Voluntary Relinquishment of American Citizenship a Proposed Definition

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Faced with the question whether an American citizen could constitutionally be deprived of his citizenship for voting in a foreign election, the Supreme Court held in 1958 that Congress could provide for such expatriation as a reasonable means of preventing embarrassment to the United States in its foreign relations.\(^1\) When the same question arose in 1967,\(^2\) the Court overruled its prior decision, declaring that since the fourteenth amendment\(^3\) describes a citizenship “which a citizen keeps unless he voluntarily relinquishes it,”\(^4\) Congress may not forcibly expatriate a citizen. The Court gave no clear indication of the meaning of “voluntary relinquishment,” and there is some doubt whether any acts short of an express, formal renunciation may provide grounds for expatriation.\(^5\)

Justice Black, writing for the majority in *Afroyim v. Rusk*,\(^6\) stated that the Court “agree[d] with the Chief Justice’s dissent in *Perez v. Brownell* . . . that the Government is without power to rob a citizen of his citizenship under § 401(e) [of the Nationality Act of 1940].”\(^7\)

Chief Justice Warren’s dissent in *Perez*, however, appears more limited than the majority opinion in *Afroyim* in restricting the power of Congress to define acts of expatriation. The Chief Justice, after stating that the fourteenth amendment rendered the right to retain United States citizenship immune from the exercise of governmental powers, added that “under some circumstances [the citizen] may be found to have abandoned his status by voluntarily performing acts that compro-


\(^3\) “All persons born or naturalized in the United States . . . are citizens of the United States . . . .” U.S. CONST. amend. XIV, § 1.


\(^5\) The Immigration and Nationality Act of 1952, 8 U.S.C. § 1481(a) (1964), provides for expatriation of a citizen for such acts short of an express renunciation as: (1) obtaining naturalization in a foreign state; (2) taking an oath or declaration of allegiance to a foreign state; (3) serving in the army of a foreign state without permission from the United States; (4) accepting employment with a foreign government, for which position an acquisition of foreign nationality or a declaration of allegiance is required; (5) voting in a foreign political election; (6) desertion in time of war; (7) treason; and (8) departing from the United States in time of war for the purpose of evading the draft.

\(^6\) 387 U.S. 253 (1967).

\(^7\) 356 U.S. 44 (1958).

\(^8\) 387 U.S. at 267.
mise his undivided allegiance to his country." The problem is spelled out clearly by Justice Harlan, dissenting in Afroyim:

It is appropriate to note at the outset what appears to be a fundamental ambiguity in the opinion for the Court. The Court at one point intimates, but does not expressly declare, that it adopts the reasoning of the dissent of THE CHIEF JUSTICE in Perez . . . . [I]t seems instead to adopt a substantially wider view of the restrictions upon Congress' authority in this area. Whatever the Court's position, it has assumed that voluntariness is here a term of fixed meaning; in fact, of course, it has been employed to describe both a specific intent to renounce citizenship, and the uncoerced commission of an act conclusively deemed by law to be a relinquishment of citizenship. Until the Court indicates with greater precision what it means by "assent," today's opinion will surely cause still greater confusion in this area of the law.10

I

THE JUDICIAL APPROACH TO EXPATRIATION: AVOIDING THE ISSUE

An analysis of past expatriation cases serves only to highlight the problem. Such conduct as desertion from United States forces in wartime,11 employment in a munitions factory of an enemy country during war,12 residence abroad for a period of years with no intention to return,13 and voting in a foreign election14 has been dismissed by the Supreme Court as "ambiguous,"15 equivocal,"16 and "in no way evidencing] a voluntary renunciation of nationality and allegiance."17 But the Court has not stressed the facts of the cases; rather, it has concluded that the statutory provisions reviewed18 were so broadly drawn that they embraced conduct that did not necessarily indicate a transfer of allegiance or a renunciation of citizenship.

10 387 U.S. at 269 n.1.
Dissenting in Perez v. Brownell, Chief Justice Warren described as the precise issue whether voting in a foreign election ("invariably involves a dilution of undivided allegiance sufficient to show voluntary abandonment of citizenship,")\(^\text{19}\) not whether the particular vote in question demonstrated voluntary abandonment. He suggested that Congress had employed an overly broad classification encompassing conduct that did not demonstrate voluntary abandonment—the citizen might have voted in a local foreign election merely to choose whether wine or beer should be sold in the town in which he was residing.\(^\text{20}\) In Afroyim, the Court again treated the expatriation issue as more theoretical than factual. It set up the problem in terms of whether Congress had the power to terminate citizenship without the citizen’s voluntary renunciation.\(^\text{21}\)

Where the Court has analyzed the facts, its purpose has been primarily to determine whether a particular renunciatory act was committed voluntarily or under duress.\(^\text{22}\) It has not really considered whether the act in question, if voluntarily committed, could constitutionally be held to have an expatriating effect. Thus, the Court has managed to avoid the task of defining “voluntary relinquishment” of citizenship. The mere recitation of the phrase has been sufficient to strike down provisions of the nationality acts that were drawn too broadly. But since Congressional legislation will not always be susceptible to constitu-

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\(^\text{19}\) 356 U.S. at 75.

\(^\text{20}\) Id. at 76-77. Justice Douglas expressed similar views in his separate dissent. Id. at 83. See also Justice Douglas’s opinion for the Court in Schneider v. Rusk, 377 U.S. 163 (1964), where it was held that living abroad by a naturalized or native-born citizen was no evidence of lack of allegiance.

\(^\text{21}\) [P]etitioner contended that the only way he could lose his citizenship was by his own voluntary renunciation of it. . . . [T]he Government took the position that § 401(e) empowers it to terminate citizenship without the citizen’s voluntary renunciation . . . . The District Court and the Court of Appeals . . . held that Congress has constitutional authority forcibly to take away citizenship for voting in a foreign country based on its implied power to regulate foreign affairs. Consequently, petitioner was held to have lost his American citizenship regardless of his intention not to give it up. This is precisely what this Court held in Perez v. Brownell . . . .

\(^\text{22}\) See Nishikawa v. Dulles, 356 U.S. 129 (1958); Mandoli v. Acheson, 344 U.S. 133 (1952). See also Note, "Voluntary": A Concept in Expatriation Law, 54 COLUM. L. REV. 952 (1954). A possible exception is Kawakita v. United States, 343 U.S. 717 (1952), where the Supreme Court upheld a jury finding that a Japanese of dual nationality, who had committed various acts of allegiance to Japan during World War II, had not intended to renounce his American citizenship and therefore could be found guilty of treason. The case is unique because the petitioner had asserted, in defense to the treason charge, that he had intended to renounce his American citizenship. The Court upheld the jury’s determination that Kawakita’s acts were too equivocal clearly to constitute expatriation under the Nationality Act of 1940. Employment in a privately owned munitions factory was held not to be government employment under § 401(d).
tional attack on the grounds of broadness, a workable definition of "voluntary relinquishment" must be developed for future application.

II

PRELIMINARY CONSIDERATIONS IN DEFINING "VOLUNTARY RELINQUISHMENT"

If the Afroyim rationale is to be respected, any comprehensive definition of "voluntary relinquishment" must, of course, reflect the intention of the person performing the expatriating acts. Intention to relinquish citizenship must be either express or inferred from the voluntary act. If the intent to relinquish citizenship is to be inferred from acts falling short of an express, formal renunciation, then the Court must decide what acts demonstrate an intent to expatriate. It can attack this problem directly, by describing the type of conduct that will result in expatriation, or it can take a case-by-case approach, reserving judgment on any acts not involved in the particular case before the Court.

The case-by-case method, which the Court has frequently employed in approaching difficult problems relating to definition of constitutional standards, seems to be an unsatisfactory method of handling the expatriation issue. In the past, use of the method reflected a need for flexibility and measured change so that the states could adjust to the federal government's presence in areas that previously had been only of state concern. In the expatriation cases, there is no federal-state relationship involved, since expatriation is a matter concerning the federal government and the citizen. Thus, there is no compelling reason to leave the citi-


24 See, e.g., Mapp v. Ohio, 367 U.S. 643, 654 (1961), where the Court, in holding inadmissible in a state court evidence seized in violation of the fourth amendment, explained its long delay in applying federal constitutional standards of admissibility to the states:

Some five years after [Wolf v. Colorado, 338 U.S. 25 (1949)], in answer to a plea made here Term after Term that we overturn its doctrine on applicability of the [Weeks v. United States, 232 U.S. 388 (1914),] exclusionary rule, this Court indicated that such should not be done until the States had "adequate opportunity to adopt or reject the [Weeks] rule." Irvine v. California, [347 U.S. 128, 134 (1954)].

See also Brown v. Board of Educ., 349 U.S. 294 (1955), where the Court, recognizing the difficulties that the local school boards would experience as a result of the school desegregation decisions (Brown v. Board of Educ., 347 U.S. 483 (1954)), remanded the cases to the local district courts to set standards in accordance with local conditions.
zen's rights in doubt. It would be helpful for the Court to inform the citizen of what acts will result in expatriation under current legislation and to provide Congress with clear constitutional standards to assist in drafting new expatriation legislation.

III

A Proposed Definition

A. The Non-Dual National

In the case of a non-dual national, i.e., a citizen only of the United States, any definition of "voluntary relinquishment" that embraces conduct short of acquiring a foreign nationality seems unnecessarily and unfairly broad. For a non-dual national, conduct such as taking an oath of allegiance to a foreign government, working for a foreign government, or serving in a foreign army might indicate a lack of allegiance to the United States and an adherence to a foreign nation. On the other hand, a citizen might intend his adherence to the foreign government to be for a specific political objective short of expatriation. For example, his act of allegiance to a foreign nation may be prompted by religious or philosophic affinity to that nation. An oath of allegiance might be only an oath of support to the foreign nation prompted by the circumstances and lasting only until the circumstances change. Moreover, the described conduct may fall short of a permanent adherence to a foreign na-

25 The State Department has an interest in expatriation since it is responsible for protecting citizens abroad. But the executive branch has great discretion in providing protection in a given set of circumstances. A citizen may temporarily "expatriate" himself, for State Department purposes, by placing himself in a situation that is diplomatically embarrassing for the United States. Since the Department is not compelled to provide protection for every citizen in such circumstances, a narrow formulation of "voluntary relinquishment" of citizenship by the Supreme Court would not necessarily hinder the Department's discretion. Diplomatic assistance could still be refused where a citizen is not deemed to have relinquished his citizenship. Moreover, Congress can assist the State Department by providing penalties for proscribed conduct. See p. 322 & note 43 infra.

26 An express, formal renunciation, however, even without an acquisition of a foreign nationality, should be sufficient, since it clearly indicates an intent permanently to renounce citizenship.

27 The fourteenth amendment precludes treating the native-born non-dual national differently from the naturalized non-dual national. See Schneider v. Rusk, 377 U.S. 163, 165 (1964):

[T]he rights of citizenship of the native born and of the naturalized person are of the same dignity and are coextensive. The only difference drawn by the Constitution is that only the "natural born" citizen is eligible to be President. Art. II, § 1.

28 See note 5 supra.

29 More specifically, Americans who fought in an Israeli-Arab war or in the Spanish Civil War probably did not intend to relinquish their American citizenship.
tionality or a permanent renunciation of American citizenship. In any event, if a citizen truly intends to renounce his citizenship, he will probably first acquire another citizenship rather than risk the perils of statelessness.\footnote{30}

There is a strong policy argument for requiring that a citizen acquire a foreign nationality before he can be declared expatriated. A citizen who is declared expatriated without having acquired another nationality will be rendered stateless. A stateless person "is not considered as a national by any State under the operation of its law."\footnote{31} No state can protect him against any other state.\footnote{32} In addition, a stateless person can be expelled from the state of his original nationality and from any other state, and, under international law, the country that deprived him of his nationality need not readmit him.\footnote{33} The problem of statelessness is sufficiently serious to concern such international organizations as the United Nations, which has suggested that states reexamine their nationality laws with the view of curtailing the number of cases of statelessness.\footnote{34}


\footnote{33} \textit{Id.} at 373 n.73. See P. Weis, \textit{Nationality and Statelessness in International Law} 243 (1956). Weis states:

\textit{Since . . . nationality is the principal link between the individual and international law, and since "the rules of international law relating to diplomatic protection are based on the view that nationality is the essential condition for securing to the individual the protection of his rights in the international sphere," there cannot be any doubt that statelessness is undesirable.}

\textit{Id.} at 166 (footnote omitted). \textit{But see Convention Relating to the Status of Stateless Persons, [1954] Y.B. Human Rights} 369, U.N. Doc. E/Conf. 17/5/rev. 1 (1954), which provides in Article 31: "The contracting states shall not expel a stateless person lawfully in their territory save on grounds of national security or public order." The exceptions, however, may be broader than the rule as "national security or public order" may be interpreted to justify the expulsion of any undesirable.

\footnote{34} The Economic and Social Council of the United Nations adopted, on August 11, 1950, a Resolution on Provisions relating to the Problem of Statelessness (Resolution 319 B III (XI), U.N. Doc. E/1814 (1950)):

\textit{The Economic and Social Council,}

\textit{\ldots . . .}

\textit{Considering that statelessness entails serious problems both for individuals and for States, and that it is necessary both to reduce the number of stateless persons and to eliminate the causes of statelessness,}

\textit{\ldots . . .}

\textit{Invites States to . . . re-examine their nationality laws with a view to re-}
The United States should not add to the problem by enforcing an overly broad policy of expatriation. Even the acquisition of a foreign nationality should not be enough, without more, to constitute expatriation. In many countries, certain acts of allegiance by an alien automatically result in naturalization. Although the international community generally does not recognize the compulsory naturalization of aliens and holds that there must be some specific voluntary act committed by the individual in order for him to acquire a new nationality, a state may formulate rules concerning an implicit acceptance of a new nationality.\(^35\) For example, the Nationality Law of Israel of 1952\(^36\) makes every Jewish immigrant to Israel an Israeli national unless he specifically declares that he does not desire to become one.\(^37\) And in some states acquisition of domicile and entry into government service automatically result in nationality for the individual.\(^38\) Defining "voluntary relinquishment" as any act resulting in the acquisition of a foreign nationality does not take into account whether the citizen intended to acquire the foreign nationality. This definition would cast expatriation as a sanction for the conduct leading to foreign nationality, an unacceptable result under the reasoning of \textit{Trop v. Dulles}.\(^39\) It would

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\(^35\) P. Weiss, \textit{supra} note 33, at 169.

\(^36\) P. Weiss, \textit{supra} note 33, at 242. Weiss states further:

[International law recognizes that] [a]cceptance of the offer [of naturalization] may be explicit or implied. The rule covers, therefore, a wider field than voluntary naturalisation, which requires an explicit \textit{request} by the person wishing to acquire the new nationality.

\(^37\) Id. at 114 (emphasis added).

\(^38\) P. Weiss, \textit{supra} note 33, at 118 n. 7, \textit{quoting} Official Gazette, No. 93, at 22.

\(^39\) Id. at 118-19, \textit{quoting} Official Gazette, No. 93, at 22.

\(^39\) Id. at 101. Until 1939, when the law was changed, aliens acquiring real estate in Mexico and failing to make a declaration of their national origin thereby automatically became Mexican nationals. Orfield, \textit{The Legal Effects of Dual Nationality}, 17 \textit{Geo. Wash. L. Rev.} 427, 440 (1949).

\(^39\) 356 U.S. 86 (1958). Congress had declared that desertion during wartime would result in expatriation. The Court stated that "the deprivation of citizenship is not a weapon that the Government may use to express its displeasure at a citizen's conduct, however reprehensible that conduct may be." \textit{Id.} at 92-93. The decision was based, at least partly, on the holding that expatriation used as a penalty violates the eighth amendment's prohibition against cruel and unusual punishment. "If the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc.—it has been considered penal." \textit{Id.} at 96. Blanket expatriation for any acquisition of foreign nationality may well constitute a penalty under this definition, and therefore may violate the eighth amendment. For distinctions between penal and regulatory measures, see \textit{id.} at 94-99. \textit{See also} Perez v. Brownell, 356 U.S. 44, 78 (1958) (Warren, C.J., dissenting).
also give too much effect to the broad naturalization laws of some foreign states.40

Since intent to acquire a foreign nationality cannot be inferred from every acquisition of new nationality, the Government should have the burden of proving that the citizen engaged in the activity with the intent to acquire the foreign nationality—that is, that the individual knew with substantial certainty that the result of his activity would give him a new nationality. Further, he should be motivated by the desire to acquire a new citizenship and not just by the desire to do service in a foreign army which results in new citizenship.41 Supplemental acts that demonstrate an intent to renounce United States citizenship could be introduced as evidence.42 In order to deter citizens from hindering United States relations abroad, the Government can provide sanctions for this conduct under its powers to regulate foreign affairs and to punish for treason.43 Expatriation is unnecessary.

The best test of whether a non-dual national has relinquished his United States citizenship is whether he has either intentionally acquired the citizenship of a foreign nation or voluntarily and formally renounced his American citizenship. This takes account of the goals discussed—to reflect intent accurately, and to reduce cases of statelessness. The acquisition of a foreign nationality does not necessarily connote a renunciation of American citizenship, although in most cases where a new nationality has been intentionally acquired, the old nationality is rejected, or at least superseded. But the intentional acquisition of such nationality does connote a division of allegiance. In light of the obligations of citizenship, primarily the defense of the homeland against all enemies, a classification that imputes renunciatory intent to all citizens intentionally acquiring a foreign nationality seems justified.44

40 See note 38 supra.
41 Of course, the conduct must be engaged in voluntarily. See Nishikawa v. Dulles, 356 U.S. 129 (1958). See also Note, "Voluntary": A Concept in Expatriation Law, 54 Colum. L. Rev. 932 (1954).
43 Cf. Zemel v. Rusk, 381 U.S. 1 (1965), where the Court upheld the right of the Secretary of State to refuse to issue a passport for travel to Cuba. Although the Court did not pass on the question whether the executive branch can apply criminal sanctions for violations of travel bans, there appears no strong constitutional objection to such sanctions if they are reasonable and established by Congress. Cf. United States v. Laub, 385 U.S. 475 (1967), which, while holding that § 215(b) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1185(b) (1964), does not provide for criminal sanctions for travel to Cuba, left open the question whether Congress can constitutionally provide such sanctions.
44 A citizen becomes a dual national when he obtains a new citizenship without
B. The Dual National

Nationality is primarily based on two systems: descent (jus sanguinis) and place of birth (jus soli). By the rule of jus sanguinis, an individual born of parents of a certain nationality ipso facto acquires the same nationality. By the rule of jus soli, a person acquires the nationality of the country in which he was born. Many nations, including the United States, have rules based on both theories. If a person is born in a state with a jus soli system, and of parents who are nationals of a jus sanguinis state, he acquires dual nationality at birth. Dual nationality may also be acquired through naturalization.

Since the American citizen of dual nationality is also a foreign national and, under international law, has obligations to both countries, unless he renounces one citizenship, some form of allegiance to a foreign state already exists. The Supreme Court has held that the mere observance of this allegiance is not sufficient to expatriate a citizen.

[Dual nationality is] a status long recognized in the law. The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other.

In order to hold that a dual national has voluntarily relinquished his citizenship by an act short of an express, formal renunciation, the Court must find an intent to renounce American citizenship in an act that derogates from the individual's obligations as a citizen of the United States. The test employed must reflect the pressures on the dual national relinquishing the old. Such a citizen "may have and exercise rights of nationality in two countries and be subject to the responsibilities of both." Kawakita v. United States, 343 U.S. 717, 723 (1952). The citizen is subject to conflicting allegiances which may cause both nations to distrust him and perhaps result in international friction. Thus, dual nationality is not something that should be encouraged by holding strictly to the doctrine that a citizen relinquishes his United States citizenship only by an express renunciation. See Flournoy, Dual Nationality and Election, 30 Yale L.J. 545, 693 (1921); Note, Expatriating The Dual National, 68 Yale L.J. 1167 (1959). The United Kingdom, however, revised its Nationality Act in 1948 to provide that a person does not lose his British nationality by the voluntary acquisition of another nationality. See P. Weis, supra note 33, at 195.

See Flournoy supra note 44, at 545.
See note 44 supra.

Kawakita v. United States, 343 U.S. 717, 723-24 (1952) (citations omitted). This doctrine was applied by the court of appeals in Jalbuena v. Dulles, 254 F.2d 379 (3d Cir. 1958), where a dual national residing in the Philippines, who did not know that he was also a United States citizen, took an oath to support the Philippine Constitution in the course of obtaining a Philippine passport.

See Kawakita v. United States, 343 U.S. 717 (1952); Jalbuena v. Dulles, 254 F.2d 379 (3d Cir. 1958). The jury found that the petitioner in Kawakita performed acts of
tional to fulfill his obligations to the nation in which he resides. For example, courts have held that service by a dual national in the army of his other nationality, even if the army is hostile to the United States, is involuntary when compulsory under the conscription laws of totalitarian nations. Voluntariness must be proved by the Government by "clear, convincing and unequivocal evidence," before the citizen can be expatriated.

The voluntary relinquishment test should be satisfied only when the dual national freely engages in hostile activity for the state of his second nationality that he knows to be inconsistent with the obligations of United States citizenship. By emphasizing hostile acts freely performed, this test recognizes that there must be a choice to act in order for an act to be voluntary. Thus, by voluntarily fighting in the foreign army in a war against the United States, or voluntarily committing a treasonous act against the United States for the country of his other nationality, the citizen is acting freely. An agreement to commit hostile acts against the United States provides an inference that the dual national has renounced his obligations to this country and has chosen the nationality he prefers.

The test also requires that the citizen be acting for the country of his second nationality. This distinguishes between expatriating activity, which involves a choice of citizenship, and treason, which generally does not. A citizen who commits a hostile act against the United States that is unrelated to an adherence to his other nationality may have engaged in treasonous conduct, but he will not be expatriated because he has not chosen one citizenship over the other.

To illustrate both aspects of the test's operation, if a dual national were to refuse to serve in the United States armed forces in a war against the other country of which he is a citizen, the refusal might be inconsistent with the obligations of his American citizenship. But it does not hostile towards the United States, consisting of cruel treatment of American prisoners of war, that he was not required by Japan to perform. Yet, the Court held he was not expatriated. The implications of Kawakita's conduct prior to the atrocities were too ambiguous to fit the provisions of the Nationality Act of 1940. Thus, he was still a citizen at the time of the alleged treason. The atrocities themselves had not been classified as expatriating by the Nationality Act of 1940.


51 Since the treasonous act would also be an expatriating act, the individual could not be prosecuted for treason but only for war crimes or espionage. Cf. Kawakita v. United States, 343 U.S. 717 (1952).
constitute an overt, hostile act for the other country. Although the citizen may be subject to the ordinary penalties for refusing to serve in the armed services, he has not indicated a preference for his other citizenship and therefore is not expatriated.

It has been suggested that the problem of dual citizenship could be better solved by providing for a formal election machinery which would force the dual national to choose, at majority, which citizenship he prefers than by looking for a renunciatory intent in the dual citizen's acts. But it is doubtful whether compelling such a choice is constitutional. Since the right to retain United States citizenship is absolute, absent a voluntary act of relinquishment, placing a condition on that citizenship—that the dual national give up his dual nationality in order to retain his United States citizenship—seems to conflict with Afroyim's interpretation of the fourteenth amendment.

Even if the constitutional question were resolved in favor of the election, the nature of the choice should cause Congress to reflect upon the wisdom of such proposed legislation because of the strong possibility of coercion. The state of residence of the dual national at the time he must make his election (assuming the state is not a third country) will greatly influence his choice, especially if choosing the other state's citizenship would force him to leave his state of residence. Although dual citizenship should not be encouraged, its difficulties are probably outweighed by the burdens that would be placed on the citizen who is forced to choose between his two nationalities.

CONCLUSION

A citizen should be held to have "voluntarily relinquished" his American citizenship only if he voluntarily and formally renounces that citizenship in a manner prescribed by law, or if he voluntarily and intentionally acquires a foreign nationality. If he is a dual national, he should

52 See Note, Expatriating the Dual National, 68 YALE L.J. 1167, 1181 (1959). See also Flournoy, Dual Nationality and Election, 30 YALE L.J. 545 (1921).
53 Afroyim appears to hold that the fourteenth amendment does not recognize a qualified citizenship. See Afroyim v. Rusk, 387 U.S. 253, 267 (1967), where the Court stated:

To uphold Congress' power to take away a man's citizenship because he voted in a foreign election ... would be equivalent to holding that Congress has the power to "abridge," "affect," "restrict the effect of," and "take ... away" citizenship. ... [T]he Fourteenth Amendment prevents Congress from doing any of these things .... See also id. at 268.
54 The Immigration and Nationality Act of 1952 requires that a United States national take up residence outside the United States and its possessions in order for his expatriating acts to become effective. 8 U.S.C. § 1483(a) (1964).
be held to have relinquished his citizenship only if he voluntarily com-
mits a hostile act for the state of his other nationality and knows the act
is inconsistent with the obligations of his American citizenship. This
test of "voluntary relinquishment" should assist the Supreme Court and
Congress in categorizing expatriating conduct. The test also reflects the
mandate of the fourteenth amendment, that expatriation must be a vol-
untary act of relinquishment, which ordinarily involves a free choice of
one citizenship over another.

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