



Lawyers since 1897

Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
Seattle, WA 98101-3034

www.ryanswansonlaw.com

Naturalization and Citizenship Requirements

By Joel H. Paget

INDEX

	<u>Page</u>
I. REQUIREMENTS FOR NATURALIZATION.....	1
A. No person’s right to be naturalized may be denied because of race, sex or marital status.	1
B. No person, except as otherwise provided in this title, shall be naturalized, unless such applicant satisfies the following:.....	1
1. The applicant for naturalization must be lawfully admitted for permanent residence.	1
2. The applicant must be 18 years of age at time of filing of application for naturalization.	1
3. The applicant must have satisfied certain residency requirements.....	1
4. The Applicant Must be a Person of Good Moral Character.....	3
5. Attachment and Favorable Disposition to the Good Order and Happiness of the Nation.....	6
6. Barred Classes.....	6
7. Literacy and Knowledge of History and Government Requirements.	8
II. NATURALIZATION OF SPECIAL CLASSES.....	8
<p>If no exemptions specifically provided for, then the substantive requirements under the General Provisions must be met.</p>	
A. Spouse of American Citizen.	8
1. Naturalization of married persons under INA § 319(a).	9
2. Naturalization of married persons under INA § 319(b), 8 U.S.C. § 1430(b).	9
B. Naturalization of Children Born Outside of the U.S. Upon Application Filed by Parent who is a U.S. citizen (or, if the U.S. citizen parent has died during the preceding five years, a U.S. citizen grandparent or U.S. citizen legal guardian. (INA § 322, 8 U.S.C. § 1433.).....	10
1. Lawful admission and maintaining lawful status.....	10

2.	Child must be under age 18 at time of naturalization.....	10
3.	Only one parent required to be a U.S. citizen (the applying parent).	10
4.	U.S. citizen parent has at the time of filing (or, at the time of his/her death) has been physically present in the U.S. or its outlying possessions, for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen.	10
5.	Child must be residing with citizen parent(s).	10
6.	Parent (s) and child must be residing within state or the district of the USCIS in the U.S. No specific U.S. residence, state residence or physical presence in the U.S. required.	11
7.	Good moral character and attachment presumed if child is of “tender years.”.....	11
8.	Child is not otherwise barred by INA § 313, 314, 315 and 318.....	11
9.	No literacy/education requirements.	11
10.	Adopted children are eligible for benefits of INA § 322.....	11
11.	No literacy/educational requirements.	11
C.	Members of the United States Armed Forces.....	11
D.	Seamen.....	12
E.	Other Special Groups.....	12
III.	CITIZENSHIP AT BIRTH.....	13
A.	Birth in United States or Territories.....	13
1.	The Fourteenth Amendment to the United States Constitution grants citizenship to all persons born in the United States, but also subjects them to its jurisdiction. This provision is codified in INA § 301(a), 8 U.S.C. § 1401(a).....	13
2.	Persons born in an outlying possession of the United States, defined by INA § 101(a)(29), 8 U.S.C. § 1101(a)(29), to include American Samoa and Swains Island are citizens so long as:	13

3.	Persons born in territories of the United States may be citizens. INA §§ 302 through 307, 8 U.S.C. § 1402-1407.	13
B.	Birth Outside of the United States The Fourteenth Amendment does not grant citizenship to persons born outside of the United States. <i>Rogers v. Bellei</i> , 401 U.S. 815 (1971).	15
1.	Child of Two U.S. Citizen Parents - INA § 301(c), 8 U.S.C. § 1401(c).	15
2.	Children Born Out of Wedlock by U.S. Parent - INA § 309(c), 8 U.S.C. § 1409(c).	15
3.	Child of One U.S. Citizen Parent and One U.S. National - INA § 301(d) 8 U.S.C. Section 1401(d).	16
4.	Child of one U.S. Citizen Parent - INA § 301(g), 8 U.S.C. § 1401(g).	16
IV.	DUAL CITIZENSHIP	17
A.	United States citizen may also be a citizen of another country under several circumstances:	17
B.	Dual nationality is not favored under international law.....	17

NATURALIZATION AND CITIZENSHIP REQUIREMENTS

BY JOEL H. PAGET

I. REQUIREMENTS FOR NATURALIZATION

A. No person's right to be naturalized may be denied because of race, sex or marital status. (INA § 311, 8 U.S.C. § 1422.)

B. "No person, except as otherwise provided in this title, shall be naturalized, unless such applicant, (1) immediately preceding the date of filing his application for naturalization has resided continuously, after being lawfully admitted for permanent residence, within the United States for at least five years immediately preceding the date of filing his application has been physically present therein for a period totaling at least half of that time and has resided within the State in which the applicant filed the application for at least six months, (2) has resided continuously within the United States from the date of application up to the time of admission to citizenship and (3) during all the period referred to in this subsection has been and still is a person of good moral character, attached to the principal of the Constitution of the United States, and well disposed to the good order and happiness of the United States." (INA § 316, 8 U.S.C. § 1427.)

1. The applicant for naturalization must be lawfully admitted for permanent residence. (INA § 318, 8 U.S.C. § 1429.)

a. Lawfully admitted for permanent residence means "the status of having been lawfully accorded the privilege of residing permanently in the United States as immigrant in accordance with the immigration laws, such status not having changed." (INA § 101(a)(20), 8 U.S.C. § 1101(a)(20).)

b. Exception to the general rule is found in INA § 329(a), 8 U.S.C. § 1440(a), whereby a person is eligible for naturalization notwithstanding he is not lawfully admitted for permanent residence provided he has honorable service in times of war or other declared hostilities with the U.S. Armed Forces and enlisted or was inducted while in the United States, the Canal Zone, American Samoa or Swains Island.

2. The applicant must be 18 years of age at time of filing of application for naturalization. (INA § 334(b), 8 U.S.C. § 1445(b).)

Exceptions are found in INA § 329(a), 8 U.S.C. § 1440(a) dealing with honorable, active-duty service in U.S. Armed Forces during designated periods and INA § 322, 8 U.S.C. § 1433 dealing with naturalization of minor children with one United States citizen parent. These sections of law allow aliens to be naturalized while under the age of 18.

3. The applicant must have satisfied certain residency requirements. "Residence" is "place of general abode; the place of general abode of a person means his

principal, actual dwelling place in fact, without regard to intent.” (INA § 101(a)(33), 8 U.S.C. § 1101(a)(33).)

a. Must have continuous residence in U.S. subsequent to lawful admission for a period of five years (three years, if married to citizen spouse), immediately preceding the filing of the application for naturalization.

b. Must be a resident in the United States and within the state or within the district of the INS in the United States where the application is filed. (INA § 316(a), 8 U.S.C. § 1427(a).)

c. Must have resided within the state or within the district of the INS in the U.S. in which the application was filed for at least three months immediately preceding the filing of the application or immediately preceding the examination on the application if the application is filed within three months of the end of the three or five period for residency.

d. Must be physically present in the U.S. for thirty months of the five years preceding the date of filing the application.

e. Must reside in the U.S. from the time of filing until time of admission to citizenship.

f. May file up to three months in advance of ability to meet the “physical presence” requirement if filing under either the general eligibility section or the section covering reduced residence requirements for eligible spouses of U.S. citizens. (INA § 316(a), 8 U.S.C. § 1427(a)).

g. Must have intention to reside permanently in the U.S. following naturalization.

h. Effect of absences from U.S. during the statutory period. (INA § 316(b), 8 U.S.C. § 1427(b).)

(1) For absences of six months or less, there is no break in continuous residence. See *U.S. v. Menasche*, 348 U.S. 528 (1955).

(2) For an absence of more than six months, but less than one year, there raises a rebuttable presumption of abandonment of continuous residency for naturalization purposes. See *In re Naturalization of Vafaei-Makhsos*, 597 F. Supp. 499 (D.C. Minn. 1984); *In re Dielsi*, 240 N.Y.S. 662 (1929).

(3) For an absence of one year or more, there is a break in continuous residency. (INA § 316(b), 8 U.S.C. § 1427(b).)

(a) Exception for persons serving abroad in the U.S. Armed Forces. See Section V.C. below.

(b) Application to preserve residence; Form N-470: (INA § 316(b) and (c) and § 317, 8 U.S.C. § 1427(b) and (c), 1428.), available only to aliens who

establish uninterrupted period of one year physical presence as lawful permanent resident. See Matter of Copeland, Interim Dec. 3084 (Comm'r. 1988)

The following persons may apply to preserve residence for naturalization purposes:

- (i) U.S. Government employee.
- (ii) Employee of an American Institution of Research recognized by Attorney General. (See, 8 C.F.R. § 316 a.2, a.3 and a.4 for a list of recognized institutes and organizations.)
- (iii) Employee of a Public International Firm or corporation (foreign trade and commerce) or foreign subsidiary (more than 50% owned by U.S. firm or corporation).
- (iv) Employee of a Public International Organization of which the U.S. is a member by treaty or statute, but not employed until after lawful admission.
- (v) Person engaged in religious functions or serving as a missionary, brother, nun or sister.

Requirements for such applicants and benefits received if application is granted.

- (i) Lawful admission for permanent residence.
- (ii) Residence and physical presence.
 - (I) General rule: continuous residence and physical presence for one year prior to absence.
 - (II) Exceptions: religious; CIA employee.
- (iii) Timely application by filing Form N-470 or the employer requests the benefit by letter prior to the expiration of one year of continuous absence from the United States.
- (iv) Both residence and physical presence can be preserved by a person engaged in religious functions, service as a missionary, brother, nun or sister, and a government employee.
- (v) Preservation of state residence.

4. The Applicant Must be a Person of Good Moral Character. (INA § 316(a), 8 U.S.C. § 1427(a), INA § 101(f), 8 U.S.C. § 1101(f).)

a. Not specifically defined under the statute, although INA Section 101(f) sets forth certain classes of persons ineligible for “good moral character.” See paragraph d below.

b. “Good moral character has been interpreted as meaning character which measures up to the standards of average citizens of the community in which the applicant resides and thus does not necessarily require the highest degree of moral excellence.” (INS Interpretation 316.1(e)(1).

c. Good moral character covers the statutory period, as well as time from filing of application through the administration of the oath of allegiance. Generally speaking, the USCIS Examiner bases his or her recommendation on the five years immediately preceding the filing of the application as to the alien’s good moral character. But the USCIS may take into consideration the applicant’s conduct and acts at any time prior. (INA § 316(e), 8 U.S.C. § 1427(e). 8 C.F.R. § 316.10(a)(2)).

d. INA § 101(f) defines who is not a person of good moral character. This is not an all-inclusive list.

(1) Convicted of murder.

(2) Convicted of an aggregate felony as defined in INA § 101(a)(43).

(3) If during the statutory period the applicant:

(i) Committed one or more crimes involving moral turpitude, other than a purely political offense, for which the applicant was convicted, except as specified in INA § 212(a)(2)(A)(ii); and

(ii) Committed two or more offenses for which the applicant was convicted and the aggregate sentence actually imposed was five years or more, provided that, if the offense was committed outside the United States, it was not a purely political offense;

(iii) Violated any law of the United States, any state, or any foreign country relating to a controlled substance, provided that the violation was not a single offense for simple possession of 30 grams or less of marijuana;

(iv) Admits committing any criminal act covered by paragraphs (d)(3)(i), (ii) or (iii) above for which there was never a formal charge, indictment, arrest, or conviction, whether committed in the United States or any other country;

(v) Was connected and sentenced to imprisonment in excess of six months whether served or not (provided that such confinement was not outside the United States due to a conviction outside the United States for a purely political offense);

(vi) Has given false testimony to obtain any benefit from the INA, yet the testimony was made under oath or affirmation and with an intent to obtain

an immigration benefit; this prohibition applies regardless of whether the information provided in the false testimony was material, in the sense that if given truthfully it would have rendered ineligible for benefits either the applicant or the person on whose behalf the applicants sought the benefits;

(vii) Is or was involved in prostitution or commercialized vice as described in INA § 212(a)(2)(D);

(viii) Is or was involved in the smuggling of a person or persons into the United States as described in INA § 212(a)(6)(E);

(ix) Has practiced or is practicing polygamy;

(x) Committed two or more gambling offenses for which the applicant was convicted;

(xi) Earns his or her income principally from illegal gambling activities; or

(xii) Is or was a habitual drunkard.

(4) Unless the applicant establishes extenuating circumstances, the applicant shall be found to lack good moral character if, during the statutory period, the applicant:

(i) Willfully failed to refused to support dependents;

(ii) Had an extramarital affair which tended to destroy an existing marriage; or

(iii) Committed unlawful acts that adversely reflected upon the applicant's moral character, or was convicted or imprisoned for such acts, although the acts do not fall within the purview of paragraphs (d)(1)(2) or (3) above. (8 C.F.R. § 316.10(b))

e. Probation or Parole. An applicant who has been on probation, parole, or suspended sentence during all or part of the statutory period is not thereby precluded from establishing good moral character, but such probation, parole or suspended sentence may be considered by the USCIS in determining good moral character. An application will not be approved until after the probation, parole, or suspended sentence has been completed. (8 C.F.R. § 316.10(c)).

f. Record Expungement. Where an applicant has had his or her record expunged relating to one of the narcotics parole offenses under INA § 212(a)(2)(A)(i)(II) and § 241(a)(2)(B), that applicant shall be considered as having been "convicted" within the meaning of 8 C.F.R. § 316.10(b)(2)(ii), or, if confined, as having been confined as a result of "conviction" for purposes of 8 C.F.R. § 316.10(b)(2)(iv).

g. Homosexuals. General rule is that homosexual activity will not in and of itself preclude a finding of good moral character. See *Nemetz v. INS*, 647 F.2d 432 (4th Cir. 1981). Contra: *Matter of Longstaff*, 716 F.2d 1439 (5th Cir. 1983).

5. Attachment and Favorable Disposition to the Good Order and Happiness of the Nation.

a. “Well disposed” and “attachment” are mental terms.

(1) “Well disposed” is not hostile. It includes dissenters, but not advocates of change through violence. See *In re Battle*, 379 F. Supp. 334 (E.D.N.Y. 1974).

(2) “Attachment” is a stronger term and implies a depth of conviction that would lead to the active support of the Constitution. See *United States v. Rossler*, 144 F.2d 463 (2nd Cir. 1944).

(a) Oath of Allegiance. A person with the requisite loyalty and attachment must take the full oath or affirmation of allegiance to the United States, without any mental reservation. A applicant is allowed to take a modified oath provided his basis of taking same is due to his deeply held religious or moral beliefs which limit his willingness to bear arms and/or perform noncombatant services in the Armed Forces of the U.S. (INS Interpretation 316.1(h)(3)(iv), p.5248.14-.16.)

6. Barred Classes. (The naturalization of certain persons is barred by law.)

a. Subversive. (INA § 313, 8 U.S.C. § 1424.)

(1) Anarchist.

(2) Advocates or teaches opposition to all organized government, or are members of or affiliated with any organization which advocates, etc.

(3) Member of or affiliated with the Communist Party of the U.S. or of any foreign country, or any front organization.

(4) Member of any other totalitarian party of the U.S.

(5) Person who, although not a member of or affiliated with the Communist Party, personally advocates the economic, international and governmental doctrines of world communism or the establishment of a totalitarian dictatorship in the U.S.

(6) Person who advocates or teaches the overthrow of the Government of the United States by force or violence, etc.

(7) Saboteur.

(8) Person who writes or publishes subversive material or causes such to be published or are members of any organization that publishes any of the foregoing, i.e., violent overthrow of government.

b. Membership in the Communist Party. The membership must be meaningful. A person is not barred from naturalization “if such person establishes that such membership or affiliation is or was involuntary, or occurred and terminated prior to the attainment by such alien of the age of sixteen years, or that such membership or affiliation is or was by operation or law, or was for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes.” (INA § 313(d), 8 U.S.C. § 1424(d); or if membership terminated more than 10 years preceding the filing of the application. (INA § 313(c); 8 U.S.C. § 1424(c)).

c. A person who deserted the U.S. Armed Forces or fled U.S. jurisdiction to avoid the draft, while the U.S. was at war. (INA § 314, 8 U.S.C. § 1425.)

(1) Must have been convicted to be barred.

(2) By a court martial or by a civil court of competent jurisdiction.

Exceptions to the rule that such person may not be naturalized:

(a) Persons who deserted between 11/11/18 and 7/1/21, or between 8/14/45 and 6/24/50 have received Presidential Amnesty. (INS Interpretation 314.2, p. 5194.)

(b) A person who may have received individual pardon.

d. Deportation Order.

(1) No application for naturalization may be finally heard if deportation proceedings are pending, or against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest. (INA § 318, 8 U.S.C. § 1429.)

(2) Exceptions:

(a) Person filing under INA § 329, 8 U.S.C. § 1440, has honorable military service during times of war.

(b) Person filing under INA § 328, 8 U.S.C. § 1439, has honorable military service aggregating three years.

e. Aliens Relieved from Military Training and Service. Relief from military training or service based on alienage applies only to those aliens who applied for and received relief from Selective INS based upon alienage. There is also an exception to the bar if the alien served in the Armed Forces of a foreign country of which the alien was a national prior to claiming exemption from service in the U.S. Armed Forces pursuant to a treaty. (INA § 315, 8 U.S.C. § 1426.) *See Villamar v. U.S.*, 651 F.2d 116 (2d Cir. 1981).

(1) Exception to general rule are persons not liable for military service.

(2) Selective Service records are conclusive evidence of relief or discharge.

7. Literacy and Knowledge of History and Government Requirements.

a. Literacy Test. Examiner tests applicant's ability to read, write and speak words in ordinary usage in the English language. Elementary literacy level is the standard. (8 C.F.R. § 312.1.)

(1) Exceptions:

(a) Physically unable to comply due to permanent disability. (INA § 312(b)(1), 8 U.S.C. § 1423(b)(1).)

(b) Applicant is more than 50 years of age and 20 years residing in the U.S. as a permanent resident alien as of the date of filing the application is exempt from the literacy test.

(c) Applicant is more than 55 years of age and 15 years residing in the U.S. as a permanent resident alien as of the date of filing the application is exempt from the literacy test.

b. Knowledge of History and Government of the U.S.

(1) Required to pass oral Government examination, even though exempt from the requirement of speaking English.

(2) Interpreter may be used to administer test if exempt from speaking English requirement.

(3) In choosing the subject matter and in phrasing the questions, the INS examiner is instructed to take into consideration the extent of the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge and any other relevant elements or factors. (8 C.F.R. § 312.1(b)(2) and 8 C.F.R. § 312.2.) The USCIS examiner chooses questions from a list of forty questions.

c. A Second Opportunity. An applicant is to be given a second opportunity to pass the test(s) is to be given within 90 days after the first examination. (8 C.F.R. § 312.5(a)).

II. NATURALIZATION OF SPECIAL CLASSES

If no exemptions specifically provided for, then the substantive requirements under the General Provisions must be met.

A. Spouse of American Citizen. (INA § 319(a) and 319(b), 8 U.S.C. § 1430(a) and (b).)

1. Naturalization of married persons under INA § 319(a).

Requirements under INA § 319(a):

- a. Spouse must be U.S. citizen for eligibility period of three years.
- b. Living in marital union with citizen spouse for at least three years immediately preceding filing of the application.
 - (1) A substantial portion thereof must be in the U.S. with the citizen spouse.
 - (2) A divorce prior to taking of oath renders applicant ineligible for naturalization under this special provision.
- c. Physically present in U.S. for 18 months during the eligibility period and have resided within the State or District of the USCIS in the U.S. in which the application is filed for at least three months. (May file after two years and nine months as long as at the time of interview the three year requirement is satisfied. The three month requirement of residence in district is waived if application is filed after two years nine months, but before three years.
- d. Good moral character need only be established during the three year eligibility period.
- e. Lawful admission as permanent resident alien. The permanent residency and marriage to the U.S. citizen must coincide for the full three year period.

2. Naturalization of married persons under INA § 319(b), 8 U.S.C. § 1430(b).

Allows for naturalization of aliens whose citizen spouses are stationed abroad in employment of government or certain other designated organizations, see paragraph 2.c below, and who, by reason of this enforced absence from the U.S., cannot meet the normal residence requirements. See Application of Gray, 369 F. Supp. 1049 (D. Miss. 1973).

Requirements under INA § 319(b):

- a. Lawful admission for permanent residence.
- b. Married to a U.S. citizen.
- c. Citizen spouse must have prescribed type of employment abroad:
 - (1) U.S. Government; or
 - (2) American Research Institution recognized by the Attorney General (see 8 C.F.R. § 316.20(a), (b) and (c)); or

(3) American firm, corporation engaged in whole or in part in the development of foreign trade and commerce of the U.S., or by a subsidiary in which a majority of the stock is owned by an American firm or corporation; or

(4) Public International Organizations in which the U.S. participates by treaty or statute; or

(5) Minister, priest or missionary.

d. Intention to join or accompany spouse abroad.

e. Intention to return immediately to U.S. upon termination of such employment abroad by the U.S. citizen spouse.

f. Regularly stationed abroad in employment.

Benefits under INA § 319(b) as compared to section 319(a):

(1) No specified period of residence or physical presence in the U.S. required.

(2) No state residence required. Applicant can file application for naturalization in any court in U.S. regardless of actual residence of applicant. The applicant must, however, be in the U.S. at the time of naturalization.

(3) No particular period or residence, good moral character or attachment required. The USCIS test is “reasonable period of time.”

B. Naturalization of Children Born Outside of the U.S. Upon Application Filed by Parent who is a U.S. citizen (or, if the U.S. citizen parent has died during the preceding five years, a U.S. citizen grandparent or U.S. citizen legal guardian). (INA § 322, 8 U.S.C. § 1433.)

Naturalization of “natural child.” A child born outside the United States, who has at least one U.S. citizen parent (or, at the time of his/her death was a U.S. citizen) at the time of the application of the child’s U.S. parent (or U.S. grandparent or U.S. legal guardian) may be naturalized, if the following requirements are met:

1. Lawful admission and maintaining lawful status.

2. Child must be under age 18 at time of naturalization.

3. Only one parent required to be a U.S. citizen (the applying parent).

4. U.S. citizen parent has at the time of filing (or, at the time of his/her death) has been physically present in the U.S. or its outlying possessions, for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen.

5. Child must be residing with citizen parent(s).

6. Parent (s) and child must be residing within state or the district of the USCIS in the U.S. No specific U.S. residence, state residence or physical presence in the U.S. required.

7. Good moral character and attachment presumed if child is of “tender years.”

8. Child is not otherwise barred by INA § 313, 314, 315 and 318.

9. No literacy/education requirements.

10. Adopted children are eligible for benefits of INA § 322.

11. No literacy/educational requirements.

C. Members of the United States Armed Forces.

1. Application Filed While in Armed Forces or Within Six Months of Discharge. When the applicant has an aggregate of one year of honorable service at any time in the United States Armed Forces. (INA § 328, 8 U.S.C. § 1439.)

a. Must be lawfully admitted to the U.S. for permanent residence before the application is filed.

b. Must never have been discharged from military service under other than honorable conditions. Honorable military service and discharge to be proved by authenticated copies of service records (Form N-426).

c. No residence in the U.S. required and no physical presence.

d. May file in any office of the USCIS.

e. Section 328 applications should be given the same priority consideration as Section 319(b) cases (see SRO Memo SR-328-C dated 10/23/81). The application must be processed within six months or a written explanation given with estimated completion date. INA Section 329(g), 8 U.S.C. Section 1439(g).

2. Application Not Filed While in Armed Forces or Within Six Months of Discharge. Applicant may still apply even after six months from date of discharge. (INA § 328(d), 8 U.S.C. § 1439(d).)

The applicant shall comply with INA § 316(a) requirements, except that military service within five years immediately preceding the date of filing such application shall be considered as residence and physical presence within the U.S.

3. “Wartime” Service by alien or a noncitizen national during war or in other periods of military hostilities is defined in the Act. (INA § 329, 8 U.S.C. § 1440.)

a. Dates of active duty service: World War I, 4/6/17 through 11/11/18; World War II, 9/1/39 through 12/31/46; Korean Hostilities, 6/25/50 through 7/1/55; Vietnam Hostilities, 2/28/61 through 10/15/78; Grenada Hostilities, 10/25/83 through 11/2/83. But see Matter of Reyes, 910 F.2d 611 (9th Cir. 1990), striking the Executive Order regarding those who served in Granada.

b. Must be an alien or national during time of active service.

c. Separated under honorable conditions, but not for alienage.

d. Must have enlisted or been inducted or re-enlisted in the United States, in the Canal Zone, American Samoa or Swains Island; or be lawfully admitted to the United States for permanent residence before the application is filed.

e. No residence required in the U.S. or state, and any physical presence required.

f. May file in any office of the USCIS.

g. Period of good moral character is “reasonable period of time.”

h. Application should be expedited. (See 32 C.F.R. § 94.4(b)(2).)

D. Seamen. Seamen who are lawful permanent residents and are serving on United States vessels, other than as a member of the Armed Forces, may count the time honorably served during the five-year period immediately prior to filing towards the residence and physical presence requirements of INA § 316(a). (See INA § 330, 8 U.S.C. Section 1441.) (a) The vessel(s) must be operated by the United States Government or have a United States port as home port and (1) be owned and titled in the name of a United States citizen or corporation; or (2) be registered under the laws of the United States; (b) vessel owned by a foreign corporation which is a wholly-owned subsidiary of a United States corporation is not considered by the INS as qualifying as being owned by a United States corporation (see INS Interpretation 330.2(b)(2)); (c) the applicant must file Form N-400 and supplemental Form N-400B; and (d) the duly-authenticated copies of the records or certificates described in INA § 330 will establish the applicant’s good moral character, attachment to the principles of the Constitution and happiness of the U.S. for the portion of service within the five years prior to the date of the application. (See 8 C.F.R. § 330.1.)

E. Other Special Groups. The INA has or does consider the following classes of people in a special manner:

1. People who expatriate themselves by:

a. Serving in the Armed Forces with the U.S. during World War II.

b. Marrying a foreign national (law now repealed) .

2. Permanent resident spouse whose U.S. citizen spouse dies during active duty service in the U.S. military forces.

3. Surviving spouses of U.S. citizens who died during a period of honorable service in an active duty status in the Armed Forces of the U.S.

4. Employees of U.S. nonprofit corporations disseminating information overseas which promote the interests of the U.S.

5. Persons who the Director of the CIA, Attorney General or the Commissioner of Immigration have determined to have made an extraordinary contribution to the national security of the U.S. or to the conduct of U.S. intelligence activities. (INA § 316(f)), 8 U.S.C. Section 1427(f)

III. CITIZENSHIP AT BIRTH

A. Birth in United States or Territories.

1. The Fourteenth Amendment to the United States Constitution grants citizenship to all persons born in the United States, but also subjects them to its jurisdiction. This provision is codified in INA § 301(a), 8 U.S.C. § 1401(a).

a. The person has to be actually born, not just conceived in the United States. Montana v. Rogers, 278 F.2d 68, (7th Cir. 1960), aff'd 366 U.S. 308 (1961).

b. The person born in the United States to a member of an Indian, Eskimo, Aleutian or other aboriginal tribe is a United States citizen.

c. The person may be the child of parents who were illegally in the United States at the time of birth. Acosta v. Gaffney, 413 F. Supp. 827 (D.N.J. 1976), rev'd ground, 558 F.2d 1153 (3d Cir. 1977); INS Interpretation 301.1(a)(3).

d. Children born to a foreign sovereign or foreign diplomat, who has been afforded diplomatic immunity, do not become citizens. INS Interpretation 301.(a)(4)(i). See In re Thenault, 47 F. Supp. 952 (D.D.C. 1942).

2. Persons born in an outlying possession of the United States, defined by INA § 101(a)(29), 8 U.S.C. § 1101(a)(29), to include American Samoa and Swains Island are citizens so long as:

a. One of the parents is a United States citizen, and

b. Said parent has been physically present in the United States or an outlying possession for a continuous period of one year prior to the child's birth. INA § 301(e), 8 U.S.C. Section 301(e).

3. Persons born in territories of the United States may be citizens. INA §§ 302 through 307, 8 U.S.C. § 1402-1407.

a. Alaska (INA § 304) Person is a United States citizen if:

Indian. (1) Born in Alaska on or after 3/30/1867, except noncitizen

(2) Noncitizen Indian born on or after 3/30/1867 but prior to 6/2/24 is a citizen as of 6/2/24.

(3) An Indian born on or after 6/2/24 (at birth).

b. Canal Zone (INA § 303) Person is a United States citizen if:

(1) Born in Canal Zone on or after 2/26/1904; and

(2) Father or mother at time of birth was or is a United States citizen.

c. Guam (INA § 307)

(1) If born on Guam after 4/11/1899 and resided on Guam on 8/1/50 or other territory of United States then a United States citizen as of 8/1/50 if within one of the four classes of people described in the statute.

d. Hawaii (INA § 305)

(1) Born in Hawaii on or after 8/12/1898 but before 4/30/1900 is a United States citizen as of 4/30/1900.

(2) Born on or after 4/30/1900 is United States citizen at birth.

(3) Citizens of Republic of Hawaii on 8/12/1898 are United States citizens as of 4/30/1900.

e. Northern Mariana Islands

(1) Persons born in the Commonwealth after 11/2/86 are United States citizens. (Section 303 of the Covenant, Pub. 94-241, 90 Stat. 203, March 24, 1967)

(2) Persons domiciled in the Commonwealth on 11/2/86 and who meet the criteria specified in Section 301 of the Covenant, Pub. 94-241, 90 Stat. 203, March 24, 1967, are United States citizens.

f. Puerto Rico (INA § 302)

(1) Persons born between 4/11/1899 and 1/13/41 are naturalized citizens so long as residing in United States or Puerto Rico on January 13, 1941.

(2) Persons born on 1/13/41 or after are United States citizens at birth.

g. Republic of Panama (INA § 303)

Person is a United States citizen if:

- (1) Born in the Republic on or after 2/26/1904;
- (2) Father or mother at time of birth was or is a United States citizen; and
- (3) Same father or mother is employed by United States Government or Panama Railroad Co. or its successor in title.

h. Virgin Islands (INA Section 306)

- (1) Persons born in Virgin Islands on or after 2/25/27 and subject to jurisdiction of United States are United States citizens at birth.
- (2) Persons born on or after 1/17/17, but prior to 2/25/27 and subject to jurisdiction of United States are United States citizens as of 2/25/27.
- (3) Other categories given in statute.

B. Birth Outside of the United States The Fourteenth Amendment does not grant citizenship to persons born outside of the United States. Rogers v. Bellei, 401 U.S. 815 (1971).

1. Child of Two U.S. Citizen Parents - INA § 301(c), 8 U.S.C. § 1401(c).

- a. Child born abroad.
- b. One of the parents has resided in the United States prior to the birth of the child.
- c. The child does not have to do anything to retain citizenship. However, parents or the legal guardian may record the birth of a United States citizen child in his consular district and so long as it is done before the child's 18th birthday (a rule proposed October 10, 1989, would raise the age to eighteen, 54 Fed. Reg. 41,459 October 10, 1989) a Consular Report of Birth will be issued upon the submission of the proof and the prescribed fee. (22 C.F.R. § 50.5)

2. Children Born Out of Wedlock by U.S. Parent - INA § 309(c), 8 U.S.C. § 1409(c).

- a. Children born out of wedlock are included in INA § 301(c), (d) (e) and (g).
- b. The child is a U.S. citizen, if the mother had been physically present in the United States for a continuous period of one year prior to the child's birth, and the child had not been legitimated during minority prior to 1/13/41.

c. The child of a U.S. citizen father, who was legitimated or acknowledged by the father and the relationship was established on or after 11/14/86 is a U.S. citizen if:

(1) The blood relationship is established by clear and convincing evidence;

(2) The father, unless deceased, has agreed in writing to financial support for the child until he/she reaches the age of 18;

(3) Before the child reaches 18, the child is legitimized¹, or the father acknowledges paternity of child in writing under oath, or the child's paternity is established by adjudication of a competent court; and

(4) The father must have had the nationality of the U.S. at the time of the child's birth.

Notwithstanding the above, a child born after December 23, 1952, outside the U.S. and out of wedlock is a U.A. citizen at the time if the child's mother is a U.S. citizen and has resided in the U.S. or its outlying possessions for one year prior to the birth of the child.

d. Subsequent legitimation is retroactive and confers the full status and rights of a legitimate child, but the father must have had qualifying residence or physical presence at time of birth (see requirements for legitimate birth). Prior to 1/13/41 the legitimation could take place at any time. Children born on or after 1/13/41 and before December 24, 1952 the legitimation must have occurred prior to the child's 21st birthday.

e. Biological fathers and their children born out of wedlock may file for immigration benefits for each other. Petitions may be filed to classify the parent or child alien as an immediate relative of a U.S. citizen or as a preference immigrant if a bona fide parent/child relationship is established.

3. Child of One U.S. Citizen Parent and One U.S. National - INA § 301(d), 8 U.S.C. Section 1401(d).

a. Child born abroad.

b. U.S. citizen parent has been physically present in the U.S. or outlying possessions for a continuous period of one year prior to birth.

c. The other parent is a U.S. National.

4. Child of one U.S. Citizen Parent - INA § 301(g), 8 U.S.C. § 1401(g).

a. The rules have changed five times since 1934.

¹ You must comply with the law in effect at the place and time the child is born.

b. Determine if the child's parent is capable of transmitting citizenship to the child.

c. If the child was born on or after 5/24/34 and on or before 10/9/52, has the child met the retention requirements? The retention requirements for persons who had acquired citizenship at birth abroad, if only one parent was a U.S. citizen were repealed effective 10/10/78. If the person arrived in the U.S. under age of 23 before October 27, 1972, they still could retain citizenship if retention requirements were met immediately after arrival. INA § 301(b), 8 U.S.C. § 1401(b)

(1) Did the person not comply with the retention requirements because the person was unaware of his or her claim to U.S. citizenship? (See, Matter of Yanez-Carrillo, 10 I&N Dec. 366 (1963); Matter of Farley, 11 I&N Dec. 51 (1965); 8 FAM 217.4(a).)

(2) Was his or her failure to comply with the retention requirements the result of U.S. government misinformation or inaction? See Interpretation 301.1(b)(6) and Hong v. Acheson, 110 F. Supp. 48 (Hawaii 1951).

IV. DUAL CITIZENSHIP

A. A United States citizen may also be a citizen of another country under several circumstances:

1. By birth in the United States to parents who are nationals of a country which bases its citizenship on parentage.

2. By birth in a foreign country to at least one United States citizen parent and meet the requirements of INA § 301(g), 8 U.S.C. § 1401(g).

3. By naturalization of a United States citizen in a foreign state, provided the United States citizen is not found to harbor the intent to expatriate himself herself from the U.S. by such naturalization.

B. Dual nationality is not favored under international law.

1. U.S. law does not require a dual national to elect one nationality over the other.

2. Whether or not the oath of allegiance to the United States effectively expatriates the person from his/her citizenship depends on the other country's nationality law.

3. A U.S. citizen who makes explicit contemporaneous statements of intent not to relinquish United States citizenship at the time of naturalization in a foreign state, and who continues to meet the obligations of U.S. citizenship, are unlikely to have expatriated themselves by the naturalization.