

§ 584.4 Adoption proceedings.

(a) *General.* This chapter does not apply to those situations where a soldier is trying to adopt a child. It applies to those situations where another person is trying to adopt a legitimate or illegitimate child of a soldier. A child born in or out of wedlock normally may not be put up for adoption without the consent of the parents. Therefore, communications from a judge or court asking that a soldier appear at an adoption hearing must be answered.

(b) *Commander's actions.* The commander will—

(1) Inform the soldier or the inquiry.

(2) Urge the soldier to see a legal assistance attorney.

(3) Advise the court or judge, as appropriate, that—

(i) A request by the soldier for leave to attend an adoption hearing on (date) has been granted.

(ii) A request by the soldier for leave to attend an adoption hearing on (date), if made, would be approved.

(iii) Due to military requirements, the soldier cannot be granted leave to attend any court hearing until (date).

(iv) The soldier has stated that he or she is not the natural parent of the child.

(v) Since the soldier is not present because (give specific reasons), (for example, temporary duty or leave), a complete response cannot be made until (date).

(vi) The soldier is no longer in this command. The commander will provide the soldier's new military address to the court or judge. The commander then will send a copy of the inquiry to the soldier's new commander and advise the court or judge of this action.

(4) Furnish the soldier with a copy of the communication and the reply.

§ 584.5 U.S. citizenship determinations on children born out of wedlock in a foreign country.

(a) *General.* (1) A child born out of wedlock in a foreign country of an American citizen father and an alien mother does not automatically gain U.S. citizenship. The child must first be legally acknowledged by the father. Marriage to the mother may be required in order for the child to acquire U.S. citizenship. The father also must

establish that he had at least 10 years of physical presence in the United States prior to the child's birth. Five of those years must have been spent in the United States after the father's 14th birthday. United States military service counts as physical presence in the United States. (See 8 U.S.C. 1101(c)(1), 1401(g), and 1409(c).) Whether the child gains the citizenship of its mother depends entirely upon the laws of the nation in which she is a citizen.

(2) A child born out of wedlock in a foreign country to an American citizen mother and an alien father or U.S. Citizen father gains U.S. citizenship at birth if the mother had been physically present in the United States for a continuous period of 1 year prior to the child's birth. (See 8 U.S.C. 1409(c).) The child will gain the citizenship of the father only if the laws of the nation of which the father is a citizen so provide.

(b) *Procedures for claiming U.S. citizenship rights.* (1) A father desiring rights of U.S. citizenship for a foreign-born child must legally acknowledge the child as his own and prepare a case file. Each case is decided on its own merits. The Department of State, if the child is in a foreign nation, or the Immigration and Naturalization Service (INS), if the child is in the United States, will make the decision. Documents that may be important in supporting a citizenship determination are listed below:

(i) Proof of father's citizenship. This may consist of any of the following:

(A) A certified copy of his birth certificate (with a raised seal of the registrar of births).

(B) A report of birth abroad (FS Form 240 (Report of Birth Abroad of a Citizen of the United States)).

(C) A certificate of citizenship.

(D) A certificate of naturalization.

(E) A valid U.S. Passport.

(F) A certified copy of an approved U.S. passport application.

(G) Any secondary evidence acceptable by the State Department or INS.

(ii) Affidavit of paternity.

(iii) Proof of presence in the foreign country at time of conception. (This information can be extracted from the passport, DA Form 2-1 (Personnel Qualification Record—Part II), etc.).

(iv) Child's birth certificate.