

From: U.S. Citizenship and Immigration Services <uscis@messages.dhs.gov>

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To:

Subject: USCIS Updates Guidance on Determining Custody for Children Acquiring U.S. Citizenship



U.S. Citizenship
and Immigration
Services

Public Engagement
Division



USCIS Updates Guidance on Determining Custody for Children Acquiring U.S. Citizenship

U.S. Citizenship and Immigration Services is issuing policy guidance in the USCIS [Policy Manual](#) to clarify the legal and physical custody requirements for purposes of acquisition of U.S. citizenship under section 320 and naturalization under section 322 of the Immigration and Nationality Act (INA). This update also provides expanded guidance on adjudicating derivation of U.S. citizenship under former INA section 321 where the relevant events occurred before the Child Citizenship Act of 2000.

The guidance will help ensure consistent determinations of legal and physical custody for adjudication of citizenship claims and provide more detailed guidance on how to determine legal and physical custody for eligibility for a certificate of citizenship in these cases.

This update, contained in [Volume 12, Part H](#) of the Policy Manual:

- Clarifies guidance on the legal and physical custody requirements and expands the current guidance on determining legal and physical custody of children of U.S. citizens for acquisition of citizenship purposes;
- Expands guidance on when USCIS considers a child to be in the legal custody of the U.S. citizen parent, clarifies the effect of a nunc pro tunc (retroactive) correction of a custody order, and clarifies when USCIS may recognize private custody agreements;
- Clarifies that USCIS considers a U.S. citizen parent who has actual uncontested custody of a child to have legal custody for purposes of acquisition of citizenship when there is no judicial determination on legal custody and the relevant jurisdiction's law does not determine which parent has legal custody of the child;
- Provides that a U.S. citizen parent has physical custody of a child when the child resides or physically lives with the parent;
- Expands guidance on adjudicating derivation of U.S. citizenship claims before the Child Citizenship Act of 2000, by providing detailed clarification on each of the requirements of former INA section 321, including the legal custody requirements; and
- Clarifies that USCIS cannot issue a Certificate of Citizenship to any applicant who does not take the Oath of Allegiance and is not eligible for a waiver of the oath.

More Information

For more information, see the [Policy Alert \[PDF\]](#). For policy suggestions, we welcome feedback at policyfeedback@uscis.dhs.gov.

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