

DUAL MEXICAN-AMERICAN NATIONALITY: A VEHICLE TO INVESTMENT

Through the vehicle of dual Mexican and United States Nationality, real property can be owned in Mexico. This article will attempt to answer some of the basic and common questions concerning "Natural" dual Mexican-American Citizenship. "Natural" dual citizenship, hereinafter referred to as dual citizenship, is dual citizenship by birth rather than by any method of naturalization. This article is not designed to uncover a vehicle to hidden "riches," available to persons who have children born in Mexico, but to illustrate the possible advantages of being a citizen of two countries. The treatment of Mexican business and finance is thus necessarily brief. Mexico has been chosen mainly because many people have a vague awareness of its investment situation. The social advantages postulated are not meant to be peculiar to Mexican-American dual Nationality.

Before answering the questions it is necessary, in way of background, to differentiate between the words "Nationality" and "Citizenship" as used in Mexico and the United States. Under United States law a national and a citizen are the same.¹ A National is a citizen of the United States.² These words are used interchangeably.

In Mexico, however, this is not the case. Mexican citizenship is an extension of Mexican Nationality.³ A Mexican *National* is one born in Mexico or naturalized.⁴ The Mexican *Citizen* is a Mexican National who has reached the age of 18 years and is married, or not married and reached the age of 21 years, and has an honest means of livelihood.⁵ A Mexican Citizen can vote, run for public office, engage in public political discussion, and exercise the right of petition. This distinction becomes important later when considering actions which might cause loss of Mexican Nationality or Citizenship or both.

What is a dual national?

When two countries recognize that a person may have and ex-

1. 8 U.S.C. § 1401 (1952).

2. 8 U.S.C. § 1101 (22) (1952).

3. J. WHELESS, *COMPENDUM OF THE LAWS OF MEXICO*, Arts. 30-34 (2d ed. Thomas Law Book Co. 1938) [hereinafter cited as *Wheless*].

4. *Id.* Art. 30.

5. *Id.* Art. 34.

ercise rights of nationality in each of the countries and be subject to the responsibilities of both, that person is a dual national.⁶

Why Mexico?

Close proximity is probably the major consideration. Mexico's location relative to the United States makes it easily accessible. Also, Mexico's Constitution is patterned after that of the United States and affords similar civil rights.⁷ Basically, Mexico affords a relatively safe choice by not being so extremely different from the United States.

What are the advantages for the parents of a dual Mexican-American National?

Parents of a dual Mexican-American National can own property in Mexico through their child. Under the Mexican Civil Code the parents are the legal representatives of the child, and as such may buy property and invest in his name.⁸ With respect to property rights, the parents are the lawful representatives of their children and have legal administration of the child's property. In Mexico, real property and personal property of minors are divided into two classes while under parental power: (1) property acquired through the child's labor, and (2) property otherwise acquired. Property of the first class is one hundred percent the child's to use and enjoy as he wishes. In property of the second class, ownership is also in the minor, but one half the use and enjoyment (usufruct) belongs to the parents. In this class the best interests of the child are of paramount concern. Parents can allow the land to be leased up to five years and rented for two years without court permission. Permission of the court might be necessary to extend these periods or to sell the land.⁹ This is to insure protection of the interests of the child. During minority the parents hold the right to exercise all real, personal, and possessory actions. They are considered a party in every litigation and receive all the fruits of any investments as would Mexican Nationals.¹⁰

6. *Tomoya Kawakita v. U.S.*, 343 U.S. 717 (1951).

7. Interview with Ignacio A. Pesqueira, Consul de Mexico, in San Diego, California, Sept. 1969; WHELESS Art. 1.

8. WHELESS ART. 233; CIVIL CODE OF THE FEDERAL DISTRICT AND TERRITORIES OF MEXICO, Arts. 425-427 (1934) (Baker, Voorhis and Co. Inc., 1950) [hereinafter cited as MEX. CIV. C.].

9. WHELESS ART. 234; MEX. CIV. C. Arts. 428-437.

10. MEX. CIV. C. Arts. 989-990.

The usufruct, referred to above, becomes extinct upon the attainment of majority of the child.¹¹ This does not, however, jeopardize the parents "investment" by rendering them vulnerable to irresponsible actions of their child. The Mexican Civil Code provides that any real or personal property received by donation or inheritance must be handled in accordance with the directions of the donor.¹² Therefore, the parents could protect themselves by including in any deed of gift the fact that their permission is necessary for any transactions involving property bought by them for the child. As the legal representative of their child, parents of a dual Mexican-American National may enjoy his economic advantages.

What are the advantages of dual Mexican-American Nationality?

First, there are financial advantages of real property ownership. Only Mexican Nationals have the right to acquire the ownership of land, water and their accessories in the Mexican Republic. This particularly applies to the prohibited zone of one hundred kilometers along the frontiers and fifty kilometers along the seashores.¹³ There is much undeveloped land in these areas as well as in the interior of Mexico. Further, the price of land has been cheap by United States standards.

In addition, as a Mexican Citizen, the Dual National could freely take advantage of Mexico's lucrative savings deposits.¹⁴ These include the following possibilities: First, there is a return on the investment of 6 percent if the money is left in the bank for at least two years. Second, there are time deposit certificates, which involve pesos only, with no taxes. Those pesos, in the bank for up to two years, will earn from 7 to 8 percent and bonds bought with pesos earn 9 percent. Third, there are financial certificates which involve a minimum investment of 5000 pesos from two to ten years. On a two year investment one earns 9.625 percent and up to 10.6 percent for a ten year investment. However, financial certificates are taxed by the Mexican Government; so after taxes one would realize from 9.325 percent per year to 10.07 percent per year. These investment plans are available to non-Mexican

11. WHELESS ART. 235; MEX. CIV. C. Arts. 438-442.

12. WHELESS ART. 234; MEX. CIV. C. Arts. 428-437.

13. WHELESS ARTS. 27 and 841.

14. Interview with a Vice President, National Bank of Mexico, in Tijuana, B.C., Mexico, Sept. 1969.

Citizens, but United States Citizens must pay income taxes on all foreign source income.¹⁵ Thus being a dual National would afford the child the opportunity to leave his income in Mexico and invest it in real estate and business.

The many ramifications inherent in Mexican corporations are beyond the scope of this article. It is enough to say that the advantage of corporate investment is open to a dual Mexican-American National, while for a foreigner it is limited. As in the United States, stock ownership in Mexico is akin to ownership of the property of the corporation. Under Article 27, of the Mexican Constitution,¹⁶ direct ownership of land in the prohibited zone is not possible for foreigners. Foreigners cannot control more than 49 percent of the stock in corporations. To acquire any stock up to 49 percent the foreigner must sign a document before the Secretariate of Foreign Relations submitting his interests solely to the jurisdiction of Mexico. This is an exception to a provision in the Civil Code which states that corporations which are allowed to own property in the prohibited zone shall have set forth in their articles of incorporation and on the stock certificates a prohibition of foreign members.¹⁷ The rationale behind this rule is that Mexico desires Nationals only to occupy the frontier and this provides a protection against armed invasion. The exception provides for needed funds while limiting control. Being a dual Mexican-American National definitely gives one economic advantages.

Social advantages might be present in addition to economic advantages. It is a common theory that social and political tensions are brought about by the lack of social awareness and understanding between different ethnic groups, and are a basis for many international disputes. In point perhaps, are the ever changing social and political conditions in Latin America, which often bring about commercial and diplomatic problems. The endless international disputes, though they may not bear directly upon the understanding, or lack thereof, between Mexicans and Americans, do illustrate the problems which dual nationality could help prevent. This could be accomplished through dual nationality in two ways. First, the simple fact that a person is appraised of his dual status might create in him an awareness of both of his cultures sufficient enough for him to encourage peaceful means of settling issues.

15. INT. REV. CODE OF 1954 § 862.

16. WHELESS ARTS. 27 and 841.

17. WHELESS ARTS. 831-836.

Secondly, the likelihood that a dual national would be economically involved in both countries would encourage him to advocate peaceful co-existence. It is apparent that dual nationality could afford one a broader basis for understanding and appreciating the viewpoints of others.

How might one obtain dual Mexican-American Nationality for his child?

Dual status is obtainable by giving birth in Mexico or through a process of naturalization; our concern here is with the former. The first step in this process is to obtain a Mexican physician.¹⁸ This is obviously, a highly personal matter and of great importance to prospective parents. There are a number of qualified physicians in Mexico, and lists are obtainable at most American Consulates. Also, it is possible to be referred to Mexican doctors through doctors in border area towns and hospitals, such as in San Diego, California. Usually, there are cooperative medical exchanges across the borders which give doctors contact with their Mexican counterparts. Mexico has a large medical school in Guadalajara, and many fine physicians can be found there. It is important to remember that there are many healthy Mexicans, and that the United States does not have a monopoly on healthy children at birth.

Upon birth in Mexico, as in the United States, a birth certificate must be filled out and filed. This is accomplished by presenting the child before the civil registrar at his office or in the house where the child is born.¹⁹ If there is no registry where the child is born the parent must present the child to a municipal authority (*i.e.*, mayor, or other local elected officer) who will issue the proper certificate. The father must then present the certificate to a registrar within fifteen days after birth, or in his absence the mother must do so within forty days. There are civil registers (*Registro Civil*) in all towns of any size.²⁰ The civil register is analogous to a hall of records. The registrar has the duty to attest the records of civil status and to register the records relating to birth, adoption, guardianship and emancipation, marriage, divorce, death and loss of legal capacity to administer property.²¹

18. It is necessary to make arrangements for a Mexican physician, since most American physicians are not licensed to practice medicine in Mexico.

19. *WHELESS ARTS*. 172-176.

20. *Id.*

21. *Id.*

What are the rights of a dual Mexican-American National in Mexico other than the advantages discussed previously?

Stated simply, his rights are the same as those of any Mexican.²² Those who are born in the territory of Mexico, whatever be the nationality of their parents, are Mexican Nationals.²³ All Mexican Nationals shall enjoy the rights under Articles 1-28 of the Mexican Constitution.²⁴ Generally, these civil rights are similar to those enjoyed in the United States, though they have not reached the sophistication which time and trial have accorded rights under the Constitution of the United States. Mexican Constitutional guarantees can only be suspended in cases of invasion, grave disturbance of the public peace, or other disturbances which may place society in danger. Suspension shall not occur with respect to a specific individual but shall be invoked by general measures only and applied uniformly throughout Mexico.²⁵ In Mexico, a dual Mexican-American National is a Mexican.²⁶

What effect does dual citizenship have on United States Nationality?

Persons born outside of the United States and its possessions, of parents both of whom are citizens of the United States and at least one of whom has had a residence in the United States, prior to the birth of such person, shall be a national and citizen of the United States at birth.²⁷ But for one exception, there is no unusual effect concerning the rights of a dual Mexican-American National in the United States.

This exception involves the loss of United States Citizenship specifically concerning dual nationals. By staying *exclusively* in Mexico for a period of three years a dual Mexican-American National would theoretically evidence the renunciation of his United States Citizenship. This three year period must be continuous after reaching the age of 22 years,²⁸ and does not apply if one is em-

22. Interview with Ignacio A. Pesqueira, Consul de Mexico, in San Diego, California, Sept. 1969.

23. WHELESS ART. 30.

24. WHELESS ARTS. 1-28.

25. WHELESS ART. 29.

26. Interview with Ignacio A. Pesqueira, Consul de Mexico, in San Diego, California, Sept. 1969.

27. 8 U.S.C. § 1401(a)(3) (1952).

28. 8 U.S.C. § 1482 (1952).

ployed by the American Government.²⁹ This renunciation also does not apply if one is disabled in American Service; or is working for an American company with its principal place of business in the United States; or cannot return to the United States because of his health or that of his family. A dual national may attend an educational institution abroad, above the level of a prep school, not to exceed five years.³⁰ If the dual national has spent ten years in the United States while under 21 years of age, and is a dual national by birth, instead of by naturalization, he may live abroad in order to reside with his spouse or children.³¹ This would involve a dual Mexican-American National who married a Mexican National and lived in Mexico.

Additionally, work or research which, in the opinion of the Secretary of State, will benefit either the United States, or the spouse or children of the Dual National, will allow him to remain in Mexico without jeopardizing his United States Citizenship.³² A spouse and children of a person in any of the above categories are also exempt from the three year provision. As with the restrictions to be discussed below, residency requirements have been greatly qualified. The author is unable to locate any cases where a citizen by birth was expatriated because of foreign residence alone. Either the cases involve a naturalized citizen, or a citizen by birth who had evidenced other acts of renunciation in addition to prolonged absence. This, and the broad expanse of the above exceptions, plus the recent decisions of *Afroyim v. Rusk*,³³ and *Bellei v. Rusk*,³⁴ make expatriation in the absence of definite renouncing acts improbable. Though not specifically holding the residency requirements of 8 U.S.C. § 1482, concerning dual nationals, unconstitutional, the *Bellei* case did hold the residency requirements of 8 U.S.C. § 1401(a)(7), concerning other United States citizens, unconstitutional. The district court in *Bellei* held further, that once citizenship is recognized or conferred, Congress cannot remove it; the citizen, natural or naturalized, must abandon it voluntarily. Considering this, it is the opinion of this author that 8 U.S.C. § 1482 will not stand a constitutional test.

29. *Id.* § 1485(1).

30. *Id.* § 1485(a).

31. *Id.* § 1485(8).

32. *Id.* § 1486(2).

33. 387 U.S. 253 (1967).

34. 296 F. Supp. 1247 (1969), Now *Bellei v. Rogers*, 90 S. Ct. 69 (1969), was argued before the Supreme Court on 15 Jan. 1970.

Are there additional duties and obligations imposed by the respective countries of which a dual national should be aware?

Both Mexico and the United States impose obligations on their nationals, violation of which could result in loss of nationality. It must be remembered that Dual Nationals in both countries are considered nationals of each.

Mexicans must serve in the national guard, defend the independence, the territory, the honor, the rights and the interests of the fatherland as well as domestic tranquility and order, and pay taxes.³⁵ Failure to fulfill these obligations could result in a loss or suspension of Mexican CITIZENSHIP—recall the difference between citizenship and nationality in Mexico—and could involve a prison sentence.³⁶

Mexican *Nationality* is lost by voluntary acquisition of a foreign nationality, or by accepting or using nobiliary titles which imply submission to a foreign state.³⁷ Being born of American parents in Mexico, and thus having American Nationality also, is not considered a voluntary acquisition of a foreign nationality.³⁸

A United States Citizen will lose his citizenship by declaring allegiance to a foreign state; by voluntarily serving in a foreign armed service without permission from the American Government; by accepting a job, political or otherwise, in a foreign country which demands citizenship of that country; by voting in a foreign election; by draft evasion, by being outside of United States jurisdiction; by formal administrative renunciation; or by an act of treason.³⁹

How does one maintain dual nationality?

Formal renunciation and treason are of no particular importance to a discussion of *maintaining* dual nationality. The remaining restrictions, though seemingly prohibitive to maintaining

35. WHELESS ART. 31.

36. WHELESS ARTS. 37 and 38.

37. This Constitutional provision is repeated in article three (3) of the Law of Nationality and Naturalization, except that this law qualified the rule to the effect that the rule does not apply where acquisition of foreign nationality took place; (I) by operation of law (II) by mere residence, or (III) as a condition to obtain work or keep it. S.A. BAYTCH AND J.L. SIQUEIROS, CONFLICT OF LAWS: MEXICO AND THE UNITED STATES 33 (Univ. of Miami Press, 1968).

38. *Id.*

39. 8 U.S.C. § 1481(a) (1952).

dual nationality, have been greatly modified by court decisions since their passage in 1952, particularly as relates to dual nationality.

"[A] dual national can *only* lose his American Nationality by his voluntary act subsequent to attainment of majority."⁴⁰ Thus it appears that during minority a dual national is safe from loss of his American Nationality. The above proposition should not be relied on heavily, since it has only been enunciated in the case of *Uruza v. Uruza*.⁴¹ In view of the great weight given to voluntariness by the courts, wholesale disregard of the above restrictions, at any time, would be foolhardy.

Voluntariness is a large factor consistent through the various decisions concerning the above restrictions. "Status as . . . a national of the United States would be deemed to continue unless the citizen had been deprived of such status by his voluntary action."⁴² Taking an oath of allegiance in conjunction with compulsory service is presumed to have been involuntary.⁴³ In the case of *Katsumi Yoshida v. Dulles*,⁴⁴ conscription of a dual citizen into the "other" country's army was held involuntary and not to affect the dual citizen's expatriation from American citizenship. As far as serving or working for a foreign government is concerned, voluntary renunciation is again the key.⁴⁵ If a dual national takes or seeks a political office voluntarily, which in its performance would require absolute allegiance to Mexico, to the necessary exclusion of allegiance to the United States Government, this would result in expatriation.⁴⁶ The final act of possible expatriation is voting in foreign elections. This, too, must be a voluntary act evidencing renunciation.⁴⁷ Thus it appears that a Mexican-American dual National should not vote for candidates or policies in Mexico which are in opposition to those of the United States. The United States Supreme Court has said that actions by a dual national must show unequivocal renunciation to result in

40. *Uruza v. Uruza*, 67 N.M. 304, 355 P.2d 123, 125 (1960); 8 U.S.C. §§ 1481 and 1482 (1952).

41. *Id.*

42. *Gensheimer v. Dulles*, 117 F. Supp. 836 (D.C.N.J. 1954).

43. *Moldoveanu v. Dulles*, 168 F. Supp. 1 (D.C. Mich. 1958).

44. 116 F. Supp. 618 (D.C. Hawaii 1953).

45. *Insogna v. Dulles*, 116 F. Supp. 473 (D.C.D.C. 1953); *Kenju Kamada v. Dulles*, 145 F. Supp. 457 (D.C. Cal. 1956); *Fletes-Mora v. Rogers*, 160 F. Supp. 215 (D.C. Cal. 1958).

46. *Insogna v. Dulles*, *supra* note 45.

47. *Takehara v. Dulles*, 205 F.2d 560 (1953); *Takano v. Dulles*, 116 F. Supp. 307 (D.C. Hawaii 1953).

loss of American Nationality.⁴⁸ As a corollary to this, the Supreme Court has stated that conduct of the Dual National which is required by one country, cannot reasonably be construed as an act of renunciation in the other country.⁴⁹

If a son is born, what do the military obligations entail and can both countries be satisfied?

Military service is required by both the United States and Mexico. From the previous discussions of obligations and loss of the respective nationalities, this problem does not seem insolvable. Mexico does not consider the American draft as a voluntary vehicle to armed service,⁵⁰ and loss of nationality must result from a voluntary submission to the foreign government.⁵¹ The Mexican Constitution states that voluntary service in a foreign army could result in only a loss or suspension of citizenship, not in a loss of nationality.⁵² This suspension would last up to one year and could result in a fine.⁵³ Consequently, a dual Mexican-American National should wait to be drafted into the American Service. Such a course would not be indicative of submission to a foreign Government. In view of the current proposal for the establishment of a volunteer army in the United States, this problem might become moot.⁵⁴

One year of service is required in the Mexican National Guard.⁵⁵ This is required after one turns 18 years old.⁵⁶ Relying on *Urzua v. Urzua*,⁵⁷ the dual Mexican American National could enlist in the Mexican National Guard before reaching 21 years of age. As stated above, *Urzua, supra*, held that one must reach majority before he could lose his American citizenship. Considering the great weight given to voluntariness by United

48. *Afroyim v. Rusk, supra* note 33.

49. *Jalbuena v. Dulles*, 254 F.2d 379 (1958); *Mandoli v. Acheson*, 344 U.S. 133 (1952).

50. Interview with Ignacio A. Pesqueira, Consul de Mexico, in San Diego, California, Sept. 1969.

51. WHELESS ART. 37.

52. *Id.*

53. WHELESS ART. 38.

54. G.E. REEDY, *WHO WILL DO OUR FIGHTING FOR US?* 47 (World Publishing Co., N.Y. 1969).

55. Interview with Ignacio A. Pesqueira, Consul de Mexico, in San Diego, California, Sept. 1969.

56. *Id.*

57. 67 N.M. 304, 355 P.2d 123 (1960).

States Courts, and the fact that *Urzua, supra*, presently stands alone, such a course is not recommended. To date this apparent conflict between voluntariness and minority has not been resolved.

There are, however, two better alternatives. American courts do not hold foreign conscription alone as a renunciation of citizenship.⁵⁸ Thus, one could wait to be drafted hoping for no conflict with the American draft. The second and safest alternative is for the dual National to inform the American State and Defense Departments of the situation and seek permission to spend time in the Mexican National Guard.⁵⁹ This permission seems to present no problem.⁶⁰ Further, the present lottery system does not subject Americans to the draft until they reach the age of 19, and Mexican service could be over by this time.⁶¹ Thus, with planning, a male can safely satisfy the military requirements of both countries without conflict. In light of the above, the military service question does not appear to hinder the maintenance of Mexican-American Dual Nationality.

Does a dual Mexican-American National have to choose one country or the other upon majority?

By now the answer to the question should be apparent. It is not legally required in the United States that a citizen by nativity (birth) elect between dual citizenship upon or after reaching majority.⁶² However, it must be remembered that some acts can be viewed as an election.⁶³

Mexican law states that a dual citizen *may* elect to renounce his Mexican Nationality, "provided that it first be proved . . . that he has had his habitual and principal residence for the past ten years in the other state. . . ."⁶⁴ Mexico, like the United States, seems to regard election as a vehicle to renunciation of nationality, not as a requirement to keep it.⁶⁵ Except for the requirement previously discussed, no additional residence requirements are re-

58. *Supra* note 43 and 44.

59. *Cafiero v. Kennedy*, 262 F. Supp. 140 (D.C.N.J. 1966).

60. *Id.*; *supra* note 39.

61. *Supra* note 7.

62. *U.S. v. Rangel-Perez*, 179 F. Supp. 619 (D.C. Cal. 1959); *Takehara v. Dulles*, *supra* note 47; *Mandoli v. Acheson*, 344 U.S. 133 (1952).

63. *U.S. v. Rangel-Perez*, *supra* note 62 at 627.

64. WHELESS ART. 828.

65. CONFLICT OF LAWS: MEXICO AND THE UNITED STATES, *supra* note 37 at 34.

quired of a dual Mexican-American.

What will be the status of a dual Mexican-American National's children—in this case the parents grandchildren?

The children of dual Mexican-American Nationals are also dual Mexican-American Nationals wherever they are born.⁶⁶ Children of a Mexican father and a foreign mother or children born of a Mexican mother and an unknown father—includes known fathers of other nationalities—are Mexican Nationals.⁶⁷ Mexican women were accorded full rights as citizens in 1954.⁶⁸ Children born of parents, one of whom is an American Citizen,—a dual Mexican-American National—are American Citizens at birth.⁶⁹ Dual nationality can be perpetuated, in both countries.

Conclusion

The above observations indicate that the acquisition and retention of dual Mexican-American Nationality is both feasible and advantageous. The economic advantages of land ownership and potential profits from Mexico's lucrative savings plans are attractive enough for most anyone. The social advantage of providing a broader base with which to identify is an added incentive.

The intent of this article, in addition to fulfilling its title, is to suggest a possible alternative to the isolationism fostered by a single nationality. To most Americans the world outside the United States is unintelligible and gains exposure generally through books, the news media, or "whirlwind" traveling. So far, these vehicles have done little to foster the understanding so seemingly necessary in a ever changing world.

Through dual nationality, regardless of the initial motives for acquisition, the conclusion seems to follow that the dual national will have a greater stake in the need for world realization. It is intriguing to imagine what would happen if many people around the world acquired multiple nationalities. The fading of international boundaries, brought about by an uncontrollable volume of humanity with multiple nationalities, and a resultant demand

66. WHELESS ART. 30.

67. *Id.*

68. Interview with Lic. Jorge Mario Magallon, Professor at University of Mexico Law School, in San Diego, California, November 1969.

69. *Supra* note 1.

for meaningful world laws, might be a distinct possibility. Though only dual Mexican-American Nationality is discussed, the possible interest in acquiring other combinations of nationality perhaps has been kindled.

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