

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

HQ 70/34.2-P

*425 I Street NW
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MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE
SERVICE CENTER DIRECTORS

FROM: William R. Yates /s/ Janis Sposato
Acting Associate Director
Bureau of Citizenship and Immigration Services

SUBJECT: Eligibility of Children Born out of Wedlock for Derivative Citizenship

This memorandum updates the interpretation of Section 101(c)(1) of the Immigration and Nationality Act (INA or the Act) that all Citizenship and Immigration Services (CIS) officers are to follow in adjudicating applications for citizenship under Sections 320 and 322. This memorandum supercedes sections of Policy Memoranda 75 and 75A concerning children who are eligible for benefits under the Child Citizenship Act (CCA, P.L. 106-395), and is to be followed in all cases that are pending on the date of this memorandum, as well as in cases filed on or after that date. For cases adjudicated before the date of this memorandum, directors should consider this memorandum to be a sufficient basis to grant an otherwise untimely motion to reopen or reconsider a previous decision, if the child is still otherwise eligible.

INA Section 320 provides for automatic citizenship of the alien child of a citizen, if the alien child is residing in the United States and meets the relevant requirements of Section 320. INA Section 322 allows for the naturalization of a child of a citizen who regularly resides outside the United States. The child must meet the definition of "child" found in Section 101(c)(1) of the Act or the requirements applicable to adopted child under INA Section 101(b)(1). The child must have at least one United States citizen parent, whether by birth or naturalization.

The question has arisen whether a child born out of wedlock who has not been legitimated may derive citizenship automatically under INA Section 320 or 322 through the naturalization of the child's mother. Children born out of wedlock were previously eligible for citizenship through Section 321 of the Act, which was repealed by P.L. 106-395. The CCA has no specific provision for children born-out-of-wedlock. The legacy-INS requested a legal opinion from the DOJ Office of Legal Counsel (OLC) on the issue of whether a child born out of

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wedlock who has not been legitimated may derive citizenship under the CCA. The CIS received the opinion on July 24, 2003 in which the OLC stated that a child born out of wedlock who has not been legitimated may derive citizenship through his or her naturalizing mother under the CCA.

Effective immediately, all Citizenship and Immigration Services officers are to interpret the definition of "child" for CCA as follows:

Assuming an alien child meets all other requirements of Section 320 and 322, an alien child who was born out of wedlock and has not been legitimated is eligible for derivative citizenship when the mother of such a child becomes a naturalized citizen.