

## **IILHR MEMO ON NATIONALITY**

### **QUESTION PRESENTED**

*What is international practice regarding constitutional and statutory treatment of citizenship and naturalization?*

### **SHORT ANSWER**

International approaches to naturalization and citizenship range from minimal constitutional or statutory hurdles to stringent requirements that virtually preclude naturalization. Furthermore, some countries regulate citizenship through their constitutions while others regulate primarily by statute.

### **INTRODUCTION**

There is no uniform approach to the treatment of naturalization or citizenship. Some countries' constitutions are silent on the issue. National policy differs most significantly in countries' standards for naturalization. The United States, Canada, and Australia employ fairly liberal requirements, whereas countries such as the United Arab Emirates are far more exclusive. One hallmark of the more inclusive approach is the recognition of the right to citizenship simply by virtue of being born within the territorial jurisdiction of a country. More exclusive approaches either fail to recognize birth as a basis for citizenship or do so within narrow parameters. The issue of specific rights of citizens in different countries falls outside the scope of this paper.

### **DISCUSSION**

#### **United States**

The U.S. adopts a fairly liberal approach to recognizing citizenship and the right to be naturalized. The United States Constitution merely states that the United States Congress shall have the power to "establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."<sup>1</sup> Furthermore, the Fourteenth Amendment to the Constitution

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<sup>1</sup> U.S. CONST. art. I § 8.

provides that all persons born or naturalized in the United States are citizens of the United States.<sup>2</sup>

Most of U.S. nationality law is based on federal statutes and case law. The United States Supreme Court has held that a person who is born in the United States, whose parents at the time of birth are subject to some foreign power, whose parents have residence or are domiciled in the United States, and whose parents are not diplomats or in the United States in service to a foreign sovereign, automatically becomes a citizen at the time of birth.<sup>3</sup> In 2000, Congress passed the Child Citizenship Act, which bestows automatic citizenship upon biological children under the age of 18 who are foreign-born, as well those who are adopted abroad by a U.S. citizen.<sup>4</sup> Other federal statutes and regulations specify other details such as the mode of naturalization as well as the possibility of losing citizenship.<sup>5</sup>

## Canada

Like the United States, the nationality law of Canada is fairly liberal. Canadian nationality law is based mostly on federal statute. The Canadian Citizenship Act states that a person is a citizen if he or she was “born in Canada”, born outside of Canada but to at least one Canadian parent, or was naturalized under Canadian law.<sup>6</sup> Section 5 of the Act specifies that a person can apply for citizenship if he or she has resided in Canada for three of the four years preceding the date of application.<sup>7</sup> The Act also provides that children of foreign diplomats do not automatically obtain citizenship by being born in Canada.<sup>8</sup>

## Australia

Citizenship is undefined in the Australian Constitution. The constitution merely gives the Parliament the power to make laws regulating “Naturalization.”<sup>9</sup> The Australian Citizenship Act of 1948 provides that a person can become a citizen (1) by birth, if at the time of birth in Australia, at least one parent is an Australian

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<sup>2</sup> *Id.* at amend XIV, § 2.

<sup>3</sup> *U.S. v. Wong Kim Ark*, 169 U.S. 649 (1898).

<sup>4</sup> 8 U.S.C. §§1431-33.

<sup>5</sup> A summary of such law and regulations is available at [http://travel.state.gov/law/citizenship/citizenship\\_782.html](http://travel.state.gov/law/citizenship/citizenship_782.html).

<sup>6</sup> R.S.C., ch. C-29, § 3 (1985)(Can.).

<sup>7</sup> *Id.* at §5.

<sup>8</sup> *Id.* at §3.

<sup>9</sup> AUSTL. CONST. ch. I, § 51.

citizen or Australian permanent resident, (2) by adoption if adopted by a citizen, (3) by descent or by (4) adoption by an Australian citizen.<sup>10</sup> Notably, Australian law is unclear as to how citizenship is to be ‘adopted.’<sup>11</sup>

### Argentina

Section 20 of the Argentine Constitution provides that a non-citizen may obtain naturalization papers by residing in the country for two uninterrupted years, but “authorities may shorten this requirement.”<sup>12</sup> Also, citizens by naturalization are exempt, if they so chose, from armed service “for a period of ten years as from the date they obtain naturalization papers.”<sup>13</sup>

### Switzerland

The Swiss constitution is somewhat restrictive in bestowing citizenship. Article 38 of the Constitution states that “the Confederation shall regulate the acquisition and the loss of citizenship through descent, marriage and adoption.”<sup>14</sup> Thus, the Constitution does not recognize the concept of citizenship on the basis of birth within the territorial jurisdiction of the country, such as in the case of the U.S., Canada and Australia. However, the Constitution does recognize the ability of non-citizens to be naturalized.<sup>15</sup>

### United Arab Emirates

The U.A.E. also employs relatively strict requirements for qualifying for citizenship. The Constitution of the U.A.E. is silent on the issue how one becomes a citizen. Federal Law No. 17 for 1972 Concerning Nationality, Passports and Amendments thereof, however, defines a citizen as those residing in the Emirate continuously since 1925 or before, or “anyone born in the country or abroad to a father who is a citizen by law.”<sup>16</sup> A mother does not pass citizenship

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<sup>10</sup> Kim Rubenstein, *Citizenship And The Centenary — Inclusion And Exclusion In 20th Century Australia*, 24 MELB. U. L. REV. 576, 588 (2000) *citing* Australian Citizenship Act, 1948.

<sup>11</sup> *Id.*

<sup>12</sup> CONST. ARG. § 20.

<sup>13</sup> *Id.* at §21.

<sup>14</sup> SWITZ. CONST., art. 38 § 1.

<sup>15</sup> *Id.* at §3.

<sup>16</sup> *Federal Law No. 17 for 1972 Concerning Nationality, Passports and Amendments Thereof* [United Arab Emirates], 18 November 1972, available at: <http://www.unhcr.org/refworld/docid/3fba182d0.html>

on to her child unless the child's paternity is "unsubstantiated," the identity of the father is unknown altogether, or unless the father is without nationality.<sup>17</sup> Naturalization by way of residency for three years is possible, but only for "an Arab of Omani, Qatari, or Bahraini origin."<sup>18</sup>

### CONCLUSION

International practice amongst representative democracies varies with regard to constitutional or statutory treatment of citizenship. More restrictive approaches preclude or limit the possibility of citizenship deriving from birth in the country. Furthermore, most jurisdictions recognize the possibility of naturalization; however more restrictive countries substantially limit opportunities for naturalization.

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*