

ACA - AMERICAN CITIZENS ABROAD

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A BRIEF HISTORY OF U.S. CITIZENSHIP LAW AND AMERICANS OVERSEAS

1790 First Congress, Act of March 26th, 1790, 1 Stat. 103.

"And the children of citizens of the United States that may be born beyond the sea, or out of the limits of the United States, shall be considered as natural born citizens: Provided, That the right of citizenship shall not descend to persons whose fathers have never been resident in the United States".

1795 Act of January 29, 1795. Section 3, 1 Stat. 414, 415. (Same general provisions as above).

1802 Act of April 14, 1802. Section 4, 2 Stat. 153, 144. (Same general provisions as above).

1855 Act of February 10, 1855. Section 1, 10 Stat. 604.

"All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States."

1878 Section 1993, Revised Statutes of 1878. (Same general provisions as 1855 Act).

1907 Act of March 2, 1907, Section 6, 34 Stat. 1228, 1229.

"That all children born outside the limits of the United States who are citizens thereof in accordance with the provisions of section nineteen hundred and ninety-three of the Revised Statutes of the United States and who continue to reside outside the United States shall, in order to receive the protection of this Government, be required upon reaching the age of eighteen years to record at

an American consulate their intention to become residents and remain citizens of the United States and shall be further required to take the oath of allegiance to the United States upon attaining their majority."

1934 Act of May 24, 1934, Section 1, 48 Stat. 797.

"Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of birth of such child is a citizen of the United States, is declared to be a citizen of the United States: but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization."

1940 The Nationality Act of 1940, Section 201, 54 Stat. 1137.

"Section 201. The following shall be nationals and citizens of the United States at birth:

"(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien: Provided, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

(h) The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934."

1952 The Immigration and Nationality Act of June 27, 1952, 66 Stat. 163, 235, 8 U.S. Code Section 1401 (b). (Section 301 of the Act).

"Section 301. (a) The following shall be nationals and citizens of the United States at birth:

"(1) a person born in the United States, and subject to the jurisdiction thereof;

"(7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States, who prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

(b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a), shall lose his nationality and citizenship unless he shall come to the United States prior to attaining the age of twenty-three years and shall immediately following any such coming be continuously physically present in the United State(s) for at least five years: Provided, That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years.

(c) Subsection (b) shall apply to a person born abroad subsequent to May 24, 1934: Provided, however, That nothing contained in this subsection shall be construed to alter or affect the citizenship of any person born abroad subsequent to May 24, 1934, who, prior to the effective date of this Act, has taken up a residence in the United States before attaining the age of sixteen years, and thereafter, whether before or after the effective date of this Act, complies or shall comply with the residence requirements for retention of citizenship specified in subsections (g) and (h) of section 201 of the Nationality Act of 1940, as amended."

1956 *Fee v. Dulles* (236 F.2d 855 (C.A. 7, 1956), (355 U.S. 61)). A child born abroad on or after May 24, 1934, who acquired U.S. citizenship through

one citizen parent had to comply with certain conditions for establishing American residence in order to retain his American citizenship. In **Fee v. Dulles**, the lower courts upheld the original administrative position that a person who had not complied with the conditions prescribed by previous statutes had lost his citizenship and derived no benefit from the more generous retention provisions of the 1952 act. However, upon consideration of this issue when it reached the Supreme Court the Solicitor General confessed error, taking the position that a person who could comply with the terms of section 301 (b) and (c) would retain his American citizenship, even though he had not fulfilled similar provisions of the earlier statutes. The Supreme Court reversed the lower court, and thus adopted the view projected in the Solicitor General's confession of error.

1956 The Act of March 16, 1956, (70 Stat. 50), provided as follows:

"That section 301 (a) (7) of the Immigration and Nationality Act shall be considered to have been and to be applicable to a child born outside of the United States and its outlying possessions after January 12, 1941, and before December 24, 1952, of parents one of whom is a citizen of the United States who has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952, and whose case does not come within the provisions of section 201 (g) or (i) of the Nationality Act of 1940".

1957 Act of September 11, 1957 (71 Stat. 644), provides as follows:

"Section 16. In the administration of section 301 (b) of the Immigration and Nationality Act, absences from the United States of less than twelve months in the aggregate, during the period for which continuous physical presence in the United States is required, shall not be considered to break the continuity of such physical presence."

1961 **Montana v. Kennedy** (366 U.S. 308 (1961)). The court ruled that a child born abroad prior to May 24, 1934, to an American citizen mother did not acquire American citizenship at birth, since at that time citizenship at birth was transmitted only by a citizen father. Although subsequent legislation conferred upon American women the power to transmit citizenship to their children born abroad, such legislation was not retroactive and did not bestow citizenship on persons born before the enactment of such legislation.

See also: **Wolf v Brownell** (253 F.2nd 141 - (C.A. 9, 1958)-certiorari denied (358 U.S. 859)). and **D'Alessio v. Lehmann** (289 F.2nd 371 - (C.A. 6, 1961)-certiorari denied (368 U.S. 822)).

1964 Schneider v. Rusk (377 U.S. 163 (1964)). Mrs. Schneider, a German national by birth, acquired United States citizenship derivatively through her mother's naturalization in the United States. She came to the USA as a small child with her parents and remained there until she finished college. She then went abroad for graduate work, was engaged to a German national, married in Germany, and stayed in residence there. She declared that she had no intention of returning to the United States. In 1959, she was denied a passport by the State Department on the ground that she had lost her United States citizenship under the specific provisions of Paragraph 352 (a)(1) of the Immigration and Nationality Act, 8 U.S.C. Paragraph 1484 (a)(1), by continuous residence for three years in a foreign state of which she was formerly a national. The Court, by a five-to-three vote, held the statute violative of Fifth Amendment due process because there was no like restriction against foreign residence by native-born citizens. The dissent (Mr. Justice Clark, joined by Justices Harlan and White) based its position on what it regarded as the long acceptance of expatriating naturalized citizens who voluntarily return to residence in their native lands; possible international complications; past decisions approving the power of Congress to enact statutes of that type; and the Constitution's distinctions between native-born and naturalized citizens.

1966 Act of November 6, 1966 (80 Stat. 1322), amended Section 301 (a) (7) of the Immigration and Nationality Act of 1952 to read as follows:

"Section 301 (a) (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: **Provided***, That any periods of honorable service in the Armed Forces of the United States, or periods of employment with the United States Government or with an international organization as that term is defined in section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288) by such citizen parent, or any periods during which such citizen parent is physically present abroad as the dependent unmarried son or daughter and a member of the

household of a person (A) honorably serving with the Armed Forces of the United States, or (B) employed by the United States Government or an international organization as defined in section 1 of the International Organizations Immunities Act, may be included in order to satisfy the physical-presence requirement of this paragraph. This proviso shall be applicable to persons born on or after December 24, 1952, to the same extent as if it had become effective in its present form on that date.

1967 Afroyim v. Rusk (387 U.S. 253 (1967)). Mr. Afroyim, a Polish national by birth, immigrated to the United States at age 19 and after 14 years in the USA acquired United States citizenship by naturalization. Twenty-four years later he went to Israel and voted in a political election there. In 1960, he was denied a passport by the State Department on the ground that he had lost his United States citizenship under the specific provisions of Section 349 (a)(5) of the Immigration and Nationality Act of 1952 (8 U.S.C. Section 1481(a)(5), by his foreign voting. The Court, by a five-to-four vote, held that the Fourteenth Amendment's definition of citizenship was significant; that Congress has no "general" power, express or implied, to take away an American citizen's citizenship without his assent," (387 U.S. at 257); that Congress' power is to provide a uniform rule of naturalization and, when once exercised with respect to the individual, is exhausted, citing Mr. Chief Justice Marshall's well-known but not uncontroversial dictum in **Osborn v. Bank of the United States** (9 Wheat. 738, 827 (1824)); and that the "undeniable purpose" of the Fourteenth Amendment was to make the recently conferred "citizenship of Negroes permanent and secure" and "to put citizenship beyond the power of any government unit to destroy," (387 U.S. at 263). **Perez v. Brownell** (356 U.S. 44 (1958)), a five-to-four holding within the decade and precisely to the opposite effect, was overruled. In dissent (Mr. Justice Harlan, joined by Justices Clark, Stewart and White) took issue with the Court's claim of support in the legislative history, elucidated the Marshall dictum, and observed that the adoption of the Fourteenth Amendment did not deprive Congress of the power to expatriate on permissible grounds consistent with "other relevant commands" of the Constitution. (387 U.S. at 292).

1971 Rogers v. Bellei (401 U.S. 815 (1971)). Bellei challenged the constitutionality of Section 301 (b) of the Immigration and Nationality Act of 1952, which provided that one who acquires United States citizenship by virtue of having been born abroad to parents, one of whom is an American citizen, who has met certain residence requirements, shall lose his citizenship

unless he resides in this country continuously for five years between the ages of 14 and 28. A three-judge District Court held the section unconstitutional, citing **Afroyim v. Rusk** and **Schneider v. Rusk**. The Supreme Court, in a five-to-four decision, held that Congress has the power to impose the condition subsequent of residence in the country on Bellei, who does not come within the Fourteenth Amendment's definition of citizens as those "born or naturalized in the United States", and its imposition is not unreasonable, arbitrary or unlawful. Justice Black filed a dissenting opinion in which Justices Douglas and Marshall joined. Justice Brennan filed a dissenting opinion in which Justice Douglas joined.

1972 Act of October 27, 1972 (87 Stat. 1289), amended the Immigration and Nationality Act of 1952 by changing section 301 (b) to the new text below; by repealing Section 16 of the Act of September 11, 1957; and by adding the new section 301 (d) below.

"Section 301 (b) Any person who is a national and citizen of the United States under paragraph (7) of subsection (a) shall lose his nationality and citizenship unless (1) he shall come to the United States and be continuously physically present therein for a period of not less than two years between the ages of fourteen years and twenty-eight years; or (2) the alien parent is naturalized while the child is under the age of eighteen years and the child begins to reside permanently in the United States while under the age of eighteen years. In the administration of this subsection absences from the United States of less than sixty days in the aggregate during the period for which continuous physical presence in the United States is required shall not break the continuity of such physical presence."

"Section 301 (d) Nothing contained in subsection (b) as amended, shall be construed to alter or affect the citizenship of any person who has come to the United States prior to the effective date of this subsection and who, whether before or after the effective date of this subsection, immediately following such coming complies or shall comply with the physical presence requirements for retention of citizenship specified in subsection (b) prior to its amendment and the repeal of section 16 of the Act of September 11, 1957."

1978 Act of October 10, 1978 (92 Stat. 1046) repealed subsections (b), (c) and (d) of section 301 of the Immigration and Nationality Act of 1952, effective as of October 10, 1978. It also struck out "(a)" after "Section 301" and

redesignated paragraphs (1) through (7) as subsections (a) through (g) respectively.

1980 Vance v. Terrazas: upheld the constitutionality of Section 349(c) of the INA. Under this provision, the party claiming that citizenship has been lost has the burden of proving such loss by a preponderance of the evidence. Moreover, a person who commits a statutory act of expatriation is presumed to have committed the act voluntarily, but the presumption may be overcome upon a showing, by a preponderance of the evidence, that the act was not performed voluntarily. The Court expressly rejected the contention that expatriation must be proved by clear and convincing evidence.

The Supreme Court reaffirmed and explained its holding in **Afroyim v. Rusk** that in order to find expatriation, "the trier of fact must...conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute, but also intended to relinquish his citizenship". The court declared that it would not be consistent with *Afroyim* "to treat the expatriating acts specified in the statute as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen". As the Court explained: "In the last analysis expatriation depends on the will of the citizen rather than on the will of Congress and its assessment of his conduct."

1986 Act of November 14, 1986 (PL 99-653) amended section 301(g) (8 U.S.C. 1401(g)) by striking out "ten years, at least five" and inserting in lieu thereof "five years, at least two". This reduced the prior residence time in the United States necessary for a U.S. citizen married to an alien to be able to automatically transmit U.S. citizenship to a child born abroad from the former period of ten years, five of which after the age of 14, to five years, two of which after the age of fourteen years.

This act also: (a) amended Sec 340(d) of the code reducing the period of time after naturalization before a naturalized citizen can reside abroad from five years to one year; (b) amended section 349 of the code so that a child who obtained a foreign nationality upon the application of the parent before the child reached age 21 years, no longer has to return to the United States to establish permanent residence in the United States prior to age 25; (c) amends section 349 so that a U.S. citizen who is a national of a foreign country and who performs an expatriating act under the provisions of section 349 is no longer presumed to have acted "voluntarily" if the individual has resided in

this foreign country more than ten years. This reinforces the importance of the individual's intent in performing such an act as a deliberate intent to lose U.S. citizenship, rather than a mere automatic presumption that such intent existed.

1994 The Immigration and Nationality Technical Corrections Act of 1994 amended several sections of the Immigration and Nationality Act, and took effect on March 1, 1995.

Amended Section 322 permits children born overseas of a U.S. citizen parent to be eligible for a certificate of citizenship if either their U.S. citizen parent or a U.S. citizen grandparent had been physically present in the United States for at least five years, two of which after the age of 14, prior to the child's birth abroad. This provision also applies to a child adopted abroad.

Amended Section 301 (h) gives back U.S. citizenship to a person born before noon (Eastern Standard Time) May 24, 1934, outside the limits and jurisdiction of the United States of an alien father and a mother who is a citizen of the United States who, prior to the birth of such person, had resided in the United States.

Amended Section 324 (d) (1) allows former U.S. citizens who lost their citizenship through failure to meet the former conditions of physical presence in the United States to retain their citizenship to regain their citizenship without having to file an application for naturalization.

The law also allows U.S. citizen parents to apply for U.S. citizenship from abroad for their foreign-born children under the age of 18, provided the child is physically present in the United States pursuant to a lawful admission when the citizenship is granted.

1998 In **Miller vs Albright** (decided April 22, 1998), the Supreme Court in a 6:3 decision held that it was constitutional for Section 309 of the Immigration and Nationality Act (8 U.S.C. Section 1409) to give U.S. citizen mothers more rights to transmit U.S. citizenship to a child born out of wedlock abroad than to U.S. citizen fathers. There were three separate opinions on the majority side and two opinions on the dissenting side.

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