

# Foreign Preference

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### ***Relevance to Security***

Foreign Preference is an issue whenever a person acts in such a way as to indicate a possible preference for a foreign country over the United States. Such actions raise questions about a person's loyalty and allegiance, and how the person would behave if faced with a conflict between the interests of the United States and the interests of a foreign person, organization, or country. A preference for a foreign country may cause a person to make decisions that are contrary to the interests of the United States.

Foreign Preference is similar to Foreign Influence in that both deal with potential conflicting foreign interests. Foreign Preference differs from the Foreign Influence guideline in that it focuses on the legal obligations associated with foreign citizenship and expressions of foreign preference, as distinct from circumstances that indicate potential vulnerability to foreign

influence. It differs from the Allegiance to the United States guideline in that the individual is not seeking to overthrow or influence the U.S. Government or prevent others from exercising their Constitutional rights.

### **Citizenship Status Is Often Uncertain**

Dual citizenship means that a person is a citizen of two countries at the same time. Dual citizenship, by itself, is not automatically a security concern, because many people have no control over their non-U.S. citizenship. Every country has its own citizenship laws, and they are quite different from one country to another. Some people automatically have dual citizenship as a result of the laws in effect in the country where they or one of their parents were born, rather than by choice.

It is not at all unusual for either a native-born American citizen or a naturalized American citizen to have an incorrect understanding of their dual citizenship status. The following are some of the circumstances under which this happens:

- A child born in the United States who has at least one parent who is now or was a foreign citizen, may be a foreign citizen as well as a U.S. citizen. Then again, such a child may not be. It depends upon the citizenship laws of the foreign country, not the laws of the United States, and there are several possible variations. It may depend upon whether the parent was a naturalized U.S. citizen at the time of birth, whether the parents registered the child as a foreign citizen at time of birth, whether the child is male or female, and whether the child had to register as a citizen of that foreign country at a certain age, usually 18, in order to maintain that citizenship.
- Some naturalized American citizens believe they are not dual citizens because they "renounced all foreign allegiances" when taking the oath of allegiance to the United States. Their oath of allegiance to the United States may not be relevant in this regard. Their citizenship in the foreign country is governed by the laws of that country, not the laws of the United States, and it will often not be affected by their action to become a U.S. citizen. The foreign citizenship often remains in effect until such people follow prescribed procedures for renunciation of citizenship with the government of their native country.
- Some children born overseas of American citizen parents are under the impression that they are dual citizens of the foreign country in which they were born. In many cases they are mistaken. More likely, they had an option to choose that citizenship at a certain age, usually 18. If they did not make such a choice, they are, in most cases, not dual citizens.

## **Foreign Preference Issues Are Becoming Far More Common**

Foreign Preference issues are becoming increasingly common for three reasons: an increasing number of countries now allow and encourage dual citizenship, an increasing number of Americans have foreign backgrounds, and there are increasing incentives for Americans to exercise the privileges of foreign citizenship or even to obtain foreign citizenship. Because any exercise of foreign citizenship is potentially disqualifying, these changes have significant implications for the personnel security system.

### ***An Increasing Number of Countries Now Allow and Encourage Dual Citizenship***

For economic, political, and cultural reasons, other countries are taking legislative action to facilitate and encourage their emigrants to maintain ties with the "home" country. This is a new development. The number of foreign countries that allow their citizens to become citizens of one or more other countries has grown rapidly from 40 in 1996 [1](#), to 89 in 2000 [1](#), and over 100 in 2004.[2](#) For example, Mexico changed its law in 1998 to grant dual citizenship to naturalized U.S. citizens of Mexican origin. Among other things, dual citizenship makes it easier for American citizens of Mexican origin to purchase and inherit Mexican real estate.[1](#)

It is estimated that almost 90% of all immigrants to the United States come from countries that now allow or encourage their citizens who emigrate to maintain dual citizenship. "Hoping to lure tourism, trade, and talent, Ireland and Italy encourage not only the children of their emigrants, but also the grandchildren of emigrants from an earlier generation to become dual citizens."[2](#) Of the top 20 countries from which immigrants come to the United States, only three do not permit dual citizenship under any circumstances. These are China, Cuba, and South Korea. [1](#)

When immigrants to this country become naturalized citizens, they take an oath of naturalization which includes a renunciation of all other loyalties and citizenships. However, U.S. courts have ruled that this oath of allegiance to the United States does not in fact result in renunciation of foreign citizenship. Although U.S. policy is not to encourage dual citizenship, our law does allow it. According to U.S. case law, renunciation of foreign citizenship must be specific and deliberate and be done to/with the other country.[3](#) It is understandable, therefore, that many emigrants who are encouraged by their native country to maintain that citizenship may feel they can have the best of both worlds, with citizenship in both countries.

### ***An Increasing Number of Americans Have Foreign Backgrounds***

The total foreign-born population in the United States tripled, from 9.7 million to 28.5 million, during the 30-year period from 1970 to 2000, according to the U.S. Census. Over 10% of the U.S. population is now foreign-born. Twenty percent of all Americans were either born outside the United States or have at least one parent who was.[4](#)

Since one foreign-born parent is often sufficient to be eligible for foreign citizenship, this suggests that about 20% of the U.S. population may be eligible to apply for a foreign citizenship. Actually, the percentage may be higher than that, as citizenship in many countries may also be obtained through one's spouse if the spouse has a foreign citizenship or is eligible to apply for such citizenship.

### ***Increasing Incentives for Americans to Obtain or Exercise the Privileges of Dual Citizenship***

Interest in the privileges of dual citizenship is growing for many reasons. Some of the more specific incentives are discussed below. There also seem to be some cultural changes in process, whereby some younger Americans separate the legal concept of citizenship from the less tangible concept of loyalty. For some, a second citizenship is simply a practical reaction to the realities of working in a global economy. To others, it seems "cool" to think of themselves as an international person or a citizen of the world.[5](#)

**Lower Profile to Reduce Risk of Terrorism:** Owing to the increased risk of terrorism, many Americans who frequently travel abroad believe it is safer to travel on a foreign passport than an American passport. Many experienced travelers put a plain cover on their American passport to conceal their nationality from casual observers.

**Privileges within the European Union:** Any American who does business in Western Europe and is eligible for citizenship in a European Union (EU) country has incentive to obtain such citizenship. With some exceptions, a citizen of one EU country has the privileges of citizenship in the other EU countries. Citizenship in a EU country facilitates establishing residence and a business without the need for special permits anywhere in the European Union. It may provide access to free public health care and public education at all academic levels. For anyone working for an international company, citizenship in a EU country provides an advantage over one's peers. This citizenship enables one to be transferred almost anywhere in Europe without any hassle for the individual or the company.

The EU now includes Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. The principal exception to equal treatment between all EU countries relates to travel. Internal border controls have been eliminated only between the signatories of the Schengen

Agreement, which includes Austria, Belgium, Denmark, Finland, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden (but not Ireland and the United Kingdom) plus Iceland and Norway (which are not EU members).

Most Americans with one parent who is a citizen of an EU country are eligible to obtain citizenship in that country. For Italy and Ireland, a single grandparent may be sufficient. Those countries grant citizenship based primarily on ancestry rather than place of birth. Many Americans with one grandparent who was an Italian or Irish citizen, and who can clearly document that ancestry, are eligible for that citizenship.<sup>6</sup> It is also noteworthy that many individuals whose spouse is a citizen of a EU country, or eligible for such citizenship, may also be eligible for citizenship in the same country as their spouse.

**India Offers New Benefits to Its Émigrés:** Many countries are developing new programs to tie their émigrés closer to their home country, but none is more extensive than India's. Indian citizens who voluntarily acquire a foreign citizenship automatically lose their Indian citizenship. However, it is in India's interest to cultivate continuing contact with and maintain the loyalty of its large émigré population, so it has established two programs to achieve that goal.

Since 2002, American citizens of Indian origin can apply for a People of Indian Origin Card (PIO Card) which offers them all the rights of a Non-Resident Indian (NRI) citizen. They can admit their children to educational institutions in India under the quota for NRIs, buy nonagricultural property and benefit from various housing programs, and not have to register during visits to India if their stay is less than 180 days. They are not able to vote in Indian elections. Any foreign national who has ever held an Indian passport or anyone who has one parent, grandparent, or great grandparent who was born and permanently resided in India as the country was defined by the Government of India Act of 1935, or who were born or resided in any other territory that became part of India thereafter, is eligible to obtain a PIO Card. Only citizens of neighboring Pakistan and Bangladesh are excluded. The stated goal of this program is "renewing and strengthening the emotional bond amongst PIOs with the land of their origin" and encouraging them "to play an increasingly constructive role in the socioeconomic and cultural development of their country of origin."<sup>7</sup>

Since early 2006, most American citizens who are eligible for a PIO Card, as described above, are now eligible to register as an Overseas Citizen of India (OCI). Benefits of OCI status are a multiple entry, multi-purpose, life long visa for visiting India, exemption from registering with local police authorities for any length of stay in India, and parity with Non-Resident Indian citizens with respect to all economic, financial, and educational benefits except the acquisition of agricultural or plantation properties. OCIs are not able to vote in Indian elections or hold high public office and normally cannot hold

government employment. A registered OCI may be granted Indian citizenship after five years from date of registration provided he/she stays for one year in India before making application.

The eligibility criteria are slightly different than for the PIO Card. Eligibility criteria to become an OCI are as follows: any foreign national who was eligible to become a citizen of India on January 26, 1950, or was a citizen of India at anytime after January 26, 1950, belonged to a territory that became part of India after August 15, 1947, and his or her children and grandchildren, provided that his or her country of citizenship allows dual citizenship in some form. Anyone who has ever been a citizen of Pakistan or Bangladesh is excluded. Upon approval of registration as an OCI, the Indian Embassy or Consulate issues two documents to the applicant. One is an OCI registration certificate in the form of a booklet. PIO Card holders must surrender their PIO Card at this time. The other is an OCI "U" visa sticker that the applicant pastes on his or her foreign passport. This is a permanent visa for entry into India. When the foreign passport expires or is replaced for any reason, a new visa sticker is issued. [7](#)

Indian law still formally prohibits dual citizenship. Indian authorities apparently consider the PIO and OCI programs consistent with this law as they do not grant *all* the privileges of Indian citizenship -- just most of them. It is noteworthy that an American OCI would travel to India on his or her American passport, not an Indian passport. However, the Indian Ministry of Home Affairs web site promotes OCI as "Dual Citizenship," and an application for OCI status or even PIO status is an application for benefits from a foreign country. It is comparable to an application for the benefits of foreign citizenship and may, therefore, be disqualifying.

**Absentee Voting:** Over 50 countries now allow absentee voting by their citizens living abroad. The number is increasing, with Mexico one of the most recent. Others that allow absentee voting by citizens living abroad include the United Kingdom, South Africa, Iraq, Netherlands, Philippines, Argentina, Columbia, Dominican Republic, Peru, and Venezuela. [1,2](#)

**Required Use of Foreign Passport:** U.S. law requires that all U.S. citizens use a U.S. passport to enter and leave the United States. Some other countries have similar laws. They require their citizens, including those who have become naturalized citizens of the United States, to use their country's passport to enter and leave their country. If an American citizen uses a foreign passport to enter one of these countries, it does not endanger U.S. citizenship, but it is an exercise of foreign citizenship that is usually disqualifying for a security clearance.

Most countries do not enforce this law, but the law is enforced in at least three countries: Israel, Iran, and Brazil. In Iran, a dual citizen visiting the country is even required to obtain an exit visa in order to leave Iran. [8](#) Applicants for a U.S. security clearance and clearance holders who are dual

citizens of one of those countries, and want to be able to travel there, will have to formally renounce that citizenship in order to travel on a U.S. passport.

Some individuals are reluctant to renounce their citizenship because of family interests, or because it may affect their ability to conduct business or inherit property in that country. More important, renunciation of the foreign citizenship may be inadvisable for security reasons. Going through the renunciation process at the foreign consulate, and explaining the reasons for it, may put the clearance applicant in contact with a foreign intelligence officer under cover in the consulate whose job it is to assess and recruit such people. See [Renunciation of Citizenship](#) for further discussion of this risk.

## ***Potentially Disqualifying Conditions***

### *Extracts from the Guideline*

*(a) exercise of any right, privilege or obligation of foreign citizenship after becoming a U.S. citizen or through the foreign citizenship of a family member. This includes but is not limited to:*

*(1) possession of a current foreign passport;*

*(2) military service or a willingness to bear arms for a foreign country;*

*(3) accepting educational, medical, retirement, social welfare, or other such benefits from a foreign country;*

*(4) residence in a foreign country to meet citizenship requirements;*

*(5) using foreign citizenship to protect financial or business interests in another country;*

*(6) seeking or holding political office in a foreign country;*

*(7) voting in a foreign election;*

*(b) action to acquire or obtain recognition of a foreign citizenship by an American citizen;*

*(c) performing or attempting to perform duties, or otherwise acting, so as to serve the interests of a foreign person, group, organization, or government in conflict with the national security interest;*

*(d) any statement or action that shows allegiance to a country other than the United States: for example, declaration of intent to renounce United States citizenship; renunciation of United States citizenship.*

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These potentially disqualifying conditions are discussed below under the following headings:

- [Exercise of Foreign Citizenship](#)
- [Obtaining Foreign Citizenship](#)
- [Open Expressions of Preference](#)

DCI Directive 6/4 governing access to Sensitive Compartmented Information (SCI) has an additional requirement for access to SCI. All of the subject's immediate family members must also be U.S. citizens. There are provisions for exceptions under some circumstances. These are discussed below under [Citizenship of Immediate Family Members](#).

### **Exercise of Foreign Citizenship**

Dual citizens owe allegiance to both the United States and the foreign country, and they are required to obey the laws of both countries whether they want to or not. The laws of foreign countries sometimes create privileges or obligations that lead to issues under the Foreign Preference guideline. However, dual citizenship, by itself, is *not* disqualifying because many people have no control over their foreign citizenship. The reasons for this are discussed above under [Citizenship Status Is Often Uncertain](#).

If a person has taken any steps to obtain, maintain, or exercise any right, privilege, or obligation of a foreign citizenship after becoming an American citizen, this is a potentially disqualifying Foreign Preference issue. Examples of this include but are not limited to the following.

- Possession of a currently valid foreign passport is a concern even if it has not been used. Possession of an expired foreign passport is not a concern as long as the individual has no intention of renewing it. (It can be argued that even possession of an expired passport is a concern, as the individual could use this to apply for a current one. However, individuals will normally have other forms of documentation that can be used to obtain a foreign passport if they are eligible for one and want to obtain one. There is nothing the government can do to prevent an individual who is eligible for a foreign passport from getting one. However, if a person cannot be trusted not to obtain a foreign passport, perhaps that person should not be trusted with access to classified information. If a person has a compelling reason to have a foreign passport, perhaps possession of the passport should be approved as described under mitigating conditions for a foreign passport.)
- Registering for military service or serving in the military forces of a foreign country after becoming a U.S. citizen. Service in a foreign

military involves swearing allegiance to that country. This can be a problem for some dual citizens. Some countries with compulsory military service, including South Korea, Israel, and Cuba, require even their citizens residing abroad to register and serve.<sup>8,9</sup> If they don't, they may be drafted or imprisoned if they return to visit their country of birth.

- Accepting or exercising benefits (including but not limited to educational, employment, retirement, medical, or social welfare benefits) provided to citizens of a foreign country. Many countries make these benefits available to dual citizens.
- Registering with a foreign consulate or embassy to obtain such benefits.
- Traveling to or residing in a foreign country for the purpose of fulfilling citizenship requirements or obligations.
- Maintaining dual citizenship to protect financial interests or gain financial benefits. (In many countries, the laws pertaining to property ownership, taxes, business licenses, and inheritance are different for citizens and noncitizens. For example, a noncitizen cannot inherit property in Switzerland.)
- Voting in a foreign election. As noted above, about 50 countries now allow absentee voting by their citizens living abroad. Voting in a foreign election can be mitigated if such voting was encouraged by the U.S. Government, as in the 2005 Iraq elections. This is discussed further under Mitigating Conditions.

Travel to the other country of citizenship can become an issue under the [Foreign Influence](#) guideline, depending on the purpose and frequency of travel, foreign contacts during the travel, and actions while in that country.

### ***An Example of the Exercise of Foreign Citizenship***

The subject is a 40-year-old graphic artist being hired as a subcontractor by a defense contractor. She was born in the United States of an American father and French mother who was then a French citizen. She has traveled often to France and worked in France for four years, but was educated in the United States and considers herself an American.

Because her mother was a French citizen, the subject automatically became a French citizen at birth. Due to her American father and birth in the United States, she also became an American citizen at birth. At age 18, pursuant to the French Code of Nationality, she elected to remain a French citizen. This did not affect her American citizenship. Her mother subsequently became a naturalized American citizen.

While living in France for four years, the subject became part owner of a business in Paris. It was financially advantageous for all owners to be French

citizens. The subject returned to the United States three years ago to open a U.S. branch of the business. She still travels frequently to France and other European countries. She uses a French passport when traveling on business in order to protect her financial interests.

The subject's conscious decision at age 18 to retain French citizenship and her continuing use of a French passport to protect her financial interests in France indicate a disqualifying foreign preference. Although France is a friendly country, it has conducted intelligence operations against the United States. There is no overriding need for the subject's services; other graphic artists are available to the defense contractor.

### **Obtaining Foreign Citizenship**

It is not unusual today for American citizens born in this country to voluntarily seek dual citizenship in a foreign country, usually a country in which they have some family heritage. Some of the reasons why Americans seek dual citizenship are discussed above under [Increasing Incentives for Americans to Obtain or Exercise the Privileges of Dual Citizenship](#). However, any such action is potentially disqualifying.

A child born in the United States of a parent who is an American citizen but still has citizenship in his or her native country is often eligible to become a citizen of the parent's native country. For some countries, such as Italy and Ireland, even a grandchild may be eligible for citizenship. Because Italy and Ireland are members of the European Union, citizenship in these countries conveys benefits comparable to citizenship throughout most of Europe as discussed above.

An American citizen who voluntarily becomes a citizen of another country, and who takes an oath of allegiance to that country, does *not* lose his or her American citizenship unless this is done "with the intention of giving up U.S. citizenship," which is rarely the case.<sup>3</sup> However, this action is usually disqualifying for an applicant for a security clearance or a holder of a security clearance.

### **Open Expressions of Preference**

Due to family, ethnic, religious, ideological, or other loyalties, many loyal Americans actively support a foreign country or minority nationality or ethnic group. This is often a country or group that is struggling to gain or maintain its political independence or develop its economy. More often than not, it is a cause that is also supported by U.S. policy.

Many forms of support for a foreign country are entirely legal and proper. Some forms of support are illegal. It is illegal for a person with access to classified information to:

- Pass classified documents or other protected technology to foreign nationals without appropriate authorization, even though a person believes this will not harm or may even support U.S. interests. Classified information may be released to foreign nationals only by designated officials under the National Disclosure Policy.
- Improperly make or influence decisions to aid a foreign government or group beyond or contrary to official U.S. policy. For example, it would be illegal for an official in a position to influence or authorize the transfer of information or equipment to a foreign country to pursue a personal agenda that is different from government policy.

Some cleared personnel handle information or are in a position to make decisions that may help or harm a foreign individual, organization, or country. This information must be handled, or these decisions must be made, in a manner that is not influenced by conflicting loyalties. Any failure to do so is usually disqualifying.

Some individuals express such strong opinions or beliefs about another country, or about U.S. policy toward a foreign country or group, that it suggests an individual may be willing to circumvent U.S. policy or security regulations in order to help or harm a foreign individual, group, or country. The following are two examples from recent investigative reports. If such information comes from a credible source, it is usually disqualifying. [10](#)

- "Subject made repeated bitter comments about United States culture and policy in the Middle East. Subject stated his allegiance was to his family, Palestine, and Kuwait."
- "Subject has stated that the United States is an 'immoral country' and he 'hates the U.S.' Subject indicated he is only in the United States 'to make money.'"

### ***Examples of Past Espionage Cases***

Several Americans with security clearance have been convicted of espionage as a result of their desire to help a foreign country. They had persuaded themselves that they could pass classified information to a foreign country to help that country without harming U.S. interests. Two examples of this follow.

#### **Frederick C. Hamilton**

Frederick C. Hamilton was a civilian employee of the Defense Intelligence Agency assigned as a bilingual research technician in the Defense Attaché's Office at the U.S. Embassy in Lima, Peru. He was arrested in 1991 for passing classified DIA reports to the Ecuadorian Military Attaché office in Lima.

Hamilton was unmarried, lived in an apartment on the economy rather than in the U.S. Embassy compound, and spent most of his free time associating with local citizens rather than Americans. He had learned Spanish from his Spanish mother. He devoted much time to humanitarian efforts, helping a local community establish a hospital and volunteering assistance during a cholera epidemic. Hamilton was particularly impressed by his experiences touring sites where Peruvian civilians had been massacred by terrorists. Peru had a major terrorism problem at that time.

Hamilton learned in early 1991 that the Peruvian government was concerned about a possible border war with Ecuador. It was relocating troops to the Ecuadorian border that had been deployed against the terrorist threat. Two concerned officials from the Ecuadorian Military Attaché Office in Lima asked Hamilton if, in the event of war, they and their families could take refuge in Hamilton's apartment. Hamilton agreed.

Hamilton began to consider ways to reduce tensions between Peru and Ecuador. His colleagues in the U.S. Defense Attaché's Office agreed that if either side knew the true capabilities and intentions of the other, the tensions would be greatly reduced. However, it seemed unlikely that DIA Headquarters would grant approval in a timely manner to pass information to the Peruvians or Ecuadorians.

Hamilton identified so closely with the local citizens that he lost his ability to remain objective. He also had a disdain for "bureaucracy," which he saw as often hindering rather than helping U.S. foreign policy. He took it upon himself on two occasions to pass classified documents to the Ecuadorians. These included raw intelligence reports that could have compromised a confidential source. He was motivated by a desire to prevent a war between Peru and Ecuador and was not paid for his efforts. He rationalized that what he did would be in the best interests not only of the people of Peru and Ecuador, but also of the U.S. Government.

Although Hamilton's humanitarian efforts and desire to prevent a war were laudable, his unilateral action to compromise classified information cannot be condoned. He was sentenced to 37 months in prison. [11](#)

### **Thomas J. Dolce**

Thomas J. Dolce worked as a weapons analyst at the Army Materiel Systems Analysis Activity in Aberdeen, MD. From 1979 to 1983 he regularly provided classified information about Soviet military equipment to South African Military Attaches in Washington, DC.

Dolce had a long-standing interest in South Africa. In 1971, he resigned his government position (with a security clearance), sold his home and emigrated to South Africa. He returned to the United States because he was "disappointed with employment opportunities" there and frustrated by the

one-year residency requirement before he could get a defense-related job. In 1973, his Secret clearance was reinstated and he began work at Aberdeen.

He wrote an unclassified paper on clandestine warfare and circulated it to the State Department, CIA, and the South African Embassy. Only the South African Embassy responded, and this led to the clandestine relationship.

Dolce was motivated by a desire to help South Africa rather than financial reasons. There is no evidence that he received money for his services. He reasoned that South African forces were confronted with Soviet equipment in neighboring Angola, and that the United States should be providing information on this Soviet equipment to the South Africans. He told FBI agents, he "believed he was doing for South Africa what the United States should have been doing," but was sentenced to 10 years in prison for espionage. [12](#)

### **Citizenship of Immediate Family Members**

DCI Directive 6/4 on Access to SCI, paragraph 5, specifies that "the individual's immediate family must also be US citizens." Immediate family are defined as "the spouse, parents, siblings, children, and cohabitant of the individual requiring SCI access." Paragraph 6 authorizes exceptions to this requirement if there is "a specific national security requirement and a certification of compelling need." A compelling need is defined as "a signed determination by a Senior Official of the Intelligence Community (SOIC) or his/her designee that the services of an individual are deemed essential to operation or mission accomplishment." Paragraph 7(b) states that "When conditions indicate, investigation of immediate family members will be conducted to the extent necessary to permit a determination by the adjudicating agency that the provisions of paragraph 5 of this directive are met."

Annex F of DCID 6/4 defines three types of exceptions -- condition, deviation, and waiver. If an adjudicative facility grants access to classified information based on an exception, this needs to be documented in manner that ensures anyone checking on the person's clearance status will be alerted to the exception.

Any exception to the DCID 6/4 citizenship requirement is a risk management decision. In addition to considering the need for the subject's services, it is also necessary to consider the nature of the subject's relationship with the family member, where the family member is located, the family member's occupation and activities, and the security risks associated with the family member's country of citizenship.

From a security perspective, the most important immediate family member may be the spouse or cohabitant. If the subject's spouse or cohabitant is a foreign citizen, the adjudicator needs to consider whether or not this person

is moving diligently toward becoming a U.S. citizen. It is not unusual these days for a foreign spouse to have no desire or intent to become an American citizen. A spouse or cohabitant who has had an opportunity to become a citizen but decided not to may be a greater security concern than a person who has just come to the U.S. and intends to become a citizen as soon as possible. The process and requirements for becoming a naturalized American citizen are described below under [U.S. Citizenship Procedures](#).

## ***Mitigating Conditions***

### *Extracts from the Guideline*

- (a) dual citizenship is based solely on parents' citizenship or birth in a foreign country;*
- (b) the individual has expressed a willingness to renounce dual citizenship;*
- (c) exercise of the rights, privileges, or obligations of foreign citizenship occurred before the individual became a U.S. citizen or when the individual was a minor;*
- (d) use of a foreign passport is approved by the cognizant security authority;*
- (e) the passport has been destroyed, surrendered to the cognizant security authority, or otherwise invalidated;*
- (f) the vote in a foreign election was encouraged by the U.S. Government.*

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The phrase "cognizant security authority" in the mitigating conditions is used in two different ways. For the purpose of providing official approval for the possession or use of a foreign passport, the phrase cognizant security authority is usually interpreted to mean a high-level official within the relevant Department or Agency. For example, in the Department of Defense it means an official at least as high as the Director of Security within the Office of USD(I) (CI&S). For the purpose of supervising the surrender, destruction, or invalidation of a foreign passport, the cognizant security authority is an operational security officer within the subject's component or employer.

The easiest mitigating conditions to deal with are (a) and (c) above. If dual citizenship is involuntary, based solely on subject's birth in a foreign country or parents' citizenship in a foreign country, and the subject has not exercised or gained benefits from the foreign citizenship, the foreign citizenship is clearly not an issue. Similarly, if the rights, privileges, or obligations of foreign citizenship were exercised *before* the subject became an American

citizen, that is usually normal and to be expected. It becomes an issue only if the rights, privileges, or obligations of foreign citizenship were exercised after taking the Oath of Allegiance to the United States.

Mitigating condition (f) was added because important elections in Iraq were in process as the updated Adjudicative Guidelines were going through the approval process. A heavy turnout in those elections was in the U.S. Government's interest. One can only speculate on how this might be handled in future Iraqi elections or elections in other countries where the United States may have a strong vested interest in the outcome. It is not clear how the "U.S. Government" might go about "encouraging" qualified American citizens to vote in a foreign election. This mitigating condition might be interpreted as giving senior security officials authority to approve such voting in selected cases that are clearly in the national interest.

### **Foreign Passport**

Two mitigating conditions apply to possession or use of a foreign passport.

- Use of the foreign passport may be approved by the cognizant security authority if there is good reason to do so. As noted above, the cognizant security authority in this context is usually a high-level official within the relevant Department or Agency. For example, in the Department of Defense it means an official at least as high as the Director of Security within the Office of USD(I) (CI&S). Reasons for granting such approval may include the following: use of the foreign passport is in the best interests of the U.S. Government, travel in certain parts of the world may be safer on a foreign passport than on a U.S. passport, and unusual circumstances are such that use of the foreign passport does not raise any question about the subject's loyalty to the United States. As discussed above under [Increasing Incentives for Americans to Obtain or Exercise the Privileges of Dual Citizenship](#), the laws of some countries prohibit a citizen from returning to their native country using a foreign passport. Israel, Iran, and Brazil are known to enforce this law, so American citizens with dual citizenship in one of these countries may be unable to return to their native country unless they use a their passport from that country. As citizens of the country they are entering, they are subject to the laws of that country and cannot enter with an American passport. This can create some difficult situations such as, for example, when an individual feels compelled to visit a dying parent in the home country.
- The passport may be destroyed, surrendered to the cognizant security authority, or otherwise invalidated. As noted above, the cognizant security authority for this purpose will usually be an operational security officer within the subject's component or employer.

The goal of these mitigating conditions is to provide alternatives to surrendering the passport to the foreign consulate or embassy and obtaining a receipt, as has been required by some agencies. The Personnel Security Working Group subcommittee that approved these guidelines concluded that such action is ill-advised. Surrendering a passport and requesting a receipt is an uncommon action that tends to label the person who does it as someone who has or is obtaining a security clearance. The consular officer the person deals with may be an undercover intelligence officer whose job is to recruit Americans with access to classified information. In other words, the counterintelligence risk involved in asking individuals to surrender their passport to a foreign consulate may be greater than any potential security gain.

### **Renunciation of Citizenship**

Individuals with dual citizenship are often asked if they would be willing to renounce the foreign citizenship if asked to do so. If they answer affirmatively, that is a good sign. If the subject is answering truthfully, it generally indicates an absence of foreign interests or obligations that might be manipulated by the foreign intelligence or security service. Such a response may be a mitigating factor. On the other hand, hesitation or expressed reluctance to renounce the foreign citizenship suggests conflicting interests or loyalties that need to be fully explored and may be relevant to both the Foreign Influence and Foreign Preference guidelines.

Regardless of the subject's answer to the question about willingness to renounce foreign citizenship, the subject should *not* be asked to actually renounce the foreign citizenship. Any legally effective renunciation usually requires the subject to work through the relevant foreign consulate or embassy. The process for renouncing citizenship varies considerably from one country to another. It is frequently complex and time-consuming, sometimes taking six to 12 months and offering the other country opportunities to manipulate the process for its own purposes. This is undesirable for the same reasons discussed above under [Foreign Passport](#), except that the complex and lengthy process makes the counterintelligence risk even greater. This risk outweighs any potential security gain from the actual renunciation of citizenship.

### **Reference Materials**

#### **Glossary of Citizenship Terms**

**Alien:** Any person currently in the United States who is not a U.S. citizen or a U.S. national is an alien.

**Immigrant Alien:** Any person who has been lawfully admitted into the United States for permanent residence under an immigrant visa is an

immigrant alien. Immigrant aliens are sometimes called green card holders, after the green card that shows they have been legally approved for residence in the United States.

**Foreign National:** Any person who is not a U.S. citizen or a U.S. national is a foreign national.

**U.S. Citizen by Birth:** This refers to any person who is entitled to U.S. citizenship at the time of birth, regardless of where the birth took place.

**U.S. National:** A person who is not a citizen of the United States but owes permanent allegiance to the United States is a U.S. national. This applies to certain persons born in current or former U.S. territories or possessions (e.g. Puerto Rico, Guam, Virgin Islands, American Samoa, Philippines, and Canal Zone). Whether a person born in one of these areas is a U.S. citizen, U.S. national, or foreign national depends upon which possession or territory, date of birth, and status of the parents. The rules can be quite complicated, especially for persons born prior to about 1950. Younger persons born in current U.S. territories are normally U.S. citizens. If there is a question, the status should be evaluated by Immigration and Customs Enforcement (ICE).

**Naturalized Citizen:** Any person who is granted citizenship of a country other than the country of their original citizenship at birth is a naturalized citizen.

**Derivative Citizen:** Any person who derives U.S. citizenship through the naturalization of a parent is a derivative citizen.

## **U.S. Citizenship Procedures**

It is sometimes necessary for an investigator or adjudicator to evaluate an individual's statements about citizenship -- to assess whether an immediate relative is eligible for citizenship or evaluate an explanation for why one has not obtained citizenship. This is particularly relevant for foreign-born spouses, some of whom decide not to become American citizens. There is a growing tendency for some immigrants to the United States to make a deliberate decision not to become U.S. citizens.<sup>1,13</sup> One might argue that a spouse who has deliberately opted not to become a citizen may be a greater security concern than one who has just come to the United States and intends to become a citizen as soon as possible. Knowledge of procedures for becoming a U.S. citizen may be useful when evaluating these situations.

Citizenship requirements are summarized below. More detailed information is available at the U.S. Citizenship and Immigration Services web site at [www.uscis.gov](http://www.uscis.gov), especially in the booklet *A Guide to Naturalization* which is downloadable at <http://www.uscis.gov/graphics/services/natz/guide.htm>

### ***Citizenship by Birth***

The following are U.S. citizens by birth:

- Children born in the United States, including U.S. territories (Guam, Puerto Rico, and the U.S. Virgin Islands), regardless of the citizenship of the parents, with the exception of children born to foreign diplomats in the United States.
- Children born outside the United States to two U.S. citizen parents, if at least one of those parents lived in the United States at some point in his or her life;
- Children born outside the United States with only one U.S. citizen parent if the following conditions are met: one parent was a U.S. citizen at the child's birth, the citizen parent lived in the United States for at least five years at some point prior to the child's birth, and at least two of the five years in the United States were after the citizen parent's 14th birthday.

### ***Citizenship by Naturalization***

Individuals who do not meet the above conditions are not U.S. citizens and must be naturalized in order to become U.S. citizens. In most cases, naturalization is possible after an immigrant visa has been issued and Lawful Permanent Residence status has been maintained for a certain period of time. After this time, one may apply for naturalization and must meet specified criteria based on:

- Time as a permanent resident, which may vary based on factors such as military service and marital status.
- Continuous residence, or the amount of time spent in the United States. If a person leaves the United States for a long period of time (usually greater than six months) it may interrupt his or her "continuous residence."
- Physical presence in the United States, or the total amount of time actually spent in the United States. Physical presence takes into account all trips outside the United States, both long and short.
- Time as a resident in district or state. Most people must live in the district or state in which they are applying for at least three months before applying for naturalization.

Other general requirements for naturalization are the following:

- Pass a test on reading, writing, and understanding the English language.
- Pass a civics test on knowledge and understanding of U.S. history and government.

- Good moral character, including a favorable criminal records check.
- Willingness to support and defend the Constitution of the United States.
- Take the Oath of Allegiance to the United States.

Residence requirements vary as follows depending upon marital status and military service:

- Permanent resident for the past five years with no special circumstances: five years of legal permanent residence without having left the United States for any trip of six months or longer.
- Currently married to and living with a U.S. citizen, *and* have been married to and living with the same U.S. citizen for the past three years, *and* spouse has been a U.S. citizen for the past three years: three years as a lawful permanent resident without leaving the United States for any trip of six months or longer.
- In the U.S. Armed Forces (or will be filing immigration application within six months after an honorable discharge), *and* have served for at least one year: only need to be a legal permanent resident on the day of the immigration interview. Note: A person who performed active duty military service for the United States during wartime (including after September 11, 2001) need not be a legal permanent resident.
- Person working abroad for a qualifying employer: five years of legal permanent residence is required, but working abroad is allowed as long as there has been at least one year of continuous residence in the United States and form N-470 has been approved before being outside of the United States for one year. Qualifying employers include U.S. Armed Forces, U.S. Government employee or contractor, an American institution of research recognized by the Attorney General, American-owned firm or corporation engaged in the development of foreign trade and commerce for the United States, and certain religious organizations.
- Spouse of an American citizen working abroad for one of the qualifying employers listed above if the American citizen is under contract to work abroad for at least one year and will continue to be so employed at the time of the spouse's naturalization: spouse must be a permanent legal resident at time of the immigration interview. There is no time requirement for permanent residence or continuous residence.

### ***Derivative Citizenship***

Children may (or may not) have become U.S. citizens automatically when their parent or parents become naturalized citizens. This is called derivative or derived citizenship. Specific requirements depend upon when the parent or

parents were naturalized. The law has changed five times since 1934. The most recent law applies to children of parents naturalized after February 27, 2001. If one of the parents became a naturalized citizen since that date, children who were legal permanent residents of United States living with that parent while under the age of 18 automatically acquired derivative citizenship. This applies to both natural and adopted children. [14](#)

For children of parents naturalized prior to February 27, 2001, the rules vary depending upon date of naturalization. The only consistent element is that the child must have been a legal permanent resident at the time of the parent's naturalization. During some time periods both parents must have become naturalized, the maximum age varies from 16 to 21, and children adopted prior to 1978 did not qualify. [14](#)

### **Citizenship Laws of Selected Foreign Countries**

It is not feasible to duplicate and maintain the previously available database on citizenship laws of over 200 countries. Citizenship laws through the world are changing to meet the needs of a highly mobile population and a global economy. Any database of citizenship laws would rapidly become out of date.

When information is needed on the laws of a specific country, this information may be available on the country's web site or by telephone from the country's consulate in the United States. Current and authoritative information on foreign citizenship laws and practices may also be available from the Library of Congress Foreign Law Division and/or the Department of State at the addresses below.

**LIBRARY OF CONGRESS - LAW LIBRARY:** The Foreign Division of the Law Library contains a staff of lawyers who provide research for the U.S. Congress and other government agencies on foreign legal systems -- to include citizenship laws. The staff represent a wide range of linguistic capacities and has amassed a large collection of foreign laws and constitutions. This office is best used for questions of a purely legal nature.

The phone number for the Library of Congress Law Library is 202-707-4351

**DEPARTMENT OF STATE:** The department does not serve as an official repository of foreign law, but may be able to answer some questions. It is divided into two different offices that deal with foreign countries.

The Office of Citizen Consular Services in the Bureau of Consular Affairs is often familiar with the citizenship laws and practices of at least the more populous countries.

State Department Desk Officers can be of help with questions concerning political, social or cultural factors in their area of responsibility, for example,

the political and practical feasibility of a given individual renouncing a foreign country's citizenship. Desk officers do not, however, deal with foreign citizenship laws.

The phone number for State Department Information is 202-647-4000.

## **Footnotes**

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