San Francisco
1458 Howard Street
San Francisco, CA 94103

Washington, D.C.
600 14th Street, NW
Suite 502
Washington, D.C. 20005

San Antonio
10127 Morocco Street
Suite 149
San Antonio, TX 78216

Houston
540 Heights Blvd
Suite 205
Houston, TX 77007

ilrc@ilrc.org
www.ilrc.org

August 12, 2024

Avideh Moussavian, Chief
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20588

Re: ILRC Commends USCIS on recent changes to the USCIS Policy Manual

Dear Ms. Mousavian,

We write to express our appreciation for the recent changes made to the USCIS Policy Manual concerning Children's Acquisition of Citizenship, published July 18, 2024.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates, and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to immigration law and processes.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration, and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans gain U.S. citizenship. Through our extensive networks with service providers, immigration practitioners, naturalization applicants, and individuals claiming citizenship through acquisition or derivation, we have developed a profound understanding of the barriers faced by individuals seeking U.S. citizenship.

We are grateful for the agency's continued engagement with stakeholders, including us, on these matters and for the positive changes that have been made. These changes will provide much-needed clarity in adjudicating acquisition of citizenship cases and will facilitate certificates of citizenship for eligible individuals. We are gratified to see

USCIS confirm the understanding of several provisions in this chapter that align with the guidance ILRC has provided to the field for years. In particular, we appreciate the agency's clarification of the residency requirements for unwed U.S. citizen mothers post *Sessions v. Morales*, 137 S.Ct. 1678 (2017), where the father is also a U.S. citizen. This guidance should decrease the current confusion in adjudicating cases of children born out of wedlock to two U.S. citizen parents. Additionally, we appreciate the clarification that conditions met on a child's 18th birthday count as being met when the child is under 18 years old. We urge USCIS to adopt this rationale to all age-based inquiries (including those with an age limit of 21 years) and update the policy manual accordingly.

We are also heartened to see the agency **clarify its position on motions to reopen where previously denied applicants become eligible for a Certificate of Citizenship after USCIS policy changes**. However, we encourage the agency to go further by allowing for the *sua sponte* reopening of previously denied cases to avoid the motion to re-open deadline. In the alternative, USCIS should add language to footnote 5 of Volume 12, Part H, Chapter 2 specifically stating that motions to reopen in this context will be considered timely. Specifically, we ask that the following language be added to the footnote:

> *Applicants who already filed an Application for Certificate of Citizenship (Form N-600) and were denied, but become eligible following a change in USCIS policy, may file a Notice of Appeal or Motion (Form I-290B) to request reopening of the prior USCIS denial of their Form N-600. Any motion to reopen on this basis will be without a fee to the applicant and deemed timely, and any delay beyond the 30 days filing period will be deemed "reasonable" and "beyond the control" of the applicant under 8 CFR § 103.5.*

Finally, we wish to reiterate our ask that **USCIS apply nationwide the precedent set forth in *Cheneau v. Garland***[1] that a child can derive citizenship under former INA § 321 (8 USC § 1432(a) without necessarily being a lawful permanent resident. Based on the reasoning in *Cheneau*, USCIS should issue guidance in the USCIS Policy Manual further defining "reside permanently" broadly to align with how those terms are defined elsewhere in the INA. This guidance should clarify that "reside permanently" includes those who have had the United States as their residence [defined in INA § 101(a)(33) as the principal, actual dwelling place in fact) for a "continuing or lasting nature" (see the definition of "permanent" in INA § 101(a)(31)].

To that end, we ask USCIS to add the following language to "Acquiring Citizenship Before the Child Citizenship Act of 2000" in 12 USCIS-PM H.4(d):

> *In general, a child born outside of the United States to two noncitizen parents, or one noncitizen parent and one U.S. citizen parent who subsequently lost U.S. citizenship, acquires citizenship under former INA 321 if:*

---

[1] *Cheneau v. Garland,* 997 F.3d 916 (9th Cir. 2021). In *Cheneau,* the Ninth Circuit agreed with the Second Circuit in *Nwozuzu v. Holder*, 726 F.3d 323 (2d Cir. 2013), to hold that the statutory requirement that the applicant "reside permanently" in former INA § 321 (8 USC § 1432(a)(5)) (repealed 2000) could include something lesser than lawful permanent residence.

- *The child's parent(s) meet one of the following conditions:*
    - *Both parents naturalize;*
    - *One surviving parent naturalizes if the other parent is deceased;*
    - *One parent naturalizes who has legal custody of the child if there is a legal separation of the parents; or*
    - *The child's mother naturalizes if the child was born out of wedlock and paternity has not been established by legitimation.*
- *The child is under 18 years of age when his or her parent(s) naturalize; and*
- *The child is residing in the United States pursuant to a lawful admission for permanent residence at the time the parent(s) naturalized or thereafter begins to reside permanently in the United States. "Reside permanently" has been found by some circuits to include something lesser than permanent residence.[1] In those circuits, any individual who has the United States as their principal, actual dwelling place[2] for a continuing or lasting nature[3] meets this requirement. A motion to re-open on this basis for any application that was previously denied for not meeting the lawful permanent residence standard will be deemed timely, and any delay beyond the 30 day filing period will be deemed "reasonable" and "beyond the control" of the applicant under 8 CFR § 103.5.*

    [1] Cheneau v. Garland, 997 F.3d 916 (9th Cir. 2021) (en banc); Nwozuzu v. Holder, 726 F.3d 323 (2d Cir. 2013); see also Thomas v. Lynch, 828 F.3d 11 (1st Cir. 2016) (discussing the issue without deciding, finding that the non-LPR client before the court had not shown that he had begun to "reside permanently" even if it were interpreted to include something other than lawful permanent residence); United States v. Juarez, 672 F.3d 381 (5th Cir. 2012) (declining to interpret "reside permanently" but recognizing multiple interpretations); but see United States v. Forey-Quintero, 626 F.3d 1323 (11th Cir. 2010); Matter of Nwozuzu, 24 I&N Dec. 609 (BIA 2008).

    [2] INA § 101(a)(33).

    [3] INA § 101(a)(31).

In short, we are appreciative of your office's diligent attention to these matters and to the positive changes that have been made to increase access to citizenship. As always, we would welcome the opportunity to discuss the suggestions listed here with your office in more detail at your convenience. Please reach out to Liz Taufa, etaufa@ilrc.org, with questions or concerns.

Sincerely
Elizabeth Taufa
Senior Policy Attorney and Strategist
Immigrant legal Resource Center