

Congress of the United States
Washington, DC 20515

September 4, 2019

The Honorable Kenneth T. Cuccinelli
Acting Director
U.S. Citizenship and Immigration Services
20 Massachusetts Ave. NW
Washington, D.C. 20529

Dear Acting Director Cuccinelli:

We write to urge you to reconsider the August 28, 2019 Policy Alert, “Defining ‘Residence’ in Statutory Provisions Related to Citizenship”¹ and express our serious concerns with the manner by which this policy guidance was issued.

Since 2004, USCIS policy provided that children of U.S. government employees and members of the U.S. Armed Forces who are employed or stationed abroad are deemed to be “residing in the United States” for purposes of automatic acquisition of citizenship under INA § 320. We understand that under the new policy, effective October 29, 2019, USCIS will no longer consider these children to be “residing in the United States,” thereby foreclosing INA § 320 as a means of recognizing citizenship. Instead, all such children will be required to apply for citizenship under INA § 322, a process which can be more difficult and time consuming for the families of public servants. We are deeply concerned that this policy change will have a significant impact on the many individuals who are already under great pressure serving our country overseas. We should support our troops and federal workers, not hinder the ability of their children to obtain citizenship.

Further, the release of this policy guidance has created significant and unnecessary confusion for all servicemembers and government employees living abroad – including those that are not even affected by the policy change. The misinformation surrounding this guidance was so significant that it necessitated an immediate statement clarifying that “the policy update doesn’t deny citizenship to the children of US gov employees or members of the military born abroad.”² Given the complexity of immigration law, as well as the extremely personal nature of the impact of these policies, we hope you would take greater care to appropriately educate affected persons and the public on the intent and effect of your policies in the future.

¹ <https://www.uscis.gov/sites/default/files/policymanual/updates/20190828-ResidenceForCitizenship.pdf>.

² <https://twitter.com/USCISCuccinelli/status/1166826012421840899?s=20>

In order to better understand the process by which this guidance was finalized and issued to the public, we request your prompt responses to the following questions:

1. The underlying policy guidance regarding residence requirements has been in place since 2004. Why change it now?
2. What studies, data, or other information did your office draw on when designing this policy? Please provide copies for our review.
3. How many military members and government workers do you estimate will be impacted by this policy change in the coming years? How was this estimate made?
4. How many children of government employees and service members obtained citizenship under INA 320 and 322 respectively in the last 5 years?
5. Why was this change announced in a haphazard manner that confused service members and government workers already stationed overseas? Why were the Defense Department and other impacted federal agencies not consulted in advance? Please provide copies of any announcement publicity plans.

Thank you for your time and attention to this matter. We look forward to your response.

Sincerely,

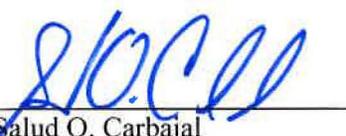

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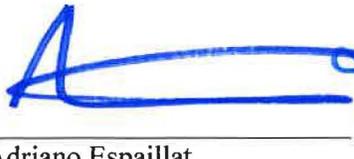
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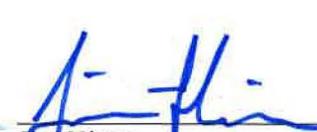
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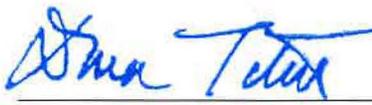
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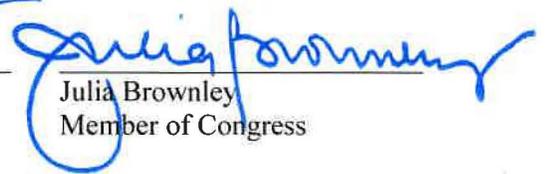
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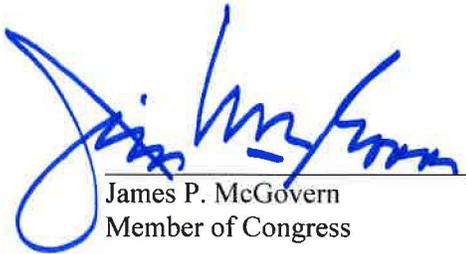
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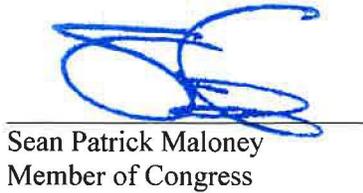


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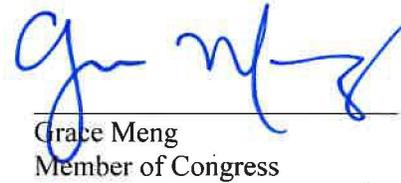

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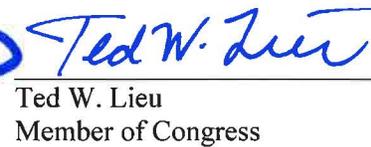

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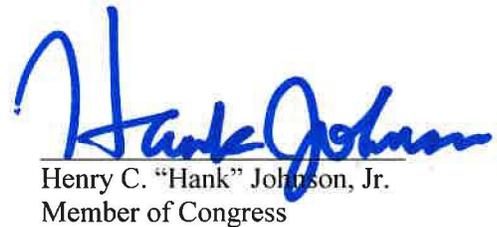

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Ann Kirkpatrick
Member of Congress



**U.S. Citizenship
and Immigration
Services**

November 4, 2019

The Honorable Veronica Escobar
U.S. House of Representatives
Washington, DC 20515

Dear Representative Escobar:

Thank you for your September 4, 2019 letter regarding the policy update U.S. Citizenship and Immigration Services (USCIS) recently made concerning residency abroad for purposes of obtaining U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (INA).

First, let me say that U.S. Citizenship and Immigration Services (USCIS) recognizes that while this update was minor, it confused the public. Although we made every effort to engage the public and assure military members and their families that the changes only affected a small population, misconceptions still exist. Second, USCIS did consult with the Department of Defense (DOD) before publishing the updated policy. We also worked with the Department of State (DOS) to ensure that our policy is consistent with their long-standing interpretation of the law. Ultimately, this policy update affects a small number of individuals. USCIS estimates that, at most, 20 to 25 applicants per year will be affected by this change.

Although the prior policy related to the acquisition of citizenship under INA 320 had been in place since at least 2004, USCIS found it necessary to update our guidance because the previous guidance was inconsistent with parts of the INA. First, the policy conflicted with the definition of "residence" in INA 101(a)(33). Second, a few years after USCIS issued its prior guidance, Congress enacted legislation directly speaking to the citizenship process for these children. Specifically, Congress amended INA 322 – the provision of the INA related to children "residing outside of the United States" – to allow children of active duty U.S. service members to naturalize overseas. See National Defense Authorization Act for fiscal year 2008, Pub. L. 110-181, 122 Stat 3 (January 28, 2008). INA 322(d) allows these children to complete the entire naturalization process outside of the United States and does not require them to travel back to the United States, but it treats them as "residing outside of the United States," just as the updated USCIS policy does.

In addition, the previous USCIS policy conflicted with DOS guidance, which adheres to the INA and does not recognize these children as residing in the United States for purposes of INA 320. Having conflicting policies led to inconsistent decisions on citizenship claims by USCIS and DOS, and caused confusion as to the date a child acquired U.S. citizenship, depending on under what statute USCIS adjudicated citizenship. Due to this inconsistency, DOS requested that USCIS amend its policy to be consistent with their interpretation of INA 320.

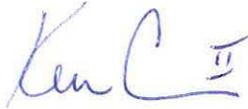
Because this policy is based on statutory authority, USCIS is unable to change the requirements absent new legislation that updates INA 320 to include certain children of military service members and U.S. government employees as being considered “residing in the United States” when they are residing with parents who are deployed overseas.

However, this update does not prevent children of military service members or U.S. government employees from obtaining citizenship. Instead of meeting the residence requirements under INA 320, the children are eligible to acquire citizenship under INA 322, which does not require residence in the United States for the child.

Please find enclosed responses to your specific questions.

Thank you again for your letter and interest in this important issue. The co-signers of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink that reads "Ken Cuccinelli II". The signature is stylized, with the first name "Ken" written in a cursive-like font, followed by "Cuccinelli" and "II" in a more formal, blocky font.

Ken Cuccinelli II
Acting Director

Enclosure

U.S. Citizenship and Immigration Services Response to Representative Escobar’s September 4, 2019 Letter

1. The underlying policy guidance regarding residence requirements has been in place since 2004. Why change it now?

The prior U.S. Citizenship and Immigration Services (USCIS) policy guidance conflicted with several provisions of the Immigration and Nationality Act (INA), especially with changes to the acquisition of citizenship statutes passed by Congress in 2008, after the initial policy determination in 2004.

First, permitting a child to be eligible simultaneously for a Certificate of Citizenship under INA 320 and for naturalization under INA 322 conflicts with the language of INA 322(a), which states that a parent “may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under INA 320.”

Second, considering children who are living outside of the United States to be “residing in the United States” conflicts with the definition of “residence” at INA 101(a)(33), which defines “residence” as a person’s “principal, actual dwelling place in fact.”

Third, considering these children to be “residing in the United States” is at odds with INA 322(d), which was enacted in 2008,¹ 4 years after USCIS issued policy guidance on the topic. When Congress enacted INA 322(d), it provided for special procedures in cases involving the naturalization of “a child of a member of the Armed Forces of the United States who is authorized to accompany such member and reside abroad with the member pursuant to the member's official orders, and is so accompanying and residing with the member.” Congress placed this provision under INA 322, which applies only to children “residing outside of the United States.” It did not provide similar language for such children to acquire citizenship under INA 320. Furthermore, in the same legislation, Congress also explicitly provided that spouses of U.S. armed forces members who reside outside of the United States due to the member’s official orders are considered to be residing in the United States for naturalization purposes.² The fact that no similar provision was included for children of U.S. armed forces members in the acquisition of citizenship context is significant.

2. What studies, data, or other information did your office draw on when designing this policy? Please provide copies for our review.

USCIS determined that the prior policy produced confusion in several respects. First, it resulted in inconsistent adjudications by USCIS officers adjudicating applications for certificates of citizenship, and U.S. Department of State (DOS) consular officers adjudicating passport applications. DOS has correctly interpreted INA 320 to apply solely to children who are physically present in the United States and does not recognize an exception by

¹ See National Defense Authorization Act for Fiscal Year 2008, Pub. L. 110-181, 122 Stat 3 (January 28, 2008).

² See INA 319(e).

policy for children of U.S. military and U.S. government employees stationed outside of the United States.³

In addition, the policy resulted in confusion as to the date a child acquired U.S. citizenship, depending on what form the parent (a U.S. Government employee or U.S. Armed Forces member employed or stationed outside of the United States) used: Form N-600K would result in naturalization proceedings under INA 322, while Form N-600 would result in automatic acquisition of citizenship under INA 320. Children who acquire U.S. citizenship automatically are citizens as of the date on which they meet all eligibility criteria under INA 320, but children who seek naturalization under INA 322 become citizens upon taking and subscribing to the oath of allegiance (or upon approval of the application if the oath is waived).

3. How many military members and government workers do you estimate will be impacted by this policy change in the coming years? How was this estimate made?

Exact numbers are impossible to provide, since parents applying on behalf of their children under INA 320 and 322 do not provide information about their employment by the government on the applications.

During the discussion of the potential effects caused by modifying the policy to faithfully reflect the statute, USCIS did estimate the affected military population using address data. Specifically, USCIS used military addresses (Fleet Post Office (FPO) and Army Post Office (APO)) as an indicator that a parent who was a military service member filed the application. USCIS then used the age of the applicant to evaluate whether or not the policy change could potentially affect them. After reviewing this data for fiscal year 2014-2018, USCIS estimated that the policy change would potentially affect approximately 20-25 children of military service members a year.

4. How many children of government employees and service members obtained citizenship under INA 320 and 322 respectively in the last 5 years?

USCIS cannot definitively state how many children of government employees and service members received certificates of citizenship under INA 320 or naturalized under INA 322 during the last five years because information about the employment of the parents is not collected on the applications for these benefits.⁴ Please see the response to question 3.

³ See 8 FAM 301.10-2(A), Evidence of Citizenship for Children Born Abroad to U.S. Citizen Parent(s) Under INA 320 as amended by the Child Citizenship Act of 2000.

⁴ Part 7 on Form N-600 asks for “information about military service of U.S. citizen parents.” However, applicants only complete this section of the form when an individual is claiming that they were a citizen *at the time of birth* under INA 301(g), and do not complete this part when the individual claims that they acquired citizenship *after birth* under INA 320.

5. Why was this change announced in a haphazard manner that confused service members and government workers already stationed overseas? Why were the Defense Department and other impacted federal agencies not consulted in advance? Please provide copies of any announcement publicity plans.

As I mentioned at the beginning of this letter, USCIS acknowledges that regrettably the rollout of this policy announcement resulted in public confusion. Despite news reports to the contrary, we coordinated this policy with the Department of Defense (DOD) for several months before its announcement. In addition, to allow time for information sharing, and upon consultation with the DOD, the policy will be effective 60 days after publication, on October 29, 2019. Applications filed on or after that date are subject to this policy. The policy in place before applies to applications filed before that date. Children who have already been recognized through the issuance of a Certificate of Citizenship as having acquired U.S. citizenship under INA 320 are not affected by this policy change. USCIS consulted extensively with both DOD and DOS prior to the publication of the new policy.