

### **Citizen or National of the United States as Basis for Termination**

A person in removal proceedings who was born abroad but claims United States citizenship or nationality is *prima facie* an alien and must meet the burden of proof in establishing his claim for citizenship or nationality. See Matter of Romandia-Herrerros, 11 I&N Dec. 772, 774 (BIA 1966) (citing Matter of A-M-, 7 I&N Dec. 332, 336 (BIA 1956)). INA § 101(a)(3) defines an “alien” as “any person not a citizen or national of the United States.” A “national” of the United States is defined under INA § 101(a)(22) as one who is a United States citizen or who “owes permanent allegiance to the United States.” An alien is subject to removal from the United States, while a United States citizen or national is not. INA § 240(a)(1). An individual may rebut the presumption of alienage by demonstrating by a “preponderance of credible evidence” that he is a United States citizen. Matter of Tijerina-Villarreal, 13 I&N Dec. 327, 332 (BIA 1969). A certificate of citizenship (N-560), like a passport, is merely *indicia* of citizenship and does not confer United States citizenship. Matter of Falodun, 27 I&N Dec. 52, 55 (BIA 2017).<sup>1</sup>

The BIA has held that a person cannot attain national status by simply taking an oath of allegiance on an application for naturalization; such status can only be acquired by birth or naturalization because permanent allegiance to the United States is based on “a legal relationship between an individual and a sovereign.” Matter of Navas-Acosta, 23 I&N Dec. 586, 588 (BIA 2003). In support of the BIA’s decision in Navas-Acosta, the Second Circuit has rejected the argument that national status can be attained by avenues other than birth or full naturalization. See Marquez-Almanzar v. INS, 418 F.3d 210 (2d Cir. 2005) (holding that an alien could not, by voluntarily enlisting in the United States Army and serving eight years, by swearing allegiance to the United States Constitution, by registering for the Selective Service, and by completely immersing himself in American society, qualify as a non-citizen national of the United States, such that he could not be removed following his conviction of a narcotics offense); see also Ajlani v. Chertoff, 545 F.3d 229, 234 (2d Cir. 2008) (finding that INA § 101(a)(22)(B) does not, by itself, provide a means by which an individual can become a United States national).

Where a person is claiming derivative citizenship, an individual who has satisfied the statutory provisions of former section 321(a) of the Act, 8 U.S.C. § 1432(a) (2000), before the age of 18 years has acquired United States citizenship, “regardless of whether the naturalized parent acquired legal custody of the child before or after the naturalization.” Matter of Douglas, 26 I&N Dec. 197, 201 (BIA 2013).

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<sup>1</sup> A certificate of citizenship (N-560), unlike a certificate of naturalization (N-550), may be properly cancelled through administrative proceedings by the District Director. See Matter of Falodun, 27 I&N Dec. 52, 54-55. (BIA 2017). Cancellation of a certificate of citizenship has no effect on the underlying citizenship status of the holder. *Id.* at 55.