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October 26, 2023

Samantha Deshommès
Chief, Regulatory Coordinator
Division Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Re: Comment in Response to the DHS/USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Certificate of Citizenship; Docket No. 2006-0023; OMB Control Number 1615-0057

Dear Chief Deshommès,

On September 26, 2023, USCIS published a proposed extension without change of Form N-600 Application for Certificate of Citizenship and the accompanying Instructions for Application for Certificate of Citizenship.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to immigration law and processes. As the lead organization for the New Americans Campaign, the ILRC receives and re-grants substantial philanthropic dollars to local immigration legal services providers across the United States who help lawful permanent residents (LPRs) apply for naturalization.

Our experience with non-profit legal services providers and applicants for these immigration benefits informs our comments on these changes.

I. ILRC urges USCIS to implement the following changes to Form N-600 to make it consistent with current law and policy.

1. Use consistent language regarding the intended recipient.

Form N-600 can be filled out both by the U.S. citizen parent claiming citizenship on behalf of their child, as well as the child him or herself. Yet the language in Form N-600 and the Instructions use “you” in the questions and statements, causing confusion as to whether the questions and instructions in the form are directed to the parent or the child. We ask USCIS to eliminate these ambiguities. We suggest that Form N-600 be worded consistently to be addressed to “the child” (in other words, the intended recipient of citizenship) throughout the Instructions and Form N-600 to make it clear on whose behalf the Certificate of Citizenship is requested.

2. Streamline and Update Part 1.

Form N-600 begins by asking if the application is based on the fact that: “I am a BIOLOGICAL child of a U.S. citizen parent,” “I am an ADOPTED child of a U.S. citizen parent,” or “Other.” Given the evolving nature of assistive reproductive technology, and the new guidance from the USCIS¹ and the Department of Justice,² children can acquire citizenship through their parents even without a biological or adoptive relationship. For example, a gestational mother can transmit citizenship to her legal child. Even a U.S. citizen parent with no gestational or biological relationship to his child can transmit citizenship if he is the legal parent. Thus, Part 1 should be streamlined and updated to read: “You are the child of a U.S. citizen parent.” For those who have been adopted, there can be a separate box: “If you are the adopted child of a U.S. citizen parent, check here as well.”

3. Clarify in Part 2 that only lawful permanent residents need to answer Item #2.

Part 2, Item #2 asks for the person’s name exactly as it appears on their permanent resident card. Many children who have acquired citizenship at birth are not lawful permanent residents and will have no permanent resident card. Similarly, the circuit law is evolving on whether a child need actually have been admitted to lawful permanent residence to derive citizenship under Former INA § 321.³

¹ USCIS updated its Policy Manual in August 2021 to account for assistive reproductive technology, saying wedlock is when “the legal parents are married to one another at the time of the child’s birth and at least one of the legal parents has a genetic or gestational relationship to the child.” 12 USCIS-PM H.3(b).

² FAM 1140 Appendix E was updated in May 2021 to say “wedlock” is when parents are “legally married to each other at the time of the person’s conception or birth or within 300 days of the end of the marriage by death or divorce.”

³ See, e.g., *Cheneau v. Garland*, 997 F.3d 916 (9th Cir. 2021); *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013).

4. Add gender inclusive language.

We appreciate USCIS's efforts in other revised forms, such as the recently revised N-400, to add inclusive gender markers. We encourage USCIS to offer a gender marker other than "M" and "F," such as "Another Gender Identity," to the N-600.

5. Clarify in Part 2, Item #14, that those questions are to be answered only if applicable.

Part 2, Item #14 asks what travel document was used to be admitted to the United States. Children who acquired citizenship at birth may still be eligible even if they did not enter the United States with a travel document. Similarly, the circuit law is evolving on whether a child need actually have been admitted to lawful permanent residence to derive citizenship under Former INA § 321.⁴

6. Clarify custody requirements in Item #21 in Part 2.

Part 2, Item #21 currently reads: "Do you regularly reside in the United States in the legal and physical custody of your U.S. citizen parent?" The requirement for a child to derive citizenship after birth from a U.S. citizen parent is that there must have been a moment in time that the child met all of the statutory criteria. Nowhere is it required that the child must meet those requirements at the time of filing Form N-600. Therefore, the question should be reworded: "Have you ever resided in the United States in the legal and physical custody of your U.S. citizen parent?" ILRC also notes that this requirement does not apply to children who acquired citizenship at birth, nor children who derived under Former INA § 321.

7. Change Part 4 and Part 5 headings to reflect updated definitions and guidance.

Change Part 4 heading to state: "Information About Your U.S. Citizen ~~Biological~~ ~~Father (or Adoptive Father).~~" Change Part 5 heading to state: "Information About Your U.S. Citizen ~~Biological~~ ~~Mother (or Adoptive Mother).~~ Given the evolving nature of assistive reproductive technology, and the new guidance from the USCIS⁵ and the Department of Justice,⁶ children can acquire citizenship through their parents even without a biological or adoptive relationship. ILRC

⁴ *Id.*

⁵ USCIS updated its Policy Manual in August 2021 to account for assistive reproductive technology, saying wedlock is when "the legal parents are married to one another at the time of the child's birth and at least one of the legal parents has a genetic or gestational relationship to the child." 12 USCIS-PM H.3(b).

⁶ FAM 1140 Appendix E was updated in May 2021 to say "wedlock" is when parents are "legally married to each other at the time of the person's conception or birth or within 300 days of the end of the marriage by death or divorce."

also asks USCIS to clarify that Part 4 only needs to be completed if the child's father is a U.S. citizen, and Part 5 only needs to be completed if the child's mother is a U.S. citizen.⁷

8. Clarify that Part 8 may apply to the U.S. citizen parent.

Part 8 asks for the applicant's signature and attestation that the applicant, among other things, understands USCIS may require an interview. If the intended recipient of citizenship is under 18, USCIS may require the U.S. citizen parent or parents to appear in person for an interview.⁸ ILRC asks USCIS to clarify that this section may be completed by the parent, and also that the interview requirement may apply to the U.S. citizen parent for a child under 18.

- II. ILRC urges USCIS to implement the following changes to the N-600 Instructions to make them consistent with current law and policy.

9. Eliminate the word "biological" to reflect updated definitions and practice.

As noted above, due to assistive reproductive technology and updated guidance, children can acquire citizenship through their parents even without a biological or adoptive relationship. Moreover, the requirements are not *always* different depending on whether the child was born in wedlock or out of wedlock. The Instructions on Page 1 in the first full paragraph should thus be amended as follows: "For purposes of these provisions, you must be the ~~biological~~ child of ~~your~~ a U.S. citizen parent, and different provisions **may** apply depending on whether you were born in wedlock or out-of-wedlock."

Similarly, the following instances need to be corrected to remove the word "biological":

- a. The numbered list of conditions on Page 1 should be updated to remove the word "biological," which does not appear in the statute: "You must be the ~~biological~~ child of that U.S. citizen parent."
- b. The numbered list of who may file an application on the top of Page 2 needs to be corrected: "2. You are the U.S. citizen parent or legal guardian who has legal and physical custody of a ~~an adopted or biological~~ child, **including an adopted child** (under 18 years of age)."
- c. The numbered list of who should not file Form N-600 should be corrected: "You do not have at least one ~~biological or adoptive~~ U.S. citizen parent."

⁷ One way to clarify would be to repeat the language in the N-600 Instructions on pages 6-7: "Part 4. . . . If you are claiming citizenship through a U.S. citizen ~~biological~~ father (~~or adoptive father~~), provide the full legal name Complete Part 5. If you are claiming citizenship through a U.S. citizen ~~biological~~ mother (~~or adoptive mother~~). . . . Part 5. . . . If you are claiming citizenship through a U.S. citizen ~~biological~~ mother (~~or adoptive mother~~), provide the full legal name Complete Part 4. If you are claiming citizenship through a U.S. citizen ~~biological~~ father (~~or adoptive father~~). . . ."

⁸ 8 CFR 320.4; 12 USCIS-PM H.4(G).

- d. The Instructions for Part 2 on Page 4 should be changed: “If you are the U.S. citizen parent applying for a Certificate of Citizenship on behalf of your minor ~~biological or adopted~~ child, submit information relating to your minor child.”
- e. The Instructions for Part 2 for Item #19 on Page 5 should be changed: “If you are a U.S. citizen parent applying on behalf of a minor ~~biological or adopted~~ child, indicate whether you were married”
- f. The Instructions for Part 4 on Page 6 should be changed:
 - Part 4. Information about Your U.S. Citizen ~~Biological Father (or Adoptive Father)~~ Item Number 1.-9. If you are claiming citizenship through a U.S. citizen ~~biological father (or adoptive father)~~, provide the full legal name, date of birth, country of birth, country of citizenship or nationality, information on U.S. citizenship, marital history, and physical address of your U.S. citizen father in the spaces provided. Complete Part 5. if you are claiming citizenship solely through a U.S. citizen ~~biological mother (or adoptive mother)~~.
 - Provide information about yourself if you are a U.S. citizen biological father (or adoptive father) applying for a Certificate of Citizenship on behalf of your minor child where information is requested about the U.S. citizen father.
- g. The Instructions for Part 5 on Pages 6-7 should be changed:
 - Part 5. Information About Your U.S. Citizen ~~Biological Mother (or Adoptive Mother)~~ Item Numbers 1. - 9. If you are claiming citizenship through a U.S. citizen ~~biological mother (or adoptive mother)~~, provide the full legal name, date of birth, country of birth, country of citizenship or nationality, information on U.S. citizenship, marital history, and physical address of your U.S. citizen mother in the spaces provided. Complete Part 4. If you are claiming citizenship solely through a U.S. citizen ~~biological father (or adoptive father)~~.
Provide information about yourself if you are a U.S. citizen ~~biological mother (or adoptive mother)~~ applying for a Certificate of Citizenship on behalf of your minor child where information is requested about the U.S. citizen mother.
- h. The Instructions for Part 6 on Page 7 should be changed: “If you were born outside the United States and claim to have been born a U.S. citizen, you are required to provide all the dates when your U.S. citizen ~~biological~~ father or U.S. citizen ~~biological~~ mother resided in the United States.”

10. Clarify the qualifying conditions on Page 1.

The Instructions state several qualifying conditions for claiming U.S. citizenship after birth. These qualifying conditions come from the Child Citizenship Act (CCA) and do NOT apply to citizenship claims before the effective date of the CCA. To avoid confusion and inefficiency, ILRC urges USCIS to refer readers to a resource to find the former laws and to add clarifying language that the conditions stated only apply to children who were under 18 on or after February 27, 2001, the

effective date of the CCA. Another way to say it is that these conditions apply to anyone born on or after February 28, 1983:

Generally, the conditions **change depending on the law that was in effect at the time the last qualifying condition was met. For charts of the different requirements over time, see the USCIS Policy Manual Appendices in Volume 12, Part H, Chapter 3. The requirements under the Child Citizenship Act, which apply to anyone born on or after February 28, 1983, are listed below:**

11. Clarify lack of age requirement for filing on Page 1.

On Page 1, the Instructions state: “You can file Form N-600 at any time if you became a U.S. citizen at birth or after birth, but before you turned 18 years of age.” This instruction is confusing, as it implies that you must file before you turn 18 years old. ILRC asks that USCIS reword to clarify that you can file N-600 at any time: “You can file Form N-600 at any time **as long as you met the criteria either at the time of** birth or before you turned 18 years of age.”

12. Eliminate incorrect and confusing Note on Page 1.

Page 1 contains the following: “NOTE: If you are now 18 years of age, but all of the above conditions apply to you before your 18th birthday and you were under 18 years of age on February 27, 2001 (the date the law took effect), you may file this application to obtain a Certificate of Citizenship. However, if you were under 18 years of age on February 27, 2001, BUT not all of the conditions noted above were met prior to your 18th birthday, you must qualify for U.S. citizenship in your own right.” This Note seems to be referring to the requirements only under the Child Citizenship Act for claiming citizenship after birth. However, the Note does not clarify which laws it is referring to, nor mention that others could claim U.S. citizenship based on former laws. ILRC asks that USCIS remove this paragraph entirely to avoid confusion.

13. Correct the Instructions on Page 2 regarding legitimation requirements.

The Instructions state: “Who Should Note File Form N-600: . . . You were born out-of-wedlock, you were not legitimated prior to your 16th birthday, and your U.S. citizen parent is your father.” This instruction is now incorrect for two reasons. First, a child can still qualify if they were legitimated before their 18th birthday (not 16th). USCIS updated its Policy Manual to clarify that where “the requirement for a child to be legitimated before a certain age is more generous in a particular citizenship statute than the requirement of legitimation before age 16 in the definition of child, USCIS allows legitimation until the age requirement in the applicable citizenship statute.” 12 USCIS-PM H.2(b). Because current INA § 320 provides that all of the requirements must be met before age 18, an individual can still derive as long as they are legitimated before age 18. *See id.* at N. 17.

Second, the law on “legitimation” is complicated and ever-evolving, particularly because many jurisdictions have eliminated all legal distinctions between children based on the marital status of their parents. In those jurisdictions, the BIA has held that all children are considered “legitimate.” *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015). Because of that, we ask USCIS to remove the confusing language above, which may lead some citizens not to file because they have not been “legitimated” by their U.S. citizen fathers, even in jurisdictions where that is not necessary: “Who Should Not File Form N-600: . . . ~~You were born out of wedlock, you were not legitimated prior to your 16th birthday, and your U.S. citizen parent is your father.~~”

14. Add inclusive gender marker.

We encourage USCIS to offer a gender marker other than “M” and “F,” such as “Another Gender Identity,” to the N-600 and to update the corresponding Instructions on Page 5.

15. Clarify when custody requirements apply.

As mentioned earlier, ILRC asks that Item #21 on Form N-600 be reworded: “**Have you ever resided** in the United States in the legal and physical custody of your U.S. citizen parent?” The requirement for a child to derive citizenship after birth from a U.S. citizen parent is that there must have been a moment in time that the child met all of the statutory criteria. Nowhere is it required that the child must meet those requirements at the time of filing Form N-600. ILRC also asks USCIS to clarify that the requirement to show legal and physical custody does not apply to children who acquired citizenship at birth, nor children who derived under Former INA § 321.

1. Include on Page 9 possible evidence of residing permanently.

There is currently a circuit split on whether a child need actually have been admitted to lawful permanent residence to derive citizenship under Former INA § 321.⁹ Because of this, USCIS should correct Item #10 as follows: “Evidence of Permanent Resident Status (**such as Copy of Permanent Resident Card**) or, **if applicable, Evidence of Residing Permanently** (only required if you are claiming U.S. citizenship after birth through a U.S. citizen parent).

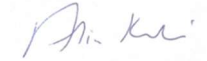
2. Clarify on Page 9 that proof of required residence or physical presence in the United States is only required if the person is claiming U.S. citizenship after birth.

To avoid confusion and unnecessary time for both the applicant and adjudicators, USCIS should add a parenthetical to Item #11 as follows (mirroring the parenthetical in item #10): “Proof of

⁹ See, e.g., *Cheneau v. Garland*, 997 F.3d 916 (9th Cir. 2021); *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013).

Required Residence or Physical Presence In the United States (only required if you are claiming U.S. citizenship after birth through a U.S. citizen parent).”

Thank you for your attention,

A handwritten signature in blue ink, appearing to read "Alison Kamhi".

Alison Kamhi
Legal Program Director
Immigrant Legal Resource Center