

7 FAM 1220

DEVELOPING A LOSS-OF-NATIONALITY CASE

(CT:CON-495; 11-07-2013)
(Office of Origin: CA/OCS/L)

7 FAM 1221 INTRODUCTION

(CT:CON-372; 05-16-2011)

- a. Domestic passport agencies and centers should not attempt to develop a loss-of-nationality case in light of the Immigration and Nationality Act (INA) 351(a) (8 U.S.C. 1483) restrictions on loss of nationality.

NOTE: INA 351(a) (8 U.S.C. 1483(a)) provides that except as provided in paragraphs (6) and (7) of INA 349(a) of this title, "no national of the United States can lose United States Nationality while within the United States and any of its outlying possessions, but loss of nationality shall result from the performance within the United States or any of its outlying possessions of any of the acts or fulfillment of any of the conditions specified in Chapter 3 of the INA when the national thereafter takes up a residence outside the United States and its outlying possessions."

- b. The U.S. Supreme Court has spoken (*Vance v. Terrazas*, 444 U.S. 252 (1980)): A person cannot lose U.S. nationality unless he or she voluntarily and intentionally relinquishes that status. In analyzing a possible loss-of-nationality case, ask the following questions, in this order:
- (1) Was the person a U.S. citizen at the time of the potentially expatriating act?
 - (2) Did the person perform an act which the relevant U.S. statute defines as a potential basis for expatriation?
 - (3) Was the act performed "voluntarily," i.e., as a product of the individual's free will (free of the undue influence of another) with an understanding of the nature of the act and a good general knowledge of its consequences?
 - (4) Was the act performed with the intention (though not necessarily the motive or desire) to relinquish U.S. citizenship?

NOTE: For most potentially expatriating acts, the Department has

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adopted an administrative presumption that a person intends to retain U.S. citizenship when he or she commits a potentially expatriating act, unless he or she asserts the contrary. See 7 FAM 1222 and 22 CFR 50.40.

- c. Unless all four of the above questions can be answered YES, loss of nationality has not occurred. Thus, if a question must be answered NO there is no need, or purpose, served by even asking the next question.

NOTE: In *Vance v. Terrazas*, the U.S. Supreme Court recognized that intent can be expressed "in words or found as a fair inference from conduct." Because the Department has an administrative presumption that a person intends to retain U.S. citizenship in committing the acts described in 7 FAM 1222, paragraph a, the Department generally does not consider conduct in such cases. 7 FAM 1270 and 7 FAM 1280 provide guidance regarding consideration of conduct in assessing intent in INA 349(a)(3) and INA 349(a)(4) cases involving service in the armed forces of a foreign state engaged in hostilities against the United States and taking up a high-level policy position in a foreign government.

- d. A potential loss-of-nationality case or previously approved loss case may also come to the attention of a consular officer abroad or passport specialist at a domestic passport agency or center in the course of adjudicating a passport application. 7 FAM 1223 provides guidance about how to proceed in such cases.
- e. 7 FAM Exhibit 1221 includes a flow chart summarizing procedures to be followed in loss-of-nationality cases.

7 FAM 1222 ADMINISTRATIVE PRESUMPTION

(CT:CON-407; 06-29-2012)

- a. In light of the U.S. Supreme Court decisions in *Vance v. Terrazas* (1980) and *Afroyim v. Rusk* (1967) (summarized in 7 FAM 1200 Appendix B), in order to expedite the resolution of cases, in 1990 the Department adopted the administrative presumption found in 22 CFR 50.40 that a U.S. citizen/noncitizen national intends to retain U.S. nationality when he or she commits certain expatriating acts. That administrative presumption is in the process of being revised in 22 CFR Part 50, and includes when a U.S. citizen:
- (1) Is naturalized in a foreign state (INA 349(a)(1)); or
 - (2) Takes an oath of allegiance to a foreign state (INA 349(a)(2)); or
 - (3) Serves in the armed services of a foreign state as a commissioned or noncommissioned officer of a foreign state, not engaged in hostilities

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U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

against the United States (INA 349(a)(3)); or

- (4) Accepts nonpolicy-level employment with a foreign government and is either a dual national of the state of employment or has taken an oath or affirmation in connection with the position (INA 349(a)(4)).
- b. Unless such a person affirmatively, explicitly, and unequivocally asserts that one of the above acts was performed with an intent to relinquish U.S. nationality or the person has engaged in other conduct which is inconsistent with retention of U.S. citizenship (see 7 FAM 1270 and 7 FAM 1280), he or she will retain U.S. nationality. Authority was delegated to consular officers abroad in 1990 to process findings in cases described in 7 FAM 1222, paragraph a, without referral to the Department. 7 FAM 1223 provides guidance on procedures consular officers should follow in such cases. No such authority has been given to the passport agencies or centers in these cases.
- c. The presumption stated in 7 FAM 1222, paragraph a, that a person intends to retain U.S. citizenship is not applicable when the individual:
 - (1) Formally renounces U.S. citizenship before a consular officer (INA 349(a)(5)) (7 FAM 1260);
 - (2) Serves in the armed forces of a foreign state engaged in hostilities against the United States or served as a commissioned or noncommissioned officer of a foreign state engaged in hostilities against the United States (INA 349(a)(3)) (7 FAM 1270); or
 - (3) Takes a policy-level position in a foreign state and is either a dual national of the state of employment or has taken an oath or affirmation in connection with the position (INA 349(a)(4)) (7 FAM 1280);
 - (4) Is convicted of treason (INA 349(a)(7)).
- d. The cases described in 7 FAM 1222, paragraph c, must be developed and evaluated carefully by the consular officer, CA/OCS/ACS, and CA/OCS/L to ascertain the individual's intent with respect to U.S. citizenship.
- e. The considerations stated in 7 FAM 1222, paragraph a, and 7 FAM 1222, paragraph c, apply not only to current and future cases, but are also applicable to past cases when persons ask for administrative review of earlier findings of loss of nationality (see 7 FAM 1230) or the cases otherwise come to our attention, for example in the context of a passport application. Many of the cases CA/OCS/L receives involve reconsideration of cases decided under earlier, now inapplicable standards. Administrative reviews of previous findings of loss of nationality are conducted by CA/OCS/L, in accordance with 7 FAM 1230. Posts abroad, passport agencies/centers, and CA/OCS/ACS may not perform administrative reviews of previous findings of loss. The only exception to this, as explained in 7 FAM 1233, are cases in which the basis for the finding of loss of nationality has been declared unconstitutional.

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- f. A person who retains U.S. citizenship following foreign naturalization becomes a dual national:
 - (1) The individual is responsible for coping with whatever consequences result from having two or more nationalities, and must enter and depart the United States on a U.S. passport (unless the requirement is waived);
 - (2) 7 FAM 080 provides guidance about dual nationality.
- g. A person who loses U.S. nationality and does not possess another nationality or permanent resident status in a foreign country may experience difficulties remaining abroad. 7 FAM 1215 provides guidance about statelessness.

7 FAM 1223 CONSULAR ACTION IN ADMINISTRATIVE PRESUMPTION OF INTENT TO RETAIN CITIZENSHIP CASES

(CT:CON-495; 11-07-2013)

- a. A potential loss-of-nationality case that comes within the administrative presumption outlined in 7 FAM 1222, paragraph a, requires you to take the following actions:
 - (1) Clear the name in the Consular Lookout and Support System (CLASS);
 - (2) If a CLASS Reason Code "Q" Questionable Claim to U.S. Citizenship exists, there is an administrative presumption that the person did not intend to relinquish U.S. citizenship by committing the acts specified in 7 FAM 1222, paragraph a;

CLASS Reason Code "Q"

Q – Claim to U.S. citizenship questionable because available evidence raises possibility that subject did not acquire citizenship or has lost citizenship. (Applicant's identity has been reasonably established and fraud is not suspected.)

Sub-Codes: The resolution of the problem requires:

- 109. Applicable section of law—possible loss of citizenship

- (3) The consular officer should apply the administrative presumption, and complete 7 FAM Exhibit 1223 (consular officer attestation of non-loss):
 - (a) If the case came to your attention in the context of a passport application, the completed 7 FAM Exhibit 1223 and any statement provided by the applicant regarding his or her intentions in performing such acts should be attached to the passport application so that it can become a permanent part of the passport record for the individual;

UNCLASSIFIED (U)

NOTE: Form DS-11, Application for a U.S. Passport, includes a sentence before the applicant's signature that "I declared under penalty of perjury that ... I have not since acquiring U.S. citizenship performed any of the acts listed under "Acts and Conditions" on this application form (unless explanatory statement is attached)." Any supplemental statement provided by the applicant should address whether he or she intended to relinquish U.S. nationality in performing such an act.

- (b) If the case did not come to your attention in the context of a passport application, you should complete a Form DS-4085, Request for Additional Visa Pages (this form is in the process of being retitled Request for Additional Visa Pages and Miscellaneous Passport Services). Attach the completed 7 FAM Exhibit 1223 to Form DS-4085 so that it can become part of the passport record for the individual. Be sure to complete the part of the form regarding the individual's previous passport number, which you can obtain either by examining the person's previous passport or from the Passport Issuance Electronic Records System (PIERS);
- (c) The passport application and consular certification (7 FAM Exhibit 1223) should be sent to Passport Services for scanning and filing together with the passport application. This should be sent to:

*U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS
1150 Passport Services PL, 6th Floor
Dulles, VA 20189-1150*

- (4) The existing CLASS reason code "Q" lookout should be removed from the CLASS system using the Passport Lookout Tracking System (PLOTS):
 - (a) Designated passport specialists at domestic passport agencies and centers are authorized to take this action;
 - (b) Posts abroad should request that CA/OCS/ACS remove the CLASS reason code "Q" lookout from the CLASS system using PLOTS.
- b. If the CLASS name check results in a CLASS reason code "L" hit for loss of nationality, the passport application should be denied due to noncitizenship. The applicant should be provided with Information Request Letter (IRL) 1095 which directs the applicant to contact CA/OCS/L to request administrative review of a previous finding of loss of nationality (7 FAM 1230). 7 FAM 1300 Appendix T provides guidance about IRLs.

7 FAM 1224 CONSULAR ACTION IF THE INDIVIDUAL ASSERTS AN INTENTION TO RELINQUISH U.S. CITIZENSHIP CONTRARY TO THE ADMINISTRATIVE PRESUMPTION

7 FAM 1224.1 Is the Person a U.S. Citizen?

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

- a. You should first determine whether the individual was a U.S. citizen/noncitizen national at the time of the alleged act of expatriation. This may include:
 - (1) Asking the person to present his or her U.S. passport, Form FS-240, Consular Report of a Birth Abroad of a Citizen of the United States of America, Naturalization Certificate, Certificate of Citizenship, or U.S. birth certificate; or
 - (2) Reviewing the Passport Issuance Electronic Records System (PIERS).
- b. Clear the name in the Consular Lookout and Support System (CLASS).
- c. Review the American Citizen Services (ACS) system and PLOTS for any previous case history.

7 FAM 1224.2 Was the Act Potentially Expatriating?

(CT:CON-449; 03-25-2013)

Analyze whether a potentially expatriating act was committed. 8 U.S.C. 1481 (INA 349) and the predecessor statutes (the Nationality Act of 1940 and the Revised Statutes) define which acts are potentially expatriating under U.S. law. When in doubt, consult CA/OCS/L (Ask-OCS-L@state.gov).

7 FAM 1224.3 Consular Letter and Questionnaire (SBU)

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

- a. If the consular officer determines the person was a U.S. citizen/noncitizen national at the time of the alleged act and that the act was potentially expatriating, you need to inquire about the voluntariness of the act and the individual's intention regarding his or her U.S. citizenship in committing the act. To do this you need to send a letter (see 7 FAM Exhibit 1224):
 - (1) Providing the individual with a copy of applicable U.S. Department of State brochures, which are also available on the CA Internet page, including Advice About Possible Loss of U.S. Citizenship and Dual Nationality;
 - (2) Asking the person to fill out Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, and to submit this form and

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

any additional documents in the return envelope provided.

- b. Consular officers should send the letter by registered mail, if that service is available; if not, use a similar secure method.

NOTE: There is an administrative presumption that an individual intends to retain U.S. citizenship when he or she commits the potentially expatriating acts enumerated in 7 FAM 1222, paragraph a.

7 FAM 1224.4 Interview

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

After you receive the questionnaire and any additional documents, it may be necessary to contact the person to discuss next steps and clarify any issues that arise in reviewing the responses to Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, such as contradictory statements. Consular officers can be flexible in determining whether this should include a person, telephone or e-mail contact, or to request additional documentation. Doubt as to voluntariness or intent must be resolved. This applies to any case not coming within the scope of the administrative presumption enumerated in 7 FAM 1222, paragraph a.

7 FAM 1225 VOLUNTARINESS AND INTENT

7 FAM 1225.1 Was the Act Performed Voluntarily?

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

- a. Analyze whether the potentially expatriating act was performed voluntarily.
- b. Most individuals who commit expatriating acts do so voluntarily. There is a statutory presumption (8 U.S.C. 1481(b); INA 349(b)) that the individual's act was voluntary. The presumption may, however, be overcome by evidence that it was more likely than not that that act was not voluntary.
- c. An expatriating act is not voluntary if the individual was coerced or compelled to commit the expatriating act. The consular officer should consider whether there are facts and circumstances that make it more likely than not that the individual was not acting out of his own free will. The fact that an individual expatriated herself or himself reluctantly, or had to choose between expatriation and another unpalatable alternative, does not in and of itself mean that the act was not voluntary. The critical question is whether the individual was free to choose between alternatives available to him or her, even if the choices might be difficult. (See 7 FAM 1260 regarding reluctant renunciation.)
- d. Special problems relating to formal renunciation of U.S. citizenship: There is

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rarely a question of intent in renunciation cases, as the oath of renunciation itself is strong proof of intent. Issues of voluntariness, however, may arise. Minors may be subject to the undue influence of others, such as parents. You should also give careful scrutiny to renunciations by persons in prison or in other circumstances where a degree of compulsion may be present. Finally, some would-be renunciants may appear to suffer from mental or emotional problems or conditions that cast doubt on the voluntariness of their actions (see 7 FAM 1290).

7 FAM 1225.2 Did the Individual Intend to Lose U.S. Citizenship?

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

- a. You need to analyze whether the individual performed the expatriating act with the intention of giving up the rights and privileges of U.S. citizenship.
- b. To evaluate intent, look at the potentially expatriating act, what the person said regarding intent, and other actions relevant to intent.
- c. Although the relevant intent is the person's intent at the time the expatriating act was committed, actions taken before or after the expatriating act may help in assessing what the person's intent was, or may cast doubt on the person's stated intent.
- d. See special instructions about renunciation and intent in 7 FAM 1260.
- e. For the expatriating acts enumerated in subparagraphs e(1) and e(2) of this section, the Department considers that intent can be expressed "in words or found as a fair inference from conduct" (Vance v. Terrazas, 444 U.S. 252 (1980)); however, the burden of proof on the Department that loss occurred must be established by a preponderance of the evidence. Those acts include:
 - (1) Serving in the armed forces of a foreign state engaged in hostilities against the United States or serving as a commissioned or noncommissioned officer of a foreign state engaged in hostilities against the United States (INA 349(a)(3)) (see 7 FAM 1270); or
 - (2) Taking up a policy-level position in a foreign state and the individual is either a dual national of the state of employment or has taken an oath or affirmation in connection with the position (INA 349(a)(4)) (see 7 FAM 1280).

7 FAM 1226 PREPARE CONSULAR OFFICER OPINION

(CT:CON-407; 06-29-2012)

- a. Summary: One of the most important elements of your development of a loss-

UNCLASSIFIED (U)

of-nationality case is the consular officer's opinion.

- b. You should prepare a thorough, thoughtful opinion that includes all information you have about the individual's demeanor, state of mind, and composure, the potentially expatriating act, and the issues of voluntariness, and intent. All relevant documentation, including Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, and, in a renunciation case, the oath of renunciation and statement of understanding should be attached. A sample consular opinion is in 7 FAM Exhibit 1226.
- c. Cases where the individual claims intent to lose U.S. nationality, especially where the expatriating act is renunciation, are generally straightforward. An exception to this are persons who claim a desire to renounce U.S. citizenship, but also claim they do not want to lose all rights and privileges of U.S. nationality. See renunciation of U.S. citizenship by persons claiming a right of residence in the United States. The intention to relinquish U.S. nationality required for purposes of finding loss of nationality does not exist in cases where a renunciant plans or claims a right to continue to reside in the United States unless the renunciant demonstrates that residence will be as an alien documented properly under U.S. law (see 7 FAM 1260).
- d. The consular officer needs to provide as much detail as possible about certain potentially expatriating acts. For example, in the case of a person accepting a policy-level position with a foreign government, CA/OCS/ACS and CA/OCS/L need to review the nature of the duties, any statements made by the individual with respect to his or her intent towards U.S. citizenship, etc.

7 FAM 1227 PREPARE CERTIFICATE OF LOSS OF NATIONALITY

(CT:CON-407; 06-29-2012)

- a. If you have reason to believe that the individual has committed an expatriating act voluntarily with the intention of relinquishing U.S. nationality, prepare a Form DS-4083, Certificate of Loss of Nationality of the United States (CLN). Prepare also the following forms, and enter the Loss of Nationality Service in the ACS case management system. Scan the forms below into the Loss of Nationality Service associated with the individual. Alert your CA/OCS/ACS desk officer to the new case.
 - (1) Form DS-4083, Certificate of Loss of Nationality of the United States;
 - (2) Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship;
 - (3) Form DS-4081, Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship;

NOTE: This is a new requirement; use Form DS-4081 for all

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loss-of-nationality cases where there is intent to relinquish U.S. citizenship. If an individual declines to execute Form DS-4081, or the consular officer neglects to obtain it; that does not invalidate the loss of nationality.

- (4) Proof that the individual committed an expatriating act;
 - (5) The consular officer opinion, which should also cite the evidence of the individual's U.S. citizenship and whether the person possesses another nationality; and
 - (6) Any additional written statement or evidence provided by the individual.
- b. 7 FAM 1260 provides special instructions regarding renunciation cases which will also require you to prepare and scan the following additional documents to CA/OCS/ACS:
- (1) Form DS-4083, Certificate of Loss of Nationality of the United States;
 - (2) Form DS-4080, Oath of Renunciation of the Nationality of the United States;
 - (3) Form DS-4081 - Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship; and
 - (4) [May also require] Form DS-4082, Witnesses' Attestation Renunciation/Relinquishment of Citizenship, to be used only when the person relinquishing or renouncing citizenship does not speak English.
- c. Make two complete copies of the relinquishment or renunciation package.
- d. You should prepare two (2) copies of Form DS-4083, Certificate of Loss of Nationality of the United States (CLN), each with original signatures and seals. Both copies of the CLN must contain the consular officer's signature, the appropriate raised seal, and no typographical errors. (See checklist in 7 FAM Exhibit 1227.)

As explained in 7 FAM 1240, copies of approved CLNs are distributed to:
Department of State Citizenship Files (CA/PPT)
The expatriate (via the U.S. embassy or consulate)
DHS/USCIS
IRS
FBI

- e. In addition, in cases involving renunciation or relinquishment by a person making threatening statements against the United States, the President, or other high-level officials, a copy is provided by CA/OCS/L to the U.S. Secret Service in accordance with Warren Commission recommendations (see 7 FAM 1245).

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

- f. The post should also transfer the automated ACS system case record to CA/OCS/ACS.
- g. Status of the U.S. passport pending approval of the CLN:
 - (1) 7 FAM 1229 provides guidance on disposition of citizenship-related documentation;
 - (2) The post should obtain the person's U.S. passport when the individual executes either Form DS-4080, Oath of Renunciation of the Nationality of the United States, or the statement of voluntary relinquishment portion of Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship;
 - (3) The post should not cancel the U.S. passport, but rather retain the passport in a secure location until the approved CLN is received back from CA/OCS/ACS;
 - (4) If the intended expatriate advises the post that he or she needs the U.S. passport immediately because it contains valid foreign visas, the post may cancel the book by punching two holes in the front cover of the passport. Use a "CANCELLED" stamp on the Secretary's message page. Do not damage the entry/exit or visa stamp or foreign visas;
 - (5) When the approved CLN is received, the post should cancel the passport. The canceled passport may be returned to the expatriate upon request. If the expatriate does not desire the canceled passport the post may locally destroy non e-passports. Canceled e-passports should be sent to the Bureau of Consular Affairs, Executive Office, General Services Division (CA/EX/GSD) (under cover of a memo) at the following address:

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| U.S. Department of State Consular Supply Facility (CA/EX/GSD) SA-21 Washington, DC 20522-2101 |
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CA/EX/GSD will forward the cancelled e-passports to the Government Printing Office (GPO) for destruction in accordance with 7 FAM 1366, as posts' shredders cannot destroy e-passports;

- (6) If the CLN is disapproved, but the passport was cancelled and returned to the applicant for use of the foreign visa, the applicant may apply for a new passport for which the requisite fees may be charged. 7 FAM 1300 Appendix G provides guidance about circumstances when passports may be issued without charging fees.

7 FAM 1228 ANALYSIS OF POTENTIAL LOSS-OF-NATIONALITY CASE BY CA/OCS/ACS AND RELATED ACTION

7 FAM 1228.1 Receipt of Loss-of-Nationality Case in CA/OCS/ACS from Post

(CT:CON-329; 05-18-2010)

- a. When the consular officer transmits a potential loss-of-nationality case to CA/OCS/ACS, through the ACS computer application, the case is distributed to the appropriate geographic division and immediately logged into the ACS system and assigned to a case officer.
- b. CA/OCS/ACS should usually complete action on an original finding of loss-of-nationality case within 30 days of receipt. If a delay is anticipated, the post will be notified.
- c. In rare cases, the individual requires an expedited decision; for example, a person running for office in a foreign state who must prove that he or she has lost U.S. citizenship. CA/OCS can accommodate such requests.

7 FAM 1228.2 Loss-of-Nationality Case When the Would-Be Expatriate Recants the Decision

(CT:CON-495; 11-07-2013)

- a. If the would-be expatriate notifies the consular officer of a change of heart after signing, the:
 - (1) Statement of Voluntary Relinquishment on Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship; or
 - (2) Form DS-4080, Oath of Renunciation of the Nationality of the United States; and
 - (3) Form DS-4081, Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship.

But before the consular officer transmits the package to CA/OCS/ACS for approval, the post should obtain a written statement from the individual explaining his or her intentions and explanation of the reversal of the previous decision. The case would then be noted as withdrawn. No finding of loss of nationality will be made.

The withdrawn CLN and supporting evidence and citizen's recant of the previous statement of intent should be sent to the following address for filing, under cover of a Form DS-4085:

UNCLASSIFIED (U)

*U.S. Department of State
Record Services Division
CA/PPT/S/TO/RS
1150 Passport Services PL, 6th Floor
Dulles, VA 20189-1150*

- b. If the case has already been sent to CA/OCS/ACS for decision, but not yet approved, the post should obtain the written statement described above from the individual, scan it in the ACS system and transmit it to CA/OCS/ACS, alerting that office by e-mail to the change of heart by the applicant. CA/OCS/ACS will not make a finding of loss of nationality in such a case. The explanatory statement will be annexed to the loss-of-nationality package, which will be sent to Passport Services for filing under cover of an explanatory memo.
- c. If the CLN has already been approved, the post should direct the individual to CA/OCS/L in accordance with 7 FAM 1230 to request administrative review of the previous finding of loss of nationality.

7 FAM 1228.3 Review of CLN Package for Documentary Requirements

(CT:CON-329; 05-18-2010)

- a. The CA/OCS/ACS officer will print the scanned documents from the ACS computer application and review the CLN package to ensure that the basic documentary requirements are met. The scanned documents will serve as working copies for ACS.
- b. The CA/OCS/ACS officer will then analyze the case and determine whether the burden of proof is met for the Department to make a finding that the individual voluntarily committed an expatriating act with the intention of relinquishing U.S. citizenship.
- c. The case will then be sent to the CA/OCS/ACS geographic division chief for approval or disapproval of the CLN.
- d. See 7 FAM Exhibit 1227 Checklist for review of CLN packet.
- e. The effective date of loss of nationality is the date of the expatriating act, not the date the CLN is approved.

7 FAM 1228.4 CA/OCS/ACS Finding Regarding Loss of Nationality

(CT:CON-407; 06-29-2012)

- a. If the CLN is approved, CA/OCS/ACS will enter the individual's name in the

UNCLASSIFIED (U)

CLASS name check system as a CLASS reason code "L" lookout reflecting loss of U.S. nationality and delete the CLASS reason code "Q."

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|---|
| CLASS Reason Code "L" |
| Loss of Citizenship established |
| Subcode |
| Section of law + date of loss of nationality (date the expatriating act was committed, not the date the CLN was approved) |
| For example: |
| INA 349(a)(5) 11/11/2005 |

- b. If the CLN is approved, the CA/OCS/ACS Division Chief will approve the decision in the ACS system and transfer the automated ACS record back to the post.
- c. Upon receipt of the 2nd original prepared by post, ACS will complete distribution of the working copies. The second original will be sent to CA/PPT by CA/OCS/ACS for scanning in the PLOTS system and filing.
- d. CA/OCS/ACS will provide other working copies of the CLN and supporting documents to CA/OCS/L for distribution to the Department of Homeland Security U.S. Citizenship and Immigration Services (DHS/USCIS), the Internal Revenue Service (IRS), Federal Bureau of Investigation (FBI), and when appropriate, to the Secret Service and entry in the CA/OCS/L database. DHS/USCIS must receive a scanned copy of the full CLN, in accordance with 8 U.S.C. 1501. (See 7 FAM 1230 regarding interagency liaison and loss-of-nationality cases.)

7 FAM 1228.5 Notifying Post of Department's Determination

(CT:CON-329; 05-18-2010)

- a. The consular officer should track the approval of the CLN in the ACS system.
- b. If the CLN is not approved, an opinion by CA/OCS/ACS explaining the basis for the Department's decision will be prepared and provided to the post explaining the bases for the conclusions.

7 FAM 1228.6 Notifying the Expatriate of the Department's Determination

(CT:CON-488; 10-22-2013)

- a. When the CLN case has been approved in the ACS system, the consular officer will take the two original paper copies of the CLN packet, and stamp the upper right corner as "approved" with the date the CLN was approved in the system as the date of reference. Your ACS desk officer can provide you with the details

UNCLASSIFIED (U)

regarding this stamp, which posts will procure locally. Use the date of approval in the system as the date you write on the CLN. Remember the actual date of the loss of U.S. citizenship is the date of the potentially expatriating act, not the date of approval of the CLN. CLNs will no longer include a signature of the CA/OCS/ACS Division Chief or formally designated alternate.

NOTE: Only a Division Chief in CA/OCS/ACS or formally designated alternate is authorized to approve a Certificate of Loss of Nationality.

- b. If the CLN packet is not handed back in person, the consular officer should notify the individual of the Department’s finding via some form of registered/certified mail or express courier service for which a receipt can be obtained and provide the individual with a sealed, signed copy of the CLN packet, including the reverse side with the information on administrative review of findings of loss of nationality.
- c. The receipt should be scanned into the ACS system record and then disposed at post. The service should then be closed in the ACS system.
- d. The second paper copy of the CLN, complete with original seals and signatures should be sent to CA/OCS/ACS at the following address:

CA/OCS/ACS
Office of American Citizen Services and
Crisis Management
Overseas Citizens Services
Bureau of Consular Affairs
U.S. Department of State
SA-17, 10th Floor
Washington, DC 20522-1710

7 FAM 1229 DISPOSITION OF U.S. CITIZENSHIP AND NATIONALITY DOCUMENTS

(CT:CON-401; 02-28-2012)

- a. 7 FAM 1227, paragraph g, provides guidance about what the post should do with the potential expatriate’s U.S. passport until the CLN is approved.
- b. If the person has a passport but has not brought it, you should ask him or her to submit it to you at the earliest opportunity in person or by mail. The Department considers an individual’s continued retention/possession of his or her U.S. passport to be incompatible with the expressed intention to terminate U.S. citizenship. If the individual questions your authority, you may cite 22 CFR 51.7 which states that “a passport shall at all times remain the property of the United States Government and shall be returned to the Government upon demand.” If the person refuses to surrender the passport, it should be treated

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as a lost/stolen passport in accordance with 7 FAM 1370 and entered in the Consular Lost and Stolen Passport (CLASP) database.

c. Consular reports of birth and certifications of birth:

- (1) Because Form FS-240, Consular Report of Birth Abroad of a Citizen of the United States of America, constitutes proof of U.S. citizenship under 22 U.S.C. 2705, the consular officer should request that the expatriate whose PIERS records reflect issuance of a Form FS-240 present that document for annotation;
- (2) The consular officer should annotate the reverse side of Form FS-240 with an endorsement along the following lines:

Name, date and place of birth, lost U.S. citizenship on (date of expatriating act, not date of approval of CLN) under INA 349(a) (insert section of law by/insert description of expatriating act). A certificate of loss of U.S. nationality was approved on day/month/year.

- (3) The consular officer should not cancel Form FS-240 since, as evidence of the person's birth abroad, it is still a valid document. However, CA/OCS/ACS will notify CA/PPT/TO/RS/DO/VR that a finding of loss of nationality has been made, and the permanent consular report of birth record in the Department will be annotated accordingly in PIERS and the CCD.

d. Naturalization certificates and certificates of citizenship:

- (1) The consular officer should ask the individual to relinquish her or his naturalization certificate or certificate of citizenship pending approval of the CLN. If the CLN is approved, CA/OCS/ACS will annotate the reverse side of the certificate of naturalization or citizenship with an endorsement along the following lines:

Name, date and place of birth, lost U.S. citizenship on (date of expatriating act, not date of approval of CLN) under INA 349(a) (insert section of law by/insert description of expatriating act). A certificate of loss of U.S. nationality was approved on day/month/year.

- (2) CA/OCS/ACS will mark the naturalization certificate or certificate of citizenship "VOID" across the face of the document and it will be sent with a copy of the approved Form DS-4083, Certificate of Loss of Nationality of the United States, to the U.S. Citizenship and Immigration Services (USCIS) at the following address:

USCIS Records Operations Branch
Douglas Development Corp. Bldg. - 4th Floor

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111 Massachusetts Avenue, NW
Washington, DC 20529

If the expatriate furnishes the document to a post at a later date, the post should take the action described above and transmit the voided naturalization certificate or certificate of citizenship to USCIS under cover of a memo explaining that (name, date and place of birth, expatriated himself or herself on day/month/year under INA 349(a) (insert section of law)) and a Certificate of Loss of Nationality was approved on day/month/year. If the applicant wishes to retain either the CRBA or a certificate of nationality/citizenship in order to establish citizenship of a child born prior to the expatriation, the post should take the necessary action to document the child as a U.S. citizen. The PIERS record would reflect the previous issuance of the CRBA and of a U.S. passport for the parent prior to the expatriation if the family does not have the necessary evidence to document the child at the time of the expatriation.

**7 FAM Exhibit 1221
LOSS-OF-NATIONALITY FLOW CHART**

(CT:CON-407; 06-29-2012)

The following chart summarizes procedures to be followed in developing loss-of-nationality cases:

| Acquisition of Foreign Nationality – No Intent to Relinquish U.S. Nationality INA 349(a)(1) INA (8 U.S.C. 1481(a)(1)); Section 401(a) NA | | |
|--|---|--|
| If ... | Then ... | You ... |
| You become aware a citizen/noncitizen national acquired foreign nationality And the individual does not assert intent was to relinquish nationality or engage in other conduct inconsistent with intent to retain U.S. nationality | The administrative presumption of intention to retain U.S. nationality applies. | Prepare Consular Officer Attestation of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation to Passport Records for filing attached to Form DS-11, Application for a U.S. Passport, Form DS-82, Application for a Passport by Mail, or Form DS-4085, |

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| | | |
|---|---|---|
| | | Application for Additional Visa Pages or Other Passport Service. |
| Acquisition of Foreign Nationality – Stated Intention to Relinquish U.S. Citizenship INA 349(a)(1) INA (8 U.S.C. 1481(a)(1)); Section 401(a) NA | | |
| If ... | Then ... | You ... |
| You become aware a citizen acquired foreign nationality And, the citizen asserts or advises you in response to your question that the intent was to relinquish U.S. citizenship | The administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent. | Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, and on-line brochure Advice About Possible Loss of U.S. Citizenship and Dual Nationality, and arrange to interview the citizen. Follow procedures below (7 FAM 1224) on case development. |
| Making a Declaration/Oath of Allegiance to a Foreign State – No Intent to Relinquish U.S. Nationality INA 349(a)(2) INA (8 U.S.C. 1481(a)(2)); Section 401(b) NA | | |
| If ... | Then ... | You ... |
| You become aware a citizen made a declaration/oath of | The administrative presumption of | Prepare Consular Officer Attestation |

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| | | |
|---|--|--|
| <p>allegiance to a foreign state And, the citizen does not assert that the intent was to relinquish U.S. citizenship.</p> | <p>intention to retain U.S. nationality applies.</p> | <p>of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation to Passport Records for filing attached to Form DS-11, Application for a U.S. Passport, Form DS-82, Application for a Passport by Mail, or Form DS-4085, Application for Additional Visa Pages, or Other Passport Service.</p> |
|---|--|--|

Making a Declaration/Oath of Allegiance to a Foreign State – Stated Intent to Relinquish U.S. Nationality

INA 349(a)(2) INA (8 U.S.C. 1481(a)(2)); Section 401(b) NA

| If ... | Then ... | You ... |
|--|--|--|
| <p>You become aware a citizen made a declaration/oath of allegiance to a foreign state And, the citizen asserts or advises you, in response to your question, that the intent was to relinquish U.S. citizenship</p> | <p>Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent.</p> | <p>Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079: Questionnaire - Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Possible Loss of U.S. Citizenship and Dual Nationality, and arrange to interview the citizen. Follow procedures (7 FAM</p> |

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| | | |
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| | | 1220) on case development. |
| Entering, or Serving in, the Armed Forces of a Foreign State if (A) Such Armed Forces Are Engaged in Hostilities Against the United States, or (B) Such Persons Serve as a Commissioned or Noncommissioned Officer of a State Engaged in Hostilities Against the United States INA 349(a)(3) (8 U.S.C. 1481(a)(3)); Section 401(c) NA | | |
| If ... | Then ... | You ... |
| You become aware that a U.S. citizen has taken this action. | Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent. | Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Possible Loss of U.S. Citizenship and Foreign Military Service, and arrange to interview the citizen. Follow procedures in 7 FAM 1270 on case development. Send the case to CA/OCS/ACS for decision. |

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Entering, or Serving in, the Armed Forces of a Foreign State as a Commissioned or Noncommissioned Officer of a State Not Engaged in Hostilities Against the United States

INA 349(a)(3) INA as originally enacted; Section 401(c) NA

| If ... | Then ... | You ... |
|--|--|--|
| <p>You become aware that a U.S. citizen has taken this action</p> <p>NOTE: Serving in a foreign armed forces below the rank of commissioned or noncommissioned officer, where the State is not engaged in hostilities against the United States, is NOT/NOT an expatriating act, and there is no need to conduct any inquiry or prepare any documentation.</p> | <p>Administrative presumption of intention to retain U.S. nationality applies.</p> | <p>Prepare Consular Officer Attestation of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation to Passport Records for filing attached to Form DS-11 Application for a U.S. Passport, DS-82 Application for a Passport by Mail, or DS-4085, Application For Additional Visa Pages or other Passport Service.</p> |

Accepting a Nonpolicy-Level Position in a Foreign State

INA 349(a)(4) INA; Section 401(d) NA

| If ... | Then ... | You ... |
|---|--|---|
| <p>You become aware that a U.S. citizen has taken this action and is either a dual national of the state of employment or has taken an oath or affirmation in connection with the position.</p> | <p>Administrative presumption of intention to retain U.S. nationality applies.</p> | <p>Prepare Consular Officer Attestation of Non-Loss, 7 FAM Exhibit 1223. Enter case in ACS system and send attestation to Passport Records for filing attached to Form DS-11,</p> |

UNCLASSIFIED (U)

| | | |
|--|--|---|
| | | Application for a U.S. Passport, Form DS-82, Application for a Passport by Mail, or, Form DS-4085, Application for Additional Visa Pages or other Passport Service. |
|--|--|---|

Accepting a Policy Level Position in a Foreign State

INA 349(a)(4) INA; Section 401(d) NA

| If ... | Then ... | You ... |
|--|--|---|
| You become aware that a U.S. citizen has taken this action and is either a dual national of the state of employment or has taken an oath or affirmation in connection with the position. | Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent. | Provide the consular letter 7 FAM Exhibit 1224, Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship and on-line brochure Advice About Possible Loss of U.S. Citizenship and Seeking or Obtaining Public Office in a Foreign State and arrange to interview the citizen. Follow procedures below on case development. See 7 FAM 1280. Send the case to CA/OCS/ACS for |

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| | | |
|---|--|---|
| | | decision following CA/OCS/L concurrence. |
| Making a Formal Renunciation of Nationality Before a Diplomatic or Consular Officer of the United States in a Foreign State in a Form Prescribed by the Secretary of State INA 349(a)(5) INA; Section 401(f) NA | | |
| If ... | Then ... | You ... |
| A citizen approaches the embassy or consulate to renounce U.S. citizenship. | Administrative presumption of intention to retain U.S. nationality is inapplicable. And, it is necessary to develop the case and assess voluntariness and intent. | Follow procedures in 7 FAM 1260 on Renunciation of Citizenship; Prepare CLN following guidelines below. Enter name in CLASS as a Reason Code Q – Questionable Claim to U.S. Citizenship; Send the case to CA/OCS/ACS for decision. |

7 FAM Exhibit 1223
A CONSULAR OFFICER ATTESTATION IN NON-LOSS CASE WHERE ADMINISTRATIVE PRESUMPTION APPLIES

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

U.S. (Embassy, Consulate General, Consulate) at
City, Country
Subscribed and Sworn:

I, (NAME OF CONSULAR OFFICER) have reviewed the U.S. citizenship status of

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U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

(name, date and place of birth).

I have noted that this person was:

Naturalized in a foreign state (INA 349(a)(1)); or

Took an oath of allegiance to a foreign state (INA 349(a)(2)); or

Served in the armed services of a foreign state as a commissioned or noncommissioned officer of a foreign state, not engaged in hostilities against the United States (INA 349(a)(3)); or

Accepted nonpolicy-level employment with a foreign government and is either a dual national of the state of employment or has taken an oath or affirmation in connection with the position (INA 349(a)(4)).

But have applied the Department of State’s administrative presumption (22 CFR 50.40) that it was not his or her intent to relinquish U.S. citizenship. Accordingly, I have determined that this person may be documented as a U.S. citizen.

Consular Officer’s Signature

Typed Name of Officer

Title

Post

Date

Seal

7 FAM Exhibit 1224
A SAMPLE CONSULAR LETTER ON LOSS OF NATIONALITY

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

U.S. Embassy/Consulate City, Country

Date

Name

Address

City, Country Postal Code

Dear (Name):

It has come to our attention that on (date) you may have (describe expatriating act). By performing this act you may have lost your U.S. nationality under Section 349(a) of the Immigration and Nationality Act of 1952 (INA), as amended (8 U.S.C. 1481(a)). INA 349(a) lists certain acts that result in loss of U.S. nationality if performed voluntarily and with the intent to lose U.S. nationality. You may lose

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

U.S. nationality only if you performed the potentially expatriating act with the intention of relinquishing United States citizenship.

Our primary purpose in writing is to learn from you whether you performed the expatriating act with the intention of relinquishing U.S. nationality. Please assist us by completing the enclosed Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship. Although it is presumed that you performed the act voluntarily, we also want to know if you believe you were subject to coercion or duress, and, if so, why.

Please fill out the enclosed questionnaire and return it in the envelope that we have provided. We urge you to complete the questionnaire carefully and thoughtfully and to closely review your answers. Once we receive the questionnaire from you, we will be in touch with you to arrange a personal interview in person or by phone.

If you wish to discuss this matter with a consular officer before completing this form, we would encourage you to do so and request that you please call (number) to arrange an appointment with a member of our consular staff.

Further if you wish to consult with counsel prior to completing the questionnaire, we would encourage you to do so as well.

Sincerely,
Signature of Consular Officer
Typed Name of Consular Officer
Title of Consular Officer

Enclosures: 1. Relevant law.
2. Form DS-4079.

7 FAM Exhibit 1226
A SAMPLE CONSULAR OFFICER OPINION

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

Embassy of the United States of America

City of X, Country of Z

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MEMORANDUM

November 15, 2007

TO: Department of State (CA/OCS/ACS)

FROM: AmEmbassy Z, CONS/ACS

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U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

TAGS: CPAS

SUBJECT: CITIZENSHIP: Loss of Nationality: John Q. Public

REF: 7 FAM 1200

In accordance with 7 FAM 1227, the attached Certificate of Loss of U.S. Nationality (CLN) is submitted to the Department for final determination.

John Q. Public, dpob: 07/04/1776 Pennsylvania, bearer of U.S. Passport number Z1234567 issued August 15, 2003 at Y, acquired the citizenship of Z by naturalization on February 3, 2007. Naturalization is a potentially expatriating act under Section 349(a)(1) INA. On August 1, 2007, Mr. Public appeared at the U.S. Embassy expressing the desire to relinquish his U.S. citizenship.

The consular section verified Mr. Public's U.S. citizenship, cleared his name in the CLASS namecheck system, and confirmed that there is no previous ACS automated system record pertaining to Mr. Public. U.S. consular officer John Smith then interviewed Mr. Public. John Q. Public advised Vice Consul Smith that he wanted to relinquish U.S. nationality. During the interview, the consular officer advised Mr. Public regarding the gravity and consequences of formal relinquishment of U.S. nationality, including the inability to live in or visit the United States unless properly documented as an alien. Mr. Smith inquired whether Mr. Public was taking this action voluntarily. Mr. Public informed the consular officer that he was aware of the consequences of formally relinquishing U.S. nationality, and that he was taking this action voluntarily.

The consular officer provided Mr. Public with a copy of the U.S. Department of State brochure about loss of nationality, directed him to <http://travel.state.gov> loss of nationality public information and Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship. Vice Consul Smith then recommended that Mr. Public review this material in the privacy of his home, think about it carefully, and if he still desired to relinquish U.S. nationality, call the consular section to make an appointment.

Mr. Public returned to the Embassy on August 14. The consular officer again advised him regarding the gravity and consequences of formal relinquishment of U.S. nationality. Mr. Public stated that he had carefully reviewed the material provided by the consular officer, and that after serious consideration; he concluded that he wished to proceed to relinquish U.S. nationality. Mr. Public appeared to be calm, reasonable, and did not exhibit any behavior to call into question his competence. The consular officer was satisfied that Mr. Public comprehended the consequences of his action and that he did not appear to be operating under any form of duress. Mr. Public then executed the Statement of Voluntarily Relinquishment before the consular officer.

I, John Smith, Vice Consul of the United States am satisfied that John Q. Public, who acquired U.S. citizenship by virtue of his birth in the United States, was

UNCLASSIFIED (U)

U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

voluntarily naturalized as a citizen of Z on 02/03/2007, an expatriating act under INA 349(a)(1) with the intention of relinquishing U.S. nationality.

Enclosures:

1. Form DS-4083, Certificate of Loss of Nationality of the United States Certificate of Loss of Nationality (original and 5 copies).
2. Form DS-4079, Questionnaire: Information for Determining Possible Loss of U.S. Citizenship, including Statement of Voluntary Relinquishment.
3. Form DS-4081, Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship.
4. Certificate of Naturalization issued by Z on February 3, 2007.
5. U.S. Passport.

Drafter: CONS/ACS:JSmith

Approved: CONS:LSimms

7 FAM Exhibit 1227
A CHECKLIST FOR REVIEW OF CLN PACKET

(CT:CON-329; 05-18-2010)

Is the individual a U.S. citizen?

Is there proof that an expatriating act occurred?

Was the act performed voluntarily?

Was the act performed with the intention of relinquishing U.S. citizenship?

Was the individual acting under duress or coercion?

Is the individual a minor?

Did the individual complete the questionnaire?

Did the individual sign the Statement of Voluntary Relinquishment?

CLN

Is the CLN properly prepared?

Did the consular officer sign the CLN?

Is the U.S. embassy or consulate seal on the CLN?

Does the CLN reflect the correct date of the expatriating act?

Does the CLN reflect the correct expatriating act and section of law?

Does the packet reflect the procedures for administrative review of a finding of loss of nationality on the reverse side of Form DS-4083, Certificate of Loss of Nationality of the United States?

Are there 2 signed, sealed copies of the CLN and supporting documents?

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U.S. Department of State Foreign Affairs Manual Volume 7
Consular Affairs

Renunciation (see 7 FAM 1260)

Did the renunciant have sufficient time to consider seriously the act and its consequences?

Does the packet reflect the correct Oath of Renunciation language? See Form DS-4080, Oath of Renunciation of the Nationality of the United States.

Does the packet reflect the correct Statement of Understanding? See Form DS-4081, Statement of Understanding Concerning the Consequences and Ramifications of Relinquishment or Renunciation of U.S. Citizenship.

Does the packet reflect the procedures for administrative review of a finding of loss of nationality on the reverse side of Form DS-4083, Certificate of Loss of Nationality of the United States?

Did the renunciation take place on consular premises?

Did the renunciant sign all copies of the oath and statement of understanding?

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