

"I Am Both German and American"

German-Born Adoptees Can Apply For and Obtain Recognition of German Nationality

by William L. Gage

Acquisition of Nationality

There are three basic means by which an individual acquires citizenship: (1) *jus soli* ("right of the soil," i.e. by virtue of being born within the geographical boundaries of a country); (2) *jus sanguinis* ("right of blood," i.e. by being born to parents who are themselves citizens of a country); and (3) naturalization (a term used generally to refer to any acquisition of citizenship after birth).

Countries vary as to whether they recognize *jus soli*, *jus sanguinis* or both means of birth-acquired citizenship. The United States recognizes both. Most every country also allows foreign-born individuals to become citizens thereof through the process of naturalization. Such post-birth acquisition of citizenship usually entails that the petitioner meet certain specific requirements, such as a minimum period of residency within the country, and often includes the swearing of allegiance to the country of naturalization and/or the renunciation of any former allegiances, e.g., in order to be naturalized. Typically, there is no distinction drawn between naturalized citizens and citizens-by-birth with respect to the rights, privileges and responsibilities associated with citizenship.

Dual nationality is a long-recognized international legal concept that arises when an individual obtains citizenship in more than one country under any of the foregoing principles. An example of one means of obtaining dual nationality is when a child is born to parents who hold citizenship in different countries; another example is when a child of a mother who is a citizen of one country that recognizes *jus sanguinis* citizenship is born in another country that recognizes *jus soli* citizenship (e.g., when a foreign national gives birth on U.S. soil, the child

is considered to be a U.S. citizen). In both these cases, acquisition of dual-national status is deemed "involuntary" under U.S. law.

Another means of acquiring dual nationality is by naturalization. Under U.S. law, however [§§349(a)(1) and (2) of the Immigration and Nationality Act of 1952, as amended], such "voluntary" acquisition of dual-national status via naturalization in a foreign country could be construed as an act designed to renounce one's U.S. citizenship and, as such, an individual could face the possibility of involuntary expatriation (loss of citizenship) as a result. (Thus is drawn the distinction between "voluntary" and "involuntary" acquisition of dual nationality.)

Obviously, a German-born adoptee is a German citizen at birth under *both* principles of birth-acquired nationality (assuming, of course, that his/her birth mother was a German national and the birth occurred on German soil). The question then becomes, whether that nationality is automatically lost by virtue of adoption by foreign nationals and/or any subsequent naturalization process in the adopting parents' country-of-citizenship.

No Automatic Loss of German Citizenship

According to Therese Keelaghan-Silvestre, writing in an article entitled "Dual Nationality and the Problem of Expatriation," published in the Winter 1982 issue of the *University of San Francisco Law Review* (pg. 312), "German law provides that naturalization of a German national in a foreign country does *not* result in loss of German citizenship *if a written authorization to retain German nationality is obtained from German authority* [emphasis supplied]."

In fact, German law provides only *one* circumstance



under which a German-born adoptee *automatically* loses his/her German citizenship, *i.e.*, when the adoption of the German-born child by foreign nationals *in and of itself* serves to confer the foreign nationality upon the child. In other words, if, in the case of a German-born child who is adopted by Americans, the act of adopting the child alone were sufficient to confer American citizenship upon the child, then the child would lose his/her German citizenship. However, American law does not so provide; any foreign-born child who is adopted by Americans must be subsequently naturalized in order to become an American citizen. Thus, since being adopted by Americans is, *in and of itself*, insufficient to result in obtainment of *American* citizenship, it is also insufficient to result in the loss of one's *German* citizenship.

Why Bother?

The question might reasonably be asked, "Why should I bother? What purpose is served by becoming a dual national?" The answer lies only within yourself, but a number of factors should be considered before one makes the decision to apply or not to apply for recognition as a German national.

In the first place, it is your right. You were born a German and you have the right to be so recognized. You never asked to be adopted, you never asked to be adopted by foreigners, and, presumably, you never renounced your German citizenship. Thus, you have a right to be recognized as a citizen of Germany, and no other reason is really necessary.

More practically, however, being recognized as a citizen of another country can have distinct advantages under certain circumstances. To take a somewhat unrealistic and extreme example, if you were flying somewhere and the airliner were hijacked by terrorists intent upon targeting Americans for violence, it would be to your advantage to be able to show a German passport. Realistically, possessing German citizenship would make it possible for one to emigrate to Germany, or to live and work in another European Community (EC) nation without the burden of having to obtain residence visas and/or work permits. If, for example, one worked for a company with offices in Germany, one could more easily relocate to and work in Germany than one's American co-worker.

Applying for Recognition as a German National

I first wrote to the German Consulate in New York

to ask whether or not I had, as a result of becoming an American citizen, lost my *German* citizenship in 1978. In his reply, the Consular Attach said, in part, that "this Consulate General is not the proper authority to determine, if you were once a German citizen or not [or, if so,] if you lost [your German citizenship] somewhere along the line." I was then instructed to fill out an enclosed form, have it notarized and submit it, along with notarized copies of my adoption papers, birth and Naturalization certificates, to authorities in the city of my birth.

In reply to a similar inquiry in Germany by Christa Hertgen, the birth mother of Kathy Hearne (see Issue #6 of *GD*), representatives of the Interior Ministry and the *Standesamt* in Düsseldorf both suggested that a German-born adoptee who was adopted by Americans and subsequently naturalized "probably" retained his/her German citizenship, and might very well be a dual national; both stated unequivocally, however, that the question must be presented in some formal way to an authoritative body in Germany.

Such presentation requires that one obtain the proper form (*Antrag auf Ausstellung eines Staatsangehörigkeitsausweises*) from the German Embassy or Consulate nearest your residence and fill it out. The completed form, along with documentary evidence to support one's application for recognition as a German national (*e.g.*, birth certificate and/or passport), is then submitted to the issuing consulate, and the paperwork is then forwarded to the appropriate officials in Germany, who will make a determination and subsequently notify the consulate, which will, in turn, notify the applicant-adoptee. (I submitted my own application on July 1, 1992, and received the reply thereto on September 15, 1992, exactly 2½ months later.)

The form requires one to provide information regarding the place and date of birth, as well as a residence chronology, for oneself and one's natural parents (or, in the case of an "illegitimate" birth, just one's mother). Such information is also required to be provided for one's grandparents if they were born after 1914; otherwise, these data may be omitted. (Clearly, however, for a German-born adoptee, at least, completion of the form itself virtually requires that one search!)

When the *Staatsangehörigkeitsausweis* is received by the Consulate from Germany, a fee (DM 50 in my case) will be assessed of the applicant prior to issuance of the certificate.