



INDIAN GOVERNMENT BACKS DOWN OVER PASSPORT SURRENDER RULE, BUT WILL THE NEW GUIDANCE LEAD TO FURTHER CONFUSION?

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As a result of pressure from the overseas Indian, the Indian government has backed down. Here is the latest guidance from the Indian Consulate in New York [website, \[http://www.indiacgny.org/php/showHighLightDet.php?h_id=144&key\]\(http://www.indiacgny.org/php/showHighLightDet.php?h_id=144&key\)](http://www.indiacgny.org/php/showHighLightDet.php?h_id=144&key).

"In supersession of the rules regarding Surrender/Renunciation Certificate the Government of India have decided as follows:-

Persons of Indian Origin (PIOs) who have already acquired foreign citizenship voluntarily till May 31, 2010 shall cease to be Indian citizens upon their acquiring foreign citizenship. However, such persons are required to surrender their Indian passports, whether valid or expired, to the Indian Consulate so that the passport is not misused. Such persons are not required to pay any fee under the Citizenship Act. They will have to pay US\$ 20/- for Surrender/Cancellation of the passports.

Those Indian citizens, who intend to acquire foreign citizenship on or after 1st June 2010 will have to submit a declaration of renunciation of their Indian citizenship with payment of US\$ 175/- as per fee structure under Rule 23 of the Citizenship Rules, 2009.

The issue of refund of any part of renunciation fee already paid by applicants till 31 May 2010, if applicable, has been taken up with the Government of India. The decision when received will be uniformly applied to those concerned and the information will be put on our website when available. Meanwhile no email/phone queries will be entertained."

The first point is consistent with what I wrote in my prior [blog](#). One ceases to be

an Indian citizen upon taking up the citizenship of another country under Section 9 of the Indian Citizenship Act, 1955. A policy requiring renunciation after one automatically ceased to be an Indian citizen made no sense, and then retroactively penalizing the individual for failing to renounce Indian citizen was extremely unfair. On the other hand, those who have taken up US citizenship or a citizenship of another country will still need to surrender their passports, albeit for a lesser fee. This will still result in hardship if the person who got US citizenship decades ago has lost the Indian passport.

It is the second point in the new policy that is most puzzling. It says that those who intend to take up the citizenship of another country after June 1, 2010 must first submit a declaration of renunciation of citizenship under under Rule 23 of the Citizenship Rules, 2009, which stem from Section 8 of the Citizenship Act. Section 8 provides that a citizen of India may renounce Indian citizenship. Rule 23 is reproduced below:

23. Declaration of renunciation of citizenship.- (1) A declaration of renunciation of citizenship of India under sub-section (1) of section 8 shall be made in Form XXII, and shall state-

(a) under which provisions of law, the applicant is an Indian citizen; and

(b) the circumstances in which the applicant intends to acquire foreign citizenship.

(2) On receipt of the declaration of renunciation of citizenship of India under sub-rule (1), an acknowledgement in Form XXIII shall be issued by an officer designated under rule 38.

(3) The declaration shall be registered in the Ministry of Home Affairs, Government of India.

(4) The Central Government in the Ministry of Home Affairs shall maintain a register in Form XXIV containing the names of persons whose declaration of renunciation of citizenship are registered under this rule.

Rule 23 requires an Indian citizen to renounce Indian citizenship while intending to take up the citizenship of another country, and not after s/he becomes a citizen of another country. How will this play out? What if the US citizenship does not pan out for some reason or is delayed? It quite often happens that one may not become a US citizen, as expected, if a security check has not cleared or if additional evidence is requested. US citizenship may also be denied if an Indian disrupted continuity of residence by spending more than 180 days outside the US during the qualifying 5 year or 3 year period, and is unable to rebut the presumption of abandonment. Will this person become

stateless between the renunciation and the acquisition of the new citizenship? Will this person be deprived of using his or her Indian passport for travel during this period? What if the renunciation has been effectuated and the person is never granted US citizenship? Strangely, the new policy has been differently announced on the Indian Consulate's website in San Francisco, which does not incorporate the second point, <http://www.cgisf.org/>. So what is the correct new policy?

I applaud the Indian government for backing down and eliminating the potential hardship the prior misguided policy would have caused to thousands of overseas Indians who had become US citizens several years ago. Yet, the fact that people may have to surrender lost passports of many years, even decades ago, will still cause hardship. On the other hand, the new policy of requiring renunciation prior to an Indian becoming a citizen of the US or another country, if this is the case, requires immediate clarification as it will cause even more hardship and uncertainty than the withdrawn policy.

Update – 6/3/10

Since the publication of this post, the Indian Consulate in New York has added the following sentence after the first two points in its new guidance: "They may fill the [Form](#) and either send it by mail or bring personally to the Consulate." A perusal through the form suggests that a person is required to renounce Indian citizenship after acquiring the citizenship of the US or another country and not before. Thus, it does not seem that one has to renounce Indian citizenship before acquiring the citizenship of another country, and the second point in the new guidance is inartfully drafted on the website of the Indian consulate in New York. Although I still question how one can renounce Indian citizenship when it has ceased to exist (although it is perfectly justified to require the surrender of the Indian passport), it is at least better than requiring someone to renounce Indian citizenship before he or she acquires the citizenship of another country.