

§ 101.3

8 CFR Ch. I (1–12 Edition)

§ 101.3 Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.

(a) *Person born to foreign diplomat*—(1) *Status of person.* A person born in the United States to a foreign diplomatic officer accredited to the United States, as a matter of international law, is not subject to the jurisdiction of the United States. That person is not a United States citizen under the Fourteenth Amendment to the Constitution. Such a person may be considered a lawful permanent resident at birth.

(2) *Definition of foreign diplomatic officer.* *Foreign diplomatic officer* means a person listed in the State Department Diplomatic List, also known as the Blue List. It includes ambassadors, ministers, chargés d'affaires, counselors, secretaries and attachés of embassies and legations as well as members of the Delegation of the Commission of the European Communities. The term also includes individuals with comparable diplomatic status and immunities who are accredited to the United Nations or to the Organization of American States, and other individuals who are also accorded comparable diplomatic status.

(b) *Child born subject to the jurisdiction of the United States.* A child born in the United States is born subject to the jurisdiction of the United States and is a United States citizen if the parent is not a “foreign diplomatic officer” as defined in paragraph (a)(2) of this section. This includes, for example, a child born in the United States to one of the following foreign government officials or employees:

(1) Employees of foreign diplomatic missions whose names appear in the State Department list entitled “Employees of Diplomatic Missions Not Printed in the Diplomatic List,” also known as the White List; employees of foreign diplomatic missions accredited to the United Nations or the Organization of American States; or foreign diplomats accredited to other foreign states. The majority of these individuals enjoy certain diplomatic immunities, but they are not “foreign diplomatic officers” as defined in paragraph (a)(2) of this section. The immunities, if any, of their family members are de-

rived from the status of the employees or diplomats.

(2) Foreign government employees with limited or no diplomatic immunity such as consular officials named on the State Department list entitled “Foreign Consular Officers in the United States” and their staffs.

(c) *Voluntary registration as lawful permanent resident of person born to foreign diplomat.* Since a person born in the United States to a foreign diplomatic officer is not subject to the jurisdiction of the United States, his/her registration as a lawful permanent resident of the United States is voluntary. The provisions of section 262 of the Act do not apply to such a person unless and until that person ceases to have the rights, privileges, exemptions, or immunities which may be claimed by a foreign diplomatic officer.

(d) *Retention of lawful permanent residence.* To be eligible for lawful permanent resident status under paragraph (a) of this section, an alien must establish that he/she has not abandoned his/her residence in the United States. One of the tests for retention of lawful permanent resident status is continuous residence, not continuous physical presence, in the United States. Such a person will not be considered to have abandoned his/her residence in the United States solely by having been admitted to the United States in a non-immigrant classification under paragraph (15)(A) or (15)(G) of section 101(a) of the Act after a temporary stay in a foreign country or countries on one or several occasions.

(Secs. 101(a)(20), 103, 262, 264 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(20), 1103, 1302, 1304)

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§ 101.4 Registration procedure.

The procedure for an application for creation of a record of lawful permanent residence and a Permanent Resident Card, Form I-551, for a person eligible for presumption of lawful admission for permanent residence under § 101.1 or § 101.2 or for lawful permanent residence as a person born in the United States to a foreign diplomatic