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US IMMIGRATION & NATIONALITY LAW

THE DIPLOMATIC EXCEPTION TO BIRTHRIGHT CITIZENSHIP: PATHS TO PERMANENT RESIDENCE AND NATURALIZATION

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One of the most misunderstood areas of U.S. immigration law is the treatment of children born in the United States to foreign diplomats. Most people assume that anyone born on U.S. soil is automatically a U.S. citizen. In reality, the Fourteenth Amendment and federal regulations carve out a narrow exception for children born to certain accredited diplomats. These children are generally not U.S. citizens at birth, but they have a unique, voluntary path to lawful permanent residence (a green card) that is effective from birth and, from there, to U.S. citizenship. When that framework is ignored or mishandled, the consequences can be deeply disruptive.

Birthright citizenship comes from the Fourteenth Amendment, which grants citizenship to those "born or naturalized in the United States, and subject to the jurisdiction thereof." The phrase "subject to the jurisdiction thereof" is crucial. The Supreme Court has long held that this clause excludes only a few narrow groups, including children of foreign diplomats and children born to enemy forces in hostile occupation. Accredited diplomats are treated under international law as remaining under the jurisdiction of their own governments rather than the United States. The State Department's Foreign Affairs Manual explains that diplomatic agents are immune from U.S. criminal jurisdiction and, with limited exceptions, from civil and administrative jurisdiction as well. Because they are not fully subject to U.S. law, their U.S.-born children are not considered "subject to the jurisdiction" of the United States and therefore do not acquire citizenship at birth.

This legal framework is implemented through the regulations at 8 CFR 101.3 and 8 CFR 264.2, as well as the corresponding guidance in the USCIS Policy Manual. Under these authorities, a child born in the United States to a foreign diplomatic officer accredited by the Department of State may voluntarily register to be treated as a lawful permanent resident from birth. Because such a child was not born "subject to the jurisdiction of the United States," they do not gain citizenship under the Fourteenth Amendment, but they can choose to be considered a permanent resident as of their date of birth. This registration is voluntary and requires an application. It is not automatic.

The diplomatic exception itself is narrow and depends on the parents' exact legal status when the child was born. It covers foreign sovereigns on official visits and accredited diplomatic officials such as ambassadors, ministers, chargés d'affaires, counselors, agents and secretaries of embassies, and attachés and other staff attached to an embassy. It also reaches people with comparable diplomatic status and immunities who are assigned to the United Nations or the Organization of American States, or who otherwise hold comparable status under international agreements. In practice, the key question is whether the parent's accredited title appeared on the State Department's Diplomatic List, known as the Blue List, at the time of the child's birth. Only Blue List officers, who enjoy full diplomatic immunity, fall within the regulatory definition of "foreign diplomatic officer" for this purpose. Not all A or G nonimmigrants are on the Blue List or have full immunity. Many consular officers and staff, for example, have more limited protections and are not on the Blue List. Their U.S.-born children are generally citizens at birth because those parents are treated as subject to U.S. jurisdiction.

For someone who does fall under the diplomatic exception, immigration law provides a clear path. A child born in the United States to a qualifying foreign diplomatic officer is not automatically a citizen, but under 8 CFR 101.3 the child may be "considered a lawful permanent resident at birth" if a record of permanent residence is properly created under 8 CFR 264.2. This status is not conferred automatically. The person must submit a Form I 485 application to create that record. USCIS guidance explains that this process allows a U.S.-born child of an accredited foreign diplomatic officer to voluntarily register permanent resident status, retroactive to birth.

To do that, the child (or a parent, if the child is under 18) files Form I-485 with the fee, supported by a U.S. birth certificate, a list of all U.S. entries and exits,

proof of continuous residence, two passport photos, and official confirmation that at least one parent was a Blue List diplomatic officer at the time of birth, including that parent's classification and title. The applicant also submits Form I-566 (showing A or G status history) and Form I-508 to waive any diplomatic rights and immunities, since lawful permanent residents must be fully subject to U.S. law. USCIS then confirms the parent's diplomatic status with the Department of State. If all requirements are met, the application is approved, the person is classified as DS1 (Born Under Diplomatic Status in the United States), and permanent residence is treated as having begun on the date of birth, not the approval date. The adjudication does not involve the usual admissibility analysis or discretionary balancing that apply in many other adjustment cases. Instead, the focus is on whether the specific eligibility criteria in the regulations are met.

From there, the path to citizenship is the same as for other permanent residents. Once USCIS approves the I□485, the person is an LPR effective from their date of birth. When they satisfy the statutory naturalization requirements, they may file Form N□400 to become a citizen. Because their LPR date is deemed to be their date of birth, most will already meet the residence□duration requirement at the time they register, as long as they have maintained the residence and presence required by the naturalization laws.

Despite this clear regulatory framework, the diplomatic exception is often missed for years. Local vital records offices issue standard U.S. birth certificates to everyone born in their jurisdiction, including children of diplomats. Those certificates do not reflect the parents' diplomatic status, and local staff generally do not investigate whether a parent is a foreign diplomatic representative. On the basis of that birth certificate, many children of diplomats obtain Social Security numbers, U.S. passports, and driver's licenses, and may even register to vote and be called on for jury duty. To agencies and institutions, these individuals appear indistinguishable from U.S. citizens. Yet if their parents held full Blue List diplomatic status at the time of their birth, they may never have acquired citizenship under the Fourteenth Amendment. This discrepancy often comes to light only when they apply for, or attempt to renew, a U.S. passport, or when a more detailed status review prompts a closer examination of their parents' diplomatic history and Blue List records.

One widely reported case shows how disruptive this can be. A U.S.-born physician in his early sixties, who had lived in the United States his entire life,

practiced internal medicine in Northern Virginia for more than three decades, and paid taxes for years, applied in 2023 to renew his U.S. passport. Instead of a routine renewal, the State Department informed him that his citizenship had been a "mistake." Officials determined that his father had been an accredited Iranian diplomat at the time of his birth. Because of his father's diplomatic immunity, they concluded that he was not "subject to the jurisdiction" of the United States at birth and had never lawfully acquired citizenship. In a single letter, he went from being a long‑time U.S. citizen in the eyes of his community to being treated as a non‑citizen and essentially stateless. He could not travel, faced uncertainty about his medical license and ongoing employment, and had to retain legal counsel and begin the process of applying for lawful permanent residence under the diplomatic‑birth framework rather than simply renewing a passport. His case underscored that what the government characterizes as a correction under 8 CFR 101.3 can, in practical terms, overturn a person's life.

USCIS and the State Department's position in such cases is not that citizenship is being revoked in the denaturalization sense, but that citizenship never attached under the Constitution and 8 CFR 101.3 because the parents' Blue List diplomatic status placed the child outside U.S. jurisdiction at birth. The proper remedy, in their view, is not a citizenship adjudication, but registration as a permanent resident through 8 CFR 264.2 and, if desired, later naturalization.

There is anecdotal evidence of this pattern. In one scenario, a person is born in the United States while both parents are serving here as foreign diplomats, often at a UN mission or embassy. They grow up entirely in the United States, hold a state birth certificate and a Social Security number, and have always assumed they are U.S. citizens. They never applied for a U.S. passport as a child or young adult. Only when they apply for a first passport in adulthood does the State Department review their parents' records, discover that one or both were Blue List diplomats with full immunity at the time of birth, and deny the passport with an explanation that the applicant is not a U.S. citizen. In another scenario, a person in the same position receives a U.S. passport as a child and may have that passport renewed multiple times. Agencies never examine the parents' diplomatic history. The person lives in the United States, works, pays taxes, votes, and even serves on juries, believing in complete good faith that they are a citizen. Then, at some later renewal, the State Department undertakes a more thorough review, confirms that a parent was on the Blue List as a fully immune diplomatic officer at the time of birth, and concludes that

citizenship was never lawfully acquired. The renewal is denied, and the individual receives a written determination that they are not a U.S. citizen.

From the applicant's perspective, it feels as if their citizenship is being annulled. But the government's legal position is that, because the parents were qualifying foreign diplomats, the person was never a citizen at birth. Earlier passports and other documents were issued in error because agencies did not have or did not consider the parents' diplomatic status. When the State Department now refuses renewal, it is, in effect, correcting that underlying mistake.

At that point, these individuals are no longer simply applying to obtain or renew a passport. They must rebuild their immigration status through the diplomatic‑birth lawful permanent resident framework. In practice, this usually requires filing Form I‑485 under 8 CFR 264.2, with a thorough evidentiary record documenting their U.S. birth, continuous residence, complete travel history, and their parents' status on the State Department's Blue List, together with Forms I‑566 and I‑508. Form I‑485 itself poses a series of detailed, high‑stakes questions, including whether the applicant has ever worked in the United States without authorization, whether they have ever falsely claimed to be a U.S. citizen in any context, and whether they have ever voted in violation of federal, state, or local law. For someone who has genuinely believed for decades that they were a U.S. citizen, and who has lived, worked, voted, and paid taxes on that understanding, answering these questions can be especially daunting. Their responses must be crafted with great care and supported by a clear legal and factual explanation so that USCIS understands this history as the product of a long‑standing, government‑reinforced misunderstanding of status, not as deliberate fraud or willful misrepresentation. Fortunately, in this diplomatic‑birth registration setting, USCIS does not apply the usual inadmissibility grounds the way it does in ordinary adjustment cases. When someone is being formally recognized as a permanent resident from birth, their prior good‑faith use of U.S. documents or belief that they were a citizen is not treated as a basis to find them inadmissible for misrepresentation or a false claim to U.S. citizenship.

Once a person in this situation becomes a permanent resident under the DS1 framework authorized by 8 CFR 101.3 and 8 CFR 264.2, they are deemed to have been permanent residents as of their date of birth. For many such individuals, that means they can apply for citizenship as soon as their permanent residence is registered and any separate naturalization‑specific

requirements are satisfied.

Children born in the United States to accredited foreign diplomats occupy a unique and often precarious place in U.S. law. They are not citizens at birth because their parents were not "subject to the jurisdiction" of the United States. In practice, they are frequently treated as citizens for years because they receive standard birth certificates and, in some cases, passports and other documents. Under 8 CFR 101.3 and 8 CFR 264.2, however, they have a special, voluntary path to lawful permanent residence that is backdated to birth, and once registered as LPRs, they can pursue naturalization under the ordinary rules. When these issues are recognized and handled proactively, the legal framework allows children of diplomats to move from a misunderstood status to permanent residence from birth and ultimately to secure U.S. citizenship. When they are discovered late, as in some cases, the disruption can be significant. For anyone born in the United States to parents who served here as diplomats, it is essential to understand the parents' exact Blue List and immunity status at the time of birth, to document residence and travel history, and to pursue the most appropriate and legally sound path.

Our blog has nothing to do with the Trump administration's executive order denying birthright citizenship to children born to parents who are either not in the U.S. lawfully or who are in the U.S. temporarily. It has always been acknowledged that children born in the U.S. to diplomats who enjoy immunity are not subject to the jurisdiction of the United States and do not acquire citizenship at the time of their birth in the U.S. Such persons can still register as permanent residents and are able to become U.S. citizens through naturalization. They are in a much better position than what might happen to children born in the U.S. if Trump's executive order was implemented. That kind of policy could have perverse and far-reaching consequences. Children born in the United States to undocumented parents could be left without any lawful status. Because some countries do not automatically confer citizenship to children born abroad based solely on their parents' status, some children in this situation could even be born stateless. The U.S.-born children of parents who hold a valid nonimmigrant status, such as H-1B or H-4, would also be impacted. A person must either be admitted into the U.S. in H-4 status or change into H-4 from another nonimmigrant status, so it is unclear how a newborn child could acquire a nonimmigrant status from birth. Parents might be forced to scramble and file immigration applications immediately following a

child's birth to ensure that they are not out of status. Because birth in the United States would no longer be sufficient to confer citizenship, even U.S. citizen parents might be forced to provide exhaustive proof of legal status to ensure that citizenship was also extended to their children. These scenarios are analyzed in greater detail in a prior blog. If Trump's executive order ever takes effect, although we fervently wish it will never happen, children born of parents in any status should be recognized as permanent residents just like children who are born to foreign diplomats.

The hope is that the Supreme Court, in *Trump v. Barbara*, will reaffirm the settled understanding of birthright citizenship under the Fourteenth Amendment: that, with the narrow and historically recognized exception for children born to accredited foreign diplomats, children born on U.S. soil are citizens at birth. For those born in the United States to foreign diplomats who later discover that they did not acquire citizenship at birth, existing law already provides a clear and workable remedy: they can register permanent residence as of their date of birth and then pursue naturalization under the ordinary rules. Any effort to narrow birthright citizenship beyond this limited diplomatic exception would raise serious constitutional concerns under the Fourteenth Amendment.

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