

8 USC 1401: Nationals and citizens of United States at birth

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From Title 8-ALIENS AND NATIONALITY CHAPTER 12-IMMIGRATION AND NATIONALITY SUBCHAPTER III-NATIONALITY AND NATURALIZATION Part I-Nationality at Birth and Collective Naturalization

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§1401. Nationals and citizens of United States at birth

The following shall be nationals and citizens of the United States at birth:

- (a) a person born in the United States, and subject to the jurisdiction thereof;
- (b) a person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: *Provided*, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property;
- (c) a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person;
- (d) a person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to the birth of such person, and the other of whom is a national, but not a citizen of the United States;
- (e) a person born in an outlying possession of the United States of parents one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year at any time prior to the birth of such person;
- (f) a person of unknown parentage found in the United States while under the age of five years, until shown, prior to his attaining the age of twenty-one years, not to have been born in the United States;
- (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in [section 288 of title 22](#) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in [section 288 of title 22](#), may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date; and
- (h) a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

(June 27, 1952, ch. 477, title III, ch. 1, §301, 66 Stat. 235 ; Pub. L. 89-770, Nov. 6, 1966, 80 Stat. 1322 ; Pub. L. 92-584, §§1, 3, Oct. 27, 1972, 86 Stat. 1289 ; Pub. L. 95-432, §§1, 3, Oct. 10, 1978, 92 Stat. 1046 ; Pub. L. 99-653, §12, Nov. 14, 1986, 100 Stat. 3657 ; Pub. L. 103-416, title I, §101(a), Oct. 25, 1994, 108 Stat. 4306 .)

EDITORIAL NOTES

CONSTITUTIONALITY

For information regarding the constitutionality of certain provisions of this section, see the Table of Laws Held Unconstitutional in Whole or in Part by the Supreme Court on the Constitution Annotated website, constitution.congress.gov.

AMENDMENTS

1994-Subsec. (h). Pub. L. 103–416 added subsec. (h).

1986-Subsec. (g). Pub. L. 99–653 substituted "five years, at least two" for "ten years, at least five".

1978-Subsec. (a). Pub. L. 95–432, §3, struck out "(a)" before "The following" and redesignated pars. (1) to (7) as (a) to (g), respectively.

Subsec. (b). Pub. L. 95–432, §1, struck out subsec. (b) which provided that any person who was a national or citizen of the United States under subsec. (a)(7) lose his nationality or citizenship unless he be continuously physically present in the United States for a period of not less than two years between the ages of 14 and 28 or that the alien parent be naturalized while the child was under 18 years of age and the child began permanent residence in the United States while under 18 years of age and that absence from the United States of less than 60 days not break the continuity of presence.

Subsec. (c). Pub. L. 95–432, §1, struck out subsec. (c) which provided that former subsec. (b) apply to persons born abroad subsequent to May 24, 1934, except that this not be construed to alter the citizenship of any person born abroad subsequent to May 24, 1934 who, prior to the effective date of this chapter, had taken up residence in the United States before attaining 16 years of age, and thereafter, whether before or after the effective date of this chapter, complied with the residence requirements of section 201(g) and (h) of the Nationality Act of 1940.

Subsec. (d). Pub. L. 95–432, §1, struck out subsec. (d) which provided that nothing in former subsec. (b) be construed to alter the citizenship of any person who came into the United States prior to Oct. 27, 1972, and who, whether before or after Oct. 27, 1972, immediately following such coming complied with the physical presence requirements for retention of citizenship specified in former subsec. (b), prior to amendment of former subsec. (b) by Pub. L. 92–584.

1972-Subsec. (b). Pub. L. 92–584, §1, substituted provisions that nationals and citizens of the United States under subsec. (a)(7), lose such status unless they are present continuously in the United States for two years between the ages of fourteen and twenty eight years, or the alien parent is naturalized while the child is under the age of eighteen years and the child begins to reside permanently in the United States while under the age of eighteen years, and that absence from the United States of less than sixty days will not break the continuity of presence, for provisions that such status would be lost unless the nationals and citizens come to the United States prior to attaining twenty three years and be present continuously in the United States for five years, and that such presence should be between the age of fourteen and twenty eight years.

Subsec. (d). Pub. L. 92–584, §3, added subsec. (d).

1966-Subsec. (a)(7). Pub. L. 89–770 authorized periods of employment with the United States Government or with an international organization by the citizen parent, or any periods during which the citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization, to be included in order to satisfy the physical presence requirement, and permitted the proviso to be applicable to persons born on or after December 24, 1952.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–653, §23(d), as added by Pub. L. 100–525, §8(r), Oct. 24, 1988, 102 Stat. 2619 , provided that: "The amendment made by section 12 [amending this section] shall apply to persons born on or after November 14, 1986."

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95–432, §1, Oct. 10, 1978, 92 Stat. 1046 , provided that the amendment made by section 1 is effective Oct. 10, 1978.

EFFECTIVE DATE

Chapter effective 180 days after June 27, 1952, see section 407 of act June 27, 1952, set out as a note under section 1101 of this title.

WAIVER OF RETENTION REQUIREMENTS

Pub. L. 103–416, title I, §101(b), Oct. 25, 1994, 108 Stat. 4306 , provided that: "Any provision of law (including section 301(b) of the Immigration and Nationality Act [8 U.S.C. 1401(b)] (as in effect before October 10, 1978), and the provisos of section 201(g) of the Nationality Act of 1940 [former 8 U.S.C. 601(g)] that provided for a person's loss of citizenship or nationality if the person failed to come to, or reside or be physically present in, the United States shall not apply in the case of a person claiming United States citizenship based on such person's descent from an individual described in section 301(h) of the Immigration and Nationality Act (as added by subsection (a))."

RETROACTIVE APPLICATION OF 1994 AMENDMENT

Pub. L. 103–416, title I, §101(c), Oct. 25, 1994, 108 Stat. 4306 , provided that:

"(1) Except as provided in paragraph (2), the immigration and nationality laws of the United States shall be applied (to persons born before, on, or after the date of the enactment of this Act [Oct. 25, 1994]) as though the amendment made by subsection (a) [amending this section], and subsection (b) [enacting provisions set out above], had been in effect as of the date of their birth, except that the retroactive application of the amendment and that subsection shall not affect the validity of citizenship of anyone who has obtained citizenship under section 1993 of the Revised Statutes [former 8 U.S.C. 6] (as in effect before the enactment of the Act of May 24, 1934 (48 Stat. 797)).

"(2) The retroactive application of the amendment made by subsection (a), and subsection (b), shall not confer citizenship on, or affect the validity of any denaturalization, deportation, or exclusion action against, any person who is or was excludable from the United States under section 212(a)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)) (or predecessor provision) or who was excluded from, or who would not have been eligible for admission to, the United States under the Displaced Persons Act of 1948 [former 50 U.S.C. App. 1951 et seq.] or under section 14 of the Refugee Relief Act of 1953 [former 50 U.S.C. App. 1971j]."

APPLICABILITY OF TRANSMISSION REQUIREMENTS

Pub. L. 103–416, title I, §101(d), Oct. 25, 1994, 108 Stat. 4306 , as amended by Pub. L. 104–208, div. C, title VI, §671(b)(1), Sept. 30, 1996, 110 Stat. 3009–721 , provided that: "This section [amending this section and enacting provisions set out above], the amendments made by this section, and any retroactive application of such amendments shall not effect the application of any provision of law relating to residence or physical presence in the United States for purposes of transmitting United States citizenship to any person whose claim is based on the amendment made by subsection (a) [amending this section] or through whom such a claim is derived."

ADMISSION OF ALASKA AS STATE

Alaska Statehood provisions as not conferring, terminating, or restoring United States nationality, see section 21 of Pub. L. 85–508, July 7, 1958, 72 Stat. 339 , set out as a note preceding former section 21 of Title 48, Territories and Insular Possessions.