

Nationality Law

In the world of immigration there are two classifications of people in the world. People are either nationals of the United States, or they are aliens. A National of the United States is:

- 1) A citizen of the United States; or
- 2) A person who, though not a citizen of the United States, owes permanent allegiance to the United States. Individuals of American Samoa and Swains Island are considered nationals but not citizens.

Any person not considered a national or citizen of the United States is considered an alien.

Citizenship is acquired/derived through two principals:

- 1) Jus Soli (Law of Place/Location/"Soil")
- 2) Jus Sanguinis (Law of Blood)

JUS SOLI

The 14th amendment to the United States Constitution guarantees citizenship to any person born in the United States and subject to its jurisdiction. The two main elements are: a person is required to be **BORN IN** and **SUBJECT TO** the jurisdiction of the United States.

What does it mean to be **BORN IN** the United States?

- Since December 12, 1952 the United States has been defined as:
"The continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the U.S. Virgin Islands."
- On 11/3/1986 most inhabitants of the Northern Mariana Islands were made U.S. Citizens through a legislative action of Congress.
- For the purposes of Nationality, the United States claims all waters within three miles of the above listed land areas.
- The United States claims half of most the Great Lakes. The United States claims half of Lake Superior, Lake Huron, Lake Erie, and Lake Ontario. All of Lake Michigan is encompassed by U.S. territory.
- For nationality purposes an American Embassy or U.S. Consulate are NOT included in the definition and not "in" the United States. The United States Department of State consider these areas to be "sovereign" U.S. territory, but for nationality purposes it does not.

What does it mean to be **SUBJECT TO** the jurisdiction of the United States?

- The 14th amendment to the United States Constitution requires an individual to also be born subject to the jurisdiction of the United States at time of birth.
- Jurisdiction means the right/power to interpret and apply the law. A person must be subject to the laws of the United States at the time of their birth.
- Most people and places in the United States are subject to the laws of the United States. Only a few exemptions exist exempting people from the jurisdiction of the United States:
 - ⇒ Foreign Sovereigns/Heads of State
 - ⇒ Accredited foreign diplomatic personnel
 - ⇒ Foreign Public Vessels
 - ⇒ Children born to invading enemy aliens during military occupation of the United States.

The United States Constitution reserves the right to control the naturalization process to the federal government. (Article 1, Section 8, Paragraph 4)

- The United States shall have the power to establish a uniform rule of naturalization...

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Nationality Law

JUS SANGUINIS

The law allows for bestowing citizenship on children born outside the United States if born to at least one United States Citizen (USC) parent. The law granting citizenship is generally the law in effect at the time of the child's birth. The laws are generally hard to interpret, and confusing to understand. To aid in determining citizenship through Jus Sanguinis, three nationality charts were created to easily determine citizenship.

Chart 1: Applies to legitimate children, born outside the United States, with at least one USC parent

Chart 2: Applies to illegitimate children, born outside the United States, with at least one USC

Chart 1 is broken into different sections depending upon the time period the child was born. Each section is subdivided into two categories for, "Both parents USCs," and "One USC parent and one alien parent." The time periods located on chart 1 are:

Period 1: Prior to 01/13/1941 (*Notes 1*)

Period 2: On or after 01/13/1941 and prior to 12/24/1952 (*Notes 1*)

Period 3: On or after 12/24/1952 and prior to 11/14/1986 (*Notes 2*)

Period 4: On or after 11/14/1986 (*Notes 2*)

Chart 2 is broken into two parts. Part one deals with illegitimate children born to a USC mother during two different time periods.

Period 1: Prior to 12/24/1952 (*Notes 1*)

Period 2: On or after 12/24/1952

Part two deals with illegitimate children, born to alien mother, and who are legitimated by a USC father, and also cover multiple time periods.

Period 1: Prior to 01/13/1941

Period 2: On or after 01/13/1941 and prior to 12/24/1952

Period 3: On or after 12/24/1952 and prior to 11/14/1968

Period 4: On or after 11/14/1968

Chart 3 is broken into different sections depending upon the time period the child was born. Each time period requires the child to be a alien Lawfully Admitted for Permanent Residence (LAPR).

Period 1: Prior to 05/24/1934

Period 2: On or after 05/24/1934 and prior to 01/13/1941

Period 3: On or after 01/13/1941 and prior to 12/24/1952

Period 4: On or after 12/24/1952 and prior to 10/05/1978

Period 5: On or after 10/05/1978

Generally, the charts cover different periods of time for the different laws that were in effect at the given time. Each generally requires some time present in the United States for USC to transmit citizenship to offspring, legitimate or illegitimate. When an individual meets all conditions mandated by the Congress of the United States, he or she can not be denied citizenship, however it bars certain aliens from becoming USCs

- 1) Any person convicted by court martial in time of war; deserters from the U.S. military
- 2) Non-immigrants
- 3) Aggravated felons, prostitutes, anarchists, individuals who lack Good Moral Character
- 4) Communists, or persons who advocate the overthrow of the U.S. Government.

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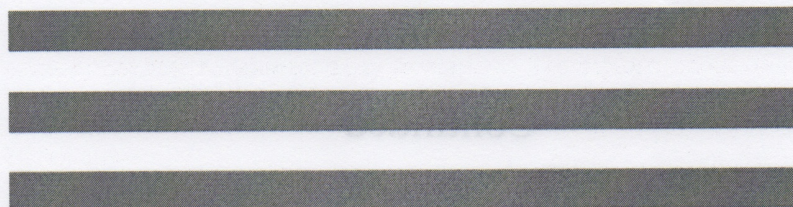
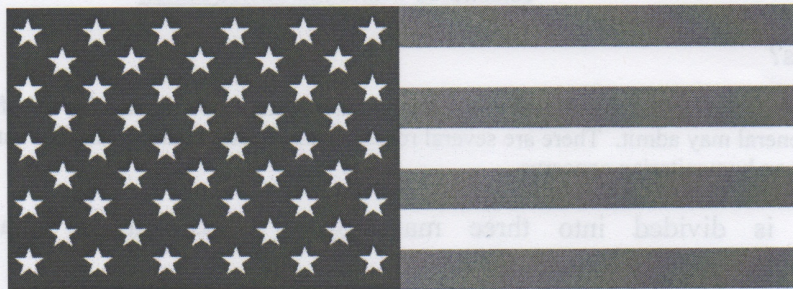
Nationality Law

Frequently Asked Questions Concerning Citizenship

- Q) If a child is born to a United States Citizen outside the United States isn't he a U.S. citizen?
A) Not necessarily. It depends on the when the child was born, and the law in effect at the time. Refer to the nationality charts for further explanation.
- Q) Once an alien becomes a United States Citizen, can citizenship ever be revoked?
A) YES! Revocation of U.S citizenship is a judicial process. Generally reserved for times when an individual obtained U.S. citizenship through fraud or willful concealment of facts.
- Q) If a president from a foreign country has a child while in the United States does that child have dual citizenship?
A) NO! At the time of the child's birth he/she was not SUBJECT TO the laws of the United States and therefore was not born a citizen. He/she is only a citizen of the parents home country.
- Q) Does the United States recognize individuals with dual citizenship?
A) Depends on the situation. An individual born in a foreign land can derive U.S. citizenship, and depending on the laws of the country, citizenship of whichever country he/she was born in. In this case the individual does not risk losing U.S. citizenship; however, if an USC applies for citizenship in a foreign land, he/she risk having their U.S. citizenship revoked if;
1) The application for foreign citizenship was voluntary
2) and with the intention to give up U.S. citizenship
- Q) If an illegal alien has a baby in the United States can she be deported even though the child is a United States Citizen?
A) YES! If the child was BORN IN and SUBJECT TO the jurisdiction of the United States he/she is born a United States Citizen, and therefore can be admitted at anytime. The mother does not gain citizenship through the birth of her child. She can be deported to her country of origin. The child only accompanies the mother while she is deported, and is not deported themselves. Though, humanitarian grounds usually will allow the mother to remain in the United States for a undefined period of time.

Loss of Citizenship

- The loss of citizenship has been an issue for many generations. The impressment of USC sailors during the war of 1812 was based on the British belief that the USC prior to the American Revolution, owed allegiance to the British. The sailors were forced to work on British navel ships under the belief that they still owed allegiance to the British crown.
- The United States, at the time a nation of immigrants, felt that any prior allegiance was revoked upon an individual swearing allegiance to another nation.
- Subsequent legislative actions by Congress has outlined rules for revoking U.S. citizenship based on specific prohibited acts; such as serving in a foreign military...
- In 1967, under Afroyim vs Rusk, the United States Supreme Court decided that the loss of citizenship depends on the intent and will of the citizen, and not the will of Congress.



Immigration Law

Aliens entering the United States fall into two categories. Immigrants and Non-immigrants. Both immigrants and non-immigrants have documentary requirements to enter and remain in the United States. An alien's visa classification depends on the purpose for entering the United States.

Immigrants: Here to reside permanently in the United States, generally under the sponsorship of a LAPR or USC family member. Immigrants may decide to become USC through naturalization. Classification depends on family sponsorship, status of relative making the petition, employment skills, and purpose for remaining.

Non-Immigrants: Generally, entry is made for a specific purpose and limited period of time. Not eligible to naturalize as USC. Generally, not authorized to work in the United States; however, some non-immigrants are authorized to work depending on status.

For aliens to be considered lawfully present in the United States they are required to show proof of lawful entry, and maintain the documentary requirements.

Visas: All United States visas are issued by the U.S. Department of State. Depending on the visa type and classification, a visa is issued for a specific period of time. It only grants an individual to request entry into the United States, it does not guarantee a person's right to enter the United States.

Passports: Travel documents issued by a competent authority identifying a bearer's origin, identity, and nationality, which is valid for the entry of the bearer into a foreign country. Must be accompanied by a valid visa, unless person admitted under the Visa Waiver Program (VWP).

There are exceptions to the normal passport and visa requirements. Such as aliens granted entry under the VWP, alien members of the U.S. military under orders, parolees, refugees, ect..

What does it mean to be paroled into the United States?

An administrative tool that addresses unique, extraordinary situations. Parole is not designed to be used to circumvent the normal visa. Generally, used to admit aliens who would be normally inadmissible. Generally, aliens granted parole are done so for two main reasons:

- 1) Humanitarian Grounds:** Aliens in need of serious medical treatment at specialized locations in the United States, or to prevent inhumane separation of families.
- 2) Public Interest:** Usually, aliens specifically requested by a government agency to be allowed into the United States as a witness or defendant in a judicial, legislative, or administrative proceeding.

Aliens Paroled into the United States are considered, "on the border." They are not considered within the United States.

What about refugees?

The President of the United States determines numerical limitations on the number of refugees the Attorney General may admit. There are several refugee classifications that each alien can be admitted under based on humanitarian concerns.

Immigration Law is divided into three main parts: Classifications, Inadmissibility, and Deportabilities.

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Immigration Law

Inadmissibility: Aliens who are specifically barred from entering the United States based upon entry requirements or past history. The burden of proof for aliens seeking entry is on the alien seeking entry into the United States. Each alien seeking entry must demonstrate their

- INA 212 outlines inadmissibilities
INA 212 states, "...aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States."
- Inadmissibility grounds generally apply to Immigrants and Non-Immigrants, with only a few exceptions.
- Congress sets the number of aliens who may enter the United States, while INA 212 determines the types (quality) of aliens entering the United States.

Grounds of Inadmissibility

- A. **Health-Related Grounds:** Any alien is inadmissible (excludable) who the United States Public Health Service (USPHS) certifies with any of the following:
- 1) A communicable disease of public health significance, which shall include infection with the etiologic agent for acquired immune deficiency syndrome (AIDS).
 - 2) A physical or mental disorder that may pose a threat to the safety/welfare of himself or others.
 - 3) A drug abuser or drug addict
- B. **Criminal and Related Grounds:** Any alien who has been convicted of, or who admits to having committed acts which constitute the essential elements of Crime Involving Moral Turpitude (CIMT)
- 1) CIMT is defined as a criminal act that is offensive to society
 - 2) CMITs include Murder, Rape, Arson, Theft, Burglary, Extortion, Blackmail, etc...
 - 3) Multiple Convictions with sentences totaling 5 years or more
 - 4) Drug Trafficker (No charge or conviction necessary)
 - 5) Prostitution/Commercialized Vice (Illegal Gambling)
- C. **Security and Related Grounds:** Any alien who the consular or immigration officer knows, or has reason to believe, is entering for:
- 1) Terrorist Activities;
 - 2) or would cause adverse foreign policy consequences;
 - 3) or is a member in a totalitarian party (Communist)
 - 4) or participates in the Nazi regime and genocide
- D. **Public Charge:** Any alien who the consular officer believes is likely to become a public charge is inadmissible.
- 1) Factors that can contribute are: Age, Health, Family Status, Assets, Resources, Financial Status, Education, and Skills
 - 2) People who have training but lack US certification
- E. **Illegal entrants and Immigration violators:**
- 1) Aliens present without admission or parole
 - 2) Stowaways
 - 3) Smugglers
 - 4) False claims to citizenship
 - 5) Student Visa abusers
 - 6) Aliens not in possession of proper documentation
 - 7) Aliens previously removed
- F. **Other Charges**
- 1) Deserters
 - 2) Draft evaders
 - 3) Polygamists
 - 4) Former US citizens who renounced citizenship to avoid taxation
 - 5) Unlawful voters

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Immigration Law

Removal/Deportation

Deportation: Applies only to the aliens who are here legally. We can only deport aliens who have been granted admission into the United States. We deport legal aliens.

Removal: Applies to aliens who have not been legally admitted to the United States. If the alien has not been admitted, he/she can't be deported. We remove aliens here illegally.

Deportation charges are found in section 237 of the INA

For inadmissibility charges, the burden of proof is on the individual to prove they are admissible. During the proceedings for deportation the burden of proof is on the government. However, once alienage is established that burden shifts to the individual to prove their legal status in the United States by proving when, where, and how they last entered the United States.

The government deports aliens who violate conditions of entry. Generally these deportation charges can be grouped into several categories; Conditions of Status, Criminal Offenses, and Security and Related Grounds.

Conditions of Status: (Do not require convictions)

- Visa Overstays
- Unauthorized Employment
- Termination of Conditional Permanent Residence
- Marriage Fraud
- Alien Smuggling
- Failure to provide Change of Address
- Public Charges
- Drug Abusers
- Drug Addicts
- Individuals inadmissible at entry

Criminal Offenses: (Require Convictions)

- Single CIMT within 5 years (felony)
- Multiple CIMTs anytime after entry
- Aggravated Felony
- High Speed Flight
- Controlled Substance Violation
- Firearms Offense
- Treason and Sedition
- Violation of Selective Service Laws
- Domestic Violence, Stalking, or Violation of Protective Order
- Failure to Register
- Providing False Documentation
- Document Fraud
- False Claim to U.S. Citizenship

Security and Related Grounds: (No Arrest or Conviction Necessary)

- Terrorist Activities
- Foreign Policy Necessities
- Nazi or Genocide
- Threat to National Security

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