IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW JERSEY
JAMESTOWN DIVISION

MARIO APUZZO, ESQ.,	)	
Appearing *pro se.*	)	
	)	
Plaintiff	)	
	)	
v.	)	**Case No. 3:20-90210P**
	)	
SENATOR TED CRUZ,	)	
ANTONIO CAPRONIGRO, NEW JERSEY	)	
SECRETARY OF STATE,	)	
NEW JERSEY REPUBLICAN PARTY,	)	
et al.	)	
	)	
Defendants	)	

MEMORANDUM AND ORDER

The Plaintiff, Mario Apuzzo, Esq., putative Republican presidential candidate, comes seeking injunctive relief to prevent Sen. Ted Cruz from appearing on the New Jersey Republican presidential primary ballot. The Plaintiff claims that Sen. Cruz is not a natural born citizen and thus not eligible for the presidency. He further maintains that his own candidacy will be irreparably harmed if Sen. Cruz remains on the ballot.

Article II. §1. c.5 of the United States Constitution sets forth the following eligibility requirements:

> No person except a *natural born citizen*, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty five years, and been fourteen Years a resident within the United States

Though the Plaintiff makes numerous claims in his rather lengthy and wordy Motion In Support of Injunctive Relief, the legal basis can be reduced to the following two arguments:

> 1. Sen. Ted Cruz is not a natural born citizen as required by the U.S. Constitution because he does not have two citizen parents.
>
> 2. Sen. Ted Cruz is not a natural born citizen as required by the U.S. Constitution because he was born in Canada, outside the boundaries of the United States, thus necessitating naturalization to make him a citizen.

The applicable statute which conferred citizenship upon Sen. Cruz is found at 8 USC§ 1401(g). [Paragraph (a) is also included for later discussion.] This statute currently provides:

> **The following shall be nationals and citizens of the United States at birth:**
>
> (a) a person born in the United States, and subject to the jurisdiction thereof;
>
> (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other 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 five years, at least two of which were after attaining the age of fourteen years: Provided, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 288 of title 22 by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the household of a person.

At the time of Sen. Cruz's birth in 1970, the citizen parent was required to have physical presence in the United States for ten years, at least five of which were after attaining the age of fourteen years. This time period was reduced in 1986.

The Court takes judicial notice of the following widely published facts concerning Sen. Cruz's birth:

> Sen. Cruz was born on December 22, 1970 in Calgary, Alberta, Canada. His mother, Eleanor Darragh was a US citizen. She spent more than ten years as a resident of the United States, and more that five of those years were after the age of fourteen. Sen. Cruz's father, Rafael B. Cruz, was a citizen of Cuba who was subsequently naturalized as a U.S. citizen in 2005.

The Plaintiff does not dispute that Sen. Cruz became a citizen at birth under the terms of the above cited law, nor does he dispute the facts of his birth. However, Plaintiff maintains that Sen. Cruz is not a *natural born citizen*. Plaintiff promulgates this as a general proposition applying both to those persons born inside the United States, and to those born outside the United States. In support, he relies upon this language from **Minor v. Happersett 88 U.S. 162 (1874)**:

> Additions might always be made to the citizenship of the United States in two ways: first, by birth, and second, by naturalization. This is apparent from the Constitution itself, for it provides that "no person except a natural-born citizen, or a citizen of the United States at the time of the adoption of the Constitution, shall be eligible to the office of President," and that Congress shall have power "to establish a uniform rule of naturalization." Thus new citizens may be born or they may be created by naturalization.

and,

> The Constitution does not, in words, say who shall be natural-born citizens. Resort must be had elsewhere to ascertain that. At common-law, with the nomenclature of which the framers of the Constitution were familiar, it was never doubted that all children born in a country of parents who were its citizens became themselves, upon their birth, citizens also. These were natives, or natural-born citizens, as distinguished from aliens or foreigners.

The Plaintiff also urges this Court to adopt certain statements from a 1758 legal treatise *The Law of Nations*, by Emer de Vattel, as a basis for finding that natural born citizenship requires two citizen parents:

> **Book 1 Chapter 19, § 212:** The citizens are the members of the civil society; bound to this society by certain duties, and subject to its authority, they equally participate in its advantages. The natives, or natural-born citizens, are those born in the country, of parents who are citizens. As the society cannot exist and perpetuate itself otherwise than by the children of the citizens, those children naturally follow the condition of their fathers, and succeed to all their rights. The society is supposed to desire this, in consequence of what it owes to its own preservation; and it is presumed, as matter of course, that each citizen, on entering into society, reserves to his children the right of becoming members of it. The country of the fathers is therefore that of the children; and these become true citizens merely by their tacit consent.

The above two page summary fairly distills the essence of over 350 pages of Plaintiff's Complaint, Motions, and Briefs, along with the relevant facts in this case.

Plaintiff's first argument is that natural born citizenship requires two citizen parents. As pointed out in Defendant Cruz's Brief in Opposition To Injunctive Relief, this argument has been a staple of the conspiracy theorists known as the *Birthers*, for over twelve years. The imaginary requirement sprang into existence during the 2008 presidential candidacy of former president Barack Obama, whose father was an African student from Kenya.

Over the last eight years, Plaintiff unsuccessfully made this argument numerous times, and in numerous forums, with but one distinction from the case at bar. Those cases were all against a Defendant who was born *inside* the United States. Candidate Cruz, on the other hand, was born *outside* the United States, in Canada. What does not differ from those previous cases is that the Plaintiff's argument continues to fail.

Plaintiff provided no cogent legal foundation to support his bald assertion that *natural born citizenship* requires two citizen parents. He misconstrues, contorts, and selectively edits the above language from **Minor v. Happersett**, omitting the italicized sentences from the cited passage:

> These were natives, or natural-born citizens, as distinguished from aliens or foreigners. *Some authorities go further and include as citizens children born within the jurisdiction without reference to the citizenship of their parents. As to this class there have been doubts, but*

> *never as to the first. For the purposes of this case it is not necessary to solve these doubts. It is sufficient for everything we have now to consider that all children born of citizen parents within the jurisdiction are themselves citizens.*

The **Minor Court** clearly and pointedly makes no attempt whatsoever to define, or deal with, children born inside the United States of alien parentage.

Further, Plaintiff provides no justifiable legal basis to conclude that the writings of Emer de Vattel influenced in any way the selection or use of the phrase *natural born citizen* by the Founders. His argument can be reduced to, "Some of the Founders had a copy of de Vattel's book, The Law of Nations." and "What Vattel said sounds a whole lot like what was said by the Minor Court." Those arguments spectacularly fail to convince, particularly when the phrase *natural born citizen* was discussed at length in **U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)**, at 658.

> It thus clearly appears that, by the law of England for the last three centuries, beginning before the settlement of this country and continuing to the present day, aliens, while residing in the dominions possessed by the Crown of England, were within the allegiance, the obedience, the faith or loyalty, the protection, the power, the jurisdiction of the English Sovereign, and therefore every child born in England of alien parents was a natural-born subject unless the child of an ambassador or other diplomatic agent of a foreign State or of an alien enemy in hostile occupation of the place where the child was born.
>
> III. The same rule was in force in all the English Colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the Constitution as originally established.

As piquantly stated in Defendant Cruz's Brief, "Mario Apuzzo [the Plaintiff] dwells in a special Universe where Wong Kim Ark never happened." Clearly, citizenship at birth within the United States, and subject to the jurisdiction thereof, is the legal equivalent of natural born citizenship. The **Wong Kim Ark Court** cited with approval, at 662-663:

> In United States v. Rhodes (1866), Mr. Justice Swayne, sitting in the Circuit Court, said:
>
> All persons born in the allegiance of the King are natural-born subjects, and all persons born in the allegiance of the United States are natural-born citizens. Birth and allegiance go together. Such is the rule of the common law, and it is the common law of this country, as well as of England. . . . We find no warrant for the opinion [p663] that this great principle of the common law has ever been changed in the United States. It has always obtained here with the same vigor, and subject only to the same exceptions, since as before the Revolution.
>
> 1 Abbott (U.S.) 28, 40, 41.

This legal equivalence was affirmed by the 14th Amendment, *supra* at 675:

> V. In the forefront both of the Fourteenth Amendment of the Constitution and of the Civil Rights Act of 1866, the fundamental principle of citizenship by birth within the dominion was reaffirmed in the most explicit and comprehensive terms.

and again at 693, and formatted for easier reading:

> The foregoing considerations and authorities irresistibly lead us to these conclusions: the Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens, with the exceptions or qualifications (as old as the rule itself) of children of foreign sovereigns or their ministers, or born on foreign public ships, or of enemies within and during a hostile occupation of part of our territory, and with the single additional exception of children of members of the Indian tribes owing direct allegiance to their several tribes.
>
> The Amendment, in clear words and in manifest intent, includes the children born, within the territory of the United States, of all other persons, of whatever race or color, domiciled within the United States. Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and consequently subject to the jurisdiction, of the United States. His allegiance to the United States is direct and immediate, and, although but local and temporary, continuing only so long as he remains within our territory, is yet, in the words of Lord Coke in Calvin's Case, 7 Rep. 6a, "strong enough to make a natural subject, for if he hath issue here, that issue is a natural-born subject;" and his child, as said by Mr. Binney in his essay before quoted, "if born in the country, is as much a citizen as the natural-born child of a citizen, and by operation of the same principle."

It is evident that parentage is irrelevant for citizens at birth. Thus, Plaintiff's argument that as a general proposition, *natural born citizenship* requires two citizen parents, is completely at odds with legal reality.

As a special proposition, Plaintiff argues that for those persons born *outside* the United States, *natural born citizenship* requires two citizen parents. Plaintiff has even LESS of a cognizable argument. That is because the granting of citizenship to those born outside the country is entirely a matter of statutory law. In his previous attempts to foist the alleged Vattel definition into American jurisprudence, there was some element of common law involved in the definition of natural born citizenship, especially prior to the ratification of the 14th Amendment. If the Plaintiff could find Vattel cited or relied upon in some prior decision, *post* **Wong Kim Ark**, on that relevant point, then he had some slim chance of success. From the record, Plaintiff was remarkably unsuccessful in said search.

Here, Defendant Cruz's citizenship is based on the above cited statute,8 USC 1401(g). That statute clearly provides that for persons in Sen. Cruz's class, only one of the parents needed to be a citizen for him to also be a citizen of the United States at birth. And, if a *citizen at birth* is deemed to be the

equivalent of a *natural born citizen*, the Plaintiff can not attempt to go behind the statute and rewrite it with his invented requirements. In other words, since Defendant Cruz became a citizen through the auspices of 8 USC 1401(g), and said provision does not require *two citizen parents*, Plaintiff's argument finally gives legal substance to Perry Mason, Esq.'s famous objection, "Irrelevant, incompetent, and immaterial!"

This leaves the Court with but one task, to determine if citizenship at birth for those born *outside* the United States is legally equivalent to citizenship at birth for those born *inside* the United States. The Plaintiff urges that the following argument, based on symantic logic, prevail:

1. There are two mutually exclusive sources of citizenship, birth and naturalization;

2. Sen. Cruz became a citizen through the provisions of a naturalization act;

3. Therefore, Sen. Cruz is a naturalized citizen, and can not be a natural born citizen, and is thus ineligible for the Presidency.

However, statutes, naturalization or otherwise, are a matter of law, and not necessarily the province of *a priori* logic. It is the task of a court to provide the logic in its interpretation. To proceed in that vein, reference is made to section IV of **Wong Kim Ark**, where the Court discussed the history of various naturalization statutes, in England and the United States, dating back to 1350. At 668:

> Nor can it be doubted that it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship.
>
> Both in England and in the United States, indeed, statutes have been passed at various times enacting that certain issue born abroad of English subjects or of American citizens, respectively, should inherit, to some extent at least, the rights of their parents. But those statutes applied only to cases coming within their purport, and they have never been considered in either country as affecting the citizenship of persons born within its dominion.

And at 672-673, *supra*:

> In the [Naturalization] act of 1790, the provision as to foreign-born children of American citizens was as follows:
>
> The children of citizens of the United States, that may be born beyond sea, or out of the limits of the United States, shall be considered as natural-born citizens: Provided, that the right of citizenship shall not descend to persons whose fathers have never been [p673] resident in the United States.

Finally, at 688 *supra*, the Wong Kim Ark Court bestows its blessing upon the split of the authority

granting citizenship between those born inside the United States through the application of the 14th Amendment, and those born outside the United States by acts of Congress:

> This sentence of the Fourteenth Amendment is declaratory of existing rights and affirmative of existing law as to each of the qualifications therein expressed — "born in the United States," "naturalized in the United States," and "subject to the jurisdiction thereof" — in short, as to everything relating to the acquisition of citizenship by facts occurring within the limits of the United States. But it has not touched the acquisition of citizenship by being born abroad of American parents, and has left that subject to be regulated, as it had always been, by Congress in the exercise of the power conferred by the Constitution to establish an uniform rule of naturalization.
>
> The effect of the enactments conferring citizenship on foreign-born children of American parents has been defined, and the fundamental rule of citizenship by birth within the dominion of the United States, notwithstanding alienage of parents, has been affirmed, in well considered opinions of the executive departments of the Government since the adoption of the Fourteenth Amendment of the Constitution.

While the issue of foreign born children was not directly before the Court, there was nothing which indicated the Court was disturbed by the granting of *natural born citizenship rights* to certain foreign born children in the 1790 Act. Perhaps of more credibility to the Plaintiff, Emer de Vattel also recognizes that naturalization is a process which may grant varying degrees of citizenship rights. From **Book 1, *The Law of Nations*, § 214. Naturalization**:

> A nation, or the sovereign who represents it, may grant to a foreigner the quality of citizen, by admitting him into the body of the political society. This is called naturalization. There are some states in which the sovereign cannot grant to a foreigner all the rights of citizens, — for example, that of holding public offices — and where, consequently, he has the power of granting only an imperfect naturalization. It is here a regulation of the fundamental law, which limits the power of the prince. In other states, as in England and Poland, the prince cannot naturalize a single person, without the concurrence of the nation, represented by its deputies. Finally, there are states, as, for instance, England, where the single circumstance of being born in the country naturalizes the children of a foreigner.

Obviously from The Naturalization Act of 1790 provision above, the 1st United States Congress believed that it possessed the authority to grant natural born citizenship status to certain children born outside the United States. That is because there is a distinction between a naturalization act, and a naturalization process. When one hears the term, naturalized citizen, one thinks of a foreign born person who must take and pass a civics test. One's mind does not go to the child of an American serviceman who is stationed overseas with his wife and has a child while there.

While not legally dispositive of the issue, attention is called Exhibit II, from the United States Citizenship and Immigration Services web page, where this language appears:

> Note: You may already be a U.S. citizen and not need to apply for naturalization if your biological or adoptive parent(s) became a U.S. citizen before you reached the age of 18. For more information, visit our Citizenship Through Parents page.

Nor is this an interpretation offensive to the rules of logic. There are clear differences between those who become citizens at birth through parentage, and those who must go through the naturalization process. For example, a citizen who goes through the naturalization process must take and pass certain tests. See Exhibit I, a screen shot of the INS webpage, which shows the different requirements for those who do not become citizens through their parents. That same exhibit indicate that the agency see two separate channels for citizenship, one through naturalization and one through parentage. Sen. Cruz needed to take and pass no such tests to obtain citizenship. He became a citizen at birth, through parentage.

But there is one straw which goes far beyond merely breaking the camel's back, and simply squashes the poor creature like a bug. And that is to actually apply Mr. Apuzzo's logic to all the classes contained in 8 USC § 1401, including paragraph (a):

> (a) a person born in the United States, and subject to the jurisdiction thereof;

If the Plaintiff's alleged logic, with supporting multi-color Venn diagrams, were adjusted to include this class of individual, then one would arrive at this result:

> 1. There are two mutually exclusive sources of citizenship, birth and naturalization;
>
> 2. All persons born in the United States and subject to the jurisdiction thereof, are citizens through the provisions of a naturalization act;
>
> 3. Therefore, all persons born in the United States are naturalized citizens, and not natural born citizens, and thus ineligible for the Presidency.

This is an absurd result, and evidence that logic and Venn diagrams sometimes have their limits.

In conclusion, whether or not a foreign born United States citizen at birth is also a natural born citizen is a matter of first impression. I find that they are. Much was written by all parties delving into whether or not English statutory law bestowing citizenship rights was subsumed into common law, and thus transported across the Atlantic prior to the Revolution. While of historical interest, and nutritious fodder for numerous law review articles, I find the whole question much simpler than that.

The **Wong Kim Ark** Court confirmed the 145 year old observation of the Minor Court that there are but two sources of citizenship, birth and naturalization. At 702-703 *supra*:

> The Fourteenth Amendment of the Constitution, in the declaration that

> all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside,
>
> contemplates two sources of citizenship, and two only: birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States, and needs no naturalization. A person born out of the jurisdiction of the United States can only become a citizen by being naturalized, either by treaty, as in the case [p703] of the annexation of foreign territory, or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens, or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts.

I find this language more than sufficient evidence that the Court did not find naturalization to be a monolithic concept which crushed all distinction beneath its ponderous weight. Some naturalization was by treaty, some by annexation, some by Congressional enactment of laws, and some by the ordinary provisions of naturalization acts. If the effect of a Congressional statute is to automatically confer citizenship at birth, it must be presumed that Congress knew and understood previous judicial decisions of the Court holding that such citizenship at birth to be the legal equivalent of natural born citizenship.

Further, there is nothing which indicates that Congress intended to limit the rights of foreign born citizens at birth to some quanta less than that of a natural born citizen. Finally, there are indicia as provided in the two exhibits, that those officials tasked with administering the process do not even regard those becoming citizens at birth through parentage as going through the naturalization process. The Plaintiff's reliance on a black and white analysis of language is misplaced and results in absurd results.

It is not likely the Plaintiff will survive Defendant's Motion to Dismiss, much less prevail at a hearing on the merits.

For these reasons, the Plaintiff's Motion for Injunctive Relief is denied.

SO ORDERED:

/s

signed by District Judge Squeeky Fromm on June 25, 2020.

Exhibit I - Web Page At INS

http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=dd7ffe9dd4aa3210VgnVCM100000b92ca60aRCRD&vgnextchannel=dd7ffe9dd4aa3210VgnVCM100000b92ca60aRCRD

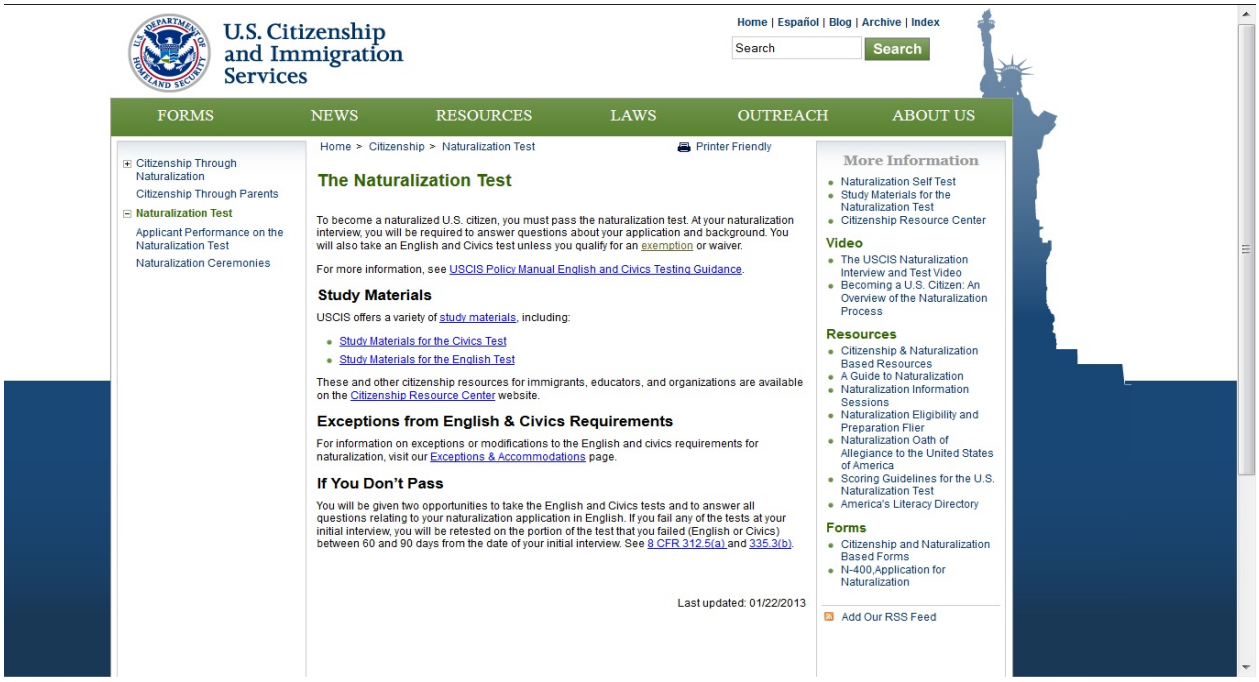
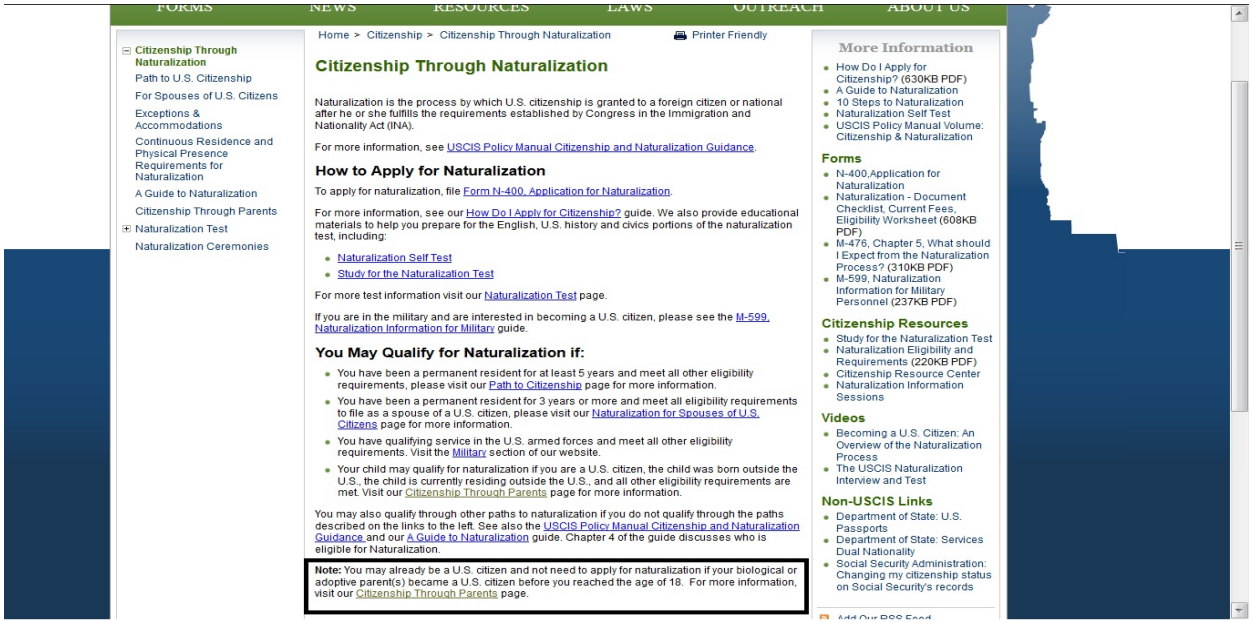


Exhibit II - Web Page At USCIS

http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=d84d6811264a3210VgnVCM100000b92ca60aRCRD&vgnextchannel=d84d6811264a3210VgnVCM100000b92ca60aRCRD



FORMS NEWS RESOURCES LAWS OUTREACH ABOUT US

- Citizenship Through Naturalization
- Path to U.S. Citizenship
- For Spouses of U.S. Citizens
- Exceptions & Accommodations
- Continuous Residence and Physical Presence Requirements for Naturalization
- A Guide to Naturalization
- Citizenship Through Parents
- Naturalization Test
- Naturalization Ceremonies

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Citizenship Through Naturalization

Naturalization is the process by which U.S. citizenship is granted to a foreign citizen or national after he or she fulfills the requirements established by Congress in the Immigration and Nationality Act (INA).

For more information, see USCIS Policy Manual Citizenship and Naturalization Guidance.

How to Apply for Naturalization

To apply for naturalization, file Form N-400, Application for Naturalization.

For more information, see our How Do I Apply for Citizenship? guide. We also provide educational materials to help you prepare for the English, U.S. history and civics portions of the naturalization test, including:

- Naturalization Self Test
- Study for the Naturalization Test

For more test information visit our Naturalization Test page.

If you are in the military and are interested in becoming a U.S. citizen, please see the M-599, Naturalization Information for Military guide.

You May Qualify for Naturalization if:

- You have been a permanent resident for at least 5 years and meet all other eligibility requirements, please visit our Path to Citizenship page for more information.
- You have been a permanent resident for 3 years or more and meet all eligibility requirements to file as a spouse of a U.S. citizen, please visit our Naturalization for Spouses of U.S. Citizens page for more information.
- You have qualifying service in the U.S. armed forces and meet all other eligibility requirements. Visit the Military section of our website.
- Your child may qualify for naturalization if you are a U.S. citizen, the child was born outside the U.S., the child is currently residing outside the U.S., and all other eligibility requirements are met. Visit our Citizenship Through Parents page for more information.

You may also qualify through other paths to naturalization if you do not qualify through the paths described on the links to the left. See also the USCIS Policy Manual Citizenship and Naturalization Guidance and our A Guide to Naturalization guide. Chapter 4 of the guide discusses who is eligible for Naturalization.

Note: You may already be a U.S. citizen and not need to apply for naturalization if your biological or adoptive parent(s) became a U.S. citizen before you reached the age of 18. For more information, visit our Citizenship Through Parents page.

More Information

- How Do I Apply for Citizenship? (630KB PDF)
- A Guide to Naturalization
- 10 Steps to Naturalization
- Naturalization Self Test
- USCIS Policy Manual Volume: Citizenship & Naturalization

Forms

- N-400,Application for Naturalization
- Naturalization - Document Checklist, Current Fees, Eligibility Worksheet (608KB PDF)
- M-476, Chapter 5, What should I Expect from the Naturalization Process? (310KB PDF)
- M-599, Naturalization Information for Military Personnel (237KB PDF)

Citizenship Resources

- Study for the Naturalization Test
- Naturalization Eligibility and Requirements (220KB PDF)
- Citizenship Resource Center
- Naturalization Information Sessions

Videos

- Becoming a U.S. Citizen: An Overview of the Naturalization Process
- The USCIS Naturalization Interview and Test

Non-USCIS Links

- Department of State: U.S. Passports
- Department of State: Services Dual Nationality
- Social Security Administration: Changing my citizenship status on Social Security's records