

## BUREAU OF MOTOR VEHICLES

**Chapter 15: RULES GOVERNING ACCEPTABLE DOCUMENTS TO ESTABLISH LEGAL PRESENCE**

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**SUMMARY:** These rules implement the provisions of 29-A M.R.S.A. §§ 1301 (2-A) and 1410 (8) which prohibit the Secretary of State from issuing a driver's license or nondriver identification card to an individual unless the individual presents valid documentary evidence of legal presence in the United States. These rules describe the documents that may be accepted to establish evidence of legal presence in the United States. These rules do not apply to credentials issued under the federal REAL ID Act which are governed by federal regulations at 8 CFR §37 *et seq.*

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**§1. Definitions**

For purposes of this Chapter:

- A. "Immigration authorities" include any federal agency charged with carrying out the Immigration and Nationality Act, including the United States Department of State, Department of Homeland Security, or Department of Justice, including the Executive Office for Immigration Review comprised of the Immigration Courts and the Board of Immigration Appeals, and any predecessor or successor federal agencies.
- B. "Document" includes but is not limited to any paper receipts, notices, letters, I-94 Arrival/Departure record or other forms, court orders issued by immigration authorities or by any federal court, or any electronic evidence, including print-outs from websites maintained by immigration authorities or from the Federal Register or federal courts that document an individual's legal presence.
- C. "Evidence" includes information pertaining to the individual, or court orders or Federal Register notices indicating an individual's legal presence or status as a member of a specific class or category.

**§2. General requirement for acceptable documents to establish legal presence in the United States.**

Any document deemed not authentic may be rejected as unacceptable. All documents described in these rules must be:

- A. Legible;

- B. Unexpired or having no expiration date; and
- C. Valid, i.e., not suspended, revoked, canceled or otherwise voided by the issuing agency.

**§3. Documents to establish the legal presence of United States citizens or nationals**

A person, who is a United States citizen, including, for the purpose of this rule, United States nationals, may present the following documents to establish evidence of legal presence in the United States.

- A. United States Passport or Passport Card.
- B. Certified copy of a birth certificate from a State Office of Vital Statistics or equivalent agency showing the individual was born in:
  - 1. a State of the United States;
  - 2. District of Columbia;
  - 3. Puerto Rico after January 12, 1941<sup>1</sup>;
  - 4. Virgin Islands after January 16, 1917<sup>2</sup>;
  - 5. Guam after April 11, 1899<sup>3</sup>;
  - 6. Commonwealth of Northern Mariana Islands at or after 11:00 a.m. (Saipan time) on January 9, 1978<sup>4</sup>;
  - 7. American Samoa after February 16, 1900<sup>5</sup>; or
  - 8. Swains Island after March 4, 1925<sup>5</sup>; or
- C. Consular of Report of Birth Abroad, Certificate of Report of Birth or Certification of Report of Birth.
- D. Certificate of Naturalization.
- E. Certificate of U.S. Citizenship.
- F. United States Citizen Identification Card.

- G. Identification Card for Resident Citizen in the U.S.
- H. American Indian Card.
- I. Northern Mariana Identification Card.

**§4. Alternative documents to establish the legal presence of United States citizens**

A person, who is a United States citizen who is unable to produce a document listed in Section 3 may present acceptable alternative documents, including the following:

- A. A person born in a United States jurisdiction listed in Sections 3.B.1 – 3.B.6 may present:
  - 1. A document issued by the United States or a jurisdiction listed in Sections 3.B.1 – 3.B.6 showing the name, date of birth and that the birth occurred in a jurisdiction listed in Sections 3.B.1 – 3.B.6, including but not limited to military discharge records, proof of civil service employment by the United States government prior to June 1, 1976, adoption papers, including court orders, and census records; or
  - 2. A document from the Federal Bureau of Prisons or the Maine Department of Corrections, or any successor agencies, approved by the Secretary of State or the Secretary of State's designee indicating that the person was born in a United States jurisdiction listed in Sections 3.B.1 – 3.B.6.; or
  - 3. Any other credible documentation that includes the person's name, date of birth, and that the birth occurred in a jurisdiction listed in Sections 3.B.1 – 3.B.6, including but not limited to a contemporaneously published newspaper birth announcement, hospital birth certificate or birth record, baptismal certificate, religious record or tribal record, doctor's records or other medical records of the birth, or any combination of documents that when considered together satisfy Maine's Secretary of State or the Secretary of State's designee that the person was born in a United States jurisdiction listed in Sections 3.B.1 – 3.B.6.
- B. A person born outside the United States who believes they are a United States citizen through a United States citizen parent or parents may present:
  - 1. the person's foreign birth certificate;

2. proof of the United States citizenship of the parent or parents; and
3. evidence of the applicant's legal relationship to the U.S. citizen parent or parents.

A credential issued under this subsection must be approved by Maine's Secretary of State or the Secretary of State's designee.

- C. Unavailability of documents establishing birth abroad or the person's relationship to parent. The unavailability of such documentation may be established by the United States Department of State's Foreign Affairs Manual or any successor resource, or by an authentic letter or statement from an authorized representative of the country unable to produce the document advising that the document is unavailable. The applicant may then provide at least two sworn affidavits from individuals with personal knowledge of the person's birth or relationship to the parent. The affidavits must be signed and include the affiant's name, address and contact information.

#### **§5. Documents to establish the legal presence of Noncitizens**

A person who is not a United States citizen may present the following documents issued by immigration authorities, unless other sources are specified, to establish evidence of legal presence in the United States:

A. Evidence of permanent resident or other permanent or unlimited duration legal presence in the United States:

1. Permanent Resident Card or Resident Alien Card;
2. Memorandum of Creation of Record of Lawful Permanent Residence;
3. Arrival/Departure Form I-94 or foreign passport with any notation referencing temporary evidence of or processed for "I-551" or similar language, or I-551 Alien Documentation and Identification System (ADIT) stamp;
4. Document indicating an approved or granted Form I-485 Application to Register Permanent Residence or Adjust Status;
5. Temporary Resident Card;
6. Court order or other document indicating a grant of cancellation of removal or suspension of deportation;

7. U.S. Travel Document indicating that it is a Refugee Travel Document, or a Reentry Permit, a Permit for Reentry or similar language;
  8. Form I-94 Arrival card or other document showing admission as a refugee under INA §207;
  9. Document showing asylum granted under INA §208;
  10. Court order or other document establishing a grant of withholding of removal or of Convention Against Torture relief;
  11. A valid unexpired passport issued by the Republic of the Marshall Islands, the Republic of Palau, or the Federated States of Micronesia with a Form I-94 form documenting the applicant's most recent admission to the United States under the Compact of Free Association between the United States and the nation that issued the passport;
  12. Arrival/Departure Form I-94 or Canadian passport coded S13; or
  13. Letter or tribal document establishing that the person is a First Nations member born in Canada;
- B. Evidence of legal presence as a limited term noncitizen:
1. Document indicating a pending Form I-485 Application to Register Permanent Residence or Adjust Status, including an Employment Authorization Document bearing the code C09 or C9;
  2. Document indicating a pending Form I-589 application for asylum, withholding of removal, or Convention Against Torture relief, including an Employment Authorization Document bearing the code C08 or C8;
  3. Employment Authorization Document (EAD);
  4. I-94 Arrival/Departure Form showing class of nonimmigrant visa admission, entry date and "Admit until" date that is unexpired, or that says "D/S" for "duration of status". If the "Admit until" date is blank, this form must be accompanied by another document from immigration authorities establishing legal presence;
  5. Other document showing nonimmigrant visa status that includes the class of nonimmigrant visa, validity period or an expiration date;
  6. Student and Exchange Visitor Information System (SEVIS) forms (I-20 or DS-2019) properly endorsed or stamped;

7. Document or other evidence of a pending or approved application for “temporary protected status,” “deferred action,” or “deferred enforced departure” or similar status;
8. Document or other evidence indicating legal presence as a Parolee or person “paroled”, a Cuban/Haitian Entrant, or Conditional Entrant;
9. Notice to Appear, court hearing notice or other evidence indicating a currently pending removal proceeding before the Executive Office for Immigration Review, or any pending appeals to a federal court;
10. Document or other evidence of an Order of Supervision;
11. Document granting a stay of deportation or removal;
12. Document granting voluntary departure until a specified departure date;
13. Document or other evidence indicating a currently pending or approved petition or application for an immigration benefit or immigration relief timely filed with immigration authorities including but not limited to a petition or application relating to a nonimmigrant visa status, or for permanent residency, or for humanitarian relief, under which the noncitizen is authorized to stay during the pendency of those petitions or applications, including exhaustion of available appeals; or
14. Any other document issued by immigration authorities or other evidence that indicates legal presence in the United States, as approved by Maine’s Secretary of State or the Secretary of State’s designee.

## §6. Expiration of driver's license or nondriver identification card

- A. United States citizens. A United States citizen whether by birth or naturalization shall be issued a full term driver's license or nondriver identification card.
- B. Noncitizens with permanent legal presence. A noncitizen who has permanent or unlimited duration legal presence as evidenced by any document listed in Section 5.A of this chapter, shall be issued a full term driver's license or nondriver identification card.
- C. Limited term noncitizens.
  - 1. Noncitizens with nonimmigrant visa status: Minimum period of admission required.

A driver's license or identification card may not be issued to a noncitizen with nonimmigrant visa status if the document listed in Section 5.B.4 through 5.B.6, shows that the authorized period of admission, plus any applicable grace period under federal immigration laws for the relevant nonimmigrant visa category, will expire fewer than 120 days from the date the person applies for a driver's license or nondriver identification card. This restriction shall not apply to a noncitizen in nonimmigrant visa status who:

- a. is requesting a duplicate of a previously issued and unexpired credential;
  - b. is requesting an additional endorsement added to a previously issued and unexpired credential;
  - c. provides evidence of a petition or application to extend, change or adjust immigration status currently pending with immigration authorities; or
  - d. provides other evidence of the ability to remain in the U.S. beyond the date of the nonimmigrant period of admission.
- 2. Noncitizens with nonimmigrant visa status: Defined period of admission.

In the case of a noncitizen with nonimmigrant visa status specifying a defined period of admission as evidenced by a document listed in Section 5.B.4 through 5.B.6, a driver's license or nondriver identification card must expire on the date specified on the immigration document plus any applicable grace period under federal immigration laws, or the date specified in 29-A MRSA §1406, whichever is earlier. This subsection shall not apply to a noncitizen with nonimmigrant visa status who provides evidence of an application to extend, change or adjust immigration status currently pending with immigration authorities or provides other evidence of the ability to remain in the U.S. beyond the date of the

nonimmigrant period of admission, whose application shall be processed as described at Section 6.C.4.

3. Noncitizens with nonimmigrant visa status: Undefined period of admission.

If the authorized period of admission is “duration of status” (D/S) for a holder of any F, J, or M nonimmigrant visa status, any driver’s license or nondriver identification card expires four years from the date of issuance, or on the date of expiration of their program, including any extensions as indicated on their I-20 or DS-2019 forms or on successor documentation, if that date is earlier.

4. Noncitizens with currently pending petitions, applications or cases.

If the document presented indicates that the noncitizen has a petition, application, or case currently pending before immigration authorities, including any review by the appropriate bodies with appellate jurisdiction, that has no defined duration limit, any driver’s license or nondriver identification card expires two years from the date of issuance.

5. Noncitizens with specified interim action dates.

If a noncitizen presents a document from immigration authorities or other evidence of an interim action date, including but not limited to an employment authorization document with an expiration date, evidence of Temporary Protected Status, Deferred Action status or other humanitarian status with an expiration date, a date to check in with immigration authorities, a parole expiration date, or other evidence of a specified interim date, any driver’s license or nondriver identification card expires on the same date as the interim date. In the case of a court hearing date, a credential may be issued for an additional period beyond the date of the hearing, not to exceed ten days, to allow the noncitizen to travel to and return from a court hearing occurring at a location outside of Maine.

## NOTES

<sup>1</sup> Individuals born in Puerto Rico on or after January 13, 1941 are U.S. citizens at birth. Those born in Puerto Rico between April 11, 1899 and January 13, 1941 who were subject to U.S. jurisdiction and resided in Puerto Rico or any other U.S. territory also became U.S. citizens effective January 13, 1941. 8 USC §1402.

- <sup>2</sup> Individuals born in the U.S. Virgin Islands on or after February 25, 1927 are U.S. citizens at birth. Most individuals born in the U.S. Virgin Islands after January 17, 1917 and before February 25, 1927 became U.S. citizens on February 25, 1927. 8 USC §1406.
- <sup>3</sup> All persons born in Guam on or after April 11, 1899 are U.S. citizens at birth, unless those born in Guam between April 11, 1899 and August 1, 1950 took affirmative steps to preserve or acquire another nationality. 8 USC §1407.
- <sup>4</sup> Individuals born in the Commonwealth of the Northern Mariana Islands (CNMI) at or after 11:00 a.m (Saipan time) on January 9, 1978 are U.S. citizens at birth. Individuals who didn't otherwise have U.S. citizenship but were domiciled in the CNMI prior to certain dates may also have become U.S. citizens. See <https://fam.state.gov/FAM/08FAM/08FAM030202.html> and <https://www.uscis.gov/policy-manual/volume-12-part-a-chapter-2> .
- <sup>5</sup> Individuals born in the U.S. outlying possession of American Samoa and Swains Island after February 16, 1900 or after March 4, 1925 respectively to parents who are not U.S. citizens are U.S. nationals at birth. 8 USC §1408.

STATUTORY AUTHORITY: 29-A MRSA §153

EFFECTIVE DATE:

**UPDATE WHEN FINAL**