

(iii) If the child's parents were married before their marriage to each other, proof of termination of any previous marriage of each parent (e.g., death certificate or divorce decree);

(iv) Evidence of U.S. citizenship of parent, (*i.e.*, birth certificate; naturalization certificate; FS-240, Report of Birth Abroad; a valid unexpired U.S. passport; or certificate of citizenship);

(v) If the child was born out of wedlock, documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable);

(vi) In case of divorce, legal separation, or adoption, documentation of legal custody;

(vii) Copy of Permanent Resident Card/Alien Registration Receipt Card or other evidence of lawful permanent resident status (e.g. I-551 stamp in a valid foreign passport or Service-issued travel document);

(viii) If adopted, a copy of the full, final adoption decree and, if the adoption was outside of the United States and the child immigrated as an IR-4 (orphans coming to the United States to be adopted by U.S. citizen parent(s)), evidence that the foreign adoption is recognized by the state where the child is permanently residing; and

(ix) Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

(2) If the Service requires any additional documentation to make a decision on the application for certificate of citizenship, applicants may be asked to provide that documentation under separate cover or at the time of interview. Applicants do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or an immigrant petition or application and included in a Service administrative file. Applicants should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

[66 FR 32144, June 13, 2001, as amended at 74 FR 26940, June 5, 2009; 76 FR 53799, Aug. 29, 2011]

#### **§ 320.4 Who must appear for an interview on the application for citizenship?**

All applicants (and U.S. citizen parent(s) if application filed on behalf of a minor biological or adopted child) must appear for examination unless such examination is waived under the guidelines expressed in § 341.2 of this chapter.

#### **§ 320.5 Decision.**

(a) *Approval of application.* If the application for the certificate of citizenship is approved, after the applicant takes the oath of allegiance prescribed in 8 CFR 337.1 (unless the oath is waived), USCIS will issue a certificate of citizenship.

(b) *Denial of application.* If the decision of USCIS is to deny the application for a certificate of citizenship under this section, the applicant will be advised in writing of the reasons for denial and of the right to appeal in accordance with 8 CFR 103.3(a). An applicant may file an appeal within 30 days of service of the decision in accordance with the instructions on the form prescribed by USCIS for that purpose, and with the fee required by 8 CFR 106.2.

(c) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 106.2.

[76 FR 53799, Aug. 29, 2011, as amended at 85 FR 46928, Aug. 3, 2020]

### **PART 322—CHILD BORN OUTSIDE THE UNITED STATES; REQUIREMENTS FOR APPLICATION FOR CERTIFICATE OF CITIZENSHIP**

Sec.

322.1 What are the definitions used in this part?

322.2 Eligibility.

322.3 Application and supporting documents.

322.4 Interview.

322.5 Decision.

## § 322.1

## 8 CFR Ch. I (1–1–23 Edition)

AUTHORITY: 8 U.S.C. 1103, 1443; 8 CFR part 2.

SOURCE: 66 FR 32144, June 13, 2001, unless otherwise noted.

### § 322.1 What are the definitions used in this part?

As used in this part the term:

*Adopted* means adopted pursuant to a full, final and complete adoption. In the case of an orphan adoption, if a foreign adoption was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, an orphan is not considered to have been adopted and must be re-adopted in the United States or satisfy the requirements of section 101(b)(1)(E) of the Act.

*Adopted child* means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E), (F) or (G) of the Act.

*Child* means a person who meets the requirements of section 101(c)(1) of the Act.

*Lawful admission* shall have the same meaning as provided in section 101(a)(13) of the Act.

*Joint custody*, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

*Legal custody* refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded “joint custody,” to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

[66 FR 32144, June 13, 2001, as amended at 76 FR 53799, Aug. 29, 2011]

### § 322.2 Eligibility.

(a) *General*. A child will be eligible for citizenship under section 322 of the Act, if the following conditions have been fulfilled:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The United States citizen parent has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14, or the United States citizen parent has a United States citizen parent who has been physically present in the United States or its outlying possessions for at least 5 years, at least 2 of which were after the age of 14;

(3) The child currently is under 18 years of age;

(4) The child currently is residing outside the United States in the legal and physical custody of the United States citizen parent; and

(5) The child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status in the United States.

(b) *Additional requirements if child is adopted.* If an adopted child, all of the requirements in paragraph (a) of this section must be fulfilled and the child must satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

(c) *Exceptions for children of military personnel.* Pursuant to section 322(d) of the Act, a child of a member of the Armed Forces of the United States residing abroad is exempt from the temporary physical presence, lawful admission, and maintenance of lawful status requirements under 8 CFR 322.2(a)(5), if the child:

- (1) Is authorized to accompany and reside abroad with the member of the Armed Forces pursuant to the member's official orders; and
- (2) Is accompanying and residing abroad with the member of the Armed Forces.

[66 FR 32144, June 13, 2001, as amended at 76 FR 53799, Aug. 29, 2011]

**§ 322.3 Application and supporting documents.**

(a) *Application.* A U.S. citizen parent of an alien child (including an adopted child) may file an application for the child to become a citizen and obtain a certificate of citizenship under section 322 of the Act by submitting an application on the form prescribed by USCIS in accordance with the form instructions and with the fee prescribed by 8 CFR 106.2. If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application, provided the application is filed not more than 5 years after the death of the U.S. citizen parent.

(b) *Evidence.* (1) An applicant under this section shall establish eligibility under § 322.2. In addition to the forms and the appropriate fee as required in 8 CFR 106.2, an applicant must submit the following required documents unless such documents are already contained in the Service administrative file(s):

- (i) The child's birth certificate or record;
- (ii) Marriage certificate of child's parents (if applicable);
- (iii) If the child's parents were married before their marriage to each

other, proof of termination of any previous marriage of each parent (e.g., death certificate or divorce decree);

(iv) Evidence of U.S. citizenship of parent (*i.e.*, birth certificate; naturalization certificate; FS-240, Report of Birth Abroad; a valid unexpired U.S. passport; or certificate of citizenship);

(v) If the child was born out of wedlock, documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable);

(vi) In case of divorce, legal separation, or adoption, documentation of legal custody (if applicable);

(vii) Documentation establishing that the U.S. citizen parent or U.S. citizen grandparent meets the required physical presence requirements (e.g., school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations);

(viii) Evidence that the child is present in the United States pursuant to a lawful admission and is maintaining such lawful status, or evidence establishing that the child qualifies for an exception to these requirements as provided in 8 CFR 322.2(c) pursuant to section 322(d) of the Act. Such evidence may be presented at the time of interview when appropriate;

(ix) If adopted, a copy of a full, final adoption decree;

(x) For adopted children (not orphans) applying under section 322 of the Act, evidence that they satisfy the requirements of section 101(b)(1)(E);

(xi) For adopted orphans applying under section 322 of the Act, a copy of notice of approval of the orphan petition and supporting documentation for such petition (except the home study) or evidence that the child has been admitted for lawful permanent residence in the United States with the immigrant classification of IR-3 (Orphan adopted abroad by a U.S. citizen) or IR-4 (Orphan to be adopted by a U.S. citizen);

(xii) For a Hague Convention adoptee applying under section 322 of the Act, a copy of the notice of approval of the Convention adoptee petition and its supporting documentation, or evidence that the child has been admitted for

#### § 322.4

lawful permanent residence in the United States with the immigrant classification of IH-3 (Hague Convention Orphan adopted abroad by a U.S. citizen) or IH-4 (Hague Convention Orphan to be adopted by a U.S. citizen); and

(xiii) Evidence of all legal name changes, if applicable, for the child, U.S. citizen parent, U.S. citizen grandparent, or U.S. citizen legal guardian.

(2) If USCIS requires any additional documentation to make a decision on the application, the parents may be asked to provide that documentation under separate cover or at the time of interview. Parents do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or another immigrant petition or application and included in a Service administrative file. Parents should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

[66 FR 32144, June 13, 2001, as amended at 72 FR 56867, Oct. 4, 2007; 74 FR 26940, June 5, 2009; 76 FR 53799, Aug. 29, 2011; 85 FR 46928, Aug. 3, 2020]

#### § 322.4 Interview.

The U.S. citizen parent and the child must appear in person before a USCIS officer for examination on the application under this section. If the U.S. citizen parent is deceased, the child's U.S. citizen grandparent or U.S. citizen legal guardian who filed the application on the child's behalf must appear.

[76 FR 53799, Aug. 29, 2011]

#### § 322.5 Decision.

(a) *Approval of application.* If the application for certificate of citizenship is approved, after the applicant takes the oath of allegiance prescribed in 8 CFR 337.1 (unless the oath is waived), USCIS will issue a certificate of citizenship. The child is a citizen as of the date of approval and administration of the oath of allegiance.

(b) *Denial of application.* If the USCIS decision is to deny the application for

#### 8 CFR Ch. I (1–1–23 Edition)

a certificate of citizenship under this section, the applicant will be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). An applicant may file an appeal within 30 days of service of the decision in accordance with the instructions on the form prescribed by USCIS for that purpose, and with the fee required by 8 CFR 106.2.

(c) *Subsequent application.* After an application for a certificate of citizenship has been denied and the time for appeal has expired, USCIS will reject a subsequent application submitted by the same individual and the applicant will be instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion must be accompanied by the rejected application and the fee specified in 8 CFR 106.2.

[76 FR 53800, Aug. 29, 2011, as amended at 85 FR 46928, Aug. 3, 2020]

### PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

Sec.

324.1 Definitions.

324.2 Former citizen at birth or by naturalization.

324.3 Women, citizens of the United States at birth, who lost or are believed to have lost citizenship by marriage and whose marriage has terminated.

324.4 Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940.

324.5 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law.

AUTHORITY: 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

#### § 324.1 Definitions.

As used in this part:

*Oath* means the Oath of Allegiance as prescribed in section 337 of the Act.

[56 FR 50490, Oct. 7, 1991]