence in Puerto Rico after April 10, 1899, was held to be sufficient for transmitting U.S. citizenship; and

(2) The Immigration and Naturalization Service has held that residence in the U.S. Virgin Islands after January 16, 1917, could be counted as residence in the United States.

7 FAM 1135.3 Children Born Out of Wedlock Before Noon EST May 24, 1934

7 FAM 1135.3-1 To American Father

(TL:CON-68; 04-01-1998)

a. Until *the Nationality Act of 1940 took effect in* 1941, no U.S. law addressed specifically how U.S. children born abroad out of wedlock to U.S. citizens could acquire U.S. citizenship.

(1) *Originally*, Section 1993, *R.S.,* and earlier laws *were interpreted to permit* only legitimate children of U.S. citizen fathers *to* acquire U.S. citizenship by *birth abroad.*

(2) Children born out of wedlock to U.S. citizen fathers were considered to acquire U.S. citizenship *at birth only if they were subsequently* legitimated under the laws of the State of the father's domicile. Once legitimated, they were regarded as having been born citizens of the United States (32 Op. Atty. Gen. 162).

(3) The Department and the Immigration and Naturalization Service interpreted "state" to include both U.S. States and foreign countries.

b. The Department holds that persons born abroad out of wedlock to U.S. citizen fathers and alien mothers when Section 1993 *R.S.* was in effect acquired U.S. citizenship under that section of law upon legitimation under the laws of the father's domicile even when the legitimation occurred after the person's majority or after repeal of Section 1993 *R.S.*, as long as the state law set no age limits on legitimation.

7 FAM 1135.3-2 To American Mother

(TL:CON-68; 04-01-1998)

a. In about 1912, the Department began to hold that a child born out of wedlock to a U.S. citizen mother (before May 24, 1934), acquired U.S. citizenship through the mother if she previously had resided in the United States. It was *considered* that in the absence of a legally recognized father, the mother, as the sole parent, would have the rights normally attributed to a U.S. citizen father. *This also avoided statelessness for the child.*

b. This view was overruled in 1939 by the Attorney General who stated that in such cases Section 1993, R.S., must be held to preclude transmission of citizenship because Section 1993 *R.S.,* as originally enacted, did not permit women to transmit citizenship (39 Op. Atty. Gen. 290).

c. The Attorney General, who recognized the harshness inherent in his holding, expressed hope that legislative relief could be given retroactively. This was done in section 205 NA [see *7 FAM 1134.5-4]*.

7 FAM 1135.4 Absence of Retention Requirements Before May 24, 1934

(TL:CON-68; 04-01-1998)

a. *There have never been retention requirements for persons born abroad before May 24, 1934. Some misunderstanding about this may exist because in 1907 Congress imposed requirements on U.S. citizen residing abroad who acquired citizenship under 1993 and who wished to avail themselves of the protection of the United States Government.* Section 6 of the Act of March 2, 1907, stated that:

...all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of [Sec. 1993 R.S.] and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at an American consulate their intention to become residents and remain citizens of the United States, and shall be further required to take an oath of allegiance to the United States upon attaining their majority.

b. Section 6 related only to whether consular protection *would be provided*. Failure to register one's intention to remain a citizen and to take an oath of allegiance had no effect on the retention of citizenship, although it did mean that the person would not be treated as a citizen for consular protection purposes while *abroad*.

7 FAM 1135.5 Proof of Claim to U.S. Citizenship Under Section 1993 Revised Statutes (R.S.), As Originally Enacted

(TL:CON-68; 04-01-1998)

Section 1993 R.S., as originally enacted, applied only to persons whose fathers were U.S. citizens. While it was in effect, it provided the only means by which a child born abroad could acquire U.S. citizenship. Due to the retroactive application of section 301(h) INA, evidence to prove a claim to U.S. citizenship now for persons born prior to May 24, 1934 is the same as that listed in 7 FAM 1135.9 b.

7 FAM 1135.6 Section 1993, R.S., As Amended by Act of May 24, 1934

7 FAM 1135.6-1 Text of Amended Law

(TL:CON-68; 04-01-1998)

a. Section 1993 *R.S.* was amended *in 1934* to permit American women to transmit U.S. citizenship to their children born abroad *and to impose retention requirements on all children born abroad to one U.S. citizen parent and one alien parent.*

b. The amended Section 1993 (48 Stat. 797), went into effect on May 24, 1934, at noon Eastern Standard Time. It stated that:

Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization.

7 FAM 1135.6-2 Effect of Amendment

(TL:CON-68; 04-01-1998)

a. The *second sentence raised a question whether* a child born abroad to one U.S. citizen and one alien acquired citizenship at birth *(subject to losing citizenship later if the residence and oath requirement were not met), or, was born an alien and acquired citizenship only after completing* 5 years residence in the United States before reaching age 18 and taking the prescribed oath of allegiance.

b. *On* July 21, 1934, the Attorney General held that, "the two conditions described in the Act... must be regarded as conditions subsequent and not conditions precedent." (38 Op. Atty. Gen. 10, 17-18).

c. Thus the conditions in the second sentence of section 1993 were established as requirements for retention rather that acquiring citizenship.

7 FAM 1135.7 Children Born Out of Wedlock from May 24, 1934, through January 12, 1941

7 FAM 1135.7-1 To American Father

(TL:CON-68; 04-01-1998)

a. The requirements for acquiring U.S. citizenship *at birth out of wedlock to an American father* were not affected by the amendment of Section 1993, *R.S.,* and remained as set forth in *7 FAM 1135.3-1.*

b. Upon legitimation, children born on or after May 24, 1934, became subject to the retention requirements of Section 1993 *R.S.,* as amended, or of its successor laws.

c. Persons past the age of possible compliance with the retention requirements when their citizenship was perfected were held not to have jeopardized their citizenship by their failure to comply with any applicable retention requirements.

7 FAM 1135.7-2 To American Mother

(TL:CON-68; 04-01-1998)

a. On May 10, 1939, the Attorney General indicated (39 Op. Atty. Gen. 290) that it was not clear that children born abroad out of wedlock to American women acquired U.S. citizenship and that new legislation was desirable to clarify their status. However, the Department and the Immigration and Naturalization Service have held administratively that children born out of wedlock to American women while Section 1993 *R.S*., as amended, was in effect acquired U.S. citizenship at birth if their mothers previously had resided in the United States (4 I. & N. Dec. 440 (1951)).

b. The retention requirements do not apply to persons who acquired U.S. citizenship under Section 1993, *R.S.*, as amended, through birth abroad out of wedlock to a U.S. citizen woman (7 I. & N. 523).

c. The Department and the Immigration and Naturalization Service both hold that the legitimation *after January 13, 1941,* of a child who acquired U.S. citizenship through birth abroad out of wedlock to an American mother between May 24, 1934, and January 13, 1941, does not affect in any way the citizenship status that the child acquired at birth. Even if the child is legitimated by an alien father, the retention requirements do not apply.

d. To clarify the status of children born out of wedlock to American women, section 205 of the Nationality Act of 1940 was made retroactive except to children legitimated before January 13, 1941.

7 FAM 1135.8 Retention of U.S. Citizenship Acquired Under Section 1993 R.S., As Amended by Act of May 24, 1934

(TL:CON-68; 04-01-1998)

a. When it amended Sec 1993 *R.S*. to give women the right to transmit U.S. citizenship to their foreign-born children, Congress was concerned that a child with one citizen and one alien parent might have divided loyalties, particularly if the father was an alien through whom the child had acquired foreign nationality. To reduce conflicting ties of allegiance and to ensure that foreign-born children would regard themselves as Americans, Section 1993 *R.S*., as amended, required such children to reside in the United States for at least 5 years before reaching age 18 and to take an oath of allegiance to the United States within 6 months after reaching age 21 or forfeit their citizenship.

b. The retention requirements did not apply if both parents were U.S. citizens or if the child had been born out of wedlock to a U.S. citizen woman. In such cases, it was felt that foreign influences and ties would be less likely to occur.

c. No one ceased to be a citizen because of the retention requirements of Section 1993 *R.S.,* as amended. This was because the Nationality Act of 1940 (NA) went into effect long before any child born on or after May 24, 1934, and subject to the retention requirements of Section 1993 *R.S.,* as amended, could have complied with both of the conditions needed to retain citizenship. Section 201(h)

NA applied the requirements of section 201(g) NA for retaining citizenship to persons born abroad on or after May 24, 1934 [see *7 FAM 1134.6-1*]. *Section 301(c) of the Immigration and Nationality Act of 1952, as originally enacted, made the retention provisions of section 301(b) INA, as originally enacted, applicable to such persons who did not comply with the retention provisions of section 201(g) NA [see 7 FAM 1133.5-2 b].*

7 FAM 1135.9 Evidence of Claim to Citizenship Under Section 1993 R.S., as Amended

(TL:CON-68; 04-01-1998)

a. *The evidence to prove citizenship claims is described briefly in 22 CFR 50.2 - 50.5 and in more detail in 22 CFR 51.44(b). 22 CFR 51.54 specifies that an applicant may be required "to submit other evidence deemed necessary to establish his or her U.S. citizenship or nationality."*

b. Evidence to *establish* acquisition of U.S. citizenship under Section 1993 R.S., as amended, would consist of:

(1) A birth certificate or other *evidence* of the child's birth to a U.S. citizen mother, father, or both;

(2) If applicable, the parents' marriage certificate or other *evidence* of the child's legitimacy or legitimation;

(3) Proof of at least one parent's U.S. citizenship; and

(4) *Evidence* of that parent's residence in the United States at any time before the child's birth.

c. Persons born to one citizen and one alien parent must also prove that they met or have been exempted from applicable retention requirements.

7 FAM 1136 THROUGH 1139 UNASSIGNED

7 FAM 1131 Exhibit 1131.5-5
AMERICAN ASSOCIATION OF BLOOD BANKS (AABB) STANDARDS FOR PARENTAGE TESTING LABORATORIES

(TL:CON-68; 04-01-1998)

P1.000 GENERAL POLICIES

P1.100 Personnel

P1.110 The laboratory shall be under the direction of an individual/individuals with a doctoral degree who is/are qualified by advanced training and/or experience in parentage testing.

P1.120 The competency of the technical staff shall be the responsibility of the director(s).

P1.130 The laboratory directors and technical staff shall participate in relevant continuing education.

P1.140 A qualified individual must be available to act as an expert witness in the event that legal testimony related to the test results is required.

P1.200 General Policies

P1.220 The staff shall be competent and adequate for performance of the required testing.

P1.230 The laboratory must be in compliance with relevant safety codes including provisions for safe handling of blood samples, reagents and proper disposal of wastes.

P1.231 The laboratory shall have in operation programs designed to minimize risks to the health and safety of employees and clients. Suitable quarters, environment and equipment shall be available to maintain safe operations.

P1.232 There shall be procedures for biological, chemical and, if applicable, radiation safety and a system for monitoring training and compliance.

P1.233 Blood and other human tissues must be collected, handled and discarded with precautions that recognize the potential for exposure to infectious agents. All devices in contact with blood that are capable of transmitting infection to the client shall be both sterile and nonreusable.

P1.240 The laboratory shall utilize a program of quality assurance that is sufficiently comprehensive to ensure that reagents, equipment and personnel perform as expected. Tests must be performed using appropriate sample and reagent controls.

P1.241 Reagents shall be stored and used appropriately.

P1.242 Samples shall be handled, processed and tested in a manner that ensures accuracy of test results.

P1.243 Tests must be performed by standard methods or by methods independently verified by the laboratory.

P1.244 Serologic reactions should be graded when appropriate.

P1.245 Records of test results, including methods, observations and interpretations, shall be maintained.

P1.246 There must be a written policy for the resolution of discrepancies between duplicate tests and/or interpretation.

P1.247 Each member of the technical staff must participate in testing blood samples on a regular basis for every assay that he or she performs.

P1.250 The laboratory shall successfully participate in available external proficiency testing programs in all systems reported by the laboratory. In the absence of such a program, the laboratory shall participate in a specimen exchange program. Results shall be reported.

P1.260 In cases of disputed parentage, the laboratory shall utilize a group of tests for genetic markers that includes multiple systems. This group of tests shall consist of only those systems and methods described within these standards or which the laboratory has obtained specific written approval of the Parentage Testing Committee of the AABB. This group of tests must provide a falsely accused man with, on the average, at least a 95% probability of obtaining evidence of nonpaternity.

P1.261 Alternate methods not described by current standards or which deviate from current standards, and for which the laboratory does not have the specific written approval of the Parentage Testing Committee of the AABB, may be equally effective for parentage testing. These alternate methods for genetic marker testing may be performed as a supplement to, but not in place of the group of tests described above in P1.260. These supplemental testing procedures shall be validated and appropriate procedures included in the laboratories procedures manual.

P1.262 The report shall indicate that there are no current AABB standards that address the testing described above in P1.261 when such supplemental testing is reported.

P1.270 An accredited laboratory may engage another laboratory to perform genetic testing for systems not used by the primary laboratory. In that event, the subcontracting laboratory shall, if not accredited by the AABB for testing in those systems, meet the standards established by the committee. The identity of the subcontracting laboratory and that portion of the report for which it bears responsibility shall be noted on the report.

P1.271 Confirmatory testing by an independent laboratory shall be possible for all genetic systems utilized for parentage testing. These laboratories shall meet the requirements of AABB Standards for Parentage Testing Laboratories for the techniques utilized.

P1.280 Outside consultative sources should be used to aid in the resolution of specific problems or in the identification of certain variants. The primary laboratory, however, will bear the responsibility for issuing the report.

P1.290 A manual detailing all procedures and policies shall be developed and maintained, and it shall be reviewed annually by the director.

P1.291 Laboratories shall use a standard method of nomenclature for describing phenotypes in each genetic system.

P2.000 IDENTIFICATION, SPECIMEN COLLECTION AND DOCUMENTATION

P2.100 Individual and Specimen Identification

P2.110 There shall be a verifiable means for identification of all individuals who present themselves for testing.

P2.120 There shall be a means for identification of specimens received from a collecting facility outside the laboratory doing the testing.

P2.130 A record must be kept at the testing facility of all identifying information including, but not limited to, name, relationship, race and place and date of collection of sample. Information about each individual shall be verified by the signature of that person.

P2.140 The date of birth of the child shall be recorded.

P2.150 A transfusion history for the preceding 3 months shall be recorded for each individual tested.

P2.160 A history of a bone marrow transplant shall be recorded for each individual tested.

P2.200 Blood or Other Tissue Samples

P2.210 Each sample shall be identified with a firmly attached label bearing a unique identification for each individual and the date of collection

P2.211 The accuracy of the labeling process and the label itself should be verified by the donor or guardian before samples are removed from his/her presence. In situations where the donor or guardian is incapable of verifying the labeling, a responsible witness should do so.

P2.212 For samples which undergo cell culture, the identity of the laboratory performing the cell culture shall be documented.

P2.220 The phlebotomist's or collector's name must be a part of the permanent record.

P2.300 Storage and Handling

P2.310 Specimens shall be handled and stored in a manner that will preclude contamination, tampering or substitution.

P2.400 Records

P2.410 Records shall be maintained in a manner that will preserve their confidentiality and integrity.

P2.420 Laboratory personnel shall respect the privacy of the individuals who are being treated. Results of the test shall not be released in a manner in which the individual is identified, except when authorized.

P2.430 Copies of records that are released as part of an inspection must have the names and identities of the tested individuals concealed.

P2.440 The records for each case shall be maintained for a minimum of 5 years; thereafter, as long as deemed necessary by the institution.

P2.450 The director (or his/her designee) shall review and initial all worksheets to verify that the duplicate observed results are in agreement and are correctly interpreted as phenotypes on the Report Form.

P3.000 RED BLOOD CELL SURFACE ANTIGEN TESTING

P3.100 Tests shall be performed twice, independently.

P3.200 Different sources of reagents should be used.

P3.300 Red cell typing reagents shall be shown to be reactive and specific on the day of use by the method employed.

P4.000 HLA TESTING

P4.100 HLA typing must include all HLA-A and -B antigens that were officially recognized (beyond provisional "w" characterizations) by the 1980 HLA Nomenclature Committee of the World Health Organization (WHO). Laboratories should also type for other recognized HLA specificities for which the laboratory can readily obtain appropriate typing antisera.

P4.200 Terminology of HLA antigens shall conform to the latest report of the WHO Committee on Nomenclature. Designation of other antigens shall not conflict with WHO nomenclature.

P4.300 Documentation shall be available to ensure specificity of reagent antisera. Such documentation should consist of prospective testing against a well-characterized cell panel and/or retrospective analysis of the results of routine typings.

P4.310 The specificity of typing sera obtained locally should be confirmed in at least one other laboratory.

P4.400 A complement-dependent lymphocytotoxic method shall be confirmed in at least one other laboratory.

P4.410 Cell viability in the negative control well at the end of incubation must be recorded and should exceed 80%.

P4.420 Each new batch of complement shall be tested to determine that it induces cytotoxicity in the presence of specific antibody, but is not cytotoxic in the absence of specific antibody. Control procedures shall be established to ensure reactivity of stored complement.

P4.430 Each typing tray shall include at least one complement-dependent positive control serum and at least one negative control serum (or serum pool) known to lack cytotoxic antibody.

P4.500 HLA typing of all individuals in a paternity case should be performed with the same techniques and reagents and in the same laboratory.

P4.600 Each HLA-A and -B antigen shall be defined by at least two different operationally monospecific sera, or by one monospecific serum plus two multispecific sera, or by three multispecific sera.

P4.700 Assignment of each HLA antigen shall be based on reactions observed on two independent trays or tray sets. Each tray must be read independently.

P5.000 RED CELL ENZYME AND SERUM PROTEIN TESTING

P5.100 Tests shall include controls appropriate for the test system used.

P5.110 Each electrophoretic run must include a control(s) expressing a minimum of two allotypes.

P5.120 Controls used to identify rare variants must be verified by an independent laboratory.

P5.200 There shall be two independent readings of the electrophoretic patterns.
P5.300 In addition to isoelectric focusing tests, conventional electrophotetic techniques should be performed when both methods are necessary to identify common allotypes.

P6.000 IMMUNOGLOBULIN ALLOTYPING

P6.100 Tests shall be performed twice, independently.

P6.200 Positive and negative controls shall be run each day to ensure reactivity of reagents.

P6.300 Dosage titrations, if done, must be done in conjunction with adequate controls.

P6.400 Immunoglobulin allotyping shall not be performed on children less than 6 months of age.

P7.000 DNA POLYMORPHISM TESTING

P7.100 Restriction Fragment Length Polymorphism Testing

P7.110 DNA loci used in parentage testing shall meet the following criteria prior to reporting results:

P7.111 DNA loci shall be validated by family studies to demonstrate that the loci exhibit Mendelian inheritance and low frequency of mutation and/or recombination.

P7.112 The chromosomal location of the polymorphic loci used for parentage testing shall be recorded by the International Human Gene Mapping Workshop.

P7.113 Polymorphic loci should be documented in the literature. Documentation should include identification of the restrictive endonucleases and probes used to detect the polymorphism.

P7.114 The conditions of hybridization and size(s) of variable and constant fragments shall be documented in the laboratory.

P7.120 A method shall be available to ensure complete endonuclease digestion of DNA for testing.

P7.130 Size markers with discrete fragments of known size shall span the range of allele sizes routinely encountered at the DNA locus being tested. Flanking size markers shall be used with sufficient frequency to accurately size alleles.

P7.140 A human DNA control of known size shall be used on each electrophoretic run.

P7.141 A mixture of DNA from the alleged father and each child shall be electrophoresed together in a single lane of the gel used to determine allele sizes.

P7.150 DNA fragments shall be sized and interpreted twice independently.

P7.160 Reports shall contain at the minimum:

P7.161 Name of the DNA locus tested as defined by the Nomenclature Committee of the International Human Gene Mapping Workshop.

P7.162 Name of the probe used to detect the polymorphism.

Continuation – 7 FAM 1131 Exhibit 1131.5-5

P7.163 Name of the restriction endonuclease used.

P7.164 The size or allelic description (alphanumeric) of reported allelic fragments.

P7.300 Polymerase Chain Reaction (PCR) Ampification Testing

P7.310 DNA loci used in parentage testing shall meet the following criteria prior to reporting results.

P7.311 DNA loci shall be validated by family studies to demonstrate that the loci exhibit Mendelian inheritance and low frequency of mutation and/or recombination.

P7.312 The chromosomal location of the polymorphic loci used for parentage testing shall be recorded by the International Human Gene Mapping Workshop.

P7.313 Polymorphic loci should be documented in the literature. Documentation should include the primer sequence and the size(s) of varible and constant fragments.

P7.314 The laboratory shall document conditions and utilize appropriate controls for amplification reactions, electrophoresis (if applicable), detection of PCR products (including DNA probe and hybridization conditions, if applicable), restriction endonuclease digestion (if applicable), and DNA quantification (if applicable).

P7.320 An appropriate human DNA control of known phenotype shall be tested during each amplification run.

P7.330 A negative control shall be processed during each specimen preparation run and subjected to testing to monitor for PCR product contamination.

P7.340 A method shall be used to monitor thermal cycler performance. This should include an initial validation review of instrument performance.

P7.350 The laboratory shall utilize a program of quality assurance to protect pre-amplification samples from contamination by post-amplification materials.

P7.360 Results shall be read and interpreted twice, independently.

P7.370 When electrophoresis is used, size markers with discrete fragments of known size shall span the range of allele sizes routinely detected at the DNA locus being tested. Flanking size markers shall be used with sufficient frequency to accurately size or identify alleles.

P7.371 A mixture of DNA from the alleged father and each child shall be electrophoresed together in a single lane of the gel used to identify or determine allele size.

P7.380 Reports shall contain at the minimum:

P7.381 Name of the DNA locus tested as defined by the Nomenclature Committee of the International Human Gene Mapping Workshop.

P7.382 Identification of the primer sequences used.

P7.383 Name of the restriction endonuclease used (if applicable).

P7.384 Name of the probe used (if applicable).

P7.385 The size of allelic description (alphanumeric) of reported allelic fragments.

P8.000 CALCULATIONS AND REPORTS

P8.100 Calculations

P8.110 Computer-assisted analyses shall be reviewed, verified and signed by a supervisor and/or laboratory director before issue.

P8.120 The method of calculation shall be validated.

P8.130 If only manual calculations are performed, they shall be performed in duplicate.

P8.140 Gene and haplotype frequencies should have been obtained from examination of populations of adequate size.

P8.200 Reports

P8.210 A written report shall be issued to the appropriate authorized individuals following completion of the tests.

P8.220 The report shall contain at least.

P8.221 The date(s) of collection of the samples.

P8.222 The institution's accession (case) number, if assigned.

P8.223 The name of each individual tested and the relationship to the child.

P8.224 The racial origins assigned by the laboratory to the mother and alleged father(s) for the purpose of calculation.

P8.225 The phenotypes established for each individual in each genetic system examined.

P8.226 A statement as to whether or not the alleged father can be excluded.

P8.230 If an opinion of nonpaternity is rendered, the basis for the opinion shall be provided.

P8.231 An opinion of nonpaternity shall ordinarily not be rendered on the basis of a single indirect exclusion or on the basis of an exclusion at a single DNA locus.

P8.240 If there is a failure to exclude, the report shall include:

P8.241 The individual paternity index for each genetic system reported.

Continuation – 7 FAM 1131 Exhibit 1131.5-5

P8.242 The combined paternity index.

P8.243 The probability of paternity as a percentage. The prior probabilities used to calculate the probability of paternity shall be stated.

P8.244 Other mathematical or verbal expressions are optional. If they are included in the report, such expressions should be defined and explained.

P8.250 An explanation as to the nature of the problem shall be given if the results are inconclusive.

P8.260 The signature of a laboratory director.

7 FAM 1133 Exhibit 1133.3-3
International Organizations Designated by Executive Order(as of August 15, 1997)

(TL:CON-68; 04-01-1998)

African Development Bank (E.O. 12403, Feb. 8, 1983).

African Development Fund (E.O. 11977, Mar. 14, 1977).

Asian Development Bank (E.O. 11334, Mar. 7, 1967).

Border Environmental Cooperation Commission, E.O. 12904, Mar. 16, 1994).

Carribean Commission (E.O. 10025, Dec. 30, 1948; revoked by E.O. 10983, Dec. 30, 1961).

Caribbean Organization (E.O. 10983, Dec. 30, 1961.)

Coffee Study Group (E.O. 10943, May 19, 1961; revoked by E.O. 12033, Dec. Jan 10, 1978).

Commissions for Environmental Cooperation (E.O. 12904, March 16, 1994).

Commission for Labor Cooperation (E.O. 12904, Mar. 16, 1994).

Commission for the Study of Alternatives to the Panama Canal (E.O. 12567, Oct. 2, 1986).

Customs Cooperation Council (E.O. 11596, June 5, 1971).

European Bank for Reconstruction and Development (E.O. 12766, June 18, 1991)

European Space Agency (formerly European Research Organization (E.O. 11318, Dec. 5, 1966; E.O. 12766, Jun. 18, 1991).

Food and Agriculture Organization (E.O. 9698, Feb. 19, 1946).

Great Lakes Fishery Commission (E.O. 11059, Oct. 23, 1962).

Hong Kong Economic and Trade Offices, E.O. 13052, Jun. 30, 1997).

Inter-American Coffee Board (E.O. 9751, July 11, 1946; revoked by E.O. 10083, Oct. 10, 1949).

Inter-American Defense Board (E.O. 10228, Mar. 26, 1951).

Inter-American Development Bank (E.O. 10873, Apr. 8, 1960).

Inter-American Institute for Cooperation on Agriculture (formerly known as Inter-American Institute of Agricultural Sciences) (E.O. 9751, July 11, 1946).

Continuation - 7 FAM 1133 Exhibit 1133.3-3

Inter-American Investment Corporation (E.O. 12567, Oct. 2, 1986).

Inter-American Statistical Institute (E.O. 9751, July 11, 1946).

Inter-American Tropical Tuna Commission (E.O. 11059, October 23, 1962).

Intergovernmental Committee on Refugees (E.O. 9823, Jan. 24, 1947; revoked by E.O. 10083, Oct. 10, 1949).

International Maritime Organization (formerly Intergovernmental Maritime Consultative Organization (E.O. 10795, Dec. 13, 1958).

Interim Communications Satellite Committee (E.O. 11227, June 2, 1965; revoked by E.O. 11718, May 14, 1973).

Interim Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).

International Bank for Reconstruction and Development (E.O. 9751, July 11, 1946).

International Boundary and Water Commission-The United States and Mexico, (E.O. 12467, Mar. 2, 1984). .

International Centre for Settlement of Investment Disputes (E.O. 11966, Jan. 19, 1977; designation retroactive to Nov. 24, 1976).

International Civil Aviation Organization (E.O. 9863, May 31, 1947).

International Coffee Organization (E.O. 11225, May 22, 1965).

International Committee of the Red Cross (E.O. 12643, June 23, 1988).

International Cotton Advisory Committee (E.O. 9911, December 19, 1947).

International Cotton Institute, now known as International Institute for Cotton (E.O. 11283, May 27, 1966).

International Criminal Police Organization (INTERPOL) (E.O. 12425, June 16, 1983).

International Development Association (E.O. 11966, Jan. 19, 1977; designation retroactive to Nov. 24, 1976).

International Development Law Institute, (E.O. 12842, Mar. 29, 1993).

International Fertilizer Development Association (E.O. 11977, Mar. 14, 1977).

International Finance Corporation (E.O. 10680, Oct. 2, 1956).

International Food Policy Research Institute (E.O. 12359, Apr. 22, 1982).

International Fund for Agricultural Development (E.O. 12732, Oct. 31, 1990).

International Hydrographic Bureau (E.O. 10769, May 29, 1958).

International Institute for Cotton (see International Cotton Institute).

International Joint Commission--United States and Canada (E.O. 9972, June 25, 1948).

International Labor Organization (Functions through staff known as The International Labor Office) (E.O. 9698, Feb. 19, 1946).

International Maritime Satellite Organization (E.O. 12238, Sept. 12, 1980).

International Monetary Fund (E.O. 9751, July 11, 1946).

International Organization for Migration (formerly the Provisional Intergovernmental Committee for the Movement of Migrants for Europe and the Intergovernmental Committee for European Migration) (E.O. 10335, Mar. 28, 1952).

International Pacific Halibut Commission (E.O. 11059, Oct. 23, 1962).

International Refugee Organization (see Preparatory Commission of the International Refugees Organization).

International Secretariat for Volunteer Service (E.O. 11363, July 20, 1967).

International Telecommunication Union (E.O. 9863, May 31, 1947).

International Telecommunications Satellite Consortium (E.O. 11277, Apr. 30, 1966; revoked by E.O. 11718, May 14, 1973).

International Telecommunications Satellite Organization (INTELSAT) (E.O. 11718, May 14, 1973; redesignated by E.O. 11966, Jan. 19, 1977, which revoked E.O. 11718 with redesignation retroactive to Nov. 24, 1976).

International Union for Conservation of Nature and Natural Resources, (limited privileges), (E.O. 12986, Jan. 18, 1996).

International Wheat Advisory Committee (International Wheat Council) (E.O. 9823, Jan. 24, 1947).

Israel-United States Binational Industrial Research and Development Foundation, (E.O. 12956, Mar. 13, 1995).

Korean Peninsula Energy Development Organization, (E.O. 12997, Apr. 1, 1996).

Lake Ontario Claims Tribunal (E.O. 11372, Sept. 18, 1967; revoked by E.O. 11439, Dec. 7, 1968).

Multilateral Investment Guarantee Agency (E.O. 12647, 1 Aug. 2, 1988).

Multinational Force and Observers (E.O. 12238, Sept. 12, 1980).

Continuation - 7 FAM 1133 Exhibit 1133.3-3

North American Development Bank, (E.O. 12904, Mar. 16, 1994).

North Pacific Anadromous Fish Commission (E.O. 12895, January 26, 1994)

North Pacific Marine Science Organization (E.O. 12895. January 26, 1994)

Organization for European Economic Cooperation (E.O. 10133, June 27, 1950) (now known as Organization for Economic Cooperation and Development; 28 FR 2959, Mar. 26, 1963).

Organization of African Unity (OAU) (E.O. 11767, Feb. 19, 1974).

Organization of American States (E.O. 10533, June 3, 1954) (Includes Pan American Union—E.O. 9698, July 12, 1946).

Organization of Eastern Caribbean States (E.O. 12669, Feb. 20, 1989).

Organization for the Prohibition of Chemical Weapons, (E.O. 13049, Jun. 11, 1997).

Pacific Salmon Commission (E.O. 12567, Oct. 2, 1986).

Pan American Health Organization (E.O. 10864, Feb. 18, 1960) (Includes Pan American Sanitary Bureau--E.O. 9751, July 12, 1946).

Pan American Union (see Organization of American States).

Preparatory Commission of the International Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).

Prearatory Commission of the International Refugee Organization and its successor, the International Refugee Organization (E.O. 9887, Aug. 22, 1947; revoked by E.O. 10832, Aug. 19, 1959).

Provisional Intergovernmental Committee for the Movement of Migrants from Europe (see Intergovernmental Committee on Refugees).

Southeast Asia Treaty Organization (E.O. 10866, Feb. 20, 1960;revoked by E.O. 12033, Jan. 10, 1978).

South Pacific Commission (E.O. 10086, Nov. 25, 1949).

United International Bureau for the Protection of Intellectual Property (BIRPI) (E.O. 11484, Sept. 29, 1969).

United Nations (E.O. 9698, Feb. 19, 1946).

United Nations Educational, Scientific, and Cultural Organization (E.O. 9863, May 31, 1947).

United Nations Industrial Development Organization (E.O. 12628, Mar. 8, 1988).

Continuation - 7 FAM 1133 Exhibit 1133.3-3

United Nations Relief and Rehabilitation Administration (E.O. 9698, Feb. 19, 1946; revoked by E.O. 10083, Oct. 10, 1949).

Universal Postal Union (E.O. 10727, Aug. 31, 1957).

World Health Organization (E.O. 10025, Dec. 30, 1948).

World Intellectual Property Organization (WIPO) (E.O. 11866, June 18, 1975).

World Meteorological Organization (E.O. 10676, Sept. 1, 1956).

World Tourism Organization (E.O. 12508, Mar. 22, 1985).

World Trade Organization, E.O. 13042, Apr. 9, 1997).

7 FAM 1133 Exhibit 1133.4-2a
CHILD BORN OUT OF WEDLOCK TO A U.S. CITIZEN FATHER AND ALIEN MOTHER: DETERMINING WHETHER TO USE OLD 309(a) OR NEW 309(a) INA

(TL:CON-68; 04-01-1998)

Date of Birth	Applicable Statute	Age by which "Legitimation" Must Occur	Date by which "Legitimation" Must Occur	Statement of Support Required
On or before 11/14/68	Old Section 309(a)	21	11/14/89	No
After 11/14/68 and	Old Section 309(a)	21	11/14/92	No
On or before 11/14/71	New Section 309(a)	18	11/14/89	Yes
After 11/14/71 and	Old Section 309(a)	15	11/14/86	No
Before 11/14/86	New Section 309(a)	18	11/14/04	Yes
On or After 11/14/86	New Section 309(a)	18	None	Yes

NOTE: The term “LEGITIMATION” in the headings refers only to the statutory procedure required to establish the relationship between the U.S. citizen father and his child for purposes of acquiring citizenship.

Continued - 7 FAM 1133 Exhibit 1133.4-2a

SUMMARY OF THE LEGITIMATION LAWS OF THE STATES OF THE UNITED STATES (as of 10/18/93)

INTRODUCTION

The Bureau of Consular Affairs compiled the following information on state laws relating to legitimation as understood by the Department as of October 18, 1993. It is not definitive and cannot substitute for actual reference to the laws in question when necessary. The subject of legitimation is not an easy area of the law to research. Even if the respective state codes were readily available, state laws on this topic often are not well indexed or cross-referenced. Moreover, statutes relating to legitimation can be scattered in chapters pertaining to minors, estates, marriage, and divorce.

The varying terminology employed by individual state codes also can render this subject difficult. A child born out of wedlock may be referred to in statute as "illegitimate" or, in older statutes, a "bastard." Similarly, a child who has been legitimated may be called "acknowledged" or "recognized." Many states, particularly those which subscribe to the Uniform Parentage Act, simply refer to the establishment of the parent child relationship, a concept intended to be synonymous with legitimation as that term traditionally has been used.

Since the 1993, state laws governing the legitimation of children have undergone many changes. Most of these changes can be read as "liberalizing" the laws that result in a child being placed in a position identical, or substantially identical, to that of a child born in wedlock. In this context, "liberalization" means making less stringent the requirements for legitimation or providing additional means by which legitimation can be accomplished.

While the laws of every state are different, there are some major similarities. The laws of every state declare that the subsequent intermarriage of a child's natural (biological) parents serves to legitimate the child. A few states impose conditions in this regard. Further, the laws of every state make legitimate the child of a void marriage with a few states adding conditions. A number of states have enacted statutes that categorically declare that the existence of a biological relationship between a father and his child in and of itself establishes a legal relationship between the two, without regard to the marital status of the parents. Finally, almost every state provides means by which a child can be legitimated in the absence of a marriage of the parents.

Continued - 7 FAM 1133 Exhibit 1133.4-2a

A post should contact CA/OCS/PRI if it has questions about the application of these statutes to an individual case. CA/OCS/PRI can attempt to confirm the current provision of the law of the state in question, if necessary. This is particularly important to do if the post is otherwise prepared to conclude that a citizenship claim of a child born out wedlock should be denied on the grounds that a statute does not serve to legitimate a child.

Please note that the effective date of each statute listed is enclosed in parentheses at the end of the item.

I. IS A CHILD LEGITIMATED BY THE SUBSEQUENT INTERMARRIAGE OF ITS PARENTS?

1. ALABAMA - Yes, *if child is recognized by natural father*. Section 26-11-1 of Alabama Code. *(1993)*

2. ALASKA - Yes. Section 25.20.050 of Alaska Statutes *(1993)*

3. ARIZONA - Yes. *Section 8-601* of Arizona Revised Statutes. *(1992)*

4. ARKANSAS - Yes. Section *28-9-209* of the Arkansas Statutes. *(1992)*

5. CALIFORNIA - Yes, if in addition to the marriage the father: (1) Consents to being named as the father on the child's birth certificate or (2) Is obligated to support the child under a voluntary written promise or by court order. Section 7004(a)(3) of California Civil Code. *(1992)*

6. COLORADO - Yes. Section *19-4-103* and 19-4-105 of Colorado Revised Statutes.*(1992)*

7. CONNECTICUT - Yes. Section *45a-438(b)(1)* of Connecticut General Statutes. (1992)

8. DELAWARE - Yes. Section 1301 of Title 13 of Delaware Code. *(1988)*

9. DISTRICT OF COLUMBIA - Yes. Sections *16-907 and 16-908* Code of District of Columbia. *(1993)*

10. FLORIDA - Yes. Section 742.091 of Florida Statutes. *(1992)*

11. GEORGIA - Yes, if the father recognizes the child as his. Section *19-7-20* of Code of Georgia. *(1993)*

12. HAWAII - Yes. *Sections 338-21 and 584-2* of Hawaii Revised Statutes. *(1991)*

13. IDAHO - Yes. Section 32-1006 of Idaho Code. *(1992)*

14. ILLINOIS - Yes. *Chapter 40, Sections 2502 and 2505* of Illinois Revised Statutes. *(1993)*

15. INDIANA - *Yes, if putative father marries the mother of the child and acknowledges the child to be his own. Section 29-1-2-7 of the Indiana Statutes. (1992)*

16. IOWA - Yes. Section 595.18 of Code of Iowa. *(1993)*

17. KANSAS - Yes. *Sections 38-1112 and 38-1114* of Kansas Revised Statutes. *(1990)*

18. KENTUCKY - *Yes, if the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void. Section 391.105 of Kentucky Revised Statutes. (1989)*

19. LOUISIANA - Yes, when the child has been formally or informally acknowledged by both parents, whether before or after the marriage. Article 198 of Louisiana Civil Code. *(1992)*

20. MAINE - Yes. Title 18-A Section 2-109(2)(1) of Maine Revised Statutes. *(1992)*

21. MARYLAND - Yes*, if the father has acknowledged himself, orally or in writing, to be the father.* Section 1-208 of Estates and Trusts Code of Maryland. *(1993)*

22. MASSACHUSETTS - Yes, if acknowledged by father or ordered by court. Chapter 190, Section 7 of Massachusetts General Laws. *(1992)*

23. MICHIGAN - Yes. *Sections 27.5111 and 25.107* of Michigan Compiled Laws Annotated. *(1991)*

24. MINNESOTA - Yes. Section *257.55 and 257.52* of Minnesota Statutes. *(1992)*

25. MISSISSIPPI - Yes. *An illegitimate child is legitimated if the natural father marries the natural mother and acknowledges the child*. Section 93-17-1 of Mississippi Code. *(1991)*

26. MISSOURI - Yes. If father acknowledges that child is his. Section 474.070 of Missouri Revised Statutes. *(1992)*

27. MONTANA - Yes. *Section 40-6-203 of Montana Code. (1989)*

28. NEBRASKA - Yes. *Section 43.1409* of Revised Statutes of Nebraska. *(1991)*

29. NEVADA - Yes. Section 122.140 of Nevada Revised Statutes. *(1992)*

30. NEW HAMPSHIRE - Yes. Section 457.42 of New Hampshire Revised Statutes Annotated. *(1989)*

31. NEW JERSEY - Yes. *Sections 9:17-39, 9:17-40 and 9:17-43* of Revised Statues of New Jersey *(1992)*

32. NEW MEXICO - Yes. Section 45-2-109 of New Mexico Statutes. *(1992)*

33. NEW YORK - Yes. *Article 3, Section 24* of Consolidated Laws of New York. *(1992)*

34. NORTH CAROLINA - Yes. Section 49-12 General Statues of North Carolina. *(1989)*

35. NORTH DAKOTA - Yes. Section 14-09-02 of North Dakota Century Code. *(1989)*

36. OHIO - Yes. Section *3111.03* of Ohio Revised Code. *(1992)*

37. OKLAHOMA - Yes. Title 10 Section 2 of Oklahoma Statutes Annotated. (*1992)*

38. OREGON - Yes. Section 109.070(3) to be read in combination with Section 109.060 of Oregon Revised Statutes. *(1991)*

39. PENNSYLVANIA - Yes. *Pa.C.S.A. 20 Sec. 2107 and 23 Pa.C.S.A. Sec. 5101* of Purdon's Pennsylvania Statutes Annotated. *(1992)*

40. RHODE ISLAND - Yes. Section *33-1-8* of General Laws of Rhode Island. *(1992)*

41. SOUTH CAROLINA - Yes. Section 20-1-60 of Code of Laws of South Carolina. *(1990)*

42. SOUTH DAKOTA - Yes. Section *29-1-15.1* of South Dakota Codified Laws. *(1992)*

43. TENNESSEE - Yes. Section *36-2-207* of Tennessee Code Annotated. *(1992)*

44. TEXAS - Yes. *Title 2, Section 12.01 and 12.02* of Texas Code Annotated. *(1992)*

45. UTAH - Yes. *Section 75-2-109(2)(a)* of Utah Code Annotated. *(1992)*

46. VERMONT - Yes, if the child is recognized by the father. Title 14 Section 554 of Vermont Statutes Annotated. *(1993)*

47. VIRGINIA - Yes. Section 20-31.1 of Code of Virginia *(1992)*

48. WASHINGTON - Yes. *Section 26.26.040(c) of the Revised Code of Washington. (1992)*

49. WEST VIRGINIA - Yes. Section 42-1-6 of Michie's West Virginia Code. *(1989)*

50. WISCONSIN - Yes. Section *767.60* of Wisconsin Statutes *(1992)*

51. WYOMING - Yes, *if in addition to the marriage, the father is obligated to support the child under a written voluntary promise or by court.* Section 14-2-102 and 14-2-101 Wyoming Statutes. *(1993)*

TERRITORIES

1. GUAM - Yes. Title II, Chapter 1, Section 215. Guam Civil Code. (1970)

2. PUERTO RICO - Yes. Title 31, Section 442, Puerto Rico Civil Code. (1988)

3. VIRGIN ISLANDS - Yes. Title 16, Section 461 of Virgin Islands Code Annotated. (1993)

II. IS ISSUE OF A VOID MARRIAGE LEGITIMATE?

1. ALABAMA - Yes. Section *26-17-3 & 5* of Alabama Code. *(1993)*

2. ALASKA - Yes. *Section 25.05.050 and 25.05.051* Alaska Statutes. *(1992)*

3. ARIZONA - Yes. *Section 8-601 of Arizona Revised Statutes. (1992)*

4. ARKANSAS - Yes. Section *28-9-209* of Arkansas Statutes *(1992)*

5. CALIFORNIA - Yes. *Section 7001 and 7004* of California Civil Code. *(1992)*

6. COLORADO - Yes. Section *19-4-103 and 19-4-105* of Colorado Revised Statutes. *(1992)*

7. CONNECTICUT - Yes. Section 46b-60 of Connecticut Statutes. *(1993)*

8. DELAWARE - Yes. *Title 13, Section 105*of Delaware Code. *(1992)*

9. DISTRICT OF COLOMBIA - Yes. *A child born in or out of wedlock is the legitimate child of mother and father and is legitimate relative of their relatives by blood or adoption. 16-908 of the D.C. Code. (1993)*

10. FLORIDA - Yes. Section 732.108(2)(a) of Florida Statutes. *(1992)*

11. GEORGIA - Yes. *Section 19-5-15* of the Code of Georgia. *(1993)*

12. HAWAII – Yes. Section 580-27 of Hawaii Revised Statutes. *(1991)*

13. IDAHO - Yes, if marriage is void *for any reason other than for fraud whereby the wife is pregnant with the child of a man other than her husband.* Section 32-503 of Idaho Code. (1992)

14. ILLINOIS - Yes. Chapter 40, Section 303of Illinois Revised Statutes. (1992)

15. INDIANA - Yes, *Sections 31-7-8-5* of Indiana Statutes. *(1992)*

16. IOWA - Yes. Section *598.31* of Code of Iowa. *(1993)*

17. KANSAS - Yes. *Section 38-1113 and 38-1114* of Kansas Statutes Annotated. *(1990)*

18. KENTUCKY - Yes. Section 391.100 of Kentucky Revised Statutes. *(1989)*

19. LOUISIANA - Yes, except in cases of incest. Article 198 of Louisiana Civil Code. *(1992)*

20. MAINE - Yes. Title 19, Section 633 of Maine Revised Statutes. *(1992)*

21. MARYLAND - Yes. Section 1-206 of Estates and Trusts Code of Maryland. *(1993)*

22. MASSACHUSETTS - Yes. Chapter 207, Sections 14-17. Annotated Laws of Massachusetts. *(1992)*

23. MICHIGAN - Yes, Section *25.108 and 25.109* of Michigan Statutes Annotated. *(1991)*

24. MINNESOTA - Yes. Section 257.54 and 257.54 of Minnesota Statutes. (1992)

25. MISSISSIPPI - Yes. *See* Section *93-7-5* of Mississippi Code. *(1992)*

26. MISSOURI - Yes. Section 474.080 of Missouri Statutes. *(1992)*

27. MONTANA - Yes. *Sections 40-6-104 and* 40-6-105 of Montana Code Annotated. *(1989)*

28. NEBRASKA - Yes. Section *42-377* of Revised Statutes of Nebraska. *(1991)*

29. NEVADA - Yes. Section *125.410* of Nevada Revised Statutes. *(1992)*

30. NEW HAMPSHIRE - Yes, child considered legitimate unless court explicitly states otherwise. Section 458.23 of New Hampshire Revised Statutes Annotated. *(1989)*

31. NEW JERSEY - Yes. Section *9:17-40* of Revised Statutes of New Jersey. *(1992)*

32. NEW MEXICO - Yes. Section *45-2-109(B)(1)* of New Mexico Statutes. *(1992)*

33. NEW YORK - Yes. Article 3, Section 24, Note 6 of Consolidated Laws of New York. *(1992)*

34. NORTH CAROLINA - Yes. Section 50-11.1 of North Carolina General Statutes. *(1989)*

35. NORTH DAKOTA - *Yes. Section 14-04-03 of North Dakota Code. (1989)*

36. OHIO - Yes. Sections *3111.02 and 3111.03* of Ohio Revised Code. *(1992)*

37. OKLAHOMA - Yes. Title 10 Section *1.2* of Oklahoma Statutes. *(1992)*

38. OREGON - Yes. Sections *106.190 and 106.210* of Oregon Revised Statutes. *(1991)*

39. PENNSYLVANIA - Yes. Section *23 Pa.C.S.A., section 5102* of Purdon's Pennsylvania Statutes Annotated.*(1992)*

40. RHODE ISLAND - Yes. Section *15-8-3* of General Laws of Rhode Island. *(1992)*

41. SOUTH CAROLINA - Yes. Section 20-1-80 *and 20-1-90* of Code of Laws of South Carolina.

42. SOUTH DAKOTA - Yes. Section *25-3-3* of South Dakota Codified Laws. (*1992)*

43. ENNESSEE - Yes, if the father recognizes the child as his. Section *36-2-207* of Tennessee Code Annotated. *(1992)*

44. TEXAS - Yes. Title 2, Section 12.01 and 12.02 of Texas Code Annotated. *(1992)*

45. UTAH - Yes. Section 30-1-17.2 of Utah Code Annotated. *(1992)*

46. VERMONT - *Yes. Title 15, Section 520 of Vermont Statutes Annotated. (1993)*

47. VIRGINIA - Yes. Section 20-31.1 of Code of Virginia. *(1992)*

48. WASHINGTON - Yes. Section 26.26.030 and 26.26.040*. (1992)*

49. WEST VIRGINIA - Yes. Section 42-1-7 of West Virginia Code. *(1992)*

50. WISCONSIN - Yes. Section *767.60* of Wisconsin Statutes. *(1992)*

51. WYOMING - Yes. Sections *14-2-101 and* 14-2-102 of Wyoming Statutes. *(1989)*

TERRITORIES

1. GUAM - Yes. Article I, Section 84 of Guam Civil Code. (1970)

2. PUERTO RICO - Yes. Title 31, Section 412a. Puerto Rico Civil Code. (1988)

3. VIRGIN ISLANDS - Yes. Title 16, Section 461 of Virgin Islands Code Annotated. (1993)

III. CAN A CHILD BE LEGITIMATED IN A MANNER NOT INVOLVING THE INTERMARRIAGE OF THE NATURAL PARENTS?

1. ALABAMA - Yes, by *the father* (1) making a declaration in writing (2) attested to by 2 witnesses (3) setting forth the name, sex, supposed age, and name of the mother and (4) recognizing that it is his child. Section 26-11-2 of Alabama Code or if the father admits a paternity complaint or is found to be the father. *(1993)*

2. ALASKA - Yes, *if putative parent acknowledges being a parent of the child* in writing. Section 25.20.050(a)(2) of Alaska Statutes. (1993)

3. ARIZONA - Yes, Arizona law states that every child is the legitimate child of its natural parents and entitled as such to support and education as if born in lawful wedlock. Thus, if satisfied as to paternity, the child may be regarded as a legitimate child of the natural father under Arizona law. Section 8-601 of Arizona Statutes. *(1992)*

4. ARKANSAS - No. Section 28-9-209 of Arkansas Statutes.

5. CALIFORNIA - Yes, if father receives the child into his home as well as openly holds it out as his own. Section 7004(a)(4) of California Civil Code. *(1992)*

6. COLORADO - Yes, if while the child is a minor, the father receives the child into his home and openly holds the child as his natural child. Section *19-4-105* of Colorado Revised Statutes. *(1992)*

7. CONNECTICUT - Yes, by written affirmation of paternity by father; or by court decree. *Section 45(a)-438 of Connecticut Code. (1993)*

8. DELAWARE - Yes, *by acknowledgement of parentage in writing by either parent and filed in Prothonotary's office in any county in the State.* Title 13, Sec. 1301 of Delaware Code. *(1988)*

9. DISTRICT OF COLUMBIA - Yes. Sections 16-907 and 16-908 Code of District of Columbia, as amended on April 7, 1977. *(1993*)

10. FLORIDA - *Yes. Paternity may be acknowledged in writing thereby legitimizing a child born out-of-wedlock. Section 732-108 of Florida Statutes. (1992)*

11. GEORGIA - Yes, if father does so by petitioning superior court in county of his residence setting forth child's name, age, sex and the name of the mother. Section *19-7-22* of the Code of Georgia. *(1993)*

12. HAWAII - Yes, if father and mother acknowledges paternity in writing. *Sections 584-2 and* 338-21(a)(2) of Hawaii Revised Statutes. *(1991)*

13. IDAHO - Yes, if father (1) acknowledges child as his and (2) receives it into his family as such, with the consent of his wife if he is married. Section 16-1510 of Idaho Code. *(1992)*

14. ILLINOIS - Yes. Parent child relationship is not dependent on marriage. *Chapter 40, Sections 2502 and 2503* of Illinois Revised Statutes. *(1992)*

15. INDIANA - Yes, if paternity of child has been established by law during father's life-time. *Section 29-1-2-7* of the Indiana Statutes. *(1992)*

16. IOWA - Yes, by adoption. *Sections 600.4 and 600.13 of Code of Iowa. (1993)*

17. KANSAS - Yes, if the father notoriously or in writing recognizes his paternity of the child. *Section 38-1114 (4)* of Kansas Statutes Annotated. (1990)

18. KENTUCKY - *Yes. A child adopted by a natural father is considered the natural child of the adopting parents the same as if born of their bodies. Sections 199.470 and 199.520 of Kentucky Revised Statutes. (1989)*

19. LOUISIANA - Yes, a child may be legitimated by notarial act. Art. 200 of Louisiana Civil Code. (1992)

20. MAINE - *Yes, if (1) the father adopts the child into his family. Under Title 18-A Section 2-109(ii) of Maine Revised Statutes or (2) the father acknowledges that he is the father of the child before a notary public or justice of the peace or (3) there is an adjudication to this effect before a court or (4) by a court after the father's death on the basis of clear and convincing evidence. Title 18-A Section 2-109(2) (iii) of Maine Revised Statutes. (1992)*

21. MARYLAND - Yes, if father (1) has acknowledged himself to be father in writing or (2) has openly and notoriously recognized the child as his or (3) has been found to be the father after judicial paternity proceedings. *Section 1-208* of Estates & Trusts Code of Maryland (several Maryland court decisions have said this constitutes legitimation for <u>all</u> purposes.) *(1993)*

22. MASSACHUSETTS - No. *An illegitmate child can be acknowledged but this does not legitimate. Chapter 190 Sec. 7 of Annotated Laws of Massachusetts. (1992)*

23. MICHIGAN - Yes. *Section 25.107* of Michigan Compiled Laws Annotated. *(1991)*

24. MINNESOTA - Yes, if while the child is a minor the father receives the child into his home and openly holds out the child as his own. *Section 257.52 and 257.55* of Minnesota Statutes. *(1992)*

25. MISSISSIPPI - Yes, but only by specific decree of Chancery Court. Section 93-17-1 of Mississippi Code. (1991)

26. MISSOURI - Yes, *when paternity is established* and the father has openly treated the child as his and has not refused to support the child. Section 474.060 of Missouri Statutes. *(1992)*

27. MONTANA - Yes, if (1) the father while the child is a minor receives the child into his home and openly holds it out as his own or (2) acknowledges the child in a writing filed with the department of health provided the child's mother does not dispute the acknowledgement within a reasonable time. *Sections 40-6-102* and 40-6-105 of Montana Code Annotated. (1989)

28. NEBRASKA - No. Although a child's paternity can be acknowledged in writing or by providing support, paternity does not appear to be tantamount to legitimacy. Section *13-1409* of Revised *Statutes* of Nebraska. *(1991)*

29. NEVADA - Yes, if the father (1) while the child is a minor receives it into his home and openly holds it out as his own or (2) acknowledges the child in a writing filed with the registrar of vital statistics. *Sections 126.031* and 126.051 of Nevada Revised Statutes. *(1992)*

30. NEW HAMPSHIRE - Yes, but only if a court in New Hampshire where the father resides grants a petition legitimating the child in all respects. Section 460.29 of New Hampshire Revised Statutes Annotated. (*1989)*

31. NEW JERSEY - Yes, by judicial proceedings to establish paternity; under laws of probate; or by a court of competent jurisdiction in another state. Section *9:17 et seq.* of Revised Statutes of New Jersey. *(1992)*

32. NEW MEXICO - Yes, if the father has signed an instrument in writing which on its face is for the purpose of recognizing the child as his heir and such writing is accompanied by proof of "general and notorious recognition" by the father. See *45-2-109 B. (2)* of New Mexico Statutes Annotated. *(1992)*

33. NEW YORK - Yes, if father files acknowledgment of paternity instrument with the New York Department of Social Services, Putative Father Registry. Section 4-1.2 of the New York Estates, Powers and Trusts Law *(1992)*

34. NORTH CAROLINA - Yes, if done by father's filing a petition so requesting in the Superior Court in North Carolina. Section 49-10 and 49-11 of General Statutes of North Carolina. *(1989)*

35. NORTH DAKOTA - Yes, if father receives the child into his home while the child is a minor and openly holds out the child as his own. Section 14-17-04(d) of the North Dakota Century Code. *(1989)*

36. OHIO - Yes, if (1) such acknowledgement is applied for in the probate court of the county where the father or child resides and (2) the mother consents and (3) the court accepts the application, then the child is legitimate for all purposes. Section 2105.18 of Ohio Revised Code. *(1992)*

37. OKLAHOMA - Yes. *All children born in Oklahoma are legitimate after July 1, 1974. Title 10 Section 1.2* of Oklahoma Statutes. *(1992)*

38. OREGON - Yes. *See section 109.060 of Oregon Revised Statutes. (1991)*

39. PENNSYLVANIA - Yes, (a) if during the lifetime of the child, the father openly holds out the child to be his own and either (1) receives it into his home or (2) provides support for the child. (b) If there is clear and convincing evidence that the man was the father of the child, which may include a prior court determination of paternity. *20 Pa C.S.A. Sec. 2107 and 23 PaC.S.A. Sec. 5102.* Pennsylvania Statutes Annotated. *(1992)*

40. RHODE ISLAND - *Yes, by adoption. Sections 15-7-5 and 15-7-14* of General Laws of Rhode Island. (1992)

41. SOUTH CAROLINA - Yes, an unmarried father may adopt his own illegitimate child. Section 15-45-30 of Code Laws of South Carolina. *(1990)*

42. SOUTH DAKOTA - Yes, by adoption. Section 25-6-1 of South Dakota Codified Laws. *(1992)*

43. TENNESSEE - Yes, *(a) An application to legitimate a child born out-of-wedlock is made by petition, in writing, signed by the person wishing to legitimate such child, and setting forth the reasons therefor and the state and date of the child's birth. (b) A father may establish paternity of a child born out-of-wedlock by executing a prescribed acknowledgement of paternity before a notary public. The father's name will be entered on the birth certificate and forwarded to the juvenile court for entry of an order of legitimation. Section 36-2-202* of Tennessee Code Annotated. (1992).

44. TEXAS - Yes, *if the father consents in writing to be named as the child's father on the child's birth certificate, or before the child reaches the age of majority, the father receives the child into his home and openly holds the child out as his. Title 2, Section 12.01 and 12.02. (1992)*

45. UTAH - Yes, if he publicly acknowledges the child as his own, and receives it into his home (with the consent of his wife, if he is married) and otherwise treats it as his own legitimate child. Section 78-30-12 of Utah Code Annotated. *(1992)*

46. VERMONT - No. Vermont Statutes Annotated. *(1993)*

47. VIRGINIA - No. Although a child can inherit property if certain circumstances occur, this does not appear to constitute legitimation. Section 64.1-5.2 of Code of Virginia. *(1992)*

48. WASHINGTON - Yes, if while the child is a minor, the father receives the child into his home openly holds out the child as his own. Section *26.26.040(d)* of Revised Code of Washington. *(1992)*

49. WEST VIRGINIA - Yes. *The father of a natural child may file an application to establish paternity in circuit court which establishes parent child relationship as though "born in lawful wedlock". Section 48A-6-6 of West Virginia Statutes. (1989)*

50. WISCONSIN - *Yes. Natural father can adopt his child born out-of-wedlock thereby establishing parent and child relationship with all the rights, duties and other legal consequencies. (1993)*

51. WYOMING - Yes, if while the child is a minor the father receives the child into his home and holds the child out as his own. Section *14-2-102(iv)* of Wyoming Statutes. *(1989)*

TERRITORIES

1. GUAM - Yes. The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. Chapter II, Section 230 of the Guam Civil Code. (1970)

2. PUERTO RICO - Yes. By adoption. An adoptee, for all legal purposes, be considered as a legitimate child of the adopter. Title 31, Sections 532 and 533 of the Puerto Rico Civil Code. (1988)

3. VIRGIN ISLANDS - Yes. The father of an illegitimate by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. Title 16, Section 462 of Virgin Islands Code Annotated. (1993)

7 FAM 1133 Exhibit 1133.5-15
U.S DEPARTMENT OF STATE
APPLICATION FOR RESTORATION OF CITIZENSHIP PURSUANT TO SECTION 324(d)(1) OF THE IMMIGRATION AND NATIONALITY ACT AND OATH OF ALLEGIANCE

(TL:CON-68; 04-01-1998)

This application is for use under Section 324(d)(1) of the Immigration and Nationality Act by a person who was a citizen of the United States and lost such citizenship for failure to meet the physical presence retention requirements under Section 301(b) of that Act.

_____

NAME OF APPLICANT (Please print name in full)
(First) (Middle) (Last)

_____

DATE OF BIRTH PLACE OF BIRTH

_____

1. I hereby apply for reinstatement of citizenship pursuant to Section 324(d)(1) of the Immigration and Nationality Act.

2. I was previously a citizen of the United States by operation of _____
(state provision of law)

3. I have read Section 313 of the Immigration and Nationality Act relating to persons opposed to government or law or who favor totalitarian forms of government. I have performed no voluntary act which would cause me to be within any of the provisions of that section. I am prepared to take the oath of allegiance to the United States as prescribed by Section 337(a) of the same Act. I understand that taking the oath restores U.S. citizenship as of the date of the taking of the oath only, and not retroactively.

OATH OF ALLEGIANCE

I hereby declare, on oath, that I will support the Constitution of the United States; that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform non-combatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God.

_____
(Signature of Applicant)

Subscribed and sworn before me by the above named applicant

_____ _____
(Date) Signature of Consul