

# **7 FAM 000**

## **CONSULAR PROTECTION OF U.S. NATIONALS ABROAD**

### **7 FAM 010**

#### **INTRODUCTION**

*(CT:CON-416; 07-26-2012)*  
*(Office of Origin: CA/OCS/L)*

### **7 FAM 011 SUMMARY**

*(CT:CON-416; 07-26-2012)*

- a. The U.S. Department of State and our embassies and consulates abroad have no greater responsibility than the protection of U.S. citizens overseas. Article 5 of the Vienna Convention on Consular Relations (VCCR) provides that consular functions include.

Article 5, VCCR, Consular Functions

“Consular functions consist in:

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law. . . .”

- b. Bureau of Consular Affairs: Primary responsibility for protection of U.S. citizens abroad is carried out by the Bureau of Consular Affairs (CA) in the Department of State and by dedicated consular officers, locally engaged staff and consular agents abroad. 1 FAM 250 outlines the duties and responsibilities of the Bureau of Consular Affairs. It is imperative that consular officers participate fully in post Emergency Action Committees (EAC) to ensure that the interests of private U.S. citizens traveling and residing abroad are considered in post strategic planning and decision-making. (See 12 FAH-1 H-230, Emergency Action Committees).
- c. Overseas Citizens Services: Within CA, the Directorate of Overseas Citizens Services (CA/OCS) is charged with exercising the Secretary of State’s responsibility to provide consular protection and services to United States citizens abroad. OCS serves as a liaison between concerned family members, friends and members of Congress in the *United States* and consular posts and

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U.S. citizens abroad. OCS is responsible for the ongoing development, delivery and oversight of a broad range of highly technical and complex programs and services requiring an in-depth knowledge of the laws, regulations, treaties, conventions, and precedents governing those programs. CA/OCS is comprised of three offices: American Citizen Services and Crisis Management (ACS), Children's Issues (CI), and Legal Affairs (L). These offices are under the leadership of a Managing Director and the Deputy Assistant Secretary for Overseas Citizens Services.

- d. The Office of American Citizens Services (ACS) and Crisis Management (CA/OCS/ACS) is in effect the Department's "America Desk." ACS helps U.S. citizens/nationals abroad and their families and friends at home with emergencies such as deaths, arrests, illnesses and injuries. ACS provides vital assistance to U.S. citizens/nationals during periods of crisis such as transportation accidents, natural disasters, and civil unrest, including the evacuation of U.S. citizens. In addition to ACS's emergency and crisis work, it provides assistance on a wide variety of other issues, including estates, property, voting and adjudicating acquisition and loss of U.S. citizenship.
- e. The Office of Children's Issues (CA/OCS/CI) provides assistance to the public on international parental child abduction and international adoption cases. CI serves as the U.S. Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention) and for the Hague Convention on the Protection of Children and Cooperation in Respect of International Adoption. CI also formulates and coordinates policy and provides direction to posts on international parental child abduction cases and international adoption policy issues. See 7 FAM 1710 and 7 FAM 1790.
- f. The Office of Legal Affairs (CA/OCS/L) participates in formulating policies relating to emergency and non-emergency services to U.S. citizens residing or traveling abroad and to interested parties in the United States. L provides legal and technical guidance relating to OCS programs carried out by all OCS personnel and by consular officers worldwide. L's primary responsibilities, stated briefly, include policy formulation, program analysis and planning, litigation, legislation, regulations, treaties, advisory opinions involving complex legal analysis, liaison with other agencies and private-sector counterparts. Posts can contact L at Ask-OCS-L-Dom-Post@state.gov.

## **7 FAM 012 ELIGIBILITY**

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- a. U.S. Nationals Eligible for Consular Protection and Other Services: Nationality is the principal relationship that connects an individual to a State. International law recognizes the right of a State to afford diplomatic and consular protection to its nationals and to represent their interests. Under U.S. law the term "national" is inclusive of citizens but "citizen" is not inclusive of nationals. All

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U.S. citizens are U.S. nationals. Section 101(a)(22) INA (8 U.S.C. 1101(a)(22)) provides that the term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. U.S. nationals are eligible for U.S. consular protection.

- b. U.S. Non-Citizen Nationals: A non-citizen national of the United States is a person who, though not a citizen, owes permanent allegiance to the United States. Section 308(1) INA (8 U.S.C. 1408(1)) provides that nationals, *but not citizens of the United States, include* people born in an outlying possession of the United States on or after the date of formal acquisition of such possession, *in addition to several other limited categories*. Section 101(a)(29) INA (8 U.S.C. 1101(a)(29)) defines the term "outlying possessions of the United States" to mean American Samoa and *Swains Island*. Some statutes and treaties, such as Section 302 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands (48 U.S.C. 1801, 48 U.S.C. 1801 Notes), have specified means by which persons who automatically acquired U.S. citizenship could instead opt to be noncitizen nationals, see:
- 7 FAM 1100, Acquisition and Retention of U.S. Citizenship and Nationality
  - 7 FAM 1121.4, Laws Governing Status of Persons Born in Outlying Possessions
  - 7 FAM 1125, American Samoa and the Swains *Island*
  - 7 FAM 1126, Commonwealth of the Northern Mariana *Islands*
- c. Lawful permanent resident aliens (LPRs): Section 101(a)(20) INA (8 U.S.C. 1101(a)(20)) defines the term "lawfully admitted for permanent residence" as the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, whose status has not changed. LPRs generally are not entitled to emergency and protective services provided by the U.S. Government. Refer such persons to the nearest diplomatic representative of the country of which they are a national or citizen. When an LPR applicant has exceptionally close and strong ties to the United States, and overriding humanitarian and compassionate grounds exist, request guidance from CA/OCS/ACS about the propriety of providing the service, with the understanding that the host government may not, and is not obligated to, honor a request from the U.S. Government on behalf of such an individual. The Privacy Act (5 U.S.C. 552a) does pertain to LPRs. (See also 7 FAM 060).
- d. No Ties to the United States: Persons with no ties or allegiance to the United States may not be provided emergency or protective services except under the most extraordinary circumstances, and then only with the prior approval of the Department (CA/OCS).
- e. Availability of Certain ACS Consular Services to Foreign Nationals: Notarial and Authentication services are available to foreign nationals under certain

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circumstances. (See 7 FAM 800).

## **7 FAM 013 DIPLOMATIC AND CONSULAR PREMISES**

*(CT:CON-300; 05-20-2009)*

The status of diplomatic and consular premises arises from the rules of law relating to inviolability and immunity from the jurisdiction of the receiving State; the premises are not part of the territory of the sending State (the United States of America). Therefore, contrary to popular belief, a U.S. embassy or consulate is not U.S. soil. (See 7 FAM 180, Refuge – Temporary Emergency Protection Of Private U.S. Nationals At Overseas Posts).

## **7 FAM 014 CONSULAR FUNCTIONS AND LEGAL AUTHORITIES**

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The following chart summarizes the legal authorities for various consular functions and who may perform them.

Function	Authority	Who May Perform
Consular Protection	22 CFR 71.1 22 CFR 71.6 <i>Article 5(a), (e), (h), and (i), VCCR</i>	Foreign Service Officers  Note: Article 3, para 2 of the Vienna Convention on Diplomatic Relations (VCDR) provides "Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission."  Consular Associates (See 7 FAH-1 H-343.4-3)
Issuance of Passports to U.S. Nationals (7 FAM 1300)	<i>Article 5(d), VCCR</i> 22 U.S.C. 211a et seq. 22 CFR 50.1(g) 22 CFR 51.1(h) 22 CFR 51.5 22 CFR	Diplomatic or Consular Officer; U.S. citizen State Department employee designated by the Assistant Secretary for Consular Affairs, including Professional Adjudication Specialists  NOTE: Passport applications may be executed before a Consular Agent or Notarial Officer, but Consular Agents

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	51.22(a)(4)	and Notarial Officers may not adjudicate passport applications or issue passports.  Consular Associates may accept and pre-screen applications for passports, but may not adjudicate entitlement to passport/citizenship. (See 7 FAH-1H-343.4-3 b.)
Consular Report of Birth Abroad of a Citizen of the United States (7 FAM 1440)	22 U.S.C. 2705 22 CFR 50.1(g) 22 CFR 50.2 22 CFR 50.5 22 CFR 50.6 22 CFR 50.7	Consular officer;  U.S. citizen State Department employees designated by the Deputy Assistant Secretary for Overseas Citizens Services, including Professional Adjudication Specialists, may "provisionally approve" a CRBA, but final approval and issuance may only be performed by a consular officer (see 22 CFR 50.2).  Passport agents in time of war or national emergency for children born in military facilities  NOTE: Consular Associates may accept and pre-screen applications for Consular Report of Birth Abroad of a Citizen of the United States but may not adjudicate entitlement to passport/citizenship. (See 7 FAH-1 H-343.4-3 b.)
Loss of Citizenship (7 FAM 1200)	8 U.S.C. 1481 (INA 349) 22 CFR 50.40; 22 CFR 50.50; 22 CFR 50.51;	Only a diplomatic or consular officer may accept an oath of renunciation of citizenship; relinquishment of citizenship or prepare a Certificate of Loss of Nationality (INA 358); However, a diplomatic or consular officer abroad may not approve a finding of loss of nationality;  Only a Division Chief or formally designated Acting Chief in CA/OCS/ACS may approve a Certificate of Loss of Nationality (see 7 FAM 1213 b);

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		Only an attorney in CA/OCS/L may conduct an administrative review of a previous finding of loss of nationality, except for grounds for loss of nationality which have been found to be Unconstitutional by the U.S. Supreme Court ( see 7 FAM 1233).
Issuance of Visas	<i>Article 5(d) VCCR</i> 8 U.S.C. 1101 et seq 22 CFR part 40 (Visas Generally) 22 CFR part 41 (Nonimmigrant Visas), 22 CFR parts 42 through 45 (Immigrant visas)	(See 9 FAM).
Visas and International Child Abduction (9 FAM 40.103)	INA 212(a)(10)(C)(ii)	In international child abduction cases, authority to determine that an alien intentionally assisted a child abductor and to designate alien family members and agents of child abductors, thereby, making such aliens ineligible for visas/inadmissible.
Notarials; Depositions; Letters Rogatory (7 FAM 800, 7 FAM 900)	<i>Article 5(f) and (j), VCCR</i>	Consular Officer; Secretary Of Embassy Or Legation; U.S. Citizen State Department Employees designated by the OCS DAS as Notarizing Officer (functions not to include performing authentications, notarizing patent applications, or taking testimony in criminal cases)
Extradition Documents	18 U.S.C. 3190	U.S. Ambassador;

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(7 FAM 1633)	22 CFR 92.40	Chargé d' Affaires; Consul General (Principal Consular Officer)
Reports of Death (7 FAM 200)	22 U.S.C. 2715b 22 U.S.C. 2715(b) 22 CFR 72.1 & 22 CFR 72.5	Consular Officer; Designated U.S. Citizen State Department employees, including Professional Adjudication Specialists and Consular Associates
Notification of Death (7 FAM 200)	22 U.S.C. 2715b 22 U.S.C. 2715(b) 22 U.S.C. 2715a 22 U.S.C. 4196 22 CFR 72.1 & 22 CFR 72.4	Consular or Diplomatic Officer; Designated U.S. Citizen State Department employees
Estates (7 FAM 290)	<i>Article 5(g), VCCR</i> 22 U.S.C. 2715c; 22 U.S.C. 2715(b); 22 U.S.C. 4196 22 U.S.C. 4197 22 CFR part 72 & 72.8 et seq.	Consular or Diplomatic Officer Designated U.S. Citizen State Department employees Note: Article 17 of the VCCR provides for the performance of diplomatic acts by consular officers under certain circumstances and similarly diplomatic missions may perform consular functions. VCCR Article 3 provides that "Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present convention." Article 3, para 2 of the VCCR provides "Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission."

**7 FAM 015 NOTE ABOUT DIPLOMATIC AND CONSULAR TERMINOLOGY**



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

In the Vienna Convention on Consular Relations (VCCR) and bilateral consular conventions, the country that sent the consular officer to serve abroad is referred to as the "sending State." The "receiving State" is the country where that consular officer will serve (the host country). You should become accustomed to this way of referring to countries in your formal dialogue with the authorities of the country where you serve abroad. Of course, diplomatic parlance is not useful or necessary when speaking informally at the working level.

## **7 FAM 016 REPORTING**

*(CT:CON-416; 07-26-2012)*

- a. Each subchapter of the 7 FAM provides specific guidance regarding reporting requirements for posts concerning consular protection and passport and citizenship cases.*
- b. Most American Citizen Services (ACS) reporting is now done in the ACS system and via record email. Certain high profile cases continue to be reported via cable using appropriate TAGS to ensure appropriate distribution in the Department of State.*
- c. As the Bureau of Consular Affairs (CA) moves to adopt a more person-centric casework model, posts must scan pertinent documents as defined below and enter case notes, where appropriate, into the ACS system record of a U.S. citizen in actual or potential high-visibility cases. This will ensure that both Washington and posts have a complete picture of what work has been completed on a case, allowing us to respond quickly to urgent inquiries.*
- d. Consular One will eventually consolidate all citizen and passport services systems, including ACS, TDIS (Travel Document Issuance System), PIERS (Passport Issuance Electronic Record System), PLOTS (Passport Lookout Tracking System), and STEP (Smart Traveler Enrollment Program). A critical feature of this system is a person-centric case work model. No longer will information be held in many systems, in separate case files, in emails, or elsewhere. You will be able to access a U.S. citizen's record literally from cradle to grave or, with a naturalized citizen, from visa application to passport issuance and, following conferral of citizenship, to the same extent as other U.S. citizens' records. Our goal is to put the right information at the fingertips of the right people when they need it most, whether in a routine passport application, an Information Memorandum to the Secretary, or during a crisis.*
- e. This system is intended to provide for a better, more well-informed consular team that enjoys improved system support. We aim to give action officers the information and documents they need for a swift response to requests for briefings by senior officials, for assistance in a crisis, or for routine consular services.*



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- f. *Where you think an ACS case might draw press or Congressional attention or involve a post or senior Department principal, please scan or attach electronic copies of pertinent U.S. and host country official documents, incoming letters from the public in high profile cases, Congressional responses, memos prepared on the case, etc., to the U.S. citizen's ACS subject record. CA/OCS will do the same. If the case is unusual and requires further explanation, include a case note that provides pertinent details that CA or post need to prepare a written response to any inquiry. The documents post should scan include:*
- (1) Congressional Correspondence for any case;*
  - (2) Diplomatic notes exchanged for any case;*
  - (3) Action, Information, and Briefing Memoranda;*
  - (4) Key press clippings or coverage;*
  - (5) Talking Points and Press Guidance;*
  - (6) Privacy Act Waivers;*
  - (7) Welfare and Whereabouts messages passed;*
  - (8) Notarial Documents where service is refused (for U.S. citizens only); and*
  - (9) Incoming correspondence for the cases above*
- g. *Please note that we are not suggesting scanning every document in every case (or even in most cases), but rather only in high-profile cases likely to draw attention outside of the Consular Section. While there will be some additional scanning involved, we do not intend to task large volumes of new work. Posts should not be scanning documents for routine cases. Likewise, scanning these documents can be achieved using the existing equipment already in the field and in Washington.*
- h. *To scan a record or file into ACS, posts can use existing flatbed scanners and will not require additional equipment. When you attach a document in subject's ACS Activity Log, users should click the "Add" button and set the "Type" to Attach File, which along with a description then enables the "File Attach" function near the bottom of the window. Users will have two choices. First, users can click the button with three periods to bring up an "Open file" window to select the scanned file. If you do have a scanner at your workstation, users can click the "Scan Doc" button to scan the documents directly. It should be noted that ACS has a file size limitation of a maximum of 2MB per file attached. Larger files will need to be broken up and attached as separate files.*
- i. *What about legacy documents for long running cases that have not been scanned in? You only need to scan new documents. However, please do keep in mind the records retention requirements referenced in 7 FAH-1 H-457 and contained in Chapter 9 of the Foreign Records Disposition Schedule; Chapters 13, 14, and 15 of the Domestic Records Disposition Schedule may also be relevant in some cases. Many ACS case files can be retired or destroyed one to*

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*five years after the case is closed. Therefore, you might not need to scan documents for cases that are closed, although high profile case records that meet the tests above should be scanned. Please seek guidance from your CA/OCS/ACS country officer about scanning old documents for such cases.*

- j. The following table provides a summary and cross references to certain critical case reporting requirements. Reporting on other subjects are found throughout the 7 FAM:*

<b>SUBJECT</b>	<b>REPORTING</b>
Arrests	<p><i>All events in arrest cases must be entered in the ACS system. In addition, immediate reporting via email is required as specified in the following 7 FAM sections:</i></p> <p><i>7 FAM 424 - Reporting An Arrest - report within 24 hours of host country notification to post of arrest; initial report via email with complete report in the ACS System;</i></p> <p><i>7 FAM 426.2-1 Failure to Notify Post of Arrest - report via email;</i></p> <p><i>7 FAM 426.2-2 - Mistreatment - report immediately via email;</i></p> <p><i>7 FAM 434 - Prison Visits - reports on prison visits in the ACS system;</i></p> <p><i>7 FAM 453 - Request Authorization to Protest Judicial Discrimination;</i></p> <p><i>7 FAM 455 - Trial - report each step of the trial/judicial process in the ACS system and via email;</i></p> <p><i>7 FAM 456.2 Death Penalty cases - report via email;</i></p> <p><i>7 FAM 400 Appendix A - Requests for Clemency, Pardons, Prisoner Release - report via email. For emergencies after hours, contact CA/OCS duty officer.</i></p>

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	<p><i>7 FAM 472.1 Death of a Prisoner - report via email.</i></p> <p><i>7 FAM 473.1 - Escaped Prisoners - report via email.</i></p> <p><i>7 FAM 474.6 - Hunger Strikes - report via email to CA/OCS/ACS.</i></p>
<p><i>Welfare and Whereabouts - Child Abduction</i></p>	<p><i>7 FAM 1715.6-1 - Reporting to Department - via record email with follow up cable in sensitive, high profile cases</i></p>
<p><i>Welfare and Whereabouts - ACS</i></p>	<p><i>7 FAM 142 - Reporting to Department - via record email with follow up cable in sensitive high profile cases.</i></p>
<p><i>Deaths</i></p>	<p><i>7 FAM 221b - Notifying the Department - enter information in the ACS system and alert your CA/OCS/ACS counterpart via email</i></p>

**7 FAM 017 THROUGH 019 UNASSIGNED**