

ably expected to result from implementation of the verification program; (3) the labor and nonlabor costs of administration of the verification system; (4) or the degree to which the INS is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status; and (5) such other factors as the Secretary deems relevant.⁴¹ The Secretary of the Department of Health and Human Services has delegated the authority to grant or deny requests for waiver of state participation in the SAVE program to the Assistant Secretary for Family Support of the Family Support Administration.⁴²

VIII. PROVING, OBTAINING, OR LOSING CITIZENSHIP; CITIZENSHIP DOCUMENTS [§§ 2677-3142]

A. NATIONALITY [§§ 2677-2769]

Research References

US Const, Art. III § 2, cl. 1; Amend. 14, § 1

8 USCA §§ 1101(a)(19), (22), (29), (33), (38), 1101(c), 1401-1409, 1435(c), 1440-1, 1452(b), 1503(a); 18 USCA § 23811; 28 USCA § 1332(a) 8 CFR §§ 306.2, 306.11, 306.12, 324.3(b)(1), Part 392; 22 CFR §§ 40.2(a), 50.1(a), 50.2-50.9, 50.30

ALR Digest: Aliens §§ 18 et seq.

ALR Index: Aliens; Children; Citizens; Citizenship; Diversity of Citizenship; Immigration and Naturalization

Fragomen, Del Rey, and Bernsen, *Immigration Law and Business* §§ 5.2(a)(2), 5.3, 5.4(a), 5.4(b), 5.3(c), 8(a)

Immigration Law Service, Ch. 29

National Lawyers Guild, *Immigration Law and Defense* § 11.9

Patel's *Immigration Law Digest* §§ 25:2, 25:3

Steel on *Immigration Law* 2d §§ 2.16, 15.01-15.04

West Digest Key Numbers: Aliens 60-70, Citizens 1-12, 20

1. GENERAL CHARACTERISTICS, RIGHTS, AND DUTIES OF CITIZENSHIP [§§ 2677-2681]

§ 2677. Presumptions concerning citizenship

As a general rule, it is presumed, until the contrary is shown, that every person is a citizen of the country in which he or she resides.⁴³ Furthermore, once granted, citizenship is presumably retained unless voluntarily relinquished,⁴⁴ and the burden rests upon one alleging a change of citizenship and allegiance to establish that fact.⁴⁵ Consequently, a person born in the United States is presumed to continue to be a citizen until the contrary is shown,⁴⁶ and

41. 42 USCA § 1320b-7 note; § 121(c)(4)(C) of the Immigration Reform and Control Act of 1986, P.L. 99-603.

42. Department of Health and Human Services Notice, 54 Fed Reg 27427 (June 29, 1989).

43. *Shelton v. Tiffin*, 47 U.S. 163, 6 How. 163, 12 L. Ed. 387 (1848).

44. *Afroyim v. Rusk*, 387 U.S. 253, 87 S. Ct. 1660, 18 L. Ed. 2d 757 (1967).

45. *Jones v. McMasters*, 61 U.S. 8, 20 How. 8, 15 L. Ed. 805 (1857).

46. *Minor v. Happersett*, 88 U.S. 162, 22 L. Ed. 627 (1874).

where it appears that a person was once a citizen of a particular foreign country, even though residing in another, the presumption is that he or she still remains a citizen of such foreign country, until the contrary appears.⁴⁷

§ 2678. Duty of allegiance

A citizen owes an absolute and permanent allegiance to his or her government, at least until, by some open and distinct act, the citizen renounces his or her allegiance and becomes a citizen or subject of another government or another sovereign.⁴⁸ A citizen of the United States owes allegiance to the United States wherever he or she may reside.⁴⁹

§ 2679. —Treason

Treason against the United States may be committed only by a person owing allegiance to the United States⁵⁰ and may be committed only by levying war against the United States or adhering to its enemies, giving them aid and comfort.⁵¹ Treason may be committed by one who owes either perpetual or temporary allegiance to the United States.⁵² The obligation of allegiance inheres in citizenship, and if the accused is shown to be a citizen at the time of the alleged crime of treason, the obligation of allegiance is sufficiently proved.⁵³

The fact that a person is situated in a foreign country and deprived of protection which he or she is entitled to from the United States as the country of his or her citizenship, does not relieve such person of all duty of allegiance to the United States, and he or she may be convicted of treason for acts performed during such period.⁵⁴ Treason may be committed by a U.S. citizen with dual nationality while residing in another country which claims him or her as a national.⁵⁵ A citizen does not cease to owe allegiance within the meaning of the treason statute by swearing allegiance to another nation at a time when a state of war did not yet exist between the United States and that nation.⁵⁶

§ 2680. "Citizenship" for Fourteenth Amendment purposes

The word "citizen" as used in the Fourteenth Amendment is used in a political sense to designate one who is entitled to the rights and privileges of a citizen of a state or of the United States.⁵⁷ The word does not mean the same thing as a resident, inhabitant, or person.⁵⁸

The "privileges and immunities" which are protected by § 1 of the Fourteenth

47. *Hauenstein v. Lynham*, 100 U.S. 483, 25 L. Ed. 628 (1879).

48. *Carlisle v. U.S.*, 83 U.S. 147, 21 L. Ed. 426 (1872).

49. *Tomoya Kawakita v. U. S.*, 343 U.S. 717, 72 S. Ct. 950, 96 L. Ed. 1249 (1952), reh'g denied, 344 U.S. 850, 73 S. Ct. 5, 97 L. Ed. 660 (1952).

50. 18 USCA § 23811.

51. US Const. Art III § 2, cl. 1.

52. *Young v. U.S.*, 97 U.S. 39, 24 L. Ed. 992 (1877); *U S v. Wiltberger*, 18 U.S. 76, 5 L. Ed. 37 (1820).

53. *Gillars v. U.S.*, 182 F.2d 962 (D.C. Cir. 1950).

54. *Burgman v. U.S.*, 188 F.2d 637 (D.C. Cir. 1951).

55. *Tomoya Kawakita v. U. S.*, 343 U.S. 717, 72 S. Ct. 950, 96 L. Ed. 1249 (1952), reh'g denied, 344 U.S. 850, 73 S. Ct. 5, 97 L. Ed. 660 (1952).

56. *Gillars v. U.S.*, 182 F.2d 962 (D.C. Cir. 1950).

57. *Baldwin v. Franks*, 120 U.S. 678, 7 S. Ct. 656, 32 L. Ed. 766 (1887).

58. *Baldwin v. Franks*, 120 U.S. 678, 7 S. Ct. 656, 32 L. Ed. 766 (1887).

Amendment arise out of the U.S. citizenship,⁵⁹ including those which arise out of the nature and essential character of the national government and are granted or secured by the Constitution⁶⁰ or by the laws and treaties passed and adopted pursuant thereto.⁶¹

The Due Process Clause⁶² and the Equal Protection Clause⁶³ of the Fourteenth Amendment do not add anything to the rights of one citizen as against another, but simply furnish an additional guarantee against any encroachment by the state upon the fundamental rights which belong to every citizen as a member of society.

- ♦ *Practice guide:* Federal statutes provide causes of action for parties injured by individual deprivations of any rights or privileges of citizens of the United States.⁶⁴

§ 2681. "Citizenship" for purposes of federal diversity and alienage jurisdiction

The first requirement for state citizenship for purposes of establishing federal diversity jurisdiction⁶⁵ is U.S. citizenship.⁶⁶ A person who is not a citizen of the United States cannot be a citizen of a state for diversity purposes.⁶⁷ Similarly, a U.S. citizen who is domiciled in a foreign country is not a "citizen of a state" and may not invoke federal diversity jurisdiction.⁶⁸ For purposes of determining diversity, an alien admitted to the United States for permanent residence is deemed to be a citizen of the state in which he or she is domiciled.⁶⁹ Minor children who claim dual citizenship by virtue of being born in the United States

59. *Breedlove v. Suttles*, 302 U.S. 277, 58 S. Ct. 205, 82 L. Ed. 252 (1937) (overruled on other grounds by, *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966)); *Hamilton v. Regents of the University of Calif.*, 293 U.S. 245, 55 S. Ct. 197, 79 L. Ed. 343 (1934), reh'g denied, 293 U.S. 633, 55 S. Ct. 345, 79 L. Ed. 717 (1935) and (abrogation on other grounds recognized by, *Auburn Alliance For Peace and Justice v. Martin*, 684 F. Supp. 1072, 46 Ed. Law Rep. 1153 (M.D. Ala. 1988)).

60. *Maxwell v. Bugbee*, 250 U.S. 525, 40 S. Ct. 2, 63 L. Ed. 1124 (1919); *Duncan v. State*, 152 U.S. 377, 14 S. Ct. 570, 38 L. Ed. 485 (1894) (abrogation on other grounds recognized by, *Grimes v. State*, 807 S.W.2d 582 (Tex. Crim. App. 1991)).

61. *Breedlove v. Suttles*, 302 U.S. 277, 58 S. Ct. 205, 82 L. Ed. 252 (1937) (overruled on other grounds by, *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S. Ct. 1079, 16 L. Ed. 2d 169 (1966)); *Hamilton v. Regents of the University of Calif.*, 293 U.S. 245, 55 S. Ct. 197, 79 L. Ed. 343 (1934), reh'g denied, 293 U.S. 633, 55 S. Ct. 345, 79 L. Ed. 717 (1935) and (abrogation on other grounds recognized by, *Auburn Alliance For Peace and Justice v. Martin*, 684 F. Supp. 1072, 46 Ed. Law Rep. 1153 (M.D. Ala. 1988)); *McPherson v. Blacker*, 146 U.S. 1,

13 S. Ct. 3, 36 L. Ed. 869 (1892); *Slaughter-House Cases*, 83 U.S. 36, 21 L. Ed. 394 (1872) (abrogation on other grounds recognized by, *Estate of Conner v. Ambrose*, 1997 WL 798096 (N.D. Ind. 1997)).

62. *Curry v. McCanless*, 307 U.S. 357, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A.L.R. 162 (1939); *U.S. v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588 (1875) (abrogation on other grounds recognized by, *Estate of Conner v. Ambrose*, 1997 WL 798096 (N.D. Ind. 1997)).

63. *U. S. v. Guest*, 383 U.S. 745, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966).

64. 42 USCA §§ 1983, 1985(3).

65. 28 USCA § 1332.

66. *Mas v. Perry*, 489 F.2d 1396 (5th Cir. 1974), reh'g denied, 492 F.2d 1242 (5th Cir. 1974).

67. *Dred Scott v. Sandford*, 60 U.S. 393, 19 How. 393, 15 L. Ed. 691 (1856) (abrogation on other grounds recognized by, *Image Carrier Corp. v. Beame*, 567 F.2d 1197 (2d Cir. 1977)).

68. *Sadat v. Mertes*, 464 F. Supp. 1311 (E.D. Wis. 1979), judgment aff'd, 615 F.2d 1176, 54 A.L.R. Fed. 401 (7th Cir. 1980).

69. 28 USCA § 1332(a).

of alien parents may not invoke federal diversity jurisdiction, since an alien father cannot have a domicile for diversity purposes in any particular state.⁷⁰

Generally, a party may not bring an action under the statute providing for alienage jurisdiction⁷¹ based upon a claim of dual citizenship, especially where United States citizenship appears to be the dominant citizenship.⁷²

A minor child born in the United States of alien parents may not invoke alienage jurisdiction,⁷³ although there is authority to the contrary, in a case involving a minor child who was also a citizen of his alien parents' native country.⁷⁴

2. GRANTS OF STATUS AS "CITIZEN" OR "NATIONAL" [§§ 2682-2737]

a. GENERAL PRINCIPLES AND DEFINITIONS [§§ 2682-2687]

§ 2682. Sources of citizenship

Citizenship is a privilege, not a common right.⁷⁵ The status of U.S. citizenship can be conferred only by the U.S. Constitution and the laws enacted by the Congress of the United States, and cannot be conferred by the laws of a state.⁷⁶ The Fourteenth Amendment provides that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside.⁷⁷ However, the Fourteenth Amendment does not address the issue of derivative citizenship, which has always been regulated by Congress in the exercise of its power to establish uniform rules of naturalization.⁷⁸

♦ *Observation:* Congress has created a corporation known as the National Conference on Citizenship,⁷⁹ which has among its purposes the development of dynamic procedures for making citizenship more effective and the promotion and encouragement of local, state, and regional citizenship conferences.⁸⁰

§ 2683. Effect of INA Savings Clause

The INA contains a Savings Clause which provides, among other things, that, except as otherwise specifically provided by the INA, the repeal of any statute by the INA does not terminate nationality theretofore lawfully acquired nor restore nationality theretofore lost under any law of the United States or any treaty to which the United States may have been a party.⁸¹ The Savings Clause

70. *Fahrner v. Gentzsch*, 355 F. Supp. 349 (E.D. Pa. 1972); *Aguirre v. Nagel*, 270 F. Supp. 535 (E.D. Mich. 1967).

71. 28 USCA § 1332(a)(2).

72. *Sadat v. Mertes*, 615 F.2d 1176, 54 A.L.R. Fed. 401 (7th Cir. 1980).

73. *Fahrner v. Gentzsch*, 355 F. Supp. 349 (E.D. Pa. 1972).

74. *Aguirre v. Nagel*, 270 F. Supp. 535 (E.D. Mich. 1967).

75. *Morrison v. People of State of California*, 291 U.S. 82, 54 S. Ct. 281, 78 L. Ed. 664 (1934).

76. *Dred Scott v. Sandford*, 60 U.S. 393, 19 How. 393, 15 L. Ed. 691 (1856) (abrogation on other grounds recognized by, *Image Carrier Corp. v. Beame*, 567 F.2d 1197 (2d Cir. 1977)).

77. US Const, Amend 14 § 1.

78. *Rogers v. Bellei*, 401 U.S. 815, 91 S. Ct. 1060, 28 L. Ed. 2d 499 (1971).

79. 36 USCA § 431.

80. 36 USCA § 433.

81. Act June 27, 1952, Ch 477 § 405, 66 Stat. 166.

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