

DEPARTMENT OF REVENUE

Taxpayer Service Division - Tax Group

RULES FOR EVIDENCE OF LAWFUL PRESENCE

1 CCR 201-17

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

1. Definitions

- 1.1 Applicant - Any natural person eighteen years of age or older seeking non-exempt Public Benefits for himself as set forth in §24-76.5-102 and 103 C. R. S.
- 1.2 Benefit Agency - An agency of the State or of any political subdivision of the State of Colorado, or other organization that administers, determines eligibility for, or assists persons with applying for Public Benefits as defined in §24-76.5-102 C.R.S.
- 1.3 Department - The Colorado Department of Revenue
- 1.4 Director - The Executive Director of the Colorado Department of Revenue
- 1.5 Request for Waiver - Request form (attached as an exhibit to these rules and incorporated herein) completed by an Applicant or Applicant's representative seeking a determination of lawful presence by the Department. The Request for Waiver must be accompanied by all documents that the Applicant can produce to verify name and proof of lawful presence.
- 1.6 Waiver - An exemption from identification requirements, issued by the Department of Revenue.

2. Identification Documents

- 2.1 A first time Applicant or Applicant seeking to reapply for Public Benefits on or after August 1, 2006 may demonstrate lawful presence by both executing the affidavit required in §24-76.5-103(4)(b) C.R.S. and producing:
 - 2.1.1 One of the forms of identification set forth in §24-76.5-103(4)(a) C.R.S. as amended:
 - I. A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S., or
 - II. A United States military or a military dependent's identification card, or
 - III. A United States Coast Guard Merchant Mariner card, or
 - IV. A Native American tribal document, or
 - V. A document described in paragraphs 2.1.3 or 2.1.4 below.
 - 2.1.2 For purposes of §24-76.5-103(4)(a)(I), a valid Colorado driver's license or identification card includes only a current driver's license, minor driver's license, probationary driver's license, commercial driver's license, restricted driver's license, instruction permit or identification card.

2.1.2.1 In the case of a resident of another state, the driver's license or a state-issued identification card from the state of residence, if that state requires that the applicant prove lawful presence prior to issuance of a document.

2.1.3 Benefit Agencies may also accept the listed forms of identification published by the Office of the Federal Register, National Archives and Records Administration, in the full Code of Federal Regulations (CFR) governing the specific services provided. In the absence of specific governing CFR regulations, Benefit Agencies shall accept the listed forms of identification published in Attorney General's Order Number 2129-97 *Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, as issued by the Department of Justice, Federal Register, November 17, 1997, Vol.62, No. 221 and which are incorporated by reference. Attachments A and B provide lists of documents acceptable per this federal publication.

Material incorporated by reference in this rule does not include later amendments to or editions of the incorporated material. Copies of the material incorporated by reference may be obtained by contacting the Director, Motor Vehicle Division, of the Department of Revenue, 1881 Pierce Street, Room 100, Lakewood, Colorado, tele: 303-205-5935 during regular business hours. Copies of materials may also be examined at any state publication depository library. Certified copies shall be provided at cost, upon request.

3. Waiver Process

3.1 A first time Applicant or Applicant seeking to reapply for Public Benefits on or after August 1, 2006, may demonstrate lawful presence by executing both the affidavit required in §24-76.5-103(4)(b) C.R.S. and by executing a Request for Waiver. The Request form, seeking a determination of lawful presence by the Department, may be completed by the Applicant or the Applicant's representative. The Request for Waiver must be accompanied by all documents that Applicant is then able to produce to verify name and proof of lawful presence. The Request for Waiver may be filed in person, by mail, or on-line.

3.1.1 Benefit Agencies shall refer those Applicants who do not have any identification documents listed in Sections 2.1, 2.1.3, or 2.1.4 to the Department to request a waiver.

3.1.2 Upon receipt of a Request for Waiver, the Department will verify lawful presence of the Applicant.

3.1.3 The Department shall make a decision approving or denying a waiver within one business day of receipt of the response from federal databases or other verifying entities. Information as to the waiver decision shall be made available to the benefit agency, if known.

3.1.4 The following constitute reasons for denial of a waiver:

3.1.4.1 The SAVE verification fails to clear the Applicant

3.1.4.2 The documents presented by the Applicant cause the Department to reasonably believe that the documents have been tampered with, altered or are not otherwise genuine, or

3.1.4.3 The statements and/or documents provided by the Applicant are inconsistent and the Applicant is unable to reasonably explain the inconsistencies.

- 3.1.5 The referring Benefit Agency is responsible for verifying that the Applicant is the same individual indicated as the person who is requesting the waiver.
- 3.1.6 Waivers are assumed to be permanent, but may be rescinded and cancelled if, at any time, the Department becomes aware of the Applicant's violation of immigration laws. Upon making a decision to rescind and cancel a waiver, the Department will notify the Applicant and the appropriate County Department of Human Services.
- 3.1.6.1 Individuals whose waivers are rescinded and cancelled shall have the right to appeal such decision by the Department. Individuals may appeal by requesting a hearing within thirty days of the waiver being rescinded or cancelled by making a written request for hearing to the Hearings Section of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.
- 3.1.6.2 The Hearings Section shall hold the hearing in accordance the provisions of the State Administrative Procedure Act and the provisions of Title 42 of the Colorado Revised Statutes.
- 3.1.6.3 The only issue at hearing shall be whether the applicant has violated immigration laws.
- 3.1.6.4 The hearing officer shall issue a written decision within fifteen (15) business days of the completion of the hearing, and shall constitute final agency action, and is subject to judicial review as provided by §24-4-106, C.R.S.
- 3.1.7 Waivers issued by the Department since August 1, 2006, but prior to approval of this rule, will continue in effect unless otherwise rescinded or cancelled by the Department, as authorized in Section 3.1.6.

ATTACHMENT A

The following documents are acceptable as proof of lawful presence pursuant to AG Order Number 2129-97 referenced in 2.1.3. of this rule.

- A. Primary Evidence (One document is needed): Identity can be proven by these same documents if they bear a picture of the applicant.
1. Copy of applicant's birth certificate from any state, the District of Columbia and all United States territories.
 2. United States Passports, except for "limited" passports, issued for less than five years.
 3. Report of Birth Abroad of a United States Citizen, form FS-20.
 4. Certificate of Birth issued by a foreign service post (FS-545) or Certification of Report of Birth (DS-1350). These are available from the Department of State.
 5. Certification of Naturalization (N-550 or N-570). The N-570 is issued upon loss or damage to the original document or following an individual's name change.
 6. Certificate of Citizenship (N-560 or N-561). This document is issued to those persons who derive U. S. Citizenship through a parent. The N-561 is issued upon loss or damage of the original document or following an individual's name change.
 7. U. S. Citizen Identification Card (I-97). These were last issued in 1974.

8. Northern Mariana Identification Card. Those born in the Northern Mariana Islands prior to November 3, 1986 were collectively naturalized.
9. Statement provided by a US consular officer certifying that the individual is a US citizen. (This document is provided to an individual born outside the US who derived citizenship through a parent but does not have form FS-240, FS-545 or DS-1350.)
10. American Indian Card with Classification code "KIC" and a statement on the back identifying US Citizen members of the Texas Band of Kickapoos.)

B. Secondary Evidence

If the applicant cannot present one of the documents listed above, the following may be relied upon to establish US citizenship or nationality:

1. Religious records recorded in one of the 50 states, the District of Columbia and U.S. territories, within three months after birth showing that the birth occurred in such jurisdiction and the date of the birth or the individual's age at the time the record was made.
2. Evidence of Civil Service Employment by the US Government before June 1, 1976;
3. Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth and the names' and places of birth of the parents;
4. Census record showing name, US citizenship or a US place of birth or age of applicant;
5. Adoption Finalization Papers showing the child's name and place of birth in one of the 50 states, DC, or US territories or where the adoption is not finalized and the State or other jurisdiction listed above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency showing the child's name and place of birth in one of such jurisdictions (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or
6. Any other documents that establish a US place of birth or in some way indicates US citizenship.

C. If an individual is unable to present any of the above documents the following options are available:

1. Accept a written declaration, made under penalty of perjury, and possibly subject to later verification of status, from one or more third parties, indicating a reasonable basis for personal knowledge that the applicant is a US citizen or non-citizen national.
2. Accept the applicant's written declaration, made under penalty of perjury and possibly subject to later verification of status that he or she is a US citizen or non-citizen national.

Note: These options (C 1 and C 2) should be used with caution in appropriate circumstances. For example, before using these options a provider might require the applicant to demonstrate why a document evidencing that he or she is a US citizen or non-citizen national does not exist or cannot be readily obtained.

D. Collective Naturalization

If the applicant cannot present one of the documents listed in A or B above, the following will establish US citizenship for collectively naturalized individuals:

1. Puerto Rico (PR):

Evidence of birth in PR on or after April 11, 1899 and the applicants' statement that he or she was residing in the US, a US possession, or PR on January 13, 1941 or

Evidence that the applicant was a PR citizen and the applicant's statement that he or she was residing in PR on March 1, 1917 and that he or she did not take an oath of allegiance to Spain;

2. US Virgin Islands:

Evidence of birth in the US Virgin Islands (VI) and the applicant's statement of residence in the US, a US possession, or the US VI on February 25, 1927;

The applicant's statement indicating residence in the US VI as a Danish citizen on January 17, 1917 and that he or she did not make a declaration to maintain Danish citizenship; or

Evidence of birth in the US VI and the applicant's statement indicating residence in the US, US Possession or Territory or the Canal Zone on June 28, 1932.

3. Northern Mariana Islands (NMI) (formerly part of the Trust Territory of the Pacific Islands(TTPI):

Evidence of birth in NMI, TTPI citizenship and residence in the NMI, the US, or a US territory or possession on November 3, 1986 (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time);

Evidence of TTPI citizenship in the NMI since before November 3, 1981(NMI local time), voter registration prior to January 1, 1975 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time); or

Evidence of continuous domicile in the NMI since before January 1, 1974 and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986 (NMI local time).

Note: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a US citizen.

E. Derivative Citizenship

If the applicant cannot present one of the above documents you should make a determination of Derivative US citizenship in the following situations:

Applicant born abroad to two US citizen parents:

Evidence of US citizenship of the parents and the relationship of the applicant to the parents, and the evidence that at least one parent resided in the US or an outlying possession prior to the applicant's birth.

Applicant born abroad to a US citizen parent and a US non-citizen national parent:

Evidence that one parent is a US citizen and the other is a US non-citizen national, evidence of the relationship of the applicant to the US citizen parent and the evidence the US citizen parent resided in the US, a US possession, American Samoa or Swain's Island for a period of at least one year prior to the applicant's birth

Applicant born out of wedlock abroad to a US citizen mother:

Evidence of US citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the US prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother has resided, prior to the child's birth, in the US or a US possession for a period of one year.

Applicant born in the Canal Zone or the Republic of Panama:

A birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a US citizen at the time of the applicant's birth;

or

A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a US citizen and employed by the US government or the Panama Railroad Company or its successor in title;

All other situations where an applicant claims to have a US citizen parent and an alien parent, or claims to fall within one of the above categories but is unable to present the listed documentation:

If the applicant is in the US, refer him or her to the local INS office for determination of US citizenship;

If the applicant is outside the US, refer him or her to the State Department for a US citizenship determination.

F. Adoption of Foreign-Born Child by US Citizen:

If the birth certificate shows a foreign place of birth and the applicant cannot be determined to be a naturalized citizen under any of the above criteria, obtain other evidence of US citizenship;

Since foreign born adopted children do not automatically acquire citizenship by virtue of adoption by US citizens, refer the applicant to the local INS district office for a determination of US citizenship if the applicant provides no evidence of US citizenship [the law changed several years ago to allow such children to obtain automatic citizenship].

G. US Citizenship By Marriage

A woman acquired US citizenship through marriage to a US citizen before September 22, 1922.

Note: If the husband was an alien at the time of the marriage and became naturalized before September 22, 1922, the wife also acquired naturalized citizenship. If the marriage terminated, the wife maintained her citizenship if she was residing in the US at the time and continued to reside in the US.

H. Applicants with Disabilities and Non-discrimination

If an applicant has a disability that limits the applicant's ability to provide the required evidence of citizenship or nationality (e.g. mental retardation, amnesia, or other cognitive, mental or physical impairment), you should make every effort to assist the individual to obtain the required evidence. In addition, you should not discriminate against applicants on the basis of race, national origin, gender, religion, age or disability. See Non-discrimination Advisory, Attachment 2 to Interim Guidance.

ATTACHMENT B

For specific detailed descriptions of the Immigration Documents referred to below see Exhibit A to Attachment 5 of US AG Order.

Instructions:

The documents listed below, will, when combined with satisfactory proof of identity (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant falls within one of the categories of "qualified alien" for purposes of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

Each of the documents listed below will demonstrate lawful status and you should not require presentation of a registration document if the applicant presents one of the other legally acceptable documents that reasonably appears on its face to be genuine and to relate to the person presenting it. However, if the document presented is not a registration document and does not on its face reasonably appear to be genuine or to relate to the person presenting it, it is appropriate to ask the applicant to produce his or her registration document as additional evidence of immigration status so long as the request is not made for a discriminatory reason.

Presentation of a registration document listed below that reasonably appears on its face to be genuine and to relate to the person presenting it (or to satisfy higher applicable standards) will often obviate the need to verify the applicant's immigration status with the INS; if the applicant presents a registration document that does not meet this standard, sending the INS a copy of the document will assist it in verifying the applicants' status quickly and accurately.

Alien Lawfully Admitted for Permanent Residence

1. INS Form I-551 (Alien Registration Receipt Card, commonly called or known as a "green card" ; or
2. Unexpired Temporary I-551 Stamp in foreign passport or on INS Form I-94.

Asylee

3. INS form I-94 annotated with stamp showing grant of asylum under section 208 of the Immigration and Nationality Act (INA)
4. INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(5)"
5. INS Form I-776 (Employment Authorization Document) annotated "A5" or
6. Grant Letter from the Asylum Office or INS

Refugee

7. INS Form I-94 annotated with stamp showing admission under Section 207 of the INA
8. INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)" or
9. INS Form I-766 (Employment Authorization Document) annotated "A3" or
10. INS Form I-571(Refugee Travel Document).

Alien Paroled into the US for a Least One Year

11. INS Form I-94 with stamp showing admission for at least one year under Section 212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement).

Alien whose Deportation or Removal Was Withheld

12. INS Form I-688B (Employment Authorization Card) annotated 274a.12(a)(10)
13. INS Form I-766 (Employment Authorization Document) annotated "A10" or
14. Order from an immigration Judge showing deportation withheld under Section 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under Section 241(b)(3) of the INA

Alien Granted Conditional Entry

15. INS Form I-94 with stamp showing admission under Section 203(a)(7) of the INA
16. INS Form I-688B (Employment Authorization Card) annotated "A3" or
17. INS Form I-766 (Employment Authorization Document) annotated "A3"

Cuban / Haitian Entrant

18. INS Form I-551 (Alien Registration Receipt Card, commonly known as the "Green Card" with the code CU6, CU7, or CH6
19. Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6, CU7, or CH6
20. INS Form I-94 with stamp showing parole as "Cuba/Haitian Entrant" under Section 212(d)(5) of the INA

Alien Who has Been Battered or Subjected to Extreme Cruelty

See Attachment 5, Exhibit B, at AG Order No. 2129-97.

The documentation for Violence Against Women Act self- petitioners is the INS issued "Notice of Prima Facie Determination" or "Notice of Approval".

NOTES:

Expired or Absent Documentation

If an applicant presents expired documents or is unable to present any documentation evidencing his or her immigration status, refer the applicant to the local INS office to obtain documentation of status. In unusual circumstances involving applicants who are hospitalized or medically disabled or who can otherwise show good cause for their inability to present documentation and for whom securing such documentation would constitute undue hardship, if the applicant can provide an alien registration number, you may file INS Form G-845 and Supplement, along with the alien registration and a copy of any expired INS document, with the local INS office to verify status.

Receipt for Replacement Document

If an applicant presents a receipt indicating that he or she has applied to the INS for a replacement document for one of the docs identified above, file INS Form G-845 and Supplement with a copy of the receipt with the local INS office to verify status. Upon return receipt of information from INS, confirm that it pertains to the applicant whose identity you have verified. You should ask to see the Replacement at a later date.

Applicants with Disabilities

If an applicant has a disability that limits the applicant's ability to provide the required evidence of immigration status (e.g., mental retardation, amnesia, or other cognitive, mental, or physical impairment), you should make every effort to assist the individual to obtain the required evidence.

In addition you should not discriminate against applicants on the basis of race, national origin, gender, religion, age, or disability.

Editor's Notes

History

Emer. entire rule eff. 08/01/2006. Emer. sections 2 - 3 Eff. 08/07/2006. Perm. entire rule eff. 08/01/2007.