

ABCs of Immigration: Loss of U.S. Citizenship

by Greg Siskind

In this article, we will discuss actions a person takes that result in the automatic loss of citizenship as opposed to government decisions to revoke a person's citizenship, which can only be done in the case of naturalized citizens.

Can natural born US citizens lose their citizenship?

Natural born US citizens -- those people who are citizens by virtue of their birth in the US -- can lose their citizenship only through their own actions and cannot be denaturalized.

The Fourteenth Amendment, passed shortly after the US Civil War, makes "All persons born in the United States citizens of the United States ." The impact of this language is clear -- those born in the US, regardless of their parents' immigration status, regardless of the circumstances that led to their birth in the US, are US citizens (there are exceptions for children of foreign diplomats, but these are not relevant for this discussion).

Since that time, there have been laws dealing with the circumstances that could lead natural born citizens to lose their citizenship. There has been substantial development in these laws over the years, but as the situation currently stands, to lose citizenship, the person must voluntarily engage in an expatriating act with the specific intention of relinquishing US citizenship. Also, that act must result in the loss of citizenship under the law in effect at the time of the act.

How can US citizenship be lost?

Under the current scheme, there are seven acts that are considered expatriating and will result in the loss of citizenship. These are:

1. Being naturalized in a foreign country, upon the person's own application made after reaching 18 years of age;
2. Making an oath or other declaration of allegiance to a foreign country or division thereof, again, after reaching 18 years of age;
3. Serving in the armed forces of a foreign country if those armed forces are engaged in hostilities against the US , or if the person serves as an officer;
4. Working for the government of a foreign country if the person also obtains nationality in that country, or if to work in such a position an oath or other declaration of allegiance is required;
5. Making a formal renunciation of US citizenship before a US consular officer or diplomat in a foreign country;
6. Making a formal written statement of renunciation during a state of war, if the Attorney General approves the renunciation as not contrary to US national defense; and
7. Committing an act of treason against the US , or attempting by force or the use of arms to overthrow the government of the US . Renunciation by this means can be accomplished only after a court has found the person guilty.

Why can I lose my citizenship if I am naturalized in a foreign country?

Because a legal application for naturalization in a foreign country must be made, obtaining citizenship in a foreign country by an automatic act of law will not result in the loss of US citizenship. If, in making the oath to the new country, the person is required to renounce allegiance to the US, and does so with the intent of losing US citizenship, he will. However, if the person makes such an oath believing that it will not impact his US citizenship, it is not a renouncing act. In those cases where the new country does not require a renunciation of loyalty to the country of original citizenship, it is very difficult to prove that a person has renounced his US citizenship.

Why can I lose my citizenship if I make an oath of allegiance to a foreign country?

This situation is most commonly encountered when a US citizen serves in the military or government of a foreign country. In some cases, such an oath must be made to obtain a passport. As with all renouncing acts, the oath must be made with the intention of renouncing US citizenship. For dual nationals exercising their rights as a national of a country other than the US, such as military service or obtaining a passport, making the oath will not be treated as a renouncing act. Indeed, there is a presumption that, without additional evidence, making an oath of allegiance to another country will not be considered an effort to renounce US citizenship.

Why can I lose my citizenship if I serve in the armed forces of a foreign country?

The primary issue in this case is whether the person served in the actual armed forces of the country, or in some sort of national defense force, and whether the person was serving in the forces of a country. Serving in a military training program or defense force that must specially be called out for military service is not considered a renouncing act, nor is service in an insurgent or revolutionary military group. Also, service in industries closely related to military efforts, such as munitions, is not considered a renouncing act.

Why can I lose my citizenship if I work for the government of a foreign country?

Generally, acceptance of only high political posts in a foreign government, along with a purposeful renunciation of US citizenship, will result in the loss of US citizenship as a result of employment in a foreign country. Also, if the oath involved is simply that the person will obey the laws of a foreign country that is not sufficient as evidence of renunciation.

Why can I lose my citizenship if I make a formal renunciation abroad?

A formal renunciation of US citizenship is the most effective and clear expatriating act. In most cases, the renunciation is made to a diplomatic or consular officer of the US in a foreign country. Because this is so clear, the primary focus is on whether the person making the renunciation understood the full impact of the renunciation, and their intent in making the renunciation. In essence, the purpose and intent must be to make oneself ineligible for all benefits of US citizenship.

Why can I lose my citizenship if I make a formal renunciation in the US ?

Formal renunciations of US citizenship may also be made within the US, but only when the US is engaged in a war. The primary use of this provision was to force Japanese Americans to renounce US citizenship during World War Two. Most of these renunciations were

ineffective because they were obtained under duress and were not voluntary.

Why can I lose my citizenship if I commit treason?

Treason remains a basis for the loss of US citizenship, while similar provisions dealing with military desertion and draft avoidance have been repealed. The treason provision is infrequently used and there are questions about whether it is constitutional.

If it is determined, in most cases by a diplomatic or consular official abroad, that a person has in fact effectively renounced US citizenship, the official is to prepare a certificate of loss of citizenship and forward it to the State Department. The State Department then makes an official determination, and if it concludes that the renunciation was effective, forwards the certificate of loss of citizenship to the INS and sends a copy to the consular official to return to the person. At that point, the person has one year in which to appeal the loss of citizenship. The person can also, at any point in the future, regain citizenship if there was no written declaration of the intent to renounce citizenship.

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