

Dual Citizenship and Challenges vis-à-vis Nepali and U.S. Laws

presented at

NRNA NCC of USA



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Agenda

- Introduction
- Dual Citizenship Explained and its Benefits
- U.S. laws on Dual Citizenship and Rules on loss of U.S. Citizenship
- Nepalese Law on Dual Citizenship
- Nepali laws on Foreign Investment from NRN
- Q &A

about Niranjan Adhikari

- * **Niranjan** represents business entities as well as individuals on all aspects of U.S. immigration and nationality laws including business as well as family-based immigration, citizenship, and various visa programs. He has advised companies on immigration compliance, government audits, site visits and investigations for immigration compliance, and has handled large number of complex as well as general immigration law and compliance related matters for corporate clients. He has advised *Fortune 1000*, NASDAQ, TSE, NSE and BSE listed public companies, technology consulting companies, hospitals and medical clinics, major research universities, start-ups, non-profits, entrepreneurs, scientists, investors, artists, athletes, students and scholars and individuals on variety of employment-based immigration and work visa matters. He has also provided legal guide on business formation and corporate governance for start-ups, foreign businesses and investors; commercial contracts; matters of Trademarks and Copyright.
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Dual Citizenship Explained

- **Citizenship is traditionally acquired by birth based on either the *jus soli* (right of soil) or the *jus sanguinis* (right of birth) principle.**
- **Nowadays, countries' laws provide for the right to choose the nationality of a state.**
 - **However, there has been backward slide on citizenship policies (UK, Japan, Denmark, etc.)**
- **Dual Citizenship also means dual or multiple “Nationality”.**
- **Benefits of Dual Citizenship provisions in the law:**
 - Better propensity to Naturalize
 - Promote economic and social assimilation
 - Employment and earnings gains

U.S. Laws on Dual Citizenship

- U.S. government does not require naturalized U.S. citizens to give up their citizenship in their country of origin
- The Oath of Allegiance to the United States speaks of renouncing “allegiance and fidelity” to other nations
- U.S. immigration law does not explicitly address the topic of dual citizenship.
- The best summarization of the U.S. government’s position on dual citizenship lies in U.S. Supreme Court opinions (e.g. *Kawakita v. United States*, 343 U.S. 717 (1952) (extra-territorial laws), which explains that *“a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both.”*
 - The Secretary of State is charged with “the determination of nationality of a person not in the United States,” and “shall establish such regulations; prescribe such forms of reports, entries and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions” in accordance with Immigration and Nationality Act (INA) § 104 (8 U.S.C. 1104).
 - The Secretary is responsible for reviewing and approving or denying a properly completed request for a Certificate of Loss of Nationality of the United States (Certificate of Loss of Nationality)

Potential to lose U.S. citizenship

- **INA 349, as amended, lists seven (7) potentially expatriating acts which, if performed voluntarily and with the intention of relinquishing U.S. nationality, may provide a legal basis for the U.S. Government to approve a U.S. national's properly completed request for a Certificate of Loss of Nationality of the United States. The U.S. Department of State administers INA Section 349(a)(1)-(5); the Department of Homeland Security administers INA Section 349(a)(6)-(7).**
 - 349(a)(1) - obtaining naturalization in a foreign state after 18;
 - 349(a)(2) - taking an oath, allegiance to a foreign state or subdivisions 349(a)(3) - entering or serving in the armed forces of a foreign state engaged in hostilities against U.S. or serving as a commissioned or non-commissioned officer in the armed forces of a foreign state;
 - 349(a)(4) - accepting employment with a foreign government after the age of 18 if (a) one has the nationality of that foreign state or (b) an oath or declaration of allegiance is required in accepting the position;
 - 349(a)(5) - formally renouncing U.S. nationality abroad;
 - 349(a)(6) - formally renouncing U.S. nationality in U.S.
 - 349(a)(7) – if convicted of performing an act of treason against the U.S. or for attempting by force to overthrow, which explains that “a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both.”

Nepalese Law on Dual Citizenship

- Constitution is silent. But the Citizenship Act clearly seem to disallow dual citizenship and
- so do whole host of other laws

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Nepalese Law on Dual Citizenship

None-resident Nepali Citizenship

७क. गैर आवासीय नेपाली नागरिकता प्राप्त गर्न सक्ने: (१) विदेशी मुलुकको नागरिकता प्राप्त गरी दक्षिण एशियाली क्षेत्रीय सहयोग सङ्गठनको सदस्य राष्ट्रवाहेकका देशमा बसोबास गरेको र साविकमा वंशजको वा जन्मको आधारमा निज वा निजको बाबु वा आमा, बाजे वा बज्यै नेपालको नागरिक रही पछि विदेशी मुलुकको नागरिकता प्राप्त गरेको व्यक्तिले आर्थिक, सामाजिक तथा सांस्कृतिक अधिकारको उपभोग गर्न पाउने गरी गैर आवासीय नेपाली नागरिकता प्राप्त गर्न सक्नेछ ।

(२) उपदफा (१) बमोजिम गैर आवासीय नेपाली नागरिकता लिन चाहने व्यक्तिले देहायका कागजात संलग्न राखी तोकिएको अधिकारी समक्ष तोकिए बमोजिम निवेदन दिनु पर्नेछ:-

- (क) निवेदन दिने व्यक्ति वा निजको बाबु वा आमा, बाजे वा बज्यै साविकमा नेपालको नागरिक रहेको प्रमाण,
- (ख) सम्बन्धित व्यक्तिले साविकमा नेपालको नागरिकता लिएको भए सो नागरिकता त्याग गरेको प्रमाण,
- (ग) विदेशी मुलुकको नागरिकता भएको प्रमाण,
- (घ) दक्षिण एशियाली क्षेत्रीय सहयोग सङ्गठनका सदस्य राष्ट्रवाहेकको देशमा बसोबास गरेको प्रमाण,
- (ङ) नेपालको संविधान र कानूनको परिपालना गर्ने प्रतिबद्धतापत्र ।

(३) साविकमा नेपालको नागरिकता लिई नागरिकताको प्रमाणपत्र फिर्ता नबुझाएको व्यक्तिले गैर आवासीय नेपाली नागरिकताको लागि उपदफा (२) बमोजिम निवेदन दिँदा निजले पहिले लिएको नेपाली नागरिकताको प्रमाणपत्र समेत पेश गर्नु पर्नेछ ।

(४) उपदफा (२) बमोजिम निवेदन प्राप्त भएपछि तोकिएको अधिकारीले आवश्यक सबुद प्रमाण बुझी निजलाई तोकिए बमोजिम गैर आवासीय नेपाली नागरिकता दिनेछ ।

पहिलो संशोधनद्वारा थप ।

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(५) उपदफा (४) बमोजिम गैरआवासीय नेपाली नागरिकता प्राप्त गर्ने व्यक्तिलाई तोकिए बमोजिम शपथ गराउनु पर्नेछ ।

(६) यस दफा बमोजिम गैर आवासीय नेपाली नागरिकता प्राप्त गरेको व्यक्तिले झुठो विवरण दिई त्यस्तो नागरिकता प्राप्त गरेमा वा निजले नेपालको स्वतन्त्रता, सार्वभौमसत्ता, भौगोलिक अखण्डता तथा राष्ट्र हित विपरीत कार्य गरेको ठहरेमा नेपाल सरकारले त्यस्तो व्यक्तिले प्राप्त गरेको गैर आवासीय नेपाली नागरिकता रद्द गर्नेछ ।

Challenges of Dual Citizenship

Double Taxation risks

- U.S. worldwide income tax rule in addition to country where one maintain residence
 - Double taxation avoidance treaty is not always there (e.g. with Nepal)
- Military Obligations
- Exempt from Certain Employment
 - Security Clearance or National Security job unless applicant surrenders foreign passport (citizenship) or obtains official approval for use.
 - Security Clearance Guidelines:
 - A: Allegiance to the United States
 - B: **Foreign Influence**
 - C: **Foreign Preference (incl. organization involvement)**
 - D: Sexual Behavior
 - E: Personal Conduct
 - F: **Financial Considerations**
 - G: Alcohol Consumption
 - H: Drug Involvement and Substance Misuse
 - I: Psychological Conditions
 - J: Criminal Conduct
 - K: Handling Protected Information
 - L: Outside Activities
 - M: Use of Information Technology

Foreign Investment Policies of Nepal on NRN

- NRN Act and regulations
 - NRN ID NRN or NRN majority-owned company
 - 10 year visa
 - No Capital gain tax
 - National Treatment
 - Foreign Currency Account
 - Investment and Investment Gain Repatriation
 - Can undertake any Industry or profession as per Nepal citizen
 - To receive benefits as any other foreign investors

What We do

- All aspects U.S. work visa, employment/family/investment-based immigration
- Legal services for foreign investment into U.S.
- Business Formation and Formation Documents
- Confidentiality & IP Assignment Agreement
- Non-compete agreements
- Technology services agreements
- Trademarks prosecution
- Attorney referral service (free)

Q & A

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