

## 7 FAM 080

# DUAL NATIONALITY

*(CT:CON-407; 06-29-2012)*

*(Office of Origin: CA/OCS/L)*

## 7 FAM 081 SUMMARY

*(CT:CON-106; 06-06-2005)*

- a. Dual nationality is the simultaneous possession of two citizenships.
- b. 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 confers its nationality on individuals on the basis of its national policy and law. For example, the laws of some countries provide for automatic acquisition of citizenship at birth or through marriage. Some persons born in the United States may be surprised to learn that they also possess derivative nationality of another country through a grandparent. Today, it is not uncommon for individuals to possess not just dual nationality, but multiple nationalities. While dual nationality can provide the individual with many benefits, such as the ability to work freely in the other country, it can also impose burdens, including military service, taxes, etc.
- c. If you receive inquiries about dual nationality, you may refer the inquirer to our brochures on this subject, Dual Nationality and Advice About Possible Loss of U.S. Citizenship and Dual Nationality, which are available on the Department of State, Bureau of Consular Affairs Internet page.
- d. International law recognizes that each country determines who is a national of that country.
- e. **U.S. Policy on Dual Nationality:** While recognizing the existence of dual nationality, the U.S. Government does not encourage it as a matter of policy because of the problems it may cause. Dual nationality may hamper efforts by the U.S. Government to provide diplomatic and consular protection to individuals overseas. When a U.S. citizen is in the other country of their dual nationality, that country has a predominant claim on the person. A foreign country might claim you as a citizen of that country if (a) you were born there; (b) your parent or parents (and sometimes grandparents) are or were citizens of that country or (c) you are a naturalized U.S. citizen but are still considered a citizen under that country's laws. (The oath you take when you are naturalized as a U.S. citizen (8 CFR 337.1) doesn't mean the foreign country does not still

regard you as a citizen of that country.) Public inquiries about the citizenship laws of other countries should be directed to the embassy or consulate of that country in the United States. 8 U.S.C. 1185(b) (Section 215(b) INA) and 22 CFR 53.1 require that U.S. citizens exit and enter the United States on a U.S. passport, with certain limited exceptions (22 CFR 53.2).

## **7 FAM 082 DUAL NATIONALITY AND U.S. LAW -- GENERALLY**

*(CT:CON-106; 06-06-2005)*

Current U.S. nationality laws do not explicitly address dual nationality, but the U.S. Supreme Court 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.” See *Kawakita v. United States*, 343 U.S. 717 (1952).

## **7 FAM 083 DUAL NATIONALITY AND U.S. LAW - ACQUISITION OF ANOTHER COUNTRY’S NATIONALITY**

*(CT:CON-106; 06-06-2005)*

U.S. citizens who naturalize in a foreign country or take an oath of allegiance to a foreign country do not automatically lose their U.S. citizenship. In adjudicating potentially expatriating acts pursuant to 8 U.S.C. 1481(a) (Section 349(a) INA), the Department has adopted an administrative presumption regarding certain acts and the intent to commit them. U.S. citizens who naturalize in a foreign country or take a routine oath of allegiance need not submit evidence of intent to retain U.S. nationality. Intent to retain U.S. citizenship will be presumed. A person who affirmatively asserts to a consular officer, after he or she has committed a potentially expatriating act, that it was his or her intent to relinquish U.S. citizenship will lose his or her U.S. citizenship. See 22 CFR 50.40. See 7 FAM 1200.

## **7 FAM 084 NATURALIZED U.S. CITIZENS**

*(CT:CON-106; 06-06-2005)*

Some countries do not recognize naturalization in a foreign country as grounds for loss of nationality. Consequently, a naturalized U.S. citizen may retain the nationality of his or her birth, even though that a person who has

applied to become a naturalized U.S. citizen is required to “take an oath to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state or sovereignty of whom or which the applicant was before a subject or citizen.” 8 U.S.C. 1448 (Section 337 INA (Immigration and Nationality Act of 1952, as amended; see 8 CFR 337 for the oath text).

## **7 FAM 085 U.S. PASSPORTS AND VISAS AND DUAL NATIONALITY**

*(CT:CON-106; 06-06-2005)*

- a. Section 215(b) of the INA (8 U.S.C. 1185(b) and 22 CFR 53 require U.S. citizens to enter and depart the United States on U.S. passports, with limited exceptions.
- b. Although a consular officer may not issue a visa to an individual who has been determined to be a U.S. citizen, if a nonimmigrant visa applicant has a possible claim to U.S. citizenship but is unable or unwilling to obtain documents to establish that status, as determined by the post’s citizenship and passport officer, the visa officer may presume that the applicant is an “alien” pursuing a nonimmigrant visa application. If the presumed alien is found eligible to receive the visa for which application was made, the visa may be issued prior to the final determination of citizenship status.
- c. If an immigrant visa applicant has a possible claim to U.S. citizenship, the post’s citizenship and passport officer must resolve the citizenship issue before the visa officer may take final action on the visa application.
- d. See 9 FAM 40.2 Notes, 9 FAM 42.12 N4 (2)(b) and 9 FAM 42.71 N5.

## **7 FAM 086 CONSULAR PROTECTION AND SERVICES AND DUAL NATIONALITY**

*(CT:CON-407; 06-29-2012)*

- a. The Vienna Convention on Consular Relations (VCCR), and most bilateral consular conventions and other consular agreements do not address the issue of dual nationality or how dual nationality affects the provision of consular services and protection to dual nationals. It is the Department’s policy to intervene on behalf of all U.S. citizens and U.S. noncitizen nationals, and make representations on their behalf, regardless of dual national status. While you should attempt to provide consular protection and services in accordance with this policy to the fullest extent permitted by the host country, you should make it clear to dual nationals that your

ability to assist them may be limited.

- b. It is a generally recognized rule, often regarded as a rule of international law, that when a person who is a dual national is **residing** in either of the countries of nationality, the person owes paramount allegiance to that country, and that country has the right to assert its claim without interference from the other country. Thus, in the absence of agreements to the contrary between the United States and the country of second nationality, if a dual national encounters difficulties in the country of the second nationality while residing there, the U.S. government's representations on that person's behalf may or may not be accepted.

### **DUAL NATIONALITY AND ARREST CASES**

See 7 FAM 416.3; 7 FAM 416.3-1 Dual National Arrestees In The Non-U.S. Country Of Nationality

- c. Dual nationals traveling abroad on a passport of their other country of nationality (or even on a U.S. passport in the absence of an express agreement between the United States and the other country) may find that the host country treats them as a national of only that country and does not recognize the United States as a country entitled to provide consular services. Nonetheless, you should provide consular services to the fullest extent permitted by the host country.
- d. When a U.S. citizen is a dual national, but is not a citizen of the host country, and the second country of nationality is providing protective services to the dual national, you should consult with the citizen and your foreign consular colleagues to ensure that appropriate protection is provided. The host country might permit consular visits only by the representative of one country, often the nation on whose passport the citizen entered the foreign country. You should continue to follow significant developments in the case and report them to the Department by cable using CASC tags.
- e. The United States does have a limited number of bilateral consular agreements or arrangements that address certain questions of related to dual nationals and consular assistance. These agreements generally provide that all nationals of the United States entering the other country on the basis of U.S. travel documents containing properly executed entry and exit visas will, during the period for which their status has been accorded, and in accordance with the visa's period of validity, be considered nationals of the United States by the appropriate authorities of the foreign country for the purpose of ensuring consular access and protection by the United States. See the Bureau of Consular Affairs Internet bilateral consular conventions feature and the CA/OCS Intranet treaties feature. Consult [\*CA/OCS/L \(Ask-OCS-L-Dom-Post@state.gov\)\*](mailto:CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov)) for additional guidance regarding these bilateral agreements and

arrangements.

**For example:**

U.S. – China Bilateral Consular Convention – The Exchange of Notes appearing at the end of the text of the Convention provide:

“2. The two governments agree to facilitate travel between their respective countries of persons who may have a claim simultaneously to the nationality of the United States of America and the People's Republic of China, **but this does not imply that the governments of the two countries recognize dual nationality**. Exit formalities and documentation shall be dealt with in accordance with the laws of the country in which such person resides. Entry formalities and documentation shall be dealt with in accordance with the laws of the country of destination.

“3. All nationals of the sending State entering the receiving State on the basis of travel documents of the sending State containing properly executed entry and exit visas of the receiving State will, during the period for which their status has been accorded, and in accordance with the visa's period of validity, be considered nationals of the sending State by the appropriate authorities of the receiving State for the purpose of ensuring consular access and protection by the sending State as provided for in Article 35 of the Consular Convention between the United States of America and the People's Republic of China. If judicial or administrative proceedings prevent the above-mentioned persons from leaving the country within the visa's period of validity, they shall not lose the right of consular access and protection by the sending State. Such persons shall be permitted to leave the receiving State without the necessity of obtaining documentation from the receiving State other than the exit documentation normally required of departing aliens.”

Some arrangements on this subject are less formal. For example:

- (1) A 1994 agreement between the United States and Vietnam provides for immediate notification of and reciprocal access within 96 hours to each other's detained citizens. Bearers of U.S. passports who enter Vietnam with a Vietnamese visa, including those of Vietnamese origin, are regarded as U.S. citizens by the U.S. Government for purposes of notification and access. Therefore, U.S. citizens are encouraged to carry photocopies of passport data and photo pages with them at all times so that, if questioned by Vietnamese officials, proof of U.S. citizenship is readily available.
- (2) The U.S.- DPRK Interim Consular Agreement provides that North Korea will notify the Swedish Embassy within four days of an arrest or detention of an American citizen bearing a U.S. passport who

enter the DPRK with a DPRK visa and will allow consular visits within two days after a request is made by the Swedish Embassy.

## **7 FAM 087 CONSULAR ACCESS AND NOTIFICATION AND DUAL NATIONALS**

*(CT:CON-106; 06-06-2005)*

Generally speaking, treaties do not require consular notification if the arrested or detained U.S. citizen is also a citizen of the host country. This is true even if the detainee's other country of citizenship is a mandatory notification country. (While the VCCR provides that consular notification is at the option of the detainee, 56 countries are governed by bilateral consular conventions under which consular notification is **mandatory** whether or not the detainee/arrestee wishes the consular officer to be informed. Posts should be familiar with the treaty provisions applicable to the host country. See Consular Notification and Access feature on the Consular Affairs Internet web page.

## **7 FAM 088 THROUGH 089 UNASSIGNED**