B. Acquisition and Loss of U.S. Citizenship

1. Acquisition of U.S. citizenship

An individual may obtain U.S. citizenship in one of four ways: (1) being born within the geographical boundaries of the United States and certain of its territories; (2) being born outside the United States to at least one U.S. citizen parent (as long as that parent had previously been resident in the United States for a requisite period of time); (3) through the naturalization process; or (4) by an act of Congress.[188] The Department of State estimates that there are approximately 3.78 million U.S. citizens living abroad, although thousands of these individuals may not even know that they are U.S. citizens.[189]

2. Loss of U.S. citizenship

Seven acts

A U.S. citizen may voluntarily give up his or her U.S. citizenship at any time. Seven acts, which if performed voluntarily with the intention to relinquish U.S. nationality, will result in the loss of U.S. citizenship:

(1) becoming naturalized in another country;

(2) formally declaring allegiance to another country;

(3) serving in a foreign army;

(4) serving in certain types of foreign government employment if the individual is a national of the foreign country or if he or she takes an oath of allegiance to such foreign country;

(5) making a formal renunciation of nationality before a U.S. diplomatic or consular officer in a foreign country;

(6) making a formal renunciation of nationality in the United States during a time of war; or

(7) committing an act of treason for which the individual is convicted.[190]

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[188] U.S. Const. amend. XIV, sec. 1; 8 U.S.C. sec. 1401.

[189] Bureau of Consular Affairs, Department of State, *Private American Citizens Residing Abroad* (July 1999). This does not include U.S. Government (military and nonmilitary) employees and their dependents.

[190] 8 U.S.C. sec. 1481(a).

An individual who wishes to renounce citizenship formally (item (5), above) must execute an Oath of Renunciation before a consular officer, and the individual's loss of citizenship is effective on the date the oath is executed. In all other cases, the loss of citizenship is effective on the date that the act of relinquishing citizenship is committed, even though the loss may not be documented until a later date. The Supreme Court has held that relinquishment of citizenship alone is an insufficient basis for revoking citizenship.[191] Rather, the act of relinquishing citizenship must be done with the requisite intent.

A child under the age of 18 cannot lose U.S. citizenship by naturalizing in a foreign state, by taking an oath of allegiance to a foreign state, by serving in a foreign government, or by being convicted for an act of treason (a minor, probably would not be charged with this because he or she may not have the resources to commit this crime). A child under age 18 can, however, lose U.S. citizenship by serving in a foreign military or by formally renouncing citizenship, but such an individual may regain citizenship by asserting a claim of citizenship before reaching the age of 18 years and six months.[192]

Certificates of loss of nationality

Generally, the Department of State documents a loss of citizenship on a certificate of loss of nationality ("CLN") when the individual acknowledges to a consular officer that relinquishment of citizenship was taken with the requisite intent. There is no obligation for an individual to obtain a CLN or otherwise notify the Department of State of relinquishing one's citizenship. When an individual acknowledges that the relinquishment of citizenship was done with the requisite intent, the consular officer abroad submits a CLN to the Department of State in Washington, D.C. for approval.[193] Upon approval, a copy of the CLN is issued to the affected individual.[194] The date upon which the CLN is approved is not the effective date for loss of citizenship. The loss of citizenship is effective on the date the relinquishment of citizenship occurs, if done with the requisite intent.

Before a CLN is issued, the Department of State reviews the individual's files to confirm that: (1) the individual was a U.S. citizen; (2) relinquishment of citizenship occurred; (3) relinquishment was undertaken voluntarily; and (4) the individual had the intent of relinquishing citizenship.[195] If the relinquishment of citizenship involved an action of a foreign government (for example, if the individual was naturalized in a foreign country or joined a foreign army), the

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

[192] An individual cannot regain his or her citizenship by asserting a claim of citizenship in this manner if he or she formally renounced citizenship during wartime. 8 U.S.C. sec. 1483(b).

[193] 8 U.S.C. sec. 1501; Department of State, 7 Foreign Affairs Manual, sec. 1221.

[194] Department of State, 7 Foreign Affairs Manual, sec. 1222.

[195] Department of State, 7 Foreign Affairs Manual, sec. 1211.

Department of State will not issue a CLN until it has obtained an official statement from the foreign government confirming the relinquishment of citizenship.[196]

If a CLN is not issued because the Department of State does not believe that relinquishment of citizenship has occurred (for example, if the requisite intent appears to be lacking), the issue may be resolved through litigation, as any dispute about relinquishment of citizenship could lead to litigation. Whenever the loss of U.S. nationality is put in issue, the burden of proof is on the individual or party claiming that a loss of citizenship has occurred to establish, by a preponderance of the evidence, that the loss occurred.[197]

Similarly, if a CLN has been issued, but the Department of State later discovers that such issuance was improper (for example, because fraudulent documentation was submitted, or the requisite intent appears to be lacking), the Department of State could initiate proceedings to revoke the CLN.[198] If the recipient is unable to establish beyond a preponderance of the evidence that citizenship was lost on the date claimed, the CLN would be revoked. To the extent that the IRS believes a CLN was improperly issued, the IRS could present such evidence to the Department of State and request that revocation proceedings be commenced.

Revocation of naturalized citizenship

In addition to relinquishment of citizenship, a naturalized U.S. citizen can have his or her citizenship involuntarily revoked. For revocation, a U.S. court must determine that the certificate of naturalization was illegally procured, or was procured by concealment of a material fact or by willful misrepresentation (for example, if the individual concealed the fact that he served as a concentration camp guard during World War II).[199] In such cases, the individual's certificate of naturalization is canceled, effective as of the original date of the certificate; in other words, it is as if the individual was never a U.S. citizen at all.

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[196] Department of State, 7 Foreign Affairs Manual, sec. 1214 ("A potentially expatriating act should be documented by statements from the foreign government.").

[197] 8 U.S.C. sec. 1481(b).

[198] *See* Department of State, 7 Foreign Affairs Manual, sec. 1231.

[199] *See* sec. 340(a) of the INA, 8 U.S.C. sec. 1451(a). *See also United States v. Demjanjuk*, 680 F.2d 32 (6th Cir. 1982), cert. denied, 459 U.S. 1036 (1982).