7 FAM 1250
NATURALIZATION AND OATH OF ALLEGIANCE TO A FOREIGN STATE

(CT:CON-483; 09-10-2013)
(Office of Origin: CA/OCS/L)

7 FAM 1251 NATURALIZATION IN A FOREIGN STATE

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

a. Introduction and definition of naturalization: Naturalization and taking a foreign oath do not result in expatriation unless the act is voluntary and accompanied by an intent to relinquish United States nationality:

(1) INA 101(a)(23) (8 U.S.C. 1101(a)(23)) defines naturalization as …

> "The conferring of nationality of a state upon a person after birth, by any means whatsoever."

(2) Section 101(a)(c) of the Nationality Act of 1940 defined naturalization as:

> "Conferring of nationality of a state upon a person after birth."

b. Naturalization as an expatriating act:

(1) INA 349(a)(1) (8 U.S.C. 1481(a)(1)) provides:

> "(a) 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:
> (1) Obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having attained the age of eighteen years."

(2) Section 401(a) of the Nationality Act of 1940 (54 Statutes at Large 1168-1169; old 8 U.S.C. 801) provided:

> "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
> (a) Obtaining naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: Provided, however, that nationality shall not be lost as the result of the naturalization of a parent unless and until the child shall have attained the age of twenty-three years

without acquiring permanent residence in the United States. Provided further, that a person who has acquired foreign nationality through the naturalization of his parent or parents, and who at the same time is a citizen of the United States, shall, if abroad and he has not heretofore expatriated himself as an American citizen by his own voluntary act, be permitted within two years from the effective date of this Act to return to the United States and take up permanent residence therein, and it shall be thereafter deemed that he has elected to be an American citizen. Failure on the part of such person to so return and take up permanent residence in the United States during such period shall be deemed to be a determination on the part of such person to discontinue his status as an American citizen, and such person shall be forever estopped by such failure from thereafter claiming such American citizenship."

(3) Section 2 of the Act of March 2, 1907 (34 Statutes at Large 1228) provided:

"That any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws.
And provided that no American citizen shall be allowed to expatriate himself when this country is at war."

c. Terminology: Foreign state procedures for conferring nationality after birth may transpire under various terminology such as "naturalization," "registration," "declaration," or "reintegration." The terminology used is not determinative; the important factors are whether the person acquires the foreign nationality after birth and whether an application is made. If these factors are present, a potentially expatriating act has been performed.

d. Application for naturalization:

(1) Naturalization can be an expatriating act under INA 349(a) only if the individual affirmatively applies for naturalization;

(2) An expatriating act is not committed if a U.S. national acquires the nationality of a foreign country by automatic operation of the country's law (e.g., by being the child of a national of that country) and did not take affirmative action to acquire the other nationality;

(3) INA 349(a)(1) also applies to naturalization upon the application of duly authorized agent after attaining the age of 18, but such cases are rare. This naturalization is potentially expatriating only if the person making the application was authorized to do so by the person being naturalized. The laws of a few countries provide that a married woman may be naturalized there only upon her husband's petition. See 7 FAM 1290 regarding adults lacking mental capacity, including mentally retarded adults, whose U.S.

citizenship cannot be relinquished by a guardian or trustee;

(4) By contrast, Section 2 of the Act of March 2, 1907, did not require an application. Naturalization between April 6, 1917, and July 2, 1921, did not result in expatriation. Automatic acquisition of the nationality of a foreign state by operation of law did not result in expatriation unless there was an oral or written declaration or an overt act clearly showing acceptance of the other nationality.

7 FAM 1252 TAKING OATH OF ALLEGIANCE TO A FOREIGN STATE

(CT:CON-483; 09-10-2013)

a. INA 349(a)(2) (8 U.S.C. 1481(a)(2)) provides:

> "(a) 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:
> (2) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years."

b. Section 401(b) of the Nationality Act of 1940 (54 Statutes at Large 1169; old 8 U.S.C. 801) provided:

> "A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
> (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state."

c. Section 2 of the Act of March 2, 1907 (34 Statutes at Large 1228), provided:

> "That any American citizen shall be deemed to have expatriated himself … when he has taken an oath of allegiance to any foreign state.
> And provided that no American citizen shall be allowed to expatriate himself when this country is at war."

d. An oath of allegiance is a statement affirming one's loyalty to a foreign state. Such a statement may be oral or in writing; it does not have to be under oath although in many instances it is; and it may be a simple statement, or it may be contained in a larger document, of which the oath is only one part. The taking of such an oath is only an expatriating act if it is taken voluntarily after the age of 18 with the intention of relinquishing one's citizenship.

e. The statement of allegiance need not be in any particular form. It may be oral or written. Its words and meaning must express actual allegiance or fidelity to

the foreign state or subdivision or to its government, sovereign, constitution, prince, or similar concepts. However, a simple pledge to carry out the duties of a certain job (i.e., sometimes referred to as an oath of office), or similar statement, even though subscribed under oath, is not potentially expatriating.

f. An oath of allegiance to a foreign state is often taken in connection with naturalization, service in the armed forces of a foreign state, or some other act that is also, in itself, potentially expatriating. A finding of loss of nationality, if made, generally results from the principal act, for example, military service, rather than the oath.

g. An oath or affirmation of allegiance to another state taken while in the United States cannot result in loss of U.S. citizenship until the person establishes a foreign residence. INA 351 (8 U.S.C. 1483) provides that, except as provided in paragraphs (6) and (7) of INA 349(a), no national of the United States can lose United States nationality while within the United States or any of its outlying possessions, but loss of nationality shall result from the performance within the United States of any of the acts or the fulfillment of any of the conditions specified in this chapter of the INA if and when the national thereafter takes up a residence outside the United States and its outlying possessions.

h. *For an oath or affirmation to be potentially expatriating, it must be meaningful. A meaningful oath is one that is required by a foreign state. Such an oath reflects a transfer of allegiance to a foreign state and/or the abandonment of allegiance to the United States. Gillars v. United States, 182 F.2d 962 (DC 1950). An oath or affirmation will be found to be meaningful only if all four of the following criteria are met:*

(1) The oath or affirmation is made to an official of a foreign state authorized to receive the oath or affirmation;

(2) The authorized foreign official in fact does receive the oath or affirmation;

(3) The oath or affirmation is made in a manner that is consistent with the foreign state's law; and

(4) The making and receipt of the oath or affirmation alters the affiant's legal status with respect to the foreign state.

> ***NOTE**: For example, a person who has already acquired a foreign nationality may not expatriate herself by swearing an oath of allegiance to that same foreign state because she already owed that state her allegiance, unless the foreign state's law specifically grants her a new right after making the affirmation not already conferred upon by virtue of her prior naturalization.*

**The Department determines on a case-by-case basis whether an oath of allegiance is meaningful for purposes of INA 349(a)(2).*

7 FAM 1253 RESPONDING TO INQUIRIES ABOUT NATURALIZATION OR OATH OF ALLEGIANCE CASES

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

When you receive inquiries about the possible implications of naturalization in a foreign state or taking an oath of allegiance to a foreign state, you may direct inquirers to the brochure entitled "Advice About Possible Loss of U.S. Citizenship and Dual Nationality" which is available on the Department of State Bureau of Consular Affairs Internet Web site.

7 FAM 1254 PROCEDURES

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a. In Vance v. Terrazas, 444 U.S. 252 (1980), the U.S. Supreme Court held that in establishing loss of citizenship, the U.S. Government must prove an intent to surrender United States citizenship, not just the voluntary commission of an expatriating act such as swearing allegiance to a foreign nation. The U.S. Supreme Court disagreed with the U.S. Government's assertion that a meaningful oath of allegiance to a foreign state is highly persuasive evidence of an intent to transfer or abandon allegiance.

b. *In light of Tarrazas, the Department now presumes that U.S. citizens who naturalize as citizens of a foreign state or who declare their allegiance to a foreign state intend, absent evidence to the contrary, to retain their U.S. citizenship (22 C.F.R 50.40(a) and* 7 FAM 1222*). A U.S. citizen may readily rebut this presumption by either signing the "Statement of Voluntary Relinquishment of U.S. Citizenship" contained in DS-4079 ("Request for Determination of Possible Loss of United States Citizenship") or by executing a written statement under oath indicating that he or she naturalized as a citizen of a foreign state or declared his or her allegiance to a foreign state voluntarily with the intention of relinquishing U.S. citizenship.*

7 FAM 1255 THROUGH 1259 UNASSIGNED