

# Adoption Advocate



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## PROTECTING THE RIGHTS OF INTERCOUNTRY ADOPTEES: STEPS TO ENSURE THE RIGHT OF CITIZENSHIP FOR EVERY ADOPTED INDIVIDUAL

By Jean Nelson Erichsen<sup>†</sup>

### Introduction

Joseph, who was born in Guatemala, adopted as a child by American citizens, and raised in the U.S., is in despair. After working for many years he has lost his job and is searching for another. But times have changed: employers are compelled to require proof of citizenship. Joseph is married and supporting two children. Like many other adoptees that are children of U.S. citizens, Joseph was shocked when he discovered that his adoptive parents never obtained his U.S. citizenship. Presumably, they never understood their responsibility to help their son attain citizenship after his adoption and the significant risks that their failure subjected him to. Joseph is one of thousands of adoptees without citizenship, their futures uncertain—waiting for the passage of the Foreign Adopted Children Equality (FACE) Act (S. 1359 and H.R. 3110) or other legislation that could right this inequity.

The need to understand and implement the appropriate path to citizenship is essential for every adopted child. National Council For Adoption regularly hears concerns about this issue from adoption professionals, adoptive parents, and adult adoptees uncertain of their citizenship status and the steps necessary to properly acquire and document their status. We hope that this article and the attached *Adoptee Citizenship Factsheet* prove to be timely resources that help intercountry adoptees and their parents better understand their citizenship status and how to properly document it.

### History of Adoptees Lacking U.S. Citizenship

According to the U.S. Department of State, Bureau of Consular Affairs, American families have adopted 224,615 foreign-born children since World War II. Despite being in the U.S. legally, several thousands of these adoptees

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have discovered that their U.S. citizenship was never attained, although they were entitled to it following their adoption by U.S. citizens.

Over the past five years, several American adoption agencies and residential treatment centers have responded to my queries via the National Council For Adoption and the Joint Council on International Children's Services concerning this problem. All report receiving desperate calls for help from adoptees who have just discovered that they are not U.S. citizens due to no fault of their own. From this anecdotal information, we can extrapolate a high number of individuals whose U.S. citizenship was never obtained—individuals born abroad but adopted by American citizens who have legally resided in the U.S. for nearly all their lives, yet lack U.S. citizenship even though they are entitled to it.

Many are no longer recognized as legal citizens of their countries of origin. Legal responsibility for Joseph, and indeed that of every adoptee, was permanently transferred from his country of origin to his adoptive parents. The majority of inter-country adoptees lose contact with their countries of origin, along with their languages and customs. They are no longer acculturated or employable there, and are left with no official legal status there.

Unfortunately, many adoptive parents and adoption facilitators are either unaware of the steps necessary to ensure that U.S. citizenship is acquired and properly documented, or do not recognize the importance of these steps. As their children are in fact legal children of American citizens, it may often be assumed that their citizenship is automatic, but this is not always the case. It is a vital responsibility of adoption service providers to inform par-

ents of the process, and parents must ensure that these simple but important steps are taken.

Adopted individuals living in the U.S. whose parents fail to take these steps have a different and much more difficult route to citizenship than an adoptee whose parents take the required steps to attain citizenship for them prior to their eighteenth birthday. The status of adopted adults without U.S. citizenship compromises their potential to achieve gainful employment, receive college scholarships, acquire passports, and take advantage of a host of other rights due to U.S. citizens. This neglected and vulnerable segment of legally adopted children of American citizens needs and deserves immediate redress.

## The Fix that Fizzled

In 2000, a bill amending the Immigration and Naturalization Act, the Child Citizenship Act (CCA), was passed. It was intended to automatically confer citizenship on children adopted from other nations by U.S. citizens. Unfortunately, this law did not apply to adoptees that were over the age of 18 on February 27, 2001, the day the bill went into effect.

Further, when the CCA was implemented, it was interpreted to include only those children who have been issued **IR-3** and, post-Hague implementation, **IH-3 visas**. IR-3 and IH-3 visas are issued to children who are observed, accepted, and adopted abroad by both adoptive parents or an unmarried single parent. Under the CCA, this first group (which we will refer to as **Group One**) is granted automatic citizenship upon entry into the United States to reside permanently.

This implementation excludes from the

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CCA provision those children who are not personally observed before and accepted by one or both adoptive parents in a couple or not personally observed by an unmarried single parent prior to immigrating to the United States on **IR-4** and, since the adoption of the Hague, **IH-4 visas (Group Two)**. The CCA also does not apply to children who were adopted from abroad and had reached the age of 18 prior to February 27, 2001 (the date the CCA went into effect) **(Group Three)**.

Historically, those in **Group Two** are at risk of losing their chance at citizenship due to parental ignorance or bad legal advice. In addition, **Group Two** adoptions are considered incomplete, either because they represent guardianships, or because they were finalized abroad in the presence of only one of two parents. These adoptions are not considered final until adoptive parents readopt<sup>1</sup> in their state of residence in the United States. Even though readopted children are considered full U.S. citizens under the CCA, the adoptive parents must acquire a U.S. Passport and/or Certificate of Citizenship in order to have documented proof of citizenship. Although there is a cost, there is a benefit to applying for a Certificate of Citizenship instead of, or in addition to, a Passport: Passports, unlike Certificates of Citizenship, have an expiration date.

Adopted individuals in **Group Three**, who were over the age of 18 at the time of CCA implementation, do not have automatic citizenship, and must go through a naturalization process to receive citizenship.

Concern about adoption disruptions or dissolutions may account for the inconsistency in granting citizenship to adopted children with

different types of visas. Yet regardless of visa type, if an adoption is disrupted, a child under 18 years of age remains in the U.S. and is placed for adoption with another family or in foster care by either the adoption agency or the state. For these children, the acquisition of U.S. citizenship is still vital to their future security and stability in this country. Like adoptive parents, state agencies that have custody of these children must also understand their role in helping children in their custody complete the steps necessary to attain citizenship and maintain documents and records of their legal entry into the U.S.

## Troubling Case Studies

During my tenure as the director of an international adoption agency, I encountered several cases that clearly illustrate the need to address the rights of adoptees whose parents failed to acquire citizenship for them. Following are just a handful of examples from my own experience:

**Case #1.** I first met Jacob, now a U.S. Army Staff Sergeant, in an orphanage abroad. He was five years old at the time. Our agency found a home for him and his two younger sisters with a couple that traveled to visit them prior to their adoption and arrival in the U.S. on IR-3 visas. Many years later, as an adult, Jacob came to see me, explaining that he was a medic who had returned to the U.S. with his regiment after two years in Iraq. When he tried to obtain a passport to travel with a small humanitarian mission to Guatemala, he was shocked to learn he was not a U.S. citizen.

Jacob's parents had readopted their chil-

<sup>1</sup> Adoption or readoption in the adoptive family's state of residence provides a birth certificate in English from Vital Statistics which cites the child's original birthplace, names the adoptive parents as legal parents, changes the child's surname, and (if requested) the first and middle names as well. This legal process bestows all rights and privileges to the child residing in that particular state.

Only the federal government, not an individual state, can grant U.S. citizenship. Children who arrive on IR-4 and IH-4 visas are granted automatic U.S. citizenship once they are readopted in their state. However, a citizenship document is not issued automatically, so the child will have no documentary proof of citizenship. U.S. Passports and Certificates of Citizenship are documentary proof of U.S. citizenship. Adoptive parents can apply for a passport for their child that will provide proof of U.S. citizenship, but they should also apply to the U.S. Citizenship and Immigration Service (USCIS) for a Certificate of Citizenship that will not expire.



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dren in their local county to obtain amended birth certificates in English. As per the law, the new certificates cited the original birthplace, named his adoptive parents as legal parents, and renamed the children. Jacob's mother told her son that she did not file for citizenship because their lawyer said the children became legal permanent residents at the time they entered the country. "On top of the misleading legal advice," Jacob told me, "my parents had lost all of our adoption documents in a flood." Jacob had to enlist the help of an attorney to assist in his citizenship case. Two years later he emailed me from Afghanistan: "My army attorney finally succeeded. I'm a citizen at last!"

**Case #2.** A state social worker called to ask me for help in locating documentation on Sarah, a 14-year old girl in state custody. Sarah possesses no proof of her status. She was legally adopted from Russia at age four with a younger brother, but is now living with strangers in a foster home. Her adoptive parents, unprepared to care for two children, kept her brother at home and sent Sarah to live with

various friends before placing her in a residential treatment center in another state. When she was discharged, the couple decided to relinquish Sarah to the welfare system before moving to another state. They continue to ignore requests for her records, and so, while Sarah is a citizen under the CCA, she has no way to prove it. The state agency now has the responsibility to help her acquire proof of her citizenship.

**Case #3.** Julia phoned to ask me for help in preventing the deportation of her sister Patricia, who was legally adopted and immigrated on an IR-4 visa ten years ago. Patricia is now 25 years old and in dire financial straits, a single mother of three American-born children. Julia explained that their father had recently died, and their mother, who had a debilitating stroke, was unable to locate Patricia's foreign adoption documents. When Patricia was recently convicted for theft, the court had noted that she was not a U.S. citizen. Julia tried to prove them wrong, but she discovered that, in fact, her parents had not readopted or obtained

	Group One IR-3 & IH-3 Visas <i>Protected by CCA</i>		Group Two IR-4 & IH-4 Visas <i>Further Action Necessary</i>	
	IR-3	IH-3	IR-4	IH-4
2006	14,594	0	6,086	0
2007	13,786	0	5,822	0
2008	11,591	9	5,856	0
2009	7,437	549	4,594	164
2010	4,971	1,950	3,797	340
<b>Visa Totals</b>	52,379	11,499	26,164	504
<b>Group Totals</b>	63,852		26,668 <sup>2</sup>	

<sup>2</sup> Adoptions by Visa Type Statistics. Bureau of Consular Affairs, U.S. Department of State. Retrieved from [http://adoption.state.gov/about\\_us/statistics.php](http://adoption.state.gov/about_us/statistics.php)



citizenship for Patricia when they were able to do so. Patricia's court-appointed attorney had no idea when she pushed her to plea-bargain her case that she would end up facing deportation.

## Analysis of the Numbers of Potential Adoptees Lacking Citizenship

Responses to my queries on this issue from adoption agencies provided enough information to extrapolate an ever-increasing number of non-citizen adoptees. According to State Department statistics, intercountry adoptions peaked in 2004, with 22,991 orphan immigrations to the U.S. In 2010, a total of 11,058 children were adopted by U.S. citizens. Thousands of children are still arriving at risk, with either an IR-4 or an IH-4 visa.

**Group One** children protected by the CCA since February 27, 2001 receive automatic citizenship and a Certificate of Citizenship as documentation. The number of children adopted abroad from non-Hague countries by U.S. citizens and issued **IR-3 visas** was 14,594 in 2006, 13,786 in 2007, 11,591 in 2008, 7,437 in 2009, and 4,971 in 2010, for a total of 52,379. Figures for those adopted and issued **IH-3 visas** were 9,549 in 2009 and 1,950 in 2010, for a total of 11,499.

The number of **Group Two** children with **IR-4 visas**, whose adoptions abroad require readoption in the United States—was 6,086 in 2006, 5,822 in 2007, 5,856 in 2008, 4,594 in 2009, and 3,797 in 2010, for a total of 26,164 since 2006. Figures for those adopted and issued IH-4 visas were 164 in 2009 and 340 in 2010, for a total of 504. Once readopted, these children are automatic U.S. citizens, but if they

want documentation of their citizenship they must apply for it.

Examining intercountry adoption in 2010, we see foreboding statistics: 6,921 **Group One** children immigrated, while the number of those in **Group Two** climbed to 4,137. If this trend continues, more **Group Two** children will continue to arrive at risk of never acquiring U.S. citizenship.

## Protect the Rights of Adoptees

The FACE Act was first introduced in 2009. If the FACE Act or similar legislation were rein-

troduced and passed, it would officially recognize and grant citizenship to foreign-born, legally documented adoptees. It would also provide a streamlined citizenship process that allows adoptees who are now adults to acquire U.S. citizenship, a right to which they are entitled as children of American citizens – and a right many could have already attained had their adoptive parents taken the necessary

steps to document them prior to their 18th birthdays. The FACE Act or legislation like it is essential to ensuring every adopted child of an American citizen receives automatic citizenship, just as any biological child born abroad to a U.S. citizen receives automatic citizenship.

Until legislation is passed that updates the CCA and provides automatic citizenship for all intercountry adoptees, regardless of the child's age or the type of visa he or she enters the country on, NCFA suggests the following steps in order to ensure that the right of citizenship for all individuals adopted by American citizens is protected now:

- An analysis should be conducted to determine how many foreign-born adoptees adopted by American citizens currently

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lack citizenship, and how many more can be expected in the coming years until a safeguard is put in place.

- An aggressive media campaign must be launched to alert adoptees, their parents and guardians, and the general public of the necessity of U.S. citizenship in order to be eligible for college scholarships, Social Security benefits, Medicare payments, and other rights, programs, and services afforded to U.S. citizens.
- USCIS must guarantee immunity, when necessary, while communicating with foreign-born adoptees adopted by American citizens.
- Regulatory change must be made to treat all full and final adoption decrees as IR-3 or IH-3 visas, which result in automatic citizenship.
- U.S. citizenship must be granted retroactively, and without fees, to vulnerable adoptees, particularly those adults who have lived and worked in the U.S. for decades.
- A system needs to be put in place to assist adopted children of American citizens now abandoned to state custody in retrieving their entry records and adoption documentation and applying for citizenship documentation.

- All intercountry adoption service providers should establish the practice of requiring parents to sign a document that explains, in layman's terms, the U.S. citizenship status of the child they have adopted and the consequences of not following through on behalf of this child. Service providers should make it a standard post-adoption check to request documentation of citizenship or proof that the process has been completed when necessary.

Our current system fails and victimizes adoptees brought to the U.S. Many of our foreign-born adoptees lack citizenship, leaving them in a precarious position. Let us not forget the U.S. Army Staff Sergeant denied a passport from the country for which he was prepared to die while serving, the undocumented teenaged girl abandoned by her parents to state custody, and the mother of three American-born children under threat of deportation to a "homeland" that is, to her, a foreign country. Instead of focusing solely on children's birth rights in the countries from which they were adopted, we must also acknowledge and address the rights too many are denied in this country.

## HELP US FUND THE *ADOPTION ADVOCATE*

National Council For Adoption is a non-profit organization supported by charitable donations. To maintain our outstanding programs, we accept contributions of every size. To make a contribution, please go to [www.adoptioncouncil.org](http://www.adoptioncouncil.org) and click on "Contribute" or mail your check to NCFCA, 225 N. Washington Street, Alexandria, VA 22314. Thank you!



# Adoptee Citizenship Factsheet

## Identifying, Ensuring, and Documenting Citizenship of International Adoptees

Adoptive parents, adult adoptees, and adoption professionals can use this factsheet to better identify, ensure, and document citizenship status themselves or seek the assistance of an immigration attorney as necessary. Low-income or jobless adult adoptees might attempt to engage The Legal Aid Society or a local legal aid clinic.<sup>3</sup>

The current status of adoptees and the process to acquire citizenship, including visa types, time limits, form numbers, and fees, are as follows:<sup>4</sup>

### Identifying Citizenship

- Children and adults who were adopted before February 27, 2001 and were under the age of 18 at that time are automatic citizens. If they lack documentation, it is advisable to apply for and acquire documentation of citizenship.
- Children that entered on **IR-3** and **IH-3** visas after February 27, 2001 are automatic citizens. Since 2004, these adopted children generally receive an official Certificate of Citizenship in the mail.
- Adoptees who were over the age of 18 on February 27, 2001 must go through a naturalization process and apply for citizenship.
- Children that arrived on **IR-4** or **IH-4** visas after February 27, 2001 and are currently under the age of 18 must be readopted before age 18 in order for citizenship to attach. Once they are readopted in their state of residence, citizenship is automatic. If they lack documentation of citizenship, it may be advisable to apply for and acquire documentation of citizenship.
- Adult adoptees now over the age of 18 who arrived with **IR-4** or **IH-4** visas are automatic citizens only if they were readopted in the state of residence by their parents. If they were never readopted, they maintain Legal Permanent Resident (LPR) status and must go through a naturalization process to apply for citizenship. A Green Card is proper documentation of LPR status. While a Green Card does expire after ten years, LPR status has not expired. However, the Green Card should be reapplied for in order to document legal status until the naturalization process is complete.<sup>5</sup>
- Adult adoptees currently over the age of 18 who arrived with **IR-4** or **IH-4** visas and were readopted in their state of residence prior to age 18 received automatic citizenship upon readoption. It is advisable to apply for and acquire documentation of citizenship.

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<sup>3</sup> The *Adoption Advocate* is published for general educational purposes only and should not be read as legal advice. Every case is unique, and NCFCA recommends that you consult an expert for individualized advice based on the specific details of your concerns and the relevant adoption laws and practices of the state and nations relevant to your situation.

<sup>4</sup> *Note:* Form numbers and fees regularly change. Be sure you have the most current information by visiting the USCIS website at [www.uscis.gov](http://www.uscis.gov).

<sup>5</sup> Karen Law, adoption/immigration attorney and member of the American Academy of Adoption Attorneys, in a personal communication, September 27, 2011.



# Adoptee Citizenship Factsheet

(cont.)

## Acquiring Citizenship

### Readoption

As indicated above, citizenship for many children requires readoption in their U.S. state of residence. Exact adoption laws vary from state to state. Consult an adoption attorney or adoption agency in your state to assist you in properly finalizing a U.S. readoption.

### Naturalization

The naturalization process and a person's eligibility may vary depending on the unique facts of your case, including how you determined you were not a citizen, at what time you were adopted, and other variables. We recommend you contact an immigration attorney to assist you in this process. More information on How to Apply for Naturalization is available at [www.uscis.gov](http://www.uscis.gov), including a Naturalization Self Test, and Form N-400, Application for Naturalization.<sup>6</sup>

## Proper Documentation of Citizenship

Once citizenship has been acquired, it is often helpful to have documentation to show proof of citizenship. A U.S. Passport or Certificate of Citizenship are both forms of citizenship documentation.

### Passport

The U.S. Department of State's Office of Passport Services designates many post offices, court clerks, public libraries, state and local government agents to accept passport applications on its behalf. You can search here for a location near you: <http://iafdb.travel.state.gov/>

Children under age 16 and all first-time applicants must appear in person at a designated location to apply for a Passport. You can learn what is required, see the current costs (at time of publication, \$80 for minors and \$110 for adults), and download the appropriate forms here: <http://www.travel.state.gov/passport/>

### Certificate of Citizenship

Unlike a Passport, a Certificate of Citizenship has no expiration date and need never be renewed; however, it does come at a slightly higher cost (at time of publication, \$550 for an adopted child). You can learn more and download Form N-600, Application For Certificate of Citizenship, at [www.uscis.gov](http://www.uscis.gov). Under the Forms tab, click Adoptions-Based Forms, and Form N-600 will be available to download.

**Helpful Hint:** Missing foreign adoption decrees and birth certificates are retrievable at no cost from USCIS. You can request missing documents by downloading and submitting Form G-884, Return of Original Documents, available at [www.uscis.gov](http://www.uscis.gov). Under the Forms tab, click on Adoptions-Based Forms, and the G-884 will be available for immediate download.

<sup>6</sup> Citizenship Through Naturalization. U.S. Citizenship and Immigration Services. Retrieved from <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=d84d6811264a3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=d84d6811264a3210VgnVCM100000b92ca60aRCRD>

