

7 FAM 1180 POSTHUMOUS CHILDREN

(CT:CON-207; 11-13-2007)
(Office of Origin: CA/OCS/PRI)

7 FAM 1181 CHILDREN BORN ABROAD AFTER THE DEATH OF A U.S. CITIZEN PARENT

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- a. Section 101(f) of the Nationality Act and INA 101(c)(2) (Immigration and Nationality Act) (8 U.S.C. 1101(c)(2)) indicate that, for purposes of acquiring U.S. nationality, “parent” includes a deceased parent in the case of a posthumous child. The INA also includes a deceased mother or father within its definition of “mother” or “father.”
- b. Posthumous children acquire at birth the same rights to citizenship or non-citizen nationality to which they would have been entitled had the deceased U.S. citizen/national parent been alive at the time of their birth. *See 7 FAM 1130 Acquisition of U.S. Citizenship by Birth Abroad to a U.S. Citizen Parent.*
- c. If the deceased parent of a child born posthumously in a foreign country was a U.S. citizen but the child did not acquire U.S. citizenship at birth under INA 301 (8 U.S.C. 1401), the child may be able to obtain U.S. citizenship automatically upon the surviving parent’s naturalization and the child’s satisfaction of the conditions stated in INA 320 (see section 7 FAM 1153.4-4) (8 U.S.C. 1431) or the “grandparent” provisions of the Child Citizenship Act of 2000 (INA 322)(8 U.S.C. 1433). Section 313 NA contained similar provisions (see section 7 FAM 1153.4-3).
- d. On occasion, DNA testing has been used to establish the genetic/blood relationship between the applicant and a deceased parent through testing of remains of the parent, or testing of a relative. Posts abroad should consult CA/OCS/PRI for guidance in such cases. Domestic passport agencies and centers should contact CA/PPT/PAS. Both CA/OCS/PRI and CA/PPT/PAS will confer with L/CA as appropriate. INA 309 (8 U.S.C. 1409) waives the “written agreement to provide financial support until the child reaches age 18 requirement” in instances where the father predeceases the birth of the child. It should be noted that both the blood and legal relationship must exist, and for birth out of wedlock legitimation must occur, however the statement of support provisions of INA 309 **do not apply when the U.S. citizen parent is deceased.**

(See 7 FAM 1130).

- e. A child born abroad to two aliens, one of whom died before the child's birth, can acquire U.S. citizenship automatically upon the naturalization of the surviving parent and the timely satisfaction of other conditions imposed by U.S. law. The current INA 320 (8 U.S.C. 1431) and, in certain instances, the non-repealed INA 321 (8 U.S.C. 1432) (that is, cases that occurred when the law was in effect between October 24, 1988 and October 30, 2000) would be applicable. (See USCIS Memo – Effect of Grandparents' death on INA 322, and 7 FAM 1150).

7 FAM 1182 THROUGH 1189 UNASSIGNED