

JOINT COMMITTEE ON CONTINUING LEGAL EDUCATION
OF THE
AMERICAN LAW INSTITUTE
AND THE
AMERICAN BAR ASSOCIATION

Immigration Law and Practice

(October, 1961)

by

Jack Wasserman

of the District of Columbia and New York Bars

Director's Address
133 South 36th Street
Philadelphia 4, Pa.

XVII

CITIZENSHIP AND NATURALIZATION

(A) CITIZENSHIP

In deportation proceedings as has been noted, the burden of proving alienage is upon the government.¹ Persons born in the United States and subject to its jurisdiction are citizens.² Individuals born abroad of a citizen parent may acquire American citizenship. Every statute since the original 1790 Act³ has, however, precluded acquisition of United States citizenship by a child born abroad unless the citizen parent or parents have resided in the United States.⁴

1. *Birth abroad prior to May 24, 1934.* Derivative citizenship prior to May 24, 1934, was controlled by Revised Statutes 1933.⁵ It descended only to children born outside the United States whose *fathers* were citizens who had resided temporarily or permanently in the United States⁶ prior to the child's birth.

2. *Birth abroad between May 24, 1934, and January 12, 1941.* By the Act of May 24, 1934 (48 Stat. 797), derivative citizenship was extended to the children of fathers or mothers who previously had resided in the United States.

3. *Birth abroad between January 13, 1941 and December 23, 1952.* Under the Nationality Act of 1940⁷ derivative citizenship descended to children of (a) American parents one of whom previously resided in the United States or its outlying possessions or (b) one an alien and the other an American parent who had previously resided in the United States or its outlying possessions for 10 years at least 5 of which were after attaining the age of 16.⁸

1. See Chapt. VI, note 4.

2. Fourteenth Amendment, 8 U.S.C. 1401(a)(1). Children born to foreign diplomatic representatives in the United States are not citizens.

3. Act of March 26, 1790 (1 Stat. 103).

4. See *Wcedin v. Chin Bow*, 274 U.S. 657 (1927).

5. 2 Stat. 153.

6. Residence in Alaska after March 30, 1867, in Hawaii after August 12, 1898, Puerto Rico after April 11, 1899, or the Virgin Islands after January 17, 1917, is sufficient.

7. 8 U.S.C. 601(c).

8. Under 8 U.S.C. 601(g) derivative citizenship was cancelled if the child did not take up residence in the United States for 5 years between the ages of 13 and 21. This has been extended to ages 14 and 23 by 8 U.S.C. 1401(b) and (c). See note 11 *infra*.

4. *Birth abroad under the 1952 Immigration and Nationality Act.* Effective December 24, 1952, citizenship descends to children born abroad of two American parents in the same manner as under the 1940 Act.⁹ Where one parent is an alien and the other an American, the American parent is required to have been physically present in the United States or its outlying possessions for a period of ten years, five of which were after attaining the age of 14.¹⁰ The child is required to live in the United States for five years between the ages of 14 and 28 or his derivative citizenship is cancelled.¹¹

5. *Birth in Puerto Rico, Canal Zone, Panama, Alaska, Hawaii, Virgin Islands and Guam.* Persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States are American citizens. Persons born in Puerto Rico between April 11, 1899, and January 12, 1941, subject to United States jurisdiction, and residing in territory on January 13, 1941, over which the United States exercises sovereignty acquire citizenship as of January 13, 1941, provided citizenship has not been conferred by any other law.¹²

Birth in the Canal Zone on or after February 26, 1904, confers citizenship to a child whose father or mother was a citizen.¹³ Birth in the Republic of Panama on or after February 26, 1904, confers citizenship on a child whose father or mother was a citizen employed by the United States, or by the Panama Railroad Co. or its successor.¹⁴

A noncitizen Indian born in Alaska on or after March 30, 1867 is a citizen at birth. An Indian born in Alaska on or after June 2, 1924, is a citizen at birth.¹⁵

Persons born in Hawaii on or after April 30, 1900, are citizens at birth.¹⁶

Persons born in the Virgin Islands on or after February 25, 1927, and subject to our jurisdiction are citizens at birth.¹⁷

9. 8 U.S.C. 1401(a)(3).

10. Service in the armed forces may be computed as constituting physical presence.

11. 8 U.S.C. 1401(b). This statutory provision "shall apply to a person born abroad subsequent to May 24, 1934". 8 U.S.C. 1401(c). *Lee You Fee v. Dulles*, 236 F.2d 885 (C.A. 7, 1956), *reversed on confession of error* 355 U.S. 61.

12. 8 U.S.C. 1402.

13. 8 U.S.C. 1403(a).

14. 8 U.S.C. 1403(b).

15. 8 U.S.C. 1404. A noncitizen Indian born in Alaska between March 30, 1867 and June 2, 1924, is a citizen as of June 2, 1924.

16. 8 U.S.C. 1405. Birth between August 12, 1898, and April 30, 1900, confers citizenship as of April 30, 1900. A person who was a citizen of the Republic of Hawaii on August 12, 1898, is declared a citizen as of April 30, 1900.

17. Persons and their children living in the Virgin Islands or born there between January 17, 1917 and February 25, 1927, may be citizens as of February 25, 1927. See 8 U.S.C. 1406.

Under some circumstances, persons and their children living or born in Guam after April 11, 1899, are declared citizens of the United States as of August 1, 1950.¹⁸

Birth in other outlying possessions or trust territory of the United States does not confer citizenship.¹⁹

(B) NATURALIZATION QUALIFICATIONS

After an alien has been lawfully admitted for permanent residence, he may file a declaration of intention to become a citizen.²⁰ This declaration is optional. It is however, required to practice certain professions or trades.²¹

1. *Residence.* Generally an alien is required to have resided in the United States continuously²² for five years after lawful entry for permanent residence and, for the last six months of that period in the State where he petitions for naturalization. For husbands and wives of citizens of the United States the required residence is reduced to three years provided the applicant has been living during the three years with his spouse, who has been a citizen during all of such period.²³

2. *Age.* The applicant must be at least 18 years of age. If a child under 18 years has not become a citizen through a parent and one of the parents is a citizen, that parent may file the petition for the child under 18.²⁴

18. See 8 U.S.C. 1407.

19. See 8 U.S.C. 1101(a)(14) for definition of the term "United States" and see: *Application of Reyes*, 140 F. Supp. 130 (D.C. Hawaii, 1956); *United States v. Shiroma*, 123 F. Supp. 145 (D.C. Hawaii, 1954).

20. 8 U.S.C. 1445, 8 C.F.R. 334(a). The declaration of intention is filed with the clerk of court and a fee of \$5.00 only after authorized by the Immigration Service which verifies the alien's lawful admission for permanent residence.

21. See Chapt. XV, Par. 2.

22. Physical presence in the United States is required for 2½ years. 8 U.S.C. 1427. Absences from the United States of more than one year break residence. Advance permission should be secured from the Immigration Service for absences of more than six months. 8 U.S.C. 1427(b). Service on American vessels following lawful entry for permanent residence is considered residence in the United States. 8 U.S.C. 1441(a)(1). After physical presence in the United States of one year, temporary absences are authorized for a person performing ministerial functions abroad for a religious denomination with a bona fide organization in the United States. 8 U.S.C. 1428.

23. 8 U.S.C. 1430. Physical presence in the United States for 1½ years is required.

24. 8 U.S.C. 1445, 1433. No period of physical presence or residence is required for the child. An alien child under 16 who is a permanent resident becomes a citizen upon naturalization of both parents or of his only alien parent who has legal custody of him. 8 U.S.C. 1431, 1432. Adopted children under 18 may be naturalized if they have permanent residence, were adopted before becoming 16, and if they thereafter resided in the legal custody of the adoptive parents for two years prior to the filing of the naturalization petition. Only one year physical presence and two years residence is required for naturalization. 8 U.S.C. 1434.

3. *Character.* The applicant must be of good moral character.²⁵

4. *Attachment.* The applicant must be "attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States."²⁶ There are specific prohibitions against naturalizing persons opposed to government or law, or who favor totalitarian forms of government.²⁷ Conviction during a period of war for draft evasion or desertion creates a permanent bar to citizenship²⁸ as does relief from military service upon the ground of alienage.²⁹ Alien enemies establishing their loyalties may be naturalized in the discretion of the Attorney General.³⁰

5. *Literacy.* Ability to read, write and speak words in ordinary usage in the English language is required except for those over 50 years of age with a total residence of 20 years on December 24, 1952. Also required is a knowledge and understanding of the fundamentals of the history, principles and form of government of the United States.³¹

6. *Deportability.* No petition for naturalization shall be finally heard by a naturalization court if a deportation proceeding is pending against the applicant.³²

7. *Veterans.* There are three separate groups of veterans eligible for special naturalization benefits.

(a) Aliens who served honorably in the armed services of the United States in an active-duty status at any time during World War I; at any time between September 1, 1939 and December 31, 1946, or at any time between June 25, 1950 and July 1, 1955.³³ The applicant does not need to prove that he has resided in the United States or been physically present within the United States for any particular time.³⁴ His petition

25. 8 U.S.C. 1427(a)(3). See Chapt. VIII, note 8 and 8 U.S.C. 1101(f).

26. 8 U.S.C. 1427(a)(3).

27. 8 U.S.C. 1424. Knowing membership in a subversive organization or subversive advocacy within ten years of the naturalization petition bars the applicant. 8 U.S.C. 1424(b).

28. 8 U.S.C. 1425.

29. 8 U.S.C. 1426. See Chapt. IV, note 117, Chapt. XIII, note 4.

30. 8 U.S.C. 1442.

31. 8 U.S.C. 1423.

32. 8 U.S.C. 1429.

33. 8 U.S.C. 1440, as amended by P.L. 87-301, 75 Stat. 653-4. This section is not applicable to conscientious objectors nor to aliens discharged for alienage.

34. If he was in the United States at the time of induction, he is not required to prove lawful admission for permanent residence. If he enlisted outside the United States, subsequent lawful admission for permanent residence is required.

for naturalization may be filed in any naturalization court regardless of where he lives. There is no age limitation.

(b) Aliens who served honorably in the armed services of the United States for a period or periods of three years if the petition for naturalization is filed while the petitioner is still in active service or within six months thereafter.³⁵ No periods of residence or physical presence are required and the petition may be filed in any naturalization court. Immediate naturalization after examination of witnesses is authorized for those in active service.³⁶

(c) Aliens who enlisted or reenlisted pursuant to Section 4 of the Act of June 30, 1950, known as the Lodge Act, (64 Stat. 316 as amended by section 402(e) of the Immigration and Nationality Act, 8 U.S.C. 1440 note). Five full years of honorable military service are required and subsequent entry into the United States, the Canal Zone, American Samoa, or Swains Islands pursuant to military orders. No period of residence or physical presence is required. The petition may be filed in any court having naturalization jurisdiction.

(C) NATURALIZATION PROCEDURE

The United States District Courts and the State Courts with jurisdictions in actions at law or equity in which the amount in controversy is unlimited are vested with jurisdiction to naturalize aliens.³⁷ The applicant may select the State or Federal Court within the district where he lives. The initial naturalization step is the execution of a preliminary form³⁸ known as N-400. This form should be submitted to the local office of the Immigration Service with a fingerprint card and three passport photos.³⁹ The Immigration Service will submit the card to the F.B.I. for clearance and will verify the alien's lawful admission for permanent residence. Thereafter the alien will be required to bring two citizen witnesses to a preliminary

35. 8 U.S.C. 1439.

36. 8 U.S.C. 1439(b) (2). Where military service was not continuous, the alien must prove his qualifications the same as any other alien for the period of nonservice during the 5 years preceding the petition. Those who apply for naturalization after 6 months following service are required to prove their qualification the same as other aliens. However service during the 5 years preceding the petition shall be considered residence and physical presence in the United States.

Lawful admission for permanent residence is required for those who began service after December 24, 1952.

For other naturalization statutes applicable to veterans, see 8 U.S.C. 1440(a).

37. 8 U.S.C. 1421.

38. 8 U.S.C. 1445(b) (2), 8 C.F.R. 334.11.

39. 8 C.F.R. 333.