

TITLE 8 - ALIENS AND NATIONALITY
CHAPTER 12 - IMMIGRATION AND NATIONALITY
SUBCHAPTER III - NATIONALITY AND NATURALIZATION
Part I - Nationality at Birth and Collective Naturalization

§ 1409. Children born out of wedlock

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title, and of paragraph (2) of section 1408 of this title, shall apply as of the date of birth to a person born out of wedlock if—

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years—
 - (A) the person is legitimated under the law of the person's residence or domicile,
 - (B) the father acknowledges paternity of the person in writing under oath, or
 - (C) the paternity of the person is established by adjudication of a competent court.

(b) Except as otherwise provided in section 405 of this Act, the provisions of section 1401 (g) of this title shall apply to a child born out of wedlock on or after January 13, 1941, and before December 24, 1952, as of the date of birth, if the paternity of such child is established at any time while such child is under the age of twenty-one years by legitimation.

(c) Notwithstanding the provision of subsection (a) of this section, a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

(June 27, 1952, ch. 477, title III, ch. 1, § 309, 66 Stat. 238; Pub. L. 97-116, § 18(l), Dec. 29, 1981, 95 Stat. 1620; Pub. L. 99-653, § 13, Nov. 14, 1986, 100 Stat. 3657; Pub. L. 100-525, §§ 8(k), 9 (r), Oct. 24, 1988, 102 Stat. 2617, 2621.)

References in Text

Section 405 of this Act, referred to in subsec. (b), is section 405 of act June 27, 1952, ch. 477, title IV, 66 Stat. 280, which is set out as a Savings Clause note under section 1101 of this title.

Amendments

1988—Subsec. (a). Pub. L. 100-525, § 8(k), amended Pub. L. 99-653. See 1986 Amendment note below.

Subsec. (b). Pub. L. 100-525, § 9(r)(1), substituted “before December 24, 1952” for “prior to the effective date of this chapter” and “at any time” for “before or after the effective date of this chapter and”.

Subsec. (c). Pub. L. 100-525, § 9(r)(2), substituted “after December 23, 1952” for “on or after the effective date of this chapter”.

1986—Subsec. (a). Pub. L. 99-653, as amended by Pub. L. 100-525, § 8(k), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “The provisions of paragraphs (c), (d), (e), and (g) of section 1401 of this title, and of paragraph (2) of section 1408, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this chapter, if the paternity of such child is established while such child is under the age of twenty-one years by legitimation.”

1981—Subsec. (a). Pub. L. 97-116, § 18(l)(1), substituted “(c), (d), (e), and (g) of section 1401” for “(3) to (5) and (7) of section 1401 (a)”.

Subsec. (b). Pub. L. 97-116, § 18(l)(2), substituted “section 1401 (g)” for “section 1401 (a)(7)”.

Effective Date of 1988 Amendment

Amendment by section 8(k) of Pub. L. 100–525 effective as if included in the enactment of the Immigration and Nationality Act Amendments of 1986, Pub. L. 99–653, see section 309(b)(15) of Pub. L. 102–232, set out as an Effective and Termination Dates of 1988 Amendments note under section 1101 of this title.

Effective Date of 1986 Amendment

Section 23(e) of Pub. L. 99–653, as added by Pub. L. 100–525, § 8(r), Oct. 24, 1988, 102 Stat. 2619, provided that:

“(1) Except as provided in paragraph (2)(B), the new section 309 (a) [8 U.S.C. 1409 (a)] (as defined in paragraph (4)(A)) shall apply to persons who have not attained 18 years of age as of the date of the enactment of this Act [Nov. 14, 1986].

“(2) The old section 309 (a) shall apply—

“(A) to any individual who has attained 18 years of age as of the date of the enactment of this Act, and

“(B) any individual with respect to whom paternity was established by legitimation before such date.

“(3) An individual who is at least 15 years of age, but under 18 years of age, as of the date of the enactment of this Act, may elect to have the old section 309 (a) apply to the individual instead of the new section 309 (a).

“(4) In this subsection:

“(A) The term ‘new section 309 (a)’ means section 309(a) of the Immigration and Nationality Act [8 U.S.C. 1409 (a)], as amended by section 13 of this Act [section 13 of Pub. L. 99–653] and as in effect after the date of the enactment of this Act.

“(B) The term ‘old section 309 (a)’ means section 309(a) of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.”

Effective Date of 1981 Amendment

Amendment by Pub. L. 97–116 effective Dec. 29, 1981, see section 21(a) of Pub. L. 97–116, set out as a note under section 1101 of this title.