

7 FAM 1290

MINORS, INCOMPETENTS, PRISONERS, PLEA BARGAINS, CULTS AND OTHER SPECIAL CIRCUMSTANCES

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

7 FAM 1291 INTRODUCTION

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

This subchapter addresses somewhat unusual questions that arise regarding loss of nationality. These are situations that consular officers should bring to the attention of the Directorate of Overseas Citizens Services (CA/OCS) to obtain specific guidance not provided in 7 FAM 1200.

7 FAM 1292 LOSS OF NATIONALITY AND MINORS

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

- a. Occasionally, CA/OCS or a post abroad will receive an inquiry from the parent of a child born in the United States who acquired U.S. citizenship at birth protesting the “involuntary” acquisition of U.S. citizenship.
- b. Jus soli (the law of the soil) is a rule of common law under which the place of a person’s birth determines citizenship. In addition to common law, this principle is embodied in the 14th Amendment to the U.S. Constitution and the various U.S. citizenship and nationality statutes. The 14th Amendment states, in part, that: All persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
- c. In *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898), the U.S. Supreme Court examined at length the theories and legal precedents on which the U.S. citizenship laws are based and, in particular, the types of persons who are subject to U.S. jurisdiction.
- d. Children born in the United States to diplomats accredited to the United States are not subject to U.S. jurisdiction and do not acquire U.S. citizenship under the 14th Amendment or the laws derived from it (see 7 FAM 1116.2-2).
- e. Parents or guardians cannot renounce or relinquish the U.S. citizenship of

a child who acquired U.S. citizenship at birth.

- f. A minor who was naturalized through naturalization of parent prior to the Nationality Act of 1940 did not lose citizenship unless voluntary transfer of allegiance by the minor was shown. Any such finding of loss of nationality under the Act of 1907 would now be subject to administrative review in light of the U.S. Supreme Court decisions in *Afroyim v. Rusk* and *Vance v. Terrazas*. (See 7 FAM 1230.)
- g. **Age limitations in the INA:** INA 349(a)(1), INA 349(a)(2) and INA 349(a)(4) contain specific provisions limiting their applicability to a person “having attained the age of eighteen years.” No finding of loss of nationality may be made for these acts committed by a person under the age of eighteen.
- h. **Child soldiers:** INA 349(a)(3) does not include a reference to age. If a case comes to a consular officer’s attention of a “child soldier” serving in the armed forces of a foreign state engaged in hostilities against the United States, the post should immediately bring the matter to the attention of CA/OCS/PRI (ASKPRI@state.gov) which will confer with the Office of the Assistant Legal Adviser for Consular Affairs (L/CA) and provide the post with specific guidance on how to proceed. The post should include the name of the child, date and place of birth, proof of U.S. citizenship and information available regarding the foreign military service. The e-mail alert should be followed by a formal cable report. (See also 7 FAM 1270.)

NOTE: INA 351(b) (8 U.S.C. 1483) provides that a national who within six months after attaining the age of eighteen years asserts his claim to U.S. nationality, in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have lost United States nationality by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraphs (3) and (5) of Section 349(a) of this title.”

- i. **Renunciation of U.S. citizenship and minors:**
 - (1) **Consult CA/OCS/ACS:** Whenever you receive a request to renounce from a minor you immediately must contact CA/OCS/ACS. CA/OCS/ACS **will not approve** a Certificate of Loss of U.S. Nationality (CLN) for a minor without the concurrence of CA/OCS/PRI, and appropriate consultation with L/CA;
 - (2) **Voluntariness and intent:** Minors who seek to renounce citizenship often do so at the behest of or under pressure from one or more parent. If such pressure is so overwhelming as to negate the free will of the minor, it cannot be said that the statutory act of expatriation was committed voluntarily. The younger the minor is

at the time of renunciation, the more influence the parent is assumed to have. Even in the absence of any evidence of parental inducements or pressure, you and CA must make a judgment whether the individual minor manifested the requisite maturity to appreciate the irrevocable nature of expatriation. Absent that maturity, it cannot be said that the individual acted voluntarily. Moreover, it must be determined if the minor lacked intent, because he or she did fully understand what he or she was doing. Children under 16 are presumed not to have the requisite maturity and knowing intent;

- (3) **Interviewing a minor:** When conducting the initial interview with a minor and during the renunciation procedure, you should have at least one other person present. The parents and guardians should not be present. As noted, the interview should take place in the presence of the consular officer and a witness, preferably another consular officer, another Foreign Service officer (nonconsular) or locally engaged staff (LES). You should also explain that upon reaching the age of 18, the minor has a six-month opportunity to reclaim U.S. nationality. See 7 FAM Exhibit 1292, A Sample Letter to Accompany CLN for Minor Renunciants, which should be provided to minor renunciants together with an approved CLN;
- (4) **Consular officer's opinion:** You should fully document every interaction with the minor and explain in your consular officer's opinion the reasons you believe that the minor is, or is not, mature enough and sufficiently knowing to renounce.

7 FAM 1293 MENTAL COMPETENCY

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

- a. Because loss of U.S. nationality occurs only when a would-be renunciant or person signing a statement of voluntary relinquishment has the legal capacity to form the specific intent necessary to lose U.S. nationality, cases involving persons with established or possible mental incapacity require careful review. This includes mental disability, mental illness, developmental impairment, Alzheimer's disease, and similar conditions. It may also include cases of substance abuse.
- b. A formal finding of mental incompetency by a court of competent jurisdiction, whether in the United States or abroad, precludes a finding that an individual has the requisite intent.
- c. The requisite intent may also be found lacking if there is evidence that due to mental incapacity or impairment the individual does not understand the seriousness of renunciation, including its irrevocable

nature and the major consequences that flow from it.

- d. Voluntariness may also be an issue with persons who suffer from mental incapacity or impairment, as such individuals may be especially susceptible to the influence of others.
- e. **Parents, guardians and trustees cannot renounce or relinquish the U.S. nationality of a citizen lacking full mental capacity:** A guardian or trustee cannot renounce on behalf of the incompetent individual because renunciation of one's citizenship is regarded, like marriage or voting, as a personal elective right that cannot be exercised by another. Should a situation arise of the evident compelling need for an incapacitated person to relinquish citizenship, you are asked to consult CA/OCS/PRI for guidance.
- f. **Importance of reporting consular observations and relevant facts:** An individual who behaves irrationally, belligerently or otherwise unusually may give you reason to question whether he or she has the mental capacity to formulate the intent required to lose U.S. nationality and/or whether he or she is subject to undue influence. You should document all the person's actions and behavior and give your impression of his or her ability to understand the nature and consequences of renunciation. You also should observe and document the behavior of any individual who appears to be attempting to influence the individual to renounce.
- g. While you are not making a clinical diagnosis, your description of the individual's demeanor, behavior, statements, and your assessment of the person's mental and emotional state are very important in making a determination whether the person is capable of formulating the intent to lose U.S. nationality and/or is acting voluntarily. This assessment must be sent to the Department (CA/OCS/ACS) as part of your consular officer opinion.
- h. **Accepting the renunciation or relinquishment:** You may accept the renunciation or voluntary relinquishment of troubled citizens who insist on exercising their right to renounce. Acceptance does not constitute approval which, by statute (INA 358; 8 U.S.C. 1501) can only occur in the Department. If the Department concludes that the facts rebut the presumption of voluntariness, the Department may decline to approve the Certificate of Loss of Nationality. Permitting such a person to attempt to exercise his or her right to renounce may alleviate tension or conflict on the scene, while reporting the circumstances surrounding the act and the person's demeanor will enable the Department to protect the citizenship of such an individual incapable of forming the requisite intent and voluntariness. The person seeking or claiming loss of citizenship has the burden of establishing knowing intent based on a preponderance of the evidence. Involuntariness may also be established by a preponderance of

the evidence.

7 FAM 1294 PRISONERS, FUGITIVES AND PLEA AGREEMENTS

7 FAM 1294.1 U.S. Citizens Imprisoned or Under Other Form of Detention Abroad

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

- a. The inherently coercive nature of incarceration and other governmental detention generally is sufficient to rebut the statutory presumption of voluntariness that is required for a renunciation to result in loss of nationality.
- b. Only in the rarest of instances will CA authorize a consular officer to accept the renunciation of U.S. nationality of a U.S. citizen or noncitizen national who is incarcerated or detained by foreign government authorities.
- c. You must report to CA/OCS/ACS any case where a prisoner or detainee indicates a desire to renounce citizenship.
- d. CA/OCS/ACS, with CA/OCS/PRI and L/CA concurrence, will provide specific instructions.
- e. A prisoner who has renounced may later claim that he or she did not renounce voluntarily, but rather was motivated by the compulsion to avoid deportation, extradition, or imprisonment.
- f. If CA/OCS/ACS authorizes the renunciation to proceed:
 - (1) You must interview the prisoner/detainee in private so as to avoid any perception or appearance of coercion from prison officials;
 - (2) If at all possible, the oath should be taken at post and you may need to make arrangements with prison officials, local police and the post's security officer to have the prisoner escorted;
 - (3) If you cannot make these arrangements for whatever reason, contact the Department (CA/OCS/ACS) for guidance;
 - (4) Security and your safety are a major concern in prisoner renunciation cases. If a prisoner is dangerous or a flight risk, you may need to make arrangements to administer the renunciation at the prison or at another secure location. Guards may need to be present as well but you must make every effort to keep the potentially coercive effect of their presence to a minimum. This may involve administering the oath within the guards' sight but

physically removed from their hearing. You must get the approval of the Department (CA/OCS/ACS) to implement such procedures.

7 FAM 1294.2 Fugitives from Justice

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

- a. Persons facing criminal charges in the United States or elsewhere may seek to renounce.
- b. They may express a reluctance to come to post for fear of being apprehended by authorities and may request to be permitted to renounce at another location.
- c. You immediately must alert CA/OCS, CA/PPT/L/LE, the RSO and L/LEI to any case in which CLASS or other information received by you indicates the potential renunciant is or may be a fugitive from justice. You must report immediately any case of a U.S. citizen who is the subject of an extradition or deportation request by the United States who inquires about renunciation of citizenship to CA/OCS and L/LEI. (See 7 FAM 1600, Extradition, and 7 FAM 190, Deserters, Stragglers and Fugitives.)

7 FAM 1294.3 Plea Bargain Agreements with U.S. Prosecutors and Renunciation or Relinquishment of U.S. Nationality

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

- a. The terms of a plea agreement between U.S. Federal or State prosecutors and a criminal defendant may include a provision that the person renounce U.S. nationality in exchange for reduced penalties.
- b. If such a person comes to you seeking to renounce, you must notify CA/OCS/ACS before proceeding. CA/OCS/ACS will coordinate with CA/OCS/PRI, L/CA, and L/LEI. Issues are raised by such an arrangement that some would liken to banishment when a citizen at birth is involved.
- c. If authorized by CA/OCS/ACS to proceed, follow the same procedures as with any other potential renunciant. (See 7 FAM 1260.) You should very carefully and fully document the case and, in particular, the facts in support of voluntariness and intent, as the renunciant may claim lack of intent or involuntariness in the future.
- d. It is not your role to enforce the plea agreement and you should make no comment on it to the renunciant.
- e. Inter-agency liaison with the U.S. Department of Justice, Federal or State prosecutors will be done by CA/OCS/PRI (ASKPRI@state.gov), in coordination with L/CA and L/LEI.

See ...

U.S. Department of Justice, Opinion of the Office of Legal Counsel, Voluntariness of Renunciations of Citizenship Under 8 U.S.C. 1481, 8 Opinion of the Office of Legal Counsel 220, September 27, 1984 – Renunciation Undertaken as Part of Agreement with Federal Prosecutors not to Proceed with Denaturalization or Deportation Proceedings if Subjects of Investigation Agreed to Renounce Their U.S. Citizenship

7 FAM 1295 DEFECTORS, DESERTERS AND PERSONS AVOIDING SELECTIVE SERVICE

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

- a. You must consult CA/OCS/ACS if you receive a request for renunciation of relinquishment of U.S. citizenship in the case of a defector, deserters or person avoiding Selective Service.
- b. Renunciation of U.S. nationality may not affect the obligation that members of the U.S. military are under to complete this service. (10 U.S.C. 504 (b)(1) provides that a person may be enlisted in any armed force if the person is a national of the United States; an alien who is lawfully admitted for permanent residence. The statute also provides notwithstanding paragraph (1), the Secretary concerned may authorize the enlistment of a person not described in paragraph (1) if the Secretary of Defense determines that such enlistment is vital to the national interest.)
- c. Loss of nationality **may not** affect a person's obligation to register with the Selective Service System. The Selective Service System operates with permanent authorization under the Military Selective Service Act (U.S.C. App. 451; 50 U.S.C. App 460; 32 CFR 1600 – 1699). With few exceptions, all male United States citizens (including dual nationals) and male aliens residing in the United States and its territories (see 9 FAM Appendix H 400) must register within 30 days of their 18th birthday. (See 7 FAM 550.) (See also *Jolley v. Immigration and Naturalization Service*, 441 F.2d 1245 (1971).)
- d. You should inform potential renunciants who are motivated by the desire to avoid military service that renunciation is not a shield from prosecution for desertion or failure to register in accordance with the law.
- e. 7 FAM 1245 provides guidance regarding reporting requirements to the U.S. Secret Service concerning any renunciant or would-be renunciant expressing hostility toward the United States, its government, or officials and shows indications of mental or emotional instability.

- f. See also 7 FAM 190, Deserters, Stragglers and Fugitives.

NOTE: The U.S. Supreme Court declared unconstitutional:

INA 349(a)(10); 8 U.S.C. 1481(a)(10); Section 401(j) Nationality Act of 1940 (NA) - Departing from or remaining outside of the United States in time of war or period declared by the President to be a period of national emergency for the purpose of evading or avoiding training and service in the armed forces of the United States. (Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S. Ct. 554, 92 L. Ed. 644 (1963)); and

INA 349(a)(8); Section 401(g) Nationality Act of 1940 (NA) - Deserting the armed forces of the United States at time of war, if and when convicted thereof by court martial and dishonorably discharged (Trop v. Dulles, 356 U.S. 86, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958).)

7 FAM 1296 CULT MEMBERS OR MEMBERS OF AMERICAN COMMUNITY GROUPS

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

- a. **Summary:** Cults are groups of individuals bound together by their devotion to a particular person or idea. Such groups are often led by either one charismatic individual or a very small cadre of people. Identification with the cult can affect an individual's decision making. If a member of a cult seeks to renounce U.S. nationality, you must explore the issue whether undue influence or duress is involved in the decision to relinquish U.S. nationality. See 7 FAM 170, Reporting on American Community Groups Abroad.
- b. **Host-government inquiries:** A host government may request clarification of U.S. law and policy regarding loss of nationality if a large group(s) of U.S. citizens or noncitizen nationals attempt to renounce their U.S. citizenship and naturalize as citizens of the host country. Such inquiries should be referred to CA/OCS/PRI (ASKPRI@state.gov).
- c. **Renunciation and cult members:** If you are notified that a number of cult members wish to relinquish U.S. nationality, you should interview privately each member who wishes to renounce his or her U.S. nationality. Preferably, the interviews should take place on different days and without the presence of other cult members in the waiting room or just outside the post. Interviews should take place in the presence of the consular officer and a witness, preferably another consular officer, another Foreign Service officer (nonconsular), or a locally engaged staff (LES).

- d. **Voluntariness:** Individuals who commit an act of expatriation because they fear retaliation by the cult leader or the cult if they do not, may not be acting voluntarily. On the other hand, an individual cult member may have independent personal reasons for seeking to renounce. Your consular officer opinion should discuss in as much detail as possible on the nature and depth of the influence of the cult leader/cult on the individual's decision, the consequences the individual fears from the leader or cult if he or she does not renounce (and what the actual consequences are likely to be), and whether the individual has any personal reasons for seeking to renounce.

7 FAM 1297 ATTEMPTS TO RENOUNCE OR RELINQUISH WHILE IN THE UNITED STATES

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

- a. CA frequently receives letters from individuals in the United States attempting to notify the U.S. Government that they do not consider themselves subject to the United States or the U.S. State of residence. We also receive letters from persons serving prison sentences in the United States who mistakenly believe that if they renounce or otherwise relinquish U.S. citizenship, they will be released from prison in the United States.
- b. CA/OCS/PRI advises these individuals of the law regarding renunciations in the United States under 8 U.S.C. 1481(a)(6) (INA 349(a)(6)), which provides:

8 U.S.C. 1481(a)(6)

"A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality –

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense."

- c. The Departments of Justice and Homeland Security **have not** promulgated regulations or procedures regarding renunciation in the United States under INA 349(a)(6), and there is no officer designated by the Attorney General or DHS to take renunciations.

7 FAM 1298 AND 1299 UNASSIGNED

7 FAM EXHIBIT 1292 A SAMPLE LETTER TO ACCOMPANY CLN FOR MINOR RENUNCIANTS

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

Post Letterhead

Date

Dear (NAME):

Every U.S. citizen has the right to renounce voluntarily and intentionally his or her citizenship, as you have done. Because this is a very serious decision with consequences that may not have been apparent to you at the time, the law gives persons like yourself who renounced under the age of 18 an opportunity to reevaluate your decision when you reach the age of 18.

Section 351(b) of the Immigration and Nationality Act (8 U.S. Code 1483) allows you to reclaim your U.S. citizenship within 6 months after your 18th birthday. You are advised to make a note of the deadline to reclaim automatically your U.S. citizenship: the deadline is [insert date six months from 18th birthday.] You may do so by going to any U.S. embassy or consulate or passport acceptance facility, execute a passport application and take an oath of allegiance to the United States. Under this law, if you make such a claim, you will be considered as never having renounced your U.S. citizenship.

Just like the decision to renounce your citizenship, the decision to reclaim it is yours alone. No one, including the U.S. Government, any other government, or even your own family can make the decision for you. Please keep this in mind as you consider whether you may want to make a claim of citizenship once you become 18.

The U.S. Government and the Department of State do not wish to influence your decision. We just want to make sure that you know that you have the right to reconsider and “take back” this decision upon reaching the age of 18. Because this is a very important right that you retain, we ask that you keep this letter with your Certificate of Loss of Nationality should you wish to take advantage of this right when you reach the age of 18. The Department of State will also keep a complete record of your renunciation as well as this letter. Please remember that the period to automatically reclaim

citizenship expires on [date].

If you have any questions, do not hesitate to contact (NAME) at (phone number). You may also contact the U.S. Department of State, Office of American Citizens Services and Crisis Management at any time. That office can be reached at 202-6647-5225.

Sincerely,

SIGNATURE OF CONSULAR OFFICER

TYPED NAME OF CONSULAR OFFICER

TITLE OF CONSULAR OFFICER