Dual Citizenship

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Summary

This report provides an overview of the legal requirements for dual citizenship and some of the issues concerning dual citizenship. There are several potential problems and issues falling into two categories—first, actions which may result in expatriation from the U.S., *i.e.*, loss of American citizenship, and second, potentially conflicting obligations to both countries, *e.g.*, mandatory military service for men, double income taxation, voting privileges, public office or employment and repatriation of income from employment or investment abroad. The report will first discuss the legal basis for dual citizenship, then the expatriation actions, the potentially conflicting obligations of holding citizenship of the U.S. and another nation, the dual citizenship laws and legislative activity of selected countries in which a significant number of U.S. citizens may be eligible for dual citizenship, and finally, current legislative activity in the 105th Congress.

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Background

Actually, nationality and citizenship are distinct concepts. Citizenship concerns the political status and rights conferred on a person by a nation, such as the right to vote and to hold office.[1] Nationality concerns the status of a person under international law, *i.e.*, the allegiance which a person owes to a nation and the protection owed by a nation to a person vis-à-vis another nation. In the U.S., all citizens are nationals, but not all nationals are citizens. Nationals by birth who are citizens are those persons born or presumed to be born in the U.S., born in the outlying possessions to parents at least one of whom is a U.S. citizen who satisfies certain conditions precedent, or born outside the U.S. and its possessions to parents at least one of whom is a U.S. citizen who satisfies certain conditions precedent.[2] Nationals by birth who are *not* citizens are those persons born or presumed to be born in an outlying possession of the U.S. on or after the date of formal acquisition of the possession or born to parents at least one of whom is a U.S. national who satisfies certain conditions precedent.[3] Aside from this distinction, generally the terms seem to be used interchangeably, although citizenship is really a subset of nationality. Therefore, although the U.S. provision concerning loss of nationality is entitled "Loss of nationality by native-born or naturalized citizen,"[4] the courts also appear to have used the two terms interchangeably, so the loss of nationality seems to be understood usually to mean the loss of citizenship as well where both are involved.[5] Therefore, the terms will be used interchangeably in this report.

Dual citizenship can arise in several ways, from naturalization and from two doctrines of citizenship. *Jus soli* is the principle that a person acquires citizenship in a nation by virtue of his birth in that nation or its territorial possessions.[6] *Jus sanguinis* is the principle that a person acquires the citizenship of his parents, "citizenship of the blood."[7] A person may acquire dual

[1] The American Law Institute, 1 3RD RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 211, comment h and reporters' note 6, § 212 (1986).

[2] 8 U.S.C.A. § 1401 (West Supp. 1998).

[3] 8 U.S.C.A. § 1408 (West Supp. 1998).

[4] 8 U.S.C.A. § 1481 (West Supp. 1998).

[5] The American Law Institute, 1 3rd Restatement of the Foreign Relations Law of the United States § 212, comment c, reporters' note 4 (1986).

[6] Black's Law Dictionary 863 (6th Ed. 1990); entry for "jus soli."

[7] *Id.* at 862; entry at "jus sanguinis."

citizenship by being born in the U.S., which recognizes *jus soli*,[8] to alien parents whose country recognizes *jus sanguinis*,[9] or by being born abroad to U.S. parents.[10] Also, a U.S. citizen may become a naturalized citizen of a nation that does not require renunciation of other allegiances, or a naturalized U.S. citizen may still retain citizenship in a country that does not recognize renunciation of its citizenship.[11]

Although the U.S. requires an immigrant to take an oath renouncing allegiance to any other sovereign power,[12] citizenship and nationality of another nation are really determined by the laws of that other nation claiming a person as a citizen and/or as a national.[13] Therefore, when a naturalized U.S. citizen renounces allegiance to his former country, if the laws of that country do not recognize the renunciation, that person still retains the citizenship of his former country. In deference to the sovereignty of that other nation, the U.S. generally recognizes the dual citizenship. Even the U.S. originally did not recognize the right of a citizen to expatriate himself if he so desired.[14] The original expatriation statute was enacted because of a growing belief in Congress that the rights of citizenship included the right to renounce citizenship.[15] Some nations still do not permit citizens to renounce citizenship.[16]

Expatriation of U.S. Citizens

Section 1481 of Title 8 of the U.S. Code enumerates actions which may result in the expatriation of a U.S. citizen, regardless of whether that person is a citizen by birth or naturalization. A naturalized citizen could be "denaturalized," *i.e.*, have his citizenship revoked by a U.S. court upon a finding that the immigrant committed fraud or misrepresentation in gaining admission to the U.S. or in obtaining his citizenship.[17] However, this report will not address this issue since it is separate from the expatriation acts in section 1481. Section 1481 includes acts demonstrating an allegiance to another nation which may be incompatible with allegiance to the U.S. Those acts include naturalization in a foreign country; taking an oath of allegiance to a foreign state or one of its political subdivisions; serving in the armed forces of a hostile foreign state or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state; serving in any office, post or employment under a foreign state's government, if one is a national of that state; making a formal renunciation before a diplomatic or consular officer of the United States in a

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[8] Constitution of the United States, Amendment XIV, § 1, cl. 1.

[9] *E.g.*, Japan, see *Nishikawa v. Dulles*, 356 U.S. 129, 131 (1957), and *Kawakita v. U.S.*, 343 U.S. 717, 720 (1951).

[10] 8 U.S.C.A. § 1401(c, d, e, g) (West Supp. 1998). The U.S. does not really recognize true *jus sanguinis*. Although, as discussed above, a person may acquire citizenship by birth outside the U.S. and its possessions to parents at least one of whom is a U.S. citizen, the parent must have met certain residency requirements prior to the birth of the person.

[11] The American Law Institute, 1 3RD RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 212, reporters' note 3 (1986).

[12] 8 U.S.C.A. § 1448(a)(2) (West Supp. 1998).

[13] *Sadat v. Mertes*, 615 F.2d 1176, 1184-5 (7th Cir. 1980) (The opinion includes a discussion of general principles of dual nationality).

[14] *Id.* and Griffith, *Expatriation and the American Citizen*, 31 Howard L.J. 453, 455-59 (1988).

[15] Griffith, supra note 14, at 455-59.

[16] The American Law Institute, 1 3RD RESTATEMENT OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 212, reporters' note 3 (1986).

[17] 8 U.S.C.A. § 1451 (West Supp. 1998).

foreign state; making a formal renunciation in a manner prescribed by the Attorney General when the U.S. is at war; and committing treason.[18]

Section 1483 of Title 8 restricts the conditions for expatriation. Except for treason and formal renunciation in the U.S., a citizen cannot be expatriated while he is in the U.S. or its possessions. However, acts committed in the U.S. or its possessions can be grounds for expatriation once the citizen leaves the U.S. and resides outside it and its possessions. Also, a citizen who asserts his claim to U.S. citizenship within six months of attaining majority shall not be considered expatriated as the result of serving in the armed forces of a foreign state or making a formal renunciation abroad before a U.S. diplomatic or consular official. Section 1489 provides that treaties and conventions ratified by the Senate before December 25, 1952, supersede the provisions on expatriation, except that no woman shall lose her nationality solely by reason of her marriage to an alien, regardless of the provisions of a treaty.

Currently, the mere commission of an act of expatriation enumerated in section 1481, or any other act that may be evidence of expatriation, cannot result in loss of citizenship unless committed voluntarily and with specific intent. At one time a U.S. citizen could lose his citizenship by denationalization as well as by expatriation.[19] The distinction is that expatriation is a loss of citizenship resulting from an act evincing the desire and intention of the citizen to renounce his citizenship, while denationalization is a loss of citizenship resulting from conduct which Congress has decided is contrary to the national interest and thus should result in a loss of citizenship. While conduct resulting in denationalization had to be voluntary and not coerced, there was no requirement of a specific or subjective intention to renounce citizenship. For example, at one time an American woman could be denationalized by marrying a foreigner. The woman's lack of subjective intent to renounce her U.S. citizenship was irrelevant; if she married voluntarily, she lost her citizenship.[20] One interpretation is that the voluntariness of the denationalizing conduct was equivalent to an objective intent to renounce U.S. citizenship.[21]

Over the years the United States Supreme Court has moved toward a stricter interpretation of expatriation. Formerly, the Supreme Court upheld the power of Congress to denationalize a U.S. citizen, even a citizen by birth.[22] Finally, it reversed itself and found that the Fourteenth Amendment[23] prevents Congress from legislating the automatic loss of citizenship by naturalization or birth in the U.S. merely because of certain conduct, without that citizen's

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[18] 8 U.S.C.A. § 1481(a) (West Supp. 1998). Former subsection (a)(5), regarding expatriation of persons who voted in a foreign political election or an election to determine sovereignty over foreign territory, and subsection (a)(8), regarding the expatriation of persons who deserted the armed forces in wartime, were repealed by Pub. L. No. 95-432, § 2, 92 Stat. 1046 (1978). Subsection (a)(10), regarding the expatriation of persons who remained outside the U.S. in wartime to evade military service, was repealed by Pub. L. No. 94-412, Title V, § 501(a), 90 Stat. 1258 (1976). Also, former section 1482 of Title 8, repealed by Pub. L. No. 95-432, § 1, Oct. 10, 1978, 92 Stat. 1046, provided for the divestiture of U.S. nationality for dual nationals in certain situations.

[19] Griffith, *supra* note 14, at 461-2; Note, *Protecting Citizenship: Strengthening the Intent Requirement in Expatriation Proceedings*, 56 Geo. Wash. L. Rev. 341, 343-4 (1988); *Perez v. Brownell*, 356 U.S. 44 (1957).

[20] *Mackenzie v. Hare*, 239 U.S. 299, 311-12 (1915) (Under the Act of March 2, 1907, c. 2534, § 3, 34 Stat. 1228, an American woman citizen who married an alien took the nationality of her husband and lost her U.S. citizenship).

[21] Griffith, *supra* note 14, at 461.

[22] *Perez v. Brownell*, 356 U.S. 44 (1957) (The Court held that Congress, pursuant to its powers to regulate foreign relations, could provide for the denationalization of a U.S. citizen who voted in a foreign election in order to avoid embarrassment in the conduct of foreign relations).

[23] "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Constitution of the United States, Amendment XIV, § 1, cl. 1.

assent.[24] There has been at least one case which found that Congress could set conditions on the retention of U.S. citizenship for a person born abroad to parents only one of whom has U.S. citizenship. Since the person was neither born nor naturalized in the U.S. but merely derived his citizenship from the parent, he was not protected from denationalization by the Fourteenth Amendment.[25] More recently, the Supreme Court elaborated on its earlier decision in *Afroyim* by holding that the Government had to prove specific intent to renounce citizenship.[26] The statutory provisions on expatriation state that the party claiming that expatriation occurred must establish the claim by a preponderance of the evidence. Any act of expatriation, including those enumerated under § 1481, will be presumed to have been done voluntarily, but the presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily. *Terrazas* upheld the statutory evidentiary standards as constitutional, but in light of *Afroyim* and the Fourteenth Amendment, it required a finding of intent to relinquish U.S. citizenship and stated that no presumption of intent arose from an expatriating act.[27] A finding of intent did not require a written, express relinquishment of citizenship. Intent could be found by a preponderance of the evidence; it could be inferred from conduct that was completely inconsistent with and derogatory to allegiance to the U.S.[28]

The courts have interpreted the statutory requirements with regard to several of the acts of expatriation. Regarding an oath of allegiance and statement of renunciation, a court has found that signing an oath of allegiance to another country as part of that country's naturalization process did not constitute renunciation of U.S. citizenship in the absence of an explicit renunciation.[29] The courts have found that where there is an explicit renunciation or an oath of allegiance accompanied by or including an explicit renunciation, the requisite specific intent exists and the citizen is expatriated.[30] On the other hand, at least one district court has found that where a person has signed naturalization papers of another country which explicitly renounce U.S. citizenship, the government has not proved the requisite specific intent where the citizen can prove that, through gross negligence, he was unaware of the fact that the naturalization papers contained a renunciation of all other citizenships.[31] While one court of appeals has rejected the argument of economic duress in rebuttal of the presumption of voluntariness of an act,[32] another court of appeals has said that economic duress may avoid expatriation, but the citizen's economic plight

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[24] *Afroyim v. Rusk*, 387 U.S. 253 (1967) (Afroyim was a naturalized citizen who participated in a foreign election). See also, note 18.

[25] *Rogers v. Bellei*, 401 U.S. 815 (1970). The conditions of residency between the ages of fourteen and twenty-eight years for retention of citizenship have since been repealed, Pub. L. No. 95-432, § 1, 92 Stat. 1046 (1978).

[26] *Vance v. Terrazas*, 444 U.S. 252, 260-1 (1980).

[27] *Id.*

[28] *Vance v. Terrazas*, 444 U.S. 257, 261-62 (1980), *Terrazas v. Haig*, 653 F.2d 285, 288 (1981) (fn. 4 referring to *King v. Rodgers*, 463 F.2d 1188, 1189 (9th Cir. 1972)).

[29] *United States v. Matheson*, 532 F.2d 809 (2d Cir.), *cert. denied*, 429 U.S. 823 (1976). Here, the estate of a woman who had married a Mexican citizen and signed an oath of allegiance to Mexico claimed that she was not an American citizen for the purposes of taxation by the U.S. The Court of Appeals said: "Had Mrs. Burns wished to expatriate herself she could simply have unequivocally stated that she renounced her American citizenship." 532 F.2d 809, 816.

[30] *Kahane v. Secretary of State*, 700 F. Supp. 1162 (D.D.C. 1988) (Israeli-American dual citizen renounced U.S. citizenship in order to be eligible to hold office in the Knesset); *Richards v. Secretary of State*, 752 F.2d 1413 (9th Cir. 1985) (U.S. citizen took oath of allegiance to Canada including renunciation of U.S. allegiance as part of naturalization process in order to gain employment).

[31] *Parness v. Schultz*, 669 F. Supp. 7 (D.D.C. 1987).

[32] *Richards v. Secretary of State*, 752 F.2d 1413 (9th Cir. 1985).

must be "dire."[33] A district court has found that holding office in a foreign legislature does not constitute expatriation in the absence of a specific intent to renounce U.S. citizenship.[34] Subsequently, the plaintiff in that case lost his U.S. citizenship when the laws of the foreign country changed to require single citizenship in order to hold legislative office. The plaintiff wished to run to retain his office, renounced his U.S. citizenship but was still unable to run for office for other reasons. His subsequent attempt to retract his renunciation was deemed ineffective because he had already voluntarily and effectively renounced U.S. citizenship.[35]

Administratively, it appears that, since the line of cases holding that a person must have committed an expatriating act voluntarily and with specific intent to lose citizenship, the State Department has taken a permissive position with regard to whether a person has lost citizenship upon commission of an act.[36] Even taking an oath of allegiance to a foreign state which renounces allegiance to the United States is considered strong, but not necessarily conclusive, evidence of intent to relinquish U.S. citizenship.

Conflicting Rights and Obligations of Dual Citizenship

The rights and obligations of a citizenship of another nation may conflict with U.S. citizenship. As mentioned above at note 18, voting in a foreign political election is no longer grounds for expatriation. If a U.S. citizen wishes to retain his citizenship and goes through some form of naturalization process in another nation, he might well be advised, for example, to take care that no renunciation of U.S. citizenship is included in any required oath of allegiance.

A U.S. citizen must also be cautious if he or she is considering accepting a government position in the other country. In recent years, many East-European-American dual nationals have been going to Eastern Europe to aid in the restructuring and development of that region. Reportedly, some have been offered positions in the governments there, but those who definitely wish to retain U.S. citizenship have turned down those offers because of concern that they would lose U.S. citizenship. Some are reportedly acting as unofficial, unpaid advisors.[37] A most notable example is former Minnesota governor Rudy Perpich who briefly considered the post of foreign minister in Croatia.[38] Even if no formal renunciation is required as part of accepting the foreign position, by not accepting such positions, dual citizens ensure that no cloud is cast on their U.S. citizenship. In one case, Milan Panic, a naturalized U.S. citizen who briefly served as Prime Minister in his native Yugoslavia during the post-communist transition period in the early 1990s,[39] was said to have received express permission from the U.S. State Department to retain

[33] *Stipa v. Dulles*, 233 F.2d 551 (3d Cir. 1956).

[34] *Kahane v. Schultz*, 653 F. Supp. 1486 (E.D.N.Y. 1987).

[35] *Kahane v. Secretary of State*, 700 F. Supp. 1162 (D.D.C. 1988).

[36] *See* 7 Foreign Affairs Manual §§ 1208, 1217, and 1262, reprinted at CHARLES GORDON AND STANLEY MAILMAN, 17 IMMIGRATION LAW AND PROCEDURE (1998) and Goldstein and Piazza, *infra* note 60.

[37] Robert C. Toth, *New Ties To The Old Country; Ethnic Pride Has Surged Among Americans Of East European Descent; Assistance Has Gone Beyond Financial Support; Some Have Taken Jobs With The New Governments*, LOS ANGELES TIMES, May 14, 1991, at A1.

[38] Maralee Schwartz, *Minnesota Ex-Governor Declines Croatian Post*, WASHINGTON POST, April 30, 1991, at A5.

[39] *Panic says don't use force in Bosnia*, USA TODAY, April 29, 1993, at 13A.

his U.S. citizenship while serving as Prime Minister.[40] U.S. citizenship may have been deemed so inherently incompatible with holding a high government position in a foreign country, that an intent to relinquish U.S. citizenship could arguably be found in the act of accepting such high office. An additional factor in this case was the embargo against the former Yugoslavia; as a U.S. citizen, Panic had to receive permission from the United States for travel to Yugoslavia. In an even more recent case, Valdas Adamkus, the current President of Lithuania, a Baltic state once part of the Soviet Union, was a naturalized U.S. citizen who had fled his native country more than fifty years ago. After his election in Lithuania, he renounced his U.S. citizenship.[41] Reportedly, the Lithuanian Constitution would have permitted him to retain his U.S. citizenship while serving as President. However, he had made a campaign promise to renounce his U.S. citizenship, knowing it would be politically awkward to retain it. He went to the U.S. Embassy in Vilnius, Lithuania, to turn in his passport, sign a formal renunciation of U.S. citizenship, and receive a diplomatic visa. It appears that, since Lithuanian laws permitted him to retain his U.S. citizenship and did not require him to renounce it to take office, U.S. laws would have permitted him to retain his U.S. citizenship, and that President Adamkus' action was not legally required.

If the laws of the other country provide for mandatory military service for young men, they may conflict with the expatriation provision that service in foreign armed forces is an expatriating act, even in a friendly country if service is as an officer. A multilateral Protocol Relating to Military Obligation in Certain Cases of Double Nationality, to which the U.S. is a party, provides that "[a] person possessing two or more nationalities who habitually resides in one of the countries whose nationality he possesses, and who is in fact most closely connected with that country, shall be exempt from all military obligations in the other country or countries."[42] Under the Protocol, the country in which the national resides and with which he has the closest ties is considered the country of the dominant nationality. So an American possessing dual citizenship could be exempt from military service in his other country if it is a party to the Protocol and if his dominant nationality is American. Article 1 of the Protocol provides that such an exemption may involve the loss of the non-dominant nationality. As discussed above, foreign military service is a potentially expatriating act under current U.S. law. Therefore, an exemption from service in the U.S. military in favor of obligations in another country could be considered evidence of an intent to relinquish U.S. citizenship. The U.S. is not a party to the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality and its Protocols.[43]

A dual citizen may have conflicting financial obligations to his two countries. He may be obligated to pay taxes to both of his countries if he has sufficient income. There are numerous

[40] Saul Friedman, *'Belgrade Mafia' Seen Influencing U.S. Policy; Slow Response Tied to Scowcroft, Eagleburger*, NEWSDAY, August 9, 1992, at 4.

[41] Richard C. Paddock, *Lithuania's President-Elect Gives Up U.S. Citizenship; Inauguration: Former EPA Bureaucrat From Chicago Is To Be Sworn In Today As Leader Of His Native Land*, LOS ANGELES TIMES, Feb. 26, 1998, at A4; *President-to-be gives up U.S. citizenship*, THE NEWS AND OBSERVER, Feb. 26, 1998, at A11; *Lithuanian Returns U.S. Passport*, WASHINGTON POST, Feb. 26, 1998, at A18; Judy Pasternak, *American Trades Retirement for Chance to Lead Lithuania*, LOS ANGELES TIMES, Feb. 9, 1998, at A5.

[42] April 12, 1930, 50 Stat. 1317, 2 Bevans 1049, 178 L.N.T.S. 227. Of the selected countries discussed below, only Colombia is listed by the Department of State, Office of Treaty Affairs, *Treaties in Force: A List of Treaties and Other International Agreements of the United States in force as of Jan. 1, 1997* (1997) [hereinafter *Treaties in Force*], as also being party to the Protocol. Bowman & Harris, MULTILATERAL TREATIES: INDEX AND CURRENT STATUS 85 (1984) (treaty 129).

[43] May 6, 1963, 634 U.N.T.S. 221.

bilateral treaties between the U.S. and other countries to avoid double taxation but these address situations in which a citizen or national of one party is domiciled in another party; often they do not address the special issue of the dual national.[44] The tax laws of the U.S. provide for foreign tax credit[45] and a court has even found that taxes levied by a political subdivision of a country, not by the federal government, may be credited toward the taxes owed by a U.S. corporation;[46] current regulations are consistent with this ruling.[47] Laws governing the repatriation of income earned and investment by aliens and dual nationals may differentiate between the alien and the dual national; the dual national may not be permitted to take as much money out of the country because he is considered a national with not as much reason as an alien to remove assets to another country, even if he is a national of that other country.[48]

If there is no treaty to which the U.S. and the particular nation involved are parties, the U.S. and that nation can negotiate naturalization, tax or military obligation treaties in which they can resolve any conflicting obligations to make the status, rights and obligations of dual nationals clear. Historically, treaties of expatriation which resolved questions of dual nationality have been negotiated with a number of countries;[49] however, some of these have terminated.[50]

Laws of Selected Countries

This section will briefly describe the dual nationality or citizenship laws of selected countries in which it appears that a significant number of Americans possess nationality or citizenship. In particular, recent changes in the constitution and federal statutes of Mexico have received a great deal of attention in the United States, since those changes were apparently motivated, at least in part, by the effects of recent immigration law reforms in the United States on Mexican citizens who are permanent resident aliens in the United States. Additionally, the relevant citizenship and nationality laws of Israel, Ireland and Colombia will be discussed. The laws discussed here do not include the naturalization laws, which could result in dual citizenship if a U.S. citizen chose to apply for naturalization in those countries. Rather, this discussion focuses on describing those laws which provide for retention of nationality after naturalization in the United States or for acquisition of nationality by descent, a sort of *jus sanguinis*. It has been suggested that the exercise of the rights and privileges of a prior nationality by a naturalized U.S. citizen, after the date of naturalization, calls into question the truthfulness of the citizen's oath of allegiance to the United States and renunciation of other allegiances, and that therefore, the naturalization could be

[44] For example, the United States has two taxation treaties with Ireland, a country in which many Americans hold nationality—Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on the estates of deceased persons, Sept. 13, 1949, 2 U.S.T. 2294, T.I.A.S. 2355, 127 U.N.T.S. 119; and Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, Sept. 13, 1949, 2 U.S.T. 2303, T.I.A.S. 2356, 127 U.N.T.S. 89. On the other hand, the United States and Israel, another country in which many Americans hold nationality, do not have any taxation treaties according to *Treaties in Force*, *supra* note 42.

[45] 26 U.S.C.S. §§ 27, 642, 841, 874, and 901 *et seq*. (1997).

[46] *Burnet v. Chicago Portrait Company*, 285 U.S. 1 (1931).

[47] 26 C.F.R. § 1.901-2(g)(2).

[48] Conversation with Anton Wekerle, Acting Chief of the Near Eastern and African Law Division, Law Library, Library of Congress, June 25, 1991.

[49] Annotation, *Expatriation by foreign naturalization or by taking oath of allegiance to a foreign state*, 15 A.L.R.2d 550, 557 (1951); *see also* the Appendix to this report.

[50] *See* the Appendix to report cited above, with reference to the Department of State, Office of Treaty Affairs, *Treaties in Force*. *supra* note 42.

invalidated on the grounds of fraud in the procurement.[51] On the other hand, since some of the foreign laws provide for reacquisition of native nationality, it could be argued that persons who take advantage of reacquisition procedures are not acting differently from native-born U.S. citizens who seek naturalization in another country.

Mexico

Recent changes in the constitutional and federal statutory laws of Mexico have made possible the retention or reclamation of Mexican nationality for former Mexican citizens who are now naturalized U.S. citizens and for their U.S.-born children. In December 1996, both chambers of the Mexican federal legislature unanimously passed amendments to articles 30, 32, and 37 of the Constitución Politica de los Estados Unidos Mexicanos [Political Constitution of the United Mexican States]. The effective date of these amendments was March 20, 1998, one year after the date of publication in the Diario Oficial de la Federación [Official Journal of the Federation].[52] Publication occurs upon ratification by a majority of the 31 state legislatures in Mexico. These amendments made possible the retention of Mexican nationality by Mexicans who possess the nationality of another country. Such persons can also transmit Mexican nationality to their children born outside Mexico. Transmission is limited to persons born outside Mexico to parents one or both of whom are Mexicans by birth or naturalization in Mexican territory. Only Mexicans with no other nationality may be appointed or elected to public offices where national security and sovereignty concerns are implicated. Mexican dual nationals will be able to hold passports and to own real property in restricted areas. Under Mexican law, foreigners are prohibited from owning land within 100 kilometers of borders and 50 kilometers of the coastline.[53] Former Mexican nationals who have already lost their nationality through naturalization in another country have five years after the entry in force of the amendment to initiate the procedure for recovering their Mexican nationality, that is, until March 3, 2003.

The law implementing the constitutional amendments with respect to dual nationality was passed by both chambers of the Mexican Congress in December 1997, published on January 23, 1998, and went into effect on March 20, 1998, the effective date of the underlying amendments.[54] Mexican law distinguishes between nationality and citizenship with regard to the rights enjoyed. Although Mexican dual nationals will be able to travel and live in Mexico and to own property

[51] *See Naturalization Requirements and the Rights and Privileges of Citizenship: Hearing Before the Subcomm. on Immigration of the Senate Comm. on the Judiciary*, 104th Cong., 2d Sess. (Oct. 22, 1996) (statement of Dan Stein, Executive Director, Federation for American Immigration Reform); and *Knauer v. United States*, 328 U.S. 654 (1946) (upholding the revocation of naturalization of a former German citizen on the grounds that his evident Nazi sympathies indicated that he falsely swore the oath of allegiance renouncing all other allegiances, including those to Nazi Germany).

[52] The text (in Spanish) of the amendments can be found at the website for the Mexican Congress, http://wwwl.cddhcu.gob.mx/. A good explanation in English of the amendments can be found at in the newsletter at the website for the Mexican Consulate in New York City, http://www.quicklink.com/mexico/gob97may/notmay97.htm. These links were good as of the date of this report.

[53] Patrick J. McDonnell and Mark Fineman, *Mexico Posed to OK Dual Nationality Law*, LOS ANGELES TIMES, Dec. 9, 1996, at A3.

[54] The text (in Spanish) of the Ley de Nacionalidad effective March 20, 1998, is available in the Lexis-Nexis database, as published in the Diario Oficial de la Federación. Descriptions in English can be found in the newletter at the website of the Mexican Consulate in New York City, http://www.quicklink.com/mexico/gob98mar/notmar98.htm#part4, and in the newsletter at the website of the Mexican Consulate in Austin, Texas, http://www.onr.com/consulmx/january98-2.html. *See also* the Press Release of the Embassy of Mexico on March 19, 1998, available on the Lexis-Nexis database in the wire service file.

without restrictions, they will be exempted from certain obligations and also barred from certain privileges and rights associated with citizenship. As mentioned above, they will not be allowed to hold certain public offices. They will not be required to serve in the Mexican armed forces, but will have to register abroad at consulates or embassies. Significantly, the right to vote, the primary political right associated with citizenship, has not been extended to dual nationals by the new laws. Apparently, at the current time there are no procedures for absentee voting even by those possessing Mexican nationality and citizenship who reside outside of Mexico.[55]

According to estimates of the Mexican government, the new dual nationality laws could affect between 4 to 5.5 million current or former Mexican nationals, of whom approximately 2.2 million are already naturalized citizens who can now apply to regain their nationality status and rights.[56] According to at least one expert, there approximately 6.6 million U.S.-born children with one or both parents born or naturalized in Mexico, who could be eligible to apply for Mexican nationality status.[57]

Israel

The Law of Return in Israel[58] provides for the right of every Jew to immigrate to Israel and become an Israeli citizen, unless it is determined that the person is engaged in activity directed against the Jewish people, may endanger public health or the security of the state, or has a criminal past, likely to endanger public welfare. A "Jew" is defined as a person born of a Jewish mother or who has converted to Judaism and is not a member of another religion. An extension has been made to cover the offspring of intermarriage between a Jewish man and a non-Jewish woman. In that case, the right of return is extended to the child and grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew, and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion.

Ireland

Under the Nationality and Citizenship Acts of 1956 and 1986,[59] a person born outside Ireland may acquire Irish nationality by descent transmitted up to three generations down from the person born in Ireland. A person born outside Ireland, whose mother or father was born in Ireland and was an Irish citizen at the time of his birth, is automatically an Irish citizen. A person whose grandfather or grandmother was born in Ireland, but whose parents were not, may acquire Irish citizenship by registering in the Foreign Births Register at a consulate or embassy of Ireland or at the Department of Foreign Affairs in Dublin, Ireland. A person whose great-grandfather or great-

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[55] *See* Press Release, *supra* note 54.

[56] Mark Fineman and Patrick J. McDonnell, *Dual Nationality Will Have To Wait Officials Say; Complexity of Creating New Legal Category For Millions Of Expatriates Is To Blame, Experts Declare*, LOS ANGELES TIMES, December 12, 1996, at A17; Mark Fineman, *Lawmakers In Mexico Approve Dual Nationality*, LOS ANGELES TIMES, Dec. 11, 1996, at A1.

[57] Patrick K. McDonnell, *Mexico Delays Dual-Nationality Plan 1 Year*, LOS ANGELES TIMES, March 6, 1997, at A3, citing Jeffrey Passel of the Urban Institute.

[58] The text of this law (in English) is available at a website of the Israeli government, gopher://israel-info.gov.il:70/00/constit/laws/bas.12, and a summary is available at another website, gopher://israel-info.gov.il:70/00/constit/laws/national.leg; these websites were active as of the date of this report.

[59] A summary description of the law is available at the website of the Irish government, http://www.irlgov.ie/justice/Publications/Citizenship/IrishCitizens.htm.

grandmother was born in Ireland but whose grandparents and parents were not, may register for Irish citizenship, provided that a parent eligible to register for Irish citizenship as the grandchild of a native Irish citizen actually registered prior to that person's birth.

Colombia

Since amendments in 1991, article 96 of the Constitucion Política [Political Constitution] of Colombia[60] provides that a native Colombian cannot be stripped of his nationality. Colombian nationality is not lost by acquiring another nationality by naturalization. Naturalized Colombians are not obligated to renounce other nationalities in order to become Colombians. Colombians who previously lost their nationality by naturalization in another country are provided the opportunity to reacquire Colombian nationality.

Other Countries

In addition to the existing laws of the countries discussed above and others, such as Turkey and Italy,[61] there has been political pressure in several countries, including Korea and Germany, to liberalize nationality laws in a way that would permit or promote dual nationality. However, in Korea, plans for legislation that would permit dual nationality have been put on hold due to concerns expressed by China about the split loyalties of the sizeable population of ethnic Koreans in China.[62] In Germany, liberalizing nationality laws became a contentious issue in the elections there. Most of the political parties apparently support liberalization which would permit non-ethnic Germans born in Germany to become German nationals automatically without having to apply for naturalization, but one conservative party is vehemently opposed and another party is split on the issue.[63]

Legislation in the 105th Congress

In the 105th Congress there has been only one piece of legislation[64] which refers to dual citizenship, although there has been some interest in revisiting the issue of permitting dual nationality under U.S. laws[65] in light of the recent Mexican legislation, the relatively recent Colombian legislation, an increasing trend of Irish-Americans acquiring Irish nationality,[66] and

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[60] The text (in Spanish) is available at a website, http://www.georgetown.edu/LatAmerPolitical/Constitutions/Colombia/colombia.html. A description (in English) of the dual nationality provisions of article 96 is provided by Eugene Goldstein and Victoria Piazza, *Naturalization, Dual Citizenship and Retention of Foreign Citizenship: A Survey*, 73 Interpreter Releases No. 16, April 22, 1996.

[61] Goldstein and Piazza, *supra* note 60.

[62] *Beijing urges Seoul to refrain from enacting citizenship law*, BBC SUMMARY OF WORLD BROADCASTS, September 23, 1998; *Special Law Grants Koreans Overseas Enhanced Legal Status*, THE KOREA HERALD, Aug. 25, 1998.

[63] Imre Karacs, *Germany's 'guests' fight for the vote; German election: Rivals head for a photo-finish—but millions of workers won't have a say in the final outcome*, THE INDEPENDENT, Sept. 23, 1998.

[64] H.J.Res. 115 proposes a constitutional amendment which would resolve an apparent boundary dispute between the United States and Canada by the U.S. relinquishment of claims and which includes a provision that the residents of the contested territory would possess U.S.—Canadian dual citizenship.

[65] Bruce Finley, *Hearts torn between old, new worlds; Many immigrants lead 'two-track' lives in U.S.*, THE DENVER POST, Aug. 23, 1998, at A-01.

[66] Sean Somerville, *Going beyond wearing green; Citizenship: Thousands of Americans mark St. Patrick's Day as dual* (continued...)

other harbingers of a global trend toward liberalization of dual nationality laws. These foreign laws and foreign legislative activity potentially could have a particular impact on the United States, traditionally perceived as a nation of immigrants. On the one hand, concern has been expressed in the media and elsewhere about split loyalties and protecting the national interests of the United States in the face of the growing numbers of Americans who hold the nationality of other countries, regardless of whether those other countries are perceived as friendly to the United States or not.[67] These concerns are reflected in some of the current policies in the federal government. In one reported instance, a renewal of security clearance was denied to a government employee when he informed authorities that he had acquired Irish nationality and possessed an Irish passport.[68] On the other hand, other opinion accepts dual nationality as a natural occurrence for a nation of immigrants and embrace the advantages of strong ties to the native or ancestral countries of Americans.[69] In the middle are those commentators who perceive neither a particular threat or benefit in the dual nationality of U.S. citizens.[70]

In addition, a recent high profile criminal case illustrated one of the problems that can be caused by dual nationality. An American man, wanted by Maryland authorities for a homicide, fled to Israel and claimed U.S.—Israeli dual nationality through his father.[71] Because Israeli extradition laws apparently prohibit the extradition of an Israeli national, lengthy delays and legal wrangling have resulted from the man's claim of dual nationality.

(...continued)

citizens of Ireland and the United States, THE BALTIMORE SUN, March 17, 1998, at 1A. According to the article, 14,000 Americans have acquired Irish citizenship over the past ten years, the highest number in any decade since the Irish law permitting dual citizenship was passed in 1956, and the majority of those did so over the last five years.

[67] G. Pascal Zachary, *Demographics: Dual Citizenship Is Double-Edged Sword*, WALL STREET JOURNAL, March 25, 1998, at B1.

[68] Joe Carroll, *U.S. Official Must Waive Irish Papers For Security*, THE IRISH TIMES, April 8, 1998, at 7. U.S. Department of Defense regulation 5200, 2-R, apparently provides that the exercise of dual citizenship, such as the possession of a foreign passport, is a disqualifying factor in the denial or revocation of security clearance.

[69] The press reports cited above concerning Valdus Adamkus and Milan Panic suggested that these leaders would be sympathetic or supportive of American interests in their native countries, or at least that they would be perceived as such. *See also*, Matthew Brzezinski, *Lithania's New Leader, An American, Presents A Problem For U.S.—Russian Ties*, WALL STREET JOURNAL, Jan. 6, 1998, at A14 (expresses view that Russia is likely to consider the Lithuanian President as a U.S. client).

[70] Peter H. Schuck and Peter J. Spiro, *Dual Citizens, Good Americans*, WALL STREET JOURNAL, March 18, 1998, at A22.

[71] Joyce Price, *Fugitive's citizenship raises questions*, THE WASHINGTON TIMES, Oct. 10, 1997, at A24.

Appendix. Nationality Treaties in Force for the United States

Multilateral Treaties

1. Protocol relating to military obligations in certain cases of double nationality, concluded April 12, 1930, in force May 25, 1937, 50 Stat. 1317, T.S. 913, 2 Bevans 1049, 178 L.N.T.S. 227.

2. Convention on the Nationality of Women, concluded Dec. 26, 1933, in force Aug. 29, 1934, 49 Stat. 2957, T.S. 875, 3 Bevans 141.

Bilateral Treaties

1. Naturalization Treaty, signed Nov. 23, 1923, in force April 5, 1924, **U.S.—Bulgaria**, 43 Stat. 1759, T.S. 684, 5 Bevans 1083, 25 L.N.T.S. 238.

2. Convention regulating military obligations of persons having dual nationality, signed Jan. 27, 1939, in force Oct. 3, 1939, **U.S.—Finland**, 54 Stat. 1712, T.S. 953, 7 Bevans 747, 201 L.N.T.S. 197.

3. Agreement relating to the fulfillment of military obligations during the wars of 1914-1918 and 1939-1945 by persons with dual nationality, signed and in force Dec. 22, 1948, **U.S.—France**, 62 Stat. 3621, T.I.A.S. 1876, 7 Bevans 1294, 67 U.N.T.S. 38. Extension signed Nov. 18, 1952 , in force Dec. 31, 1952, 3 U.S.T. 5345, T.I.A.S. 2741, 185 U.N.T.S. 396.

4. Treaty relating to exemption from military service or other act of allegiance of persons having dual nationality, signed Nov. 1, 1930, in force Feb. 11, 1931, **U.S.—Norway**, 46 Stat. 2904, T.S. 832, 10 Bevans 502, 112 L.N.T.S. 399.

5. Convention relating to exemption from military service of persons having dual nationality, signed Jan. 31, 1933, in force May 20, 1935, **U.S.—Sweden**, 49 Stat. 3195, T.S. 890, 11 Bevans 778, 159 L.N.T.S. 261.

6. Convention relative to military obligations of certain persons having dual nationality, signed Nov. 11, 1937, in force Dec. 7, 1938, **U.S.—Switzerland**, 53 Stat. 1791, T.S. 943, 11 Bevans 936, 193 L.N.T.S. 181.

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