

ARE YOU A UNITED STATES CITIZEN?

WARNING

This booklet provides general information about immigration law and does not cover individual cases. Immigration law changes often, and you should try to consult with an immigration attorney or legal agency to get the most recent information. Also, you can represent yourself in immigration proceedings, but it is always better to get help from a lawyer or legal agency if possible.

This booklet is presented by the Vera Institute of Justice, an independent non-profit organization, which assists in the coordination of the Legal Orientation Program (LOP). It is adapted from materials originally prepared by the Florence Immigrant and Refugee Rights Project (Florence Project), a non-profit law office that supports human and civil rights. It was not prepared by the Department of Homeland Security (DHS)/U.S. Immigration and Customs Enforcement (ICE) or Executive Office of Immigration Review (EOIR) but these agencies have reviewed its content

Immigration law, unfortunately, is not always clear, and everyone's understanding of the law may not always be the same as DHS' interpretation of the law. It is believed that the information in this booklet is correct and helpful, but the fact the booklet is available in the libraries of detention centers for the use of detainees does not mean that DHS' interpretation of the law is the same as that expressed in the booklet.

Who was this booklet written for?

This booklet is for individuals who are in the custody of DHS and who have been placed in removal, exclusion, deportation or other immigration proceedings. If you are in expedited removal, reinstatement of removal or administrative removal proceedings, this booklet will help you understand whether you have a claim to U.S. citizenship, but to understand the proceedings you are in, you should also read the materials called "What to Do If You Are in Expedited Removal or Reinstatement of Removal."

You can tell what type of proceedings you are in by the document you should have received from DHS. Each type of proceeding has a different document, but they all explain the reasons why you may be removed from the United States ("U.S.").

- If you received a document called a "**Notice to Appear**" (Form I-862), then you are in **removal proceedings**.

- If you received a document called an "**Order to Show Cause**" (Form I-221), then you are in **deportation proceedings**.
- If you received a document which is marked "**Form I-122**" at the bottom, then you are in **exclusion proceedings**.
- If DHS says that you were arrested trying to enter the U.S. at or near the U.S. border and you received a "**Notice and Order of Expedited Removal**" (Form I-860), then you are in **Expedited Removal proceedings**. (You can learn more about Expedited Removal by reading the booklet entitled, "What to do if You Are in Expedited Removal or Reinstatement of Removal").
- If DHS says that you entered the U.S. illegally after having been deported or removed and you received a "**Notice of Intent/Decision to Reinstate Prior Order**" (Form I-871), then you are in **Reinstatement of Removal proceedings**. (You can learn more about Reinstatement of Removal by reading the booklet entitled, "What to do if You Are in Expedited Removal or Reinstatement of Removal").
- If DHS says that you have been convicted of an aggravated felony and you do not have lawful permanent residence in the U.S., and you received a "**Notice of Intent to Issue a Final Administrative Removal Order**" (Form I-851), then you are in **Administrative Removal proceedings**. (You can learn more about Administrative Removal by reading the booklet entitled, "What to do if You Are in Expedited Removal or Reinstatement of Removal").

Who is a U.S. citizen?

There are several ways that you may be a citizen of the U.S.:

- You are **probably** a U.S. citizen if you were born in the U.S. or one of its territories or you were a lawful permanent resident who became a naturalized U.S. citizen.
- You **may be** a U.S. citizen if one of your parents or grandparents was born in the U.S. or one of its territories, OR if one or both of your parents was a U.S. citizen at the time of your birth.
- You **may be** a U.S. citizen if one or both of your parents became a naturalized U.S. citizen before your 18th birthday.

We will explain each of these possible ways to be a U.S. citizen in more detail later in this booklet. If you can answer yes to any of the following questions, you may be a U.S. citizen.

You may be a U.S. citizen if you answer “yes” to any of the following questions:

- Were you born in the U.S. or one of its territories (American Samoa, Guam, the Northern Mariana Islands, the U.S. Virgin Islands or Puerto Rico)?
- Were you a lawful permanent resident who became a naturalized U.S. citizen?
- Did your mother or father become a naturalized U.S. citizen before you turned 18?
- Was your mother or father born in the U.S. or one of its territories?
- Was your grandmother or grandfather born in the U.S. or one of its territories?
- Was your mother or father a U.S. citizen at the time you were born?

What immigration rights does a U.S. citizen have?

If you establish that you are a U.S. citizen, you cannot be detained by DHS or deported/removed from the U.S. regardless of your criminal history. Once you prove you are a U.S. citizen, DHS does not have the right to detain you or remove you from the U.S., ever.

***If you are a U.S. citizen,
DHS can never detain or remove you from the U.S.!***

You have other rights as a U.S. citizen. For example, you have the right to vote and you have the privilege of receiving government benefits.

How do I use this booklet?

First, read the whole booklet through to decide whether you qualify for U.S. citizenship, and to learn what you need to do to prove your claim. It is up to YOU to get together the papers that you need and to prepare yourself to talk to the Immigration Judge or DHS. If you do not prepare your claim well, you will probably not be successful with your case.

This booklet has some sample legal forms you will need to give the Court and discusses the kinds of proof you will need to get and how to get it. Prepare carefully, and you will be ready to present your case.

Can I fight my citizenship case outside of detention?

If you are in removal or deportation proceedings and are being detained by DHS, you may have the right to ask the Immigration Judge to lower your bond. A bond is money you pay to DHS to get out of custody while you are fighting your case. DHS will return the money to you after your case is finished as long as you go to all your court hearings and interviews and you leave the country if that is what the judge orders. If you have a very strong case and strong family or community ties in the U.S., the judge may decide to let you out of custody without making you pay any money, based only on your promise to attend all your hearings. This is called being released “on your own recognizance.”

If you have committed certain types of crimes, you will not be eligible for a bond or for release from detention. To find out whether you are eligible for a bond, how to apply for a bond hearing and how to prepare for a bond hearing, you should read another booklet called “All About Bonds.”

If you were arrested by DHS while trying to enter the U.S. from the sea or at an airport or border crossing station, you may not qualify under the law to ask the Immigration Judge to set a bond for you or to release you on your “own recognizance,” but you may qualify to ask DHS to do this. If you have certain types of criminal convictions, however, you will not be eligible for release.

If you are in deportation, removal or exclusion proceedings and you do get out of detention on bond or on your own recognizance, you are still required to go to court to continue with your case. If you get out of detention but do not show up in court when you are supposed to, the judge will order you removed. Later in this booklet, we explain what to do if you get out of detention.

What if I cannot take being in detention any more? Can't I just accept removal or deportation and make a claim to U.S. citizenship when I am out?

Being in detention for a long time is difficult and frustrating. If you do not have a bond or cannot afford to pay your bond, you may want to give up and accept removal or deportation or ask for voluntary departure so that you can get out of custody.

If you leave the U.S. under an order of removal or voluntary departure, you can still present your claim for U.S. citizenship to the U.S. Department of State from outside the U.S., but it may be difficult to prepare your case from outside the country. In some cases, you might be able to apply for an identity card at the U.S. consulate in your country in order to travel to the U.S. and seek admission. However, at the port of entry, you would probably be put into immigration proceedings again. If you do not win your claim to citizenship, it will be difficult and in some cases impossible to ever return to the U.S. legally.

If you are thinking about coming back to the U.S. in the future, accepting deportation or removal may be a mistake. If you return to the U.S. illegally, you will not have

permission to work, you will not have any legal status in the U.S., and you will always run the risk of being caught by DHS.

If you are caught, you can be charged with the federal crime of returning illegally after an order of removal. This is a felony for which you can be put in prison. If you have a criminal history, in some cases, the law says you can go to prison for up to 20 years for coming back to the U.S. illegally! Read this entire booklet before you make the decision whether to present your claim to U.S. citizenship now.

You could be put in prison if you return to the U.S. illegally after being ordered removed or deported from this country!

If I make a claim for U.S. citizenship, can I or should I apply for any other relief from removal?

It is usually a good idea to apply for (or raise) every possible form of relief for which you may be eligible to avoid being deported or removed from the U.S. You may think you have a great case for citizenship, but you could be wrong. You might lose your citizenship case, but obtain another type of relief from removal. So try to find out for what else you may qualify. For those in removal proceedings, there should be booklets available in your detention center on the other possible forms of "relief" from removal.

- If you are a **lawful permanent resident**, you should read the booklet called, "How to Apply for Cancellation of Removal for Certain Lawful Permanent Residents."
- If you are afraid that you will be harmed or tortured if you return to your country, you should read the booklet entitled, "How to Apply for Asylum and Withholding of Removal."
- If you have lived in the U.S. for 10 years or more and do not have a serious criminal history, you should read the booklet called, "How to Apply for Three or Ten Year Cancellation of Removal."
- If you have lived in the U.S. for 3 years or more and you have been physically or psychologically abused by a lawful permanent resident or U.S. citizen spouse or parent, you should read the booklet called, "How to Apply for Three or Ten Year Cancellation of Removal."
- If you are from Cuba, Nicaragua, El Salvador, Guatemala, Eastern Europe, or Haiti, you might qualify for relief under a law called NACARA, a special law for Haitians called the Haitian Refugee Immigration Fairness Act or Temporary Protected Status for Haitians. Both the booklets on Asylum and Three and Ten

Year Cancellation discuss these possibilities.

- If you have a child over 21 years old or a spouse or parent who is a U.S. citizen or lawful permanent resident or if you have a pending visa petition through a family member, you should read the booklet called "How to Get Legal Status Through Your Family Member— Now or in the Future."

If you qualify, you should present your claim to U.S. citizenship AND apply for any other form of relief from removal that you may have!

WHAT ARE THE REQUIREMENTS TO QUALIFY FOR U.S. CITIZENSHIP?

As we mentioned earlier, there are several ways that you might qualify to be a U.S. citizen:

- By your birth in the U.S. or one of its territories;
- By your naturalization;
- By the naturalization of one or both of your parents;
- By the birth of your parents or grandparents in the U.S. or one of its territories; or
- By your birth to a U.S. citizen parent or parents.

U.S. CITIZENSHIP BY YOUR OWN BIRTH

Who is a U.S. citizen at birth?

You are a U.S. citizen if you were born:

- In one of the 50 U.S. states (unless your parent is a certain type of foreign diplomat), or

In one of the following areas after the following dates
:

- Puerto Rico after January 13, 1941;
- Virgin Islands after January 13, 1941;
- Guam after December 24, 1952; and

- o Northern Mariana Islands after November 4, 1986.

If you were born in one of the above locations before the dates listed, you might still be a U.S. citizen. The law in this area is very complicated, and we do not have space to describe it here. You should check with a lawyer if possible, and tell the Immigration Judge and/or DHS officer that you think you might be a U.S. citizen.

You may be a U.S. citizen if you were born:

- On a ship or vessel while at a U.S. port or within a U.S. harbor, bay or enclosed arm of the sea along the U.S. coast;
- Within 3 or 12 miles of the U.S. in U.S. territorial waters. (DHS may argue only people born within 3 miles are U.S. citizens. If you were born in more than 3 but less than 12 miles of U.S. territorial waters, remind DHS, the Passport Office, or the Judge about Presidential Proclamation 5928 of December 27, 1988); or
- Within U.S. territorial air space.

However, if you were born on a foreign public vessel such as a warship or warplane, you do not qualify.

There is another category of persons who cannot be deported. They are not U.S. citizens but are **U.S. nationals**. You are a U.S. national if you were born in American Samoa or the Swains Islands.

How do I prove that I am a U.S. citizen or national by birth?

You can prove you are a U.S. citizen by birth in the U.S. or one of its territories with a certified copy of your birth certificate. If you do not have a birth certificate because you were not born in a hospital and your birth was not registered, you should try to get the following types of proof of your birth:

- Baptismal certificate;
- Certification of your birth by the doctor who attended the birth; and/or
- Affidavit from someone who attended your birth.

An “affidavit” from someone who was there when you were born is a written statement by the witness who should write the exact date and place of your birth and how the person knows these facts. It is a sworn statement under penalty of perjury. In other words, the person writing the affidavit swears as if he or she were in a court of law that what he or she is writing is the truth. The “affidavit” should be signed and notarized. An affidavit of this type may not be enough proof of your birth. Gather as much proof as you can of your birth in the U.S. If you were born in a hospital but do not have a copy of

your birth certificate, contact the hospital where you were born for a certified copy of the certificate.

If you were born on a ship or aircraft and believe you are a U.S. citizen, you should contact a lawyer, if possible, about how to obtain proof of your citizenship.

What if I do not know where I was born?

You may be a U.S. citizen if you were found in the U.S. before the age of 5, your parents are not known, and DHS cannot prove before you turn 21 years old that you were not born in the U.S. Tell DHS or the Immigration Judge if this is your situation and try to get a lawyer to help you with your case.

U.S. CITIZENSHIP BY YOUR NATURALIZATION

Who is a naturalized U.S. citizen?

You may be a naturalized U.S. citizen if you had lawful permanent residency in the U.S. and you filled out an Application for Naturalization (Form N-400), took a test on your knowledge of the English language and U.S. history, had an interview with INS or DHS, and took an oath of allegiance to the U.S. at a “swearing-in ceremony.” Usually, you must have been a lawful permanent resident for at least five years before you can go through this process. If you got your lawful permanent residency through a petition by a U.S. citizen spouse, you can go through the naturalization process three years after getting your lawful permanent residency.

If you remember going through this process, you should have received a naturalization certificate. If you are a naturalized U.S. citizen, provide a copy of your certificate to DHS and/or the Immigration Judge. If you do not have a copy but believe you are a naturalized U.S. citizen, tell DHS and/or the Immigration Judge so that DHS can check your immigration records to see if there is proof in your file of your naturalization.

If you never went through the naturalization process, you may be eligible to do so now. This booklet does not discuss this situation.

NOTE: You cannot submit an Application for Naturalization with the Immigration Judge. If you do not have certain criminal convictions and you have been a lawful permanent resident for the necessary amount of time (mentioned above), you may be able to submit an Application for Naturalization to DHS and have your proceedings terminated until your application is decided. If you have a criminal history, it will be difficult and in many cases impossible to become a naturalized U.S. citizen. If you are interested in naturalizing, we advise you to consult with an attorney before submitting an application.

If you went through the naturalization process before and if you are a naturalized U.S. citizen, provide a copy of your naturalization certificate to DHS and/or the Immigration Judge.

We now explain how you might be a U.S. citizen if one or both of your parents went through the naturalization process.

CHILD CITIZENSHIP ACT OF 2000

On February 27, 2001, the Child Citizenship Act of 2000 went into effect. This law extends citizenship to a larger group of people than previous citizenship laws. This law applies to you if you were born on or after February 27, 1983..

Under this law, you may be a U.S. citizen if **after February 27, 2001 ALL of the following occurred:**

- One of your parents is a U.S. citizen (either by birth or naturalization);
- You were residing in the U.S. in the legal and physical custody of your U.S. citizen parent pursuant to a lawful admission for permanent residence; AND
- You were a lawful permanent resident.
- You were under the age of 18 when all of the above occurred.

NOTE: Under this law, if you were adopted before the age of sixteen and meet all of the above four requirements, you are eligible for U.S. citizenship.

DERIVATIVE CITIZENSHIP

How can I be a U.S. citizen through a parent or parents who became naturalized U.S. citizens?

You might be a citizen of the U.S. if one or both of your parents became naturalized U.S. citizens before you turned 18. This type of citizenship is called “**derivative citizenship**.” It means that when your parents became citizens, you “derived” or got citizenship through them. If you qualify for derivative citizenship, you became a citizen automatically when your parent or parents naturalized. You did not have to fill out any forms. So you may have been a U.S. citizen since your parent(s) naturalized and you never even knew it.

As we discussed above, naturalization is a process for people who were not born in the U.S. to become U.S. citizens. Typically, to naturalize, a person must have been a lawful permanent resident for at least 3 and usually 5 years. The person must also

pass an English and U.S. history test and go to a ceremony where they take an oath to uphold allegiance to the U.S. If one of your parents successfully went through this process before you turned 18 and you lawfully immigrated as a permanent resident before you turned 18, you are a U.S. citizen. Ask your parents if you are not sure whether they went through this process.

If you meet all of the above requirements, obtain copies of your parents' naturalization certificates, your lawful permanent residency card, and your birth certificate, if you are able to obtain a copy. Give the copies to DHS and/or the Immigration Judge. If your parents are deceased and you do not have copies of their naturalization certificates, tell DHS and/or the Immigration Judge when you believe your parents naturalized and as much information about your parents as possible including your parents' full name, dates and places of birth, and A-number. DHS should be able to search its records to see when and if your parents naturalized. Otherwise, you can submit a Freedom of Information Act ("FOIA") request for copies of your parents' naturalization history. You must have your parent's consent to do a search of their immigration records! Your parent could also submit the FOIA form him or herself. You should ask an immigration officer for the address of where to send the FOIA request.

What if I entered the U.S. after my parent or parents naturalized?

Unless you are claiming derivative citizenship through adoptive parents, it does not matter in what order the requirements for derivative citizenship are met as long as they all happened before your 18th birthday.

What if I became a lawful permanent resident after my parent or parents naturalized?

Unless you are claiming derivative citizenship through adoptive parents, it does not matter whether you became a lawful permanent resident before or after your parents naturalized as long as you began to live in the U.S. as a lawful permanent resident before your 18th birthday.

What if only one of my parents became a naturalized U.S. citizen before I turned 18?

In some cases, you might be a derivative citizen if only one of your parents became a naturalized U.S. citizen before your 18th birthday. In this section, we discuss four different ways.

You may be a derivative citizen if, before your 18th birthday, any of the following are true:

- First way:** One of your parents naturalized and your other parent was a U.S. citizen.
- Second way,** one of your parents naturalized and your parents were divorced or legally separated.
- Third way,** one of your parents naturalized and your other parent was deceased.
- Fourth way,** your mother naturalized and your parents were not married when you were born, and never married prior to your 18th birthday.

These four methods of deriving U.S. citizenship are discussed in detail below:

The first way is pretty simple. You only need to prove that one of your parents naturalized before you turned 18 and the other was a U.S. citizen

You are a derivative U.S. citizen if:

1. You came to the U.S. before you turned 18;
2. You became a lawful permanent resident before you turned 18;
3. One of your parents became a naturalized U.S. citizen before you turned 18;
AND
4. Your other parent was a U.S. citizen at the time of your birth.

The second way you might be a derivative citizen through one naturalized parent involves the separation or divorce of your parents.

You are a derivative U.S. citizen if:

1. You came to the U.S. before you turned 18;
2. You became a lawful permanent resident before you turned 18;
3. Your parents divorced or became “legally separated” before you turned 18; AND
4. One of your parents became a naturalized U.S. citizen before you turned 18 and that same parent had “legal custody” of you.

“Legally separated” means that your parents went to a court of law and asked the court to

recognize that they no longer wished to be together. It is a step some couples take before getting a divorce. If your parents were ever “legally separated,” there should be a document from a court ordering the separation. Also, if your parents got a divorce, they should have a document usually called a “divorce decree” from a court. You will need to obtain a copy of these types of documents to present your case for derivative citizenship through one parent.

“Legal custody” means that a family court decided a particular parent should have custody over you. Usually this means that a court decided which parent you should live with after your parents got a divorce or legal separation. Again, if a court gave one of your parents’ custody over you, there should be a document ordering the custody. Ask your family if they have a copy of such a document. If the court gave legal custody to both parents, called “joint legal custody” you still may derive U.S. citizenship, depending on the laws in your area.

If your parent no longer has copies of such documents but knows the name of the court where your parents were separated or divorced or where custody was ordered, your parent can request a copy of these documents from that court. You might be able to request a copy yourself. You should contact the court where your parents were divorced or separated to find out. When requesting the documents, ask for a “**certified copy**.” A “certified copy” is better than a regular copy because it has a stamp showing that it is a true copy. You will also need a copy of the naturalization certificate of the one parent who became a U.S. citizen before you turned 18. DHS does not provide certified copies of naturalization certificates, so a certified copy is not required. You should give the copies of all of these documents to DHS and/or the Immigration Judge. Keep a copy for yourself.

The third way you might be a U.S. citizen through one parent who naturalized involves the death of one of your parents.

You are a derivative U.S. citizen if:

1. You came to the U.S. before you turned 18;
2. You became a lawful permanent resident before you turned 18; AND
3. Before you turned 18, one of your parents became a naturalized U.S. citizen and the other parent was deceased.

If you meet the above requirements, you should get a copy of the naturalization certificate of one parent and the death certificate of the other parent. If you do not have a copy of the death certificate, find out where your parent died and write to the county or state health department for a certified copy. Give copies of all of these documents to DHS and/or the Immigration Judge.

The fourth way that you might be a derivative citizen through one parent is if your parents were not married when you were born and your mother became a naturalized U.S. citizen before you turned 18.

Through your mother--You may be a derivative U.S. citizen if:

1. Your parents were not married when you were born;
2. Your mother became a naturalized U.S. citizen before you turned 18 years old;
AND_
3. Your father did not “establish paternity by legitimation” before your mother became a naturalized U.S. citizen.

NOTE: This section of the law was not added until December 24, 1952. Persons who were under the age of 16 on that date could take advantage of the change. Persons who were over the age of 16 had to use the old law, which did not have a special provision for persons born out of wedlock.

NOTE: We explain what it means for your father to “legitimate” you below.

NOTE: The laws relating to derivative U.S. citizenship have changed through the years. If at least one parent naturalized before January 13, 1941, and you were under the age of 21, you may automatically have derived U.S. citizenship.

NOTE: If your parents naturalized on or after December 24, 1952, the law required that the child be unmarried in order to derive U.S. citizenship.

What if I was adopted?

Previously, the law did not allow adopted children to become derivative citizens through their adoptive parents. But, the law changed in 1978 and then again in 1981, so read the following carefully.

You are a derivative citizen if between October 5, 1978 and December 29, 1981:

1. Your parents adopted you before you turned 16;
2. You entered the U.S. before you turned 18;
3. You became a lawful permanent resident before you turned 18;
4. You were residing in the U.S. in the legal custody of your adoptive parents when they became naturalized U.S. citizens;

5. Your adoptive parents became naturalized U.S. citizens before you turned 18;
AND
6. At the time your adoptive parents naturalized, you were not married.

When the law changed in 1981, it became easier for adopted children to derive citizenship because it changed the age that a child had to be adopted to obtain derivative citizenship.

You are a derivative citizen if after December 29, 1981:

1. Your parents adopted you before you turned 18;
2. You entered the U.S. before you turned 18;
3. You became a lawful permanent resident before you turned 18;
4. Your adoptive parents became naturalized U.S. citizens before you turned 18;
5. At the time your adoptive parents naturalized, you were residing in the US "at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence AND
6. You were not married at the time your parents naturalized.

NOTE: The adoption may not cut off your right to acquire US citizenship at birth through your natural parents. In other words, if you were adopted, you may be able to make a claim that you acquired US citizenship at the time of your birth if one of your parents was a US citizen when you were born. You also may have a claim to derivative citizenship if you met the requirements to derive US citizenship from your natural or biological parents prior to your adoption. However, if your biological or natural parents naturalize after you have been adopted by someone else, you cannot derive US citizenship from them. If you think this applies to you, you should consult with an attorney.

How do I apply for derivative citizenship?

If you qualify for derivative citizenship through any of the three ways listed above, you are already a U.S. citizen and you do not need to apply for it. However, you must get proof of your citizenship to have your removal proceedings terminated. When you have proof of your citizenship you should file an application for a certificate of citizenship or for a passport. You apply for a certificate of citizenship with DHS by filing a form called an "Application for Certification of Citizenship" (N-600). Ask DHS or the Immigration Judge for the form. We discuss this process later.

ACQUIRED CITIZENSHIP

This booklet is intended to provide a general overview of acquired citizenship. You should contact an immigration lawyer or legal agency if you think you may qualify for acquired citizenship after reading this section. If you are unable to contact a legal representative, tell DHS or the Immigration Judge that you believe you may have acquired citizenship.

What is acquired citizenship?

A person may “acquire” or gain U.S. citizenship at birth if one or both of your parents was a U.S. citizen **at the time of your birth**. As you have seen by reading this booklet, there are a variety of ways your parents may be citizens. For example, your parent might be a U.S. citizen because he or she was born in the U.S. or because he or she became a naturalized U.S. citizen. On the other hand, your parent might be a U.S. citizen through his or her parents—for example, if you have a grandparent born in the U.S. The key to a claim to acquired citizenship is that one or both of your parents must have been a U.S. citizen at the time of your birth.

How do I know if I qualify for acquired U.S. citizenship?

Whether you qualify for acquired citizenship depends on many factors. To learn whether you qualify, you will need to know the answers to the following questions:

- 1) What is your date of birth? The law has changed many times and you must look at the requirements that were in effect at the time of your birth.
- 2) Was one or both of your parents a U.S. citizen at the time of your birth?
- 3) Were your parents married at the time of your birth?
- 4) Was your U.S. citizen parent or parents physically present or had a residence in the U.S. before you were born? For how many years?

We will now explain in more detail what you need to know in order to answer the above questions.

Acquired Citizenship: First Question - What is your date of birth?

Over the years, the law on U.S. citizenship has changed many times. To figure out whether you are a U.S. citizen through your parent or parents, you must look at the requirements at the time of your birth.

Acquired Citizenship: Second Question - Was one or both of your parents a U.S. citizen at the time of your birth?

If one or both of your parents was a U.S. citizen when you were born, you might be a U.S. citizen. In answering this question, remember your parent(s) could be U.S. citizen(s) under any of the types of U.S. citizenship described in this booklet. For example:

- Your parent(s) might have been born in the U.S. or one of its territories. Look at the requirements for birth in the U.S. at the beginning of this booklet. In this case, your parent(s) should have a copy of his or her birth certificate. If not, perhaps someone who witnessed your parent(s) birth can make a sworn, notarized statement about the date, place and time of birth of your parent(s). A sworn, notarized statement is a declaration under penalty of perjury. This kind of sworn statement is unlikely to be enough proof by itself of a parent's birth. DHS most likely will require additional proof. Try to get other proof.
- Your parent may have become a naturalized U.S. citizen before you were born. Look at the discussion of naturalization at the beginning of this booklet. In this case, your parent(s) should have a copy of his or her certificate of naturalization.
- Also, your parent might be a U.S. citizen through his or her parents. Your parent may or may not know if they acquired or derived U.S. citizenship. If your parent knows he or she is a U.S. citizen through your grandparent(s), your parent should have a certificate of citizenship. This certificate is evidence that your parent is a U.S. citizen as of the date your parent was born. A U.S. passport is also proof of U.S. citizenship.

If your parent does not know whether he or she is a U.S. citizen through your grandparent(s), your parent should go through the same process you are going through right now to determine if he or she qualifies for acquired citizenship.

In other words, if one or both of your grandparents was a U.S. citizen when your parent was born, perhaps your parent is a U.S. citizen. If so, that parent would be a U.S. citizen at the time of his or her birth, which would be before you were born. Then you could see if you are a U.S. citizen through your parent. This is a complicated area. You might want to reread this section after reading all about acquired citizenship.

If your parent(s) is a U.S. citizen,  get a copy of his or her: birth certificate, certificate of citizenship, or naturalization certificate.

Acquired Citizenship: Third Question - Were your parents married at the time of your birth?

If your **natural or biological** parents were not married at the time you were born, the requirements for citizenship are different depending on whether your mother was a U.S.

citizen, your father was a U.S. citizen, or both of your parents were U.S. citizens at the time of your birth. The law is also different depending on when you were born.

NOTE: If your father was a U.S. citizen but your parents were never married, it may be difficult to show that your biological father is really your father. It helps if your father's name is on your birth certificate. If not, you can use sworn statements from your mother, from your father, and from anyone else who knew your parents at the time of your birth and knows who your father is. You can also use DNA testing to prove a biological relationship.

NOTE: If your parents were not married when you were born and you want to show that you acquired U.S. citizenship through your father, you will need to show that your father "legitimated" you; the law varies depending where he lived or where you lived, and may require your father to take certain steps to show that he is your father. As we explained before, "legitimation" is a hard concept to understand. If your parents were not married at the time of your birth or afterward, and your parents never married, the law may require your father to take certain steps to show he is your father. The steps he takes may depend on where he lived or where you lived while you were under the age of 18. The law regarding legitimation is very complicated and we cannot fully explain it here. If you meet the above requirements, you should consult with an attorney or legal agency if possible.

<p>Acquired Citizenship: Fourth Question - Did your U.S. citizen parent or parents reside in the U.S. before you were born? For how many years?</p>
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Now that you have answered the first three questions, you will need to know whether your U.S. citizen parent was physically present or had a residence in the U.S. before your birth. We call this part of the law, "physical presence or **residency requirements.**" The requirements are different depending on what year you were born. There may or may not be a physical presence or residency requirement in your case. If there is, you will have to show that your parent was physically present in the U.S. anywhere from a few days to 10 years.

NOTE: The Immigration Act does not define "physical presence." Generally, for citizenship purposes, "physical presence" means actual bodily presence. Any time spent in the U.S. or its territories, even without residence, may count towards "physical presence."

"Residence" means the place of "general abode" or a person's principal, actual dwelling place (home).

HOW DO I PRESENT MY CLAIM TO U.S. CITIZENSHIP?

The way you present your claim to U.S. citizenship depends on what type of proceeding you are in. If you are not sure what type of proceeding you are in, look at

the discussion on page 2. If you are in removal, exclusion, or deportation proceedings, you will be going to a court and seeing a judge. There are specific things you should tell the judge, which we discuss in a moment. If you are in reinstatement of removal or administrative removal proceedings, you do not have the right to see an Immigration Judge, but you have the right to present a claim of citizenship to DHS.

If you will not be seeing an Immigration Judge, as soon as possible tell an Immigration Officer that you think you are a U.S. citizen and ask for an N-600 form.

STEP ONE. Tell DHS or the Immigration Judge you think you are a U.S. citizen.

Removal, Deportation or Exclusion Proceedings

If you are in removal, exclusion or deportation proceedings, you will have a series of court hearings with an Immigration Judge. Usually at your first or second court hearing, the judge will ask you where you were born or if you were born in a specific foreign country. At this point, tell the judge where you were born. If you were born in the U.S., the judge will want to see proof of your birth. If you were born outside the U.S., but believe you qualify for U.S. citizenship, tell this to the judge immediately after you tell him or her where you were born. Ask the Judge or DHS for a **Form N-600**, which we discuss in more detail under Step Two.

When the Immigration Judge asks you where you were born, if you think you are a U.S. citizen,



tell the Judge immediately.

Reinstatement of Removal or Administrative Removal Proceedings

If you are in reinstatement of removal or administrative removal proceedings, you will not see an Immigration Judge. If you think you have a claim to U.S. citizenship, tell DHS at the first opportunity that you believe you are a U.S. citizen and that you want to submit proof of your claim. When you tell DHS that you believe you are a U.S. citizen, unless you are a U.S. citizen by your own birth in the U.S., ask for an **N-600 form**. We discuss this form in more detail under Step Two. If you think believe you are a U.S. citizen by birth in the U.S., you will be asked to present your U.S. birth certificate.

If you will not be seeing an Immigration Judge, As soon as possible tell an Immigration Officer that you think You are a U.S. citizen and ask for an N-600 form.

STEP TWO. For Claims to Acquired or Derivative Citizenship, Apply for Certificate of Citizenship

If you are claiming citizenship through your parent or parents, fill out and file an N-600 form. If you are claiming U.S. citizenship through your own birth in the U.S., then you do not need to file an N-600 form. Instead, present a copy of your U.S. birth certificate, or a copy of your U.S. passport.

To apply for either acquired or derivative citizenship, you need to:



Fill out, copy, and file an N-600 application.

The N-600 is an application for a Certificate of Citizenship. You also could apply for a U.S. passport instead of a Certificate of Citizenship as proof of citizenship. You must apply for a passport from the U.S. Department of State. We are not able to discuss that process in this booklet, but you can obtain information about applying for a U.S. passport through www.state.gov.

In the following pages, we explain how to apply for a Certificate of Citizenship by filling out an N-600 and submitting it to DHS.

Where do I get an N-600 form?

If you are in removal, deportation or exclusion proceedings, ask the Immigration Judge or DHS for an N-600 form at the time you tell the judge that you think you are a U.S. citizen. If you are in reinstatement or administrative removal proceedings, ask DHS for the form at the time you tell them you think you are a U.S. citizen.

If you are claiming U.S. citizenship through a parent or parents,



ask an Immigration Officer or the Immigration Judge for an N-600 form.

There may be times when an Immigration Judge does not think you need to file an N-600 form but just wants to see your proof of citizenship. In this case, skip to Step Three: Gathering proof of your claim to U.S. citizenship through a parent or parents.

How do I fill out an N-600 application form?

When filling out the forms, use a typewriter or a pen. DHS is required to make pens or a typewriter available to you so that you can prepare documents for court. **Do not use pencil.** Also, write all of your answers in English. DHS will not accept any documents in any language except English.

If there is not enough room on the form for you to answer the questions completely, finish your answers on another piece of paper. At the top, put "Continuation of N-600." Make sure that your name, relevant question number, and immigration identification number (also called your "A number" because it starts with the letter "A") is on every paper you attach to the N-600 form. Also, make sure you sign and date every sheet of paper that is a continuation of the N-600. This rule does not apply to letters and other proof you may submit with your application.

When Preparing N-600 Form:

- Always use a pen or typewriter,
- Always answer the questions truthfully. If you don't know an answer, state that you are not sure.
- Only use English, and
- Sign and date any paper that is a continuation of the N-600 form.

Do I need to file anything else with the N-600?

Along with the N-600, you must file proof or evidence of your claim to citizenship! Examples of such proof are outlined in the next section.

Just filling out the N-600 form alone will not get you a Certificate of Citizenship. You must file along with the N-600, proof or evidence of your claim to U.S. citizenship.

STEP THREE. Gather proof of your claim to U.S. citizenship through a parent or parents.

The proof you will need to gather together depends on the type of claim to citizenship that you have. We discuss first claims to derivative U.S. citizenship then claims to acquired U.S. citizenship.

PROOF FOR DERIVATIVE CITIZENSHIP CLAIMS

If you believe you have a claim to derivative citizenship because one or both of your parents became a naturalized U.S. citizen before you turned 18 you must submit the following evidence

- Naturalization Certificate – Parent(s) naturalization certificate
- Birth Certificate - Copy of your birth certificate
- Death Certificate, Divorce Decree or Legal Separation Decree: If you are claiming through one parent rather than two, get copies of divorce, legal

separation and custody documents or the death certificate of your parent who passed away.

- Green Card - Proof of your lawful permanent residence in the U.S. prior to the age of 18.

Provide all the evidence to DHS along with the N-600 form. We discuss in more detail below how to file the N-600 form along with the proof to your citizenship claim.

PROOF FOR ACQUIRED CITIZENSHIP CLAIMS

If you believe you have a claim to acquired citizenship because one or both of your parents was a U.S. citizen at the time of your birth, you will need proof of your parent's U.S. citizenship at the time of your birth.

Proof of your parent's citizenship could be:

- Birth Certificate--certificate of your parent's birth in the United States;
- Naturalization Certificate--certificate of your parent's naturalization as a U.S. citizen;
- Passport--your parent may have gotten a U.S. passport before you were born;
OR
- Certificate of Citizenship--a certificate which your parent obtained by proving a claim to U.S. citizenship through his or her parents, perhaps similar to the claim you are making now.

You also may need proof that your parent resided in the U.S. for a certain period of time. Proof of your parent's physical presence or residency in the U.S. is difficult but not impossible to gather. The following are suggested types of proof. Gather as much proof as you can.

Proof of Parent's Physical Presence or Residency in the U.S. for Acquired Citizenship Claims

FOIA Request

It might be helpful to submit a Freedom of Information Act ("FOIA") Request on your U.S. citizen parent or parents. Ask an Immigration Officer for a FOIA request form and the address of where to send the request. You should write a cover letter and send it with the FOIA request. If you are in DHS custody, you should tell this to the FOIA officer in your cover letter and ask the FOIA office to respond quickly.

U.S. Citizen Parent's school records

Before you were born, your parent may have attended elementary, junior high, high school or college in the U.S. Ask your parent or members of your family where your parent went to school. If your parent is alive, have the parent write or call the schools to find out the process for requesting records. If your parent is not alive, you or your family members can request the records.

Parent's records from church or other religious institutions

Before you were born, your parent may have attended a particular church, temple, synagogue, etc. Your parent may have been a member of a church or other religious institution. Your parent may have records of his or her baptism, communion or other church ceremonies that occurred in the U.S. Ask your parent for records of his or her religious involvement, or ask your parent to write for such records from the religious organization. Also, there may be someone at the church or institution that remembers your parent and can write a letter about the parent's attendance or membership at the church or institution. The person writing the letter should be as specific as possible about the dates your parent was involved in the church or institution and how the author of the letter knows this. Also, the letter should be notarized.

Parent's work records

Your parent may have worked in the U.S. and have records of their employment, such as check receipts. Your parent can and should request a copy of their social security records. If your parent is no longer alive, an immediate family member such as yourself can request the social security records. If the parent is still alive, only he or she can request the records. To request social security records, write to the following address and request FORM SSA-7004-SM (Request for Social Security Statement).

Social Security Administration
Wilkes-Barre Data Operations Center
P.O. Box 7004
Wilkes-Barre, PA 18767-7004

We strongly recommend that you or your parent request these records. They can be very good proof of the years your parent was in the U.S.

Parent's tax returns

If your parent worked in the U.S. during the years you need to prove that he or she was in the U.S., the parent may have filed income tax forms. Your parent or family may have copies of such forms.

If not, your parent can request a copy of the forms from the Internal Revenue Service.

If your parent is not alive, you or an immediate family member can request the forms. To make the request, fill out Form 4506 (“Request for Copy of Tax Return”) and Form 4506-T (“Request for Transcript of Tax Return”) and send them to the IRS. The address where you send the forms depends on where your parent lived when they filed their taxes. Look at the instructions for Form 4506 to find the correct address.

Census Records

Your U.S. citizen parent may have been counted in a census survey in the U.S. at some point in their lives before your birth. A census survey is done by the U.S. Census Bureau every 10 years. A census survey is a way of counting the population in a country. If your U.S. citizen parent was ever counted in a survey, proof of the survey is some evidence that the parent was present in the U.S. in the year or years counted. As you will see census records can be very difficult to obtain and sometimes you will need to pay for copies of the records. For these reasons, you may want to concentrate on getting the other forms of proof.

If you want to prove your parent was in the U.S. before 1930, the census records are somewhat easier to obtain. The census records from the years 1790 to 1930 have been made public and are available through National and Regional Archives. If you are trying to prove your parent was in the U.S. prior to 1930, you should contact the archives office nearest you. You might need to actually send a family member to the regional office to search for and obtain the records. There may be a charge for copies of the records. In addition, you may obtain information about the existence of U.S. census records on www.ancestry.com.

If you want to prove your parent was in the U.S. after 1930, the census records are more difficult to obtain. The records are confidential and are not available to the public. But, your parent can request census records about him or herself. If your parent is deceased and if you are a legal heir of your parent, you can request the records yourself. The problem is that you have to pay for the records, and the cost could be \$40 or more just to request records for a particular year. Also, you have to say which year you want to know about. If you are not sure when your parent was in the U.S., you may be interested in several years. You will have to pay for each year that the Census Bureau searches its records. Finally, you must know your parent’s address at the time your parent may have been counted in a census. If you decide to request census records for any years after 1920, you can obtain an application form from:

Personal Census Search Unit
U.S. Census Bureau

OR

History Staff
U.S. Census Bureau
Washington, DC
20233
(301) 457-1167

Box 1545
Jeffersonville, IN 47131
(812) 218-3046

While census records may be helpful, keep in mind it is not certain that your parent has ever been included in a census survey and it may take a lot of resources to make the

request.

Rental Records or Home Ownership Records

Your parent may have paid rent or owned a house during the years you are interested in proving that the parent was living in the U.S. The following are good proof of your parent's presence in the U.S.: copies of rental agreements, leases, rent receipts, house payments or home ownership documents. If your parent was a renter but has no records of this, perhaps the landlord is still alive and could write a letter stating that your parent rented from him or her and should state the exact years your parent paid rent. Again the letter should be signed and notarized.

Military or Draft Records

Your parent may have served in the U.S. military during the years you want to prove he or she was in the U.S. If your parent is alive, the parent must be the one to request copies of his or her military records. If your parent is deceased, you or another immediate family member can request the records. To request military records use Form 180, Request Pertaining to Military Records. Follow the instructions on the form, which tell you where to send your request and the information to include in the request.

If you are trying to prove citizenship through your father, perhaps he registered for the Selective Service. All men who are U.S. citizens or lawful permanent residents and over 18 years of age are required to register to serve in the military in the case of war. Your father might have registered only once or he may have registered several times. Your father can request his records. If your father is no longer alive, you can request copies of his records. To see if your father registered, you or a family member can call 1-847-688-6888. You must know your father's birth date and his social security number.

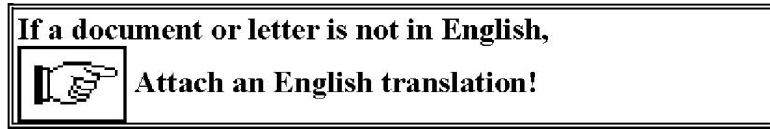
Affidavits from Witnesses

Perhaps your parent has friends or was acquainted with community members in the U.S. during the years you want to prove your parent was in the U.S. You or your family could request that such witnesses write "affidavits" stating:

- The exact years they knew your parent;
- How they knew your parent;
- Where your parent was during those years (city, state, address if known); and
- Any other specific information they remember about your parent such as your parent's type and place of employment, school attendance, or church attendance.

The affidavit must be signed and notarized. It also must be written in English.

NOTE:



Remember, everything that you give to DHS or the Immigration Judge has to be in English or has to be translated into English. If a letter or other document is not in English, you need to find someone to translate it. At the end of the translated document or letter, the person who translated it should put the following:

I, (name of translator), certify that I am competent to translate this document and that the translation is true and accurate to the best of my abilities.

(signature of translator) (date)

What is the best kind of proof?

“Official” proof is the best kind of proof. Affidavits from friends, family members or acquaintances who knew your parent when he or she lived in the U.S. before your birth are not enough proof. You must have some “official” proof of the years your parent lived in the U.S. For example, the best kinds of proof are social security records, military records, work records and school records.

How much proof is enough?

You can never have enough proof. Gather as much proof as you can. **The more proof you have, the more likely you are to win your case.**

Remember that you only need proof of the number of years of your parent’s physical presence or residence in the U.S. that are required for your case. Your parent may have been in the U.S. for a very long time, longer than you need to prove.

You need to show your U.S. citizen parent was here for a number of years before you were born. Proving the years your parent was here after you were born will not help you!! Your parent’s years after you were born are not important to your case.

Important Points Regarding Proof of Your Parent’s Time in the U.S.:

- Gather as much proof as you can that your parent was physically present or resided in the U.S. during the required years.
- Remember, your parent’s physical presence or residence in the U.S. after

you were born do not count, so do not waste your time gathering proof of those years.

- Remember, the physical presence or residence does not have to be all in a row.

HOW DO I FILE THE N-600 FORM AND PROOF OF MY CLAIM?

Once you have filled out the N-600 form and gathered all of your proof, you must file everything with the "USCIS" division of DHS. This is true no matter which type of proceedings you are in. You cannot file an N-600 form with the Immigration Judge. The Judge does not have the power to issue you a Certificate of Citizenship. Only DHS has this power.

Ask your Deportation Officer or another Immigration Officer where to file the N-600 and to help you file it.

To file the N-600 form you must provide DHS with the following:

- The original N-600 form;
- Two identical, passport-style photographs of yourself;
- A fee of \$600; and
- Proof of your claim to citizenship (as discussed previously).

Photographs

If you are detained at the time you file your N-600 application, you should ask an Immigration Officer if you can get the photographs taken at the detention center where you are being held. If you are not detained at the time you file the N-600, ask DHS for instructions. The photographs must be the exact size and type of photograph that DHS requests or DHS will reject your N-600 application.

N-600 Fee

At the time of the update of this booklet (2011) the fee for filing an N-600 is \$600. To be certain about the amount of the fee, ask an Immigration Officer what the fee is. You will need a cashier's check or money order payable to the DHS in the exact amount of the required fee. Keep a copy of the check or money order, and ask the DHS Officer for a receipt that shows that the N-600 application was filed and that the fee was paid. Keep these for your records. You must pay the fee to file the N-600 form. As a general rule, there is no waiver if you cannot afford the fee. However, DHS currently has a fee waiver policy, which may be applicable in limited cases

Should I make copies of these forms after I fill them out?

Yes. Ask the DHS Officer who helps you file the N-600 to provide you with at least one copy of the N-600 form and the proof you are filing with it. If you are in removal, deportation or exclusion proceedings, ask the DHS Officer for three copies. One copy is for you, one is for the Immigration Judge, and one is for the trial attorney for DHS.

WHAT HAPPENS AFTER I FILE THE N-600?


What happens next depends on the type of proceeding you are in.

If you are in reinstatement or administrative removal proceedings, DHS should ask USCIS to consider your N-600 application and make a decision as fast as possible as to whether you are a U.S. citizen. USCIS may want to interview you or your family members before making its decision. If your family is located in another state, they might be able to have an interview with a different USCIS officer close to where they live. DHS should not remove you from the U.S. while your N-600 is being decided. If USCIS decides you have enough proof of citizenship, it will issue you a Certificate of Citizenship and DHS will terminate its proceedings against you. You will not be removed from the U.S. and will be released from detention.

If you are in removal, exclusion or deportation proceedings, USCIS is unlikely to decide your N-600 before you see the Immigration Judge. Give the judge a copy of everything that you filed with USCIS, including the N-600 form you filled out and all of the proof you gathered.

Even if USCIS has not decided your N-600 form, the Judge can consider your evidence and decide him or herself whether you have provided enough evidence to prove you are not an “alien” of the U.S. If the Judge decides you have enough proof, he or she should “terminate” the proceedings against you. This means that, unless DHS appeals the decision, DHS can no longer try to remove you from the U.S. unless USCIS decides your N-600 form and finds that you are not a U.S. citizen.

If you are in removal or deportation proceedings and the Judge “terminates” the proceedings against you, you should immediately ask the Judge for your release on your own recognizance from DHS custody. This means that you do not have to pay a bond to be released. If you were arrested at sea or at a border crossing station or in an airport or if you are in exclusion proceedings, you will have to ask DHS to release you from custody. To find out more about this process, read the booklet called “How to Ask for Release from Immigration Custody.”

If you are in removal or deportation proceedings and the Judge “terminates” the proceedings against you,
 **ask the Judge to release you from DHS custody**
“on your own recognizance.”

If the Judge terminates proceedings, what happens to my N-600 application?

If the Immigration Judge finds that you have enough proof that you are not an alien of the U.S. but the USCIS division of DHS has still not decided your N-600 application, you cannot be removed, but at the same time, you do not yet have proof of your U.S. citizenship. The judge cannot decide that you have U.S. citizenship status. To get proof of your U.S. citizenship, you will need to wait until USCIS decides your N-600 application. In some cases, the Immigration Judge might find that you have enough proof that you are not an alien of the U.S. even though you have not filed an N-600 application, and the Judge will terminate your proceedings. In this case, you also do not have proof of your citizenship, and you should file an N-600 application with USCIS or apply for a passport with the U.S. State Department.

If the Judge terminates the proceedings against you, the Judge should release you from DHS custody. If this happens and you have filed an N-600 application with USCIS, the application will probably be transferred to the USCIS division of DHS closest to where you live. **Be sure to tell DHS your correct address before you leave detention**, so that you will receive any notices to appear at USCIS for your interview. USCIS should continue to consider your N-600 application and eventually call you and perhaps your family for an interview. You should try to find an attorney to help you with this process.

If you are released from detention while your N-600 application is still being considered, it is unclear what your legal status is. If you had lawful permanent residency before you were put in immigration proceedings, it is not clear whether you can work with your lawful permanent residency card. The best thing is to hope that your N-600 is decided quickly.

IF THE JUDGE RULES AGAINST ME, WHAT SHOULD I DO?

If the judge rules against you, you have three possible options:

- You can accept the judge's decision and accept an order of removal;
- You can accept the judge's decision but ask for voluntary departure; or
- You can decide not to accept the judge's decision and “reserve” your right to file an appeal.

What is the difference between getting voluntary departure and getting ordered removed?

Generally, if you qualify, getting voluntary departure is better than getting ordered removed. But, there are consequences regarding your ability to return to the U.S. in the future whether you leave through voluntary departure or removal. It is important that you understand all of the possible consequences, which differ depending on your criminal history and length of time in the U.S.

If you have a criminal history, you may not qualify for voluntary departure.

If you think you will ask for voluntary departure if you do not win your case, please read our booklet called "How to Apply for Voluntary Departure." The booklet explains who qualifies for voluntary departure, what conditions you must satisfy in order to be granted voluntary departure, and the consequences of leaving the country under an order of voluntary departure instead of an order of removal.

WHAT DOES IT MEAN TO APPEAL THE JUDGE'S DECISION?

If you or DHS disagree with the judge's decision, you both have the right to keep fighting the case by appealing the decision to a higher court called the Board of Immigration Appeals (or sometimes called simply "the Board" or the "BIA"). This court is a group of judges in Virginia who look at all the papers filed in the case and everything that was said in court, and decide if the judge was right.

It is usually hard to succeed in an appeal, but if you believe that you have enough evidence of your claim to U.S. citizenship and you did not convince the judge in court, you should appeal. If you want to appeal, you should consult with an attorney.

When the judge tells you his or her decision on your case, he or she will ask both you and the trial attorney whether you want to "reserve appeal" or "waive appeal." "Reserving appeal" means you want to hold on to your right to appeal. To "waive appeal" means to give up your right to appeal. If both sides "waive appeal," that is the end of the case.

If the judge decides to give you his or her decision in writing, your right to appeal should be automatically reserved for you. You have 30 days from the date of the judge's written decision to appeal if you do not win.

If you or DHS "reserve appeal," the person reserving appeal has 30 days to file a paper called a "Notice of Appeal" with the Board in Virginia. If DHS appeals, it has to send you a copy of this Notice. If you appeal, you have to send DHS a copy of your Notice.

What if DHS appeals my case?

The trial attorney may say he or she wants to "reserve appeal," but that does not mean DHS will actually appeal. You may not know for sure until 30 days from the judge's

decision. If DHS has not filed a Notice of Appeal by then, it cannot appeal. You should know if DHS has filed a Notice of Appeal or not because you should get a copy of the Notice if it is filed. If DHS does file a Notice of Appeal and, on the form, says that it will file a "brief" or written statement later, the Board of Immigration Appeals will send you and DHS a paper saying when DHS must file its brief or statement. This paper will also say when you should mail to the Board any response you want to write to DHS's arguments. Try to get a lawyer to help you with this if you can.

In addition, if you are successful before the judge and DHS reserves its right to appeal,

**Ask the judge or DHS to order you released on your own recognizance
(without having to pay bond)!**

- As we mentioned previously, if you qualify to ask the judge for a bond and you the judge decides your case in your favor, ask the judge to release you right then and there! If you do not get the chance, write the judge a letter asking for a bond hearing (even if you had one before). If you do not qualify for a bond from the judge, ask DHS to release you from DHS detention.

If the judge rules against me, how do I appeal?

If you do not agree with the judge's decision and you "reserve appeal," the Board of Immigration Appeals must **receive** the form stating that you are appealing the decision (Notice of Appeal – see below) by the 30th day after the judge's decision or the appeals board will not read them. The forms you must fill out in order to appeal the judge's decision are:

- A "Notice of Appeal" form (EOIR-26), and
- A "Appeal Fee Waiver Request" form (EOIR-26A) (unless you can pay a \$110 fee, in which case, follow the instructions on the "Notice of Appeal" form and pay the fee)

The forms explain how to fill out your appeal and where to send it.

If, after 30 days, the appeal papers have not been **received** in Virginia, you will not be allowed to appeal, and the judge's decision will become final. For this reason, we recommend mailing the papers as soon as possible and mailing them by express mail or "certified mail" (with proof of receipt).

If the Board has received your forms, it will give DHS a chance to file some papers also. DHS will give you a copy of whatever papers it files.

If you are detained during the appeal process, it usually takes from four to six

months or more for the Board to decide the appeal. If you are out of custody during the appeal process, it may take much longer. There is no set time frame, and it is impossible to determine how long the appeal will take.

What if the Board of Immigration Appeals decides against me?

You may be able to appeal the Board's decision to a federal court. If you have certain types of criminal convictions, it can be more difficult to appeal to a federal court. Also, unless you get a special order known as a "stay of removal" from a federal court as soon as the Board of Immigration Appeals decides your case, DHS may remove you from the country before you have the chance to get into federal court! This can happen very fast, so if you or DHS appeals your case to the Board, you should try to get a lawyer's help before the Board makes its decision. Appealing a case to federal court is very complicated, so this booklet does not explain how to do that.

WHAT HAPPENS IF I GET OUT OF DETENTION BEFORE MY CASE IS DECIDED?

If you are allowed to leave the detention center before your case is over, your case continues. If you are in removal, deportation or exclusion proceedings, you will have future court dates. You are required to file a change of address form EOIR-33/IC to notify the court of your address within 5 days of moving. The court will send you a letter at the address they have on record for you telling you the date, time, and place of your next hearing.

For this reason, it is extremely important that you try to find legal help as soon as possible. Don't delay.

When you leave the detention center, look for legal help for your case!

It is also very important that you or your lawyer ask the court to transfer your case to a different court, unless you want to go to court where your case is now. You do this by filling out a form called a "Motion for Change of Venue" on which you write the address where you plan to live when you leave the detention center.

NOTE: Your address must be a street address, not a post office box!

At the back of this booklet is a sample form that you may use to change the location of your future court hearings, but some courts may want you to use a different form, so find out. At some detention centers, a DHS officer will give you the form and will give it to the court after you complete it. Find out how things are done at your detention center

and make sure to file the right form with the court. You must send a copy to DHS's attorney of any papers you file with the court. If the court grants your request to change court locations, it will send your file to the Immigration Court closest to the address you wrote down. That court will then send you a letter telling you where and when to go for your next hearing. After receiving this letter, you should then only send things to the Court and DHS in your new location.

When you leave the detention center, if you do not want your next court hearing to be where you are now,



file a "Motion for Change of Venue!"

Some courts require a more complete explanation of why you want to change court locations. At the time of your bond hearing, ask the judge if you will need to do that.

Remember, if you miss a hearing, the judge will order you removed from the U.S.!

What should I do if I move?

Every time you move, it is your responsibility to tell both the Immigration Court and DHS what your new address is within five days of moving! There are special forms to do this. You should send the blue change of address form (Form EOIR-33/IC) to the Immigration Court. DHS might want you to send it a different change of address form. You should ask an Immigration Officer for the forms when you leave the detention center. Letting the Court and DHS know your new address will not change where you will have your hearing. Instead, the special forms used for changes of address let the Court and DHS know where to send you papers about your case.

When the Immigration Court and DHS send you papers, they will send them to the address you gave them. If the Court only has an old address for you, it will send the paper telling you when your next hearing is to the old address, and when you do not show up to court on that date, you can receive an order of removal. This means that the next time DHS arrests you, you can be sent back to your country without a hearing.

If you move, send the Immigration Court your new address using the EOIR 33/IC form within 5 days of your move! Also you must send the DHS your new address using the AR-11 form within 10 days of your move!

It is important to remember that the Court and DHS are two different offices. If you let DHS know your new address but you do not send the right form to the Immigration Court, the Court will keep sending papers to you at your old address, and you can miss your court date. If that happens, you will get a removal order without seeing a judge.

DON'T BE AFRAID

People who are in immigration proceedings do get issued Certificates of Citizenship and/or have the removal proceedings against them terminated. Preparing your case is a lot of work, but the more you prepare, the better chance you have of winning your case.

Certificate of Service

Name: _____

A#: ____ -- ____ -- ____

I certify that on _____, _____, I served
(date) (year)

Assistant Chief Counsel of the Department of Homeland Security -U.S.
Immigration & Customs Enforcement (ICE) with a copy of:

(description of documents being served)

by placing a true and complete copy in an envelope, postage prepaid, and mailing it,
addressed as follows:

Assistant Chief Counsel
Department of Homeland
Security

U.S. Immigration & Customs Enforcement (ICE)
(address of DHS office that handled your case when you were in DHS custody)

(Sign your name here)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

_____ City and state where court is

In the Matter of:) IN REMOVAL
) PROCEEDINGS
)
(Your name))
Respondent)
File No. A _____)
_____))

MOTION FOR CHANGE OF

VENUE The Respondent has bonded out and will be residing at:
(your address outside of detention)

The Respondent requests that his case be transferred to the Immigration Court that covers the area of his residence.

CERTIFICATE OF

SERVICE This original document is being sent by mail to:

Executive Office of Immigration
Review Office of the Immigration
Judge

(address of court that handled your case while you were in DHS custody)

I hereby certify that I have served a copy of this motion by mailing a

copy to: Assistant Chief Counsel

Department of Homeland Security

U.S. Immigration & Customs Enforcement (ICE)

(address of DHS office that handled your case when you were in DHS custody)

Date: _____ Signed: _____

(sign your name here)

Respondent