4.9.1 Scope of Chapter

The 1983 Social Security Amendments and the Railroad Retirement Solvency Act of 1983 require the RRB to establish residence and citizenship for certain beneficiaries.

The Federal taxation provisions of both laws require tax accounting, tax withholding, and tax reporting of RRA annuity payments for United States citizen and nonresident alien (NRA) annuitants. Nonresident annuitants need to establish citizenship and residence for tax purposes. NRAs may need to submit proof of residence to qualify for reduced tax withholding under income tax treaties with the United States. See RCM 4.9.10 for information about citizenship and residence for RRA taxation purposes. At this time, NO other sections in this chapter regarding citizenship and residence, definitions, or proofs are to be used for RRA taxation purposes.

The alien nonpayment provision (section 202(t) of the Social Security Act) requires suspension of benefits to certain aliens who reside outside the U.S for more than six calendar months. In L-83-176, the General Counsel determined that this provision does not apply to the tier I amounts and O/M shares of railroad employee annuitants. For all others first eligible for benefits after 1984, tier I amounts, O/M shares and Medicare benefits must be withheld if these NRA's cannot be exempted as discussed in this chapter.

4.9.2 Definition Of Terms For Alien Payment and Nonpayment Purposes

Do NOT use this section for RRA Taxation Purposes. See RCM 4.9.10 for information about how citizenship and residence affect the taxation of RRA annuity payments. Use this section for alien nonpayment and payment issues.

The following terms appear throughout the chapter:

alien - a foreign-born resident who has not been naturalized and who is still a citizen of a foreign country. An alien is someone who is not a citizen of the 50 U.S., Washington, D.C., Guam, Northern Mariana Islands, or Puerto Rico.

NOTE: Certain U.S. citizens in the Virgin Islands are considered aliens if they did not acquire U.S. citizenship by birth or naturalization in one of the 50 states or Washington, D.C.

citizen - a native or naturalized person who owes allegiance to a government and is entitled to reciprocal protection from it.

domicile - the place a person maintains as a residence and to which the person intends to return even after an extended absence.

dual citizenship - a citizen of more than one country. In a situation where dual citizenship does not involve the U.S. and where a payment may be affected by citizenship status, refer case to P&S-PAS for further instructions.

national - one who owes allegiance to or is under the protection of a nation without regard to the more formal status of citizen or subject.

naturalized - admitted to citizenship.

non-resident alien - an alien residing outside the 50 U.S., Washington, D.C., Guam, or the Northern Mariana Islands.

refugee - a person outside all countries of his nationality who is unable or unwilling (due to fear of being persecuted for his race, religion, nationality, political opinion, or membership in a particular group) to avail himself of those countries' protection.

resident - a person who actually lives in a place as distinguished from a person who temporarily stays there.

resident alien - a foreign born resident who has not been naturalized and who is a citizen of a foreign country who is legally residing in one of the 50 US, Washington, D.C., Guam, or the Northern Mariana Islands.

stateless person - one having no state or lacking the status of a national.

United States - under the alien nonpayment provision, the Fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and America Samoa.

4.9.10 Citizenship and Residence Rules for RRA Taxation Purposes

4.9.10.05 General

Laws pertaining to United States citizenship and residence issues are covered by the Immigration and Nationality Act (INA). The Immigration and Naturalization Service (INS) used to manage the INA. That responsibility is now under the direction of the U.S. Citizenship and Immigration Service (USCIS), a bureau under the Department of Homeland Security.

The information annuitants enter on Form RRB-1001, *Nonresident Questionnaire*, is the primary basis for our determination of whether an individual falls under U.S. citizen tax rules or nonresident alien tax rules. The tax rule determines how Federal income tax withholding applies to annuity payments and the kind of annual RRA tax statement information we release to annuitants and the Internal Revenue Service.

Nonresident individuals who do not establish citizenship and residence for federal taxation purposes, are subject to mandatory United States Federal tax withholding on all or part of their RRA annuity payments.

4.9.10.10 RRA Taxation Citizenship and Residence Rules are Not the Same as Alien Nonpayment Provision Rules

Internal Revenue Service citizenship and residence rules for RRA taxation purposes cited in this section may not agree with determinations for the alien nonpayment provision of the Social Security Act.

A. Alien Nonpayment Provision Considerations

Refer to sections of RCM 4.9 **other than** RCM 4.9.10 for citizenship and residence issues related to alien nonpayment provision considerations. Alien nonpayment provision rules are under the jurisdiction of Policy and Systems' RRA Application and Calculation (RAC) section.

B. RRA Taxation Considerations

Refer to RCM 4.9.10 for citizenship and residence issues for RRA taxation considerations. RRA taxation issues are under the jurisdiction of Policy and Systems' Payment Analysis and Systems (PAS) section.

4.9.10.20 Citizenship

Claims of citizenship should be accepted as stated unless there is a known or suspected conflict with previously submitted information, or if dual citizenship is claimed.

4.9.10.20.05 Citizenship Claim Conflicts

A. From information on Form RRB-1001, *Nonresident Questionnaire*

Conflicts can be determined from information on Form RRB-1001, and by comparing information on Form RRB-1001 with TAS information available on the Online Form RRB-1001/RRB-1001 Buff screen. See TOM 210.75.25, Returned Forms RRB-1001 White - Review for Country of Citizenship Claims, Section 3, Item1, for examples.

B. From Information on the Imaging System or in the Claim Folder

Conflicts can also exist if information on the Imaging system or in the claim folder is inconsistent with information on an incoming Form RRB-1001.

4.9.10.20.10 Claims of Dual Citizenship

A. One of the Countries is the United States

If an individual claims dual citizenship and one of the countries is the United States, consider the individual to be a United States citizen. United States citizenship takes priority over a second claimed country of citizenship.

For individuals entering Form RRB-1001 citizenship information into the Taxation Accounting System, receipt date the form, process the form entering “US” citizenship into the online process, image the form, and forward a copy of the form to TCIS-TS requesting handling of the second claimed country of citizenship.

B. Neither of the Countries is the United States

For individuals entering Form RRB-1001 citizenship information into the Taxation Accounting System, receipt date the form, image the form, and forward a copy of the form to TCIS-TS for handling.

4.9.10.30 Residence

Claims of residence may or may not be accepted as submitted.

4.9.10.30.05 When Proof of Residence for Taxation Purposes is Required

See TOM 210.75.35, Returned Forms RRB-1001 White and RRB-1001 Buff - When Proof of Residence for Tax Purposes is Required. That section lists five situations in which proof of residence is required to establish an applicant’s or annuitant’s claimed country of residence for RRA taxation purposes. The most common situation is when an individual claims to be a legal resident for tax purposes of a country other than the country in his or her mailing address.

A. When Claimed Residence in the United States Requires Proof

1. An Alien of the United States Physically Present in the United States Claims United States Residence

An alien of the United States who is physically present in the United States may be either a resident alien who qualifies under U.S. citizen tax rules **OR** a nonresident alien who qualifies under nonresident alien tax rules. Although physically present in the United States, this individual must prove United States residence as claimed. See RCM 4.9.10.30.10.A, Proofs for Aliens of the United States Claiming Residence in the United States.

2. An Alien of the United States Physically Present Outside the United States Claims United States Residence

An alien of the United States who is physically present outside the United States may be either a resident alien who qualifies under U.S. citizen tax rules **OR** a nonresident alien who qualified under nonresident alien tax rules. This individual must prove United States residence as claimed. The claimed country of residence does not match the country in the mailing address. See RCM 4.9.10.30.10.A, Proofs for Aliens of the United States Claiming Residence in the United States.

3. **A Citizen of the United States Physically Present Outside the United States Claims United States Residence**

   This individual must prove residence in the United States. The claimed country of residence does not match the country in the mailing address. See RCM 4.9.10.30.10.C, Proofs for Nonresident Citizens of the United States Claiming United States Residence **OR** for Nonresident Aliens Claiming Residence in Non-Tax Treaty Countries But Physically Residing Elsewhere.

B. When Claimed Residence Outside the United States Requires Proof

1. **An Alien of the United States Claims Residence Outside the United States in a Tax Treaty Country that is NOT the Country in His or Her Mailing Address**

   This individual must prove residence in the tax treaty country as claimed. The claimed country of residence does not match the country in the mailing address. See RCM 4.9.10.30.10.B, Proofs for Nonresident Aliens Claiming Residence in Tax Treaty Countries, But Physically Residing Elsewhere.

2. **A Citizen of the United States Physically Present in the United States Claims Residence Outside the United States**

   This individual must prove residence in the country claimed. The claimed country of residence does not match the country in the mailing address. See RCM 4.9.10.30.10.C, Proofs for Nonresident Citizens of the United States Claiming United States Residence **OR** for Nonresident Aliens Claiming Residence in Non-Tax Treaty Countries But Physically Residing Elsewhere.

4.9.10.30.10 Proofs of Residence

Internal Revenue Service (IRS) Publication 519, U.S. Tax Guide for Aliens, provides guidance for determining if an alien residing in the United States is a resident alien or nonresident alien for tax purposes. IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, provides guidance for determining if an alien residing in a foreign country may claim residence in a different country which has an income tax treaty with the United States. Publication 515 also provides general requirements for proofs of residence. The IRS changes these rules from time to time,

so always refer to the latest versions of IRS Publication 519 and IRS Publication 515 to be sure you are using current guidelines for proof of residence.

A. Proofs for Aliens of the United States Claiming Residence in the United States

1. Lawful Permanent Residence Cards/Green Card Test

Lawful Permanent Residence Cards, also called Green Cards, establish lawful residence in the United States for up to a 10 year period. A Green Card without a date or with an expired date is not valid. An alien using a Green Card to establish U.S. resident alien status, must present **an original Form I-551 containing a future expiration date** to establish U.S. residence.

a. INS Green Cards are Forms I-551, Alien Registration Receipt Cards

Form I-551, Alien Registration Receipt Cards, was issued by the Immigration and Naturalization Service (INS). Alien Registration Receipt Cards are predecessors to Lawful Permanent Residence Cards.

b. USCIS Green Cards are Forms I-551, Lawful Permanent Residence Cards

Form I-551, Lawful Permanent Residence Cards, is issued by the U.S. Citizenship and Immigration Service (USCIS). They contain expiration dates. A Form I-551 without a future expiration date is not valid.

2. Substantial Physical Presence Test

An alien may establish lawful resident alien status by passing the IRS' substantial physical presence in the United States test as described in IRS Publication 519, U.S. Tax Guide for Aliens.

B. Proofs for Nonresident Aliens Claiming Residence in Tax Treaty Countries, But Physically Residing Elsewhere

These individuals must prove residence as claimed because the claimed country of residence does not match the country in the mailing address. Additionally, the Internal Revenue Service has specific rules for proofs of residence in a tax treaty country in which the individual does not regularly reside. The proof should be:

1. Issued by a Tax Official of the Tax Treaty Country of Which the Foreign Beneficial Owner (the Applicant/Annuitant) Claims to be a Resident.

   AND

2. States That the Person Has Filed His or Her Most Recent Income Tax Return as a Resident of That Country and the Tax Return Identifies the Individual as a Resident of That Country.

Filing an income tax return with a country does not prove residence in that country. A country may tax both residents and nonresidents of the country who receive taxable income from that country. An income tax return must specifically identify the individual as a resident of the country with which the tax return is filed if the tax return is to be used as proof of residence.

AND

3. Is issued Within 3 Years Prior to Being Presented to the RRB.

C. Proofs for Nonresident Citizens of the United States Claiming United States Residence OR for Nonresident Aliens Claiming Residence in Non-Tax Treaty Countries But Physically Residing Elsewhere

These individuals must prove residence as claimed because the claimed country of residence does not match the country in the mailing address. General proofs or certificates of residence for these situations must:

1. Include the Individual's Name, Address, and Photograph.

AND

2. Is an Official Document Issued By an Authorized Governmental Body.

AND

3. Is Issued No More Than 3 Years Prior to Being Presented to the RRB.

NOTE: Field office personnel who are not comfortable making country of residence determinations for RRA taxation purposes using rules in IRS Publication 519, U.S. Tax Guide for Aliens, or IRS Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities, may send date receipted but unprocessed Forms RRB-1001 to the Tax, Clerical, and Imaging Section–Tax Section (TCIS-TS) for handling.

4.9.11 Aliens Claiming U.S. Residence h

This section is NOT to be used for RRA taxation purposes.

While the RRB will not attempt to locate aliens within the U.S., some will be brought to our attention. Field office personnel are instructed to develop Form RRB-1001 when they believe a beneficiary is a citizen or resident of another country, even if the beneficiary's mailing address is within the U.S. An alien who has entered the U.S. on a six-month visitor's visa or who has been permitted to enter the U.S. temporarily for work purposes is not considered a resident.

An alien who was not lawfully admitted to the U.S. will be considered a nonresident alien who loses his or her resident status when he or she leaves the U.S. He or she will

be considered a nonresident alien until such time as he or she may return to this country and submits evidence of his or her U.S. resident status (see RCM 4.9.13.)

An alien who has lawfully acquired U.S. resident status retains this status until he leaves the U.S. and abandons his residence. As a general rule, he can retain his resident status for up to one year, but loses his U.S. resident status after that period unless he obtains a reentry permit.

While a temporary visit abroad usually does not result in the loss of U.S. resident status, a trip for an extended period (e.g., more than six months) would generally not be considered temporary unless there is evidence of a more or less permanent attachment to an abode in the U.S. and an intention to return and make a home in the U.S. For example, the maintenance of a bank account in the U.S. or the ownership of property for investment purposes does not establish U.S. resident status. However, evidence that the beneficiary has secured a reentry permit indicating that he would be traveling in Europe for eighteen months would establish intention of retaining U.S. resident status. Generally, an individual who lives in two countries (e.g., Mexico and the U.S.) will be considered a resident of the one in which he maintains his home and family.

4.9.12 When Proof Of Residence Is Required

This section is NOT to be used for RRA taxation purposes.

A. Change of Address to U.S.

For the purpose of establishing U.S. residence, a period of residence begins on the day the beneficiary arrives in one of the fifty States or the District of Columbia with the intention of establishing at least a temporary home here. Mere presence in the U.S. is not enough to establish the beneficiary as a resident.

B. Different Countries in Mailing and Home Addresses

The RRB requires proof of residence when an individual claims his country of residence is not the same as the country in his mailing address.

4.9.13 Acceptable Proofs

This section is NOT to be used for RRA taxation purposes.

Acceptable proofs of residence must be valid for the period of time for which residence must be verified. This means that the date of issue is within one year of the period of residence in question. In addition, in order to establish continued residency, it will be necessary to note the date the proofs expire and code a call-up to secure an updated proof of residence, if necessary.

Acceptable proofs of residence are:

A. <u>In The United States</u>

1. A valid Alien Registration Receipt Card ("Green Card"),I-151 or I-551. If the individual has been outside the U.S. for more than a year, he must furnish an additional proof as listed below.

   The Green Card is not sufficient proof of residence for an individual using an address in Guam, The Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands.

2. A Reentry Permit, I-132. Whether first-issues or renewed, the permit is valid for one year.

3. A U.S. federal income tax return for the most recent tax year (see "Note" below). This can be a photocopy and does not need to be certified by IRS.

4. A refugee travel document issued by the U.S.

5. An Application to Retain U.S. Residence..., Immigration and Naturalization Service (INS) Form N-470. A photocopy of this application is acceptable.

6. Notice of Approval of Application to Preserve Residence, INS form N-472.

7. Proof of filing of a declaration intent to become a U.S. citizen under the naturalization laws. This would probably be a stamped document (form letter I-181, a passport, or Form I-94 processed for I-551 temporary evidence.

8. Other evidence showing the individual has a current attachment to the U.S. and intends to return to make the U.S. his home.

   NOTE: The following evidence does not establish U.S. resident status:

   1. AR-3, Alien Fingerprint Receipt Card.
   2. I-94, Arrival-Departure Record.
   3. I-95 (or-I95A), Crewmen Landing Permit.
   4. I-100C, Alien Laborer Permit.
   5. I-184, Crewmen Landing Permit and Identification Card.
   6. I-185, Nonresident Alien Canadian Border Crossing Card.
   7. I-186, Nonresident Alien Mexican Border Crossing Card.
   8. I-444, Mexican Border Visitor Permit

9. I-586, Border Crossing Card.

10. IRS Form 104ONR, Nonresident Alien Tax Return.

B. In Other Countries

Generally, any evidence that establishes that the country is the country of residence may be accepted. Some examples are:

1. an identification or voter's registration card issued by the government of the foreign country;

2. a record of current eligibility for government health or welfare programs;

3. a tax record for the prior year;

4. a current passport;

5. a recent bill for public utilities;

6. a library card with an address in that country.

When district office personnel doubt the acceptability of the proof of residence, they will forward a copy of the evidence to BRC.

4.9.20 Alien Nonpayment Provisions

A. Auxiliary Annuitants And Ineligible Persons Included (IPI's)

Under the alien nonpayment provision, spouse, child, student, and survivor beneficiaries who reside outside the U.S. more than 6 full consecutive calendar months are not due tier 1, Overall Minimum (O/M) guaranty amounts, or Medicare benefits with the following exceptions:

- U.S. citizens and nationals (see RCM 4.9.21);
- Beneficiaries who initially became eligible for benefits before 1-1-85 (see RCM 4.9.22);
- Beneficiaries exempted under Totalization agreements with the U.S. that is, citizens and residents, unless exempted, of Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, South Korea, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Always check the Social Security Administration's website, www.ssa.gov/international/agreement, for updates to the list of agreements prior to applying the Alien Nonpayment Provision to make sure that the country, in question, has not established a Totalization agreement with the U. S. (see RCM 4.9.23.)

- Beneficiaries exempted under treaty obligations of the U.S. (citizens of Germany, Greece, Ireland, Israel, Italy, Japan, and the Netherlands (survivors only.) (see RCM 4.9.24);

- Beneficiaries entitled on the account of an employee who died in the U.S. military service or as a result of a service connected disease or injury (see RCM 4.9.25);

- Beneficiaries who resided in the U. S. for 5 years, while maintaining the same family relationship on which benefits are now based (see RCM 4.9.26).

Spouses and survivors will continue to receive tier 2 even if their tier 1 is withheld under this provision.

B. Auxiliary Medicare Beneficiaries

1. General - If an alien meeting no exception in A above is absent from the U.S. for six full consecutive months preceding the month of treatment or service, he may not be paid under Medicare hospital or medical insurance, even if the treatment was received in the U.S. If the alien was present in the U.S. for the entire month in which treatment was received, or if he meets an exemption to the alien nonpayment provision, Medicare benefits may be paid.

2. Examiner Action Required - Examiners handling either the withholding or the reinstatement of annuity payments under the alien nonpayment provision must consider the effect on Medicare as well. If the alien is eligible for Medicare, refer the case to the Medicare Section. MS will earmark the Health Insurance Utilization Master to prevent payment by the Part B carrier.

   NOTE: An annuitant may be entitled to hospital insurance even if he refused supplementary medical insurance. Refer appropriate cases to MS even if the SMI code is "3".

4.9.21 Exemption For Employees, U.S. Citizens And Nationals

Regardless of their country of residence, employee annuitants, U.S. citizens and U.S. nationals are exempt from the alien nonpayment provision. (See RCM 4.9.101 ff. for evidence requirements.)

4.9.22 Exemption For Beneficiaries Eligible Before 1985

The alien nonpayment provision does not apply to any person first eligible for a tier 1 or O/M share before 1-1-85

To be eligible for tier 1, a person need not file an application nor cease railroad or last person service but must meet all other requirements for entitlement (e.g., relationship, etc.) To be eligible for the O/M, a person must actually be included in the computations.

A person who becomes eligible for tier 1 or the O/M after 1984 can still meet this exception if he was previously eligible on the same earnings record before 1985.

4.9.23 Exemption Under Totalization Agreements

Totalization agreements are international social security agreements. In addition to coordinating employment coverage, these agreements provide exceptions to the alien nonpayment provision. Information on these agreements can be found at http://www.ssa.gov/international/agreement_descriptions.html. Check the listings on this Social Security website before applying the alien nonpayment provision to any RRB annuitant. Report any changes to Policy and Systems – RAC.

The following countries have Totalization agreements with the U.S.: Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, South Korea, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Beneficiaries covered by agreements with these countries are not subject to the loss of tier 1 or O/M share under the alien nonpayment provision:

Country	**Effective Date**	
Australia	October 1, 2002	Individuals may receive benefits as long as they reside in Australia regardless of their nationality.
Austria	November 1, 1991	A U.S. or Austrian citizen, a refugee, a stateless person, or a person who is eligible for dependents or survivors benefits based on the Social Security record of one of these persons, may receive benefits as long as they reside in Austria.
Belgium	July 1, 1984	U.S. or Belgian nationals, refugees, or stateless persons and auxiliary or survivor beneficiaries who derive rights from these individuals may receive benefits as long as they reside in Belgium.
Canada	August 1, 1984	Individuals may receive benefits as long as they reside in Canada regardless of their nationality.
Chile	December 1, 2001	Individuals may receive benefits as long as they reside in Chile regardless of their nationality.

Czech Republic	January 1, 2009	Individuals may receive benefits as long as they reside in Czech Republic regardless of their nationality.
Denmark	October 1, 2008	Individuals may receive benefits as long as they reside in Denmark regardless of their nationality.
Finland	November 1, 1992	Individuals may receive benefits as long as they reside in Finland regardless of their nationality.
France	July 1, 1998	Individuals may receive benefits as long as they reside in France regardless of their nationality.
Germany	December 1, 1979	U.S. or German nationals, refugees, or stateless persons and auxiliary or survivor beneficiaries who derive rights from these individuals may receive benefits as long as they reside in Germany.
Greece	September 1, 1994	Individuals may receive benefits as long as they reside in Greece regardless of their nationality.
Ireland	September 1, 1993	Individuals may receive benefits as long as they reside in Ireland regardless of their nationality.
Italy	November 1, 1978	Individuals may receive benefits as long as they reside in Italy regardless of their nationality.
Japan	October 1, 2005	Individuals may receive benefits as long as they reside in Japan regardless of their nationality.
South Korea	April 1, 2001	Individuals may receive benefits as long as they reside in South Korea regardless of their nationality.
Luxembourg	November 1, 1993	Individuals may receive benefits as long as they reside in Luxembourg regardless of their nationality.

Netherlands	November 1, 1990	Individuals may receive benefits as long as they reside in Netherlands regardless of their nationality.
Norway	July 1, 1984	U.S. or Norwegian nationals, refugees, or stateless persons and auxiliary or survivor beneficiaries who derive rights from these individuals may receive benefits as long as they reside in Norway.
Poland	March 1, 2009	Individuals may receive benefits as long as they reside in Poland regardless of their nationality.
Portugal	August 1, 1989	Individuals may receive benefits as long as they reside in Portugal regardless of their nationality.
Spain	April 1, 1988	Individuals may receive benefits as long as they reside in Spain regardless of their nationality.
Sweden	January 1, 1987	Swedish nationals, refugees, or stateless persons and auxiliary or survivor beneficiaries who derive rights from these individuals may receive benefits as long as they reside in Sweden.
Switzerland	November 1, 1980	Swiss nationals, refugees, or stateless persons and auxiliary or survivor beneficiaries who derive rights from these individuals may receive benefits as long as they reside in Switzerland.
The United Kingdom	January 1, 1985	➢ Individuals may receive benefits as long as they reside in the United Kingdom regardless of their nationality. This includes England, Scotland, Wales, Northern Ireland, Isle of Man, and the Islands of Jersey, Guernsey, Alderney, Hern, and Jethou. Note: For tax treaty purposes, the United Kingdom includes only England, Scotland, Wales, and Northern Ireland.

Evidence requirements for the above are discussed in this chapter as follows:

- Citizenship – see RCM 4.9.100 and RCM 4.9.112.
- Stateless – see RCM 4.9.111.
- Residence – see RCM 4.9.70 and RCM 4.9.71.

4.9.24 Alien Nonpayment Provision Treaty Exemption

The alien nonpayment provisions do not affect benefits or beneficiaries who are citizens or national of countries which had, on August 1, 1956, treaties in effect with the U.S. providing for reciprocal payment of benefits to the nationals of each country.

The U.S. had, on August 1, 1956, treaties of Friendship, Commerce, and Navigation in effect with eight countries that provide for equal treatment by the U.S. and the foreign governments of nationals of both countries with respect to social security benefits. These countries are: Federal Republic of Germany (West Germany), Greece, Republic of Ireland, Israel, Italy, Japan, and the Kingdom of the Netherlands (including the Netherlands Antilles.)

Except for the treaty with the Netherlands, which limits equal treatment to survivor beneficiaries, the citizens of these countries will be paid monthly benefits, if otherwise entitled, despite any extended absence from the U.S. and regardless of whether they are living inside or outside the countries of which they are citizens.

Evidence requirements for citizenship are discussed in RCM 4.9.100 and 4.9.112. Special situations involving Germany and the Netherlands are discussed in RCM 4.9.107 B and C, respectively.

4.9.25 Deceased Veteran's Exemption

The alien nonpayment provision does not apply to survivor benefits if the employee died:

1. while on active duty, or while on inactive duty training as a member of the uniformed service of the U.S.; or

2. as a result of a service connected disease or injury, if the employee's discharge or release from service was under conditions other than dishonorable.

The Veterans Administration must certify the facts in 2 above before we can consider this exception.

4.9.26 Five Year Family Relationship And Residence Exemption

A beneficiary may meet an exemption under the alien nonpayment provision by living in the U.S. for at least five years. During that period, the beneficiary must have maintained the family relationship on which benefits are now based. Evidence requirements are discussed in RCM 4.9.70.

A. A spouse or surviving spouse meets the requirement if there was a total residence period of five years in the U.S. in which the beneficiary had a spousal relationship to the employee (i.e., as a wife or husband, widow or widower, divorced wife or divorced husband, surviving divorced wife or surviving divorced husband, surviving divorced mother or surviving divorced father, or a combination of the above.) The period of residence does not have to be continuous.

If a surviving spouse remarries before completing the five-year residence period, the spouse can still continue to complete the period as long as eligibility for benefits is not affected.

Example 1: A surviving divorced spouse lived Panama until remarrying at age 61. By moving to the U.S., she could eventually complete the five-year relationship and residence requirement. The remarriage does not affect her potential entitlement to a surviving divorced spouse's tier 1.

Example 2: A non-disabled widow lived in Peru until age 55. She remarried and then moved to the U.S. She did not qualify for an annuity until her second husband died eight years later.

Her years of remarriage may not be included as part of the required five year period because the widow did not maintain a spousal relationship with employee. The relationship and residence requirement could be met only if the widow remained unmarried in the U.S. for a total of five years.

B. A child meets the residence requirement if:

1. he resided in the U.S. as the employee's child for at least five years; or

2. the employee and the child's "other parent" (see D below) resided in the U.S. for at least five years; or

3. the employee and the child's "other parent" (see D below) died while residing in the U.S. Since by definition the "other parent" must be living, this refers only to the death of the railroad employee thus enabling surviving children, who could not meet the five year residence requirement on their own, to be deemed to meet it; or

4. in the case of an adopted child, he was adopted in the U.S. by the employee and lived in the U.S. with the employee and received one-half his support from the employee for a period (beginning before the child attained age 18) consisting of:

   a. the year immediately before the month in which the employee became eligible for a RIB/DIB or died, whichever is earlier; or

   b. the year before the month the employee's period of disability began, if the period continued until the employee became entitled to a RIB/DIB or died.

NOTE: The relationship in 1 through 4 above must exist at the time the child becomes entitled to benefits. A subsequent change in parental status would not affect the child's status under the alien nonpayment provision.

C. A parent meets the residence requirement if he resided in the U.S. as the employee's parent for at least five years.

D. For the purposes of this provision, "other parent" on B above means, any living parent who is the opposite sex of the railroad employee and who is either the adoptive parent by whom the child was adopted before the child attained age 16 and who is or was the spouse of the railroad employee on whose record the child is entitled; the natural parent of the child; or the step-parent of the child by a marriage, contracted before the child attained age 16, to the natural or adopting parent on whose earnings record the child is eligible.

Generally speaking, determining the "other parent" presents no problem when there is only the employee and one other parent. However, in some situations involving a step-relationship or an adoptive relationship, for example, there may be additional parents. In such situations, as long as a child has one "other parent" who meets the 5-year U.S. residence requirement, the child is exempt from the alien nonpayment provision. Considerations such as with which parent the child actually resides, which parent contributes the most financial support or which parent has custody are immaterial.

If information indicates multiple "other parents" exist, and there is information which indicates the existence and whereabouts of a parent who meets the residency requirement, explain to the individual filing on behalf of the child that it will be necessary to establish that the parent resided in the U.S. for 5 years. Explain that allegations concerning the length of a period of residence must be supported by documentation.

A lead indicating that the other parent is alive, but with no specific information regarding the person's whereabouts (e.g., the employee's statement that his former wife - the child's natural mother - "lives somewhere in the U.S."), need not be pursued. Applicants are responsible for providing evidence in support of their

claims. In such cases, explain to the applicant what evidence is required, and why, and that failure to submit such evidence will result in withholding of benefits to the child.

4.9.30 Applicability

An alien who meets no exception to the nonpayment provision will have his or her tier 1, O/M share, or Medicare benefits withheld after he had been outside the U.S. for six full consecutive calendar months. The six-month period of continued payment does not apply to an alien who begins residing in a restricted country. (See RCM 8.1.14.)

Under the alien nonpayment provision, the U.S. includes the Fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa.

Note that the IRS defines the U.S. differently; under taxation provisions, the U.S. is limited to the Fifty States and the District of Columbia.

4.9.31 Determine Absence Of Six Full Consecutive Calendar Months

In determining whether an alien has been outside the U.S. for six full consecutive calendar months, check no further back than to the last day of the seventh month before the first months of entitlement to tier 1 or the O/M share.

An alien begins a period of absence once he has been outside the U.S. for thirty consecutive days. Measure the six-month period of absence from the first day of the first full month of absence. Don't interrupt your count of the six month period if the alien returns to the U.S. for less than thirty days; once an alien has been outside the U.S. for thirty consecutive days, he will not be considered to have returned until he has spent thirty consecutive days in the U.S.

If by the seventh month the alien has not returned to the U.S., his tier 1 O/M share must be withheld. At this point, payment may not be resumed until the alien has spent an entire calendar month in the U.S.

EXAMPLE 1

A widow meeting no exception to the alien nonpayment provision leaves the U.S. to visit the Dominican Republic. Her trips are as follows:

Leaves U.S.	2-10-85
Returns	3-5-85
Leaves U.S	3-9-85
Returns	6-4-85
Leaves U.S.	7-1-85

Her first trip is not considered a period of absence because she did not remain outside the U.S. for thirty consecutive days. But her second departure begins a period of absence that is not interrupted by her visit to the U.S. for part of June. Unless she returns to the U.S. and remains for thirty consecutive days before the end of September, her tier I would be withheld effective October 1, 1985.

EXAMPLE 2

An alien has resided in Yemen since birth. He visits the U.S. for one day in July 1985 and files an application for a spouse annuity. His first month of entitlement to tier 1 is August 1985. He is considered to have been outside the U.S. for the six-month period from February through July 1985 and is therefore subject to the alien nonpayment provision. He would not be paid tier 1 unless he was to spend the full month of August in the U.S.

4.9.32 Thirty Days vs. Calendar Month

There is a distinction between the thirty consecutive day period and a full calendar month that particularly applies to the month of February. Since that month has less than thirty days, an alien's presence in the U.S. for the entire month of February would not interrupt a six-month period of absence.

A "full calendar month" means all of the first day through all of the last day of a month. A presence of "thirty consecutive days" means presence for 24 hours each day in a consecutive thirty-day period.

4.9.33 When Evidence Of Presence In The U.S. Is Required

A. General

When an alien alleges presence in the U.S., and it is material in applying the alien nonpayment provisions, he must submit proof of such presence except as provided in C and D below. Generally, proof is necessary if the alien is or has been outside the U.S. and is alleging a return to this country, or where the exact month of his departure from the U.S. is in doubt. Where proof is necessary, obtain it in accordance with the RCM 4.9.34.

B. Alien Residing Outside the U.S.

If an alien residing outside the U.S. alleges presence in the U.S. sometime during the six month period before his first month of entitlement to tier 1 or an O/M share, or if he claims presence at a subsequent time, he must furnish proof of this presence if it is material to the claim.

C. Alien Residing In The U.S.

If an alien residing in the U.S. alleges presence in the U.S. throughout the entire retroactive period of his application, proof of such presence is not needed.

If he alleges he was outside the U.S. at any time during the retroactive period, then proof of his presence in the U.S., where material, must be obtained. So long as the alien continues to reside within the U.S., his presence here may be assumed for future months in the absence of an indication to the contrary.

D. Alien Changes Address To Foreign Country

If an alien beneficiary requests a change of address from one in the U.S. to one outside the U.S., and the request was mailed in the U.S., presence in the U.S. may be assumed through the month the request was mailed. If the request was mailed from a foreign country, the beneficiary must indicate the month and year of his departure from the U.S., if material. Such allegations may be accepted without proof unless circumstances in a particular case raise doubts.

E. Alien Changes Address To The U.S.

If an alien beneficiary notifies us of a change of address from a foreign country to the U.S., proof of the month of entry into the U.S. must be obtained where material. If payments have been withheld under the alien nonpayment provision, proof of continuous presence for a full calendar month must be obtained before payments can be resumed.

In addition to the above, a verification of physical presence in the U.S. is required in any case in which a beneficiary reports a return to the U.S. with an "in care of" address or the beneficiary was previously in a restricted country. Verification of physical presence in the U.S. requires actual contact with the beneficiary in person.

F. EET Payment Going To Address in the U.S. but Alien May Be Living Outside U.S.

If an annuity is being paid to a financial institution in the U.S., but it appears that the annuitant is living outside the U.S. (i.e., return address on letter or postmark on letter shows a foreign country), it will be necessary to develop further per RCM 4.9.34 either through the appropriate field office or directly from headquarters.

4.9.34 Acceptable Evidence Of Presence

A. Definition of Presence In the U.S.

Proof of presence in the U.S. (B below) may be required to interrupt the running of a six month period of absence which would cause withholding. Where benefits have

been withheld, the beneficiary must prove continuous presence in the U.S. for one full calendar month (C below) before full benefits can be resumed.

Presence in the U.S. means physical presence and not legal residence of domicile. Thus, establish presence, an alien need not show intent to make a permanent or temporary home here. Any documentary evidence, which reasonably establishes the alien's physical presence in the U.S. during a particular period, will constitute proof of presence in the U.S.

B. Evidence to Establish Presence In The U.S.

The following types of evidence may be used to establish the fact of an alien's presence in the U.S. to interrupt the running of a six-month period of absence. Any type of evidence on the list is acceptable if it is convincing under the circumstances of the particular case:

D/O report of contact with the beneficiary in person at some point in the U.S. during the month in question.

Alien Registration Card I-151 or I-551 certifying the date of the alien's admission into the U.S. as a permanent resident.

Official visa, passport, or entry permit verifying the alien beneficiary's month of arrival in this country.

U.S. Post Office receipts, if signed by the beneficiary and dated; registered mail addressed to the beneficiary at a U.S. address and received there by him on a certain date. (Postcards of letters signed by the beneficiary and bearing a U.S. postmark are not by themselves satisfactory evidence, since they could have been signed outside the U.S. and mailed in the U.S. by someone else.)

Other documents issued to and signed by the beneficiary which establishes his physical presence in the U.S. at a certain time, such as hotel or motel receipts issued to the beneficiary, receipts for credit purchases issued by a service station or store in the U.S. and signed by the beneficiary, application for licenses or permits filed by the beneficiary at a place in the U.S., reports or medical examinations of the beneficiary made in the U.S., or the like.

Other probative evidence; e.g., signed statements from one or more U.S. residents attesting to the beneficiary's presence in the U.S. at a particular time, giving their address, and stating the basis for their knowledge.

C. Evidence To Establish Continuous Presence In The U.S. For A Full Calendar Month

Proof of continuous presence throughout a full calendar month to qualify for resumption of payment requires more evidence than mere proof of the fact of

presence as in B above. Where continuous presence for a full calendar month must be proved, obtain the following evidence:

1. a signed statement from the alien beneficiary giving the date he entered the U.S. and the place at which he stayed while in this country during the first full month, and affirming that he did not go outside the U.S. at any time during such month; and

2. signed statements from one or more U.S. residents having knowledge of the alien beneficiary's presence in the U.S. to corroborate his presence during the month in question. A statement from the person who furnished the alien beneficiary lodging throughout the month is question is preferable. Statements from employers, clergymen, neighbors, or anyone else likely to have knowledge of the alien beneficiary's presence in this country are also acceptable. Persons providing corroborative statements must give their addresses, and must indicate the basis for their knowledge.

If a beneficiary was present in the U.S. for all but a few hours of the first or last day of a month, he would not establish presence for the full month.

4.9.35 Actions Required Upon Receipt Of Evidence Of Presence

When an alien beneficiary going outside the U.S. meets no exception to the alien nonpayment provision, he must submit evidence of presence in the United States every thirty days to avoid having his tier 1 or O/M share withheld at the end of six months. Once he has been outside the U.S. for thirty full consecutive days, evidence of his presence in the United States for thirty consecutive days will be required to interrupt the running of a six month period of absence which would cause withholding.

A. If proof of presence is a report indicating that the beneficiary is coming into the United States each month (and there has been no break in reporting every thirty days), set a thirty day dormant call-up.

   If there has been a break in reporting every thirty days, set a six-month tickler call-up for nonpayment, and send the folder to claim files.

B. If proof of presence is to establish presence in the United States for thirty consecutive days before the six month period of absence expires, set a tickler call-up for nonpayment at the end of the next six month period and return the folder to claim files.

C. If you receive proof of presence after withholding tier 1 or O/M benefits, restore full benefits effective with the first full month of presence in the U.S.

NOTE: The actions above are taken if the case requires no other action and the proofs are good evidence. Such evidence could be signed statement received through the D/O's with a report of contact confirming the monthly entry of the person in the United

States. Proof of "thirty consecutive days" and "one full calendar month" must establish beyond a doubt the date the beneficiary entered the United States and the fact that he was still here at the end of the required time.

4.9.70 Establishing Residence In The U.S.

A. Period of Residence - A period of residence begins when an individual physically arrives in the U.S. with the intention or establishing at least a temporary home here. The period ends when the individual leaves the U.S. with the intention to reside elsewhere. Residence outside the U.S. (e.g., on a U.S. military base) does not satisfy the U.S. residence requirement.

While an individual's statement about his intent to reside in the U.S. is ordinarily acceptable in itself, an allegation concerning the length of a period of residence must be supported by documentation if the five-year family relationship requirement must be developed/established.

For purposes of determining the total period of residence, the period does not have to have been continuous. It is necessary only that the aggregate period(s) residence total 5 full years.

B. Evidence of Residence - The most convincing evidence would indicate that an individual was an active participant in a U.S. community:

a U.S. driver's license;

U.S. income tax returns;

evidence of membership in a church or a social organization;

evidence of home ownership;

utility bills addressed to the individual;

evidence of regular employment or business ownership;

evidence of school enrollment;

clinical records of regular medical or dental treatment;

a document such as a passport or entry permit issues by the U.S.

Other probative evidence; e.g., signed statements from one or more U.S. residents having knowledge of the alien's residence. Statements from landlords, employers, clergymen and neighbors are acceptable. Persons providing corroborative statements must give their addresses and must indicate the basis for their knowledge.

A combination of documents may be necessary to establish that an alien resided in the U.S. for the five-year period during which the family relationship existed. Prepare a summary of any evidence submitted if the D/O has not already done so. Document the file with your conclusion regarding the residence requirement.

NOTE: No evidence of residence is necessary if the alien does not allege a five year residence in the U.S. or if the alien did not maintain at least a five year family relationship with the employee in the U.S.

4.9.71 Establishing Residence Outside The U.S.

Assume residence in a country if there is evidence of birth in that country and the individual alleges residence and currently was an address in that country.

If documentary evidence is necessary, (e.g., to provide a native-born Turkish citizen's claim that he is a resident in W. Germany) follow the general guidelines described in RCM 4.9.27 for establishing U.S. residence. In some countries, including Belgium, West Germany, and Switzerland, residents must register with local authorities and receive registration cards. These cards are excellent proofs of residence and should be requested when necessary. Other proofs of residence are listed in RCM 4.9.13 B.

4.9.72 Handling of Claims of Alien Nonpayment Prov.

If the annuitant has a foreign address, refer to sec. 4.9.22, as well as sec. 8.1.187.

4.9.73 D.O. Development

Field personnel will mark the G-230 manual review box (when applicable) and will indicate on transmittal if they applicant is subject to non-payment provisions. They will also submit form G-45 (supplement to Claim or Person Outside the U.S.) and any other statements or proofs necessary to establish applicant's status. The transmittal will show any additional proofs being developed by the field.

4.9.74 Developing Applications From Foreign Applicants By Headquarters

It may be necessary to furnish an application to individuals in a foreign country. Refer to sec. 8.1.187.

4.9.75 Examiner Responsibilities

Refer to sec. 8.1.187.

4.9.76 Use Of Tax Information

If the individual has submitted information in conjunction with establishing his tax status at the Board this information may be useful in determining what proofs or forms to develop in conjunction with the alien non-payment provision.

4.9.77 Change Of Address

When making a change of address to a foreign country it will be necessary to determine whether or not the alien non-payment provision could apply. Develop proof of citizenship, residence, or relationship as needed. Use G-45 necessary.

4.9.100 Determining Citizenship

Citizenship is a material factor in determining whether the alien nonpayment provisions will apply. Citizens of treaty and totalization countries meet an exception to alien nonpayment because of their citizenship or residence. Citizens and nationals of the U.S. are not subject to the alien nonpayment provisions, but it is sometimes necessary to establish that an individual has such status.

Generally, accept an allegation that a person is a citizen of the country of birth provided there is evidence of birth in that country. If an individual claims to be a citizen of a country other than that of birth, he must submit evidence indicating that competent authorities in the country or alleged citizenship have determined that he is their citizen. Assume that officials of a nation's Department of Foreign Affairs or Department of Immigration can make this determination; when in doubt, refer the case to M&P-B.

If, considering allegations of all past and current citizenship, an alien nonpayment exception can be met, the exact status of citizenship need not be established, provided there is some evidence that the beneficiary was a citizen of one of the alleged countries and there is no indication that he has been a citizen of a third country.

Example 1: A widower residing in Paris was born in France, as evidenced by his birth certificate. He claims he was born a French citizen but that now he is a naturalized citizen of the U.S. As a French citizen, he would be subject to the alien nonpayment provision unless he could prove five years' residence in the U.S. as the employee's husband and/or widower. As a U.S. citizen, he would not be subject to the alien nonpayment provision. His allegation of U.S. citizenship requires proof.

Example 2: A spouse with a child in her care was able to submit evidence of her child's birth but not her own. She states that she was born in Belgium and has always been a citizen of Belgium. She married the employee there and her child was born there, as evidenced by her proof of marriage and the child's proof of age.

As a citizen of Belgium, she meets the totalization exception. Although she presented no direct evidence that she is a citizen of Belgium, her citizenship may be inferred from her allegations and other evidence of a lifelong residence in that country.

4.9.101 Conditions Of U.S. Citizenship

A. General - A person may become a U.S. citizen by birth, by naturalization, or by virtue of certain relationships to U.S. citizens. If an applicant claims U.S. citizenship under a condition not included in this chapter, forward the case to Policy and Systems.

B. A U.S. Citizen By Birth - A U.S. citizen by birth is generally a person who was born in one of the fifty States or the District of Columbia and is subject to the jurisdiction of the U.S., or who was born outside the U.S. to parents who met certain U.S. citizenship, nationality, or residence requirements.

C. Naturalized Citizens of the U.S. - Naturalized U.S. citizens are citizens upon whom U.S. citizenship is conferred after their birth. This may be accomplished through individual or collective naturalization or under certain conditions citizenship may be derived from a naturalized parent. Women automatically became citizens if they could have been lawfully naturalized and if, prior to September 22, 1922, they were married to citizens or to aliens who became citizens before that date. On and after that date, various other conditions had to be met before women could become naturalized citizens. There are special provisions for naturalization of persons who were born or who lived in Alaska, Hawaii, Puerto Rico, the Canal Zone, Guam, and the U.S. Virgin Islands prior to the acquisition or these areas by the U.S. There are also special provisions for naturalization of American Indians, who were not otherwise citizens, born in the U.S. before June 2, 1924.

D. Dual Citizenship - Dual citizenship can exist when an individual is recognized as a citizen both by the U.S. and a foreign country. For example, an individual born to U.S. citizen parents in a country such as the Dominican Republic, which considers all people born within its jurisdiction to be citizens of that country, has dual citizenship.

   NOTE: For taxation purposes, U.S. citizenship takes precedence over a second citizenship. In a situation where dual citizenship does not involve U.S. and where a payment may be affected by citizenship status, refer case to M&P-tax specialist for further instructions.

E. U.S. National - A national of the U.S. is either a citizen of the U.S. or a person whom though not a citizen, owes allegiance to the U.S. Generally, the only remaining noncitizen nationals are the natives of American Samoa and Swain's Island. A noncitizen national of the U.S. has the same exemption from the alien nonpayment provision as a U.S. citizen.

F. Loss of U.S. Citizenship and Nationality - Both citizens by birth and naturalized citizens of the U.S. may lose their citizenship and nationality. Submit to M&P-B any case in which a person's possible loss of citizenship could affect the claim.

A citizen or national of the U.S. who commits any of the following acts may forfeit his citizenship or national status:

1. obtains naturalization in a foreign state; or

2. makes a formal declaration of allegiance to a foreign sovereignty; or

3. serves in foreign armed forces, except with written approval of the U.S. Secretary of State and the Secretary of Defense; or

4. accepts official employment under a foreign government, if acquisition of foreign nationality or declaration of allegiance is necessary for such employment; or

5. renounces U.S. nationality by a formal declaration made before an American diplomatic or consular officer abroad; or

6. renounces U.S. nationality within the U.S. when the U.S. is in a state of war; or

7. is convicted for treason or bearing arms against the U.S. or similar acts.

4.9.102 Citizenship By Birth In U.S. Or U.S. Possession

A. General

Ordinarily, the evidence of age submitted will be sufficient proof of U.S. citizenship if it shows a place of birth in one of the places listed below.

Persons may qualify for U.S. citizenship by birth in the following locations.

Location	RCM Reference for Additional Information
1. One of the 50 states or D.C.	4.9.102B
2. Puerto Rico	4.9.102c
3. U.S. Virgin Islands	4.9.102D
4. Guam	4.9.102E

5. Canal Zone and Republic or Panama	4.9 102F
6. American Samoa and Swain's Island	4.9 102G
7. Northern Mariana Islands	4.9.102H

B. One of the Fifty States of D.C.

A person born in one of the fifty States or the District of Columbia is a citizen of the U.S. if he is subject to the jurisdiction of the U.S. American Indians and Eskimos born in the U.S are U.S. citizens by birth even though they are also entitled to special rights as members of Indian or Eskimo tribes.

C. Puerto Rico

A person born in Puerto Rico on or after April 11, 1989, and living in Puerto Rico, the U.S. or any U.S. possession on January 13, 1941, is a U.S. citizen.

A person born in Puerto Rico, on or after January 13, 1941, is a U.S. citizen. Also, any Puerto Rican citizen residing in Puerto Rico on March 1, 1917, regardless of where he was born, who did not take an oath of allegiance to Spain, was declared to be a U.S. citizen. Unless there is evidence to the contrary, the beneficiary's statement that he was residing in Puerto Rico on the appropriate date is acceptable evidence.

D. U.S. Virgin Island

1. Under the alien nonpayment provision, every native of the Virgin Island (U.S.) is a U.S. citizen if he meets one of the following three conditions:

   a. on January 17, 1917, he was residing in the Virgin Islands (U.S.) and on February 25, 1927, was residing in those islands, the U.S., or Puerto Rico, and he was not, on February 25, 1927, a citizen or subject of any foreign country; or

   b. on January 17, 1917, he was residing in the U.S. and, on February 25, 1927 was residing in the Virgin Islands (U.S.), and was not, on February 25, 1927, a citizen or subject of any foreign country; or

   c. on June 28, 1932, he was residing in the U.S., Puerto Rico or any other possession of territory of the U.S., or the Canal Zone, and was not, on that date, a citizen or subject of any foreign country.

   In addition, all persons born in the Virgin Islands (U.S.) on January 17, 1917, or later, and subject to the jurisdiction of the U.S. are citizens of the U.S.

Any former Danish citizen who, on January 17 1917, resided in the Virgin Islands (U.S.) and was residing in those islands, U.S., or Puerto Rico on February 25, 1927, and who did not make a declaration to retain Danish citizenship, is a U.S. citizen.

The beneficiary's statements concerning the above factors, if corroborated by evidence indicating residence on the pertinent date(s), are acceptable in the absence of evidence to the contrary.

2. Under taxation provisions, the IRS considers some U.S. citizens in the Virgin Islands to be nonresident aliens: those who acquired citizenship in the Virgin Islands. Unless an individual acquired his citizenship by birth or naturalization in one of the fifty States or the District of Columbia, he is nonresident alien for tax purposes.

E. Guam

A person born in Guam on or after April 11, 1889, or born before April 11, 1899 and residing in Guam on that date and who continued to reside in Guam, the U.S., or a U.S. territory continuously (not counting any temporary absences) until at least August 1,1950, should be assumed to be U.S. citizen unless there is an indication that he or his parents took steps to preserve or to acquire foreign nationality. A person born in Guam on or before April 11, 1899, who resided outside the U.S. or its territories at any time prior to August 1, 1950, should be referred to INS for a determination of his status.

The beneficiary's statements concerning the above factors, corroborated by evidence showing his birth in Guam and, if born before April 11, 1899, residence as of August 1, 1950, will be acceptable in the absence of evidence to the contrary.

F. Canal Zone and Republic of Panama

A person born in the Canal Zone on or after February 26, 1904, and before October 1, 1979, is a U.S. citizen if at least one parent was a U.S. citizen at the time of the person's birth. If the birth certificate shows the person was born in the Canal Zone and at least one parent was a U.S. citizen, no further evidence of citizenship is required. Individuals born in the Canal Zone may have a Certificate of Citizenship.

A person born in the Republic or Panama on or after February 26, 1904, is a U.S. citizen if, at the time of the person's birth, at least one of his parents was or is a U.S. citizen employed by the U.S. Government or by the Panama Railroad Company or its successor in title.

If the beneficiary alleges U.S. citizenship and the birth certificate from the Republic of Panama does not indicate he was born in the Canal Zone, he should

have either an FS-240, Report of Birth Abroad of a Citizen of the United States, or a Certificate of Citizenship.

G. U.S. National Treated as U.S. Citizen

American Samoa and Swain's Island are designated as "outlying possession." Natives of these areas, unless they derive U.S. citizenship at birth or by marriage, are "nationals of the U.S." For purposes of the alien nonpayment provision, they are regarded as U.S. citizens. Proof of birth in either of these possessions is sufficient evidence of U.S. citizenship.

H. Northern Mariana Islands (NMI)

Effective November 4, 1986 local time, public Law 94-241 established the Commonwealth of the Northern Mariana Islands in political union with the United States. The NMI resident must meet one of the following criteria:

1. Citizens at birth. Individuals subject to the jurisdiction of the United States born in the NMI on or after November 4, 1986, acquire U.S. citizenship at birth.

2. Citizens by collective naturalization:

   a. Individuals who do not owe allegiance to a foreign State, who were born in the NMI and were citizens of the dissolved Trust Territory of the Pacific Island (TTPI) on November 3, 1986, and were domiciled in the NMI or in the U.S., or any of its territories or possessions on that date;

   b. Individuals who do not owe allegiance to a foreign State, who were citizens of the TTPI on November 3, 1986, and had been continuously domiciled in the NMI since November 3, 1981, and who, unless under age, registered to vote in elections for the Mariana Islands District Legislature of any municipal election in the NMI before January 1, 1975; or

   c. Individuals who do not owe allegiance to a foreign State, who were domiciled in the NMI on November 3, 1986, and who, although not citizens of the TTPI, have been continuously domiciled in the NMI since January 1, 1975.

3. Non-citizen nationals. Any NMI resident who is declared a citizen by Public Law 94-241 may become a non-citizen national of the U.S., making a declaration of such in any U.S., or NMI commonwealth court.

4. Residents of the NMI who are not citizens. Generally, the Immigration and Naturalization Service will presume children, spouses and parents of U.S. citizens to be lawful permanent residents of the U.S. "without any of the

usual procedures". For those claiming to have entered the NMI after November 3, 1986, residence is established as for the United States.

4.9.103 U.S. Citizenship By Birth Abroad

A. General

Two ways by which a person born abroad may derive U.S. citizenship through a parent are: (1) by acquisition at birth and (2) by derivation after birth.

Adopted children do not acquire U.S. citizenship by virtue of adoption by U.S. citizens; they must be naturalized to become U.S. citizens.

1. By Acquisition At Birth

In most situations legitimate children born outside the U.S. acquire citizenship at birth when:

a. both parents were U.S. citizens at the time of the child's birth and at least one parent had resided in the U.S. or its outlying possessions before the birth of the child; or

b. one parent was a U.S. citizen and the other parent was a noncitizen national at the time of the child's birth, and the U.S. citizen parent resided in the U.S. or an outlying possession for a period of at least one year before the child's birth; or

c. one parent was a U.S. citizen and the other was an alien at the time of the child's birth. (See Note below.)

For births before May 24, 1934, U.S. citizenship could be acquired by legitimate children only through the citizen father. Therefore, the residence requirements had to be met by the beneficiary's citizen father. For births on or after May 24, 1934, either citizen parent could confer U.S. citizenship by meeting the requisite residence requirements.

Children born out of wedlock may also acquire U.S. citizenship at birth if one of the parents is a U.S. citizen at the time of the child's birth. A child born out of wedlock to a U.S. citizen mother need only establish the mother's U.S. citizenship and her residence in the U.S. or an outlying possession prior to the birth of the child. (See C below.) The acquisition of U.S. citizenship at birth by an illegitimate child born to a U.S. citizen father is complicated by the fact that the child must have been legitimated by the father.

2. Derivation After Birth (See Note below.)

The most frequent situations in which children become U.S. citizens by derivation are when:

a. both parents become U.S. citizens after the child's birth but before the child reaches eighteen (under the present law);

b. one parent becomes a U.S. citizen, the other alien parent is deceased and the child is under eighteen (under the present law); or

c. there is a divorce and the custodial parent becomes a U.S. citizen and the child is under eighteen (under the present law).

NOTE: FOR RRB PURPOSES ONLY, we will make determinations of U.S. citizenship for beneficiaries whose parents are classified under la or b above. Refer to M&P-B any cases involving a beneficiary whose parents are classified under 1c and 2 above. Complex rules apply in determining whether the child has acquired U.S. citizenship at birth. The Immigration and Naturalization Service (INS) must make a formal determination. In addition, refer to M&P-B any cases involving (1) a beneficiary who was born out of wedlock and claims U.S. citizenship through a U.S. citizen father; (2) any beneficiary whose evidence requires establishment of the U.S. citizenship of the beneficiary's parent; and (3) any beneficiary whose documents appear to be of questionable authenticity.

B. Other Evidence of U.S. Citizenship for Children Born Aboard

1. General

Request evidence to support the beneficiary's allegation if neither parent was an alien at the time of the beneficiary's birth, and the beneficiary has none of the documents listed in RCM 4.9.110. If either parent was an alien at the time of the beneficiary's birth, refer the case to M&P-B for an official INS determination of his citizenship status.

NOTE: Any determination we make of a beneficiary's citizenship status is for RRB purposes only, and is not binding on any other agency or any individual.

Evidence of the parent's U.S. citizenship includes the parent's public or religious record of age showing birth in the U.S., naturalization papers, or other evidence in RCM 4.9.110.

Evidence of birth in American Samoa or Swain's Island establishes that a person is a noncitizen national.

2. Specific Evidence Requirements

a. If both parents were U.S. citizens at the time of the beneficiary's birth, obtain evidence of both parents' citizenship, the relationship of the beneficiary to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the beneficiary's birth. Evidence of his parent's residence in the U.S. may include a birth certificate, a religious record of a ceremony which took place in the U.S. or an outlying possession, school records, employment records, rent receipts, marriage certificate when the ceremony took place in the U.S. or an outlying possession, and census records. The residence need not be of specific duration. For the purposes of establishing the beneficiary's U.S. citizenship, a casual visit to the U.S. by the citizen parents establishes the requisite residence.

b. If one parent was a U.S. citizen and the other was noncitizen national, obtain evidence of both parents' citizenship, the relationship of the beneficiary to the parents, and evidence that the U.S. citizen parent resided in the U.S., American Samoa, or Swain's Island for a period of one year prior to the birth of the beneficiary. Evidence of residence may include school records, employment records, and census records.

C. <u>Evidence to Establish U.S. Citizenship of a Beneficiary Born Out of Wedlock to a U.S. Citizen Mother</u>

If the beneficiary was born out of wedlock to a U.S. citizen mother, obtain evidence of the mother's U.S. citizenship, evidence of the relationship to the beneficiary and, for births on or before December 24, 1952, evidence that the mother has resided in the U.S. before the beneficiary's birth or, for births after December 24, 1952, evidence that the mother had resided in U.S. or an outlying possession for one year prior to the birth of the birth.

4.9.104 U.S. Citizenship By Personal Naturalization

A. <u>Proof of Citizenship</u>

An individual claiming citizenship by personal naturalization should submit one of the documents listed in RCM 4.9.110 as proof of citizenship.

B. <u>No Proof Available</u>

If the beneficiary is unable to present proof of naturalization, he should obtain it as indicated in RCM 4.9.106. Such information may also be available from the U.S. District Court or other court of record which granted citizenship.

4.9.105 Citizenship Claimed By Marriage

Before September 22, 1922, a woman, who herself could have been lawfully naturalized, acquired U.S. citizenship through marriage to a U.S. citizen. If the marriage terminated, she maintained her U.S. citizenship if she then was residing in the U.S. and continued to reside here. If her husband was an alien, she acquired citizenship if he was naturalized before September 22, 1922. The beneficiary should submit proof of the citizenship of her husband and proof of their relationship, showing that marriage occurred before September 22, 1922. If she is unable to submit the necessary proofs, she should obtain proofs from INS. Refer any such case to M&P-B.

After September 22, 1922, an alien married to a U.S citizen must apply for naturalization to become a U.S. citizen.

4.9.106 Obtaining Proof From INS

If a beneficiary is unable to present adequate proof of citizenship and fails to meet the alternative requirements as an alien, refer the case to M&P-B. M&P will determine whether the beneficiary should complete a Form G-641 (Application for Verification if information from Immigration and Naturalization Service Records.) INS charges a fifteen dollar fee for a search of its records.

If the beneficiary is an undocumented alien, INS would have no information in its records; M&P may refer the beneficiary to INS to have his status determined.

4.9.107 Special Situations

A. United Kingdom

The terms "British Subjects" and "Commonwealth Citizens" indicate citizenship in a country which is a member of the British Commonwealth of Nations. They do not mean that the individual is a citizen of the United Kingdom.

The United Kingdom considers as its citizens all persons who were born within the United Kingdom or within what is now a British colony. Such persons are considered "citizens of the United Kingdom and Colonies". Generally, a person born in a colony which had been given independence acquires citizenship in the new nation and does not retain his U.K. citizenship.

B. The Federal Republic of Germany

The West German Government accepts as national all persons born within the area of the German State as it existed in 1937 (including what is now East Germany). Residents or West Germany who were born in Germany, as defined in 1937, are granted German passports and all other privileges of citizenship upon making the same application as required of persons born within the present borders of West Germany.

C. Countries With Non-Contiguous Territory

Denmark, France, the Netherlands, and Portugal are composed of territories in Europe and in America, Asia, or Africa. In determining citizenship, it is immaterial in which portion of the country the individual was born.

D. American Indians

Some individuals contend that they are "North American Indians", but there is no such national citizenship. These people are members of certain Indian tribes which are located near the Canadian-United States border. They have special privileges as to entry into either country, hunting and fishing rights, etc., but their national citizenship is either Canadian or United States, depending upon their place of birth. Their opinion concerning their national status does not affect their citizenship.

4.9.110 Evidence Of U.S. Citizenship

A. General

When the development of U.S. citizenship is required, it should be undertaken without indicating doubt of the beneficiary's citizenship. RRB's development is in no sense an adjudication of the individual's status.

B. Conclusive Evidence of U.S. Citizenship

Any of the following documents is generally conclusive evidence of U.S. citizenship for the person to whom the document is issues regardless of where the person was born (see NOTES):

1. a birth certificate showing birth in the U.S.;
2. a U.S. passport;
3. a Certificate of Citizenship or Certificate or Naturalization;
4. Form FS-240, Report of Birth Abroad of a Citizen of the United States;
5. Form FS-545, Certification of Birth; or
6. Form I-197, United States Citizen Identification Card

NOTE: In a rare case, the individual may have renounced or otherwise lost citizenship and still have one or more of the documents above in his possession. Only if something creates a doubt should a question be raised and the issue resolved.

NOTE: Certain U.S. citizens in the Virgin Islands are considered aliens for tax purposes if they did not acquire U.S. citizenship by birth or naturalization in the 50 states or Washington, D.C. Therefore, be sure to check place of birth on any proof of citizenship submitted by applicants from the Virgin Islands. If they were born in the Virgin Islands and were never naturalized as described above, they are not considered U.S. citizens for taxation purposes.

C. Other Evidence of U.S. Citizenship

The evidence listed in B above and 1-4 below is preferred evidence and must be sought first:

1. a religious record recorded in the U.S within three months after birth (even though it may not actually contain place of birth information); or

2. evidence of civil service employment by the U.S. government before June 1, 1976; or

3. a census record (when a request for citizenship data was included in the remarks section of the request, the Census Bureau will display the age and the citizenship); or

4. any document established at least five years before the date of initial application which indicates a place of birth which agrees with the beneficiary's allegation. (Examples of such documents are school records, marriage license, military service record, medical record, driver's license, etc.); or

5. the statements of two persons which indicate that the beneficiary was born in the U.S., providing the file reflects a reasonable basis for the two persons having such knowledge.

Note 1: The evidence in 5 above may be used only if preferred evidence does not exist. The file must be documented to show that attempts were first made to obtain the preferred evidence.

Note 2: Certain U.S. citizens in the Virgin Islands are considered aliens for tax purposes if they did not acquire U.S. citizenship by birth or naturalization in the 50 states or Washington, D.C. Therefore, be sure to check of birth on any proof of citizenship submitted by applicants from the Virgin Islands. If they were born in the Virgin Islands and were never naturalized as described above, they are not considered U.S. citizens for taxation purposes.

4.9.111 Stateless Person

A. General

Stateless persons are of two classes, those stateless "de jure" and those stateless "de facto."

De jure stateless persons do not posses nationality of any country, De facto stateless persons are those whom having left the country of which they are nationals, no longer enjoy the protection and assistance of their national authorities, either because those authorities refuse to grant them assistance and protection, or because the aliens themselves renounce the assistance and protection of the countries of which they are nationals. De facto stateless persons are usually political refugees; they are legally citizens of a country only because the laws of the country do not permit denationalization or only permit it with the country's approval.

B. Establishing De Jure Status

Possession of any of the following documents will establish that an individual is de jure stateless:

1. a "Nansen passport" issued under the authority of the League of Nations, provided the holder did not acquire a nationality subsequent to the issuance of the passport.

2. a "travel document" issued by the individual 's country of residence showing that the holder is stateless and that the document is issued under the United Nations. Such a document may be identified by the phrase "Convention of 28 September 1954" which appears on the cover and sometimes on each page of the document.

3. a "travel document" issued by the International Refugee Organization showing that the person named is stateless.

4. a document issued by officials of the country of former citizenship showing that the individual has been deprived of citizenship in that country.

Once it has been established that a person is de jure stateless, this status continues until he acquires nationality is some country.

C. Establishing De Facto Status

If an individual contends that he is stateless but cannot establish that he is de jure stateless, it may be accepted that he is de facto stateless if he establishes that:

1. he has taken up residence outside the country of his nationality;

2. there has been an event which is hostile to him, such as a sudden or radical change in the government's political structure, in the country of nationality; and,

3. in a sworn statement he renounces the protection and assistance of the government of the country of which he is a national and declares that he is stateless.

In considering 2 above, it is not necessary to show that the event is actually hostile; it is sufficient that the individual has reason to fear it would be. The statement in 3 must be sworn to before an individual legally authorized to administer oaths, and the original statement must be presented to the RRB.

A de facto stateless status remains in effect only as long as the conditions above continue to exist.

D. Stateless Residents of Hong Kong or Macao

The RRB will also consider as stateless all persons who allege citizenship in China or Nationalist China (The Republic of China) and who reside in Hong Kong or Macao. Such recognition applies only as long as the beneficiary resides in these areas and does not apply if he states he is a citizen of communist China (the People's Republic of China).

4.9.112 Passports As Evidence Of Citizenship

Generally, a current passport is evidence of an individual's citizenship in the country that issued the passport. Listed below are some exceptions to this rule.

A. Austrian Passports

Under Austrian law, a so called "alien's passport" (Fremdenpass) may be issued. Bearers of this passport are not considered Austrian citizens.

B. Federal Republic of Germany (FRG) (West Germany) Passports

A Fremdenpass (Alien Passport/Travel Document) shows either the bearer's native citizenship or identifies the bearer as a stateless person. The passport may show the citizenship of the bearer as "URGEKLAERT"(undetermined). These passports do not identify the bearer as a citizen of the Federal Republic of Germany.

C. Greek Passports and Other Proofs of Greek Citizenship

The Minister of Interior is the authority responsible for determining Greek citizenship and has exclusive authority to rule over any controversy over Greek nationality.

Greek documents that may be accepted as proof of Greek citizenship are:

A. Greek passports (except those designated "A.E." or "O.T.A")

B. Greek Identity Card (issued by the Policy Department in conjunction with the Ministry of the Interior).

C. Demotologions of Mitroon Arrenons used to establish proof of age may be used for proof of citizenship when they have been obtained or verified by the Federal Benefits Unit in Athens.

D. Netherlands Passports

Vreemdelingen Passports (noncitizen passports) are issued by the Queen's Commissioner of the province where the individual resides. Vreemdelingen Passport holders are not classified as Dutch Citizens; they might indicate their citizenship as "stateless."

E. Portuguese Passports

A Portuguese decree of September 3, 1981, permits the issuance of passports to several categories of foreigners. The passports are clearly marked "Passport for Foreigners" and contain the following statement in Portuguese, French, English and German: "The holder of this passport is not a Portuguese subject. The passport does not entitle him to any protection from the Portuguese authorities abroad." In addition to the normal biographic data, these passports also show the nationality of the bearer.