

United States.⁹³ The term "outlying possessions of the United States" means American Samoa and Swains Island.⁹⁴

b. CITIZENSHIP BY BIRTH IN UNITED STATES [§§ 2688-2698]

§ 2688. Doctrine of *jus soli*

Both the Fourteenth Amendment to the U.S. Constitution⁹⁵ and the INA⁹⁶ provide that persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States. This provision is declaratory of the pre-existing common-law principle of *jus soli*, under which a person's nationality is determined by his or her place of birth, and which was the law of the United States even prior to the adoption of the Fourteenth Amendment.⁹⁷

§ 2689. —Who is born in United States and subject to United States jurisdiction

A person is born subject to the jurisdiction of the United States, for purposes of acquiring citizenship at birth, if his or her birth occurs in territory over which the United States is sovereign, even though another country provides all governmental services within the territory, and the territory is subsequently ceded to the other country.⁹⁸ Using secondary evidence, including the defendant's mother's baptismal record from a U.S. church, a Czechoslovak census for the defendant's childhood household, and post-World War II documents signed by the defendant's mother, the defendant proved by a preponderance of the evidence that his mother was born in the United States, and was thus a U.S. citizen by birth.⁹⁹ However, a child who is conceived in the United States, but born in another country is not a child born in the United States.¹

A child born on a merchant vessel of American registry, on the high seas, of alien parents who are domiciled in the United States is not a child born in the United States.²

- ♦ *Practice guide:* The case of a child born in the United States whose citizenship may be doubtful because his or her parent was an ambassador, envoy, or minister of a foreign country, should be resolved in consultation with the Citizenship and Passport Section of the Diplomatic or Consular Office to determine whether any claim to citizenship exists.³

§ 2690. Persons born in United States to member of aboriginal tribe

A person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe is a national and citizen of the United States

93. 8 USCA § 1101(a)(38).

94. 8 USCA § 1101(a)(29).

95. U.S. Const. Amend 14 § 1.

96. 8 USCA § 1401(a).

97. *U.S. v. Wong Kim Ark*, 169 U.S. 649, 18 S. Ct. 456, 42 L. Ed. 890 (1898).

98. *Matter of Cantu*, 17 F. & N. Dec. 190, 1 & N. Interim Dec. No. 2748, 1978 WL 36395 (B.I.A. 1978).

99. *U.S. v. Breyer*, 841 F. Supp. 679 (E.D. Pa. 1993), *aff'd*, 41 F.3d 884 (3d Cir. 1994), *reh'g* and *reh'g* in *ban* denied, (Dec. 13, 1994).

1. *Montana v. Rogers*, 278 F.2d 68 (7th Cir. 1960), *cert. granted*, 364 U.S. 861, 81 S. Ct. 102, 5 L. Ed. 2d 84 (1960) and *judgment aff'd*, 366 U.S. 308, 81 S. Ct. 1336, 6 L. Ed. 2d 313 (1961).

2. *Lam Mow v. Nagle*, 24 F.2d 316 (C.C.A. 9th Cir. 1928).

3. *U.S. v. Wong Kim Ark*, 169 U.S. 649, 18 S. Ct. 456, 42 L. Ed. 890 (1898).

at birth.⁴ However, the granting of citizenship to persons born in the United States to members of aboriginal tribes does not in any manner impair or otherwise affect the right of persons granted such citizenship to tribal or other property.⁵ Therefore, such a grant does not affect the right of Indians to allotments under the General Allotment Act⁶ and is not violated by a requirement of that Act that applicants for allotment file certificates of eligibility.⁷

§ 2691. Persons of unknown parentage

Under the INA, a person of unknown parentage found in the United States while under the age of five years is until shown, prior to having attained the age of 21 years, not to have been born in the United States, a national and citizen of the United States at birth.⁸

§ 2692. Persons born in Puerto Rico

All persons born in Puerto Rico on or after April 11, 1899, and before January 13, 1941, who are subject to the jurisdiction of the United States, who resided on January 13, 1941, in Puerto Rico or other territory over which the United States exercised the right of sovereignty, and who are not citizens of the United States under any other statute, are citizens of the United States as of January 13, 1941.⁹ All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.¹⁰

In order to attain U.S. citizenship by virtue of residing in Puerto Rico on January 13, 1941, an alien must have had a general abode in Puerto Rico on that date and may not attain citizenship by virtue of a mere sojourn in Puerto Rico on that date.¹¹ However, a person born in Puerto Rico prior to 1941, who was taken to another country by his parents prior to 1941, apparently for a temporary visit, but who could not return to Puerto Rico until late 1941, because of the confusion of the Spanish Civil War, has been held to have attained U.S. citizenship by virtue of the statute.¹² On the other hand, a person who abandoned his residence in Puerto Rico prior to 1941 with the intent and actual effect of taking up permanent abode in another country, who was not prevented from returning to Puerto Rico, did not have any constructive residence in Puerto Rico, and who resided in the foreign country until a date after 1941, has been held not to have attained U.S. citizenship.¹³

♦ *Observation:* Although the rights, privileges, and immunities of citizens of the United States are required to be respected in Puerto Rico to the same extent as though Puerto Rico were a state and subject to the provi-

4. 8 USCA § 1401(b).

5. 8 USCA § 1401(b).

6. 25 USCA §§ 331 et seq.

7. *Witt v. U. S.*, 681 F.2d 1144 (9th Cir. 1982).

8. 8 USCA § 1401(f).

9. 8 USCA § 1402.

10. 8 USCA § 1402.

11. *Caolo v. Dulles*, 115 F. Supp. 125 (D. P.R. 1953).

12. *Puig Jimenez v. Glover*, 255 F.2d 54 (1st Cir. 1958).

13. In the Matter of M_____, 6 I. & N. Dec. 660, I. & N. Interim Dec. No. 709, 1955 WL 8724 (B.I.A. 1955).

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