



**FALSE CLAIMS TO U.S. CITIZENSHIP:
HIDDEN PITFALLS & POTENTIAL DEFENSES
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For the most part, U.S. immigration laws are complex and confusing. Some are little known or frequently overlooked. Some carry serious consequences that may result in a permanent bar to immigrating to the U.S. One provision that is especially problematic is section 212(a)(6)(C) of the Immigration and Nationality Act (INA). This dictates that any foreign national who falsely claims to be a U.S. citizen for any purpose or benefit under the INA or any federal or state law, including to obtain a job or vote in the U.S., is permanently inadmissible to the U.S. Such a false claim also makes the person removable from the U.S. The law covers all false U.S. citizenship (USC) claims made on or after September 30, 1996, and does not provide any waiver to overcome the bar.

How Does a False Claim to U.S. Citizenship Arise?

Intentional Claims

To obtain benefits under the INA or any federal or state law, foreign nationals might be tempted to claim U.S. citizenship even when they know this is false. Many false USC claims arise when the foreign national completes and signs a Form I-9, Employment Eligibility Verification. All individuals working in the U.S. who were hired after November 6, 1986 must complete the I-9 form, which allows the employer to verify that they are authorized to work in the U.S. The I-9 form includes a section stating as follows -

I attest, under penalty of perjury, that I am (check off one of the following):

1. A citizen of the United States
2. A noncitizen national of the United States (see instructions)
3. A lawful permanent resident (Alien #):
4. An alien authorized to work (Alien # or Admission #):

Often times, the desire to work overpowers all other considerations and drives foreign nationals who lack employment authorization to falsely assert that they are U.S. citizens. False USC claims often occur when individuals intentionally misrepresent their status in the U.S. on the I-9 and check off the box stating, “A citizen of the United States.” Prior versions of the Form I-9 combined “a citizen or national of the United States” into one attestation box. This allowed some foreign nationals to focus on the ambiguous nature of the box and raise doubts as to whether they falsely claimed to a U.S. citizen, a U.S. national, or something else. When a prior I-9 version is involved, some argue that a false USC claim is not proven unless there is clear evidence to the contrary. The ambiguity no longer exists in the current I-9, which separates U.S. citizen and U.S. national into two different boxes. Further, the foreign national’s presentation of a fake birth certificate or other similar document to show U.S. citizenship is further evidence of a false USC claim.

Unintentional Claims

An unintentional false USC claim arises from inadvertent mistakes, such as when the person reasonably believes he is a U.S. citizen but really is not, or innocently assumes that he qualifies for the benefit when he does not. Unintentionally registering to vote in state and local elections, for example, can occur quite easily. According to the National Voter Registration Act of 1993, also referred to as the Motor Voter Act, when individuals apply for or renew their driver’s licenses at their local Department of Motor Vehicles (DMV), states are required to provide them with an opportunity to register to vote.

Only fifteen states, however, call for documentary proof of citizenship at the DMV. Some states do not require any proof of citizenship and many only ask the driver’s license applicant or the DMV clerk to check off a box to designate citizenship status. To add to the confusion, DMV clerks regularly ask driver’s license applicants whether they intend to register to vote. Such a question by a government official may imply to noncitizens that they may vote.

There also situations where individuals, such as adopted children, genuinely believe that they are U.S. citizens, but they later find out that they were mistaken.

What are the Consequences of a False Claim To U.S. Citizenship?

Inability to Adjust to Permanent Resident Status

Foreign nationals who are found to have made false USC claims are ineligible to adjust to permanent resident status. This means they may never immigrate to the U.S. through a family-based or employment-based petition. The severe consequences of violating this law are undeniable. For example, noncitizens who were convicted of crimes involving moral turpitude, such as sexual assault and fraud, are often eligible for waivers of inadmissibility. Strikingly, there are no waivers available to persons who are deemed inadmissible or removable for false USC claims.

Placement In Removal Proceedings

The Department of Homeland Security (DHS) may – and frequently does – initiate removal proceedings against foreign nationals in the U.S. who violate Section 212(a)(6)(C). The false USC claim issue often arises when the person applies for permanent resident status. In some cases, during the adjustment of status interview, U.S. Citizenship & Immigration Services (USCIS) may question the applicant about how he was able to work in the U.S. without employment authorization. Some examinations officers will take the extra step of subpoenaing the I-9 records from the applicant’s prior employer or current employer. While some employers might refuse to comply with USCIS’ request, many will simply hand over the I-9 records to USCIS. If the Service finds that the person made a false USC claim, it will issue a Notice to Appear in removal proceedings before the Immigration Court. The person will then need to convince the Immigration Judge that he did not make a false USC claim or defend himself against removal.

What are the Defenses To False Citizenship Claims?

In general, Immigration Courts and government counsels agree that the false USC claim must be intentional. Therefore, one defense is that the person unintentionally claimed to be a U.S. citizen. For example, the citizen/national box on the I-9 might have been mistakenly checked when the applicant presented a permanent resident card (real or fake) to the employer. The foreign national might have reasonably believed that he qualified to register to vote in a state or a local election when he indicated that he was eligible. The law also specifically excuses a foreign national who “reasonably believed” he was a U.S. citizen because his parents either were U.S. citizens or currently are U.S. citizens, and he permanently resided in the U.S. before his 16th birthday. It is rare, however, for all three requirements to be met.

Recently, the U.S. Supreme Court stated that information on a Form I-9 should not be used by the DHS to deny naturalization and adjustment of status applications and place noncitizens in removal proceedings. On that basis, the foreign national could challenge the DHS’ procurement and use of I-9 forms to bring a false USC claim charge.

In addition, false USC claims do not bar foreign nationals from obtaining certain types of relief from removal, such as asylum and/or cancellation of removal. Of course, the foreign national must meet the eligibility requirements to apply for these forms of relief in the first place.

Conclusion

Foreign nationals must refrain from making false USC claims to obtain immigration benefits or other benefits available under federal or state law. False USC claims carry severe, permanent consequences for which there is limited defense or no available relief.

Nothing in this article should be taken as legal advice for an individual case or situation. The information is intended to be general and should not be relied upon for any specific situation. For legal advice, consult an attorney experienced in immigration law.