

OUR PRACTICE

Loss of Citizenship

One of the great beauties of U.S. Citizenship is that it is a status that is nearly impossible to lose. But it is possible to lose it. Any U.S. citizen is subject to "Expatriation." Only those who obtained citizenship by naturalization can lost it through "Denaturalization."

Denaturalization

One of the primary reasons for a U.S. permanent resident to naturalize to U.S. citizenship is to prevent the possibility of becoming subject to removal under one of the grounds of deportability (or in more limited situations, such as criminal acts, inadmissibility).

But the INS can revoke the naturalization if INS discovers that the person:

- Was not qualified originally for naturalization,
- Obtained the naturalization through concealment or willful misrepresentation.
- Has been dishonorably discharged from military service that was the basis for the naturalization
- Although there is debate as to what constitutes a "material misrepresentation," a person who fails to respond honestly and fully in the naturalization application process opens themselves to the possibility of revocation of naturalization at any time.
- Has refused to testify before a congressional committee within 10 years after naturalizing.
- Within 5 years of naturalizing, affiliated with an organization in which membership would have precluded naturalization (applies only to those naturalized after 2/24/52).
- Derived citizenship through the naturalization of a parent or spouse whose naturalization has been subsequently revoked, if either the revocation was for concealment or willful misrepresentation, or if the person is residing outside the U.S at the time of the parent's or spouse's revocation.

Even if the person made a misrepresentation in the naturalization application, that would not, in itself, have been material to the application (such as a minor, aged criminal charge), INS often successfully contends that the act of misrepresentation in the application reflects lack of good moral character that made the applicant ineligible for naturalization, justifying denaturalization. The INS can also cause the U.S. Attorney to bring criminal charges for the misrepresentation, conviction for which then makes the alien deportable. The lesson is that lying in a naturalization application is a bad idea, and one who has done so with initial success will always be subject to the "house of cards" falling down.

Happily, since 1994, even newly naturalized citizens can reside permanently outside the U.S. without being subject to denaturalization on account of the foreign residence.

Expatriation

Any citizen can lose citizenship on the basis of one of seven acts of expatriation, but even then only in certain circumstances. The Department of State web page describes those acts which may subject a person to loss of citizenship. These acts include:

- Formal renunciation of U.S. Citizenship Outside the U.S.: one the easiest ways to lose citizenship (usually made in a consulate office outside the U.S.).
- Formal renunciation inside the U.S. during wartime.

- Serving in a foreign military: either as a commissioned or non-commissioned officer, or serving in foreign armed forces that are engaged in hostilities against the U.S.
- Treason
- Naturalizing in a foreign state: Although technically this is a ground for expatriation, the State Department has officially recognized the notion of dual citizenship. A very prudent person may consider lodging with to a U.S. consulate a formal written declaration of intent to retain U.S. citizenship both before and after taking any foreign naturalization oath (many of which, like the U.S.'s oath, require renunciation of other allegiances), but the State Department states clearly that, absent other factors, this is not necessary to retain citizenship.
- Taking an oath or making a formal declaration to a foreign state or sovereignty.
- Employment with a foreign government at a policy making level, usually involving certain oaths of allegiance or nationality in taking the position

In order for the above acts to be expatriating, the following 5 underlying circumstances must exist simultaneously with the act:

- Commission of any one of the statutory listed acts of expatriation.
- Commission that is done voluntarily.
- Acting with the intent to relinquish U.S. nationality; and
- Acting while outside the United States or any of its outlying possessions or within the United States before taking up residence outside the United States.
- *This does not apply to* persons who were under 18 when serving in a foreign army or making a formal renunciation of citizenship as long as they assert their claim to U.S. citizenship within 6 months after reaching age 18.

Defenses and Retroactive Restoration of Citizenship

Lack of intent to commit a potentially expatriating act is one of the best defenses when attempting to restore citizenship. Other defenses include:

- Non-commission of the act.
- Involuntariness of the act.
- Unawareness of citizenship.
- Misinformation by a consulate officer.
- Duress.

How We Can Help

Baker Donelson's Immigration Group advises U.S. citizens in the full range of citizenship matters. We evaluate clients' eligibility for naturalization, sometimes advising clients not to apply because of the risks of denial for possible deportation. We press claims for citizenship through naturalization, passport, and certificate of citizenship applications. We advise clients about actions they are considering, or may already have taken, about the possible consequences to citizenship and how to reduce risks of loss of citizenship. We defend clients who face administrative expatriation proceedings, and we can bring federal lawsuits relating to the matters.

Important Links

- [Possible Loss of U.S. Citizenship](#)