

## HR Law Hotline

July 06, 2005

### DUAL CITIZENSHIP FOR PERSONS OF INDIAN ORIGIN

The Union Cabinet of the Government of India recently approved of amendments to the Citizenship Act, 1955 ("**Act**") which provide for the grant of dual citizenship to persons of Indian origin residing in 16 specified countries and holding passports of those respective countries. The Citizenship (Amendment) Act of 2003 ("**Amended Act**") includes a key section titled "Overseas Citizens" which sets out the conditions for eligibility for, and grant of, dual citizenship. The amendments were in response to a longstanding demand by the vast Indian diaspora overseas -- according to a recent study, there are more than 20 million persons of Indian origin residing in about 70 countries abroad<sup>1</sup>.

Section 2 of the Act was amended to include a new clause (ee), which defines an "overseas citizen of India" as a person of Indian origin, who is a citizen of a country specified in the Fourth Schedule to the Amended Act, or a person who was a citizen of India immediately before becoming a citizen of such specified country. The Amended Act therefore provides for reacquisition of Indian citizenship without surrendering the citizenship of any of the specified countries.

### ELIGIBILITY CRITERIA

The 16 specified countries are, in alphabetical order, Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, Netherlands, New Zealand, Portugal, the Republic of Cyprus, Sweden, Switzerland, the UK and the US. The respective laws of these specified countries should also allow dual citizenship. Section 7A(1) of the Amended Act lays down the "condition of reciprocity as may be prescribed" on an application for overseas citizenship.

Under Section 7A of the Amended Act, eligible persons include:

- (a) a person of "full age and capacity" who is of Indian origin and is a citizen of any of the specified countries; or
- (b) a person who was a citizen of India immediately before the commencement of the Amended Act (December 2003), who, on or after such date of commencement, had obtained the citizenship of any of the specified countries; or
- (c) a person who is a minor of such person mentioned in the two previous clauses (a) and (b)..

The Amended Act sets out the parameters for classification of "citizenship by birth" in the amended Section 3 and clarifies that a "person of Indian origin" means a citizen of another country who:

- (i) was eligible to become a citizen of India at the time of the commencement of the Indian Constitution (January 26, 1950) or
- (ii) belonged to a territory that became a part of India after Indian Independence (August 15, 1947) or
- (iii) the children and grandchildren of persons covered under (i) or (ii), excluding however, any person who is or had been at any time a citizen of Pakistan, Bangladesh or any other country which the Indian Government may specify by notification.

Minors born in any of the specified countries may also be eligible for grant of dual citizenship under certain conditions. These include citizenship by descent: if born between January 26, 1950 and 1992 and the father was a citizen of India at the time of the minor's birth, or, if born after 1992, if either parent was a citizen of India at such time. Another condition is registration at the Indian consulate in the relevant specified country within one year of birth, or within one year of the commencement of the Amended Act, whichever is later.

Other categories include persons who apply for citizenship under the amended Section 5, who have been resident in India for 7 years before making such application; persons of Indian origin ordinarily resident in any country or place outside India; persons married to citizens of India and resident in India for seven years prior to such application and minor children of persons who are citizens of India. Such applicants should not be illegal migrants as defined in the Amended Act. Foreign spouses of persons of Indian origin are also not eligible.

### AVAILABLE BENEFITS / PRIVILEGES

Overseas citizens will receive registration certificates, overseas citizens' passports and smart cards. Apart from the emotional comfort of reacquiring citizenship of their country of origin, overseas citizens will enjoy all the facilities extended to non-resident Indians ("**NRIs**"). These include: unhindered travel to and from India minus the formalities attendant on foreign passport holders; no requirement of registration for stay in India; no separate documentation for admission to educational institutions or for employment; parity with NRIs with regard to facilities in economic and financial sectors, such as investment in agriculture and plantation properties, and facilities under housing schemes offered by state governments and government agencies.

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While registered overseas citizens are conferred specific rights by notification by the Indian Government, certain rights otherwise available to a citizen of India are withheld under Section 7B (2) of the Amended Act. Rights denied to overseas citizens include equality of opportunity in matters of public employment; election as President or Vice President of India; appointment as a judge of the Supreme Court of India or any of the High Courts of Indian States; registration as a voter in India; eligibility to be elected as a member of the Lok Sabha (House of the People in the Indian Parliament) or the Council of States, or the State Legislative Assembly or Legislative Council or appointment to positions in public services and posts related to the affairs of the Indian Union or of any Indian State unless by specific appointment by the Indian Government. The overseas citizenship is, therefore, partial in nature.

**Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business**

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- **Daksha Baxi & Rina Kamath**

Source:

- The Citizenship (Amendment) Act, 2003
- The Times of India, Mumbai Edition, June 17, 2005
- Ministry of Overseas Indian Affairs/FICCI release
- Indian Citizenship, Ministry of Home Affairs, Foreigners Division
- Centre for Study of Indian Diaspora, University of Hyderabad
- Indian Embassy release

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