

LAW OFFICE OF C.J. LYFORD
PMB 141
12 West Willow Grove Avenue
Philadelphia, PA 19118-3952
Telephone 215-836-4628
E-mail lyfordesq@comcast.net
Fax 215-836-4629

*Practicing in the areas of Immigration/Citizenship/Visa Law
and International Adoption Law*

WHY AND HOW TO GET PROOF OF U.S. CITIZENSHIP UNDER THE CHILD CITIZENSHIP ACT FOR YOUR FOREIGN – BORN ADOPTED CHILD?

By C.J. Lyford, Esq.*

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The Child Citizenship Act of 2000 (CCA)¹ provides for the “automatic” acquisition, that is acquisition as a matter of law, of U.S. citizenship to many children (adopted and not adopted) of U.S. citizens (USC’s) who are born abroad, provided that certain qualifications are met.² As a result, many foreign-born children who have been adopted by USC’s have become citizens, without the need to apply for citizenship. For children adopted in the future, many will also automatically become U.S. citizens under the Act.³

1. Will your child automatically receive proof documenting his or her U.S. citizenship?

It depends. As a result of the “CCA Program”, if your child entered or enters the United States on or after January 2004, on an IR3 classified visa (See comment number 7 below that discusses the difference between an IR3 and IR4 visa classification), after a “full and final” adoption abroad, your child should receive a Certificate of Citizenship (COC) from the U.S. Department of Citizenship and Immigration Services (USCIS, previously the INS; see comment 4 below) in the mail, automatically, at no charge.^{3a} However if your child entered the United States before January 2004, or entered on an IR4 visa, you will still have to apply for a COC from the USCIS

or obtain a U.S. Passport from the Department of State, Office of Passport Services, to prove your child's citizenship.

The following comments are directed at why and how to obtain proof of citizenship for your child.”⁴

2. Do you have to obtain proof of U.S. citizenship for your child?

No. You are not required to get a document proving your child's citizenship. As emphasized by the USCIS and elsewhere, if your child meets the requirements of the CCA, he or she is a U.S. citizen (USC) “automatically”, that is, without any further action on your part, and is entitled to all the benefits of being a USC whether or not you ever obtain proof of the citizenship.

3. Is it a good idea to obtain documentary proof of your child's U.S. citizenship?

Yes and I strongly recommend it. Even if your child has the status of USC under the law and you will ultimately prevail on this issue in the end, you may still be faced with the problem of having to convince others that your child has this status. Having this clear and tangible evidence immediately on hand will save you and/or your child from having to produce numerous documents, and probably having to re-explain the CCA, every time it is necessary to prove that he or she is a USC. Indeed, despite the CCA, many Social Security Offices require a Certificate of Citizenship or U.S. Passport before they will classify your child as a USC in their system. ^{4b}

Furthermore, there will be no doubt that your child has met all of the requirements under the CCA and indeed is a USC.

4. By the way, what has happened to the INS? What is the BCIS or USCIS?

As most of you probably know, as of March 1, 2003, most of the INS functions were transferred to a new department, the “Department of Homeland Security” (DHS), and the “INS” no longer exists. Most of the immigrant service functions such as immigrant petitions (e.g., I-600 Orphan Petitions), citizenship, etc., are now handled by the U.S. Department of Citizenship and Immigration Services (USCIS).

5. How do you get documentary proof that your child is a citizen?

For the moment you have two choices:

- a) Obtain a Certificate of Citizenship (COC) from the USCIS (See comments 10 – 13) and/or
- b) Obtain a U.S. Passport from the Department of State. (See comment 14 below.)

6. Which type of proof of citizenship should you obtain?

Under the USCIS regulations, you can prove U.S. citizenship through either a COC or a U.S. Passport. However, I recommend that you get both.^{6a} The COC is advantageous because it is universally recognized, only one-page long and does not need to be renewed. It is very similar to the one page Certificate of Naturalization that is used by a naturalized USC to prove U.S. citizenship. Unfortunately the USCIS response time for issuing a COC has been very slow. The passport can usually be obtained fairly quickly. (But see comment 15 below) and will be necessary if you travel outside of the United States with your child. (See comment below) If at all possible, start the process for both. You can then wait for the USCIS to provide the COC.

7. Does your child need a U.S. Passport to travel out of the United States?

Yes. Once your child becomes a USC he or she should have a U.S. Passport before travel outside of the United States.^{6b}

8. What is the difference between an IR3 classification visa and an IR4 classification visa and why does it matter?

If your child is issued a visa with an IR3 classification⁷ (“Immediate Relative -- Orphan Adopted Abroad by U.S. Citizen”), he or she will automatically become a USC under the CCA upon entering the U.S., assuming the other qualifications are met. (See endnote 2)

However, if the adoption was not completed abroad or considered “final”, either by the country abroad, or U.S. immigration, the child will enter the U.S. on an “IR4” classification visa.

(“Immediate Relative – Orphan to be Adopted in the United States by U.S. Citizen.”). If so, additional action will have to be taken for the child to become a USC.⁸ An IR4 visa is issued in two types of situations.

The first situation arises because there has been no adoption proceeding abroad, when the adoption is not completed abroad and/or the adoption is not considered final by the foreign country. This is often seen in adoptions of children from India or Korea in which only a guardianship or custodial relationship is established between the child and parent(s) or the child and the agency. In this situation, an adoption must take place in the U.S. according to the law of the applicable U.S. state court where the parents, or sole parent, as applicable, reside, or where the court otherwise has jurisdiction. This is frequently referred to as an adoption “finalization”. Once the adoption is “finalized”, the child automatically becomes a USC as of that date.

The second situation in which a child is issued an IR4 visa is when both parents, or the sole parent, as applicable, did not see the child before or during the adoption abroad, even if the foreign adoption was considered final under the law of the foreign country where the adoption took place. An IR4 visa is issued in this situation because the Immigration and Nationality Act (INA) has been interpreted as requiring that both parents, or the sole parent, as applicable, see the child before or during the adoption abroad in order for the adoption to be “final” under the INA⁹ and the child eligible for U.S. citizenship. In order for the adoption to be final for purposes of citizenship, the INS has generally required a readoption of the child in a U.S. state court.¹⁰

9. Can the USCIS readoption requirement be waived?

The interim regulations regarding the implementation of the CCA (see reference 3 in endnote 4) indicate that the USCIS may “waive” the readoption requirement if the applicable state “recognizes the foreign adoption as full and final under that state's adoption laws.”¹¹

Unfortunately, the USCIS has been ambiguous about what type of “evidence” of state “recognition” will be sufficient for the waiver. As a result, absent a written state law that specifically provides for recognition of a foreign decree, or a procedure for court recognition, it is not clear what kind of evidence of recognition will be sufficient for a waiver.¹²

Until more information is available about what kind of proof of recognition will be required for a waiver and how the USCIS will be implementing the regulations in practice, caution is advised. Most professionals still recommend a readoption in this situation rather than risk uncertainty regarding a child's citizenship, and I agree. However, should you decide not to readopt because your state recognizes foreign adoptions as valid under its law, do not assume that your child is a citizen. Make sure that you take the next step and obtain a COC to confirm that the USCIS has accepted the proof of state recognition that you have submitted and has waived the readoption requirement. Otherwise, and not until then, will you be certain that your child has acquired U.S. citizenship.

10. Can a birth certificate issued by a U.S. state for a foreign born child of a U.S. citizen parent or parents serve as proof of the child's U.S. citizenship?

No. While you may have obtained a birth certificate for your child issued from a U.S. state as a result of readoption, registering the foreign adoption, etc., your child was not born in the U.S. For purposes of these comments, only the birth certificate of an individual born in the U.S. can serve as proof of U.S. citizenship for that individual.

11. How do you obtain for a Certificate of Citizenship from the USCIS? What form do you use?

You can obtain a COC for a foreign born adopted (or biological) child by completing the USCIS Form N-600.⁵ This form replaces the Form N-643, the form that was previously used to request a COC on behalf of a child through adoption. Note that not all of the USCIS and related government forms and publications have been revised to accurately reflect the use of the new form.

11. What is the difference between the Form N-600 and the Form N-600K?

The Form N-600K is the form to be used to apply for a COC if the child and his or her family do not reside in the United States. See endnote 3.

12. What is the cost for a COC?

The fee for the N-600 and the N-600K Applications for a COC for an adopted child is \$200.

(The fee on behalf of a biological child is \$240.)^{5a}

13. What documents do you have to submit with the N-600 Application for a Certificate of Citizenship?

- If your child entered on an IR3 visa, most of the USCIS publications state that you do not need to submit documents that it already has in its file, such as your child's foreign birth certificate, etc., unless requested specifically by the USCIS. As a result, you should only need to submit the \$200 filing fee and the required photographs. However, there are reports that some USCIS offices are requiring copies of all documents even if they are already in their file. As a result, you may save time in the long run by submitting copies of all of the documents requested in the N-600 Instructions and Application. (The additional documents include: a copy of, as applicable: child's birth certificate from foreign country, final adoption decree from foreign country, US Permanent Resident Card, parent's marriage certificate, evidence of termination of any prior marriages, U.S. birth certificate or other evidence of US citizenship, and some evidence of U.S. residence, for example, an employment record.)
- If your child entered the U.S. on IR4 visa because the adoption was not completed abroad, etc., and you have finalized the adoption, you should submit a copy of the final adoption decree from the state court of your residence, along with the documents discussed above.
- If your child entered on an IR4 visa because you or your or your spouse, as applicable, did not see the child before or during the adoption, and you have readopted, you should also submit a copy of the adoption decree issued by your state court. If you have chosen not to readopt, you should provide the USCIS with "evidence" that your state recognizes the adoption, and request that the readoption requirement be waived. (See comments number 8 and 9 above)

- If you have legally changed your child’s name through readoption, etc., and want the COC to be issued in the new name, request this and enclose a copy of the adoption decree or the court order regarding the name change.
- Regarding the photographs of your child, the instructions to the N-600 contain very specific requirements about the size, background, etc., that should be reviewed before the photograph is taken. Note that the USCIS has now changed the photograph specifications for the COC. They are now the same as those required for a U.S. Passport. See <http://uscis.gov/graphics/lawsregs/handbook/PhotoRmnd082504.pdf>
- The fee should be paid by certified check or money order and made payable to the U.S. Citizenship and Immigration Services. You should mail the submission, by federal express or US postal mail, return receipt requested, to the USCIS District Office with jurisdiction over your place of residence.^{13a}

14. What is needed to obtain a U.S. Passport from the State Department?¹⁴

- Evidence of a full and final adoption through submission of a “certified copy of a final adoption decree.” In practice, most passport offices require that the parent submit the “original” of the foreign adoption decree, with the English translation,¹⁵ or if the adoption was finalized in the U.S., or the child readopted, a certified copy of the final adoption decree from the state court.
- Evidence that the child entered the U.S. as a legal permanent resident. This can be shown through producing either the child’s permanent resident alien card or the child’s foreign country passport with the I-551 stamp.
- Valid parent ID, for example, a driver’s license;
- Evidence of U.S. citizenship of at least one of the parents, for example: a birth certificate showing that a parent was born in the U.S., a parent’s U.S. Passport, or a parent’s Certificate of Naturalization, if the parent is a naturalized U.S. citizen.

- The parent(s) should also bring a certified copy of the child’s birth certificate, with a certified translation as applicable, to confirm the child’s age.
- Your child must appear in person when you are applying for the passport.¹⁶

15. Is a COC required before you can obtain a U.S. Passport for your child?

According to the State Department Fact Sheet (See endnote 4) you are not required to obtain a COC in order to obtain a Passport. However some offices are nevertheless requiring a Certificate before they accept the application. If unsuccessful, you should try another designated office that accepts Passport applications.

16. Is it possible the USCIS may eventually provide a COC or other documentation of proof of citizenship to children who do not qualify under the new “CCA Program?”

It is possible. The USCIS states in its publication “ Child Citizenship Act Program Facts” that “Once the new IR-3 entrant program is established, the USCIS will expand the program to address other Immediate Relative visa cases so that additional children benefit from the CCA changes. Key elements to be addressed include development of a streamlined procedure for IR3 children who have already been admitted to the U.S. but have not filed the [Form N-600] for evidence of citizenship and families who fall within other visa categories.”(See reference 1 at endnote 4)

So it may happen, but it will likely be a long wait. In the interim, your child will not have proof of his or her U.S. citizenship unless you obtain a COC or a U.S. Passport. I therefore recommend that you get the COC for your child now.

Please note that these are general comments and are not intended to be comprehensive. They are not legal advice nor should they be relied upon as legal advice.

If you have any questions about the Child Citizenship Act of 2000 or other issues involving international adoption, immigration or citizenship, feel free to contact me. I am an attorney with a private practice in the areas of immigration/citizenship law and adoption of foreign-born children adopted abroad or domestically, as well as the mother of a 10 year-old child adopted from China in 1994. I provide legal services and consultations to parents and agencies throughout the United States and abroad to address INS/BCIS or consulate visa issues or problems that issues in a specific adoption situation. I also handle domestic adoptions, adoption finalizations and readoptions in the Commonwealth of Pennsylvania.

C.J. Lyford, Esquire
215-836-4628 (telephone)
215-836-4629 (fax)
lyfordesq@comcast.net

*Member of the American Immigration Lawyers Association

¹ Public Law No. 106-395. The CCA, effective on February 27, 2001, can be downloaded from: <http://uscis.gov/lpBin/lpext.dll/inserts/publaw/publaw-23271?f=templates&fn=document-frame.htm#publaw-pl106395>;

See also Immigration and Nationality Act (“INA”) sections 320, 322 and 341.

² To qualify the following qualifications have to be met: 1) at least one parent of the child is a citizen of the United States, whether by birth or naturalization, 2) the child is under the age of eighteen years; or was under 18, at the time of the effective date of the CCA, 3) the child is residing in the United States in the legal and physical custody of the U.S. citizen parent pursuant to a lawful admission for permanent residence, and; 4) if adopted, the adoption must be “final.”

³ Not all foreign-born adopted children have benefited or will benefit from the “automatic” provisions of the Act. As an example, one of the requirements is that the child be permanently residing in the U.S. If you and your child are not permanently residing in the U.S., you will still need to apply for citizenship. (See “Information for Parents of Foreign-Born Children Residing Abroad, January 2004” at http://uscis.gov/graphics/services/natz/residing_abroad.htm); (See also INA sec. 322). To apply you should use the new form N-600K at <http://uscis.gov/graphics/formsfee/forms/n-600k.htm> (the forms N-643 and old N-600/N-643 Supplement A, previously used for this purpose have also been eliminated.)

3a On November 20, 2003, the USCIS announced that under its "CCA Program," the USCIS would be issuing Certificates of Citizenship to children who enter the U.S. on IR3 visas within 45 days of entry, free of charge. See: USCIS publications regarding the CCA Program: "Child Citizenship Program Fact Sheet" at:

http://uscis.gov/graphics/services/natz/CCAFacts_Jan_04.pdf; and "CCA Program Update" at: http://uscis.gov/graphics/services/natz/CCA_Update.htm

4 These Comments are my impressions of the CCA and its practical effect and are not legal advice. They are based on my experience as well as various USCIS and State Department publications and information that are referenced within this article and the following.

1) USCIS Fact Sheet regarding the Child Citizenship Act of 2000 dated 10/25/04 at http://uscis.gov/graphics/publicaffairs/factsheets/CCA_102504.pdf

2) "Information for Parents of Foreign-Born Biological Children Residing in the U.S. January 2004" at:

http://uscis.gov/graphics/services/natz/orphans_residing_US.htm

3) June 13, 2001 Federal Register Notice re: "INS Regulations and Comments regarding implementation of the CCA," 66 FR 32138, Interim Rule but effective upon publication (June 13, 2001) at: [http://frwebgate.access.gpo.gov/cgi-](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr13jn01-13)

[bin/getdoc.cgi?dbname=2001_register&docid=fr13jn01-13](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr13jn01-13)

(Note that in the January 2004 "CCA Program Update" the USCIS states that it is in the process of reviewing comments in response to the June 13, 2001 Notice, and is "in the process of drafting the final regulation.")

4) INS Fact Sheet "How to Get a Certificate of Citizenship for Your Child", dated 2/27/01, at:

<http://uscis.gov/graphics/publicaffairs/factsheets/howto.htm>

5) "INS Backgrounder "Information for Adoptive Parents", dated 2/27/01, at:

<http://uscis.gov/graphics/publicaffairs/backgrounds/cbground.htm>

4b After you get the Certificate or the Passport, go back to the Social Security Office with the proof of citizenship to be sure that the Social Security records accurately reflect that your child is a U.S. citizen.

5 You can download the revised Form N-600 and its instructions at:

<http://uscis.gov/graphics/formsfee/forms/files/N-600.pdf> See also:

"Memorandum: Introducing revised Form N-600, Application for Certificate of Citizenship, and new Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322",

dated 6/23/03 William R. Yates /s/ Janis Sposato HQBCIS (Services/Naturalization) at:

<http://uscis.gov/graphics/lawsregs/handbook/PolMem95Pub.pdf>

Make sure that the N-600 contains a revision date in the lower corner of 11/15/02 or later.

5a See <http://uscis.gov/graphics/publicaffairs/newsrels/USCISFeeStructure.pdf>

6a I have received reports from some families that a U.S passport was not accepted abroad in various situations. While this should not occur, it further supports the recommendation that both documents should be obtained, and carried with you abroad. By the way, it is ok to make a copy of a COC to carry with you. Keep the original in a safe deposit box.

6b A USC should use his or her U.S. Passport to leave and enter the United States. See INA sec. 215(b).

7 You can determine what classification of visa your child was issued by looking at the I-551 visa stamp in your child's foreign country passport to see whether the designation is "IR3" or "IR4".

8 Remember, U.S. citizenship will be automatic only when your child enters the U.S. and the foreign adoption is "final" under the law of the country abroad and U.S. immigration.

9 The INS/USCIS requirement is based on its interpretation of INA sec. 101(b)(1)(F), 8 U.S.C.A. sec. 1101(b)(1)(F) regarding a full and final adoption and other sections. Note however, that, the decisions and practices of the various District Offices are not always consistent with each other or general USCIS policy.

10 The term "readoption" generally refers to a process by which a U.S. state court reviews the adoption abroad along with additional information as it deems necessary, and issues a new adoption decree, independent of the foreign decree, stating that the child has been adopted in conformity with the adoption law of the applicable state. There are a number of advantages to readoption and many families choose to readopt their child even if not required. It is generally recommended by most adoption lawyers and other professionals. Readoption is discussed more specifically in comments that I have prepared about readoption generally and readoption in Pennsylvania: "READOPTION" – WHAT IS IT? DO YOU NEED TO DO IT? SHOULD YOU DO IT? WHAT DOES IT INVOLVE? -- SOME THINGS TO CONSIDER REGARDING READOPTION." This is available upon request.

¹¹ The Instructions for the Form N-600 state at Part 3H. Re-adoption in the United States, that children admitted on an IR4 visas “must have been finally adopted in the United States or had the foreign adoption recognized by the state where the child is permanently residing. If you had to be re-adopted in the United States before you could acquire citizenship automatically, provide the information requested. . . . If the appropriate authority in your current place of residence recognizes the validity of a full, final foreign adoption, submit evidence of this.” [emphasis added.]

¹² For example, Pennsylvania courts generally recognize a foreign country adoption in practice but recognition is not specifically provided for by a written law. Some counties in Pennsylvania, such as Chester and Delaware, will issue an order essentially “recognizing” the foreign adoption, as part of the process for registering a foreign adoption. Unfortunately, most counties in Pennsylvania do not issue such an order.

^{13a} You can determine what office has jurisdiction over your residence at <http://uscis.gov/graphics/fieldoffices/index.htm>

¹⁴ See U.S. State Department Bureau of Consular Affairs’ “Fact Sheet” at <http://travel.state.gov/childcitfaq.html> and “Citizenship Act of 2000” at <http://travel.state.gov/childcit.html> See also the Passport Services website at: http://travel.state.gov/passport_services.html, although I find this website description of what is required for a minor to be very confusing.

You can locate offices where you can apply for the passport at: <http://iafdb.travel.state.gov/>

¹⁵ According to statements from the Office of Passport Services, all documents submitted with the application, including originals, will be returned when the passport is issued. Despite this assurance, many parents choose to readopt so that they can submit a certified copy of the state adoption decree, rather than risk the losing of their “original’ of the foreign decree.

¹⁶ Be aware that when applying for a passport for a minor under the age of 14 that you must comply with the parent consent provisions required under Public Law 106-113. See <http://travel.state.gov/specialreq.html>.

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