

## LEGAL FACT SHEET

### Passports for Minor Children\*

All persons regardless of age (including newborns and infants) must have their own passport if they travel outside of the United States. Passports are issued by the Department of State pursuant to federal law. In order to obtain a passport for a minor child, application must be made at a local post office or at a passport office or via mail to the Department of State's passport processing center. If the child is traveling within 14 days, the application process can be done very quickly by applying in person at a Regional Passport Agency. There are also many commercial services available, many online, which can walk your passport through for you on an expedited basis for an additional fee. Here is official site:

<https://travel.state.gov/content/travel/en/passports.html>

### Documents Needed

If you or your child are applying for a passport for the first time, you must appear in person at one of the 9,000 passport offices located in the U.S. and provide two photographs, proof of U.S. citizenship, and a valid form of photo identification such as a driver's license, and proof of relationship for minors under 16 when applied for by a parent or guardian. As part of the application, it is necessary to show proof of citizenship.

In order to prove citizenship, submit one of the following:

- Certified U.S. birth certificate; or
- Previous fully valid U.S. Passport; or
- Report of Birth Abroad (Form FS-240); or
- Certification of Birth Abroad (Form DS-1350); or
- Certificate of Citizenship or Naturalization from USCIS.<sup>1</sup>

If a birth certificate is not available, then you will need a Letter of No Record issued by the state with name, date of birth, years were searched for a birth record, and a statement that there is no birth certificate on file, and as many of the following documents as possible:

- Baptismal certificate
- Hospital birth certificate
- Census record
- Early school record
- Family bible record
- Doctor's record of post-natal care

These documents must be early public records showing the date and place of birth, preferably created within the first five years of birth. Another document that may work is an Affidavit of Birth, form DS10A, from an older

<sup>1</sup> Source: US Department of State, Passport Office Web Page, online at [http://travel.state.gov/passport/get/minors/minors\\_834.html](http://travel.state.gov/passport/get/minors/minors_834.html)

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blood relative, i.e., a parent, aunt, uncle, sibling, who has personal knowledge of your birth. It must be notarized or have the seal and signature of the acceptance agent.

### Children Under 14 Years of Age

Federal regulations governing issuance of passports for children under age 14 require that:<sup>2</sup>

- (a) In general ...
  - (2) Requirements:
    - (A) Both parents, or the child's legal guardian, must execute the application and provide documentary evidence demonstrating that they are the parents or guardian; or
    - (B) The person executing the application must provide documentary evidence that they:
      - (i) Have sole custody of the child;
      - (ii) Have the consent of the other parent to the issuance of the passport; or
      - (iii) Are in loco parentis and has the consent of both parents, of a parent with sole custody over the child, or of the child's legal guardian, to the issuance of the passport.
  - (b) Exceptions — The regulations required by subsection (a) may provide for exceptions in exigent circumstances, such as those involving the health or welfare of the child, or when the Secretary determines that issuance of a passport is warranted by special family circumstances.

Parents and guardians have a statutory right to make applications for children under the age of 14. The statute mentions “sole custody,” which means that one parent who is the legal custodian may make an application.

### Applications Made by Non-Parents (“*in loco parentis*”)

The statute also mentions “*in loco parentis*” which is a legal term referring to caregivers who have assumed parental duties. “*In loco parentis*” is Latin for “in place of the parent”). Therefore legal custodians and other caregivers may make application, and if they can document the consent of the parents or guardian, application should be successful.

*Without parental consent*, success will depend upon a showing of “exigent circumstances.”<sup>3</sup> Exigent means “requiring immediate aid or action,” and therefore the caregiver must show special reasons for caregiving and for seeking the passport.

Both parents and guardians do not need to be present at the same time when the application is presented (see Pub.L. 106-113 § (a)(B)(ii) above): one may apply while the other submits a statement of consent. If you are either a non-applying parent or guardian consenting to passport issuance for your child by the applying parent, or you are an applying parent or guardian, and the written consent of the non-applying parent or guardian cannot be obtained, you must also fill out and have notarized Form DS 3053, Statement of Consent: Issuance of a Passport to a Minor Under Age 16, “Statement of Consent or Special Circumstances: Issuance of a Passport to as Minor Under Age 16”, along with the DS-11 Application for Passport. In this application you are asked to explain in your own words whatever special circumstances you have for claiming waiver of the rules regarding parental or guardian consent for your child for the issuance of the passport, or why the written consent of the

<sup>2</sup> Pub.L. 106-113, Div. B, § 1000(a)(7) [Div. A, Title II, § 236] div. B, § 1000(a)(7) [div. A, title II, § 236], < Nov. 29, 1999, 113 Stat. 1536, 1501A-430., Subsection (a)(2)

<sup>3</sup> Id, Subsection (b)

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non-applying parent or guardian cannot be obtained. It is also to be completed by the non-applying parent or guardian when he or she will not be present at the time the applying parent or guardian submits the minor's application,<sup>4</sup> but no more than three months before the application is submitted by the applying parent or guardian.

According to statute, "No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States."<sup>5</sup> However, this section does not authorize a mandatory oath of allegiance as a condition precedent to obtaining a valid United States passport.<sup>67</sup>

Documentation must be provided under penalty of perjury. It is a federal crime to willingly and knowingly make a false statement in the application for a passport that may result in fines or imprisonment.<sup>8</sup>

**All minors under age 16 must appear in person.** If your child does not have identification of his/her own, you need to accompany your child, present identification and co-sign the application.

If you are behind in child support payments, you may not be able to get a passport.<sup>9</sup>

### Children Adopted from Foreign Countries

If you are adopting your child from another country, you should apply for a passport for him/her. Last year nearly 20,000 children were adopted from foreign countries. The Department of State, Office of Children's Issues plays an active role in the intercountry adoption process. On February 27, 2001, the Child Citizenship Act of 2000<sup>10</sup> became effective. The aim of this law, which, among other things, amended Section 320 of the Immigration and Nationality Act (INA),<sup>11</sup> is to automatically and retroactively facilitate the acquisition of U.S. citizenship for both biological and adopted children of U.S. citizens who are born abroad and who do not acquire U.S. citizenship at birth.

The Act (8 U.S.C. §1431) provides that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
  - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
  - (2) The child is under the age of eighteen years.
  - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.
- (b) Subsection (a) of this section shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 1101(b)(1) of this title.<sup>12</sup>

<sup>4</sup> Source: US Department of State, Passport Office Web Page, online at [http://travel.state.gov/passport/passport\\_1738.html](http://travel.state.gov/passport/passport_1738.html)

<sup>5</sup> 22 U.S.C. §212

<sup>6</sup> *Woodward v. Rogers*, D.C.D.C. (1972), 344 F.Supp. 974, aff'd 486 F.2d 1317, 159 U.S. App. D.C. 57

<sup>7</sup> This section (22 USC §212) and former §211 of this title are not in terms mandatory, and the Secretary may, in his discretion, either grant or withhold a passport as the public interests may require. 1901, 23 Op. Atty. Gen. 509.

<sup>8</sup> 18 U.S.C. §1001, 18 U.S.C. §1542, and/or 18 U.S.C. §1621

<sup>9</sup> Op cit, div. B, § 1000(a)(7) [div. A, title II, §238], Nov. 29, 1999

<sup>10</sup> 10 PL 106-395, TITLE I--CITIZENSHIP FOR CERTAIN CHILDREN BORN OUTSIDE THE UNITED STATES, SEC. 101. AUTOMATIC ACQUISITION OF CITIZENSHIP FOR CERTAIN CHILDREN BORN OUTSIDE THE UNITED STATES.

<sup>11</sup> 8 U.S.C. §1431

<sup>12</sup> 8 U.S.C.A. §1101 (b)(1) "The term "child" means an unmarried person under twenty-one years of age who is--(A) a child born in wedlock; (B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred; (C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen

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Children who have immigrated to the United States in order to be adopted become citizens as soon as the adoption decree is final (the adoption decree may be from the country of origin, it is not limited to American court decrees). Citizenship is acquired automatically as soon as all of the requirements have been met. As soon as the law's requirements have been met, the child acquires U.S. citizenship automatically without the need to apply for either a passport or a Certificate of Citizenship. To obtain a passport for a child who became a U.S. citizen under the Act, the applicant must provide: (1) Evidence of the child's relationship to a U.S. citizen parent (a certified copy of the foreign birth certificate for children born to an American or, if adopted, a certified copy of the final adoption decree); (2) the child's foreign passport with INS's I-551 stamp or the child's resident alien card; and (3) the parent's valid identification. To prove admission into the United States as an immigrant for lawful permanent residence, one must provide either the child's permanent resident alien card, commonly known as a "green card," or an I-551 stamp placed in the child's passport by INS. For a child to demonstrate adoption in order to obtain a passport and/or Certificate of Citizenship he needs to present a certified copy of a final adoption decree.

### Children Born Abroad and Not Adopted

Another section of this law provides that children (biological and adopted) of U.S. citizens who are born and reside abroad (that is, they do not enter the U.S. as permanent residents) and who don't become U.S. citizens at birth can apply to INS for a certificate of citizenship if the following conditions are met:

- 1.) At least one parent of the child is a U.S. citizen, whether by birth or naturalization.
- 2.) The U.S. citizen parent has been physically present in the U.S. for a total of at least five years, at least two of which are were after the age of 14. If the child's U.S. citizen parent cannot meet this requirement, it is enough if one of the child's U.S. citizen grandparents can meet it.
- 3.) The child is under the age of eighteen.
- 4.) The child resides abroad in the legal and physical custody of the U.S. citizen parent and has been lawfully admitted into the United States as a nonimmigrant.

Children who acquire citizenship under this provision do not acquire citizenship automatically; rather, they must/must apply to INS for a certificate of citizenship and go through the naturalization process.

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years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation; (D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person; (E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or 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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or (ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or (F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence; Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or (ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 1151(b) of this title."

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