



Trow & Rahal, P.C.
Winning Immigration Strategies™

**Obtaining and Terminating U.S. Citizenship
and
Preserving and Terminating U.S. Green Cards**

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SURPRISE!
Your Client May Be A U.S. Citizen
And Not Know It

Citizenship By Birth In U.S.

- Any child born in U.S. is U.S. citizen, unless parents have full diplomatic immunity from arrest
- Citizenship and immigration status of parents is irrelevant (unless diplomats)
- No U.S. residence requirement for parents or child, before or after birth
- Intent of parents and child is irrelevant – cannot “opt out”
- Example – mother is working or studying in U.S. or just visiting
- Example – parent works for international organization in U.S. but has only “official acts” immunity

Citizenship By Birth Abroad To U.S. Citizen Parent – Under Current Law Child Is U.S. Citizen At Birth If:

- Born abroad to two U.S. citizen parents, if either parent had U.S. residence for any time before birth of child, or
- Born abroad to one U.S. citizen parent who, prior to birth of child, was physically present in U.S. for at least five years, including at least two years after parent reached age 14
- U.S. citizen parent is deemed to be present in U.S. while employed abroad by U.S. government or by international organization, or while unmarried dependent residing with grandparent who was so employed
- Rules are different for children born before 1987, born out of wedlock, born in U.S. possessions, etc

Naturalization – The Normal Path For Non-Citizen To Become U.S. Citizen Is:

- Become U.S. Permanent Resident, then
- Reside in U.S for at least five years (or three years if residing with U.S. citizen spouse);
- Be physically present in U.S. for at least half the days in that five years (or three years); and
- File application, meet other requirements for naturalization, and take oath of allegiance

Derivative Naturalization – Under Current Law Child Born Abroad Becomes U.S. Citizen Automatically If:

- Child is or becomes U.S. Permanent Resident
- At least one parent is or becomes U.S. citizen
- Child is residing in U.S. in legal and physical custody of U.S. citizen parent
- All this occurs while child is under 18 years of age
- Intent of parents and child is irrelevant – cannot “opt out”
- Example – parents and child get green cards together, then years later one or both parents naturalize
- Example – mother with green card returns to home country to give birth, brings child to U.S., then one or both parents naturalize

Retroactive Presumption Of Intent To Retain U.S. Citizenship

- Prior to 1990, U.S. citizens who moved abroad and obtained another citizenship were often told by U.S. consular officers that they had lost U.S. citizenship
- In 1990, the U.S. adopted a retroactive presumption of intent to retain U.S. citizenship
- As a result, many people who think they lost U.S. citizenship but took no action to confirm the loss are still considered by the U.S. government to be U.S. citizens

Three Generations Who Do Not Know They Are U.S. Citizens

- Father was born in U.S., moved abroad as young man and obtained a new citizenship, thinks he lost U.S. citizenship, but he never got a Certificate of Loss of Nationality
- Son born abroad is U.S. citizen because Father was present in U.S. for ten years before Son's birth (prior law required ten years)
- Grandson born abroad is U.S. citizen because Son studied or worked in U.S. for five years before Grandson's birth, or Son was deemed present in U.S. due to his job or Father's job

How To Spot The Unaware U.S. Citizen

- Ask “Where were you born?”
- If born in U.S., client is U.S. citizen unless parents were diplomats or client has obtained a Certificate of Loss of Nationality
- Ask “Do you have a parent, grandparent or great-grandparent who is or ever was a U.S. citizen?”
- If so, client MAY be U.S. citizen through derivative naturalization or by birth abroad to U.S. citizen parent who may not know of that citizenship

Non-Tax Issues In Terminating U.S. Citizenship

Understand Reed Amendment and Schumer Bill

- Reed Amendment permanently bars from the U.S. any person who “renounces” U.S. citizenship “for the purpose of avoiding taxation”
- Adopted in 1996 but no regulations, policy guidance, or procedures to implement it – only one confirmed case of denial of entry
- Sen. Reed recently called on DHS to enforce it, but restrictions on IRS sharing of taxpayer information have stymied past efforts
- Schumer Bill (S. 3205) would bar entry by any “covered expatriate”, with exception if no substantial reduction in taxes from expatriation
- Schumer Bill would be retroactive to anyone with “expatriation date” later than 10 years prior to date of enactment – would apply to former long-term green card holders as well as former US citizens

Confirm Or Acquire Another Citizenship and Residence

- Make sure client has lawfully obtained and still retains another citizenship – by birth outside U.S., through parents or grandparents (at birth or later), by naturalization, or through investment
- Check requirements for third-country visas and residence/work permits with that citizenship
- Consider plan for upgrading from one citizenship to another
- Past acquisition of second citizenship may provide basis for retroactive expatriation, in some cases prior to 1996 effective date of Reed Amendment, and in some cases prior to birth of child who would otherwise be U.S. citizen

Understand Consequences Of Terminating Citizenship

- Termination of citizenship is irrevocable once approved by Department of State
- Former U.S. citizens have no right to visit, work or reside in U.S. and have no advantage over other non-citizens in applying to do so
- Children born outside U.S. to former U.S. citizens have no claim to U.S. citizenship
- Children who became U.S. citizens before parent expatriates remain U.S. citizens unless child was born abroad and parent's expatriation is retroactive prior to date of birth of child
- Names of expatriates are published online

Make Sure Client Is Not “Excludable” From U.S.

- Reed Amendment and Schumer Bill
- Criminal exclusion grounds – including college pranks and minor drug offenses
- “Conviction” is a term of art – conditional discharge is a conviction; foreign pardons don’t help; expunged convictions still count
- Medical exclusion grounds, including HIV and driving under influence of alcohol

Plan For Visiting, Working Or Maybe Later Residing In U.S.

- U.S. consulate may refuse to issue visitor visa to expatriate who recently relocated abroad
- U.S. immigration inspector may refuse entry for “business” visit that sounds like “work”
- Consider getting U.S. visa that provides authorization to work and reside in U.S.
- Consider options to return to U.S. in future to care for aging parents, to reside near adult children in old age, or for other reasons

Choose Method of Terminating Citizenship

- Renunciation at U.S. consulate - requires voluntary choice and understanding of consequences – parent cannot expatriate child
- Relinquishment – requires past expatriating act with contemporaneous intent to relinquish – retroactive; may protect against Reed Amendment; may extinguish citizenship of children
- Revocation of naturalization – retroactive; provides strong defense against Reed Amendment; but could trigger criminal charges
- Failure to satisfy “retention” requirement if born abroad between 1934 and 1952 – occurs automatically at age 26; can later elect to regain citizenship prospectively; provides strong defense against Reed Amendment; may extinguish citizenship of children

Difficult Cases – Children, Young Adults, Persons With Diminished Mental Capacity

- Expatriation requires voluntary choice and understanding of consequences
- Parents cannot expatriate child, and guardian cannot expatriate ward
- Expatriation under age 18 is very difficult; young adults may also have problems
- Mental incompetence bars expatriation; mental illness or impairment, Alzheimer's, dementia or alcohol/drug abuse raise issues

Procedures At U.S. Consulate

- Many consulates have long delays in scheduling appointments, and many will not accept out-of-district cases
- Personal appearance – One visit or two? How long between visits?
- Forms – Questionnaire, Statement of Understanding and Oath of Renunciation
- Wait for approval of Certificate of Loss of Nationality – it could take weeks, months, or over one year
- No U.S. visa before CLN is approved, but can visit U.S. if visa exempt or eligible for Visa Waiver Program

Green Cards and the Exit Tax – Four Immigration Options to Avoid Exit Tax Upon Departure from U.S.

Green Card Can Be Revoked for Abandonment of U.S. Residence

- Unlike U.S. citizens, U.S. permanent residents can expatriate involuntarily, by having green card revoked for abandonment, criminal conviction or other deportable offense
- Permanent residents who take up residence abroad risk revocation for abandonment if absent from U.S. continuously for over one year, or absent extensively (more than 50%) with only short visits to U.S.
- Visiting U.S. once or twice per year does NOT protect against abandonment, nor does owning real property or bank/retirement accounts in U.S.

HOLD – Re-Entry Permit Preserves Permanent Resident Status While Residing Abroad

- Must intend to return to U.S. to be eligible
- Must be physically present in U.S. to apply
- Must remain in U.S. for four to six weeks or return within four months for “biometrics”
- Must NOT have filed federal income tax return as non-resident, or failed to file because non-resident
- Multiple renewals are common but not guaranteed

FOLD – Leave U.S. and Surrender Permanent Resident Status Before First Day of Eighth Year

- Sign Form I-407 upon departure from U.S. or after departure
- Have Form I-407 endorsed by U.S. immigration or consular officer
- Get copy of endorsed Form I-407 – better to file in person than by mail
- Do not file Form I-407 by mail while remaining in U.S.
- Plan ahead for U.S. visitor visa if needed
- Consider retroactive expatriation by claiming treaty tie-breaker benefits for calendar year preceding eighth year as Permanent Resident

DOWNGRADE - To Non-Immigrant Visa Status Before Becoming Long-Term Resident

- Permanent Resident can voluntarily surrender green card and immediately apply for nonimmigrant visa that permits full-time or part-time work and residence in U.S.
- No change of status within U.S. – must surrender green card then apply for visa abroad
- Some work visas require petition that can be pre-approved before surrendering green card
- Some work visas require present intent to depart the U.S. eventually; others do not
- Background checks can delay visa issuance for weeks or months

UPGRADE - To U.S. Citizenship To Avoid Abandonment Of Permanent Resident Status

- May make sense for Long-Term Resident intending to reside abroad indefinitely and concerned about maintaining Re-entry Permit
- U.S. citizen can reside abroad forever without losing citizenship
- Naturalization takes six to nine months, and applicant must maintain U.S. residence until citizenship is granted
- Permanent Resident married to U.S. citizen who is working abroad may be exempt from residence and physical presence requirements

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