7 FAM 1150 CITIZENSHIP BY NATURALIZATION

(TL:CON-13; 12-31-84)

7 FAM 1151 WHAT NATURALIZATION IS

a. Naturalization is “the act of adopting a foreigner, and clothing him with the privileges of a native citizen.” (Boyd v. Thayer, 143 U.S. 103, 110 (1892))

b. The Supreme Court has stated that “under our Constitution, a naturalized citizen stands on equal footing with the native citizen in all respects, save that of eligibility to the Presidency.” (Luria v. United States, 231 U.S. 9 (1913)).

7 FAM 1152 JUDICIAL NATURALIZATION

7 FAM 1152.1 Historical Background

7 FAM 1152.1-1 Constitution of the United States

Section 8, Article I, of the Constitution gives Congress the right "to establish an uniform Rule of Naturalization."

7 FAM 1152.1-2 Act of March 26, 1790

On March 26, 1790, the second session of the first Congress enacted An Act to Establish an Uniform Rule of Naturalization (1 Stat 103), which stated:

> That any alien, being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for a term of two years, may be admitted to become a citizen thereof, on application to any common law court of record, in any one of the states wherein he shall have resided for a term of one year at least, and making proof to the satisfaction of such court, that he is a person of good character, and taking the oath or affirmation prescribed by law to support the Constitution of the United States, which oath or affirmation such court shall administer; and the clerk of such court shall record such application, and the proceedings thereon; and thereupon such person shall be considered as a citizen of the United States. And the children of such persons so naturalized dwelling within the United States, being under the age of twenty-one years at the time of such naturalization, shall also be considered as citizens of the United States.

7 FAM 1152.1-3 Changes in Naturalization Laws, 1795-1906

Subsequent acts added provisions similar to those in the current laws.

a. The Act of January 29, 1795 (1 Stat. 414), which replaced the original act, required:

(1) Five years residency in the United States prior to naturalization;

(2) A declaration of intention to become a citizen filed at least 3 years before the person’s application for citizenship; and

(3) A renunciation of other allegiances and of hereditary titles or orders of nobility.

b. The next law, the Act of June 18, 1798 (1 Stat. 566):

(1) Extended the period of required residency to 14 years in the United States and 5 years in the State or territory in which the person was applying for citizenship and specified that the filing of a declaration of intention must occur at least 5 years prior to naturalization; these provisions were modified for persons who had taken up residence in the United States before January 29, 1795, or who had already declared their intentions to become citizens;

(2) Stated that no nationals of countries with which the United States was at war could apply for naturalization;

(3) Required that all aliens entering the United States (except foreign diplomatic and consular personnel, their families, and their servants) to be registered; and

(4) Required petitioners for naturalization to present a certificate of registry to prove residency for the required period.

c. The periods of U.S. and State residency required for naturalization and the length of residence required after filing a declaration of intention were reduced to the previous levels of 5 years, 1 year, and 3 years, respectively, by the Act of April 14, 1802 (2 Stat. 153).

d. Eligibility for naturalization was “extended to aliens of African nativity and to persons of African descent” on July 14, 1870 (16 Stat. 254).

e. The naturalization of anarchists and others opposed to organized government was prohibited by the Act of March 3, 1903 (32 Stat. 1213).

7 FAM 1152.1-4 Act of June 29, 1906

a. The Act of June 29, 1906 (34 Stat. 596), for the first time outlined uniform procedures and included standard forms.

b. Polygamists and persons who could not speak English were included among the categories of persons ineligible for naturalization.

c. The act also required that a duplicate of each naturalization certificate issued by the various naturalization courts be sent to a central Federal repository in the Bureau of Immigration and Naturalization in the Department of Labor and Commerce. Its successor agency, the Department of Justice's Immigration and Naturalization Service, can provide confirmation of naturalizations dating from September 26, 1906. Information about naturalizations which occurred before that date may be obtained only from the court which naturalized a particular person.

7 FAM 1152.2 Nationality Act of 1940 (NA)

a. Sections 301 through 347 NA (54 Stat. 1140-1168) set forth the requirements and procedures relating to naturalization which became effective on January 13, 1941.

b. Section 303 NA provided that naturalization was available "only to white persons, persons of African nativity or descent, descendants of races indigenous to the Western Hemisphere", certain Filipinos who had served honorably in the armed forces, and former U.S. citizens of any race.

c. "Chinese persons or persons of Chinese descent" were added to the list of eligibles by the Act of December 17, 1943 (57 Stat. 600).

d. Section 303 NA was amended by the Act of July 2, 1946 (60 Stat. 416) to include Filipinos and Indians, and, on August 1, 1950, to include "Guamanian persons and persons of Guamanian descent" (64 Stat. 384).

7 FAM 1152.3 Immigration and Nationality Act (INA)

a. Section 311 INA states that:

> The right of a person to become a naturalized citizen of United States shall not be denied or abridged because of race or sex or because such person is married....

The current provisions for naturalization are given in Sections 310 through 339 INA (8 U.S.C. 1422-1450).

7 FAM 1152.4 Expeditious Naturalization

a. Sections 319, 322, 324, 327, and 328 INA provide that certain categories of aliens may be naturalized without meeting the normal residence and physical-presence requirements for naturalization. From time to time, posts receive inquiries about expeditious naturalization from persons who wish to be naturalized during a visit to the United States. Most such inquiries relate to the spouses or children of U.S. citizens employed abroad by the U.S. Government or American business firms.

b. Section 319(b) INA permits spouses of U.S citizens engaged in certain employment abroad to be naturalized after meeting all requirements for naturalization except those relating to physical presence and residence in the United States and after declaring an intention to take up residence in the United States upon the termination of the American spouse's employment.

c. Section 322 INA does not make special provisions for the naturalization of U.S. citizen's children who reside abroad with the U.S. citizen parent and, in fact, states that a child to be naturalized upon the petition of a citizen parent must be "residing permanently in the United States, with the citizen parent, pursuant to a lawful admission for permanent residence." There have, however, been cases in which children admitted as legal permanent residents but normally residing abroad due to a citizen parent's employment have been naturalized on the parent's petition while only temporarily in the United States.

d. To avoid disappointment, wasted time, or expense, persons who may be eligible for expeditious naturalization should contact the office of the Immigration and Naturalization Service that has jurisdiction over the proposed place of naturalization 6 months before the time they wish the naturalization to take place.

e. The 6-month notice gives the Immigration and Naturalization Service the time needed to provide the forms that must be filled out, obtain the files of aliens who previously entered the United States documented as legal permanent residents, process the completed applications, and arrange for the naturalization.

f. The Immigration and Naturalization Service should be consulted about which documents must be submitted with the Application to File Petition for Naturalization in each case (Form N-400).

(1) Such supporting documents may include:

(a) The birth certificate of the alien to be naturalized;

(b) The petitioner's marriage certificate;

(c) Evidence of the termination of previous marriages of either spouse/parent;

(d) Proof of citizenship of the U.S. spouse/parent;

(e) A letter from the employer of the American spouse/parent indicating when the employment began and is likely to end;

(f) Confirmation that the alien to be naturalized intends to join the citizen spouse/parent abroad following naturalization and that they intend to return to the United States to reside upon termination of the employment;

(g) Photographs; and

(h) A fingerprint chart.

(2) All foreign-language documents must be translated into English.

7 FAM 1152.5 Proof of Judicial Naturalization

a. Evidence to prove judicial naturalization normally consists of a Certificate of Naturalization issued by the Immigration and Naturalization Service or by its predecessor agency, the Department of Labor and Commerce's Bureau of Immigration and Naturalization. Certification from the records of the Immigration and Naturalization Service or the court that naturalized a person can also be accepted.

b. If the Department's help is needed to verify a naturalization, the post should provide as much of the following information as possible (see 7 FAM 1152 Exhibit 1152.5b):

(1) Name of the naturalized person, including variations and aliases;

(2) The person's date and place of birth;

(3) The person's alien registration number;

(4) Date and place of naturalization; and

(5) Number of the Certificate of Naturalization issued to the person.

7 FAM 1153 AUTOMATIC NATURALIZATION

7 FAM 1153.1 What Automatic Naturalization Is

a. U.S. law has provided for various types of automatic naturalization. Such naturalizations take place without any application for citizenship. Citizenship vests automatically if all of the conditions listed in the pertinent statute have been fulfilled. Other qualifications or requirements for judicial naturalization need not be met. Except for cases involving collective naturalization, there have been no provisions for declining the citizenship to which one is entitled by automatic operation of law.

b. The Immigration and Naturalization Service often does not have any record of such automatic naturalizations, and consular officers sometimes must adjudicate the citizenship claims of persons who have acquired citizenship by automatic operation of U.S. law.

7 FAM 1153.2 Collective Naturalization

a. One type of automatic naturalization is collective naturalization in which certain categories of persons have been made U.S. citizens without any action on their part.

b. Collective naturalization occurred most frequently when the United States added new States or territories and Congress enacted laws granting citizenship to the inhabitants. (For information on grants of citizenship to the inhabitants of certain U.S. territories, see sections 7 FAM 1120 through 7 FAM 1124 .)

c. The 14th Amendment had the effect of giving citizenship retroactively to black persons who had been born in the United States.

d. Various groups of American Indians, who originally were considered not to have been born subject to the jurisdiction of the United States and not to have acquired U.S. citizenship at birth, were granted citizenship by Congressional legislation, culminating in the Act of June 2, 1924 (43 Stat. 253), which conferred citizenship on all U.S.-born Indians who were not already citizens.

7 FAM 1153.3 Acquisition by Marriage to U.S. Citizen

7 FAM 1153.3-1 Prior to September 22, 1922

a. Act of February 10, 1855

(1) Section 2 of the Act of February 10, 1855 (10 Stat. 604) stated that:

> ... any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen.

(2) In Kelly v. Owen, 74 U.S. 496 (1868), the Supreme Court commented on this law as follows:

> As we construe this act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide. The terms "married" or "who shall be married" do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that whenever a woman, who under the previous acts might be naturalized, is in a state of marriage to a citizen, whether his citizenship existed at the passage of the act or subsequently, or before or after the marriage she becomes, by that fact, a citizen also.
>
> His citizenship, whenever it exists, confers, under the act, citizenship upon her. Its object, in our opinion, was to allow her citizenship to follow that of her husband without the necessity of any application for naturalization on her part.
>
> The terms "who might lawfully be naturalized under the existing laws," only limit the application of the law to free white women. The previous naturalization act, existing at the time, only required that the person applying for its benefits should be a "free white person" and not an alien enemy.

(3) In 1874, the Attorney General informed the Secretary of State, after discussing Kelly v. Owen and other legal precedents:

> ... that, irrespective of the time or place of marriage or the residence of the parties, any free white woman, not an alien enemy, married to a citizen of this country, is to be taken and deemed a citizen of the United States. (14 Op. Atty. Gen. 402)

b. Section 1994, Revised Statutes

(1) Section 1994, Rev. Stat., stated that:

> Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.

(2) The Attorney General stated in 1909 (27 Op. Atty. Gen. 507):

> ... that legal precedents ... seem to settle the proposition that the words "who might herself be naturalized," in the act of February 10, 1855, and section 1994 of the Revised Statutes, refer to the class or race who might be lawfully naturalized, and that compliance with the other conditions of the naturalization laws is not required.
>
> It is true ... (that cases considered by various courts) involved only the necessity for residence within the United States for the period provided by the naturalization laws, or at all, and the question of good moral character did not arise therein. But the principle on which they were decided--that class or race alone was to be considered--is broad enough to cover the matter of character also.

(3) It was held that citizenship was conferred on the wife of a valid marriage only. A sham marriage did not serve to confer citizenship. In cases of bigamous or polygamous marriages, only the first wife could acquire U.S. citizenship. The Department held that enemy aliens did not acquire U.S. citizenship upon their marriage to U.S. citizens during World War I but did acquire it automatically upon the official termination of the war on July 12, 1921, if the marriage had not been terminated.

(4) Because a number of courts had held that women who had been arrested for prostitution and either were married to U.S. citizens or married citizens before they could be deported acquired U.S. citizenship upon marriage if they possessed the racial qualifications for naturalization, Congress enacted as Section 19 of the Immigration Act of 1917 (39 Stat. 889) the following provisions:

> The marriage to an American citizen of a female of the sexually immoral classes ... shall not invest such female with U.S. citizenship if the marriage of such alien femaleshall be solemnized after her arrest or after the commission of acts which made her liable to deportation under this act.

c. Retention of Citizenship Upon Termination of Marriage

(1) Section 4 of the Act of March 2, 1907, provided for retention of U.S. citizenship by a foreign woman who acquired it by marriage, if she continued to reside in the United States after termination of the marriage.

(2) If residing abroad she could retain her citizenship by registering before a U.S. consul within 1 year after termination of the marriage.

7 FAM 1153.3-2 Effect of Marriage to U.S. Citizen On or After September 22, 1922

a. On or after September 22, 1922, an alien woman who married a U.S. citizen or whose husband was naturalized as a U.S. citizen did not become a U.S. citizen by reason of such marriage or naturalization.

(1) Section 1 of the Act of September 22, 1922 (42 Stat. 1021) provided that naturalization should not be denied to any woman because of her sex or marriage.

(2) Section 2 provided that the wife of a U.S. citizen could be naturalized after1 year's continuous residence in the United States, Alaska, Hawaii, or Puerto Rico if she had the necessary qualifications.

(3) Section 5 (which was repealed by Section 4 of the Act on March 3, 1931) provided that a woman whose husband was not eligible for citizenship could not be naturalized while the marriage endured.

(4) Section 6 repealed Section 1994, Rev. Stat., and Section 4 of the Act of March 2, 1907 (referred to in section 7 FAM 1153.3-1 c). However, such repeal did not terminate citizenship acquired or retained under either of those acts.

b. By the Act of May 24, 1934 (49 Stat. 797), Section 2 of the Act of September 22, 1922, was amended to apply to both alien men and alien women who were married to U.S. citizens or whose alien spouses were naturalized as U.S. citizens. For alien wives, the length of residence required for naturalization was raised from 1 to 3 years. For alien husbands, it was lowered from 5 to 3 years.

c. Section 312 NA exempted from the residence requirement the spouses of U.S. citizens engaged abroad in certain types of employment. Section 319(b) provides similar exemption.

7 FAM 1153.4 Naturalization of Children by Parents' Naturalization

7 FAM 1153.4-1 Prior to May 24, 1934

a. Historical Background

Since the first naturalization act in 1790, U.S. citizenship has been acquired automatically by children under age 21 and living in the United States at the time their parents were naturalized.

b. Section 2172, Revised Statutes

(1) Section 2172, Rev. Stat., stated that:

> The children of persons who have been duly naturalized under any law of the United States, ... being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; ...

(2) Section 2172, Rev. Stat., and earlier laws did not provide for automatic acquisition of citizenship by minors residing abroad at the time of their parents' naturalization, This gave rise to the question of whether such children could also benefit from the law and, if so, under what conditions.

(a) The Department held that such a child did not acquire U.S. citizenship through a parent's naturalization unless, after the naturalization and before the child's 21st birthday, the child was admitted to the United States for residence under the immigration laws then in effect.

(b) Judicial authorities who had occasion to consider the status of children residing abroad when their parents were naturalized tended to come to the same conclusion. However, one court found that residence commenced at age 61 concurred citizenship on a woman who had been a minor residing abroad when her father was naturalized (Young v. Peck, 21 Wend. (N.Y.) 389 (1839).

c. Section 5, Act of March 2, 1907

(1) Because there was no statutory basis for finding that children who were abroad when their parents were naturalized could acquire citizenship automatically by coming to the United States and because of confusion about the applicability of Section 2172, corrective action was taken in the Act of March 2, 1907.

(2) Section 5 of that act (34 Stat. 1229) stated:

> That a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: Provided, That such naturalization or resumption shall take place during the minority of such child: And provided further, That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States.

NOTE.--This section of the Act was amended in 1934 (see section 7 FAM 1153.4-2 a).

d. Section 2172, Rev. Stat., and Section 5 of the Act of March 2, 1907 Were Complementary

(1) Section 5 of the Act of March 2, 1907, gave rise to uncertainty about the status of minors residing in the United States at the time of their parents' naturalization. In U.S. ex rel. Patton v. Tod, 297 Fed. 384 (2d Cir. 1924), the court ruled that Section 2172, Rev. Stat., had not been wholly repealed by the Act of March 2, 1907, and that the two laws were complementary.

(2) The court stated that:

> Under the former a foreign-born child dwelling in the United States at the time of the naturalization of the parent automatically becomes a citizen, while under the latter a foreign-born child, not in the United States when the parent is naturalized, becomes a citizen from the time that, while still a minor, it begins to reside permanently in the United States, and under each statutethe "dwelling" or "permanent residence" must have a lawful inception.

e. Naturalization of Children Through Mother's Naturalization

(1) When a woman automatically acquired U.S. citizenship before September 22, 1922, due to her marriage to a U.S. citizen or the naturalization of her husband, her children by a former marriage acquired U.S. citizenship under Section 2172, Rev. Stat., or Section 5 of the Act of March 2, 1907, if they resided in the United States during their minority and after the date the mother acquired citizenship.

(2) In 1929, the Attorney General held (36 Op. Atty. Gen. 197) that a child's citizenship was not affected by the mother's naturalization as a U.S. citizen if the father remained an alien and the family was living together, but that if the father died after the mother's naturalization and during the child's minority the child became a U.S. citizen upon the father's death if residing in the United States or upon taking up residence in the United States during minority.

f. Naturalization of Children Upon Resumption of Citizenship by Mother

When a woman who had lost her citizenship by marrying an alien resumed it upon termination of the marriage, her children, if not already U.S. citizens, became citizens, assuming that they met the applicable age and residence requirements.

g. Naturalization of Children Upon Mother's "Fictional Resumption of Citizenship"

(1) A similar rationale was applied by some administrative and judicial authorities to children of American women who had not lost their citizenship by marrying an alien.

(a) A concept of fictional resumption of citizenship was developed so that the children of such women could acquire U.S. citizenship under the same terms as children whose mothers were aliens when the children were born but later resumed their U.S. citizenship.

(b) Upon termination of a marriage, an American woman who had never lost her citizenship was considered to be in the same position as a woman who had resumed it upon termination of her marriage, and, if her children had not acquired citizenship at birth or through the naturalization of their father, it was considered that they could benefit from Section 2172, Rev. Stat., or Section 5 of the Act of March 5, 1907, assuming that, if the father had not died, the mother had been awarded custody of the children (37 Op. Atty. Gen. 90; Petition of Black, 64 F. Supp. 518; Petition of Donsky, 77 F. Supp. 832).

(2) The concept of fictional resumption of citizenship upon termination of a marriage was found questionable by the courts in D'Alessio v. Lehmann, 289 F. 2d 317 (C.A. 6, 1961), certiorari denied (that is, the Supreme Court declined to review it) 368 U.S. 822, and Montana v. Kennedy, 366 U.S. 308 (1961).

(3) Cases in which a claim to U.S. citizenship hinges on the mother's fictional resumption of citizenship should be referred to the Department (CA/OCS/CCS).

h. Adopted, Married, or Legitimated Children

(1) In 1935 and 1936, the Attorney General (38 Op. Atty. Gen. 217 and 397) concluded that the acquisition of citizenship by an adopted child's adoptive parent did not confer citizenship on the child, but that the naturalization of the surviving natural parent did, assuming that the child met the age and residence requirements of Section 2172, Rev. Stat., or Section 5 of the Act of March 2, 1907. Adoption of an alien child by American parents did not alter the child's citizenship.

(2) In reaching this conclusion, the Attorney General relied in part on the holding of the Departments of State and Labor that minors who were married could acquire citizenship through the naturalization of their parents if they were residing in the United States at the time of the naturalization or later took up residence in the United States while still under the age of 21.

(3) A legitimated child could acquire citizenship in the same manner as other children, but an unlegitimated child could acquire citizenship automatically only through its aliens mother's acquisition of citizenship.

7 FAM 1153.4-2 From May 24, 1938 Through January 12, 1941

a. Effective at noon on May 24, 1934, Section 5 of the Act of March 2, 1907, was amended by Section 2 of the Act of May 24, 1934, to read as follows:

> ... a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the father or mother: Provided, That such naturalization or resumption shall take place during the minority of such child: And provided further, That the citizenship of such minor child shall begin five years after the time such minor child begins to reside permanently in the United States.

b. When one parent was naturalized during a child's minority and the other remained an alien, the child acquired citizenship after 5 years' residence in the United States. The Court of Appeals for the District of Columbia ruled on March 20, 1952, in the case of Irving Albert that citizenship was vested after 5 years' residence begun during minority even if the child reached age 21 during that period. Other courts held that the 5 years' residence must have been completed before the repeal of Section 5 on January 13, 1941 (U.S. ex rel. Aberastruri v. Cain, 149 F. 2d 449; Petition of Donsky, 77 F. Supp 832).

c. Section 2172, Rev. Stat., and the interpretation discussed in sections 7 FAM 1153.4-1 b and d, were considered to remain in effect with respect to situations in which:

(1) Both parents were naturalized on or after May 24, 1934;

(2) One parent always was a U.S. citizen but was unable to transmit citizenship and the other was naturalized on or after that date; or

(3) The sole parent or the one having legal custody of the child became a citizen on or after that date.

d. If residing in the United States, a minor child acquired U.S. citizenship upon the naturalization of the alien parent or parents pursuant to Section 7 FAM 2172 , which was not repealed until 1941. The Department held also that, if the child was residing abroad at the time of the naturalization, the child would acquire citizenship immediately upon taking up residence in the United States during minority.

e. In summary, since it was held that Section 7 FAM 2172 remained in effect, only children born abroad to two aliens whose marriage had not terminated and only one of whom was naturalized were required to begin a 5-year period of residence during minority to be considered citizens.

7 FAM 1153.4-3 From January 13, 1941 through December 23, 1952

a. Sections 313 and 314 NA

(1) Children acquired U.S. citizenship through the naturalization of their parents under the following provisions of the Nationality Act of 1940:

> Sec. 313. A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, be deemed a citizen of the United States, when--
>
> (a) Such naturalization takes place while such child is under the age of eighteen years; and
>
> (b) Such child is residing in the United States at the time of the naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.
>
> Sec. 314. A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(a) The naturalization of both parents; or

(b) The naturalization of the surviving parent if one of the parents is deceased; or

(c) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents; and if--

(d) Such naturalization takes place while such child is under the age of eighteen years; and

(e) such child is residing in the United States at the time of the naturalization of the parent last naturalized under subsection (a) of this section, or the parent naturalized under subsection (b) or (c) of this section, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(2) The laws previously in effect were repealed by Section 504 NA. Because the new provisions were more specific than those they replaced, fewer questions arose about their application. In each case, all pertinent conditions must have been met before the child reached age 18.

b. Children Born Out of Wedlock

(1) Section 102(h) NA defined the term "child" as including:

> ... a child legitimated under the law of the child's residence or domicile, whether in the United States or elsewhere; ..., provided such legitimation ... takes place before the child reaches the age of sixteen years and the child is in the legal custody of the legitimating ... parent or parents.

It was administratively held that a child legitimated under the laws of the father's residence or domicile could derive citizenship on the same terms as one legitimated under the laws of its own residence or domicile.

(2) Sections 102(h), 313, and 314 NA failed to mention children born out of wedlock to American women and not legitimated.

(a) It was held that such children did not derive citizenship upon the naturalization of their mothers during the existence of the Nationality Act (Peignand v. INS, 440 F. 2d 757 (1st Cir. 1971); Espindola v. Barber, 152 F. Supp. 829 (N.D. Cal. 1957).

(b) However, it was held that such children would automatically be considered citizens under Section 321 INA if they were under age 16 and residing in the United States pursuant to lawful admission for permanent residence on the effective date of the INA or thereafter immigrated to the United States while still under age 16 (7 I. & N. 512, 679; 8 I. & N. 272).

c. Posthumous Child

Section 101(f) NA states that:

> The term "parent" includes in the case of a posthumous child a deceased parent.

A child who was born after the death of the citizen parent and who did not acquire U.S. citizenship at birth could acquire citizenship automatically upon the naturalization of the alien parent and satisfaction of the other requirements of Section 313 NA.

d. Married Child

Since the definition of "child" did not specify that the child must be unmarried, Sections 314 and 314 NA applied to married children also.

e. Legal Custody/Legal Separation

(1) It was held (3 I. & N. 850) that:

> ... in the absence of judicial determination or judicial or statutory grant of custody in the case of a legal separation of the parents of a person claiming citizenship under section 314(c), the parent having actual uncontested custody is to be regarded as having "legal custody" of theperson concerned for the purpose of determining that person's status under section 314(c).

(2) If a child's parents never were married, there cannot be considered to have been a legal separation when they parted (3 I. & N. 742). The considerations in subsection b, above, would apply to that child.

(3) A legal separation is one established by judicial proceedings and includes absolute or limited divorce.

f. Provisions for U.S. Citizen Children Who Could Not Acquire Citizenship Automatically

(1) The Nationality Act also provided for the naturalization of children upon the petition of a citizen parent. Section 315 states that:

> A child born outside of the United States, one of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen and is residing permanently in the United States with the citizen parent, on the petition of such citizen parent, without a declaration of intention, upon compliancewith the applicable procedural provisions of the naturalization laws.

(2) Although Section 102(h) NA included in its definition of "child" a child adopted in the United States, if the child was under age 16 and in the legal custody of the adopting parent or parents at the time of the adoption, adopted children could not acquire citizenship automatically through the naturalization of their adoptive parents. Their parents could petition for their naturalization in accordance with Section 316 NA, which stated:

> An adopted child may, if not otherwise disqualified from becoming a citizen, be naturalized before reaching the age of eighteen years upon the petition of the adoptive parent or parents if the child has resided continuously in the UnitedStates for at least two years immediately preceding the date of filing such petition, upon compliance with all the applicable procedural provisions of the naturalization laws, if the adoptive parent or parents are citizens of the UnitedStates, and the child was:
>
> (a) Lawfully admitted to the United States for permanent residence; and
>
> (b) Adopted in the United States before reaching the age of sixteen years; and
>
> (c) Adopted and in the legal custody of the adoptive parent or parents for at least two years prior to the filing of the petition for the child's naturalization.

(3) Children who acquired citizenship under Sections 315 and 316 NA should have a naturalization certificate in their own name as evidence of citizenship.

7 FAM 1153.4-4 On or After December 24, 1952

a. Current Law

As amended by Public Laws 95-417 of October 5, 1978 (92 Stat. 918) and 97-116 of December 29, 1981 (95 U.S.C. 1611), the Immigration and Nationality Act provides that:

> Sec. 320(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when--
>
> (1) such naturalization takes place while such child is under the age of eighteen years; and
>
> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years. (b) Subsection (a)(1) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.
>
> Sec. 321 (a) A child born outside of the United States, of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if
>
> (4) Such naturalization takes place while such child is under the age of eighteen years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.
>
> (b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of suchadoptive parent or parents, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

NOTE.--Until October 5, 1978, all conditions in Sections 7 FAM 320 and 7 FAM 321 INA had to be met by age 16 in order for citizenship to vest. See section 7 FAM 1153.4-4 c for additional information.

Before October 5, 1978, adopted children could not acquire citizenship automatically through the naturalization of their adoptive parents. See section 7 FAM 1153.4-4 d.

b. Definitions

(1) Child

(a) Pursuant to Section 101(c)(1), the use of "child" in this context:

> ... means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided ..., a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of sixteen years, and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

NOTE.--See the discussion of the 1981 amendment to Section 320 and 321 INA in section 7 FAM 1153.4-4 d(3).

(b) Because stepchildren, who are included in the definition of "child" for immigration purposes, are excluded from this definition, they do not acquire citizenship through the naturalization of a stepparent. They would, however, be eligible to acquire citizenship under Section 321(a)(3) if the natural parent having custody of them is naturalized.

(c) Because Section 101(c)(1) INA specifies that a person must be unmarried in order to be considered a "child," minors who are married no longer can derive citizenship through their parents' naturalization.

(d) As in the 1940 act, the definition of "child" includes a child legitimated by its father. Section 321(a)(4) INA specifies that a child who was born out of wedlock but never was legitimated can become a citizen through the naturalization of its mother, if the child meets the other applicable provisions of Section 321(a) INA. Citizenship acquired in this manner is not taken away if the child subsequently is legitimated.

(2) "Parent"

Section 101(c)(2) INA states that:

> ... The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father and mother.

(3) "Lawfully Admitted for Permanent Residence"

(a) Section 101(a)(20) defines "lawfully admitted for permanent residence" as:

> ... the status of having been lawfully accorded with the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(b) A child's temporary absence from the United States at the time of its parent(s) naturalization would not preclude derivation of citizenship.

c. Deadline Originally Was 16th Birthday

(1) Sections 320 and 321 INA, as originally enacted, specified that the naturalization of the parent(s) must have taken place before the child's 16th birthday and that if the child was not a lawful resident at that time, the child must have taken up permanent residence by that date in order to derive citizenship.

(2) Public Law 95-417 of October 5, 1978 (92 Stat. 917), Section 4 of which raised the age limit from 16 to 18 was not retroactive. It did not benefit a child who was still under age 18 when the law was amended if the parents had been naturalized after the child's 16th birthday and before October 5, 1978.

d. Adopted Children Precluded From Acquiring Citizenship Automatically Before Oct. 5, 1978

(1) When Sections 320 and 321 INA, which concern the automatic naturalization of children, were enacted in 1952, both specified in subsection (b) that "Subsection (a) of this section shall not apply to an adopted child." The constitutionality of subsection (b) was upheld in Hein v. USINS, 456 F.2d 1239 (5th Cir. 1972). Section 323 INA, which was repealed in 1978, listed the conditions under which an adopted child could be naturalized upon the petition of the adoptive parent or parents. Children who acquired citizenship under Section 323 would have Certificates of Naturalization in their own names.

(2) Public Law 95-417 of October 5, 1978, enabled children who had been adopted before reaching age 16 to acquire citizenship automatically through naturalization of their adoptive parent(s). That law was not retroactive.

(3) On December 29, 1981, Public Law 97-166 (95 Stat. 1611) deleted the reference to adoption under age 16. Now, all conditions for automatic naturalization, including adoption, must occur before the child's 18th birthday.

7 FAM 1153.5 Proof of Claim to Citizenship Acquired by Automatic Naturalization

a. Persons claiming citizenship by automatic naturalization must establish that they met all of the conditions specified by the pertinent law within the time limits set by the law.

b. Persons claiming citizenship by collective naturalization must show that they were in a certain place at a certain time and/or were members of the group that the law in question was designed to benefit.

c. A woman claiming citizenship through marriage to a U.S. citizen prior to September 22, 1922, must establish that her husband was a citizen at the time of their marriage or was naturalized before September 22, 1922, and that their marriage occurred before that date. She would also need to meet the racial qualifications for naturalization in effect before 1922.

d. Children claiming citizenship through their parents' naturalization must establish that:

(1) Their alien parent(s) were naturalized; and

(2) They, themselves, were residing in the United States pursuant to lawful admission at the time of the naturalization and were under the age specified in the applicable law; or

(3) They were legally admitted to the United States for permanent residence after the naturalization and while they were still under the age specified by the law then in effect.

e. Section 341 INA provides that persons in the United States who claim citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband can apply for a certificate of citizenship from the Immigration and Naturalization Services.

7 FAM 1154 THROUGH 1159 UNASSIGNED

7 FAM 1152 Exhibit 1152.5b

Sample of a Telegram Requesting Department Verification of Derivative Naturalization

Sample of a Telegram Requesting Department Verification of Derivative Naturalization

TELEGRAM

INDICATE PRIORITY CHANGE TO

FROM	CLASSIFICATION
Amconsul LYON	UNCLASSIFIED

E.O. 11652: N/A
TAGS: CPAS (Buthaud, Sylviane)
SUBJECT: Verification of Derivative Naturalization

ACTION: AmConsul LYON

INFO: AMEMB

REF: 7 FAM 1153.5b, 1133.1b, and 1153.5d

1. Sylviane Buthaud (DOB 5/19/73 Grenoble, France), bearer of alien registration card No. A35 603 394 visited Consul to apply for a passport. She stated that her mother, Clothilde Johnson, was naturalized as U.S. citizen in July 84 and said she should get a U.S. passport before returning to the United States. Sylviane is visiting her French father during her summer vacation. Her parents are divorced, and her mother remarried an American.

2. It appears that Sylviane Buthaud has a claim to U.S. citizenship under section 321 INA through the naturalization of the parent having legal custody of her. 7 FAM 1153.4-4b(3)(b) indicates that Sylviane's temporary absence from the United States when her mother was naturalized would not preclude her acquisition of citizenship.

3. In support of her passport application, Sylviane presented her green card showing that she was admitted to the United States for permanent residence on June 26, 1979, and a letter from her mother indicating that Mrs. Johnson was issued Naturalization Certificate No. 22050237 following her naturalization on 7/27/84 before the U.S. District Court for the Eastern District of Michigan at Detroit. Sylviane's father, Jean-Francois Buthaud, confirmed that his ex-wife received custody of Sylviane at the time of their divorce. He can present a copy of their divorce decree if necessary. Sylviane's French passport

DRAFTED BY	DRAFTING DATE	TEL. EXT.	CONTENTS AND CLASSIFICATION APPROVED BY
WEcuni	R/9/84	53-33-1?	JCGonzales

IT'S ADVANCED

UNCLASSIFIED
CLASSIFICATION

5010-101

OPTIONAL FORM 153
(Formerly FS 413)
January 1970
Dept. of State

Sample of a Telegram Requesting Department Verification of Derivative Naturalization - Continued

UNCLASSIFIED Page 2 of ___ NRN
Classification

shows she entered France on 6/23/84. She plans to return to the United States on 8/19/84.

4. Mrs. Johnson is reluctant to send her naturalization certificate through the mails. As it appears unlikely that Sylviane would be able to obtain a statement from the Immigration and Naturalization Service confirming Mrs. Johnson's naturalization by next week, the department is requested to contact the INS and verify that Clothilde Dumont Johnson (DPOB 2/18/52 Annecy, France) was naturalized as claimed. Sylviane does not know her mother's alien registration number but believes it was close to hers. If further information is needed from Mrs. Johnson, she can be reached at 147 Avon Ct., Grosse Pointe, MI 48236 (Tel. No. (313) 426-4392).

MCCALL

UNCLASSIFIED
Classification

DFT DNAL FORM 183A
(Formerly FS-483A)
January 1978
Dept. of State

1153-201