Acquisition and Derivation of U.S. Citizenship
Presenters

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TOPICS WE WILL COVER

• Acquisition of Citizenship
  – Factors in acquisition
  – Current law on acquisition
  – Acquisition law from 1952 to November 1986

• Derivation of Citizenship
  – Factors in derivation
  – Last act
  – Law on or after February 27, 2001
  – Law from 1978 to February 26, 2001
Acquisition and Derivation

• **Acquisition** = at birth outside U.S.

• **Derivation** = event after birth confers citizenship
FACTORS IN ACQUISITION

• Was one or both parents a USC?
• Was either parent a U.S. national?
• Was your client born in wedlock?
• If not, was your client legitimated?
• Did USC parent ever reside in the U.S.?
• If so, for how long and at what ages?
Born in Wedlock (Chart A)

• Before noon May 24, 1934
• Noon May 24, 1934 to January 13, 1941
• January 14, 1941 to December 23, 1952
• December 24, 1952 to November 13, 1986
• On or After November 14, 1986
ACQUISITION – INA §§ 301, 309

• For children born after November 14, 1986

• **Child with Two Citizen Parents:**
  – One parent must have resided in U.S. or possessions at any time before child’s birth
  – INA §301(c).
Citizen parent must have been physically present in U.S. for one continuous year before child was born -- INA §301(d).
Citizen parent must have been physically present in U.S. for five years before child’s birth. At least two of the five years must be after age 14.

INA §301(g).
Is Alexander a U.S. Citizen?

In Wedlock: 2 USC Parents

• Born Bet. 12/24/52 and 11/14/86 Two Citizen Parents:
  – One parent must have resided in U.S. or before child’s birth
In Wedlock: 1 USC, 1 National Parent

Citizen parent must have been physically present in U.S. for one continuous year before child was born.
In Wedlock: 1 USC Parent

Citizen parent must have been physically present in U.S. for ten years before child’s birth. At least five years must be after age 14.
Are Isabelle & Jacqueline USCs?

Out of Wedlock (CHART B)

• **For father**, before January 13, 1941
• January 13, 1941 to December 23, 1952
• December 24, 1952 to November 14, 1968
• November 15, 1968 to November 14, 1971
• On or After November 15, 1971

• **For mother**, before or after December 24, 1952
Out of Wedlock: USC Mother

USC mother must been physically present in U.S. or its possessions for one continuous year before child’s birth
– INA §309(c).
Out-of-Wedlock: USC Father

- Requirements on/after Nov. 15, 1971:
  - Clear evidence of blood relationship w/ father;
  - Father is USC at time of child’s birth;
  - Father agreed in writing to provide financial support to child up to 18 years of age;

- AND
Out-of-Wedlock: USC Father

• While child is under age 18:
  – Child is legitimated,
  – Father acknowledges paternity in writing under oath, OR
  – Competent court determines paternity of child

• INA §309(a).
Citizen father must meet U.S. residency requirements for appropriate situation:
- two citizen parents,
- one citizen parent and one national parent, or
- one citizen parent and one alien parent
Is George a USC?

• Henry was born in New York City in 1960. In 1988 his company transferred him to work in London. In 1990 Henry fathered a child, George, with Kate, a British citizen. In 1992 Kate and Henry married. Can George claim U.S. citizenship?
PROOF OF ACQUISITION

• U.S. Passport
  – Fees – currently $140 - 95

• Consular Report of Birth Abroad of U.S. Citizen (FS-240)
  – For child living outside U.S.
  – Must be submitted before child’s 18th birthday
Certificate of Citizenship

- $600 fee & two photos of applicant
- N-600 form
- Copy of applicant’s birth certificate
- Copy of parents’ marriage certificate
- Proof of termination of prior marriages
- Copy of birth certificate(s), Certificate of Citizenship, or Certificate of Naturalization for parent(s)
- Evidence of parent’s residence/presence in U.S.
DOCUMENTING ACQUISITION

• **Proof of parent’s citizenship**
  – Birth certificate
  – Naturalization Certificate
  – Certificate of Citizenship
  – Valid passport

• **Proof of relationship to parents**
  – Birth certificate
  – Baptismal records
  – DNA or blood tests
Documenting Acquisition

- Proof of age and residency of parents
  - Birth certificate
  - Old passports
  - School records
  - Bank receipts
  - Employer records
  - CIS/DHS records
  - Census records
DERIVATION OF CITIZENSHIP
(INA §320)

• Concept: Automatic citizenship conferred on Lawful Permanent Resident child by virtue of USC status of parent or parents.

• Different from Acquisition: Doesn’t happen at birth

• Order in which qualifying events take place is irrelevant, as long as they occur before child turns 18

• Laws governing derivation have changed several times – may need to refer to the old law
Which Law Applies? DATE OF LAST ACT

• Look at law in effect at the time all requirements for derivation met.

• Prior to 5/24/34
• 5/24/34 to 1/12/41
• 1/13/41 to 12/23/52
• 12/24/52 to 10/5/78
• 10/5/78 to 2/26/01
• On or after 2/27/01
Current Requirements: (on or after 2/27/01)

- Child automatically becomes a citizen when *all* of the following requirements are met:
  - At least one parent USC by birth or naturalization
  - Child under age 18
  - Child not married
  - Child is LPR
  - Child is residing in U.S. in legal and physical custody of USC parent
Is Nyara a USC?

• Nyara was born in Brazil on June 15, 1995. In 2002 Nyara and her parents entered the US as lawful permanent residents based on a 4th preference petition filed by her mother’s sister. On March 3, 2012, Nyara’s mother naturalized. Her father is still a lawful permanent resident. Nyara has always lived with her parents in the US.
Is Kinsley a USC?

Kinsley was born in Jamaica on January 15, 1994. When he was 10 years old, Kinsley and his mother entered the United States as LPRs based on a petition (2B) filed by his mother’s father. Kinsley’s mother was never married to Kinsley’s father. Kinsley always lived with his mother in the US. On November 14, 2011, Kinsley’s mother naturalized.
WHAT IS DEFINITION OF CHILD FOR DERIVATION? - § 101 (c)

• Includes:
  – Child legitimated under the law of child’s or father’s residence or domicile before child reaches 16 years old, and child is in the legal custody of the legitimating parent
  – Child adopted under the age of 16 (or sibling under 18), and in the legal custody of the adopting parent(s) (other requirements for adoption must be met)
  – Does not include step-children
What if Kinsley’s Father Is the US Citizen?

• Different Rule for derivation for child born out of wedlock if US citizen father
  – Child must be legitimated by the father under either the law of the child’s residence or domicile or the law of the father’s residence or domicile and must take place before age 16.
WHAT DOES IT MEAN TO HAVE LEGAL CUSTODY?

– 8 CFR § 320.1 – Presumes US citizen has legal custody absence evidence to the contrary in case of:
  – A biological child living with married parents or surviving parent if other deceased
  – Child born out of wedlock who has been legitimated and currently resides with the natural parent
  – Adopted child when final adoption decree
WHAT DOES IT MEAN TO HAVE LEGAL CUSTODY? (continued)

– If parents divorced or legally separated: an award of primary care, control and maintenance by a court or other appropriate government entity according to laws of the state or country of residence

– There may be other factual circumstances under which the Service will find the US citizen parent to have legal custody
Is Gabriella a USC?

• Gabriella was born in the Dominican Republic on August 11, 1984. In 1994 her parents divorced and her mother Luisa was granted primary legal custody. On September 1, 1996, Gabriella’s mother married Joe, a U.S. citizen. Joe filed relative petitions for Luisa and Gabriella and they were admitted to the U.S. as lawful permanent residents on October 1, 1998. Did Gabriella derive US citizenship through Joe? On August 10, 2002, Luisa became a naturalized U.S. citizen. Can Gabriella claim U.S. citizenship?
REQUIREMENTS FOR DERIVATION OF CITIZENSHIP FROM 10/5/78 TO 2/26/01?

• Child became a citizen when:
  – **Both** parents naturalized, or
    • If one parent naturalized, the other must have been a citizen at the time the child was born, or deceased, or the parents legally separated and citizen parent had legal custody
  – Child is under age 18
  – Child is not married
  – Child is a lawful permanent resident
IS SOPHIA A U.S. CITIZEN?

• Sophia was born in Italy on September 21, 1982. She immigrated to the U.S. on June 17, 1992 based on a 2\textsuperscript{nd} preference (2A) relative petition filed by her father, a lawful permanent resident. Sophia’s mother also immigrated at this time. On May 1, 1998, Sophia’s father became a U.S. citizen. Sophia’s mother is still a lawful permanent resident. Can Sophia claim U.S. citizenship?
PROOF OF DERIVATION

• U.S. Passport
• Certificate of Citizenship
DOCUMENTATION NEEDED FOR N-600

• Child’s birth certificate or record
• Parents’ marriage certificate
• Proof of termination of any previous marriage (death certificate or divorce decree)
• Evidence of U.S. citizenship of parent
• If child born out of wedlock, documents verifying legitimation according to laws of child’s residence or domicile or father’s residence or domicile
• In case of divorce, legal separation, or adoption, documentation of legal custody
• Proof child in the physical custody of parent
• Copy of green card or other evidence of LPR status
• Evidence of all legal name changes, if applicable, for child and U.S. citizen parent
• Additional evidence for adopted child: copy of full and final adoption decree
• Photos of applicant
• Filing fee
N-600 Process

• File at Phoenix Lockbox
• Appear for Interview Unless Waived
• If approved: Receive Certificate of Citizenship
• If denied: 30 days to file appeal
Questions?

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