

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

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In This Issue: PROOF OF U.S. CITIZENSHIP AND WHY IT MATTERS

UPCOMING EVENTS

02/11/2020: 10:00 am- 12:00 pm
Onondaga County Assigned Counsel
Program, Nuts & Bolts training for
panel attorneys
Onondaga Co ACP offices
Syracuse, NY

03/07/2020: 9:00 am- 12:00 pm
"Crimmigration" Update with
Cultural Competency/Use of
Interpreters
Oneida County Bar Assoc.
Mohawk Valley Comm. College

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The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

PROOF OF U.S. CITIZENSHIP AND WHY IT MATTERS

The fundamental issue of determining your client's U.S. citizenship was the subject of our newsletter of May 2018. However, we have seen recent cases where a client was placed in removal proceedings because of a prior conviction that makes them removable, yet the attorney never contacted the RIAC or gave any immigration advice. Why? Because the client said he or she was a U.S. citizen (USC).

In another case, the client had an ICE detainer and actually WAS/IS a USC. After working with the attorney and contacting family members to get the required proof, the client's citizenship determination lifted the detainer and avoided his being placed in removal proceedings.

Finally, there are consequences surrounding the mere claim of being a U.S. citizen that make a noncitizen both removable in Immigration Court (see INA §237(a)(3)(D)(i)) **and** subject to prosecution in federal District Court under the federal criminal statutes.

We know what happens when a client says they weren't born in the U.S. and they know they are not a USC, but what happens when a client, born abroad, claims to be a USC and it turns out they are wrong? How do we avoid a potentially disastrous outcome if the client mistakenly believes that they are a USC?

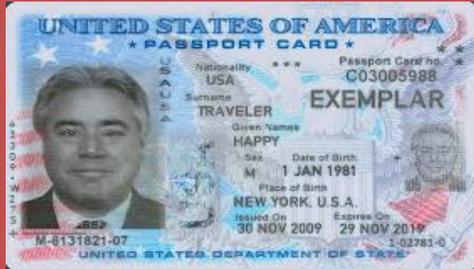
We go back to basics: The fundamental question you should ask EACH AND EVERY CLIENT, at the earliest opportunity, is "Where were you born?" There are two possible answers to this question:

1. Someplace in the United States (or one of its Territories) or
2. Someplace outside the United States.

If your client says he or she was born in the United States, get the city AND the state of birth (e.g. Kingston, NY v. Kingston, Jamaica).



U.S. Passport



Passport card



Certificate of Naturalization



Certificate of Citizenship



Consular Report of Birth Abroad

Chief Defenders & Assigned Counsel Administrators:

Contact the RIAC2 to schedule your 2020 training, lunch hour or other session in your office/county. We will provide CLE credit!

If your client says he or she was born *outside* the United States, but believes he or she is a USC, it is imperative to follow up with documentary proof as to how they obtained U.S. citizenship. There are some instances where citizenship is obtained automatically by operation of law. In those cases, no document is provided by the U.S. government unless the citizen applies for a Certificate of Citizenship with proof that the statutory requirements for automatic citizenship have been met, along with a hefty filing fee (currently over \$1,000). It is easy to see why your indigent client may not have proof of U.S. citizenship in these circumstances, making it even more important to verify your client's status.

Direct proof:

- U.S. passport
- U.S. passport card
- Certificate of Naturalization
- Certificate of Citizenship
- Consular Report of Birth Abroad

No direct proof:

- Child Citizenship Act: Client was under 18 on 02/27/2001, one or both parents became a USC prior to client's 18th birthday; and, client is/was a LPR living under legal and physical custody of USC parent. **Documents needed:** Copy of client's green card, copy of parent(s)' naturalization certificate, and proof of residence with USC parent.
- Acquisition of citizenship: Client born abroad to USC parents automatically becomes USC under certain conditions. Different rules apply depending on client's date of birth.
- If your client has a grandparent who is a USC, there is a possibility that your client derived U.S. citizenship through the grandparent, transmitted through the parent, depending on the circumstances.

Getting to the bottom of this issue can be a challenge, especially when there is no direct proof of citizenship. Getting your client's family members' names, contact information and status, *all part of the intake process*, is critical. Interpreters are often necessary and required for effective communication. **This takes time.** You must spend the time with your client and his/her family members to get this information, in their native language with the proper use of an interpreter, so be prepared when we ask you to provide proof of U.S. citizenship in a follow up email when you tell us your client is a USC. Always document your file as to any and all time spent in the investigation of your client's status.

Contact the RIAC at the earliest possible moment in your client's case!