7 FAM 1200 APPENDIX A LOSS OF NATIONALITY AND THE EARLY YEARS OF THE REPUBLIC

(CT:CON-285; 03-06-2009)
(OFFICE OF ORIGIN: CA/OCS/PRI)

7 FAM 1210 APPENDIX A SUMMARY

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

a. 7 FAM 1200 Appendix A provides some historical perspective regarding U.S. law and policy pertaining to loss of nationality in the early years of the Republic. Two points emerge as having deep historical roots:

   (1) That a person has a right to expatriate; and

   (2) That there has been from the beginning a belief that we ought not to treat (a) "native-born" and (b) naturalized U.S. citizens differently.

b. 7 FAM 1200 Appendix H (under development) provides links to historical instructions to consuls about loss of nationality.

c. It was one of the earliest principles of the foreign and domestic policy of the United States Government that aliens could come to the United States, be naturalized as citizens of this country, and thereafter be considered as absolved from allegiance to the countries of which they had previously been citizens. This was one of the principles involved in our dispute with Great Britain which led to the War of 1812. Under common law, it was generally held that no person could discard his or her nationality and become an alien without the consent of his or her sovereign or government (Shanks v. Dupont, 28 U.S. 242 (1830)). This concept received some acceptance in the United States but was questioned at an early date.

d. For most of the 19th century and early 20th century, when questions about loss of nationality arose in the United States, it was in the context of the right of expatriation and the protection of naturalized U.S. citizens abroad.

e. 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 080 provides guidance on dual nationality and consular protection.

7 FAM 1220 APPENDIX A THE CONSTITUTION

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

a. In 1967, the U.S. Supreme Court, in the matter of Afroyim v. Rusk, 387 U.S. 253, noted:

(1) "The Constitution grants Congress no express power to strip people of their citizenship, whether in the exercise of the implied power to regulate foreign affairs or in the exercise of any specifically granted power";

(2) "And even before the adoption of the Fourteenth Amendment, views were expressed in Congress and by this Court that under the Constitution the Government was granted no power, even under its express power to pass a uniform rule of naturalization, to determine what conduct should and should not result in the loss of citizenship."

b. **Fourteenth Amendment to the U.S. Constitution**: The first sentence of the Fourteenth Amendment (1868), as construed in Afroyim v. Rusk, 387 U.S. 253, 268 (1967), "[protects] every citizen of this Nation against a congressional forcible destruction of his citizenship'" and that every citizen has "'a constitutional right to remain a citizen . . . unless he voluntarily relinquishes that citizenship."

The Fourteenth Amendment, Section 1 reads: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside."

c. In the matter of Osborn v. Bank of the United States, 9 Wheat. 738, 827, 6 L Ed 204 (1824), the U.S. Supreme Court, speaking through Chief Justice Marshall, declared that:

"Congress, once a person becomes a citizen, cannot deprive him of that status: [The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual."

7 FAM 1230 APPENDIX A EARLY LEGISLATIVE ACTIVITY

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

a. The parent laws of our citizenship and naturalization laws were the Virginia laws of 1779 and 1782, which were drawn up by Thomas Jefferson and introduced by George Mason. President Thomas Jefferson recommended the enactment of the Federal law of April 14, 1802 upon which our system of naturalization rests. The Virginia law of 1779 is notable because it contained a provision for expatriation in the following terms:

> "That whensoever any citizen of this commonwealth shall by word of mouth in the presence of the court of the county wherein he resides, or of the general court, or by deed in writing under his hand and seal, executed in the presence of three witnesses, and by them proved in either of the said courts, openly declare to the same court that he relinquishes the character of a citizen and exercises his natural right of expatriating himself, and shall be deemed no citizen of this commonwealth from the time of his departure."
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> (**Source**: Chapter IV, Vol. 10, p. 129, Hening's Statutes at Large.)
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> (**Source**: 59th Congress, 2nd Session, House Document No. 326, Letter from the Secretary of State Submitting Report on the Subject of Citizenship, Expatriation, and Protection Abroad, December 18, 1906.)

b. On three occasions, in 1794, 1797, and 1818, Congress considered and rejected proposals to enact laws which would describe certain conduct as resulting in expatriation. On each occasion Congress was considering bills that were concerned with recognizing the right of voluntary expatriation and with providing some means of exercising that right.

c. In 1794 and 1797, many members of Congress still adhered to the English doctrine of perpetual allegiance and doubted whether a citizen could, even voluntarily, renounce his citizenship.

d. By 1818, however, almost no one doubted the existence of the right of voluntary expatriation, but several judicial decisions had indicated that the right could not be exercised by the citizen without the consent of the Federal Government in the form of enabling legislation:

   (1) A bill was introduced to provide that a person could voluntarily relinquish his citizenship by declaring such relinquishment in writing before a district court and then departing from the country;

   (2) The opponents of the bill argued that Congress had no constitutional authority, either express or implied, under either the

Naturalization Clause or the Necessary and Proper Clause, to provide that a certain act would constitute expatriation. They pointed to a proposed Thirteenth Amendment, subsequently **not ratified**, which would have provided that a person would lose his citizenship by accepting an office or emolument from a foreign government. The bill was finally defeated.

7 FAM 1240 APPENDIX A CIVIL WAR DEVELOPMENTS

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

a. The Enrollment Act of March 3, 1865 - 13 Statutes at Large 487; 38th Congress, Session II, Chapter 78, 79, 1865 contained a provision (Section 21) concerning loss of nationality for deserters from the military and naval service of the United States and for departing the United States with the intent of avoiding any draft into such service. The law provided:

> Section 21:
> "And be it further enacted, That, in addition to the other lawful penalties of the crime of desertion from the military or naval service, all persons who have deserted the military or naval service of the United States, who shall not return to said service, or report themselves to a provost-marshal within sixty days after the proclamation hereinafter mentioned, **shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens**; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, **or of exercising any rights of citizens thereof**;
> And all persons who shall hereafter desert the military or naval service, and all persons who, being duly enrolled, **shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of the United States, with intent to avoid any draft into the military or naval service, duly orders, shall be liable to the penalties of this section**.
> And the President is hereby authorized and required forthwith, on the passage of this act, to issue his proclamation setting forth the provisions of this section, in which proclamation the President is requested to notify all deserts returning within sixty days as aforesaid that they shall be pardoned on condition of returning to their regiments and companies or to such other organizations as they may be assigned to, until they shall have served for a period of time equal to their original term of enlistment."

b. In 1867, Congress passed An Act for the Relief of Certain Soldiers and

Sailors, 15 Statutes at Large 14, to remove any disability incurred by loss of citizenship due to desertion.

c. In 1868, two years after the Fourteenth Amendment had been proposed, Congress specifically considered the subject of expatriation. Several bills were introduced to impose involuntary expatriation on citizens who committed certain acts. With little discussion, these proposals were defeated. Other bills, like the one proposed but defeated in 1818, provided merely a means by which the citizen could himself voluntarily renounce his citizenship.

d. Then in the July 27, 1868 Act Concerning the Rights of American Citizens in Foreign States 15 Statutes at Large 223; 40th Congress, 2nd Session, Chapter 248, 249 1868, Congress enacted legislation declaring that expatriation is a natural and inherent right of all people.

> "WHEREAS the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore,
>
> Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled,
>
> Section 1.
>
> That any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government."

e. The July 27, 1868 Act Concerning the Rights of American Citizens in Foreign States (15 Statutes at Large 223) provided no method by which the right of expatriation might be exercised and, except for the limited grounds specified in the Act of March 3, 1865, 13 Statutes at Large 487, legislative guidance as to the circumstances in which nationality might be cast off was completely lacking until the Act of March 2, 1907, 34 Statutes at Large 1228.

f. The primary aim of the July 27, 1868 Act Concerning the Rights of American Citizens in Foreign States (15 Statutes at Large 223) undoubtedly was to safeguard the status of aliens who had become U.S. citizens. The motivating force of this legislation appears to have been

public indignation aroused by the treatment of naturalized Irish-Americans who were arrested in Ireland for participation in the Fenian movement and similar cases in Germany.

(**Source**: Moore, Digest of International Law, Volume III, (1906), page 579-581.)

"Among the naturalized citizens of the United States, in regard to whom the discrimination had been made, were some who had borne arms in defence [sic.] of the United States during the Civil War. Her Majesty's Government could conceive "how impossible it would be for the Government of the United States to agree to a denial or abridgement of their right to extend to them the same natural protection and care which the United States extend to native-born citizens of the United States in similar cases." (Mr. Seward, Secretary of State to Mr. Adams, Minister to England, Diplomatic Correspondence 1866.) The foregoing cases grew out of the Fenian movement. In consequence of the arrest of naturalized Americans on charges connected with this movement, the question of expatriation assumed an acute form. Among the numerous cases arising at that time, the most notable one, historically, is that of Warren and Costello, two naturalized American citizens who were tried and sentenced in Dublin in 1867, for treason-felony, on account of participation in the Jacmel expedition. It was shown that they had come over to Ireland in that vessel and had cruised along the coast for the purpose of effecting a landing of men and arms, in order to raise an insurrection. This incident, together with others, produced an excitement that, as Mr. Seward stated, extended "throughout the whole country, from Portland to San Francisco and from St. Paul to Pensacola." The subject was discussed in Congress, and exhaustive reports were made both in the Senate and the House of Representatives on the subject of expatriation."

(**Source**: 59th Congress, 2nd Session, House Document No. 326, Letter from the Secretary of State Submitting Report on the Subject of Citizenship, Expatriation, and Protection Abroad December 18, 1906, page 10.)

"The immediate occasion which called forth the law was the arrest of certain naturalized citizens by the authorities of their parent countries, chiefly the German States, for nonperformance of military service, and numerous arrests of naturalized citizens of Irish origin in the United Kingdom charged with crimes of a political character."

7 FAM 1250 APPENDIX A SELECTED SECRETARIES OF STATE VIEWS ON EXPATRIATION

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

a. **Mr. Jefferson**: In a communication to "Gouverneur Morris", U.S. Minister to France, dated August 16, 1793, Thomas Jefferson, then Secretary of State, made the following statement:

> "Our citizens are certainly free to divest themselves of that character by emigration and other acts manifesting their intention, and may then become the subjects of another power, and free to do whatever the subjects of that power may do."
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> (**Source**: The Works of Thomas Jefferson in Twelve Volumes. Federal Edition. Collected and Edited by Paul Leicester Ford.)

b. **Mr. Marshall**: In an instruction to Mr. Humphreys, U.S. Consul General in Spain, dated September 23, 1800, Secretary of State John Marshall advised:

> "The right of naturalizing aliens is claimed and exercised by the different nations of Europe, as well as by the United States. When the laws adopt an individual no nation has a right to question the validity of the act, unless it be one which may have a conflicting title to the person adopted. Spain therefore cannot contest the fact that these gentlemen are American citizens."
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> (**Source**: Moore, International Arbitrations, II, 1001 (1896); MS Inst. U. States Ministers, V 383.)

Further, in an instruction to Rufus King, envoy at London, Mr. Marshall stated on September 20, 1800:

> "With the naturalization of foreigners no other nation can interfere further than the rights of that other are affected … consequently those persons who, according to our laws, are citizens, must be so considered by Britain, and by every other power not having a conflicting claim to the person."
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> (**Source**: 59th Congress, 2nd Session, House Document No. 326, Letter from the Secretary of State Submitting Report on the Subject of Citizenship, Expatriation, and Protection Abroad, December 18, 1906.)

c. **Mr. Monroe**: In a communiqué to Mr. Foster, British Minister, dated May 30, 1812, Secretary of State James Monroe stated:

> "Your proffered exertions to procure the discharge of native American citizens from on board British ships of war, of which you desire a list, has not escaped attention. It is impossible for the United States to discriminate between their native and naturalized citizens, nor ought your Government to expect it, as it makes no such discrimination itself. There is in this office a list of several thousand American seamen who have been impressed into the British service, for whose release applications have from time to time been already made; of this list a copy shall be forwarded to you, to take advantage of any good offices you may be able to render."
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> (**Source**: 3 Moore, International Law Digest (1906) 563.)

d. **Mr. Adams**: In an instruction to Mr. Shaler, American Consul General at Algiers, dated January 13, 1818, Secretary of State John Quincy Adams, in declining to extend the protection of the United States to a native of Italy who has established himself in Tunis immediately or shortly after procuring naturalization in this country, said:

> "Without recurring to the litigious question, how far his rights as a citizen might be affected in the judicial tribunals of this country, by such a long and continued absence following almost immediately after his naturalization, it must be obvious that the obligations of the United States to protect and defend the interests of such a person, in controversies originating in foreign countries, and against the rights of their jurisdiction, cannot be supposed to bind them to the same extent at which it might be proper to interpose in behalf of our resident or native citizens."
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> (**Source**: 3 Moore, International Law Digest (1906) 735-736.)

e. **Mr. Calhoun**: In a communiqué to Mr. Pageot, French Minister, dated November 30, 1844, Secretary of State Calhoun stated:

> "From these provisions [of the naturalization laws] it would seem by necessary implication, that our laws presuppose a right on the part of citizens and subjects of foreign powers to expatriate themselves and transfer their allegiance, and, although the abstract right has not to my knowledge been settled by any authoritative decision, I feel no difficulty in expressing the opinion that the United States, acting upon these principles in reference to the citizens and subjects of other countries, would not deny their application to cases of naturalization of their own citizens by foreign powers, and, of course, to the case of Demerlier, who, if he should be naturalized by France, would on this view of the subject, be absolved from his allegiance to the United States."

(**Source**: 3 Moore, International Law Digest (1906) 565.)

f. **Mr. Buchanan**: In a letter to Mr. Rosset, dated November 25, 1845, Secretary of State James Buchanan stated:

"The fact of your having become a citizen of the United States has the effect of entitling you to the same protection from this Government that a native citizen would receive."

(**Source**: 3 Moore, Digest of International Law (1906) 566.)

Further, Mr. Buchanan stated in a letter to Mr. Huesman, dated March 10, 1847:

"The Government of the United States affords equal protection to all our citizens, whether naturalized or native, and this Department makes no distinction between the one and the other in granting passports.

It is right to inform you, however, that difficulties have arisen in cases similar to yours. In more than one instance European governments have attempted to punish our naturalized citizens, who had returned to their native country, for military offenses committed before their emigration. In every such case, the Government has interposed, I believe successfully, for their relief, but still they have in the meantime been subjected to much inconvenience. Under these circumstances I could not advise you to incur the risk of returning to Oldenburg, if the business which calls for your presence can be transacted by any other person."

(**Source**: 3 Moore, Digest International Law (1906) 566.)

And in a communiqué to Mr. Bancroft, Minister to England, dated October 28, 1848, Mr. Buchanan further stated:

"Whenever the occasion may require it, you will resist the British doctrine of perpetual allegiance, and maintain the American principle that British native born subjects, after they have been naturalized under our laws, are, to all intents and purposes, as much American citizens, and entitled to the same degree of protection, as though they had been born in the United States."

(**Source**: 3 Moore, Digest of International Law (1906) 566.)

And in a further communiqué to Mr. Bancroft, dated December 18, 1848, Mr. Buchanan stated:

"Our obligation to protect both these classes [naturalized and native American citizens] is in all respects equal. We can recognize no

> difference between the one and the other, nor can we permit this to be done by any foreign government, without protesting and remonstrating against it in the strongest terms. The subjects of other countries, who, from choice, have abandoned their native land, and, accepting the invitation which our laws present, have emigrated to the United States and become American citizens, are entitled to the very same rights and privileges, as if they had been born in the country. To treat them in a different manner, would be a violation of our plighted faith, as well as of our solemn duty."
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> (**Source**: 3 Moore, Digest of International Law (1906) 566-567.)

7 FAM 1260 APPENDIX A EARLY OPINIONS OF THE ATTORNEY GENERAL ON LOSS OF NATIONALITY

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

a. In 1856, the Department of State submitted to Mr. Cushing, as Attorney General, the following question propounded by the Bavarian Minister at Berlin: "Whether, according to the laws of the United States, a citizen thereof, when he desires to expatriate himself, needs to ask either from the Government of the United States, or of the State of which he is the immediate citizen, permission to emigrate; and if so, what are the penalties of contravention of the law." The Attorney General advised the Secretary of State, in part, that:

> "Citizens of the United States possess the right of voluntary expatriation, subject to such limitations, in the interest of the State, as the law of nations or acts of Congress may impose."
>
> (**Source**: 8 Op. Atty. Gen. 139 (1856))

"Further, Mr. Cushing, after averting to the fact that the National Government had not undertaken to formalize any general law either or citizenship or of emigration, referred to the laws of Virginia, which required, he said, as conditions of the relinquishment of citizenship, (1) a solemn declaration of intention to emigrate, with actual emigration and (2) the assumption in good faith of a foreign allegiance, but declared (3) that the act of expatriation should have no effect if done while in the State or the United States was at war with a foreign power, nor could a citizen of Virginia by emigration discharge himself from any obligation to the State, the nonperformance of which involved by its laws any penal consequence." (3 Moore, Digest International Law (1906) 570.)

b. On August 17, 1857, Attorney General Jeremiah S. Black wrote to the

Secretary of State an opinion regarding expatriation in the matter of **Julius Amther**, a native of Immelhausen, in Bavaria:

> "1. Any citizen of the United States, native or naturalized, may remove from the country, and change his allegiance, provided this be done in time of peace, and for a purpose not directly injurious to the interests of this Government.
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> 2. If he emigrates, carries his family and effects along with him, manifests his intention not to return, takes up his residence abroad, and assumes the obligation of a subject to a foreign government, this implies a dissolution of his previous relations with the United States, and no other evidence of that fact is required by our law.
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> 3. A native of Bavaria naturalized in America may return to his native country, and assume his political status as a subject of the King of Bavaria, if there be no law there to forbid it.
>
> 4. The Bavarian government may require him to abjure his allegiance to the United States in such form as they may choose to prescribe, since we, on our part, make our own regulations for the admission of Bavarian subjects as citizens of the United States."
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> (**Source**: 9 Op. Atty Gen. 62 (1857))

c. In 1859 Attorney General Black wrote an opinion in the case of **Christian Ernst** proclaiming in sweeping terms the right of expatriation:

> "1. The natural right of every free person, who owes no debt and is not guilty of any crime, to leave the country of his birth, in good faith and for an honest purpose, the privilege of throwing off his natural allegiance and substituting another allegiance in its place, is incontestible.
>
> 2. We take our knowledge of international law, not from the municipal code of England, but from natural reason and justice, from writers of known wisdom, and from the practice of civilized nations; and they are all opposed to the doctrine of perpetual allegiance.
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> 3. In the United States, ever since our independence, we have upheld and maintained the right of expatriation by every form of words and acts; and upon the faith of the pledge which we have given to it, millions of persons have staked their most important interests.
>
> 4. Expatriation includes not only emigration, but also naturalization.
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> 5. Naturalization signifies the act of adopting a foreigner and clothing him with all the privileges of a native citizen or subject.
>
> 6. In regard to the protection of our citizens in their rights at home

and abroad we have, in the United States, no law which divides them into classes or makes any difference whatever between them."

The Attorney General went on to say:

It was the "natural right of every free person, who owes no debts and is not guilty of any crime, to leave the country of his birth in good faith and for an honest purpose, and to throw off his natural allegiance and substitute another in its place; that although the common law of England denied this right, and some of our own courts, misled by British authority, have expressed, though not very decisively, the same opinion, this was not to be taken as settling the question; that natural reason and justice, writers of known wisdom, and the practice of civilized nations were all opposed to the doctrine of perpetual allegiance, and that the United States was pledged to the right of expatriation and could not without perfidy repudiate it."

(**Source**: 9 Op. Atty. Gen. 356, 357 (1859))

d. In 1873 Attorney General Williams ruled that the 1868 expatriation statute's sweeping language also recognized the right of U.S. citizens to cast off their nationality. The Attorney General indicated that it was the duty of executive officers to determine if such loss of nationality had taken place and suggested renunciation and foreign naturalization as two methods of expatriation. Thereafter the Department of State assumed the responsibility, in the absence of statute, of determining whether such loss of nationality occurred.

"The declaration in the act of July 27, 1868, chap. 249, that the right of expatriation is 'a natural and inherent right of all people,' comprehends our own citizens as well as those of other countries; and where a citizen of the United States emigrates to a foreign country, and there, in the mode provided by its laws, formally renounces his American citizenship with a view to become a citizen or subject of such country, this should be regarded by our Government as an act of expatriation.

The selection and actual enjoyment of a foreign domicile, with an intent not to return, would not alone constitute expatriation; but where, in addition thereto, there are other acts done by him which import a renunciation of his former citizenship, and a voluntary assumption of the duties of a citizen of the country of his domicile, these together with the former might be treated as presumptively amounting to expatriation, even without proof of naturalization abroad; though the latter is undoubtedly the highest evidence of expatriation."

(**Source**: (14 Op. Atty Gen. 295, 296 (1873))

7 FAM 1270 APPENDIX A NATURALIZATION TREATIES

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

a. Continuing problems with foreign governments taking legal action against naturalized U.S. citizens lead to the negotiation of a series of naturalization treaties which recognized naturalization as a means of effecting loss of nationality.

b. Even before the passage of the Act of July 27, 1868, a treaty was negotiated (May 27, 1868) by which the North German Confederation agreed to recognize as Americans former Germans who had secured our naturalization. Soon thereafter similar treaties were negotiated with Bavaria (October 8, 1868); Belgium (July 30, 1869); Hesse (August 7, 1870); Great Britain (September 16, 1870 and May 5, 1871); Austria-Hungary (August 1, 1871); Norway and Sweden (January 12, 1872); and Denmark (April 15, 1873).

(**Source**: Van Dyne, Citizenship of the United States (1904), Page 327, et seq.)

(**Source**: 59th Congress, 2nd Session, House of Representatives Document 326 (1906).)

c. The United States entered into a number of bilateral and multilateral treaties, commonly called the Bancroft Conventions for their chief negotiator, George Bancroft, 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.

d. From 1868 to 1937, the United States entered into 25 Bancroft treaties covering 34 foreign countries. In the matter of Reid v. Covert, 354 U.S. 1 (1957), the U.S. Supreme Court established that provisions of treaties or executive agreements are unenforceable if they conflict with the Constitution. In Schneider v. Rusk, 377 U.S. 163 (1964), the Supreme Court invalidated a section of the Immigration and Nationality Act of 1952 that purported to strip naturalized Americans of their citizenship after three years' continuous residence in their country of origin; and in Afroyim v. Rusk, 387 U.S. 253 (1967), the Supreme Court, reviewing part of the Nationality Act of 1940, held that Congress has no power to strip anyone of their citizenship, whether it is acquired by birth or by naturalization. These decisions strongly implied that if a case of involuntary loss of citizenship under one of the Bancroft treaties came before the Supreme Court, the expatriation provisions would be found unconstitutional. Concluding that the treaties had become unenforceable,

in 1980, the administration of President Jimmy Carter, acting in consultation with the Senate Committee on Foreign Relations, gave notice terminating the treaties to the remaining 21 countries with whom the Bancroft treaties were still in force.

(**Source**: Borchard, The Diplomatic Protection of Citizens Abroad, page 548 (1928).)

7 FAM 1280 APPENDIX A THE ACT OF MARCH 2, 1907

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

a. The provisions of Section 1 of the Act of July 27, 1968, 15 Statutes at Large 223, were incorporated in Section 1999 of the Revised Statutes, as codified in 1878.

b. On the 13th of April, 1906, the Senate passed a joint resolution providing for a commission to examine the subjects of citizenship of the United States, expatriation, and protection abroad. The Commission consisted of Mr. James B. Scott, Solicitor for the Department of State, Mr. David Jayne Hill, Minister of the United States to the Netherlands, and Mr. Gaillard Hunt, Chief of the Passport Bureau. The findings and recommendations of the Commission were reported to Congress in 59th Congress, 2nd Session, House of Representatives Document 326 (1906). Congress took the recommendations into account in preparing new legislation on expatriation.

c. The Act of March 2, 1907, 34 Stat. 1228, provided in the first paragraph of section 2 that expatriation would result from the naturalization of an American citizen "in any foreign state in conformity with its laws" or upon his taking an oath of allegiance to any foreign state. 7 FAM 1200 Appendix F provides guidance about how loss of citizenship claims under the Act of 1907 were administered by the Department.

7 FAM 1290 APPENDIX A LATER TWENTIETH CENTURY DEVELOPMENTS

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

a. By 1940, the 1907 Act had been repealed, and the Expatriation Act of 1868 was reenacted (8 U.S.C. 800). In 1940, Congress enacted the Nationality Act, 54 Stat. 1137, to codify the nationality laws. The Nationality Act expanded the grounds for loss of nationality to include engaging in military or government service for a foreign government;

voting in a foreign political election; formally renouncing citizenship; deserting the armed forces in time of war; treason; and residence for a specified time in foreign countries by naturalized citizens. (Nationality Act of 1940, Sections 401-409.)

b. Later, Congress enacted the Immigration and Nationality Act of 1952, 8 U.S.C. 1481, 66 Statutes at Large 280, which incorporated the concepts of the Expatriation Act of 1868 and the Nationality Act of 1940 and expanded the grounds for loss of nationality. These later statutes included provisions affecting dual nationals and naturalized citizens (Section 349 INA, Section 350 INA, Section 351 INA and Section 352) discussed in 7 FAM 1200 Appendix C. The current statutory regime is discussed in 7 FAM 1210 and in particular 7 FAM 1214.

c. While this Appendix reflects the very serious attention given to the issue of the right of expatriation by a young nation populated by immigrants, the United States has come to accept, as reflected in the U.S. Supreme Court's decision in Kawakita v. United States, 343 U.S. 717 (1952), that dual nationality exists, and that when a person who possesses dual nationality travels to the country of his or her other nationality, the person comes within the authority of that nation. The United States will continue to assert our interest in protecting the individual, but, as 7 FAM 080 explains, our ability to do so may be limited. (See also 7 FAM 1111.4 and 7 FAM 416.3.)

d. The principle that a country shall determine who is a national of that country for purposes of their domestic law is a concept universally recognized under international law.

e. The United States has recognized the right of expatriation as an inherent right of all people. Citizens of the United States can expatriate themselves through the voluntary performance of a statutorily specified expatriating act with the intention of relinquishing citizenship.

f. The United States, in accordance with the general principles of international law and practice, objects to the concept of arbitrary deprivation of nationality.

g. The United States is **not a party** to the League of Nations Convention on Certain Questions Relating to the Conflict of Nationality Laws, done at The Hague April 12, 1930, registered no. 4137, League of Nations, Treaty Series, volume 179, the U.N. Convention on Stateless Persons (1954), the U.N. Convention on Reduction of Statelessness (1961), or the European Convention on Nationality done at Strasbourg June 11, 1997.