

7 FAM 1200 APPENDIX C TAKING UP RESIDENCE ABROAD: LOSS OF NATIONALITY, DUAL NATIONALS AND NATURALIZED CITIZENS

*(CT:CON-285; 03-06-2009)
(Office of Origin: CA/OCS/PRI)*

7 FAM 1210 APPENDIX C INTRODUCTION

(CT:CON-285; 03-06-2009)

7 FAM 1200 Appendix C provides guidance regarding certain **former** sections of the Immigration and Nationality Act (INA) which may come to the attention of consular officers and passport specialists due the existence of outstanding lookouts in the Consular Lookout and Support System (CLASS). The sections of law to which these lookouts pertain have been repealed or declared unconstitutional. 7 FAM 1200 Appendix C advises consular officers and passport specialists what to do if you come across one of these cases.

7 FAM 1220 APPENDIX C FORMER INA AUTHORITIES

(CT:CON-285; 03-06-2009)

The sections of law discussed in 7 FAM 1200 Appendix C are:

- (1) Former INA 350 (66 Statutes at Large 269) (8 U.S.C. 1482);

NOTE: INA 350 provided for loss of nationality by a dual national by birth (a person who acquired U.S. and foreign nationality by birth) who has voluntarily sought or claimed the benefits of the nationality of any foreign state and thereafter has a continuous residence for 3 years in the foreign state whose nationality he or she acquired at birth at any time after attaining the age of 22. It also provided that nationality is not lost if prior to the expiration of the 3-year period, the national takes an oath of allegiance to the United States before a diplomatic or consular officer and had his or her residence abroad solely for one of the reasons set forth in paragraphs (1), (2), (4), (6), (7), or (8) of INA 353 or paragraph (1), or (2) of INA 354. A further stipulation was that

nobody whose foreign residence begins after age 60, and after having his residence in the United States for 25 years after age 18, is subject to loss of nationality under section 350.

(Source 8 FAM 225.11; 4/10/1970.)

- (2) Former INA 352 listed the circumstances under which naturalized persons residing abroad would lose their citizenship.

7 FAM 1230 APPENDIX C FORMER INA 350

(CT:CON-285; 03-06-2009)

- a. On October 10, 1978, the President signed Public Law 95-432 which repealed INA 350 effective that date.
- b. The report of the House Committee on the Judiciary reaffirmed that the repeal of the law was prospective.
- c. Public Law 95-432 did not restore citizenship to anyone who lost citizenship under Section 350 INA prior to October 10, 1978.
- d. Effective October 10, 1978, anyone who had not completed the three years continuous residence in the foreign state of which he or she was a national at birth was no longer subject to loss of nationality under Section 350 INA.
- e. INA 350 provided for loss of citizenship if a dual national sought or claimed benefits of nationality of a foreign state.
- f. Persons who had acquired U.S. or foreign nationality by naturalization as defined in Section 101(a)(23) INA were **not subject to this provision**.
- g. The benefits need not actually have been granted; merely seeking or claiming the benefits was contemplated by INA 350. A benefit must have accrued by reason of having the nationality of the foreign country.
- h. 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. INA 101(a)(33) defines "residence" for this purpose. The Bureau of Consular Affairs (CA) considered 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 INA 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.

- i. Persons taking the oath of allegiance within the 3-year period, or whose residence in the foreign state was for the reasons listed in INA 353 and INA 354 were not subject to expatriation regardless of seeking or claiming benefits or later residence.
- j. INA 350 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.
- k. In light of the **Terrazas** decision, CA no longer makes a finding of loss of nationality for a person who claimed such a benefit between December 24, 1952 (effective date of the INA) and October 10, 1978 (effective date of Public Law 95-432) who met the 3-year residence requirement, even if he or she claimed that the benefit was sought and obtained with the intention of relinquishing U.S. citizenship.
- l. If a CLASS hit occurs when clearing the name of a passport applicant due to former INA 350, the lookout should be removed and the passport issued.
- m. If a U.S. citizen requests a finding of loss of nationality under former INA 350 the matter should be referred to CA/OCS/PRI (ASKPRI@state.gov).

7 FAM 1240 APPENDIX C SECTION 352 EXPATRIATION AFTER TAKING UP RESIDENCE ABROAD

(CT:CON-285; 03-06-2009)

- a. Former INA 352 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).
- b. INA 352 was repealed in its entirety by Public Law 95-432 on October 10, 1978.