

# Complexities of dual/multiple citizenship

Make sure you apply for a retention of citizenship before acquiring another citizenship.

By Julian Pokroy

**P**revious articles about dual nationality for South African citizens and the complexities that surround this have appeared in *HR Future*.

Prior to giving the actual update on the situation, it is important to note that the South African Constitution enshrines the right to citizenship.

Similarly, the South African Citizenship Act number 88 of 1995 also permits a South African citizen to acquire the citizenship of another country.

In defined time spaces, that is, pre 1949, post 1949 but prior to 1988 and post 1988, the Rules have remained essentially the same. To sum it up, there has been no prohibition against a South African citizen obtaining a citizenship of another country provided that the necessary steps are taken by the South African citizen to preserve their South African citizenship status. The main focus of this article is in respect of the post 1988 proclamation of the South African Citizenship Act 88 of 1978 "the Act" as this is where most of the enquiries are received in terms of time frame.

One may ask why this topic is being covered once again and hopefully an explanation will materialise hereunder.

The reason for covering this article stretches somewhat further in that, with the global village being

narrowed down in size because of technology and communication, skilled South Africans, and skilled individuals from other countries are migrating across the globe "exporting" their skills wherever needed. Attractive remuneration packages and benefits are generally the carrot dangled in front of them, but the fact of the matter is that South Africa is losing skills in a global skills migration scenario.

The further relevance of this is that when a South African who has migrated to another country reaches the stage where they have permanent residence and now become eligible to apply for the passport of that country, a two edge sword comes into operation.

Even where the individual does not acquire the citizenship in this fashion, the Act provides that where citizenship of another country has been applied for by way of a "formal and voluntary act" then this constitutes the relevance for this article. In other words, an individual who applies for an ancestral visa based on their parents' or grandparents' prior citizenship and does so by way of the aforesaid "formal and voluntary act" then they too would be exposed to the vagaries of the Act.

The consequences of not taking the step of applying for retention of South African citizenship status prior to acquiring citizenship of another country are drastic.

Section 6 of the Act provides that there would then be an automatic loss of South African citizenship status.

Some schools of thought, mine included, believe that this automatic loss is potentially also unconstitutional but, until the question is tackled in the Constitutional Court, it would be impossible to state this with any certainty.

It therefore becomes vitally important and

indeed essential that, when a South African citizen contemplates taking out citizenship of another country, they should first apply for retention of their South African citizenship status in anticipation thereof. Only once that retention certificate is in place should the other citizenship be acquired.

The amount of enquiries that our office receives on a daily basis from South Africans who have been affected by this loss of citizenship status, "innocently" and without realising the consequences of their act, is enormous.

Generally, such person would only find out about their loss of South African citizenship status when applying for a new South African passport as the relevant form requires you to state whether you have acquired citizenship of another country and indeed asks when and how.

All of this is easy to avoid by doing a retention of Citizenship application.

A free assessment of such situation is accessible on our web site ([www.immigration.org.za](http://www.immigration.org.za)) by clicking on the "Free citizenship assessment questionnaire" icon and completing and submitting the questionnaire.

The same process would apply to someone who wishes to acquire a further additional other foreign citizenship, where the process would have to be repeated again for each citizenship acquired.

The vexing question that now begs answering is: what happens to the status of the person who has now recently lost their South African citizenship status?

The answer to that is rather simple in the sense that a South African citizen who was born a South African citizen, that is, not naturalised as a South African citizen, would retain their right to permanent residence in South Africa and ultimately after a passage of time would indeed qualify to apply for a resumption of South African citizenship status if they returned to South Africa, a phenomenon which literally occurs daily, judging by the very many enquiries received every single day on this topic.

There are very few specialist attorneys in South Africa dealing with this kind of matter and it is vitally important that, should you or an employee of yours be placed in a situation such as that outlined above, expert advice should be sought. The last place to ask for such advice would be the officials at the

counter desk of the Department of Home Affairs or an Embassy or High Commission.

As another aside to the above, it is important also to note that the Act provides that a South African citizen must exit and re-enter South African soil with their South African passport at all times. Indeed it becomes an offence not to do so.

A South African national who has knowingly or unknowingly lost their South African citizenship status will, after their South African passport has expired, not be able to fulfil this statutory requirement.

If they do try and then exit the country on their non-South African passport, then the chances are, and indeed this happens quite often, that they will be prevented from leaving or re-entering the country, if their foreign "other" passport is from a non visa exempt country.

Therefore this is an advisory to anyone who is in the above situation whether it be the reader personally or an employee, to have their status determined formally

by a professional and then to take the necessary steps to either obtain a retention of South African citizenship status or, if they qualify, for a resumption of South African citizenship status.

Over the last few years there have been quite a number of South Africans who have left South Africa, ostensibly for so called "greener" pastures, who have been retrenched or become redundant or are simply not happy in their adopted countries, and wish to return to South Africa, who are faced with the situation of having to apply in many instances for a visa to come back to their country of birth or naturalisation.

This matter therefore takes on a larger connotation and interpretation. ■

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