



# Guide to Acquisition of U.S. Citizenship by Birth Abroad

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## I. INTRODUCTION

### I.1 SCOPE OF THIS ARTICLE

This article discusses the requirements for a child born abroad to automatically acquire U.S. citizenship at birth.<sup>1</sup>

The law sets forth different requirements for U.S. citizenship depending on the following factors:

- **Child born to two U.S. citizen parents:**<sup>2</sup> A child is a citizen at birth if one parent has had a residence in the U.S. for at least 1 year prior to the birth.<sup>3</sup>
- **Child born to one U.S. citizen parent in wedlock:** A child is a citizen at birth if that parent was previously physically present in the U.S. or its outlying possessions for periods totaling not less than 5 years, at least 2 of which were after age 14.<sup>4</sup>
- **Child born to U.S. citizen father out of wedlock:** the child is a citizen at birth if (a) the blood relationship between the father and child is established; (b) the father was previously physically present in the U.S. or its outlying possessions for periods totaling not less than 5 years, at least 2 of which were after age 14; (c) the father (unless deceased) has agreed in writing to provide financial support for the child until age 18; and (d) while the child is under age 18, the child is legitimated under the law of his or her residence or domicile, the father acknowledges paternity in writing under oath, or paternity is established by adjudication of a competent court.<sup>5</sup>
- **Child born to U.S. citizen mother out of wedlock:** the child is a citizen if the mother was previously physically present in the U.S. for a continuous period of 1 year.<sup>6</sup>

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<sup>1</sup> A person born in the U.S. is a U.S. citizen at birth, unless born to certain foreign heads of state or diplomats. U.S. Const., amend. XIV; INA § 301(a). This reflects the principal of *jus soli*, meaning nationality determined by place of birth. In contrast, this article focuses on laws based on the principal of *jus sanguinis*, meaning nationality determined by blood or parentage.

<sup>2</sup> It is irrelevant whether citizenship was obtained by birth or naturalization.

<sup>3</sup> INA § 301(c).

<sup>4</sup> INA § 301(g). Periods abroad of honorable U.S. military service, U.S. government employment, or employment with certain international organizations satisfy the physical presence requirement, as do periods as the dependent unmarried son or daughter in the household of engaged in such service or employment. (Government contractors and Peace Corps volunteers are not U.S. Government employees for purposes of § 301(g).

<sup>5</sup> INA § 309. The U.S. Supreme Court has rejected claims that it is unconstitutionally discriminatory to impose stricter requirements on children born out of wedlock to U.S. citizen fathers than U.S. citizen mothers. *Miller v. Albright*, 532 U.S. 420 (1998).

<sup>6</sup> Note that it's harder for a U.S. citizen mother to transmit citizenship if she's married.

Related laws have changed many times over history, and this article only covers children born on or after November 14, 1986.<sup>7</sup>

Part 2 of this article discusses the State Department’s traditional interpretation that only a natural parent—i.e., one biologically related to the child—can transmit citizenship, as well as a 2014 update to that policy as it relates to birth mothers (gestational mothers).

Part 3 discusses the additional requirements for children born out of wedlock to a U.S. citizen father.

Part 4 discusses how the citizen parent can prove the required physical presence in the U.S.

And Part 5 discusses the various procedures to apply for evidence of the child’s citizenship, which include:

- filing Form DS-2029, Application for a Consular Report of Birth Abroad of a Citizen of the United States (CRBA), with a U.S. consulate abroad
- applying for a U.S. passport; and
- filing a Form N-600, Application for a Certificate of Citizenship with U.S. Citizenship and Immigration Services (USCIS).

## **I.2 RELATED TOPICS**

The following related topics are beyond the scope of this article so are not discussed in detail:

### **U.S. GOVERNMENT POLICY ON DUAL NATIONALITY**

The concept of dual nationality means that a person is a citizen of two countries at the same time. U.S. policy is to recognize the existence of dual nationality but not to encourage it.<sup>8</sup> Dual nationality may hamper efforts by the U.S. Government to provide diplomatic and consular protection to individuals overseas. When a U.S. citizen is in the other country of their dual nationality, that country has a predominant claim on the person.<sup>9</sup>

### **FOREIGN GOVERNMENT POLICIES ON DUAL NATIONALITY**

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<sup>7</sup> For an overview of the history of the law, see Charles Gordon, et al., *Imm. Law & Proc.* § 93.01[3].

<sup>8</sup> 7 FAM 081. Current U.S. nationality laws do not explicitly address dual nationality, but the U.S. Supreme Court has stated that dual nationality is a “status long recognized in the law” and that “a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both.” *Kawakita v. United States*, 343 U.S. 717 (1952).

<sup>9</sup> 7 FAM 081.

Each country has its own citizenship laws. Some countries do not recognize dual nationality.

### China

Under China's Nationality Law, any person born in China to one PRC national parent automatically acquires Chinese nationality at birth.<sup>10</sup> China doesn't recognize dual citizenship for its nationals.<sup>11</sup>

As a result, the PRC will not allow a person to enter or exit with a foreign passport if the person is considered a PRC national. Further, if a child born in China has obtained a foreign passport, the PRC Ministry of Public Security sees this as a "nationality conflict" making it inappropriate to issue a PRC passport. Instead, the child may apply at the city public security bureau (PSB) exit-entry office where he or she resides for an exit and entry travel document (出境入境通行证) valid for a single exit and entry during a 3-month period.<sup>12</sup> The child may also apply to renounce PRC nationality.<sup>13</sup> In the past, some cities (but not all) have required the child to renounce PRC nationality as a condition to issuance of the exit and entry travel document.

The U.S. State Department will also issue a one-time pro forma nonimmigrant visa to a child "unable or unwilling" to establish U.S. citizenship status.<sup>14</sup> That visa, in a PRC passport, would enable the child to exit China in lieu of the PRC exit and entry travel document.

## DERIVATION OF CITIZENSHIP

This article focuses on citizenship acquired automatically **at birth**. As a separate matter, a child born abroad to one U.S. citizen parent may, **subsequent to birth**, derive citizenship when the following conditions have been fulfilled: (a) the child is under age 18, and (b) the child is a lawful permanent resident living in the U.S. in the custody of the citizen parent.<sup>15</sup>

## NATURALIZATION

A child<sup>16</sup> qualifies for citizenship if the following conditions have been fulfilled: (a) the child is under 18; (b) the child is residing abroad in the citizen parent's custody; (c) the child has been admitted to the U.S. temporarily; and (d) the citizen parent (or that parent's parent) has been physically present in the U.S. for five years, at least two of which were after age 14.<sup>17</sup>

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<sup>10</sup> PRC Nationality Law, art. 4.

<sup>11</sup> PRC Nationality Law, art. 3.

<sup>12</sup> MPS, 公安出入境管理群众咨询答复口径 (Nov. 16, 2012).

<sup>13</sup> PRC Nationality Law, art. 10.

<sup>14</sup> 7 FAM 085; 9 FAM 40.2 N1.

<sup>15</sup> INA § 320.

<sup>16</sup> A "child" for this purpose does not include the stepchild of a U.S. citizen. *Matter of Guzman-Gomez*, 24 I. & N. Dec. 824 (BIA 2009).

<sup>17</sup> INA § 322.



## RENUNCIATION OF U.S. CITIZENSHIP

A person may renounce U.S. nationality by performing certain acts voluntarily and with the intention of relinquishing U.S. nationality. Those acts include, for example, naturalizing in a foreign state or making a formal renunciation of nationality before a diplomatic or consular officer of the United States, after age 18.<sup>18</sup> Parents cannot renounce U.S. citizenship on behalf of their child.<sup>19</sup>

## 2. THE GENETIC OR GESTATIONAL RELATIONSHIP

### 2.1 THE RULE

According to the State Department's traditional policy, to transmit citizenship, the U.S. citizen parent must be related to the child genetically.<sup>20</sup>

However, since 2014, the State Department has updated the policy as it relates to gestational mothers.<sup>21</sup> Under this policy, a "mother" can be either genetically related to the child or be the gestational mother, i.e. birth mother (who carries and gives birth to the child).<sup>22</sup> This policy has retroactive application.<sup>23</sup>

If the only U.S. citizen parent is the father and he is not married to either the genetic mother or the gestational mother at the time of the birth, then the child would be treated as born "out of wedlock" to a U.S. citizen father, so the additional requirements described above would need to be met. For example, where a U.S. citizen genetic father and the child is born to a surrogate birth mother carrying an anonymous egg, the child is treated as born "out of wedlock."<sup>24</sup>

Courts have at times been more liberal in determining whether a child was born "in wedlock" where extramarital affairs are involved.<sup>25</sup> *Scales v. INS*<sup>26</sup> was a case involving a child born abroad whose foreign national mother was married to a U.S. citizen, but whose genetic father was a third party. The court held that the child was not "born out of wedlock" and determined that under the statute no genetic relationship need be proven between the U.S. citizen father and the child. The court cited to a widespread family-law presumption that the husband is the father of a child born to his wife.

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<sup>18</sup> INA § 349.

<sup>19</sup> 7 FAM 1292.

<sup>20</sup> 7 FAM 1131, 1441, 1445, 1110 Appendix A, 7 FAM Appendix E. That State Department policy is required by statute only in the case of a child born out of wedlock. INA § 309.

<sup>21</sup> DOS Cable 00010952, *Policy Change Related to Children Born Abroad through Assisted Reproductive Technology (ART)* (Jan. 14, 2014), AILA Doc. No. 14020740.

<sup>22</sup> DOS Cable 00010952, *supra*.

<sup>23</sup> *Id.*

<sup>24</sup> 7 FAM 1120 App. D (Dec. 15, 2015).

<sup>25</sup> Courts have jurisdiction over nationality determinations in the U.S. but not abroad.

<sup>26</sup> 232 F.3d 1159 (9th Cir. 2000).

Similarly, *Solis-Espinoza v. Gonzalez*<sup>27</sup> involved a child born to two foreign nationals. The father had an extramarital affair with the natural mother and was married to a U.S. citizen. The court held that the resulting child was not “born out of wedlock” because of the presumption of parentage for children born to married couples.

## 2.2. HOW TO PROVE A GENETIC OR GESTATIONAL RELATIONSHIP

For a child whose only U.S. citizen parent is the mother, her blood relationship to the child must be proven by a preponderance of the evidence.

For a child born in wedlock whose only U.S. citizen parent is the father, if the blood relationship to the mother is proven, then it will be presumed that her husband is the father.

But for a child born out of wedlock whose only U.S. citizen parent is the father, stronger proof must be shown: a blood relationship must be proven by clear and convincing evidence.<sup>28</sup>

A birth certificate listing the names of the mother and father as the biological parents should be provided, if available.

Beyond that, many consular officers rely take a common-sense approach by checking to see if the child looks like the father.

In cases where a doubt arises, the consular officer may consider factors such as:<sup>29</sup>

- Several pictures of the mother’s pregnancy, prenatal records, and hospital records if available<sup>30</sup>
- If the child is not a newborn, a photo album showing the parents and child together over time
- Evidence that the father and mother were together at the time of conception, including travel records and receipts along with statements of third party witnesses<sup>31</sup>
- Photos of the couple together prior to the time of conception
- Correspondence between the couple prior to the time of conception

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<sup>27</sup> 401 F.ed 100 (9<sup>th</sup> Cir. 2004).

<sup>28</sup> INA § 309(a)(1).

<sup>29</sup> 7 FAM 1131.4-2(b)(2) (2007).

<sup>30</sup> U.S. Embassy in Beijing, Report a Birth, <http://beijing.usembassy-china.org.cn/crba.html> (last visited Sept. 1, 2012).

<sup>31</sup> 7 FAM 1133.4-2(b)(1) (2007).

- Statements of additional third parties with knowledge of the child's paternity, such as medical staff from the delivery<sup>32</sup>
- Certified hospital records or physicians' records where an ART procedure occurred and a sworn statement from the physician who performed the procedure.<sup>33</sup>
- Medical records documenting the underlying medical conditions that caused the parents to seek ART;
- Medical records documenting pre-natal care.
- Insurance documents or other types of receipts documenting the payments made for prenatal medical care, labor and delivery, and ART.

Though it is not required by law, in cases where it is difficult to prove a blood relationship, the parents may elect to commission a blood or DNA test.<sup>34</sup> The results of these tests are not considered definitive, but may be considered strong evidence of biological paternity.<sup>35</sup>

Several concerns must be addressed when choosing to conduct a blood or DNA test.<sup>36</sup> The Government must be satisfied with the legitimacy of the test, and so should be provided with the facility name and dates for testing.<sup>37</sup> The official may also request a test be performed, but it remains the duty of the parents to arrange and pay for the testing.<sup>38</sup> In the case of a blood test, a testing facility certified by the American Association of Blood Banks is recommended because of their quality control standards recognized by the U.S. government.<sup>39</sup> Government officials will work directly with the testing facility to assure that the tissue samples used in testing are in fact taken from the parent(s) and child and that the integrity of the samples is intact throughout the test.<sup>40</sup> A list of recommended testing facilities is available from the Department of State.<sup>41</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> 7 FAM 1140 App. D (Dec. 15, 2015).

<sup>34</sup> 7 FAM 1133.4-1(b)(2) (2007).

<sup>35</sup> 7 FAM 1133.4-2(b)(1) (2007).

<sup>36</sup> *See generally* 7 FAM 1100 Appendix A (DNA testing and citizenship) (June 29, 2012).

<sup>37</sup> 7 FAM 1131.5-5(d)(4) (1998).

<sup>38</sup> 7 FAM 1131.5-5(c) (1998); 7 FAM 1131.5-5(d)(2) (1998).

<sup>39</sup> 7 FAM 1131.5-5(d)(1) (1998).

<sup>40</sup> 7 FAM 1131.5-5(d)(5) (1998).

<sup>41</sup> 7 FAM 1131.5-5(d)(1) (1998). *See generally* U.S. State Dep't, *Information for Parents on U.S. Citizenship and DNA Testing*, <http://travel.state.gov/content/travel/en/legal-considerations/us-citizenship-laws-policies/citizenship-and-dna-testing.html> (last viewed Feb. 25, 2016).

### 3. CHILDREN BORN OUT OF WEDLOCK TO A U.S. CITIZEN FATHER

#### 3.1 WHAT DOES IT MEAN TO BE “BORN OUT OF WEDLOCK”?

A citizen father must meet the above-listed additional requirements to transmit citizenship if his child was “born out of wedlock.” As mentioned above, according to State Department policy, a child is “born out of wedlock” to a U.S. citizen genetic father if he wasn’t married to either the genetic mother or the birth mother at the time of birth. (Some courts take a more liberal attitude in cases involving children born to extramarital affairs).

#### 3.2 FINANCIAL COMMITMENT LETTER

In the case of a child born out of wedlock to a U.S. citizen father, a written statement from the father made before the child’s 18<sup>th</sup> birthday promising to provide financial support for the child until the child reaches the age of 18 is required.<sup>42</sup> The letter must be signed before a U.S. or foreign official authorized to take oaths for the letter to be valid.<sup>43</sup> Local law of the child’s place of domicile or residence which requires a father to provide support for a child is not sufficient to satisfy this requirement.<sup>44</sup> The statement may be in any form, but the State Department sample may be used.<sup>45</sup>

#### 3.3 LEGITIMATION BEFORE AGE 18

For a child born to a U.S. citizen father out of wedlock, the child must be legitimated before age 18. This can be done in any of three ways: (1) the child can be legitimated under the law of the child’s residence or domicile; (2) the father can acknowledge paternity of the child in writing under oath; or (3) paternity can be established by adjudication of a competent court.<sup>46</sup>

The first method is that children are legitimated under the law of their residence or domicile when they have the same legal status and rights as children who born in wedlock.<sup>47</sup> Rules of legitimation vary by country. By operation of law, any child born in China as a Chinese citizen is legitimate because China does not distinguish between the legal rights of children born in or out of wedlock.<sup>48</sup>

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<sup>42</sup> INA § 309(a)(3) (2008); 7 FAM 1133.4-2(b)(3)(c) (Apr. 1, 1998).

<sup>43</sup> 7 FAM 1133.4-2(b)(3)(c)(iv) (2007).

<sup>44</sup> 7 FAM 1133.4-2(b)(3)(b) (2007).

<sup>45</sup> 7 FAM 1133.4-2(b)(3)(c) (Apr. 1, 1998). The sample is available at 7 FAM 1445 Exhibit 1445.5-3.

<sup>46</sup> INA § 309(a)(4) (2008).

<sup>47</sup> 7 FAM 1133.4-2(b)(4)(a)(ii) (2007).

<sup>48</sup> *Lau v. Kiley*, 563 F.2d 543 (2d Cir. 1977).

The second method is that the U.S. citizen father may, under oath and in writing, acknowledge paternity of the child.<sup>49</sup> In cases where legitimation of a child in his place of domicile or residence are unclear or difficult to prove, an acknowledgement letter should always be included.<sup>50</sup> This statement is known as an Affidavit of Parentage. It may be taken by any government official authorized to administer oaths either domestically or abroad.<sup>51</sup>

Lastly, the paternity of a child may be decided by the adjudication of a competent court.<sup>52</sup> This option is rarely used, most often when the father is unavailable or unwilling to acknowledge paternity of the child.<sup>53</sup>

## 4. HOW TO PROVE U.S. PHYSICAL PRESENCE

Where a physical presence requirement applies, it's worth noting that it's distinct from a residence requirement (e.g., time in the U.S. as a visitor would count) and that there is no requirement that the individual be a citizen at the time of physical presence.

Physical presence may be proven by providing several types of documents.

The Foreign Affairs Manual specifically refers to<sup>54</sup>:

1. Proof of registration in U.S. public or private schools (e.g., transcripts)
2. Court records
3. Military records (e.g., statement of service or DD-214 separation statement)
4. Employment and income records
5. Medical records

That list is not exclusive, and other types of documents that may be appropriate include, for example:

1. Residence records (utility bills, payment receipts on a home mortgage and property taxes)
2. Tax records
3. Passports showing entry and exit stamps from the U.S.

If such primary evidence is insufficient, the Consulate may also accept the sworn statements of at least two U.S. citizens having personal knowledge of the period

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<sup>49</sup> 8 U.S.C. § 1409(a)(4)(B) (2008).

<sup>50</sup> 7 FAM 1133.4-2(b)(4)(a)(iv) (2007). The State Department provides a sample at 7 FAM 1445 Exhibit 1445.5-3.

<sup>51</sup> 7 FAM 1133.4-2(b)(2) (2007); 7 FAM 1445.5-3(h) (2007).

<sup>52</sup> 8 U.S.C. § 409(a)(4)(B).

<sup>53</sup> 7 FAM 1133.4-2(b)(4)(c)(i) (2007).

<sup>54</sup> 7 FAM 1445.5-6(d) (June 29, 2012).

of physical presence.<sup>55</sup> Multiple sources of evidence should be submitted in support of the physical presence requirement.

## 5. PROCEDURES

As mentioned above, there are various types of official acknowledgment that a child born abroad acquired citizenship at birth. These include a Consular Report of Birth Abroad (CRBA), Certificate of Citizenship, or U.S. passport.

If the child and parents are physically located abroad, they will apply typically for the CRBA and passport.

If the child and parents are physically located in the U.S., they will apply typically for the certificate of citizenship and passport.

Note that only a passport itself is only evidence of citizenship if unexpired, so a CRBA or Certificate of Citizenship is helpful additional evidence.

### 5.1 APPLICATION FOR A CONSULAR REPORT OF BIRTH ABROAD

A CRBA (Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America) is an official document issued by the State Department certifying acquisition of citizenship for a child born outside of the United States.<sup>56</sup> Effective January 17, 2011, the State Department began issuing a redesigned version of the CRBA with a variety of security features, which is printed at a Passport Agency in the U.S.<sup>57</sup> Note that a CRBA is not a “birth certificate.”<sup>58</sup> It does provide a record of the acquisition of U.S. citizenship at birth in a foreign country that can be used by that citizen throughout life.<sup>59</sup>

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<sup>55</sup> 7 FAM 1445.5-6(e).

<sup>56</sup> 7 FAM 1441.1 (June 29, 2012).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*





Sample CRBA (Current version)

UNITED STATES OF AMERICA  
DEPARTMENT OF STATE  
**Consular Report of Birth Abroad**  
of a Citizen of the United States of America

This is to certify that \_\_\_\_\_ sex \_\_\_\_\_  
born at \_\_\_\_\_  
on \_\_\_\_\_ acquired United States citizenship at birth as established by documentary evidence presented  
to the Consular Service of the United States at \_\_\_\_\_  
on \_\_\_\_\_  
Father \_\_\_\_\_ PARENTS Mother \_\_\_\_\_  
Date of Birth \_\_\_\_\_ Date of Birth \_\_\_\_\_  
CONSUL \_\_\_\_\_  
MADRID, SPAIN \_\_\_\_\_  
JUNE 02, 2009 \_\_\_\_\_  
(SEAL)  
FORM PB-540 A Consular Report of Birth is proof of United States citizenship by law: 22 USC 2706

Sample CRBA (2009 version)

## FILING DATE

The application for a CRBA must be made prior to the child's 18<sup>th</sup> birthday,<sup>60</sup> except in extraordinary circumstances.<sup>61</sup> It is best to apply for the CRBA within one to two months after the birth of the child.<sup>62</sup> Delayed reporting is disfavored:

Delayed reporting of the birth of a U.S. citizen abroad not preferable: Because the availability and/or reliability of the information and supporting evidence presented diminishes with time, it is desirable that the application be made as soon after birth as possible. Accordingly, posts should impress upon U.S. citizen parents resident in their consular districts the advantage of a prompt reporting of the birth of their children. Delay in reporting could cause inconvenience and possibly deprive a child of this valuable document.<sup>63</sup>

## **WHERE TO APPLY**

The application is normally made at the U.S. consulate in the consular district where the birth occurred.<sup>64</sup>

Still, it is permissible for a birth that occurred in one consular district to be reported in another.<sup>65</sup> If the parents find it convenient, or necessary, to apply in a different consular district in the same country, the consular officer "may proceed to complete and approve" the application, "provided there are no fraud concerns."<sup>66</sup>

If the parents apply in a different country from where the birth occurred, the application will be forwarded by the consulate where the child resides to the Consulate where the birth occurred. There, the consulate may approve the application and issue the CRBA, returning it to the parents or the consulate where the child resides.<sup>67</sup>

Only rarely can a CRBA be approved for a child who is physically present in the U.S.<sup>68</sup>

## **FORM OF APPLICATION**

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<sup>60</sup> 7 FAM 1443(d); 7 FAM 1443.1 (June 29, 2012); 7 FAM 1444.2 (June 29, 2012).

<sup>61</sup> 7 FAM 1444.2 (June 29, 2012).

<sup>62</sup> U.S. Consulate General in Shanghai, *Report of Birth Abroad*, [http://shanghai.usembassy-china.org.cn/birth\\_citizen.html](http://shanghai.usembassy-china.org.cn/birth_citizen.html) (last visited June 7, 2008).

<sup>63</sup> 7 FAM 1444.2 (June 29, 2012).

<sup>64</sup> 7 FAM 1444.3-1 (June 29, 2012).

<sup>65</sup> 7 FAM 1444.3-1 (June 29, 2012).

<sup>66</sup> 7 FAM 1444.3-2(A) (Mar. 1, 2011).

<sup>67</sup> 7 FAM 1444.3-2(B) (June 29, 2012). See 22 C.F.R. § 50.5 ("In specific instances, the Department may authorize consular officers and other designated employees to adjudicate the application for a Consular Report of Birth Abroad of a child born outside his/her consular district.")

<sup>68</sup> 7 FAM 1444.3-1 (June 29, 2012).



The application is made on Form DS-2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America. It should be signed by a parent or guardian.<sup>69</sup>

### **APPLICANT'S NAME**

The child's name shown on the application (and the subsequently issued CRBA) should normally be the name recorded on the local birth certificate,<sup>70</sup> and it should match the name written on the application.<sup>71</sup> Yet those names needn't match exactly.<sup>72</sup> For example, a foreign name may be translated (e.g., Moises Ramon in Spanish may be translated to Moses Raymond).<sup>73</sup> An applicant whose foreign name has no English equivalent may use a different English name, in which case the applicant may be required to provide an affidavit issued by an immediate blood relative of the applicant's generation or older explaining the discrepancy or may be required to obtain an amended birth certificate.<sup>75</sup> And if the child is born out of wedlock, the father's surname can be used on the CRBA even if it is different from the name on the birth certificate if paternity is proven.<sup>76</sup>

### **SCHEDULING AN APPOINTMENT**

At the U.S. Consulates in China, routine services are by appointment only.

### **INTERVIEW**

Typically, the consulate will require that an appointment be scheduled to apply for the CRBA.

According to the rules, the consular officer "may" require the child to be present at the interview.<sup>77</sup> In practice, in China the Consulate typically requires both parents and the child to appear together.<sup>78</sup>

Where it's necessary to show a parent's physical presence in the U.S., that "can usually be determined by a brief interview with one of the parents" and "[e]vidence of such residence would be required only in unusual circumstances in

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<sup>69</sup> 7 FAM 1445.1 (Mar. 1, 2011).

<sup>70</sup> 7 FAM 1310(b), (d) Appendix C (Mar. 25, 2013).

<sup>71</sup> 7 FAM 1311(a) Appendix C.

<sup>72</sup> 7 FAM 1311(c) Appendix C.

<sup>73</sup> 7 FAM 1445.5-4(a) (Mar. 1, 2011).

<sup>75</sup> 7 FAM 1317 Appendix C. "We are aware of cases in which multi-cultural dual national families give their children more than one set of names, an English name and a name in the native language of the foreign nationality.... For infants and very young children, parents can present the birth evidence and an affidavit, and then the passport may be issued in the name the family will use for the infant." 7 FAM 1367(b)-(c) Appendix C. The affidavit should state that "the English name will be used exclusively in all U.S. registration and citizenship documents." 7 FAM 1392(b) Appendix C.

<sup>76</sup> 7 FAM 1445.5-4(b) (Apr. 10, 2007).

<sup>77</sup> 7 FAM 1444.1 (June 29, 2012).

<sup>78</sup> U.S. Embassy in Beijing, Report a Birth, <http://beijing.usembassy-china.org.cn/crba.html> (last visited Sept. 1, 2012).

which neither parent ever spent any substantial period of time in the United States,” according to the Foreign Affairs Manual.

### **WHAT IF ONLY ONE PARENT CAN BE PRESENT FOR THE INTERVIEW?**

Both parents are strongly encouraged to appear for the CRBA interview. However, if the U.S. citizen parent cannot be present for the interview, the following documents must be completed and signed by the American parent, notarized and then submitted with all other supporting documents to the Consulate:

- Completed Consular Report of Birth Abroad application: Form DS-2029
- Completed Affidavit of Parentage, Physical Presence and Support: Form DS-5507
- Notarized copies of U.S. citizen parent’s passport(s). Must include all pages, including blank pages.

Please be aware that should the parent present for the interview not be able to adequately answer questions asked by the consular officer, processing of your child’s CRBA application may be delayed. In some circumstances, the consular officer may request to interview the non-appearing parent.<sup>79</sup>

Not that there will be additional documentary requirements to apply for a passport if only one parent will be present.

### **SUPPORTING EVIDENCE**

All documentary evidence related to the application must also be provided at the time of initial application. This includes:

- Forms:
  - a. Form DS-2029, Application for Consular Report of Birth Abroad of a Citizen of the United States of America (rev. 2013-04) (unsigned). At the interview, the applicant (or parent) will be instructed to sign with his or her normal legal signature, which should generally match the signature shown on the applicant’s identity documents.<sup>80</sup>
  - b. Form DS-5507, Affidavit of Parentage, Physical Presence and Support (unsigned)
  - c. You may apply for a Social Security number by filing a Form SS-5, Application for a Social Security Card (unsigned). The number will be mailed to you about four months after registration.<sup>82</sup>

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<sup>79</sup> U.S. Embassy in Beijing, CRBA Frequently Asked Questions (last visited Nov. 4, 2017), <https://china.usembassy-china.org.cn/u-s-citizen-services/child-family-matters/crba-frequently-asked-questions/>.

<sup>80</sup> 7 FAM 1313(a) Appendix C.

<sup>82</sup> U.S. Consulate in Shenyang, *Reporting a Birth*, <http://shenyang.usembassy-china.org.cn/birth.html> (last visited Oct. 24, 2013).

- Filing fee of \$100 (also payable in local currency)
- Two 2x2 inch U.S. passport-type photos of the child *may* be required.<sup>83</sup>
- Evidence of the child's ID, relationship to parents, and citizenship:
  - a. Child's birth certificate<sup>84</sup>
  - b. Evidence of change of child's name, if applicable,<sup>85</sup> if the name on the application doesn't match the birth certificate
  - c. Parents' original marriage certificate or certified copy of the marriage certificate (if applicable)
  - d. Evidence of the termination of any previous marriages of the parents (certified divorce decree, annulment decree, or death certificate)<sup>86</sup>
  - e. Evidence of the father-child blood relationship, where just the father is a U.S. citizen. See the list in Part 2.2 above.
  - f. Evidence of the citizen parent's 5 years' physical presence in the U.S., where just one parent is a citizen. See the list in Part 4 above.
  - g. In the case of a child born out of wedlock to a U.S. citizen father, a financial commitment letter and evidence of legitimation (see Part 3 above).<sup>87</sup>
- Evidence of the parents' identification and U.S. citizenship, if applicable:
  - a. Evidence of the U.S. citizen parent's citizenship and identity: Citizenship may be proven by providing a valid passport, original or certified birth certificate, or a certificate of citizenship or naturalization.<sup>88</sup>
  - b. Evidence of the noncitizen parent's identity (e.g., passport, national ID card, family register, U.S. Form I-551, Permanent Resident Card if applicable)
- All foreign language documents must be accompanied by "summary" English translations.<sup>91</sup>

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<sup>83</sup> Not required at U.S. Consulate in Shenyang as of Nov. 7, 2013.

<sup>84</sup> 22 C.F.R. §§ 50.5 (must submit proof of the child's birth, identity, and citizenship); 50.5(a) (Proof of child's birth usually consists of, but is not limited to, an authentic copy of the record of the birth filed with local authorities, a baptismal certificate, a military hospital certificate of birth, or an affidavit of the doctor or the person attending the birth. If no proof of birth is available, the person seeking to register the birth shall submit his affidavit explaining why such proof is not available and setting forth the facts relating to the birth.); 7 FAM 1445.5-3 (Sept. 17, 2014).

<sup>85</sup> 7 FAM 1445.5-4 (Mar. 1, 2011).

<sup>86</sup> 7 FAM 1445.5-7 (Mar. 1, 2011).

<sup>87</sup> 7 FAM 1445.5-3 (June 29, 2012).

<sup>88</sup> 7 FAM 1145.5-5(c) (2008). Identity must also be proven, so a birth certificate alone would not be enough. 7 FAM 1133.4-2(b)(2) (Apr. 1, 1998).

<sup>91</sup> *Id.*

- Appointment confirmation notice from the U.S. Consulate's American Citizen Services section.

The applicant should supply original supporting documents. The Consulate will record pertinent information and then return the documents to the applicant,<sup>92</sup> except that the Consulate may keep documents for purposes of a fraud investigation.<sup>93</sup> The Consulate may photocopy the documents for their own use.<sup>94</sup>

Since you will not be allowed to bring any electronic devices into the Embassy, bring a hard copy of all documents and photos that you need for your appointment.<sup>95</sup>

## ADJUDICATION AND PROCESSING TIME

The officer will approve the application if the “preponderance of the evidence” shows that the child meets the requirements. This standard means that the evidence that the requirements are met is stronger than the evidence to the contrary.<sup>96</sup>

Current processing time is approximately two to three weeks assuming there is no complication.<sup>97</sup>

At the time of application, the consulate office may request additional information beyond the initial documents submitted. If additional information is requested, the application will be held in suspense for up to 90 days while waiting for the submission of the requested information.<sup>98</sup> Any additional documents provided to the consulate office should have a copy of the initial application attached.<sup>99</sup> If additional evidence requested by the consulate office is not received within 90 days of the request, the application will be considered abandoned and new application must be separately filed.<sup>100</sup>

If there is any complex legal question, the consular officer may refer the question to the Office of Legal Affairs, which is part of the State Department's Overseas Citizen Services in Washington, DC.<sup>101</sup>

If the application is approved, the actual Consular Report of Birth Abroad is issued on a State Department Form FS-240. It typically takes a couple weeks after the interview for the Consulate to issue the CRBA. When you receive it, make sure to check it carefully for errors.

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<sup>92</sup> 7 FAM 1445.7-1 (Apr.10, 2007).

<sup>93</sup> 7 FAM 1445.7-2 (June 29, 2012).

<sup>94</sup> 7 FAM 1445.7-1 (Apr. 10, 2007).

<sup>95</sup> U.S. Consulate in Shenyang, *Reporting a Birth*, <http://shenyang.usembassy-china.org.cn/birth.html> (last visited Oct. 24, 2013).

<sup>96</sup> 22 C.F.R. § 51.40; 7 FAM 1131.4-1 (Dec. 13, 2010).

<sup>97</sup> Telephone conference with the U.S. Consulate in Shenyang, Oct. 24, 2013.

<sup>98</sup> 7 FAM 1445.4 (June 29, 2012).

<sup>99</sup> 7 FAM 1445(c)(4) (2007).

<sup>100</sup> 7 FAM 1445.8 (2007).

<sup>101</sup> 7 FAM 1441.4 (June 29, 2012).

If the application is refused, the consulate will take appropriate action to enter the name in the CLASS (Consular Lookout and Support System) system. The Consulate will inform the parents in writing that the application is disapproved. The family may submit additional evidence at any time, and request reconsideration of the case by the Office of Legal Affairs.<sup>102</sup> It's not clear whether an appeal to federal court is possible.<sup>103</sup>

## REPLACING OR AMENDING A CRBA

It's possible to replace or amend a CRBA.<sup>104</sup>

## CANCELLATION OF A CRBA

A CRBA may be canceled if it appears to the State Department that it was illegally, fraudulently, or erroneously obtained, or was created through illegality or fraud. The Department will provide written notice with specific reasons and an explanation of the procedures for review.<sup>105</sup>

## 5.2 APPLICATION FOR A CHILD'S FIRST U.S. PASSPORT

A U.S. passport<sup>106</sup> is the most useful document to have because it evidences identity and U.S. citizenship. In addition, U.S. citizens exiting and entering the U.S. are required to do so with a U.S. passport.<sup>107</sup>

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<sup>102</sup> *Id.*

<sup>103</sup> See Daniel Levy, U.S. Citizenship and Naturalization Handbook § 13:22 (Sept. 2011).

<sup>104</sup> DOS, Replace or Amend a Consular Report of Birth Abroad, [http://www.travel.state.gov/passport/get/first/first\\_825.html](http://www.travel.state.gov/passport/get/first/first_825.html) (last visited August 31, 2012). Beginning 2011, the State Department no longer issues the Form DS-1350, Certification of Birth Abroad. [http://www.travel.state.gov/passport/faq/faq\\_5052.html](http://www.travel.state.gov/passport/faq/faq_5052.html).

<sup>105</sup> 22 C.F.R. § 50.7. See e.g., *Hizam v. Kerry*, 747 F.3d 102 (2d Cir. 2014) (CRBA cancelled years after issuance due to mistaken issuance by State Department).

<sup>106</sup> The U.S. also issues "passport cards," which are valid only for departure from and entry to the U.S. through land and sea ports of entry between the U.S. and Mexico, Canada, the Caribbean, and Bermuda. 22 C.F.R. § 51.3(e). This article does not cover passport cards.

<sup>107</sup> INA § 215(b).



Also, for a child under age 16, both parents must appear in person to execute the application.<sup>111</sup> Or one parent must appear in person with the minor and the second parent's notarized statement of consent to issuance of the passport.<sup>112</sup>

Or one parent with sole custody must prove it with one of the following<sup>113</sup>:

- Minor's certified U.S. or foreign birth certificate listing only the applying parent
- Consular Report of Birth Abroad (Form FS-240) or Certification of Birth Abroad (Form DS-1350) listing only the applying parent
- Court order granting sole custody to the applying parent (unless child's travel is restricted by that order)
- Adoption decree (if applying parents is sole adopting parent)
- Court order specifically permitting applying parent's or guardian's travel with the child
- Judicial declaration of incompetence of non-applying parent
- Death certificate of non-applying parent

## PROCESSING TIMES

The State Department posts processing times on their website.<sup>114</sup> Currently they are:

- Routine: 4-6 weeks
- Expedited: 2-3 weeks
- Expedited at agency: 8 business days

## REQUIRED DOCUMENTS

A passport applicant has the burden of proving his or her identity and U.S. citizenship.<sup>115</sup> Submit the following documents:

1. Basic Forms:
  - a. Form DS-11, Application for a U.S. Passport (unsigned). This application can be completed at <https://pptform.state.gov/>. If no Social Security number has been issued yet, enter zeroes in the SS# box.
  - b. If only one parent is a U.S. citizen, submit Form DS-5507, Affidavit of Parentage, Physical Presence and Support (unsigned)

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<sup>111</sup> 22 C.F.R. § 51.28(a)(2).

<sup>112</sup> 22 C.F.R. § 51.28(a)(3)(a)(i).

<sup>113</sup> 22 C.F.R. § 51.28(a)(3). If none of the above documentation is available, the applying parent must submit Form DS-3053 stating why the non-applying parent/guardian's consent cannot be obtained.

<sup>114</sup> <https://travel.state.gov/content/passports/en/passports.html>.

<sup>115</sup> 22 C.F.R. § 51.40.



2. Fees:
  - a. \$105 filing fee
  - b. \$60 expedited service fee, if you will be applying in person at a passport agency<sup>117</sup>
  - c. Optional \$20.66 priority mail express delivery fee, if you will be applying in the U.S.<sup>118</sup> (Some passport agencies offer “will call” (pickup) service too).

At passport agencies, fees are payable by credit card (Visa, MasterCard, American Express, Discover), debit card (Visa or MasterCard), check, money order, or cash (exact change only).<sup>119</sup> At consular posts, payment is accepted in cash (U.S. dollars or local currency), and some posts accept credit cards. Check the post’s website.<sup>120</sup>

3. Evidence of the identity and U.S. citizenship, if applicable, of the parent (or parents) appearing in person (see above) (originals and copies)
4. If one parent will not appear in person, submit his or her notarized Form DS-3053, Issuance of a U.S. Passport to a Minor under Age 16.<sup>121</sup> It must be notarized within 90 days of filing the passport application. It must be accompanied by a photocopy of the parent’s ID.
5. One recent U.S. passport-style photograph<sup>122</sup>
  - Evidence of the child’s ID, relationship to parents, and citizenship (see above) (originals and copies)
  - All foreign language documents must be accompanied by English translations. The best practice is for these to be “certified” English translations<sup>123</sup> (originals and copies)
  - If you are applying at a passport agency:
    - a. Your appointment confirmation number

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<sup>117</sup> 22 C.F.R. § 51.56(a).

<sup>118</sup> 22 C.F.R. § 51.56(c).

<sup>119</sup> <https://travel.state.gov/content/passports/en/passports/information/fees.html>.

<sup>120</sup> <https://travel.state.gov/content/passports/en/passports/applying-for-a-u-s--passport-from-outside-the-united-states.html>.

<sup>121</sup> <https://travel.state.gov/content/passports/en/passports/forms.html>.

<sup>122</sup> 22 C.F.R. § 51.26.

<sup>123</sup> State Department rules on translation formats for purposes of passport applications are not clear. *See* 22 C.F.R. § 51.26 (requiring “official” English translations); *but see* DOS, Secondary Evidence of U.S. Citizenship, <https://travel.state.gov/content/passports/en/passports/information/secondary-evidence.html> (last visited Dec. 12, 2016) (requiring “informal or formal English translations”).



- b. Proof of international travel: Your international travel must be within either two weeks or four weeks if you need to obtain a foreign visa. Proof of international travel includes but is not limited to a flight itinerary, hotel reservation, and cruise tickets. A print version of your proof of travel is required at most agencies.

## **GROUNDINGS FOR REFUSAL TO U.S. CITIZENS**

The State Department may refuse to issue to a U.S. citizen a passport, except a passport for direct return to the United States, in certain cases where:<sup>125</sup>

1. The applicant is in default on a loan received from the U.S. government for repatriation or evacuation of the applicant, spouse, or minor children from a foreign country.
2. The applicant has been certified by the Secretary of Health and Human Services as notified by a state agency to be in arrears of child support in an amount determined by statute.
3. The applicant is the subject of an outstanding Federal, state, local, foreign government, or international organization warrant of arrest for a felony.
4. The applicant is subject to a criminal court order, condition of probation, or condition of parole, any of which forbids departure from the United States.
5. The applicant is subject to a U.S. court order committing him or her to a mental institution.
6. The applicant has been legally declared incompetent by a court of competent jurisdiction in the United States.
7. The applicant is the subject of a request for extradition.
8. The applicant is the subject of a subpoena received from the United States.
9. The applicant is subject to an order of restraint or apprehension issued by an appropriate officer of the United States Armed Forces.
10. The applicant has not repaid a loan received from the United States for emergency medical attention, dietary supplements, and other emergency assistance, including, if applicable, assistance provided to

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<sup>125</sup> 22 C.F.R. §51.60-51.61.

his or her child(ren), spouse, and/or other immediate family members in a foreign country.

11. The Secretary of State determines that the applicant's activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States.
12. The applicant is a minor who has been abducted, wrongfully removed or retained in violation of a court order or decree.

## **ADJUDICATION**

As mentioned above, the applicant has the burden of proving that he or she is a U.S. citizen.<sup>126</sup> If additional evidence is required, it must be provided within 90 days.<sup>127</sup>

You can track the status of your passport application at [https://passportstatus.state.gov/opss/OPSS\\_Status\\_ip.asp](https://passportstatus.state.gov/opss/OPSS_Status_ip.asp).

If you apply at a U.S. consular post, the passport will be issued at the same time as the Consular Report of Birth abroad, if you apply for them both together.

If you apply within the U.S., you may receive your newly issued passport and your citizenship documents in two separate mailings. Please contact the National Passport Information Center (NPIC) if you do not receive a second mailing within 10 business days of receiving the first.<sup>128</sup>

If the application is denied, the State Department will provide written notice with specific reasons for the denial.<sup>129</sup>

## **VALIDITY OF PASSPORTS**

A passport issued to an applicant under age 16 is normally valid for five years.<sup>130</sup> A regular passport issued to an applicant age 16 or older is normally valid for 10 years.<sup>131</sup>

## **PROPERTY OF THE U.S. GOVERNMENT**

A passport at all times remains the property of the U.S. Government and must be returned upon demand.<sup>132</sup>

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<sup>126</sup> 22 C.F.R. § 51.40; 7 FAM 1443(d).

<sup>127</sup> 22 C.F.R. § 51.65.

<sup>128</sup> <https://travel.state.gov/content/passports/en/passports/FAQs.html>.

<sup>129</sup> 22 C.F.R. § 51.65(a).

<sup>130</sup> 22 C.F.R. § 51.4(b).

<sup>131</sup> 22 C.F.R. § 51.4(b).

<sup>132</sup> 22 C.F.R. § 51.7(a).

## 5.3 APPLICATION FOR A CERTIFICATE OF CITIZENSHIP



The image shows a sample Certificate of Citizenship for Anna Leigh Judge. The certificate is issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services. It includes the following details:

- No. A2767194**
- Registration No. A059221842**
- Personal description of holder as of date of issuance of this certificate:**
  - Sex: Female
  - date of birth: April 1, 2010
  - country of birth: CHINA
  - complexion: \*\*\*\*\*
  - color of eyes: \*\*\*\*\*
  - color of hair: \*\*\*\*\*
  - height: \*\* feet \*\* inches; weight: \*\*\* pounds; visible distinctive marks: \*\*\*\*\*
  - Marital status: Single
- I certify that the description above given is true, and that the photograph affixed hereto is a likeness of me**
- Signature of holder:** Anna Leigh Judge (by Jane M. Judge, Complete and true signature of holder)
- Be it known that:** ANNA LEIGH JUDGE, now residing at 7512 LASHLEY COURT, GREENSBORO, NC 27455, having applied to the Director of U.S. Citizenship and Immigration Services for a certificate of citizenship pursuant to Section 341 of the Immigration and Nationality Act, having proved to the satisfaction of the Director, that (s)he is now a citizen of the United States of America, became a citizen thereof on April 22, 2011 and is now in the United States.
- Now Therefore, in pursuance of the authority contained in Section 341 of the Immigration and Nationality Act, this certificate of citizenship is issued this day of Thirty-first May Two Thousand and Eleven**
- Signature of Director:** Alejandro N. Meerkens, Director, U.S. Citizenship and Immigration Services
- Seal of the Department of Homeland Security**
- IT IS PUNISHABLE BY U. S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.**
- DEPARTMENT OF HOMELAND SECURITY**

Sample Certificate of Citizenship

### FILING

The application is made on Form N-600, Application for Certificate of Citizenship.<sup>133</sup> The application can be filed by the child's parent or guardian, unless the applicant has reached age 14. The supporting documents required are described in the form's instructions and are similar to those required for a CRBA.

### INTERVIEW

An interview may be required.<sup>134</sup>

At the examination, the applicant may be represented by counsel and present evidence and cross-examine witnesses.<sup>135</sup>

If essential witnesses are not available in the United States but can be located abroad, provisions allow for depositions in the form of written interrogatories before a DHS officer or United States consular official.<sup>136</sup>

<sup>133</sup> 8 C.F.R. § 301.1(a)(1).

<sup>134</sup> 8 C.F.R. § 301.1(a)(1).

<sup>135</sup> 8 C.F.R. § 341.2(f).

<sup>136</sup> 8 C.F.R. § 341.3.

## ADJUDICATION

If the application for the certificate of citizenship is approved, the applicant must be in the United States or its outlying possessions and must take an oath of allegiance.<sup>137</sup> The certificate will be issued even when the person lacks mental capacity to understand the oath.<sup>138</sup> The certificate is delivered personally or may be forwarded by certified mail.<sup>139</sup> The certificate will not be delivered outside the United States.<sup>140</sup>

If the application is denied, the applicant receives written notice of the grounds for denial. The decision of the district director may be appealed to the Administrative Appeals Unit within 30 days of notice of denial.<sup>141</sup> An appeal is filed on Form I-290B, along with the requisite filing fee and is submitted to the office that made the original decision.<sup>142</sup> Requests for submission of written briefs and oral argument may be included in the notice of appeal. Upon receipt of the appeal, the officer who made the decision may treat the appeal as a motion to reopen or reconsider and grant the case.<sup>143</sup> Appeal to the federal courts is also possible if the appeal is denied.

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<sup>137</sup> INA § 341; 8 C.F.R. § 341.7.

<sup>138</sup> INS Interp. 341.2(a)(4).

<sup>139</sup> 8 C.F.R. § 341.7.

<sup>140</sup> INS Interp. 341.2(a)(7).

<sup>141</sup> 8 C.F.R. §§ 103.1(f)(3)(iii)(P), 103.3(a)(2)(i), 341.6.

<sup>142</sup> 8 C.F.R. § 103.3(a)(2)(i).

<sup>143</sup> 8 C.F.R. § 103.3(a)(2)(ii), (iii).