106TH CONGRESS
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HOUSE OF REPRESENTATIVES
REPORT
106–852

ADOPTED ORPHANS CITIZENSHIP ACT

SEPTEMBER 14, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 2883]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2883) amending the Immigration and Nationality Act to confer United States citizenship automatically and retroactively on certain foreign-born children adopted by citizens of the United States, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Citizenship Act of 2000".

SEC. 2. AUTOMATIC ACQUISITION OF CITIZENSHIP FOR CERTAIN CHILDREN BORN OUTSIDE UNITED STATES.

(a) IN GENERAL.—Section 320 of the Immigration and Nationality Act (8 U.S.C. 1431) is amended to read as follows:

"CHILDREN BORN OUTSIDE UNITED STATES; CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

"SEC. 320. (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

"(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

"(2) The child is under the age of eighteen years.

"(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

"(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).".

(b) CLERICAL AMENDMENT.—The table of sections of such Act is amended by striking the item relating to section 320 and inserting the following:

"Sec. 320. Children born outside United States; conditions under which citizenship automatically acquired.".

SEC. 3. ACQUISITION OF CERTIFICATE OF NATURALIZATION FOR CERTAIN CHILDREN BORN OUTSIDE UNITED STATES.

(a) IN GENERAL.—Section 322 of the Immigration and Nationality Act (8 U.S.C. 1433) is amended to read as follows:

"CHILDREN BORN AND RESIDING OUTSIDE UNITED STATES; CONDITIONS FOR ACQUIRING CERTIFICATE OF NATURALIZATION

"SEC. 322. (a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States. The Attorney General shall issue a certificate of naturalization to such parent upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

"(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

"(2) The United States citizen parent—

"(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

"(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

"(3) The child is under the age of eighteen years.

"(4) The child is residing outside of the United States in the legal and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

"(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of naturalization.

"(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).".

(b) CLERICAL AMENDMENT.—The table of sections of such Act is amended by striking the item relating to section 322 and inserting the following:

"Sec. 322. Children born and residing outside United States; conditions for acquiring certificate of naturalization.".

SEC. 4. CONFORMING AMENDMENT.

Section 321 of the Immigration and Nationality Act (8 U.S.C. 1432) and the item relating to section 321 in the table of sections are repealed.

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall take effect 120 days after the date of the enactment of this Act.

Amend the title so as to read:

A bill to amend the Immigration and Nationality Act to modify the provisions governing acquisition of citizenship by children born outside of the United States.

PURPOSE AND SUMMARY

H.R. 2883 modifies the provisions of the Immigration and Nationality Act governing acquisition of United States citizenship by certain children born outside of the United States, principally by providing citizenship automatically to such children.

BACKGROUND AND NEED FOR THE LEGISLATION

A. Current Law as to the Citizenship of Foreign-Born Children Who Are the Natural-Born or Adopted Children of a U.S. Citizen(s)

Under current law, a child born abroad to two U.S. citizen parents is considered a U.S. citizen at birth as long as one of the parents has had a residence in the United States prior to the birth of the child.[1] In addition, under current law a child born abroad to a U.S. citizen and an alien parent is also considered a U.S. citizen at birth if the U.S. citizen parent was, prior to the birth of the child, physically present in the United States for a period or periods totaling not less than 5 years, at least two of which were after attaining the age of 14.[2]

However, under current law, if American parents adopt a foreign child, or if a child born abroad to a U.S. citizen parent(s) is not considered a citizen at birth, the parent can obtain citizenship for the child only by seeking the child's admission to the United States and applying for a certificate of citizenship for the child to become a citizen. In order to receive a certificate of citizenship, the following conditions have to be met:

- at least one parent is a citizen of the United States, whether by birth or naturalization,
- the child is physically present in the United States pursuant to a lawful admission,
- the child is under 18 and in the legal custody of the citizen parent,
- if the child was adopted, the child was adopted before the child reached 16 in an adoption meeting the requirements of the INA[3], and

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[1] INA sec. 301(c). This residence requirement is longstanding. The act of March 26, 1790, stipulated that "The right of citizenship shall not descend to persons whose fathers have never resided in the United States." The requirement is designed to "prevent the establishment of successive generations of absentee citizens, who were not identified and not familiar with American language, customs, and traditions, and who might seek to avail themselves of the advantages of American citizenship while evading its duties." Gordon, Mailman & Yale-Loehr, 7 *Immigration Law and Procedure* sec. 93.02(5)(a) (2000). And, as the Supreme Court stated in *Weedin* v. *Chin Bow*, citizenship should not be extended to "a generation whose birth, minority and majority, whose education, and whose family life, have all been out of the United States and naturally within the civilization and environment of an alien country." 274 U.S. 657, 667 (1927).

[2] INA sec. 301(g).

[3] The adoption must meet the requirements of sections 101(b)(1)(E) or (F) of the INA.

- if the citizen parent has not been physically present in the United States for a period or periods totaling not less than 5 years, at least two of which were after attaining the age of 14, then 1) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or 2) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least two of which were after attaining the age of 14.[4]

The child must then take and subscribe to the oath of allegiance required of an applicant for naturalization unless the Attorney General waives this requirement upon finding that the child is unable to understand the oath's meaning.[5] The child will then receive a certificate of naturalization.

The INA also provides two mechanisms for conferring automatic citizenship on an alien child when an alien parent naturalizes. First, if a child is born overseas to a U.S. citizen parent and an alien parent, and the alien parent later naturalizes, the child automatically becomes a citizen if two conditions are met: (1) the parent's naturalization occurs when the child is under 18 and (2) the child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the parent's naturalization or thereafter and begins to reside permanently in the United States while under 18.[6] This provision applies only to an adopted child who is residing in the United States pursuant to a lawful admission for permanent residence in the custody of the adoptive parents at the time of naturalization of the adoptive parent.[7]

Second, if both parents are aliens (or one is an alien and the other has lost his or her U.S. citizenship), the child automatically becomes a citizen when:

- both parents naturalize *or* the surviving parent naturalizes *or* the parent with legal custody of the child pursuant to a legal separation naturalizes *or* the mother naturalizes if the child was born out of wedlock (and paternity has not been established by legitimization),
- the naturalization takes place when the child is under 18, and
- the child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized or thereafter begins to reside permanently in the United States while under 18.[8]

Current law can beneficially be streamlined in a way that will benefit families with foreign-born children while "untangl[ing] the complex and duplicative provisions of the Immigration and Nationality Act relating to citizenship of children."[9] Automatic citizenship for the foreign-born children will spare parents the delays and ex-

[4] INA sec. 322(a).
[5] INA secs. 322(b), 337(a).
[6] INA sec. 320(a).
[7] INA sec. 320(b).
[8] INA sec. 321(a). This provision only applies to an adopted child who is residing in the United States pursuant to a lawful admission for permanent residence in the custody of the adoptive parent(s) at the time of naturalization of the adoptive parent(s). INA sec. 321(b).
[9] Letter from Robert Raben, Assistant Attorney General, U.S. Department of Justice, to Henry J. Hyde, chairman, House Judiciary Committee, at 4 (July 18, 2000).

pense of the process they must currently follow to procure citizenship for their children. This is a particular hardship for parents of adopted children, who have already gone through the costly and cumbersome adoption process with the INS and the State Department. Automatic citizenship would also ensure that children are not deprived of U.S. citizenship because their parents did not realize they had to go through the certificate of citizenship process after bringing the children to the United States.

B. H.R. 2883

The bill as introduced dealt solely with foreign-born adopted children and provided that once brought to the United States by their U.S. citizen parent(s) they would be considered citizens at birth. The Justice Department and State Department have expressed "serious concerns" with this approach, being opposed to the "retroactive" granting of citizenship to adopted children "based entirely on events and conditions occurring after birth."[10] Both agencies have expressed the view that a unilateral redefinition of citizenship at birth would adversely affect U.S. relations with foreign governments and would create inequities between adopted children and other children of U.S. citizens born abroad.

The bill as amended in the Judiciary Committee addresses the administration's concerns. The bill provides for automatic citizenship for foreign-born adopted children when they enter the United States—but not retroactively to birth. The bill provides the same automatic citizenship upon entry for foreign-born children of a U.S. citizen(s) who are not considered citizens at birth under current law. And the bill utilizes this same process for children receiving citizenship on the basis of a parent(s) naturalizing.

The bill provides that a child will automatically become a U.S. citizen when the following conditions are met:

- at least one parent of the child is a citizen of the United States, whether by birth or naturalization,
- the child is under 18, and
- the child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

In the case of an adopted child, the adoption must meet the requirements of current law contained in section 101(b)(1)(E) and (F) of the INA.

The bill further provides that foreign-born children of U.S. parents who are temporarily present in the United States but intend to reside abroad will continue to be eligible to apply for citizenship as they do under current law.

HEARINGS

The committee's Subcommittee on Immigration and Claims held 1 day of hearings on H.R. 2883 on February 17, 2000. Testimony was received from Gerri Ratliff, Director of Business Process and Reengineering Immigration Services Division and Acting Director of the Office of Congressional Relations, U.S. Immigration and Naturalization Service; Edward A. Betancourt, Director of the Office of

[10] Letter from Robert Raben to Lamar Smith, chairman, Subcommittee on Immigration and Claims, House Judiciary Committee (Nov. 22, 1999).

Policy Review and Interagency Liaison, Overseas Citizens Services, Bureau of Consular Affairs, U.S. State Department; Susan Soon-Keum Cox, Vice President of Public Policy and External Affairs, Holt International Children's Services; and Ms. Maureen Evans, Executive Director, Joint Council on International Children's Services.

COMMITTEE CONSIDERATION

On July 11, 2000, the Subcommittee on Immigration and Claims met in open session and ordered favorably reported the bill H.R. 2883 by a voice vote, a quorum being present. On July 26, 2000, the committee met in open session and ordered favorably reported the bill H.R. 2883 with amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

The bill was ordered favorably reported by a voice vote. One amendment was adopted by voice vote. The amendment, offered by Mr. Delahunt, substituted the first four sections of H.R. 3667 for the text of the bill as introduced.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 3(c)(4) of rule XIII of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the committee sets forth, with respect to the H.R. 2883, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 11, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2883, the Child Citizenship Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Democratic Member

H.R. 2883—Child Citizenship Act of 2000.

CBO estimates that enacting H.R. 2883 would have no significant net effect on the federal budget. Because the legislation would affect direct spending, pay-as-you-go procedures would apply. However, we estimate that the additional spending from enacting this legislation would be less than $500,000 a year. H.R. 2883 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act, but it could result in a very small increase in the state share of benefits paid under certain federal entitlement programs.

H.R. 2883 would grant automatic U.S. citizenship to certain foreign-born children under the age of 18 who become permanent U.S. residents. In order to qualify, one of the child's parents would have to be a citizen and meet certain U.S. residence requirements. Under current law, such children may choose to become citizens by filing an application with the Immigration and Naturalization Service (INS) for a certificate of citizenship and paying a $160 fee (the fee is $125 for children adopted overseas).

In fiscal year 1999, CBO estimates that INS collected several million dollars in citizenship fees for foreign-born children and spent roughly the same amount for related administrative costs. Under H.R. 2883, it is not clear how the provision of automatic citizenship would be documented or whether these children would need or desire a certificate of citizenship. CBO expects that fewer children would apply for certificates of citizenship if the bill is enacted, because certificates would no longer be necessary to obtain citizenship. Thus, we estimate that enacting H.R. 2883 would reduce both fee collections and spending by the INS. The resulting net effect on outlays would be negligible.

Because enacting H.R. 2883 would automatically grant citizenship to certain foreign-born children of U.S. citizens, some of these children could receive certain public benefits for which they would not have been eligible as legal permanent residents. CBO estimates that direct spending on benefits for such children would increase by less than $500,000 a year.

On November 4, 1999, CBO transmitted a cost estimate for S. 1485, the Adopted Orphans Citizenship Act, as passed by the Senate on October 26, 1999. That legislation is similar to H.R. 2883 but applied only to certain foreign-born children who are adopted. CBO estimated that the net effect on the federal budget would be insignificant.

The CBO staff contact for this estimate is Mark Grabowicz, who can be reached at 226–2860. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clause 4 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short title

This act may be cited as the "Child Citizenship Act of 2000."

Section 2. Automatic acquisition of citizenship for certain children born outside United States

Section 2(a) of the bill amends section 320 of the Immigration and Nationality Act to provide certain children born outside the United States with automatic U.S. citizenship. Subsection 320(a) provides that a child meeting all of the following conditions automatically becomes a U.S. citizen at the time the conditions are fulfilled:

- at least one parent of the child is a citizen of the United States, whether by birth or naturalization,
- the child is under 18, and
- the child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Subsection 320(b) provides that subsection (a) shall apply to a child adopted by a U.S. citizen parent if the child satisfies the requirements for being a child under section 101(b)(1)(E) or (F).

Subsection 2(b) of the bill makes a clerical amendment.

Section 3. Acquisition of certificate of naturalization for certain children born outside United States

Section 3 of the bill amends section 322 of the INA to provide for the acquisition of certificates of naturalization by certain children born outside of the United States. Subsection 322(a) provides that a parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States, and that the Attorney General shall issue a certificate of naturalization to such parent upon proof (to the satisfaction of the Attorney General), that the following conditions have been fulfilled:

- at least one parent is a citizen of the United States, whether by birth or naturalization,
- the U.S. citizen parent (1) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least two of which were after attaining the age of 14, or (2) has a citizen parent who

has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least two of which were after attaining the age of 14,
- the child is under 18, and
- the child is residing outside of the United States in the legal and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

Subsection 322(b) provides that upon approval of the application (which may be filed from abroad) and upon taking and subscribing before an officer of the Immigration and Naturalization Service within the United States to the oath of allegiance required by the INA of an applicant for naturalization (which may be waived by the Attorney General if in her opinion the child is unable to understand its meaning, as provided in INA sec. 337(a)), the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of naturalization.

Subsection 322(c) provides that subsections (a) and (b) shall apply to a child adopted by a U.S. citizen parent if the child satisfies the requirements for being a child under INS sec. 101(b)(1)(E) or (F).

Subsection 3(b) of the bill makes a clerical amendment.

Section 4. Conforming amendment

Section 4 of the bill repeals section 321 of the INA and items relating to the section in the table of contents.

Section 5. Effective date

Section 5 of the bill provides that it shall take effect 120 days after the date of enactment.

AGENCY VIEWS

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, July 18, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Justice Department on HR 2883, the "Adopted Orphans Citizenship Act." The Department favors measures to streamline the acquisition of United States citizenship by adopted children of United States citizen parents. However, we oppose HR 2883 as currently drafted because: (1) it is inconsistent with long-standing, fundamental principles of United States nationality law; and (2) it would inject confusion and uncertainty into the law. The Department, in close consultation with the Department of State, however, has prepared alternate legislation for consideration, which we believe not only will eliminate the current inequities in the acquisition of citizenship by biological and adopted children but also streamline the citizenship documentation process. The legislation provides for automatic acquisition of citizenship for those children who have been admitted for lawful permanent residence. Much of this legisla-

tion has been introduced as HR 3667 by Representatives Delahunt and Gejdenson. As we stated in testimony presented before the Subcommittee on Immigration and Claims on February 17, 2000, we support the adoption provision in HR 3667.

HR 2883 would make an alien child under the age of 18 years adopted by a United States citizen parent meeting certain physical presence requirements a national and citizen of the United States at birth if the child was physically present in the United States with the citizen parent, was lawfully admitted for permanent residence, and sought documentation as a United States citizen while under the age of 18. By placing this provision in section 301 of the Immigration and Nationality Act ("INA"), HR 2883 attempts to make individuals retroactively citizens "at birth" based entirely on events and conditions occurring after birth. In so doing, HR 2883 confuses the fundamental distinction between the acquisition of citizenship at birth and the acquisition of citizenship through conferral after birth, or "naturalization." Section 101(a)(23) of the INA defines naturalization as "the conferring of nationality of a state upon a person after birth, by any means whatsoever."

A nation may legitimately claim the allegiance of an individual in one of three ways: 1) birth on its soil (*jus soli*); 2) birth to a citizen parent (*jus sanguinis*); or 3) a voluntary choice after birth by a qualifying individual (naturalization). Citizenship by birth is conferred automatically and is not a matter of voluntary choice. HR 2883 attempts to confer citizenship by birth based on later, voluntary actions by the alien or his adoptive parent. In addition to contradicting the statutory definition of naturalization, this would create a legal fiction in which the alien was deemed always to have been a United States citizen. However, this is not so. Neither at the time of the child's birth abroad to alien parents nor at any other time prior to the child's adoption by a United States citizen, did the United States have a legitimate or supportable claim to the allegiance of the child under the customary law of nations.

To claim by later decree that a child who undeniably was a citizen of a foreign state by birth under all applicable fact and law at that time, in fact was a United States citizen from birth could have harmful consequences. Presumably, consistent with HR 2883's provision that the citizenship claim of the United States extends back to the time of the child's birth, the foreign state could conclude that the child never was its citizen. The possible implications of this conclusion—depending on the nation—could reach issues such as possible claims for reimbursement of educational, health care, and other benefits provided to the child before adoption, based upon the mistaken impression that the child was a citizen of that state, particularly if such benefits are not available to that state's citizens temporarily residing in the United States. Alternatively, the foreign state could view a retroactive award of citizenship as an action in derogation of its sovereignty, which would not be conducive to cooperative relations with that country in matters of international adoptions. In other words, the retroactive revocation of the child's foreign citizenship could unfortunately ensue as a result of the retroactive conferral of United States citizenship at birth. In light of the provisions of HR 2883, the United States would be in no position to object to such an action on the part of the foreign state.

The confusion HR 2883 would engender is not justified by any meaningful advantage to foreign-born, adopted children who otherwise would be naturalized upon fulfillment of the necessary conditions. Naturalized citizens of the United States stand upon an equal footing, in terms of their rights and privileges, with native-born citizens. *See, e.g., Schneider* v. *Rusk*, 377 U.S. 163, 165 (1964). The only exception to this principle is the limitation of eligibility for the office of President of the United States to "natural born" citizens in Article II of the Constitution. This clause has never been definitively interpreted by the Supreme Court, and HR 2883 does not and cannot resolve questions as to its meaning, either.

In addition, HR 2883 may in certain instances favor adopted, non-citizen children of United States citizens over biological, non-citizen children of United States citizens (*i.e.*, in that certain adopted children will receive the benefit of citizenship at birth, while biological children, potentially of the same United States citizen parents, would not). For example, if two United States citizen parents, neither of whom has resided in the United States, bore a biological child abroad, under current law that child would not be a United States citizen at birth. The parents would have to immigrate the child to the United States and apply for naturalization before the child could become a United States citizen. Suppose that this same couple, after the birth of the biological child, took up residence in the United States for five years and then adopted an alien child. Under HR 2883, the adopted child would become a United States citizen at birth upon attaining lawful permanent residence while under 18 years of age, while the biological child could never be a citizen at birth.

This retroactive conferral of citizenship on a class of adopted children would also create unacceptable differences between adopted children and other persons who acquire United States citizenship through naturalization. In fact, the proposed legislation would bestow greater benefits upon children with no nexus to the United States at birth than those currently enuring to children born abroad who, while having a United States citizen parent at birth, do not acquire United States citizenship pursuant to the principle of *jus sanguinis*. For example, a child born overseas to a United States citizen parent who is unable to transmit citizenship at birth in accordance either with paragraphs (c), (d), (e), and (g) of section 301 or with paragraphs (a) and (c) of section 309 of the INA, can apply for a certificate of citizenship under section 322 of the INA. Such citizenship does not relate back to the child's birth and is deemed to have been obtained through naturalization.

Similarly, a child born outside of the United States to an alien parent and United States citizen parent who is not capable of transmitting citizenship also conceivably can naturalize as a United States citizen in accordance with section 320 of the INA. Again, the individual acquires citizenship via the naturalization process as set forth in chapter 2 of title III of the INA. Such citizenship only becomes effective at the time of the alien parent's naturalization. We note that adopted children currently are able to take advantage of the provisions of sections 320 and 322.

In November 1999, we forwarded to the Congress alternative draft legislation that we believe untangles the complex and duplicative provisions of the Immigration and Nationality Act relating

to citizenship of children. This legislation eliminates inequities in the current law by creating a standard set of conditions for foreign-born children of United States citizens to acquire citizenship. This legislation also eliminates in most instances the necessity for the Immigration and Naturalization Service to adjudicate applications for children adopted by U.S. citizen parents to become citizens of the United States after having been admitted as lawful permanent residents. This legislation provides for fair treatment of all biological and adopted children in terms of acquisition of United States citizenship. As we indicated above, we support the adoption provision contained in HR 3667, which is substantially similar to the Administration's proposal.

In conclusion, the Department reiterates its support for efforts to streamline the acquisition of United States citizenship by adopted children of United States citizen parents. However, HR 2883 would inject confusion and uncertainty into the law. We would be glad to work with Congress on alternative ways of achieving this goal.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of further assistance. The Office of Management and Budget has advised us that, from the standpoint of the Administration's program, there is no objection to the submission of this letter.

Sincerely,

ROBERT RABEN, *Assistant Attorney General.*

U.S. DEPARTMENT OF STATE,
LEGISLATIVE AFFAIRS,
Washington, DC, July 19, 2000.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This letter presents the views of the Department of State on H.R. 2883, the "Adopted Orphans Citizenship Act." We support the goals of the bill; however, we oppose H.R. 2883 as currently drafted.

We believe the current procedures for naturalizing adopted children pursuant to Title III of Chapter 2 of the Immigration and Nationality Act (INA) can and should be simplified. In this respect, the Department supports the language and approach detailed in H.R. 3667, the "Child Citizenship Act of 2000," introduced by Representatives William Delahunt and Sam Gejdenson which tracks legislation forwarded to the Congress by the Department of Justice in November, 1999.

While we strongly advocate diminishing the procedural burdens placed on adoptive parents in conjunction with securing U.S. citizenship for their children, we believe that any measures toward this end should be taken in the context of Chapter 2, "Nationality Through Naturalization" of Title III. These changes should not be incorporated in Chapter 1, "Nationality At Birth And By Collective Naturalization" of this same title. Citizenship at birth can be conferred whether by birth in the United States (jus soli) or through birth to a U.S. citizen parent or parents able to transmit citizenship (jus sanguinis). According to Section 101(a)(23) of the INA, naturalization is defined as the acquisition of citizenship after birth by any means.

We continue to be of the view that to confer citizenship at birth upon an adoptive child born overseas, as proposed in H.R. 2883, is to engage in a legal and factual fiction that would create unacceptable inequities between adopted children and other persons who acquire U.S. citizenship through naturalization. Citizenship at birth would bestow greater benefits upon children with no nexus to the U.S. at birth than to certain children born abroad who, while having a U.S. citizen parent at birth, do not automatically acquire U.S. citizenship from that parent.

H.R. 2883 would confer U.S. citizenship retroactive to the birth of a child who may have no ties to the United States or any of its citizens at the time of birth. By sharp contrast, under current law, a biological child born to a U.S. citizen parent who lacked the requisite period of physical presence in the United States does not acquire U.S. citizenship at birth despite the existence of the biological relationship to a U.S. citizen at the moment of birth. Moreover, if the biological child is able to qualify for U.S. citizenship subsequent to birth, the conferral of U.S. citizenship is not retroactive to birth but occurs as of the date he or she fills the statutory qualifications of Section 320, 321, or 322 of the INA. Thus, under H.R. 2883, a child with no connection to the U.S. at birth could acquire U.S. citizenship retroactive to birth, whereas a child whose connection to the U.S. exists at birth, but is deemed insufficient by law, cannot.

An additional concern is that a foreign state might view a retroactive award of citizenship as a derogation of its sovereignty, which could cause a lack of cooperation in international adoption.

In conclusion, the Department would be pleased to work with the Congress to ensure the enactment of legislation to facilitate and simplify the naturalization of foreign-born adopted children in a nondiscriminatory manner along the lines proposed by the Department of Justice and Representatives Delahunt and Gejdenson.

Thank you for your consideration of this matter and permitting us to offer our views.

Sincerely,

BARBARA LARKIN, *Assistant Secretary.*

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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TITLE III—NATIONALITY AND NATURALIZATION

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CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

Sec. 310. Naturalization authority.

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[Sec. 320. Children born outside of United States of one alien and one citizen parent.]

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TITLE III—NATIONALITY AND NATURALIZATION

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CHAPTER 2—NATIONALITY THROUGH NATURALIZATION

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[CHILD BORN OUTSIDE OF UNITED STATES OF ONE ALIEN AND ONE CITIZEN PARENT AT TIME OF BIRTH; CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

[SEC. 320. (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when—

[(1) such naturalization takes place while such child is under the age of eighteen years; and

[(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of eighteen years.

[(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.]

CHILDREN BORN OUTSIDE UNITED STATES; CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

SEC. 320. (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).

[CHILD BORN OUTSIDE OF UNITED STATES OF ALIEN PARENT; CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

[SEC. 321. (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subse-

quently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

[(1) The naturalization of both parents; or

[(2) The naturalization of the surviving parent if one of the parents is deceased; or

[(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if

[(4) Such naturalization takes place while such child is under the age of eighteen years; and

[(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

[(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

[CHILD BORN OUTSIDE THE UNITED STATES; APPLICATION FOR CERTIFICATE OF CITIZENSHIP REQUIREMENTS

[SEC. 322. (a) A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:

[(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

[(2) The child is physically present in the United States pursuant to a lawful admission.

[(3) The child is under the age of 18 years and in the legal custody of the citizen parent.

[(4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years (except to the extent that the child is described in clause (ii) of subparagraph (E) or (F) of section 101(b)(1)) and the child meets the requirements for being a child under either of such subparagraphs.

[(5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years—

[(A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

[(B) a citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five

years, at least two of which were after attaining the age of fourteen years.

[(b) Upon approval of the application (which may be filed abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

[(c) Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.]

CHILDREN BORN AND RESIDING OUTSIDE UNITED STATES; CONDITIONS FOR ACQUIRING CERTIFICATE OF NATURALIZATION

SEC. 322. (a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States. The Attorney General shall issue a certificate of naturalization to such parent upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

(1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent—

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the citizen parent, is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of naturalization.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).

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