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**IS OR WILL YOUR CHILD AUTOMATICALLY BECOME A U.S. CITIZEN  
UNDER THE CHILD CITIZENSHIP ACT -- SOME COMMENTS ON THE  
CHILD CITIZENSHIP ACT OF 2000 AS IT APPLIES TO FOREIGN-BORN  
ADOPTED CHILDREN**

By C.J. Lyford, Esq.\*

November 7, 2000  
June 19, 2002 (revised)

The Child Citizenship Act of 2000 (“Act” or “CCA”) (Public Law 106-395) provides for the “automatic” acquisition, that is acquisition as a matter of law, of U.S. citizenship to many children of U.S. citizens who are born abroad (adopted and not adopted) provided that certain qualifications are met. As a result, many, but not all, foreign-born children who have been adopted by U.S. citizens have automatically become citizens. For children adopted in the future, many, but not all, will also automatically become U.S. citizens under the Act.<sup>1</sup> For some children, citizenship can be acquired but will not be acquired automatically until the adoption is finalized or readopted, as applicable, in the U.S. For some, citizenship can be acquired but will not be acquired “automatically.”

This is an important change for children adopted abroad because they now will obtain the important benefits of U.S. citizenship more quickly. Moreover, citizenship will not be dependent upon a parent taking the action of filing the INS application (INS Form N-643) to request citizenship and the inevitable INS delay in granting the application, which, depending on the district, could take from three months to over one year. During this period before the application was filed and INS approval of the application, the child remained a legal permanent resident. As long as the child remained a legal permanent resident, the child was not protected from deportation/removal or other adverse INS actions should the child become involved in drug or criminal activities, etc. Furthermore, the child was not protected from the effects of changes in U.S. immigration law that could be even more unfavorable for immigrants than it is now.

Not all foreign-born adopted have benefited or will benefit from the “automatic provisions” of the Act. To qualify the following qualifications have to be met: at least one parent of the child is a citizen of the United States, whether by birth or naturalization, the child is under the age of eighteen years, 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 if adopted, the adoption must be final. Therefore, for a child whose adoption is not final, an adoption finalization, a readoption/State recognition will have to take place before the child automatically becomes a citizen. For some children, for example, a child who is residing outside of the United States with his or her adoptive parent or parents, as applicable, (hereinafter “parent”) will not automatically become a citizen. Under the Act the parent will have to take further action on behalf of the child before the child becomes a citizen. (See my comment 6 below). Accordingly, before you assume that your child automatically became or will become a citizen under this new law, you should consider the following:<sup>2</sup>

## **1. Your child must still satisfy the same basic INS requirements for adoption.<sup>3</sup>**

These requirements for the adoption remain just as strict and have not been changed by this Act. For example: If adopting under the orphan petition process the child must still meet the INS definition of “orphan”, etc. If adopting under the “adopted child provisions”, you still must satisfy the two-year custody and residence requirement, etc.

## **2. Citizenship is not automatic until your child actually enters the United States as a legal permanent resident.**

U.S. citizenship will not be automatic until your child physically enters the U.S. as a legal permanent resident. Your child will still have to immigrate to the U.S. as a nonU. S. citizen and you will have to go through the same immigration process to get your child into the U.S. that you are all familiar with, for example: getting your child an immigrant visa to enter the U.S., etc. You will still have to deal with the INS and the Consulate. Your child will travel to the United States on a passport of his or her country of origin and not on a U.S. passport.

## **3. Citizenship will not be automatic until and unless the adoption is “final”.**

U.S. Citizenship will be automatic when your child enters the U.S., only when the foreign adoption is “final.” under the law of the country abroad, your State of residence and U.S. immigration. If the adoption is “final” based on the law of the country abroad and U.S. immigration law, there should be an entry marked “IR3”(“Immediate Relative – Orphan Adopted Abroad by U.S. Citizen”) on your child’s visa stamp in his or her foreign passport. However, if the adoption was not completed or considered “final”, either by the country abroad or U.S. immigration, the child will enter the U.S. on an “IR4” visa (“Immediate Relative – Orphan to be Adopted in the United States by U.S. Citizen”) This occurs in two types of cases. First, in cases where the child is coming to the U.S. for purposes of adoption and there has been no adoption proceeding abroad, or only a guardianship relationship is involved, between the agency or parents, and the child, such as often seen in adoptions from Korea and India. In this situation, the child travels on an IR4 visa and an adoption must take place in the U.S. according to the procedures of the applicable U.S. State Court where the parent resides. This is frequently referred to as an adoption “finalization”. Once the adoption is completed under the applicable State’s law, the child will automatically become a U.S. citizen. The second situation comes up in cases when both parents, or parent, as applicable, did not see the child before or during the adoption abroad, sometimes referred to as a “proxy” adoption. (See comment 4 below.)

## **4. What if you or you and your spouse, as applicable, did not see your child before or during the adoption abroad? Does the INS require that you readopt?**

Your child will enter the U.S. on an IR4 visa in this situation, even if the foreign adoption is considered final under the law of the foreign country where the adoption took place. For some time, the INS has been interpreting the Immigration Act (“INA”) as requiring that the parent see the child before or during the adoption abroad in order for the adoption to be “final” under the INA.<sup>4</sup> If not, the INS has generally required a readoption of the child in the State Court of the parent residence before the child could become a U.S. citizen.<sup>5</sup> However, the INS published interim regulations on June 13, 2001, effective on that date (see footnote 2), that suggest that there may be a change in this policy so that the requirement for readoption can be “waived” with proof of the State’s recognition of the adoption. The type of proof that will be required is not described. Until more information is available about how the INS will be implementing the regulations in practice, caution is advised. It is strongly advised that the parents obtain confirmation that the INS has “waived” the readoption requirement, and that U.S. citizenship has been acquired, through obtaining a Certificate of Citizenship.

## **5. Are there advantages to readoption even if it is not required?**

Yes. Many families choose to readopt their child even if not required and it is generally recommended by most adoption lawyers and other professionals.<sup>6</sup>

Some of the reasons for readoption include the following: differences in State laws regarding honoring a foreign decree and its potential effect on inheritance laws and social security and related laws; additional security should the foreign country or others subsequently challenge the validity of the adoption, increased ability to obtain future certified copies of an adoption decree; to get a State-issued birth certificate, name change, etc.<sup>7</sup>

## **6. Your family must be residing in the U.S. for your child to benefit “automatically”.**

Even if you or your spouse is a U.S. citizen, U.S. citizenship for your child will not be automatic if you and your family are not residing in the United States. You will still have to do something affirmatively, in the usual case, file an INS N-643 Application for Certificate of Citizenship form, to make your child a U.S. citizen. However you are only entitled to utilize the N-643 Certificate of Citizenship procedure in this situation if your child is: 1) under 18 years of age; 2) residing outside of the U.S. with the U.S. citizen parent but temporarily present in the U.S. in legal status and pursuant to a lawful admission; and 3) the U.S. citizen parent (or the citizen grandparent), must have been physically present in the U.S. for a minimum of five years, previously (at least two of which were after attaining the age of 14 years.) (See INA section 322.)<sup>8</sup>

## **7. The Act only applies to final adoptions that took place before February 27, 2001, only if, as of February 27, 2001 the child was under the age of eighteen years.**

If your child turned 18 before February 27, 2001, the Act will not apply and your child did not automatically become a U.S. citizen under the Act.

## **8. What can you do if your child was 18 years old or older as of February 27, 2001 and is not entitled to automatic citizenship under the Act?**

You and your child should immediately look into the procedure for your child to naturalize as an adult, which will generally involve the same process that any other adult who immigrates to the U.S. must undertake. This involves the filing of an N-400 Petition. For the Petition to be approved your child must be a person of “good moral character”, pass a general test regarding U.S. history and be interviewed, etc. Do not delay in looking into this procedure.<sup>9</sup> While approval of the N-400 Petition may eventually be granted, there is a substantial backlog of applications and it is taking up to two years for INS approval. Until then, your child remains a legal permanent resident.

## **9. While your child may automatically become a U.S. citizen upon entry to the U.S., you will not “automatically” receive any proof that your child has become a citizen.**

Unfortunately, you will not “automatically” get a U.S. passport or other document at the time your child comes to the U.S. proving his or her automatic citizenship. IF you want proof, you will need to either apply for a Certificate of Citizenship through submission of the INS N-643 form or obtain a U.S. passport.<sup>10</sup>

## **11. Is it a good idea to obtain proof of your child’s U.S. citizenship?**

Yes and I strongly recommend it. Obtaining proof is well worth the effort and cost. Having this clear and recognizable proof on hand will save you and/or your child from having to produce numerous documents, and probably having to re-explain the Act, every time it is necessary to prove that he or she is a U.S. citizen. Indeed, many social security offices will require a Certificate of Citizenship or U.S. Passport before

they will classify your child as a U.S. citizen, even if your child “automatically” became a citizen under the Act. Furthermore, there will be no doubt that your child has met all of the requirements under the Act and indeed is a U.S. citizen.

**Please note that these are general comments 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 an 8-year-old child adopted from China in 1994. I provide legal services and recommendations to prospective parents and agencies throughout the United States to address INS problems and procedural requirements that have come up in a specific international adoption situation or to prevent or minimize potential problems. I am also handle adoption finalizations and readoptions in the Commonwealth of Pennsylvania.

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#### NOTES

<sup>1</sup> The Act can be downloaded from:

<http://www.jcics.org/billtext.pdf>

The Act, effective February 27, 2001, amended the Immigration and Nationality Act (INA) at sections 320 and 322. The Act applies to children adopted through the “orphan adoption” or “nonorphan adopted child” provisions under U.S. immigration law at INA sections 101(b)(1)(F) and 101(b)(1)(E), respectively.

<sup>2</sup> The following Comments are my interpretation of the Act and its practical effect and are not legal advice. They are based on my experience as well as publications and information from the INS and State Department about the Act, including the following:

**INS “Backgrounder Information for Adoptive Parents”**, dated 2/27/01, at

<http://www.ins.usdoj.gov/graphics/publicaffairs/backgrounds/cbground.htm>;

**INS Fact Sheet “How to Get a Certificate of Citizenship for Your Child”**, dated 2/27/01, at:

<http://www.ins.usdoj.gov/graphics/publicaffairs/factsheets/chowto.htm>;

**INS Fact Sheet “The Child Citizenship Act of 2000”**, dated 12/01/00, at

<http://www.ins.usdoj.gov/graphics/publicaffairs/factsheets/adopted.htm>;

**State Department Fact Sheet “Child Citizenship Act of 2000”**, dated 2/28/01, at:

<http://travel.state.gov/childcitfaq.html>;

**INS Regulations and Comments**, (published in Federal Register on June 13, 2001, pages 32138 to 32147) (Interim Rule but effective upon publication) have also been published regarding implementation of the CCA at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001\\_register&docid=01-14579-filed.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-14579-filed.pdf)

<sup>3</sup> Your child will still have be qualified under the provisions of the “orphan adoption” or “nonorphan adopted child” provisions under U.S. immigration law at INA sections 101(b)(1)(F) and 101(b)(1)(E). See also the applicable INS regulations at 8 C.F.R. sec.204.2, and subsections. Of related interest is that recently the requirement of an I-824 Affidavit of Support has been eliminated for parents of children who immigrate on an IR3 visa. (See <http://www.ins.usdoj.gov/graphics/lawsregs/handbook/afdptcca.pdf>) Note however that not all consulates are following this policy and this should be determined before you travel to adopt.

<sup>4</sup> The INS requirement is based on its interpretation of INA sec. 101 (b)(1)(F) regarding a full and final adoption and other sections. (See also the history of INA sec. 342 in which subsection (c) was deleted from the section.)

<sup>5</sup> Note that if you have changed your child's name, it is important that the child's former name be referenced in the State issued adoption decree with the new name, so that it is clear that it is the same child.

<sup>6</sup> In Pennsylvania, a foreign adoption decree that is final under the applicable foreign adoption law is treated as a full and final adoption under Pennsylvania law. (See my Comments, dated June 19, 2002, regarding "Things to Consider Regarding Readoption in the Commonwealth of Pennsylvania." Each State has its own set of laws regarding adoption, etc. An attorney experienced in international adoption and knowledgeable about the applicable laws in your State of residence should be consulted.

<sup>7</sup> In some States a birth certificate can also be obtained from vital records upon the filing and registration of the foreign adoption decree in the County dockets of the parent residence. Some but not all Counties in Pennsylvania have implemented a system to do this.

<sup>8</sup> If you and your child meet these requirements, you can file the N-643 from abroad with the INS office nearest to your U.S. home of record but you will have to return to the U.S. temporarily with your child, who can enter the U.S. on a B2 visitor visa, to complete the citizenship process. The regulations state that preferred interview times should be provided to the INS and that the INS should be given "sufficient time" defined as at least 90 days, to adjudicate the application and schedule the interview. Only when the INS grants the N-643 application will your child be a U.S. citizen.

<sup>9</sup> However, legal counsel should be obtained before filing, as there are other factors that should be considered before the Petition is filed.

<sup>10</sup> See my companion article, revised June 2, 2002, entitled: "**HOW DO YOU GET PROOF OF CITIZENSHIP UNDER THE CHILD CITIZENSHIP ACT FOR YOUR FOREIGN – BORN ADOPTED CHILD?**"

CJL 6/19/02

If you are in doubt about whether your child is an automatic citizen under the Act or if the adoption is final, you should contact the appropriate professional to ensure that it is the case.

Some of the reasons for readoption include the following<sup>6</sup>:

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- In Pennsylvania, and most likely in many other State Courts, the process for readoption will usually involve a brief and friendly hearing before a Judge, either in a Courtroom or a small room. Usually family members and friends are allowed to come to the hearing. The hearing can serve as an opportunity for other members of your family or friends to be involved in the adoption of your child, who could not attend the initial adoption abroad. You may be permitted to take photographs.

**Finally, an adoption decree issued from a U.S. State Court will provide your family with additional protection should the foreign country involved, or others, ever challenge the validity of the adoption or adoptions from the country generally. You may at some point want to bring your child to visit his**

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<sup>6</sup> Each State has its own set of laws regarding adoption, etc. An attorney experienced in international adoption and knowledgeable about the applicable laws in your State of residence should be consulted. In Pennsylvania, a foreign adoption decree that is final under the applicable foreign adoption law is treated as a full and final adoption. Therefore if you reside in Pennsylvania, a “readoption” should not be “required” for the adoption to be treated under Pennsylvania law as full and final. However, as described in comment 4 above, the INS has generally not considered the adoption to be “final” in the situation where both parents, or parent, as applicable, did not see the child before or during the adoption. The INS regulations (see footnote 2) and indicate that the readoption requirement may be waived with proof of Pennsylvania’s recognition of the adoption. In Pennsylvania, each County has its own set of additional, and often different, rules that govern proceedings brought in its jurisdiction. Some Counties in Pennsylvania have developed specific procedures for readoptions involving foreign adoptions; Some Counties in Pennsylvania provide a procedure for “recognition” of a foreign adoption. but have no procedure for a “readoption”; many have no special procedures as of yet, etc. The proceeding can be brought in the County of the parents’ residence or, in the alternative if a Pennsylvania agency was used for the adoption, in the County where the agency has an office.

**or her country of birth. A U.S. State issued adoption decree will prove and confirm his or her status as your child.**

- Not all States in the U.S. recognize a foreign decree. However, if you have an adoption decree issued by a U.S. State Court, all other States in the U.S. are required by the U.S. Constitution to give full faith and credit to the decree and your child's rights under the decree. Therefore, obtaining a U.S. State adoption decree assures you that every other State in the U.S. will recognize the decree. Furthermore, each State has its own inheritance and family laws, and even federal laws, such as social security, can be based on a State's laws. Should you move to one of the States that do not recognize the foreign adoption decree, your child's inheritance, social security and related rights could be questioned.
- There are practical concerns. An adoption decree from a U.S. State Court will be in English. The Certificate of Adoption and related documents that are issued from your child's country of birth are generally in a language other than English and will need to be accompanied by separate English translations. Should you need to prove the adoption it will be easier for you or your child to be able to refer to one document that is written in English and is readily recognizable as a decree of adoption. In addition, you will have a limited number of originals of the documents from your child's country of origin. Should you lose these it will be difficult if not impossible to obtain additional "originals" or certified copies. If you have a U.S. State adoption decree you can easily obtain additional copies if necessary. For example, when you apply for a U.S. passport for your child, you will be required to send them an original copy of the foreign adoption documents for processing of the passport. If you have a U.S. State adoption decree, you can use this in its place, and give this to the Passport office rather than risk losing the original foreign decree.
- Some States require that you readopt under its laws before you can obtain a State issued birth certificate for your child.<sup>7</sup> The same practical concerns apply to obtaining a birth certificate for your child from your State of residence.

**A name change can be incorporated in the adoption decree. (But see footnote 5.) The State issued adoption decree can be sent to vital records and a birth certificate in English will be issued in your child's "American" name. Some INS and social security offices will not issue documents in the "American" name if the immigration documents are in the "foreign country name", without a court-ordered name change.**

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<sup>7</sup> In Pennsylvania, by statute, a birth certificate can also be obtained from vital records upon the filing and registration of the foreign adoption decree in the County docket of the parent(s)' residence. Some but not all Counties in Pennsylvania have implemented a system to do this. The costs and exact procedures involved vary with the County.

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