

USCIS Policy Manual

Current as of **October 28, 2014**

Volume 12 - Citizenship & Naturalization

Part H - Children of U.S. Citizens

Chapter 2 - Definition of Child for Citizenship and Naturalization

A. Definition of Child

The definition of “child” for citizenship and naturalization differs from the definition used for other parts of the INA.^[1] The INA provides two different definitions of “child.”

- One definition of child applies to approval of visa petitions, issuance of visas, and similar issues.^[2]
- The other definition of child applies to citizenship and naturalization.^[3]

The most significant difference between the two definitions of child is that a stepchild is not included in the definition relating to citizenship and naturalization. Although a stepchild may be the stepparent’s “child” for purposes of visa issuance, the stepchild is not the stepparent’s “child” for purposes of citizenship and naturalization. A stepchild is ineligible for citizenship or naturalization through the U.S. citizen stepparent, unless the stepchild is adopted and the adoption meets certain requirements.^[4]

In general, a child for the citizenship and naturalization provisions is an unmarried person under 21 years of age who is:

- The genetic, legitimated,^[5] or adopted son or daughter of a U.S. citizen; or

- The son or daughter of a non-genetic gestational U.S. citizen mother who is recognized by the relevant jurisdiction as the child's legal parent.

The term “genetic child” refers to a child who shares genetic material with his or her parent, and “gestational mother” is the person who carries and gives birth to the child. A genetic parent, as well as a non-genetic gestational mother who is recognized by the relevant jurisdiction as the child's legal parent, is included within the phrase “natural” parent as referenced in the INA.^[6] In general, absent other evidence, USCIS considers a child's birth certificate as recorded by a proper authority as sufficient evidence to determine a child's genetic relationship to the parent (or parents). The child's parent (or parents) who is included in the birth certificate is presumed to have legal custody of the child absent other evidence.^[7]

In addition to meeting the definition of a child, the child must also meet the particular requirements of the specific citizenship or naturalization provision, which may include references to birth in wedlock or out of wedlock, and which may require that certain conditions be met by 18 years of age, instead of 21.^[8]

B. Legitimated Child

Legitimation means “placing a child born out of wedlock in the same legal position as a child born in wedlock.”^[9] The law of the child's residence or domicile, or the law of the father's residence or domicile, is the relevant law to determine whether a child has been legitimated.^[10] Generally, unless otherwise specified by the specific provision, if the father or child had various residences or domiciles before the child reached 16, 18 or 21 years of age (depending on the applicable provision), then the laws of the various places of residence or domicile must be analyzed to determine whether the requirements for legitimation have been met.^[11]

A child is considered the legitimated child of his or her parent if:

- The child is legitimated in the United States or abroad under the law of either the child's residence or domicile, or the law of the child's father's residence or domicile, depending on the applicable provision;^[12]
- The child is legitimated before he or she reaches 16 years of age (except for certain cases where the child may be legitimated before reaching 18 or 21 years of age);^[13] and

- The child is in the legal custody of the legitimating parent or parents at the time of the legitimation.[\[14\]](#)

A non-genetic gestational mother may legitimate her child. While legitimation has been historically applied to father-child relationships, the gestational mother of a child conceived through Assisted Reproductive Technology (ART) may be required to take action after the birth of the child to formalize the legal relationship. Whether such action is required depends on the law of the relevant jurisdiction.

Post-birth formalization of the legal relationship between a gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child's birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.[\[15\]](#)

An officer reviews the specific facts of a case when determining whether a child has been legitimated accordingly and to determine the appropriate citizenship provision.

C. Adopted Child

An adopted child means that the child has been adopted through a full, final, and complete adoption.[\[16\]](#) This includes certain siblings of adopted children who are permitted to be adopted while under 18 years of age.[\[17\]](#)

A child is an adopted son or daughter of his or her U.S. citizen parent if the following conditions are met:

- The child is adopted in the United States or abroad;
- The child is adopted before he or she reaches 16 years of age (except for certain cases where the child may be adopted before reaching 18 years of age);[\[18\]](#) and
- The child is in the legal custody of the adopting parent or parents at the time of the adoption.[\[19\]](#)

In general, the adoption must:

- Be valid under the law of the country or place granting the adoption;
- Create a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent; and
- Terminate the legal parent-child relationship with the prior legal parent(s).[\[20\]](#)

D. Orphan[\[21\]](#)

In general, the definition for adopted children applies to adopted orphans. USCIS, however, does not consider an orphan adopted if any of the following conditions apply:

- The foreign adoption was not full and final;
- The foreign adoption was defective; or
- An unmarried U.S. citizen parent or a U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings.[\[22\]](#)

If the orphan is not considered adopted:

- The child must be must be readopted in the United States; or
- The child must be adopted while under 16 years of age and must have been residing in the legal custody of the adopting parent or parents for at least two years.[\[23\]](#)

In all cases, the condition that the child must have been residing in the legal custody of the adopting parent or parents is not required if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household.

E. Child Born Abroad through Assisted Reproductive Technology

1. Background

Assisted Reproductive Technology (ART)

A child may be born through ART. ART refers to fertility treatments where either the egg or sperm, or both, is handled outside the body. ART includes intrauterine insemination (IUI) and in vitro fertilization (IVF), among other reproductive technology procedures.^[24] In these procedures, the parent or parents may use a combination of his or her own genetic material or donated genetic material (donated egg, sperm, or both) in order to conceive a child.^[25]

ART and the Immigration and Nationality Act (INA)

ART was not considered at the time the INA and many of its subsequent amendments were enacted. One of the most significant impacts of ART is that ART allows for a woman to bear a child to whom she does not have a genetic relationship through the use of a donor egg. As such, a mother could have a biological relationship to her child but not a genetic relationship.

Children Born Abroad through ART

USCIS and the Department of State (DOS), who share authority over these issues, collaborated in the development of this policy. A non-genetic gestational mother (person who carried and gave birth to the child) who is also the child's legal mother may be recognized in the same way as genetic legal mothers are treated under the INA. A mother who is the gestational and legal parent of a child under the law of the relevant jurisdiction at the time of the child's birth consequently may transmit U.S. citizenship to the child if all other requirements are met.^[26]

Child Born Abroad through ART in the Citizenship and Naturalization Contexts

A child born through ART may acquire U.S. citizenship from his or her non-genetic gestational mother at the time of birth, or after birth, depending on the applicable citizenship or naturalization provision, if:

- The child's gestational mother is recognized by the relevant jurisdiction as the child's legal parent at the time of the child's birth; and

- The child meets all other applicable requirements under the relevant citizenship or naturalization provision.

2. Jurisdiction's Recognition of Mother-Child Relationship

The relevant jurisdiction must recognize the mother-child relationship as the legal parental relationship. Whether a parent is recognized as the legal parent is generally assessed under the jurisdiction of the child's birth at the time of birth. In some jurisdictions, the non-genetic gestational mother is recognized as the legal mother without her having to take any additional affirmative steps after birth. However, in other jurisdictions, a non-genetic gestational mother may be required to take certain action after the child's birth to establish the legal relationship.

Post-birth formalization of the legal relationship between a non-genetic gestational mother and her child should be viewed as relating back to the time of birth. This is because the relevant jurisdiction's recognition of the legal relationship between a non-genetic gestational mother and her child is based on the circumstances of the child's birth, including that she carried and bore the child of whom she is the legal parent. This rule applies unless it is otherwise specified in the law of the relevant jurisdiction.

In either case, the law of the relevant jurisdiction governs whether the non-genetic gestational mother is the legal mother for purposes of U.S. immigration law. Importantly, a non-genetic gestational mother who is not the legally recognized mother may not transmit U.S. citizenship to the child. USCIS will follow a court judgment of the relevant jurisdiction if parentage is disputed. In addition, USCIS will not adjudicate cases involving children whose legal parentage remains in dispute unless there has been a determination by a proper authority.

The applicable citizenship provision may depend upon whether the child is born in wedlock or out of wedlock. USCIS must determine whether a child born through ART is born in wedlock or out of wedlock and will treat a child born to a legal gestational mother in the same manner as a child born to a genetic mother when determining if the child is born in or out of wedlock.

Footnotes

1.

See [INA 101\(b\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>) and [INA 101\(c\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

2.

See [INA 101\(b\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

3.

See [INA 101\(c\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

4.

See Section C, Adopted Child [[12 USCIS-PM H.2\(C\)](http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter2.html) (<http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter2.html>)].

5.

A child can be legitimated under the laws of the child's residence or domicile, or under the law of the father's residence or domicile. See [INA 101\(c\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1173) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1173>). A person's "residence" is his or her place of general abode, that is, his or her principal, actual dwelling place without regard to intent. See [INA 101\(a\)\(33\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-195.html#0-0-0-937) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-195.html#0-0-0-937>). A person's "domicile" refers to a person's legal permanent home and principal establishment, to include an intent to return if absent. Black's Law Dictionary (9th ed. 2009). In most cases, a person's residence is the same as a person's domicile.

6.

See [INA 101\(b\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1129) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1129>) and [INA 101\(c\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1173) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1173>).

7.

In certain cases, a court may terminate a parent's parental rights or a parent may relinquish his or her parental rights depending on the laws of the relevant jurisdiction.

8.

See Chapter 3, United States Citizens at Birth (INA 301 and 309) [[12 USCIS-PM H.3](http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter3.html) (<http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter3.html>)]; Chapter 4, Automatic Acquisition of Citizenship after Birth (INA 320) [[12 USCIS-PM H.4](http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter4.html) (<http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter4.html>)]; and Chapter 5, Child Residing Outside of the United States (INA 322) [[12 USCIS-PM H.5](http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter5.html) (<http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter5.html>)].

9.

See *Matter of Moraga*, 23 I&N Dec. 195, 197 (BIA 2001).

10.

See [INA 101\(c\)\(1\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1175) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1175>).

11.

Importantly, certain citizenship provisions limit the place of legitimation to the child's residence. See [INA 309\(a\)\(4\)\(A\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9774.html#0-0-0-7565) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9774.html#0-0-0-7565>). In such cases, only the law of the place of residence will be analyzed to determine whether the requirements for legitimation have been met.

12.

See [INA 101\(a\)\(33\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-195.html#0-0-0-937) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-195.html#0-0-0-937>), which defines the term "residence" as the "place of general abode." The place of general abode of a person means his or her "principal, actual dwelling place in fact, without regard to intent."

13.

For example, the current version of [INA 309](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9774.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-9774.html>) allows for legitimation until the age of 18, while [INA 101\(c\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1173) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1173>) requires legitimation by the age of 16.

14.

See [INA 101\(c\)\(1\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1175) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html#0-0-0-1175>). See also *Matter of Rivers*, 17 I&N Dec. 419, 422 (BIA 1980) (presuming a legitimated child to be in the legal custody of the legitimating parent).

15.

See Section E, Child Born Abroad through Assisted Reproductive Technology [[12 USCIS-PM H.2\(E\)](http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter2.html#S-E)] (<http://www.uscis.gov/policymanual/HTML/PolicyManual-Volume12-PartH-Chapter2.html#S-E>).

16.

See [8 CFR 320.1](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31686/0-0-0-31692.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31686/0-0-0-31692.html>). See [8 CFR 322.1](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31769/0-0-0-31775.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31769/0-0-0-31775.html>).

17.

See [INA 101\(b\)\(1\)\(E\)\(ii\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

18.

See [INA 101\(b\)\(1\)\(E\)\(ii\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>) and [INA 101\(b\)\(1\)\(F\)\(ii\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

19.

See [INA 101\(c\)\(1\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

20.

See [Adjudicator's Field Manual, Chapter 21.15, Self Petitions by Parents of U.S. Citizens](http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-3481/0-0-0-6266.html) (<http://www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-3481/0-0-0-6266.html>).

21.

See [INA 101\(b\)\(1\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

22.

See [8 CFR 320.1](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31686/0-0-0-31692.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31686/0-0-0-31692.html>). See [8 CFR 322.1](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31769/0-0-0-31775.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-11261/0-0-0-31769/0-0-0-31775.html>).

23.

See [INA 101\(b\)\(1\)\(E\)](http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html) (<http://www.uscis.gov/ilink/docView/SLB/HTML/SLB/0-0-0-1/0-0-0-29/0-0-0-101/0-0-0-434.html>).

24.

See Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA), Pub. L. No. 102-493, 106 Stat. 3146.

25.

In addition, a couple may use a gestational carrier (also called a gestational surrogate). A gestational surrogate is a woman, who gestates, or carries, an embryo that was formed from the egg of another woman on behalf of the intended parent or parents. The gestational carrier usually has a contractual obligation to return the infant to his or her intended legal parents. For additional information on ART, see the [Centers for Disease Control \(CDC\) Web site](http://www.cdc.gov/art) (<http://www.cdc.gov/art>).

26.

Previously, a genetic relationship with a U.S. citizen parent was required in order for a child born abroad to acquire U.S. citizenship through that parent.

Updates

POLICY ALERT – Effect of Assisted Reproductive Technology (ART) on Immigration and Acquisition of Citizenship Under the Immigration and Nationality Act (INA)

October 28, 2014

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance relating to the use of Assisted Reproductive Technology (ART).

POLICY ALERT – Comprehensive Citizenship and Naturalization Policy Guidance

January 07, 2013

USCIS is issuing updated and comprehensive citizenship and naturalization policy guidance in the new USCIS Policy Manual.