

either parent may transmit citizenship to his or her foreign-born offspring, the amendment was not retroactive. Although Congress is not constitutionally precluded from restricting the ability of citizen parents to transmit citizenship to their foreign-born children, having permitted them to do so, Congress may not permit men, but not women, to do so without some rationale, which the government failed to offer.⁶⁹ Another court has taken the view that the proper remedy for the unconstitutionally underinclusiveness of § 1993 of the Revised Statute of 1874, which awarded U.S. citizenship to the foreign-born offspring of U.S. citizen fathers, but not mothers, was to retroactively extend the coverage of that statute to include the foreign-born offspring of U.S. citizen mothers as well as fathers.⁷⁰ The Immigration and Nationality Technical Corrections Act of 1994 added a provision that states that 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, is a national and citizen of the United States.⁷¹

§ 2704. —Procedure for acquiring citizenship “at birth”

A person residing in the United States who desires to be documented as a U.S. citizen “at birth” under the applicable federal statute⁷² may apply for a passport at a U. S. passport agency or may submit an application on Form N-600, Application for Certificate of Citizenship.⁷³ This application must be filed with the INS office having jurisdiction over the applicant’s place of residence, or with such other INS office as the Commissioner may designate, and must be accompanied by the required fee.⁷⁴ The application also must be accompanied by supporting documentary and other evidence essential to establish the claimed citizenship, such as birth, marriage, death, and divorce certificates.⁷⁵ The applicant will be notified in writing when and where to appear before an INS officer for examination on his or her application.⁷⁶

A person residing outside of the United States who desires to become a U.S. citizen “at birth”⁷⁷ must make his or her claim at a U.S. embassy or consulate, in accordance with such regulations as may be prescribed by the Secretary of

69. *Elias v. U.S. Dept. of State*, 721 F. Supp. 243 (N.D. Cal. 1989).

70. *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 banc* denied, (Dec. 13, 1994).

71. 8 USCA § 1401(h), as added by P.L. 103-416 § 101(a)(2), 108 Stat. 4305, October 25, 1994.

These provisions were made retroactive, except that the retroactive application of these provisions did not affect the validity of the citizenship of anyone who had obtained citizenship under § 1993 of the Revised Statutes, as in effect before the enactment of the Act of May 24, 1934, 48 Stat. 79. Furthermore, the retroactive application of these provisions did 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 8 USCA

§ 1182(a)(3)(E), or any 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 or under § 14 of the Refugee Relief Act of 1953, P.L. 103-416 § 101(c)(1), 108 Stat. 4305, October 25, 1994. Finally, these provisions did not affect any residency or other retention requirements for citizenship as in effect before October 10, 1978, with respect to the transmission of citizenship. P.L. 103-416 § 101(c), (d), 108 Stat. 4305, October 25, 1994.

72. 8 USCA § 1401(h).

73. 8 CFR § 301.1(a)(1).

74. 8 CFR § 301.1(a)(1).

75. 8 CFR § 301.1(a)(1).

76. 8 CFR § 301.1(a)(1).

77. 8 USCA § 1401(h).

State.⁷⁸ Upon determination by the district director that a person is a U.S. citizen "at birth,"⁷⁹ the person must take the oath of allegiance,⁸⁰ before an officer of the INS designated to administer the oath of allegiance within the United States, and a certificate of citizenship will be issued.⁸¹ The person will be considered a U.S. citizen as of the date of his or her birth.⁸²

§ 2705. Birth on or after May 24, 1934, but prior to January 13, 1941

The statute effective May 24, 1934, governing grants of derivative citizenship to persons born outside the United States provided that any child born outside the limits and jurisdiction of the United States, whose father or mother, or both, was a citizen of the United States at the time of the birth of the child, would be a U.S. citizen, but provided that the rights of citizenship would not descend unless the citizen mother or father had resided in the United States previous to the birth of the child.⁸³ This statute also provided that if one parent was an alien, the rights of citizenship would not descend unless the child came to the United States and resided therein for at least five years continuously immediately previous to his or her 18th birthday and took the oath of allegiance within six months after his or her 21st birthday.⁸⁴

- ♦ *Observation:* Because of their repeal in 1940, the retention requirements of the 1934 Act, requiring at least five years continuous residence immediately prior to the child's 18th birthday, never became effective. However, the retention requirements of the Nationality Act of 1940 were made applicable retroactively to any child born abroad after May 24, 1934.

§ 2706. Birth on or after January 13, 1941

The Nationality Act of 1940, effective January 13, 1941,⁸⁵ made the following persons nationals and citizens of the United States at birth:

(1) a person born outside the United States and its outlying possessions of parents, both of whom were citizens of the United States, and one of whom had resided in the United States or its outlying possessions prior to the birth of such a person;⁸⁶

(2) a person born outside the United States and its outlying possessions of parents, one of whom was a citizen of the United States who resided in the United States or its outlying possessions prior to the birth of such person, and the other of whom was a national, but not a citizen, of the United States;⁸⁷

(3) a person born in an outlying possession of the United States of parents, one of whom was a citizen of the United States who resided in the United States or one of its outlying possessions prior to the birth of such person.⁸⁸

In addition, U.S. citizenship at birth was granted to a person born outside the United States and its outlying possessions of parents, one of whom was a

78. 8 CFR § 301.1(a)(2).

79. 8 USCA § 1401(h).

80. Prescribed in 8 CFR Part 337.

81. 8 CFR § 301.1(b)(1).

82. 8 CFR § 301.1(b)(1).

83. Act of May 24, 1934 § 1, 48 Stat. 797.

84. Act of May 24, 1934 § 1, 48 Stat. 797.

85. Nationality Act of 1940 § 601, 54 Stat. 1174.

86. Nationality Act of 1940 § 201(c), 54 Stat. 1138.

87. Nationality Act of 1940 § 201(d), 54 Stat. 1138.

88. Nationality Act of 1940 § 201(e), 54 Stat. 1138.

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