

Am I a U.S. Citizen if I Was Born Abroad to a U.S. Citizen Parent?



Immigration Blog

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The United States constitution defines a U.S. citizen as any individual who is a citizen of the United States by law, birth or naturalization. But this isn't always as clear as it may seem, as some individuals — particularly those born abroad to one or more U.S. citizen parents — may or may not be considered a U.S. citizen, sometimes without even knowing it.

So, when is someone in this situation considered a U.S. citizen? The overall answer to this is “it depends.” While one may assume that someone born outside the United States cannot be a U.S. citizen, that is not always true. A child can automatically acquire U.S. citizenship through both parents or even just one (U.S. citizen) parent, depending on the facts of the situation. However, citizenship is not transmitted solely because their parent is a U.S. citizen.

The U.S. government has established specific and differing requirements that must be met for a child born abroad to be documented as a U.S. citizen. This article will focus on the documentary requirements to establish U.S.

citizenship for children born in wedlock to one U.S. citizen parent, on or after Nov. 14, 1986 — the date a major amendment to the Immigration and Nationality Act (INA) took effect, changing the residency and legitimation requirements for transmitting U.S. citizenship to children born outside the United States to U.S.-citizen parents.

For most families, their first step is obtaining a Consular Report of Birth Abroad (CRBA), which is the overseas equivalent of a U.S. birth certificate. Obtaining a CRBA has very specific requirements. Parents must apply for a CRBA and then have an appointment scheduled at a U.S. embassy or consulate. Gathering the necessary documents is a time-consuming part of the process, and some U.S. citizen parents outside the U.S., when their child is born, do not even realize this is available.

While one of the requirements for a child to be documented as a U.S. citizen based on their parentage is for one or both parents to be U.S. citizens, that alone is not enough. When only one parent is a U.S. citizen, he or she must provide documentation showing physical presence in the U.S. for at least five years prior to the child's birth, two of which were after they turned age 14. They can use past transcripts from school, records from doctors' offices or churches, yearbooks, bank account records showing their address at the time, or anything else that establishes a convincing and reliable timeline. But getting your hands on these kinds of records can prove difficult as time passes, since buildings burn down, businesses close, and records disappear or change ownership, making them unavailable, etc. If unexpected challenges arise when attempting to locate documentation of qualifying physical presence in the U.S., individuals can also use affidavits from family members, friends, teachers or anyone else who has specific knowledge of the parent's physical presence in the U.S.

After the CRBA application is submitted, the appointment with the U.S. embassy or consulate comes next. This interview's main purpose is to verify the authenticity of the documents provided and to verify both the biological relationship between the parent and the child, and the parent's history of physical presence in the U.S. prior to the child's birth, all to ensure legal transmission of citizenship to the child.

The final stage of this process is to apply for a U.S. passport and a social security card for the child. Once the CRBA has been issued and approved, the parents can apply for a U.S. passport at the U.S. embassy or consulate where they had their interview. In some locations, the parents can combine the CRBA and passport application. The child's passport and CRBA will serve as proof of the child's U.S. citizenship, but only the passport can enable the child to fly to the U.S. as a U.S. citizen. At land borders, children under 16 can enter the U.S. as U.S. citizens using only their CBRA, but a passport further confirming their U.S. citizenship might make travel across land borders quicker and easier

Once a U.S. citizenship document has been issued, the parents can also apply for a Social Security Number (SSN) for the child, which is a necessary document for the child to participate in U.S. society as an employee, bank account holder and many other aspects of life. While most hospitals in the U.S. today have a birth-registration process that will result in the assignment of an SSN to children (if the parents say "yes" to the question about applying for an SSN at that time), parents of children born abroad need to apply separately on their own for this, for their child. These applications require substantial documentation from the parent(s) but constitute an important step in formally establishing the child's legal U.S. status.

The specific requirements for proving U.S. citizenship of children born outside the U.S. depend on the circumstances of the child's birth, such as whether the child was born in or out of wedlock, whether one or both of the child's parents are U.S. citizens, and whether specific legal requirements are met and documented

appropriately. While the process may be long and complex, it is necessary to go through the proper steps for the child to obtain proper, provable U.S. citizenship.

For any parents or children facing this situation, it is highly recommended to seek competent immigration counsel to discuss how to start or where to go next in the process. The immigration team at Lippes Mathias LLP is available and eager to be of assistance to you in these matters. For further guidance or questions on this process, contact Eileen M. Martin (emartin@lippes.com) or Elizabeth M. Klarin (eklarin@lippes.com).

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