

7 FAM 1160 MISCELLANEOUS NATIONALITY MATTERS

7 FAM 1161 POSTHUMOUS CHILDREN

a. Section 101(f) NA and Section 101(c)(2) INA indicate that, for purposes of acquiring U.S. nationality, "parent" includes a deceased parent in the case of a posthumous child. The INA also includes a deceased mother or father within its definition of "mother" or "father."

b. Posthumous children acquire at birth the same rights to citizenship or noncitizen nationality to which they would have been entitled if the deceased parent was alive at the time of their birth.

c. If the deceased parent of a child born posthumously in a foreign country was a U.S. citizen but the child did not acquire U.S. citizenship at birth, the child could obtain U.S. citizenship automatically upon the surviving parent's naturalization and the child's satisfaction of the conditions stated in Section 320 INA (see section 7 FAM 1153.4-4). Section 313 NA contained similar provisions (see section 7 FAM 1153.4-3).

d. A child born abroad to two aliens, one of whom died before the child's birth, can acquire U.S. citizenship automatically upon the naturalization of the surviving parent and the timely satisfaction of other conditions imposed by U.S. law.

7 FAM 1162 DUAL NATIONALITY

a. Dual nationality is the simultaneous possession of two different nationalities. 7 FAM 1162 Exhibit 1162a , which can be distributed to the public, provides general information on this subject.

b. Two of several misconceptions about dual nationality are that:

(1) The United States does not permit dual nationality; and

(2) U.S. citizens who acquire dual nationality during childhood must choose one nationality or the other upon reaching adulthood.

[Both of these statements are false.]

c. The Immigration and Nationality Act (INA) does not define dual nationality or take a position for it or against it. There has been no prohibition against dual nationality, but some provisions of the INA and earlier U.S. nationality laws were designed to reduce situations in which dual nationality exists. For example:

(1) Section 337 INA (8 U.S.C. 1448) requires petitioners for naturalization "to renounce ... all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen"; and

(2) Section 349 INA (8 U.S.C. 1481) provides for loss of U.S. citizenship due to the performance of certain acts which may demonstrate allegiance to another country.

d. Despite these laws, a person may not actually lose nationality upon naturalization in the United States because the foreign country might require something more before loss of its nationality would occur. A U.S. citizen who is naturalized abroad or performs one or the other acts listed in Section 349 may not lose U.S. citizenship because the U.S. Government may not be able to prove that the person acted with the intention of giving up U.S. citizenship.

e. Section 350 INA was the only provision of the INA that specifically mentioned dual nationality. It was repealed in 1978.

7 FAM 1163 HONORARY CITIZENSHIP

a. Honorary U.S. citizenship has been granted to only two people:

(1) Winston Churchill, by the Act of April 9, 1963 (77 Stat. 5), proclaimed by the President on the same date, and

(2) Raoul Wallenberg, by a joint resolution of Congress on October 5, 1981 (95 Stat. 971); the resolution honoring Wallenberg stated that "honorary citizenship is and should remain an extraordinary honor not lightly conferred nor frequently granted."

b. In a joint resolution (S.J. Res. 80, adopted on October 4, 1984) Congress authorized the President to declare by proclamation that William Penn, founder of the Commonwealth of Pennsylvania, and his second wife, Hannah Callowhill Penn, are honorary citizens of the United States. Pursuant to Presidential Proclamation 5284 of November 28, 1984, honorary citizenship was conferred upon William Penn and his wife Hannah Callowhill Penn.

c. Questions arise from time to time about the citizenship status of descendants of the Marquis Marie Joseph Y. R. G. du Motier deLafayette and other French military officers who may have been granted citizenship by States which they aided during the American revolution.

(1) In 1955, the Immigration and Naturalization Service had occasion to consider the case of a descendent of Lafayette who claimed U.S. citizenship pursuant to a Maryland Act of 1784 which stated "(t)hat the marquis de la Fayette, and his heirs male for ever, shall be ... citizens of this state."

(2) In reaching the conclusion that the male descendants of Lafayette, born after March 4, 1789 (the effective date of the Constitution), could acquire U.S. citizenship only on terms specified by Congress, the INS cited:

(a) The exclusive power given to Congress by the Constitution to establish naturalization laws; and

(b) The Supreme Court's ruling in *Dred Scott v. Sandford*, 60 U.S. 393 (1856), that, although a State might grant State citizenship to someone, that person would not automatically be a U.S. citizen (6 I. & N. 749).

7 FAM 1164 THROUGH 1169 UNASSIGNED

7 FAM 1162 Exhibit 1162a

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Sample of an Information Sheet on Dual Nationality

DUAL NATIONALITY

What It Is

The Supreme Court of the United States has stated that dual nationality is a "status long recognized in the law" and that "a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other", *Kawakita v. U.S.*, 343 U.S. 717 (1952).

How Acquired

Dual nationality results from the fact that there is no uniform rule of international law relating to the acquisition of nationality. Each country has its own laws on the subject, and its nationality is conferred upon individuals on the basis of its own independent domestic policy. Individuals may have dual nationality not by choice but by automatic operation of these different and sometimes conflicting laws.

The laws of the United States, no less than those of other countries contribute to the situation because they provide for acquisition of U.S. citizenship by birth in the United States and also by birth abroad to an American regardless of the other nationalities which a person might acquire at birth. For example, a child born abroad to U.S. citizens may acquire at birth not only American citizenship but also the nationality of the country in which it was born. Similarly, a child born in the United States to foreigners may acquire at birth both U.S. citizenship and a foreign nationality.

The laws of some countries provide for automatic acquisition of citizenship after birth. For example, a U.S. citizen may acquire another nationality merely by marrying a citizen of certain foreign countries. In addition, some countries do not recognize naturalization in a foreign state as grounds of loss of citizenship. A person from one of those countries who is naturalized in the United States keeps the nationality of the country of origin despite the fact that one of the requirements for naturalization in this country is a renunciation of other nationalities.

The automatic acquisition or retention of a foreign nationality does not affect U.S. citizenship; however, the acquisition of a foreign nationality upon one's own application may cause loss of U.S. citizenship under Section 349(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1481). In order for loss of nationality to occur under Section 349(a)(1), it must be established that the naturalization was obtained with the intention of relinquishing U.S. citizenship. Such an intention may be shown by a person's statements or conduct. If the U.S. Government is unable to prove that the person had such an intention when applying for and obtaining the foreign citizenship, the person will have both nationalities.

Current Law and Policy

United States law does not contain any provisions requiring U.S. citizens who are born with dual nationality or who acquire a second nationality at an early age to choose one nationality or the other when they become adults, Mandeli v. Acheson, 344 U.S. 133 (1952). The current nationality laws of the United States do not specifically refer to dual nationality.

While recognizing the existence of dual nationality and permitting Americans to have other nationalities, the U.S. Government does not endorse dual nationality as a matter of policy because of the problems which it may cause. Claims of other countries on dual-national U.S. citizens often place them in situations where their obligations to one country are in conflict with the laws of the other. In addition, their dual nationality may hamper efforts to provide diplomatic and consular protection to them when they are abroad. In general it is considered that while a dual national is in the other country of which the person is a citizen, that country has a predominant claim on the person.

Allegiance to Which Country

Like Americans who possess only U.S. citizenship, dual national U.S. citizens owe allegiance to this country and are obliged to obey its laws and regulations. Such persons usually have certain obligations to the foreign country as well. Although failure to fulfill such obligations may have no adverse effect on the person while in the United States because the foreign country would have few means to force compliance under those circumstances, the person might be forced to comply with those obligations or pay a penalty if the person goes to the foreign country. In cases where a dual national encounters difficulty in a foreign country of which the person is a citizen, the ability of U.S. Foreign Service posts to provide assistance may be quite limited since the foreign countries may not recognize the dual national's claim to U.S. citizenship.

Which Passport to Use

Section 215 of the Immigration and Nationality Act (8 U.S.C. 1185) requires U.S. citizens to use U.S. passports when entering or leaving the United States unless one of the exceptions listed in Section 53.2 of Title 22 of the Code of Federal Regulations applies. Dual nationals may be required by the other country of which they are citizens to enter and leave that country using its passport, but do not endanger their U.S. citizenship by complying with such a requirement.