



FACT SHEET

Documents Needed to Prove Lawful Presence

Department of Revenue Rule Implementing HB 07-1314

I. Background

In the summer of 2006 during a Special Session of the State Legislature, SSHB 06-1023 was passed. It required citizens and legal immigrants applying for public benefits to prove **lawful presence** before they could be determined eligible. The law allowed for the temporary use of more than just the five permanent documents allowed by 1023. It also established a temporary waiver process for those who could not provide any of the documents required by 1023.

In 2007, HB 07-1314, which amends SS HB06-1023, was passed. It authorizes the Department of Revenue (DOR) to make permanent the use of a broad list documents to prove lawful presence and to make permanent the waiver process that can be used if applicants are unable to provide any of the documents needed. The official DOR Rule that implements the law and a list of all the documents that can be used to verify lawful presence are at the following DOR web address:

http://www.revenue.state.co.us/EDO_dir/wrap.asp?incl=LawfulPresenceRules. The rule is effective on August 1, 2007. Note that Attachments A and B of the Rule list the many documents that can be used. The rule also provides more information about the waiver and appeal processes. For your convenience, the long list of documents that can be used by citizens and lawful immigrants are at the end of this fact sheet as well.

The Rule is intended to eliminate, as much as possible, the need to obtain a waiver from the DOR, by allowing one of a long list of documents to be provided by an applicant when s/he applies for assistance at Benefit Agencies. Applicants should not be sent to DOR by Benefit Agencies unless the applicant cannot provide any of the documents allowed and the Benefit Agencies decide a self-declaration and/or a third party declaration is not acceptable. There will likely be limited use of this option as the federal law indicates it should be used cautiously and in unusual circumstances.

II. Frequently Asked Questions

The following frequently asked questions and responses are intended to help public benefits applicants, service providers, county human services staff, and Department of Motor Vehicle (DMV) staff better understand how individuals may prove lawful presence.

1. What is Lawful Presence?

A public benefits' applicant is lawfully present if the applicant is a U.S. citizen or a legal immigrant.

2. How does an Applicant prove Lawful Presence?

If an applicant is applying for public benefits the applicant can demonstrate lawful presence by *signing an affidavit and providing one of the following documents*:

- A valid Colorado driver's license or a Colorado identification card
 - Valid Colorado driver's license or identification card refers only to 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.

- A driver's license or a state-issued identification card from a state that requires the applicant to prove *lawful presence* before the document is issued
- A United States military or a military dependent's identification card.
- A United States Coast Guard Merchant Mariner card
- A Native American tribal document **or**
- For US citizens, one of the many documents listed in Attachment A of the Rule
- For legal immigrants, one of the many documents listed in Attachment B of the Rule

3. What if an applicant does not have any of these documents?

If an applicant does not have any of the documents listed above, the Benefit Agency may allow the applicant to do either one of the following:

- Have one or more third parties sign written declarations that the applicant is a U.S. citizen or a legal immigrant and that they have reasonable basis for personally knowing that the applicant is a US citizen or legal immigrant or
- Utilize the written self-declaration already required by 1023 which indicates that the applicant is a US citizen or legal immigrant.

Important: These written declarations are made under the penalty of perjury and are possibly subject to later verification of status.

4. What if I don't have any of the documents that are listed in Attachments A and B and my self - declaration or the declaration of third parties are not accepted by the Benefits' Agency?

If the applicant does not have any of the documents needed and the Benefit Agency will not accept just her/his self-declaration or third party declarations, the applicant can request a Waiver at DMV. The request must be accompanied by all documents that the applicant is able to produce.

5. Why would a Request for Waiver be denied?

A. Request for Waiver may be denied for the following reasons:

- The SAVE verification system is unable to verify a person's lawful immigrant status. The SAVE system is a federal system used to verify lawful immigrant status.
- The Department of Revenue reasonably believes the documents provided have been tampered with, altered, or are not genuine.
- The documents provided are inconsistent and the applicant is unable to explain the inconsistencies.

6. Do Waivers Expire?

No, waivers do not expire. They may be rescinded / cancelled if the Department of Revenue becomes aware of any possible violation of immigration laws. Waivers issued since August 1, 2006, but prior to the approval of the changes in the Rules for Evidence of Lawful Presence, will continue to be in effect unless rescinded / cancelled by the Department of Revenue.

7. How can an applicant appeal the decision to rescind or cancel a waiver or appeal the denial of a waiver?

If an applicant is an immigrant and his/her waiver has been rescinded / cancelled, the applicant may request a hearing within thirty days of the waiver being rescinded / cancelled by making a written request for hearing to the Hearings Section of the Department at 1881 Pierce St. #106 Lakewood, CO 80214. The only issue at the hearing will be whether the applicant was unable to verify his/her lawful status.

If a citizen's waiver is rescinded /cancelled or an applicant's (citizen or legal immigrant) waiver is denied, the appeals process remains unclear. Attempts to clarify the appeal process with DOR are being made by the Colorado Center on Law and Policy (CCLP), Colorado Legal Services (CLS), and the Denver Department of Human Services (DDHS) and other advocates.

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**DOCUMENT LISTS AUTHORIZED BY DOR RULE ON LAWFUL PRESENCE
EFFECTIVE 8/1-07**

Attachment A to the Rule

Attachment A documents are documents that citizens may use to prove "lawful presence" when they are applying for public benefits at a Benefit Agency like the County Departments of Human Services.

Attachment B to the Rule

Documents that Immigrants may use to prove "lawful presence" in order to obtain public benefits are identified in Attachment B below.

Attachment A Documents

A. Primary Evidence

1. Copy of applicant's birth certificate from any state, the District of Columbia and all United States territories.
2. US Passports, except "limited" passports, issued for periods of less than five years.
3. Report of Birth Abroad of a U.S. 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 cards 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 U.S. 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.) OR
10. American Indian Card with Classification code "KIC" and a statement on the back identifying US Citizen members of the Texas Band of Kickapoos.)

Note: Any of the above documents with pictures can also be used to prove identity as well as lawful presence.

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. **or**
 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) will be used with caution by workers.

***** This is very important because it makes it easier to access public benefits. Workers at the County Department of Human Services, non-profits and DMV may not be aware they can accept just a declaration so the person applying for benefits or her/his representative may have to tell the workers this is allowed by law.**

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 resident in the US VI as a Danish citizen on January 17, 1917and 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 into 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 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 5, 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 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

US AG Guidance: AG Order No. 2129-97: List of Documents that Demonstrate Lawful Presence / Qualified Alien Status

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 appear 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 INS

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 ”A 3” or
17. INS Form I-766 (Employment Authorization Document) annotated “A3”

Cuban / Haitian Entrants

18. INS Form I-551 (Alien Registration Receipt Card, commonly known as the “Green Card” with the code CU 6, CU 7, or CH 6
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

21. 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.

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