**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of the Director* (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

August 28, 2019 PA-2019-05

# Policy Alert

SUBJECT: Defining "Residence" in Statutory Provisions Related to Citizenship

## Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual to address requirements for "residence" in statutory provisions related to citizenship, and to rescind previous guidance regarding children of U.S. government employees and members of the U.S. armed forces employed or stationed outside the United States.

## Background

Numerous statutory provisions related to citizenship[1] require applicants or their U.S. citizen parents to "reside" or to have had a "residence" in a particular location. USCIS is updating the Policy Manual to better define residence and clarify the distinction between U.S. residence and physical presence. In addition, USCIS is updating its policy regarding children of U.S. government employees and U.S. armed forces members employed or stationed outside the United States to explain that they are not considered to be "residing in the United States" for purposes of acquiring citizenship under INA 320.

This guidance, contained in Volume 12 of the Policy Manual, is effective as of October 29, 2019 (see attached) and applies prospectively to applications filed on or after that date.[2]

## Policy Highlights

- Clarifies that temporary visits to the United States do not establish U.S. residence and explains the distinction between residence and physical presence in the United States.
- Explains that USCIS no longer considers children of U.S. government employees and U.S. armed forces members residing outside the United States as "residing in the United States" for purposes of acquiring citizenship under INA 320.[3]

**Citation:** Volume 12: Citizenship and Naturalization, Part H, Children of U.S. Citizens [12 USCIS-PM H]; Part I, Military Members and their Families [12 USCIS-PM I].

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[1] See, for example, INA 301(c), INA 320(a)(3), and INA 322(a)(4).
[2] Children who have already been recognized through the issuance of a Certificate of Citizenship as having acquired U.S. citizenship under INA 320 will not be affected by this policy change.
[3] Instead, the U.S. citizen parent of such a child may apply for naturalization on the child's behalf under INA 322.

**This policy is effective on October 29, 2019 and will be incorporated into the Policy Manual accordingly.**

USCIS Policy Manual, Volume 12: Citizenship & Naturalization
Part H - Children of U.S. Citizens

## Chapter 2. Definition of Child and Residence for Citizenship and Naturalization

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### F. Definition of U.S. Residence

The term residence is defined in the Immigration and Nationality Act (INA) as the person's principal actual dwelling place in fact, without regard to intent.[1] A person is not required to live in a particular place for a specific period of time in order for that place to be considered his or her "residence." However, the longer a stay in a particular place, the more likely it is that a person can establish that place is his or her residence.

1. Difference between Residence and Physical Presence

The term residence should not be confused with physical presence, which refers to the actual time a person is in the United States, regardless of whether he or she has a residence in the United States.[2] Although some provisions related to naturalization and citizenship require specific time periods of physical presence, residence, or both,[3] in contrast, there is no specific time period of residence required for purposes of acquiring citizenship where a child is born outside the United States of two U.S. citizen parents.[4]

For example, a person who spent time travelling in the United States for a year living in different hotel rooms in different cities or towns every week and who did not own or rent any property or have another principal dwelling place in the United States, would likely be able to establish 1 year of physical presence. However, without additional evidence of a principal actual dwelling place in the United States, that person could not establish residence in the United States. The table below provides a few examples on how travel would affect the physical presence and the residence requirements. However, the examples are not dispositive and individual cases will be determined based on the individual merits and evidence presented.

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[1] See INA 101(a)(33). See *Savorgnan v. U.S.*, 338 U.S. 491, 506 (1950).
[2] Examples of documentary evidence showing physical presence may include: academic transcripts, military records, official vaccination records, medical records, employment records, and lease agreements.
[3] See INA 301. See INA 309. For more information on physical presence, see Part D, General Naturalization Requirements, Chapter 4, Physical Presence [12 USCIS-PM D.4].
[4] See INA 301(c).

**Examples Illustrating Physical Presence and Residence in the United States**

| Scenarios | Physical Presence | Residence |
|---|---|---|
| U.S. citizen parent owns a home and works in a foreign country. Parent travels to the United States and:<br>• Stays 2 weeks with a cousin in New York,<br>• Stays 2 weeks in New York with his or her parents, and<br>• Travels to Florida on vacation for 2 weeks. | 6 weeks | No U.S. residence<br><br>(Residence is outside the United States) |
| Parent is a U.S. citizen born in a foreign country, who never lived in or visited the United States. His child moved to the United States as an adult and claimed U.S. citizenship. | No physical presence[5] | No U.S. residence |
| As a child, U.S. citizen parent came to the United States for 3 consecutive summers to attend a 2-month long camp. The parent lived and went to school in a foreign country for the rest of the year. | 6 months | No U.S. residence<br><br>(Residence is outside the United States) |
| U.S. citizen parent worked in the United States for 9 months in a year for 8 years out of a 9-year period. (Parent returned to Mexico to spend the remaining 3 months of each year with family, who never visited the United States.) | 9 months in a year for 8 years | U.S. residence established[6] |

2. Special Considerations

Various circumstances may affect whether USCIS considers a person to be residing in the United States, and therefore whether a U.S. citizen may transmit citizenship to his or her children.

*U.S. Citizens who were Born, But Did Not Reside, in the United States*

A U.S. citizen may have automatically acquired U.S. citizenship based on birth in the United States,[7] but never actually resided in the United States. This U.S. citizen will not have established

[5] See *Madar v. USCIS*, 918 F.3d 120 (3rd Cir. 2019). In that case, the appellant argued that he was "constructively resident" in the United States because his U.S. citizen father lived during the relevant time in what was then Communist Czechoslovakia and was not free to leave the country. The court rejected that claim noting that physical presence requirements can be constructively satisfied only in extraordinary circumstances, such as, for example, when a U.S. government error causes citizenship to lapse, preventing the foreign-born parent from complying with the physical presence requirements.
[6] See *Alcarez-Garcia v. Ashcroft*, 293 F.3rd 1155 (9th Cir. 2002).
[7] See U.S. Const. amend XIV. See INA 301(a).

residence in the United States, and may be unable to transmit U.S. citizenship to his or her own children.

For example, if the U.S. citizen, still having never resided in the United States, subsequently marries another U.S. citizen who never resided in the United States, and they give birth to a child outside the United States, the child will not acquire citizenship at birth under INA 301(c) because neither U.S. citizen parent can show the requisite residence in the United States. However, if the U.S. citizen parent had returned to the United States after his or her birth and established residence before giving birth to the child outside the United States, then he or she may be able to meet the residence requirement based on that period of residence and transmit U.S. citizenship to his or her children.

*Commuters and Temporary Visits to the United States*

Residence is more than a temporary presence or a visit to the United States. Therefore, temporary presences and visits are insufficient to establish residence for the purposes of transmitting citizenship. For example, someone who resides along the border in Mexico or Canada, but works each day in the United States, cannot use his or her workplace to establish a residence.

Vacations or brief stays in the United States do not qualify as residence in the United States. However, attendance at school, college, or university in the United States for an extended period of time may be considered as residence in the United States depending upon the totality of the circumstances.[8]

*Owning or Renting Property*

A person does not need to own or rent property in the United States in order to establish residence. In addition, owning or renting property outside of the United States does not automatically establish lack of residence in the United States. Owning and renting property in the United States may help to establish residence in the United States if the person also establishes that he or she actually lived in that property, for example. A person who owns property but never lived in the property would not be able to establish residence based on owning that property.

3. Evidence

A U.S. citizen who was born in the United States generally meets the residence requirement as long as he or she can present evidence to demonstrate that his or her mother was not merely

[8] See *Matter of M--*, 4 I&N Dec. 418 (BIA 1951) (continuous stay in the United States as a college student for almost 3 years held to have residence in the United States for purposes of Section 201(g) of the Nationality Act of 1940, Pub. L. 76-853, 54 Stat. 1137, 1139 (October 14, 1940)).

transiting through or visiting the United States at the time of his or her birth.[9] For example, a long form birth certificate is sufficient evidence if it shows a U.S. address listed as the mother's residence at the time of the U.S. citizen's birth.

If a U.S. citizen's birth certificate indicates that his or her mother's address was outside of the United States at the time of the birth, USCIS may find that the U.S. citizen does not meet the residence requirement unless the U.S. citizen can prove U.S. residence.

Documents that can help demonstrate residence include, but are not limited to, the following:

- U.S. marriage certificate indicating the address of the bride and groom;
- Property rental leases, property tax records, and payment receipts;
- Deeds;
- Utility bills;
- Automobile registrations;
- Professional licenses;
- Employment records or information;
- Income tax records and income records, including W-2 salary forms;
- School transcripts;
- Military records; and
- Vaccination and medical records.

## Chapter 3. U.S. Citizens at Birth (INA 301 and 309)

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## Chapter 4. Automatic Acquisition of Citizenship after Birth (INA 320)

[9] For more information on how the rules may vary depending on whether the U.S. citizen is the mother or father of a child seeking to acquire citizenship, see Chapter 3, U.S. Citizens at Birth (INA 301 and 309), Section A, General Requirements for Acquisition of Citizenship at Birth [12 USCIS-PM H.4(A)] through Section C, Child Born Out of Wedlock [12 USCIS-PM H.4(C)].

**A. General Requirements: Genetic, Legitimated, or Adopted Child Automatically Acquiring Citizenship after Birth[1]**

A child born outside of the United States automatically becomes a U.S. citizen when all of the following conditions have been met on or after February 27, 2001:[2]

- The child has at least one parent, including an adoptive parent[3] who is a U.S. citizen by birth or through naturalization;
- The child is under 18 years of age;
- The child is a lawful permanent resident (LPR);[4] and
- The child is residing[5] in the United States in the legal and physical custody of the U.S. citizen parent.[6]

A child born abroad through Assisted Reproductive Technology (ART) to a U.S. citizen gestational mother who is not also the genetic mother may acquire U.S. citizenship under INA 320 if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and

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[1] See INA 320. See Nationality Chart 3.
[2] These provisions were created by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395 (October 30, 2000), which amended earlier provisions of the Immigration and Nationality Act (INA) regarding acquisition of citizenship after birth for foreign-born children who have U.S. citizen parent(s). These CCA amendments became effective on February 27, 2001.
[3] As long as the child meets the requirements to be considered an adopted child for immigration purposes, as outlined in INA 101(b)(1)(E), INA 101(b)(1)(F), or INA 101(b)(1)(G).
[4] A person is generally considered to be an LPR once USCIS approves his or her adjustment application or once he or she enters the United States with an immigrant visa. See INA 245(b). For certain classifications, however, the effective date of becoming an LPR is a date that is earlier than the actual approval of the status (commonly referred to as a "rollback" date). See Part D, General Naturalization Requirements, Chapter 2, Lawful Permanent Resident (LPR) Admission for Naturalization, Section A, Lawful Permanent Resident (LPR) at Time of Filing and Naturalization [12 USCIS-PM D.2(A)]. In addition, a person who is born a U.S. national and is the child of a U.S. citizen may establish eligibility for a Certificate of Citizenship without having to establish LPR status.
[5] For the definition of residence, see Chapter 2, Definition of Child and Residence for Citizenship and Naturalization, Section F, Definition of Residence [12 USCIS-PM H.2(F)].
[6] See INA 320. See 8 CFR 320.2. Children of U.S. government employees, including members of the armed forces, who live with parents who are stationed outside the United States are not considered to be "residing in" the United States for purposes of acquisition of citizenship under INA 320. For a more thorough discussion, see Chapter 5, Child Residing Outside of the United States (INA 322), Section E, Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K) [12 USCIS-PM H.6(E)].

- The child meets all other requirements under INA 320, including that the child is residing in the United States in the legal and physical custody of the U.S. citizen parent.[7]

A stepchild who has not been adopted does not qualify for citizenship under this provision.

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## Chapter 5. Child Residing Outside of the United States (INA 322)

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### D. Temporary Presence by Lawful Admission and Status in United States

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### E. Children of U.S. Government Employees and Members of the Armed Forces Employed or Stationed Abroad

Effective October 29, 2019, children residing abroad with their U.S. citizen parents who are U.S. government employees or members of the U.S. armed forces stationed abroad are not considered to be residing in the United States for acquisition of citizenship. Similarly, leave taken in the United States while stationed abroad is not considered residing in the United States even if the person is staying in property he or she owns.

Therefore, U.S. citizen parents who are residing outside the United States with children who are not U.S. citizens should apply for U.S. citizenship on behalf of their children under INA 322[8], and must complete the process before the child's 18th birthday.[9] The child of a member of the U.S. armed forces accompanying his or her parent abroad on official orders may be eligible to complete all aspects of the naturalization proceedings abroad. This includes interviews, filings, oaths, ceremonies, or other proceedings relating to naturalization.[10]

Applications filed on or after October 29, 2019 are subject to this policy. The policy in place before October 29, 2019 applies to applications filed before that date. Children who have already been recognized through the issuance of a Certificate of Citizenship as having acquired U.S. citizenship under INA 320 are not affected by this policy change.

*Background*

Children born outside the United States who did not acquire U.S. citizenship at birth have two

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[7] For a more thorough discussion, see Chapter 2, Definition of Child for Citizenship and Naturalization, Section E, Child Born Abroad through Assisted Reproductive Technology [12 USCIS-PM H.2(E)].
[8] See Chapter 9, Spouses, Children, and Surviving Family Benefits, Section C, Children of Military Members [12 USCIS-PM I.9(C)].
[9] See INA 322(a)(3).
[10] See INA 322(d).

methods by which they could become U.S. citizens. The first method permits children to automatically become U.S. citizens under INA 320. Among other eligibility criteria, the statute requires the child to be "residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence."[11]

The second method is for the U.S. citizen parent of a child "who has not acquired citizenship automatically under section 320" to apply for U.S. citizenship on the child's behalf under INA 322. To be eligible for citizenship under INA 322, the statute requires the child to be "residing outside of the United States in the legal and physical custody of the applicant (or, if the citizen parent is deceased, an individual who does not object to the application)."[12]

USCIS policy previously provided that children of U.S. government employees and members of the U.S. armed forces who were employed or stationed outside of the United States should be considered to be both "residing in the United States" for purposes of INA 320 and "residing outside of the United States" for purposes of INA 322.[13] Their parents were permitted to file an Application for Certificate of Citizenship (Form N-600) on their behalf and obtain a Certificate of Citizenship showing that they had acquired citizenship automatically, or their parents were permitted to file an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) in order to apply for naturalization on the child's behalf.

USCIS previously arrived at the interpretation that children of members of the U.S. armed forces could be considered as "residing in the United States" when stationed abroad by comparison to naturalization under INA 316.

For purposes of naturalization under INA 316, eligibility requirements include continuous residence in the United States for at least 5 years after being lawfully admitted for permanent residence.[14] An absence from the United States for a continuous period of 1 year of more during the period for which continuous residence is required, breaks the continuity of such residence, except in certain cases when the absence is related to qualifying employment, including an absence by a U.S. government employee who establishes that he or she is absent from the United States on behalf of the U.S. government.[15] The spouse and dependent unmarried sons and daughters of such an employee are also entitled to this exception excusing the absence from the United States during which they are residing outside of the United States as dependent members of the U.S. government employee's household.

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[11] See INA 320(a)(3).
[12] See INA 322(a)(4).
[13] See Policy Manual Technical Update, Child Citizenship Act and Children of U.S. Government Employees Residing Abroad (July 20, 2015); and USCIS Policy Memorandum, No. 103, *Acquisition of Citizenship by Children of U.S. Military and Government Employees Stationed Abroad under Section 320 of the Immigration and Nationality Act (INA)*, issued May 6, 2004.
[14] See INA 316(a). See Part D, General Naturalization Requirements, Chapter 3, Continuous Residence [12 USCIS-PM D.3].
[15] See INA 316(b).

Based on this treatment of U.S. government employees and their children in the context of naturalization under INA 316, USCIS determined that "residing in the United States" for purposes of naturalization under INA 320 should likewise be interpreted to include children of U.S. military and government employees stationed outside of the United States who are residing outside of the United States with their parents.

However, as of October 29, 2019, USCIS is no longer committed to this reasoning because the prior USCIS policy guidance is in conflict with several provisions of the Immigration and Nationality Act (INA), especially with changes to the acquisition of citizenship statutes that occurred in 2008, after the initial policy determination in 2004.

First, permitting a child to be eligible simultaneously for a Certificate of Citizenship under INA 320 and for naturalization under INA 322 conflicts with the language of INA 322(a), which states that a parent "may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under INA 320."

Second, considering children who are living outside of the United States to be "residing in the United States" conflicts with the definition of "residence" at INA 101(a)(33), which defines "residence" as a person's "principal, actual dwelling place in fact."

Third, considering these children to be "residing in the United States" is at odds with INA 322(d), which was enacted in 2008,[16] 4 years after USCIS issued policy guidance on the topic. When Congress enacted INA 322(d), it provided for special procedures in cases involving the naturalization of "a child of a member of the Armed Forces of the United States who is authorized to accompany such member and reside abroad with the member pursuant to the member's official orders, and is so accompanying and residing with the member." Congress placed this provision under INA 322, which applies only to children "residing outside of the United States." It did not provide similar language for such children to acquire citizenship under INA 320.

Furthermore, in the same legislation, Congress also explicitly provided that spouses of U.S. armed forces members who reside outside of the United States due to the member's official orders are considered to be residing in the United States for naturalization purposes.[17] The fact that no similar provision was included for children of U.S. armed forces members in the acquisition of citizenship context is significant.[18]

Finally, the prior USCIS policy produced confusion in several respects. First, it may have resulted in inconsistent adjudications by USCIS officers adjudicating applications for certificates of citizenship, and U.S. Department of State (DOS) consular officers adjudicating passport applications. DOS has interpreted INA 320 to apply solely to children who are physically in the

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[16] See National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat 3 (January 28, 2008).
[17] See INA 319(e).
[18] See, for example, *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)) ("[W]here Congress includes particular language in one section of a statute but omits it in another ..., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

United States and does not recognize an exception by policy for children of U.S. military and U.S. government employees stationed outside of the United States.[19]

In addition, the policy resulted in confusion as to the date a child acquired U.S. citizenship, depending on what form the parent (a U.S. government employee or U.S. armed forces member employed or stationed outside of the United States) used: Form N-600K would result in naturalization proceedings under INA 322, while Form N-600 would result in automatic acquisition of citizenship under INA 320. Children who acquire U.S. citizenship automatically are citizens as of the date on which they meet all eligibility criteria under INA 320, but children who seek naturalization under INA 322 become citizens upon taking and subscribing to the oath of allegiance (or upon approval of the application if the oath is waived).

Under USCIS' prior policy guidance, a child of a U.S. government employee or U.S. armed forces member who was employed or stationed outside of the United States could meet all of the eligibility criteria for acquiring citizenship under INA 320 while residing outside of the United States, but still seek to naturalize under INA 322. In such a case, the date on which the child became a citizen would have been unclear.

For all these reasons, USCIS rescinded the prior USCIS policy permitting children of U.S. government employees and U.S. armed forces members stationed outside of the United States to be considered "residing in" the United States.

**F. Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)**

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**G. Documentation and Evidence**

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**H. Citizenship Interview and Waiver**

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**I. Decision and Oath of Allegiance**

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Part I - Military Members and their Families

[19] See 8 FAM 301.10-2(A), Evidence of Citizenship for Children Born Abroad to U.S. Citizen Parent(s) Under INA 320 as amended by the Child Citizenship Act of 2000.

## Chapter 9. Spouses, Children, and Surviving Family Benefits

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### C. Children of Military Members[20]

The table below serves as a quick reference guide to certain residence, physical presence, and overseas naturalization provisions for children of service members. The paragraphs that follow the table provide further guidance on each provision.

**Residence, Lawful Admission, and Overseas Naturalization for Children of Members of the U.S. Armed Forces**

| INA Section[21] | Place of Residence | Lawful Admission | Treatment of Time Residing Abroad | Automatic Citizenship or Overseas Naturalization |
|---|---|---|---|---|
| 320 | United States | Must be LPR | Must reside with U.S. citizen parent in the United States | May acquire automatic citizenship (must take oath in the United States) |
| 322 | Outside the United States | No lawful admission required | Must reside with U.S. citizen parent serving abroad | Must apply, but may complete entire naturalization process from outside the United States (must take oath before 18th birthday) |

1. Children of Service Members Residing in the United States (INA 320)

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[20] This section describes certain benefits on residence, lawful admission, and overseas naturalization for children of service members. See Part H, Children of U.S. Citizens [12 USCIS-PM H], for guidance on the general naturalization, residence and acquisition of citizenship provisions.
[21] See 8 CFR 320.2 and 8 CFR 322.2.