

## § 320.1

## 8 CFR Ch. I (1-1-11 Edition)

AUTHORITY: 8 U.S.C. 1103, 1443; 8 CFR part 2.

SOURCE: 66 FR 32144, June 13, 2001, unless otherwise noted.

### § 320.1 What definitions are used in this part?

As used in this part, the term:

*Adopted* means adopted pursuant to a full, final and complete adoption. If a foreign adoption of an orphan was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, the child is not considered to have been fully, finally and completely adopted and must be readopted in the United States. Readoption requirements may be waived if the state of residence of the United States citizen parent(s) recognizes the foreign adoption as full and final under that state's adoption laws.

*Adopted child* means a person who has been adopted as defined above and who meets the requirements of section 101(b)(1)(E) or (F) of the Act.

*Child* means a person who meets the requirements of section 101(c)(1) of the Act.

*Joint custody*, in the case of a child of divorced or legally separated parents, means the award of equal responsibility for and authority over the care, education, religion, medical treatment, and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

*Legal custody* refers to the responsibility for and authority over a child.

(1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

### § 320.2 Who is eligible for citizenship?

(a) *General*. To be eligible for citizenship under section 320 of the Act, a person must establish that the following conditions have been met after February 26, 2001:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The child is under 18 years of age; and

(3) The child is residing in the United States in the legal and physical custody of the United States citizen parent, pursuant to a lawful admission for permanent residence.

(b) *Additional requirements if child is adopted*. If adopted, the child must meet all of the requirements in paragraph (a) of this section as well as satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act.

### § 320.3 How, where, and what forms and other documents should be filed?

(a) *Application*. Individuals who are applying for certificate of citizenship on their own behalf should file a Form N-600, Application for Certificate of

Citizenship. An application for a certificate of citizenship under this section on behalf of a minor biological child shall be submitted on Form N-600, Application for Certificate of Citizenship, by the U.S. citizen parent(s) or legal guardian. An application for a certificate of citizenship under this section on behalf of a minor adopted child shall be submitted on Form N-643, Application for Certificate of Citizenship in Behalf of An Adopted Child by U.S. citizen adoptive parent(s) or legal guardian. The application must be filed with the filing fee required in §103.7(b)(1) of this chapter.

(b) *Evidence.* (1) An applicant under this section shall establish eligibility under §320.2. In addition to the forms and the appropriate fee as required in §103.7(b)(1) of this chapter, an applicant must submit the following required documents unless such documents are already contained in the Service administrative file(s):

(i) The child's birth certificate or record;

(ii) Marriage certificate of child's parents (if applicable);

(iii) If the child's parents were married before their marriage to each other, proof of termination of any previous marriage of each parent (e.g., death certificate or divorce decree);

(iv) Evidence of U.S. citizenship of parent, (*i.e.*, birth certificate; naturalization certificate; FS-240, Report of Birth Abroad; a valid unexpired U.S. passport; or certificate of citizenship);

(v) If the child was born out of wedlock, documents verifying legitimation according to the laws of the child's residence or domicile or father's residence or domicile (if applicable);

(vi) In case of divorce, legal separation, or adoption, documentation of legal custody;

(vii) Copy of Permanent Resident Card/Alien Registration Receipt Card or other evidence of lawful permanent resident status (e.g. I-551 stamp in a valid foreign passport or Service-issued travel document);

(viii) If adopted, a copy of the full, final adoption decree and, if the adoption was outside of the United States and the child immigrated as an IR-4 (orphans coming to the United States to be adopted by U.S. citizen parent(s)),

evidence that the foreign adoption is recognized by the state where the child is permanently residing; and

(ix) Evidence of all legal name changes, if applicable, for the child and U.S. citizen parent.

(2) If the Service requires any additional documentation to make a decision on the application for certificate of citizenship, applicants may be asked to provide that documentation under separate cover or at the time of interview. Applicants do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or an immigrant petition or application and included in a Service administrative file. Applicants should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.

[66 FR 32144, June 13, 2001, as amended at 74 FR 26940, June 5, 2009]

#### **§ 320.4 Who must appear for an interview on the application for citizenship?**

All applicants (and U.S. citizen parent(s) if application filed on behalf of a minor biological or adopted child) must appear for examination unless such examination is waived under the guidelines expressed in §341.2 of this chapter.

#### **§ 320.5 What happens if the application is approved or denied by the Service?**

(a) *Approval of application.* If the application for the certificate of citizenship is granted, after the applicant takes the oath of allegiance prescribed in 8 CFR part 337, unless the oath is waived, the Service will issue a certificate of citizenship.

(b) *Denial of application.* If the decision of the district director is to deny the application for a certificate of citizenship under this section, the applicant shall be furnished with the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). An applicant