



CITIZENSHIP FOR AMERICANS OVERSEAS

Association of Americans Resident Overseas
www.aaro.org

Association of American Wives of Europeans
www.aaweparis.org

Federation of American Women's Clubs Overseas
www.fawco.org

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INTRODUCTION

Each country has its own rules for determining citizenship. There is no such thing, for example, as a global “right” to dual citizenship nor does there exist “out there” a general prohibition against voting in more than one country. Such rights and prohibitions as well as how citizenship is acquired, retained and lost are all matters which each individual country determines for itself. Because citizenship law is, thus, so very country-specific, when we talk about it we must focus on the particular laws of a particular country and how these would apply in a given case.

This chapter addresses itself to the citizenship laws of the United States of America. It takes up the major U.S. citizenship rules in effect today which are relevant to American families who reside abroad, but it is necessarily an overview of the laws and may not cover, or provide sufficient detail for, the situation of certain individuals.

All of the laws discussed below are contained in the Immigration and Nationality Act (the INA), which is several hundreds of pages long and which is broken down into numerous provisions or “Sections.” The main Sections are noted by number in parentheses in the text which follows.

For information on all citizenship matters the U.S. Embassy web site is www.france.usembassy.gov. In particular, it is wise to inquire about fees for passports and immigrant visas and related expenses in advance as they are significant.

DUAL CITIZENSHIP

While the United States does not as a matter of policy officially favor the concept of dual nationality for Americans, it does accept its existence in individual cases. In addition to instances of voluntary naturalization accepted by the Department of State as non-expatriating (see “Current Policy Regarding Loss of Citizenship” below), dual nationality also exists when it results from the **automatic operation of the laws** of other countries. Two examples would be: (1) the child who is a citizen of the U.S. and another country at birth due to the operation of the laws of each country; (2) the U.S. citizen who marries a national of another country and, under the laws of that country, thereby automatically becomes a citizen without having to take any other action whatsoever.

You don’t need to choose. As far as U.S. law is concerned, an American who is also a citizen of another country does not need to choose one nationality or the other—at any age.

A dual national U.S. citizen must always use his/her American passport when entering and leaving the U.S. (Section 215).

U.S. CITIZENSHIP AT BIRTH FOR A CHILD BORN ABROAD TO AN AMERICAN PARENT MARRIED TO A NON-AMERICAN (Section 301(g))

For the child born abroad after November 14, 1986: A U.S. parent married to a non-American is eligible to transmit U.S. citizenship to his/her child born abroad **only if** such American parent had spent five years in the U.S. prior to the child's birth, and two of those five years must have been after the parent was 14 years old. (This is the "5 year/2 year" requirement for transmission.)

For the child born abroad before November 14, 1986: The U.S. parent married to a non-American is eligible to transmit **only if** the U.S. parent had spent ten years in the U.S. prior to the child's birth, and at least five of those ten years must have been after the parent was 14 years old (the "10 year/5 year" requirement).

This physical presence requirement for transmission of U.S. citizenship to children born abroad applies in all cases where a U.S. citizen is married to a non-U.S. citizen—even when the American parent was born in the U.S.

In either the "5 year/2 year" or the "10 year/5 year" requirement, the parent's physical presence need not have been continuous; visits of any length to the U.S. count toward fulfillment of the requirement. Time spent abroad can also count if the parent was overseas for U.S. military duty, employed by the U.S. government or an international organization as defined in the International Organizations Immunities Act, or if the U.S. parent (when he/she was a child) was abroad as a dependent unmarried child of a person overseas for the above reasons.

Parents seeking to register their children as U.S. citizens at birth should contact their local U.S. Embassy or Consulate and be prepared to show they have fulfilled the physical presence requirement specified in Section 301(g). See "Proof of Physical Presence" below.

N.B. Parents who do not fulfill these requirements and parents of children adopted abroad have two "alternate routes" for having their children become U.S. citizens. Since March 1, 1995, under Section 322 of the INA these parents can have their children naturalized through a procedure administered by the United States Citizenship and Immigration Service (USCIS) for which they can apply from abroad. See "Naturalization for Children and Grandchildren Under 18 Years Old" and "U.S. Naturalization for Minor Children and Grandchildren of Americans Abroad (Section 322)".

In addition, as of February 27, 2001, under the provisions of the "Child Citizenship Act of 2000", children of American citizens who did not acquire citizenship at birth automatically acquire citizenship when they enter the US as immigrants. See "Automatic Citizenship for Children Coming to the U.S. on Immigrant Visas (Section 320)".

TRANSMITTING U.S. CITIZENSHIP AT BIRTH TO A CHILD BORN ABROAD OUT OF WEDLOCK WHEN ONE PARENT IS A U.S. CITIZEN (Section 309)

A child born abroad out of wedlock to a U.S. citizen mother is a U.S. citizen at birth if the mother had been physically present in the U.S. or one of its outlying possessions for a **continuous period** of one year prior to the child's birth. This must be an uninterrupted period of at least 365 days.

A child born abroad out of wedlock to a U.S. citizen father is an American at birth if the father, prior to the child's birth, has met the U.S. physical presence requirements in effect for married couples under Section 301(g) (as detailed above). The father must also acknowledge paternity in writing under oath and declare that he will provide support until the child reaches age 18. Or he must legitimate the child while the child is under age 18.

OTHER WAYS FOR A CHILD TO BE A U.S. CITIZEN AT BIRTH

A child born abroad to a couple in which **both parents are American** is a U.S. citizen at birth as long as one of the parents had a residence—even for a short time—in the U.S. or one of its outlying possessions at some point prior to the birth of the child.

Any child **born on U.S. soil** is American regardless of its parents' nationalities (with exceptions, e.g., a child of a foreign diplomat). Such child is an American for life with no need to spend any time in the U.S.

PROOF OF PHYSICAL PRESENCE FOR U.S. CITIZENSHIP AT BIRTH

Physical presence is counted as the time the parent was actually in the United States. The U.S. citizen parent's physical presence need not have been continuous (except in the case of an unwed U.S. citizen mother).

Parents not having spent large blocks of time in the U.S. which clearly and unquestionably show fulfillment of the physical presence requirement would do well to produce documents or other evidence showing when and for how long they were actually present there. Airline ticket stubs, passport stamps and high school transcripts, for example, provide objective proof to the Consular officers who are required by law to ascertain that an individual has fulfilled the time specified in the law. Military, employment and tax records also are useful in this regard. The more completely the parent can show that he/she has fulfilled the physical presence requirement, the easier it will be for the Consular officer to document the child as a U.S. citizen.

Collecting such documentation in the course of an individual's growing-up years is a very good way to be sure one has this "evidence" should the individual eventually marry a non-American and should the individual's child be born abroad.

REPORTS OF BIRTH

The U.S. State Department strongly recommends that U.S. citizen children born overseas be documented as such through the completion of a Consular Report of Birth Abroad of a Citizen of the United States as soon after the birth as is convenient. This report records data on the citizenship of the parents, their residence in the U.S., and the time and place of birth of the child. Reports of Birth Abroad can be issued to any U.S. citizen child up to his/her 18th birthday.

The Department notes that a foreign birth certificate, even one that mentions the parents' nationalities, does not serve as evidence of the child's U.S. citizenship, but that a Report of Birth will always serve as proof of this fact.

CHILDREN'S PASSPORTS

Children under 16 must appear in person to apply for or renew a passport. Children 14 or over may apply for or renew a passport without parental consent, but the signature of both parents on the U.S. passport application and any renewals of a child under 14 years old is required. One parent must be present to sign the application form, but regulations allow the use of a notarized form ("Statement of Consent: Issuance of a Passport to a Minor Under Age 14") from the parent who is not present when the passport is issued.

REINSTATEMENT AS U.S. CITIZENS FOR THOSE BORN BEFORE 1952 WHO MAY HAVE LOST THIS STATUS (Section 324)

Individuals who were born overseas between May 24, 1934 and October 9, 1952 who lost their U.S. citizenship for failure to reside for certain periods of time in the United States when they were in their teens and twenties may regain U.S. citizenship. As of March 1, 1995, such persons may take an oath of allegiance and renunciation at a U.S. Consulate and thereby be reinstated as American citizens and receive a U.S. passport. The citizenship attaches as of the day this oath is taken and is not retroactive to the time the original U.S. citizenship was lost.

"AUTOMATIC" CITIZENSHIP FOR CHILDREN UNDER 18 COMING TO THE U.S. ON IMMIGRANT VISAS (Section 320)

As of February 27, 2001, the minor child of an American who is coming to the U.S. to live, automatically becomes a citizen upon lawful admission as an immigrant to the U.S. This procedure is under the jurisdiction of the State Department and the visa application is processed by your nearest U.S. consulate.

To qualify for automatic citizenship, children must meet all of the following three conditions:

1. One parent is a U.S. citizen, by birth or through naturalization;

1. The child is under the age of eighteen (18);
2. The child is residing in the U.S. pursuant to a lawful admission as a permanent resident alien in the legal and physical custody of the American citizen parent.

Adopted children qualify if they satisfy the requirements applicable to adopted children under Section 101(b)(1) of the INA, i.e. they have been in the legal custody of and residing with the American citizen parent for at least two years.

The Citizenship Committee understands that to obtain the child's immigrant visa an affidavit of support will generally not be required except in the case of certain adoption procedures.

For those children qualifying, citizenship becomes effective on the day all the foregoing conditions have been met, that is, upon arrival in the U.S. There is no U.S. residency requirement. Those who acquire citizenship under the Child Citizenship Act may immediately apply for a US passport, either in the US or abroad at US Embassies and Consulates. Acceptable proof of acquisition of citizenship under this new provision includes an alien registration card ("green card") or the foreign passport containing the USCIS endorsement stamp (I-551) made at the time of the child's admission into the US as an immigrant.

NATURALIZATION FOR CHILDREN AND GRANDCHILDREN UNDER 18 YEARS OLD (INCLUDING ADOPTED CHILDREN) (Section 322)

Since 1995, a child whose U.S. parent could not fulfill the physical presence requirement of Section 301 (g) of the INA (per above discussion) **and children who have been adopted** by Americans abroad can become naturalized U.S. citizens even if they reside outside the U.S. Prior to this time families had to reside or intend to reside in the U.S. to obtain Certificates of Citizenship for their minor children.

This is an administrative procedure which is entirely under the jurisdiction of the USCIS in the U.S. It is not administered by the State Department through its consular offices abroad. Once the application is approved by the USCIS, the Certificate is obtained in a single visit by the parent and child to one of the USCIS district offices in the U.S.

ELIGIBILITY REQUIREMENTS

A child living abroad is eligible to become a U.S. citizen under Section 322 if the following requirements are fulfilled:

1. At least one parent is a U.S. citizen (by birth or naturalization);
2. The child is present in the U.S. pursuant to a lawful admission;
3. The child is under age 18 and in the legal and physical custody of the citizen parent;

1. If the citizen parent is an adoptive parent of the child, the child was adopted before age 16 and has been in the legal custody of such parent(s) for at least two years (however, if the child is a beneficiary of an orphan petition (I-600) through U.S. immigration, this two year custody requirement does not apply);
2. If the child is not entering the U.S. to reside there permanently, the child must have an American parent or grandparent who was physically present in the U.S. for a total of five years (with two after the age of 14). The parent's or grandparent's fulfillment of this physical presence requirement can have taken place before or after the birth of the child.

APPLICATION PROCEDURE

The American parent fills out USCIS application forms and must include documents proving that either the parent or grandparent spent the requisite time in the U.S. The forms and supporting documents are mailed to an USCIS District Office in the U.S. for review. See below regarding the need to choose the District Office carefully.

Applicants abroad are notified of preliminary approval, and an appointment is set up for the American parent and child/children to appear at the chosen USCIS District Office.

There, in a short interview, the child takes an oath of renunciation and allegiance¹ and is granted the Certificate of Citizenship. With the Certificate in hand, the child can obtain a U.S. passport, through a local U.S. Passport Office.

THE 18TH BIRTHDAY CUT-OFF

Children who reach their 18th birthdays without having already completed the USCIS naturalization procedure lose their eligibility to become U.S. citizens under Section 322—even if the application has been submitted but has not been fully adjudicated and even if the delay is the fault of the USCIS! Parents of children who are eligible and who will turn 18 in the next 12 months should act immediately.

OBTAINING APPLICATION FORMS

State the number of children to be naturalized, their ages, and whether or not they are adopted. Address application requests to:

Branch Chief, Consumer Service
U.S. Citizenship & Immigration Services
425 I Street, N.W., Room 3214
Washington, D.C. 20536 U.S.A.
Tel: (202) 307-3587 and Fax: (202) 514-8661

THE USCIS' LESS THAN STERLING TRACK RECORD SO FAR

The USCIS in general has not been “user friendly” in implementing this procedure. A number of applicants are successful. Others are meeting with errors or long delays. The ability to process applications efficiently and correctly varies greatly from one District Office to another. All offices are currently facing huge backlogs of work, and processing can take up to a year or more.

EXPERIENCE SHOWS THAT MANY OF THOSE WHO HAVE BEEN SUCCESSFUL USING SECTION 322 HAVE:

1) Carefully chosen the USCIS District Office with which they will work. It is best to avoid USCIS offices in big cities such as Miami, New York, and Los Angeles, and seek out smaller offices such as St. Paul, Buffalo, Albany, Providence, Norfolk VA, Portland OR, Portland, ME, Hartford CT, Helena, MT, Honolulu, HI. The rate of success at the smaller offices is such that filing there is recommended, even if it involves making a special trip to that office from the U.S. city where one has family or other ties.

2) Enlisted the help of their Congressional representatives or Senators to make sure the applications are processed through. Alternatively, some individuals have hired an attorney—a step which is not necessary legally, but one which can be useful in helping to keep a given application from “falling to the bottom of the pile” at the USCIS.

¹ Part of finalizing the naturalization process involves taking an oath of renunciation (of previous nationality) and allegiance (to the U.S.) by children who are judged to be able to understand its meaning. The consequences, if any, to the nationality of a minor child who may take this oath should be evaluated in light of the laws of the country of which he or she is currently a citizen. For example, it is the Citizenship Committee’s understanding that under French law taking an oath, even a renunciatory one, does not endanger French nationality. Similarly, under British law, the Committee understands, a renunciatory oath taken by a person under 18 years of age does not jeopardize that person’s British citizenship. Parents are advised to verify this issue for themselves regarding the laws of the country of which the child is a citizen. It appears that children who do not speak English or are too young to understand will not be asked to take the oath.

NATURALIZATION OF SPOUSES OF U.S. CITIZENS

The naturalization of an alien spouse can be obtained by the spouse's entering the U.S. as an Immediate Relative on an Immigrant Visa and residing there for three years. Spouses of U.S. citizens may submit an application for citizenship at the end of three years continuous residence. U.S. citizens contemplating petitioning for Immigrant Visas (green cards) for an immediate relative are urged to contact the Visa Section of their local U.S. Embassy or Consulate as procedures on this have become tighter, particularly regarding the need to provide a legally binding Affidavit of Support.

MILITARY SERVICE FOR DUAL NATIONALS

U.S. law requires young men to register with the U.S. Selective Service within 30 days of their eighteenth birthdays. This may be done at any U.S. Consular office and involves showing proof of U.S. citizenship and filling out a short form. As of this writing there is no draft in the U.S.

Under current law, dual national young persons do not risk losing their U.S. citizenship by fulfilling their "other" country's compulsory military service. In the event a person chooses to pursue service as a military officer, it is advisable to write a letter to U.S. consular authorities in advance stating the reasons and the person's intention to retain U.S. citizenship so these will be "on the record" for possible future reference. Normally, however, no such letter is necessary in the case of draftees or those who serve as non-officers in a foreign military not hostile to the U.S.

RETENTION OF U.S. CITIZENSHIP GENERALLY

Individuals who are Americans at birth—including those born abroad—are not required to live in the U.S. for any period of time whatsoever in order to retain their citizenship. Since 1994, naturalized citizens may leave the U.S. after naturalization without raising the presumption that they did not intend to reside in the U.S. (Section 104(b) repealing Section 340(d), INA).

LOSS OF U.S. CITIZENSHIP GENERALLY

Section 349 (a) of the INA lists the voluntary acts which, if performed with the intention to relinquish U.S. citizenship, could result in the loss of U.S. citizenship. Among these are:

- Obtaining a foreign nationality upon one's own application,
- Taking an oath of allegiance to a foreign state,
- Serving as an officer in a foreign army or serving in an army hostile to the U.S.,
- Serving as a high official in a foreign government,
- Making a formal renunciation of U.S. citizenship,
- Working to overthrow the U.S. government.

(N.B. Voting in a foreign election is not grounds for loss of U.S. citizenship. That provision of law was struck down by the U.S. Supreme Court in 1967.)

CURRENT POLICY REGARDING LOSS OF CITIZENSHIP

In the fall of 1990 the U.S. State Department issued guidelines concerning loss of U.S. citizenship under Section 349. Particularly given past problems and uncertainties Americans have had regarding taking on a foreign nationality, these guidelines were and continue to be a revolutionary improvement.

Under this changed policy Americans who obtain naturalization in a foreign country will not lose U.S. citizenship unless they want to. The State Department will no longer judge each case on an individual basis regarding the individual's intent to remain a U.S. citizen. Rather, **the Department now assumes—as a basic administrative premise—that U.S. citizens who obtain naturalization in a foreign state intend to retain U.S. citizenship. The Department now will only revoke U.S. citizenship if individuals actually state that this is their desire.**

The following is quoted directly from a circular entitled “Advice About Possible Loss of U.S. Citizenship and Dual Nationality” dated January 22, 1991, from Overseas Citizens Services, Office of Citizens Consular Services, U.S. Department of State, Washington, D.C.:

The Department has a uniform administrative standard of evidence based on the premise that U.S. citizens intend to retain United States citizenship when they obtain naturalization in a foreign state, subscribe to routine declarations of allegiance to a foreign state, or accept non-policy level employment with a foreign government.

In light of [this], a person who:

(1) is naturalized in a foreign country;

(2) takes a routine oath of allegiance; or

(3) accepts non-policy level employment with a foreign government and in so doing wishes to retain U.S. citizenship need not submit prior to the commission of a potentially expatriating act a statement or evidence of his or her intent to retain U.S. citizenship since such an intent will be presumed.

When such cases come to the attention of a U.S. consular officer, the person concerned will be asked to complete a questionnaire to ascertain his or her intent toward U.S. citizenship. Unless the person affirmatively asserts in the questionnaire that it was his or her intention to relinquish U.S. citizenship, the consular officer will certify that it was not the person's intent to relinquish U.S. citizenship and, consequently, find that the person has retained U.S. citizenship.

The circular notes also that the premise that a person intends to retain U.S. citizenship is not applicable when: the individual takes a policy level position in a foreign state; is convicted of treason; performs an act made potentially expatriating by statute accompanied by conduct which is so completely inconsistent with retention of U.S. citizenship that it compels a conclusion that the person intended to relinquish U.S. citizenship; or when an individual formally renounces U.S. citizenship before a consular officer.

It should also be noted that whether or not the current policy is actually useful in a given case also depends upon the laws of the country of which the second nationality is sought. The new policy works very well in countries such as France which do not require renunciation of one's previous citizenship. However, it does not remedy the situation for Americans seeking a second nationality in countries such as Germany which require actual and formal renunciation of one's previous citizenship before granting the new nationality.

Individuals who have lost U.S. citizenship in the past under Section 349 and wish to have their cases reconsidered in light of the current standard may so request through their nearest U.S. consular office. Or they may write directly to:

Director, Office of Overseas Citizens Services
(CA/OCS), Room 4811 NS
U.S. Department of State
Washington, D.C. 20520-4818