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Fil-Ams Keep US Citizenship Under Philippine Citizenship Reacquisition Law

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For many Filipino migrants who have acquired US citizenship, the recently passed Citizenship Reacquisition and Retention Act of 2003 (hereafter, "Philippine Dual Citizenship Law") is an auspicious development. With this law in place, former Filipino citizens who have kept the ties to their homeland can take a more active role in charting the political and economic direction of the Philippines.

Cause for Concern

Notwithstanding the warm reception of the Filipino-American community, the Philippine Dual Citizenship Law has been subjected to some criticism, foremost of which is its supposed adverse effect upon US citizenship.

Criticism has been leveled against the provision in the Philippine Dual Citizenship Law which grants the reacquisition or retention of one's Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines. This provision has become a cause for concern among Filipino-Americans.

While it is true that this issue should elicit caution, recent developments in US laws, policies and jurisprudence should allay fears that taking the oath of allegiance under Philippine Dual Citizenship may lead to the loss of one's US citizenship.

Expatriating Acts

Understandably, most Filipino-Americans would not want to lose their American citizenship, hard-earned as it is. Once acquired, however, US citizenship is not so easily lost either.

Since US citizenship is a constitutionally protected right under the Fourteenth Amendment, Congress has no authority to pass a law depriving an American of his or her citizenship by providing that the performance of certain acts would automatically result in loss of US citizenship.

From the standpoint of prevailing US law and policy, certain acts such as swearing allegiance to a foreign state are merely potentially expatriating (or citizenship-losing) actions. The voluntary performance of such acts cannot, by themselves, result in the loss of US citizenship. There must be separate proof that there is an intention to relinquish US citizenship. Conversely, should a person voluntarily perform a potentially expatriating act and express the intention to relinquish US citizenship (e.g. by making a formal renunciation of US citizenship before a US consular officer), then loss of US citizenship may result.

Loss of Citizenship Laws

In the past, certain acts such as becoming a naturalized citizen of another country, declaring allegiance to another country, voting in foreign elections or working for a foreign government, when voluntarily performed, were sufficient by themselves to cause the loss of US citizenship.

However, in the 1967 case of *Afroyim v. Rusk* (387 US 253), the US Supreme Court added the "assent" requirement to the voluntary performance of these acts before a person would be considered to have lost US citizenship.

The practical effect of *Afroyim* was that the act of voting in foreign elections was considered as "potentially," as opposed to an "automatically" expatriating act. According to the *Afroyim* Court, Congress has no power to strip a person of his US citizenship by providing that the mere performance of certain acts such as voting in foreign elections is sufficient to cause the loss of US citizenship. Only the individual has the right to renounce his/her US citizenship, hence, the "assent" requirement.

The Court ruled that Afroyim, a naturalized US citizen from Poland who moved to Israel and voted in the elections there, did not automatically lose his US citizenship by voting in a foreign election. The *Afroyim* Court emphasized that US citizenship is a constitutionally protected right and Congress may not take away that right by passing a law prescribing certain acts as expatriating. US citizenship may not be lost <u>without the assent</u> of the person.

The Assent Requirement

Despite adding the "assent" requirement, the *Afroyim* ruling was not clear on whether taking an oath of allegiance to a foreign state would be considered "assent" so as to cause the loss of US citizenship. The 1980 case of *Vance v. Terrazas* (444 US 252) would clarify this issue.

In *Terrazas,* the State Department ruled that Terrazas lost his US citizenship when he signed a document which, not only reaffirmed his Mexican citizenship, but explicitly renounced his US citizenship. The Court held that proof of this act alone does not meet the "assent" requirement. The voluntary performance of the potentially expatriating act in question cannot be treated as the individual's "assent" as well. In other words, the performance of any of the potentially expatriating acts enumerated by law and the individual's assent must be proved separately and independently of each other.

The *Terrazas* Court also held that while Congress may not prescribe the performance of certain acts as automatically expatriating, Congress may decree that the "assent" to relinquish US citizenship may be established by a "preponderance of evidence."

The Immigration and Nationality Act was amended in November 1986 (Public Law: 99-653) to incorporate the *Afroyim* and *Terrazas* rulings. The amended law now requires proof of two elements: (a) voluntariness of the potentially expatriating act; and (b) intent to relinquish US citizenship, thereby limiting the effect of taking an oath of allegiance to a foreign state upon one's US citizenship.

State Department Policy

Prevailing administrative policy in the State Department further diluted the effect of certain potentially expatriating acts upon US citizenship.

It has adopted what is called an "administrative premise" in cases where US citizens perform selected potentially expatriating acts. The State Department presumes that US citizens intend to retain their US citizenship when they perform any of the following: (a) obtain naturalization in a foreign state; (b) subscribe to routine declarations of allegiance to a foreign state; or (c) accept non-policy level employment with a foreign government. It must be emphasized that the benefit of this administrative presumption is available only in these three instances. [See *22 CFR 50.40* and the *Bureau of Consular Affairs website: http://travel.state.gove/loss.html*.)

Conversely, the presumption to retain US citizenship does not arise when such person: (a) formally renounces US citizenship before a consular officer; (b) takes a policy-level position in a foreign state; (c) is convicted of treason; or (d) performs an act made potentially expatriating by law which is so inconsistent with retention of US citizenship that it compels a conclusion that the individual intended to relinquish US citizenship.

The impact of this administrative presumption is to raise the standard of evidence in establishing relinquishment of US citizenship. In other words, it is now more difficult for the State Department to prove intent to relinquish citizenship.

Oath of Allegiance

Will Filipino-Americans stand to lose their American citizenship if they take the oath of allegiance under the Philippine Dual Citizenship Law?

On the basis of the amended provision of the Immigration and Nationality Act, the prevailing State Department policy, and pertinent US case law discussed above, the oath of allegiance by itself hardly poses a threat to one's US citizenship.

In the first place, one who takes the oath of allegiance under the Philippine Dual Citizenship Law, enjoys the State Department's administrative presumption that he or she intends to retain US citizenship. The act of taking the oath of allegiance alone will not automatically result in the loss of US citizenship.

Moreover, the oath of allegiance under the Philippine Dual Citizenship Law is obviously, if not arguably, a routine declaration of allegiance to the Philippines. It is clearly one of the three instances where the benefit of the State Department's administrative presumption applies. We note for this purpose that unlike the *Vance v. Terrazas* case, the language of the Philippine oath of allegiance does not include an express renunciation of the citizenship acquired from another country.

In accordance with declared policy, the State Department does not even require a person to submit, prior to taking an oath of allegiance to a foreign country, a statement or other evidence of his or her intent to retain US citizenship. (See "Advice About Possible Loss of US Citizenship and Dual Nationality" Bureau of Consular Affairs website: *http://travel.state.gov/loss.html*.)

In any event, it must be borne in mind that the routine oath of allegiance to a foreign country is considered a potentially expatriating act. This would have a practical effect when the performance of the potentially expatriating act comes to the attention of a US consular officer in the course of inquiries or applications for registration or passport by US citizens.

In such instances, the US consular officer will simply ask the applicant if there was intent to relinquish US citizenship when performing the act. If the answer is "No," the consular officer will certify that it was not the person's intent to relinquish U.S. citizenship and, consequently, find that the person has retained U.S. citizenship.

Should the person answer “Yes,” s/he will be asked to complete a questionnaire to determine intent to relinquish US citizenship. When the questionnaire is completed and a voluntary relinquishment statement is signed by the person, the US consular officer will then issue a certificate of loss of nationality to be forwarded to the Department of State for consideration and approval. (See “Advice About Possible Loss of US Citizenship and Dual Nationality” noted above.)

In sum, it takes more than an oath or affirmation to a foreign country to lose one’s US citizenship. Unless one expressly renounces his/her US citizenship, taking the oath of affirmation under the Philippine Dual Citizenship Law is not hazardous to one’s US citizenship.