

## **7 FAM 1100 APPENDIX E (OLD 8 FAM 250 ENTITLEMENT TO PROTECTION OF NATIONALS ABROAD)**

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This appendix contains text from subchapter 250 of the old 8 FAM. Citizenship and Passports. Because this material has not been revised and issued, we are publishing the old (and still valid) text in this format to alleviate some of the confusion caused by having old 8 FAM chapter numbers still in existence. When this material is revised and issued, this appendix will be deleted. Until then, continue to refer to this appendix.

### **8 FAM CITIZENSHIP AND PASSPORTS PROCEDURES**

#### **8 FAM 250 ENTITLEMENT TO PROTECTION OF NATIONALS ABROAD**

##### **8 FAM 253 CRITERIA FOR PROTECTION**

###### **8 FAM 253.1 General Comment**

Generally, the establishment of the claim the United States nationality also establishes the right to receive the protection of this government abroad. However, the provisions of a treaty to which the United States is a party bearing on the subject would be governing. Also, the circumstances of a person's conduct abroad may very well be a determining factor in considering the extent to which such protection should be granted. In the case of a dual national living in the foreign country of which he is also a national, the circumstances may restrict to a great extent, if not eliminate entirely, a national's eligibility to receive the protection of the United States Government.

## **8 FAM 253.2 Dual Nationals**

A United States national may possess dual nationality and also owe allegiance to the foreign state wherein he is residing. He may, in fact, have identified himself more closely with such foreign state than with the United States, thereby raising a serious doubt as to the propriety of attempting to extend protection to him. The principles of jus soli and jus sanguinis are followed to a large extent, by the United States, although neither of the two doctrines is adhered to in its fullest extent in this country. The confusion growing out of the existence of these distinct doctrines of nationality has been the cause of numerous difficulties which have arisen, from time to time, between the United States and foreign countries.

While a person who has dual nationality resides in the United States, the right of the United States to his allegiance is paramount to the right of the other country of which he may be a citizen. Conversely, while a person who has dual allegiance is residing abroad in the foreign country of which he is a national, the right of that country to claim his allegiance is paramount to that of the United States. However, it has been the policy of this Government when occasion arises, to intercede in behalf of a person who has dual or multiple nationality, one allegiance being to the United States, when the facts clearly indicate that his habitual place of abode over a period of years has been the United States and he has been molested by the authorities of the foreign country of which he is also a citizen while temporarily visiting or sojourning in such country.

## **8 FAM 253.3 Citizenship Obligations Imposed on Naturalized Citizens by Foreign Countries**

As regards a naturalized citizen whose country of former allegiance does not recognize his United States naturalization and who is called upon to perform or discharge the duties of a citizen in the foreign country, an officer of the Foreign Service shall in appropriate cases make representations on his behalf in an effort to obtain his exemption from performing such duties in the foreign country. The Department considers that a naturalized citizen of the United States should not upon his return to the other country, be held liable for citizenship obligations therein which has not actually accrued under the law of the foreign country prior to his immigration into the United States.

Where the law of the country applies equally to its own citizens and aliens, officers of the Foreign Service should report the facts to the Department and be guided by its instructions. In countries which do not regard the naturalization of its citizens by a foreign country as divesting them of their original nationality, in the absence of express authorization from their own government, this Government does not deny the right of a foreign

government to call upon an individual to pay taxes in lieu of military service which accrued at any time prior to his naturalization in the United States. When such a question arises, any pertinent naturalization or military treaty to which the United States is a party should be consulted.

## **8 FAM 253.4 Effect of Naturalization Treaties**

The United States has entered naturalization treaties with a number of foreign countries where under the naturalization of citizens of one country is recognized in the other country. These treaties may provide for the punishment of former nationals of either country for military or other delinquencies which occurred prior to the immigration. This Government should assure itself that the delinquency for which the naturalized citizen is punished was a delinquency covered by the treaty and was committed before his immigration into the United States. These varying provisions of the treaties are binding on this Government, not only as to the extent of the protection which may accord to those naturalized United States citizens who come within such provisions, but also with respect to their retention of United States citizenship. For a list of such treaties, see section 8 FAM 253.6.

## **8 FAM 253.6 Naturalization Treaties**

There are presently in force naturalization treaties with the following countries:

- Albania (49 Stat. (Pt. 2) 3241)
- Belgium (16 Stat. 747), (18 Stat. (Pt. 2, Public Treaties)61)
- Bulgaria (43 Stat. (Pt. 2) 1759)
- Costa Rica (37 Stat. (Pt. 2) 1603)
- Czechoslovakia (46 Stat. (Pt. 2) 2424)
- Denmark (17 Stat. 941), (18 Stat. (Pt. 2) 176)
- El Salvador (35 Stat. (Pt. 2) 2038)
- Haiti (33 Stat. (Pt. 2) 2101)
- Honduras (36 Stat. (Pt. 2) 12160)
- Nicaragua (37 Stat. (Pt. 2) 1560, 1563)

- Norway (17 Stat. 809)
- Peru (36 Stat. (Pt. 2) 2181)
- Portugal (35 Stat. (Pt. 2) 2082)
- Sweden (18 Stat. (Pt. 2) 744)
- Uruguay (36 Stat. (Pt. 2) 2165)

## **8 FAM 253.7 Multilateral Treaty**

There is also the multilateral treaty concerning the status of naturalized citizens, signed on August 13, 1906, at Rio de Janeiro, which entered into force for the United States May 25, 1908, and which is still binding upon the following states: United States of America, Argentina, Chile, Columbia, Costa Rico, Ecuador, El Salvador, Honduras, Nicaragua, and Panama.

## **8 FAM 253.13 Misuse of Passport**

Section 51.76 of Title 22, Code of Federal Regulations, provides that should a person to whom a passport has been issued, knowingly use or attempt to use it in violation of the conditions or restrictions contained therein the protection of the United States may be withdrawn from him while he continues to reside abroad. If a consular officer has reason to believe that this section has been violated, he should report all the facts to the Department and await its decision.

## **8 FAM 253.15 Criminals and Revolutionaries**

The cases of persons who are involved in illegal activities, who are fugitives from justice, or who engaged in revolutionary activities should be considered in the light of the principles and discussion set forth in section 8 FAM 241.7 , Interpretations.

## **8 FAM 254 RETENTION OF UNITED STATES PASSPORTS BY FOREIGN AUTHORITIES**

The United States passport is the official document of identify and nationality issued by the United States government to its nationals for use in traveling and residing abroad. It is prima facie evidence that it is the right of the bearer to receive the protection of the United States Government and it requests, on the part of the Government, that officials of foreign

governments permit the bearer to travel and, in case of need, give all lawful aid and protection. Consistent with the inherent nature and purpose of the document it should remain in the possession of the national while he is abroad. The United States Government has taken the position that it is inconsistent with the comity of nations for any government to withhold a United States passport from a national except in the following circumstances:

- a. Normal inspection and visa purposes;
- b. When there is doubt regarding the validity of the document itself or a visa entered therein; or
- c. When there is doubt regarding the identity of the bearer: In cases where United States passports are withheld for an unreasonable period, officers of the Foreign Service shall immediately take up the matter with the appropriate foreign authorities. If satisfactory disposition of the matter cannot be arranged, the facts should be submitted to the Department. Any fraudulent alteration or use of a United States passport should be processed in accordance with section 547.8. In some cases United States nationals may voluntarily surrender their passports to foreign authorities to insure attendance at judicial proceedings. There is no reason to object to this action since the alternative may consist of incarceration or the posting of sizeable monetary guarantees.

## **8 FAM 258 RESTRICTING PASSPORT AGAINST USE IN COUNTRIES IN WHICH THE UNITED STATES GOVERNMENT CANNOT EXTEND PROTECTION**

The Department at various times has found it necessary to restrict passports against use in specified countries where conditions have been unsettled or where instances have occurred justifying the fear that American citizens would be unable to obtain the protection to which they are entitled under international law and comity. See Section 8 FAM 253.13 regarding the possible loss of protection resulting from the use of a passport contrary to its terms, and for the legal penalties incurred thereby.