

# Vexing question of dual citizenship

It's important to take the correct steps when becoming a dual citizen.

By Tarryn Pokroy Rietveld

**A**t the outset it is necessary to distinguish between “loss” and “deprivation” of citizenship status.

The Constitution of South Africa in section 20 thereof provides that “no citizen may be deprived of citizenship” in terms of the Bill of Rights.

The Constitution however does not deal with the concept of “loss” of citizenship status.

The most recent Citizenship Act (number 88 of 1995) “The Act” together with subsequent amendments as well as the predecessors of the 1926 and 1941 amendments to the original Citizenship Act provided statutorily for a situation allowing dual or multiple nationalities subject to certain conditions.

Since the situation only became more prevalent since the 1995 Act came into operation it is therefore the focus of this article.

Until the amendments in 2004 to the Act, in fact a person could obtain a “permission letter” to hold another passport in terms of 9(2) of the 1995 Act.

In terms of the 2004 amendments however this “permission” letter no longer was possible as the subsection was expunged from the Act.

If the act of taking up citizenship of another country took place after October 1995 then in terms of section 6(2) of the 1995 Act one would automatically lose South African citizenship status unless an application was first brought on a formal basis, for retention of South African citizenship status.

Initially the Department of Home Affairs whilst issuing the section 9(2) “permission letters” refused to take in retention applications and stated that the “permission letter” was sufficient. This left many people exposed when the 2004 amendment to the Act took place and in fact they may have lost their South African citizenship status, and in all probability did, on the basis of the fact that they did not apply

for retentions of their status, at the same time.

The Act did provide, as implied above, that if one were to first apply for retention of South African citizenship status prior to the “formal and voluntary act” of acquiring citizenship of another country then one would become a dual national upon that acquisition of another passport. Indeed the section is liberal and allows for more than one citizenship and therefore multiple nationalities are possible. The only restrictions that are placed on a dual or multiple national, and this is in line with international best practice in this regard, is that they must enter and leave South Africa on their South African passport, but would be free to travel on their other passports outside of South Africa.

The only other restriction placed on a dual national is that they may not claim any benefit off their foreign passport to which they would not ordinarily have been entitled to on their South African passport. This was to combat many persons in this situation, who were taking advantage thereof, from reclaiming VAT that they were not entitled to.

A practical problem that does arise is that a person, by way of example, who is a dual national

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with a UK passport and who must now leave South Africa on a South African passport, would need to provide proof at the airline check-in and to Immigration at the Departing International Airport that they have a right to enter their country of destination.

Accordingly on check-in at the airline counter they would have to present their foreign passport providing proof of entry to their country of

destination. It would be best in that instance to also disclose that they are South African nationals and as a matter of courtesy to present their South African passport as well. When they move onto the Immigration officials they would need to present a South African passport in order to comply with the Citizenship Act and this is the passport which would bear their departure stamp. It may very well be that the Immigration official does ask, as they would be entitled to, that the person does exhibit their passport providing proof of ability to enter their country of destination.

The Director International Relations at the Department of International Relations and Cooperation recently made a rather heavy-handed statement which harshly advised that the Government intended Legislating by way of an amendment to the Citizenship Act preventing dual passports. And indeed requiring a Citizen to make an unenviable choice as to which passport to retain.

This would fly directly in the face of section 20 of our Constitution which is entrenched in the Bill of Rights and would therefore not only be unconstitutional but would also be very bad in Law and specifically Administrative Law.

The Minister of Home Affairs very shortly thereafter

backtracked on this unfortunate statement which had been made by the Director of International Relations and announced that the Government did not have any plans in the pipeline to amend the Citizenship Legislation in any way. Hopefully this status and statement will perpetuate.

In the Global Village that we live in it is necessary to be mobile in order to succeed in business and a second or further passport is an asset in affording such mobility and should therefore be welcomed.

Primarily, as a South Africa citizen, our loyalty lies with South Africa and that right should never be placed in any form of a constitutional dilemma.

Advice to anyone who is contemplating taking up citizenship of another country is to consult an Attorney specialising in citizenship issues in order to ensure that you protect your rights to the fullest and do not incur an unexpected and surprise loss of status as a result of not taking the necessary steps in this regard. ■

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