

Certificates of Non Citizen Nationality

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Certificates of Non Citizen Nationality

The Department of State occasionally receives requests for certificates of non-citizen national status pursuant to Section 341(b) of the Immigration and Nationality Act (INA), 8 USC 1452(b).

As the title of the certificate indicates, only a person who is a non-citizen U.S. national (i.e., a U.S. national but not a U.S. citizen) may apply for such a certificate.

As defined by the INA, all U.S. citizens are U.S. nationals but only a relatively small number of persons acquire U.S. nationality without becoming U.S. citizens. Section 101(a)(21) of the INA defines the term “national” as “a person owing permanent allegiance to a state.” Section 101(a)(22) of the INA provides that the term “national of the United States” includes all U.S. citizens as well as persons who, though not citizens of the United States, owe permanent allegiance to the United States (non-citizen nationals).

Section 308 INA confers U.S. nationality but not U.S. citizenship, on persons born in “an outlying possession of the United States” or born of a parent or parents who are non-citizen nationals who meet certain physical presence or residence requirements. The term “outlying possessions of the United States” is defined in Section 101(a)(29) of the INA as American Samoa and Swains Island. No other statutes define any other territories or any of the states as outlying possessions.

In addition to Section 308 of the INA, Section 302 of Public Law 94 – 241 provides for certain inhabitants of the Commonwealth of the Northern Mariana Islands, who became United States citizens by virtue of Article III of the Covenant, to opt for non-citizen national status. (See requirements of Section 302).

As the Department has received few requests, there is no justification

for the creation of a non-citizen national certificate. Designing a separate document that includes anti-fraud mechanisms was seen as an inefficient expenditure of resources. Therefore, the Department determined that those who would be eligible to apply for such a certificate may instead apply for a United States passport that would delineate and certify their status as a national but not a citizen of the United States.

If a person believes he or she is eligible under the law as a non-citizen national of the United States and the person complies with the provisions of section 341(b) of the INA, 8 USC 1452(b), he/she may apply for a passport at any Passport Agency in the United States.. When applying, applicants must execute a Form DS-11 and show documentary proof of their non-citizen national status as well as their identity.

Pertinent Sections of Law on Non-Citizen Nationality

Section 341 of the Immigration and Nationality Act:

(b) A person who claims to be a national, but not a citizen, of the United States may apply to the Secretary of State for a certificate of non-citizen national status. Upon - (1) proof to the satisfaction of the Secretary of State that the applicant is a national, but not a citizen, of the United States; and, (2) in the case of a non-citizen national born outside of the United States or its outlying possessions, taking and subscribing, before an immigration officer within the United States or its outlying possessions, to the oath of allegiance required of an applicant for naturalization.

Section 101(a) (21) of the Immigration and Nationality Act:

The term "national" means a person owing permanent allegiance to a state.
Section 101(a) (29) of the Immigration and Nationality Act:

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

Section 101(a) (36) of the Immigration and Nationality Act:

The term "State" includes the District of Columbia, Puerto Rico, Guam, and the Virgin Islands of the United States.

Section 308 of the Immigration and Nationality Act:

Unless otherwise provided in section 301 of this title, the following shall be nationals, but not citizens of the United States at birth:

(1) A person born in an outlying possession of the United States on or after the date of formal acquisition of such possession;

(2) A person born outside the United States and is outlying possessions of parents both of whom are nationals, but not citizens, of the United States, and have had a residence in the United States, or one of its outlying possessions prior to the birth of such person;

(3) A person of unknown parentage found in an outlying possession of the United States while under the age of five years, until shown, prior to attaining the age of twenty-one years, not to have been born in such outlying possessions; and

(4) A person born outside the United States and its outlying possessions of parents one of whom is an alien, and the other a national, but not a citizen, of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than seven years in any continuous period of ten years -

(A) during which the national parent was not outside the United States or its outlying possessions for a continuous period of more than one year, and

(B) at least five years of which were after attaining the age of fourteen years.

The proviso of section (301(g) shall apply to the national parent under this paragraph in the same manner as it applies to the citizen parent under that section.

Section 302 of Public Law 94 - 241:

Any person who becomes a citizen of the United States solely by virtue of the provisions in Section 301 [applying to those born in or residing in the Northern Mariana Islands] may within six months after the effective date of that Section or within six months after reaching the age of 18 years, whichever date is later, become a national but not a citizen of the United States by making a declaration under oath before any court established by the Constitution or laws of the United States or any other court of record in the Commonwealth in the form as follows " I ____ being duly sworn, hereby declare my intention to be a national but not a citizen of the United States."

<https://govbanknotes.wordpress.com/application-for-u-s-national-passport-modified-forms>

<https://famguardian.org/TaxFreedom/Forms/Emancipation/ReqForCertOfNonCitizenNationalStatus.htm>

FORMS: 4.22 Request for Certificate of non-citizen National Status
RIGHT click here for the Word 97 version of this document

Related attachments:

Enclosure (b): Department of State form DS-11 (modified to remove presumptions). Fill in according to instructions found in this article and step 3.13 of the Income Tax Freedom Forms and Instructions, INSTRUCTIONS area

Enclosure (c): Social Security Program Operations Manual (POM), section RS 00204.015

Enclosure (d): FS-581: Questionnaire for Determining Citizenship

Enclosure (e): 7 FAM 1113

Enclosure (f): Why you are a "national", "state national", and Constitutional but not Statutory Citizen

Related forms:

4.13 Abandonment/Amendment of Citizenship Notice to Attorney General/Secretary of State

Getting a USA Passport as a "State National", Form #10.012 (Compliant Members Only)-SEDM. Must be logged in to download

Getting a USA Passport as a "State National", Form #10.013 (Compliant Members Only)-SEDM. Must be logged in to download

Related articles:

8 U.S.C. § 1452: Certificates of citizenship or U.S. non-citizen national status; procedure

Citizenship status v. Tax status

"U.S. national" defined

"U.S. citizen" defined

Referenced on Expatriation

Sample government responses:

Response from Dept. of State (see Evidence, item 14.3)

The letter below is to be sent as an attachment to a U.S. Department of State form FS-581 and is used to request a from the U.S. Department of State a “Certificate of non-Citizen National Status”. It should be sent along with a check for \$35, a certified and notarized copy of your birth or naturalization certificate, and the form FS-581. The procedures for using this form are covered in section 8.5.3.13 of this book entitled “IMPORTANT: Change your U.S. citizen status”.

<<ADDRESS>>

<<CITY>>, <<STATE>> <<ZIP>>

<<PHONE>>

<<EMAIL ADDRESS>>

<<DATE>>

The Honorable _____

Secretary of State

U.S. Department of State

Washington, DC 20520

Certified Mail: _____

Enclosure(s):

a) Certified copy of Certificate of Naturalization by Notary or

Certified Copy of Birth Certificate (certified with the Notary stamp at the end of this letter)

- b) Affidavit as Oath of Allegiance of _____ (name of state) Citizenship and of Non- U.S. Citizen Status. Dept. of State form DS-11.
- c) Social Security Administration Regulation on Citizenship Status, Program Operations Manual (POM), section RS 00204.015 available at: <http://policy.ssa.gov/poms.nsf/lnx/0300204015>
- d) FS-581 - Questionnaire Information for Determining U.S. Citizenship
- e) 7 FAM 1113 Definitions under the Immigration and Naturalization Act
- f) Why you are a "U.S. national" Instead of a "U.S. citizen"
- g) Check for Payment
- h) Copy of last U.S. passport (optional)

Re: Application Non-Citizen Certificate

I am herein the person in compliance with the provisions of 8 USC 1452(b)(1) and (2), and I hereby apply for a Certificate of Non-Citizen National Status from the Secretary of State pursuant to 8 USC 1452(b)(1) and (2). Any record of my being a "U.S. citizen" is in error and must promptly be corrected pursuant to the Privacy Act, 5 U.S.C. 552 a(d)(2), Freedom of Information Act 5 U.S.C. 552(a)(2), Federal Tort Claims Act 28 U.S.C. 1346, 2671-2680 and the Administrative Procedures Act. 5 U.S.C. 551-559

This not an expatriation of "U.S. Nationality" or American citizenship as applicant did welcome such status by way of naturalization or birth in a _____ (name of state) Court by becoming a Citizen of _____ (name of state) and a "U.S. National" under the authority of 8 U.S.C. § 1408(2). The status of "U.S. citizen" under section 1 of the Fourteenth Amendment has never been applied for or requested and applicant did not and does not wish to have such privileged citizenship conferred upon him. Any such presumptions of Applicant being a "U.S. citizen" are in error. If in the event that it is determined that applicant is a "U.S. citizen" even though applicant did not apply for

such citizenship it shall be considered by the applicant that he has voluntarily abandoned any such "U.S. citizen" status nunc pro tunc or from the date of the conference of any such alleged citizenship.

Please do not cite as your authority for denying this request Section 308(1) of the Immigration and Nationality Act, which is 8 U.S.C. § 1408(1), since I do not claim to be born in a possession or territory of the federal United States. Such a claim on your part would be frivolous and unwarranted. I instead emphasize that I was born outside the federal United States to parents who were both "non-citizen U.S. nationals" under the authority of 8 U.S.C. § 1408(2) and at least one of whom resided in the federal United States at one time during their lifetime.

I have executed a form a Oath of Allegiance, DS-11, form FS-581 Information for Determining U.S. Citizenship and have provided documentary proof of my non-U.S. citizen status as a Citizen of the United States of American as well as my identity.

I hereby apply for a certificate of U.S. Non-Citizenship National Status pursuant to 8 U.S.C. 1452(b)(1)&(2) and for a U.S. National Passport. Your authority to issue such certificate is:

8 U.S.C. 1452(b)(1)&(2)

Section 1452. Certificates of citizenship or U.S. non-citizen national status; procedure

* (b); proof; oath of allegiance

A person who claims to be a national, but not a citizen, of the United States may apply to the Secretary of State for a certificate of non-citizen national status. Upon (1) proof to the satisfaction of the Secretary of State that the applicant is a national, but not a citizen, of the United States

And:

Public 99-396 Section 16(c)

Certificates Of Non-Citizen National Status; \$35 Limit On Fees For Processing Applications

Section 16(c) of Pub. L. 99-396 provided that: 'The Secretary of State may not impose a fee exceeding \$35 for the processing of an

application for a certificate of non-citizen national status under section 341(b) of the Immigration and Nationality Act (8 U.S.C. 1452(b)).....’’

To prove the requirements please find enclosures listed above.

I would like to remind you that the act of either remaining a “U.S. citizen” or becoming one is a voluntary, revocable act according to the U.S. Supreme Court in the case of United States v. Cruikshank, 92 U.S. 542 (1875). All citizenship is a product of intent and domicile, and it has never been my intent to be a “U.S. citizen” as defined in 8 U.S.C. § 1401 while it has always been my intent to be a “national” per 8 U.S.C. § 1101(a) (21) but not a STATUTORY “U.S. citizen” per 8 U.S.C. § 1401:

“The fourteenth amendment does not make a resident in a state a citizen of such state, unless he intends, by residence therein, to become a citizen.”

“” Citizenship’ and ‘residence,’ as has often been declared by the courts, are not convertible terms. Parker v. Overman 18 How. 141; Robertson v. Cease, 97 U.S. 648; Grace v. American Cent. Ins. Co., 109 U.S. 283; S.C. 3 Sup.Ct. Rep. 207; Prentiss v. Barton, 1 Brock. 389. Citizenship is a status or condition, and is the result of both act and intent. An adult person cannot become a citizen of a state by simply intending to, nor does any one become such citizen by mere residence. The residence and the intent must co-exist and correspond; and though, under ordinary circumstances, the former may be sufficient evidence of the latter, it is not conclusive, and the contrary may always be shown; and when the question of citizenship turns on the intention with which a person has resided in a particular state, his own testimony, under ordinary circumstances, is entitled to great weight on the point.

[...]

“But, certainly, it was not the intention of the [Fourteenth] amendment to make any citizen of the United States a citizen of any particular state against his will, in which the exigencies of his business, his social relations or obligations, or other cause, might require his presence for a greater or less length of time, without any intention on his part to become such citizen. “The better opinion seems to be that a citizen of the United States is, under the amendment, prima facie a citizen of the state wherein he resides, and cannot arbitrarily be excluded therefrom by such state, but that he does not become a citizen of the state against his will, and contrary to his purpose and intention

to retain an already acquired citizenship elsewhere. The amendment is a restraining on the power of the state, but not on the right of the person to choose and maintain his citizenship or domicile; but it protects him in the exercise of that right by making him a citizen of that state in which he may choose to reside with such intention. In *Robertson v. Cease*, 97 U.S. 648, the court held that, for the purpose of giving the jurisdiction to the circuit court, an allegation that a party is a resident of a particular state is not equivalent to an allegation that he is a citizen thereof, for the reason, as suggested by Mr. Justice Harlan, that, even under the amendment, mere residence in a state does not necessarily or conclusively prove one to be a citizen thereof. And if an allegation of residence in a state is not necessarily, even under the amendment, the equivalent of an allegation of citizenship, then the mere fact of residence in a state is not necessarily the equivalent of citizenship.”

[*Sharon v. Hill*, 26 F.337 (1885), Emphasis added]

The decision to abandon one’ s STATATUTORY “U. S. citizen” status while retaining their “national” status under 8 U. S. C. § 1101(a) (21) is guaranteed by 15 Stat. 223-224 (1868), R. S. § 1999, 8 U. S. C. § 800 (1940) and you have no lawful delegated authority to deny this request. If you believe otherwise, then please provide evidence of same, including a delegation of authority order that authorizes you to make such a determination. Thank you very much for your prompt and courteous compliance with this request.

If you have doubts or concerns about the facts and law appearing in this document, I encourage you to read the following free document, which completely and thoroughly explains and substantiates everything I have just told you:

Why You are a “national”, “state national”, and Constitutional but not Statutory Citizen, Form #05.006

<http://sedm.org/Forms/FormIndex.htm>

You are also encouraged to consult Enclosure (f) for a detailed explanation of why I am a “national” per 8 U. S. C. § 1101(a) (21) and not a STATUTORY “U. S. citizen” per 8 U. S. C. § 1401. NOTE: This status is NOT the same as 8 U. S. C. § 1408, which is only available to people born in U. S. possessions, since CONSTITUTIONAL states are NOT “possessions of the United States” .

I would also like a passport issued to me as a “non-citizen national” . I have not provided a Socialist Security Number with Encl.

(b) and you may NOT lawfully penalize me for not providing one because:

1. I never requested one.
2. One may have been assigned but it was assigned without my consent and is used under duress.
3. I have a right to not incriminate myself under the Fifth Amendment to the U.S. Constitution.
4. The U.S. Constitution in Article 1, Section 10 forbids Bills of Attainder, which are penalties imposed against natural persons such as myself by the government absent a court order accompanying a criminal act.
5. There are no implementing regulations under 26 U.S.C. § 6029E that authorize you to penalize natural persons as required by 26 U.S.C. § 7805. See the following for more details:
Getting a a USA Passport as a "State National", Form #10.013
<http://sedm.org/Forms/FormIndex.htm>

In the event that you refuse to comply with this request to provide said requested "Certificate of non-citizen national status" upon this demand within 45 days of this notice, the event of your default and/or failure to respond shall make my original copy of this notice into said certificate. Please notify all appropriate government agencies within your jurisdiction of this change in my Lawful citizenship status.

Please include in your response a copy of the completed DS-11 passport form that you have added your annotations to if you issue a passport to me as a "national" per 8 U.S.C. § 1101(a) (21) but not a STATUTORY "U. S. citizen" per 8 U.S.C. § 1401. I request that the copy that you provide of this document be certified so that it may be used as evidence in any legal proceedings that might relate to my citizenship status.

I declare under penalty of perjury from without the United States under the Laws of _____ (name of state) and in accordance with 28 U.S.C. § 1746(1) that the foregoing facts and statements made by me are true, correct, and complete to the best of my knowledge and ability.

Sincerely,

<<NAME>>

AFFIDAVIT OF SERVICE AND JURAT

STATE OF _____)

COUNTY OF _____)

I, _____, the undersigned mailer/server, being of sound mind and under no duress, do hereby certify, attest and affirm that the following facts are true and correct, to wit:

1. On _____ before me _____ personally appeared _____ personally known to me (proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

2. That, at the city of _____, County of _____ and the State of _____, on the _____, 200__, that, on behalf of (name) _____, a natural person, the undersigned personally deposited the following documents (listed below) inside the envelope, sealed them and mailed them via U.S. Certified Mail, to wit:

Total of ____ () documents with combined total of _____ (____) pages.

3. That I personally mailed in the United States Postal Office, by Certified Mail # _____, Return Receipt Requested, at said City and State, one (1) complete set of ORIGINAL documents, as described in item 2 above, properly enveloped and addressed to:

This letter and the following enclosure(s):

a) Certified copy of Certificate of Naturalization by Notary or Certified Copy of Birth Certificate (certified with the Notary stamp at

the end of this letter)

b) Affidavit as Oath of Allegiance of _____ (name of state)
Citizenship and of Non- U.S. Citizen Status. Dept. of State form
DS-11.

c) Social Security Administration Regulation on Citizenship
Status, Program Operations Manual (POM), section RS 00204.015 available
at: <http://policy.ssa.gov/poms.nsf/lnx/0300204015>

d) FS-581 - Questionnaire Information for Determining U.S.
Citizenship

e) 7 FAM 1113 Definitions under the Immigration and
Naturalization Act

f) Why you are a "U.S. national" Instead of a "U.S. citizen"

g) Check for Payment

h) Copy of last U.S. passport (optional)

4. That I am at least 18 years of age;

5. That I am not related to _____ by blood, marriage, adoption,
or employment, but serve as a "disinterested third party" (herein
"Server"); and further,

6. That I am in no way connected to, or involved in or with, the person
and/or matter at issue in this instant action.

7. That the copy of the birth certificate included as enclosure (a) is
certified to be a true copy of the original provided to me by the person
mailing this letter.

I now affix my signature to these affirmations.

(Signature): _____,
Mailer/Server

(Printed name): _____

Witness my hand and official seal.

Signature of Notary: _____