7 FAM 1270 OTHER PROVISIONS OF LAW ON LOSS OF CITIZENSHIP

(TL:CON-5; 3-30-84)

7 FAM 1271 LOSS OF CITIZENSHIP BY DUAL NATIONALS

a. Former Section 350 INA was repealed on October 10, 1978. Repeal was prospective. Persons subject to its provisions before October 10, 1978, may have performed acts that were expatriating.

b. Section 350 provided for loss of citizenship if a dual national sought or claimed benefits of nationality of a foreign state. Persons who had acquired U.S. or foreign nationality by naturalization as defined in Section <$X> 101(a)(23) INA were not subject to this provision. The benefits need not actually have been granted; merely seeking or claiming the benefits was contemplated by Section 350. A benefit must have accrued by reason of having the nationality of the foreign country. For example, obtaining a work permit in a foreign state which was available to all aliens residing there did not meet the requirement of Section 350. Obtaining a special type of work permit available only to persons of a particular nationality or nationalities, for example, the European Community, met the requirement.

c. A second requirement was that of continuous residence for 3 years in the foreign state of which the person was also a national at any time after age 22. Residence, unlike obtaining the benefit, must have been in the country of the other nationality. Section 101(a)(33) INA defines “residence” for this purpose. The Department considers that the 3-year period of residence began from age 22 or from the date of seeking or claiming the benefit of a foreign state, whichever was later. For example, a person who claimed a benefit at age 25 while residing in the country of the other nationality became subject to Section 350 at age 28. To be subject to that section of law, the person must have retained the other nationality acquired at birth at the time of claiming the benefit and during the 3-year residency period. A person who acquired dual nationality at birth who later lost the other nationality by an act made expatriating by the foreign country’s law or by any other procedure was not subject to Section 350.

d. Persons taking the oath of allegiance within the 3-year period, or whose residence in the foreign state was for the reasons listed in Sections 353 and 354 were not subject to expatriation regardless of seeking or claiming benefits or later residence.

e. Section 350, unlike any subsection of Section 349, imposed a requirement of voluntariness on the seeking or claiming of a benefit of a foreign state. Persons who did not affirmatively seek the benefit concerned, or had it pressed upon them against their will, were not subject to this section of law.

7 FAM 1272 EXPATRIATION AFTER TAKING UP RESIDENCE ABROAD

a. Section 351(a) INA concerns acts performed in the United States which may result in expatriation once the person establishes residence outside this country.

b. Section 351(a) was not amended by Public Law 95-432. However, this appears to have been an oversight in the bill as drafted. The reference in Section 351(a) to paragraphs (7), (8), and (9) should be construed as a reference to paragraphs (6) and (7) as the statute is currently designated. This subsection requires that a person must reside abroad to lose citizenship. Residence outside the United States before the commission of a potentially expatriating act would not qualify as the kind of residence under this statute so as to permit a finding of expatriation.

c. Section 351(b) deals with nationals who expatriated themselves under paragraphs (2), (4), (5), and (6) of Section 349(a) and who may have citizenship restored by asserting their claim within 6 months after attaining age 18.

d. The regulations prescribed by the Secretary of State under this subsection are listed in 22 CFR 50.20(b) as follows:

> Section 351(b) of the Immigration and Nationality Act. (1) A person who desires to claim U.S. nationality under the provisions of section 351(b) of the Immigration and Nationality Act must, within the time period specified in the statute, assert his claim to U.S. nationality and subscribe to an oath of allegiance before a diplomatic or consular officer.
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> (2) In addition, the person shall submit to the Department a statement reciting his identity and acquisition or derivation of U.S. nationality, the facts pertaining to the performance of any act which would otherwise have been expatriative, and his desire to retain his U.S. nationality.

e. A person performing any of the acts in Section 351(b) while under age 18 is still subject to loss of U.S. nationality under the appropriate section of law as of the date of its performance. Assertion of a claim to U.S. nationality under this law restores U.S. nationality. The person is then considered as never having lost it. Failure to assert a claim ratifies the previous act of expatriation and does not alter the original loss.

7 FAM 1273 LOSS OF CITIZENSHIP BY NATURALIZED CITIZENS

Former Section 352 INA listed the circumstances under which naturalized persons residing abroad would lose their citizenship. This section was declared unconstitutional in Schneider v. Rusk, 377 U.S. 163 (1964).

7 FAM 1274 EXCEPTIONS TO SECTION 352 INA: SECTION 353 INA

This section listed exceptions to Section 352. Section 352 was repealed in its entirety by Public Law 95-432 on October 10, 1978. Although Section 353 applied only to Section 352(a), paragraphs (1), (2), (4), (5), (6), (7), and (8) of Section 353 were declared exceptions to Section 350. It continues to apply to persons subject to Section 350 before the date of repeal. Persons whose residence abroad was for any of the reasons shown in the specified paragraphs did not perform potentially expatriating acts.

7 FAM 1275 MINOR'S LOSS OF CITIZENSHIP: SECTION 355 INA

Former Section 355 referred to Section 350 and to Section 352 which dealt with loss of citizenship by minors whose parents lost their U.S. nationality. Section 352 was held unconstitutional in Schneider v. Rusk. Its repeal was retroactive in nature, that is, Section 352 was void from the effective date of the INA and could not cause expatriation. Accordingly, all prior determinations of loss of citizenship under Section 352 are void. The application of Section 355, therefore, is severely limited, since it is applicable only to cases arising under Section 350, a statute which itself was repealed on October 10, 1978. Section 355 imposed a condition stated in the proviso, similar to that in Section 349(a)(1), that a minor could lose U.S. nationality only if the minor failed to establish residence in the United States by age 25. Unlike the first proviso to Section 349(a)(1), Section 355 did not require that a permanent residence be established to excuse a minor from expatriation. Any residence which fits the definition in Section 101(a)(33) INA will satisfy the provision.

7 FAM 1276 CONDITIONS FOR LOSS OF NATIONALITY: SECTION 356 INA

This section provides that there can be no expatriation except by performance of acts or fulfillment of conditions specified in Chapter 3, INA.

7 FAM 1277 TREATIES: SECTION 357 INA

a. Section 357 deals with loss of nationality by treaty provisions for performing acts other than those specified by statute. That section of the INA includes the following proviso:

> That no woman who was a national of the United States shall be deemed to have lost her nationality solely by reason of her marriage to an alien on or after September 22, 1922, or to an alien racially ineligible to citizenship on or after March 3, 1931, or, in the case of a woman who was a United States citizen at birth, through residence abroad following such marriage, notwithstanding the provisions of any existing treaty or convention.

b. The United States entered into a number of bilateral and multilateral treaties, commonly called the Bancroft Conventions, in the 19th Century and early years of the 20th Century. The treaties provided for loss of citizenship by a citizen of one state upon naturalization in the other state and for loss of the second nationality upon resuming permanent residence in the original country. The United States filed notice in 1980 of intention to abrogate most of these treaties. Conventions with Albania, Bulgaria, and Czechoslovakia are the only ones still in force.

7 FAM 1278 AND 1279 UNASSIGNED