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U.S. Citizenship in Puerto Rico under Free Association Status

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As in the case of Puerto Ricans under the Foraker Act from 1900 to 1917, those born in the American Commonwealth of the Philippines had U.S. nationality but not a statutory citizenship classification. At the hour for establishment of separate sovereignty under President Truman's Proclamation No. 2695 of July 4, 1946, all persons with U.S. nationality based on birth in the U.S. Commonwealth of the Philippines instantly became aliens under U.S. nationality and immigration law. However, only those who met requirements for residency in the mainland were able to become naturalized U.S. citizens under the 14th Amendment.

Citizenship is a subset of nationality. The U.S. Supreme Court upheld the expatriation of those with U.S. nationality based on birth in the Philippines as part of the succession of state in that case, and since citizenship flows from nationality there is no reason to believe Congress could not simply employ the Philippine precedent in the case of Puerto Rican nationhood.

Those born in Puerto Rico who have statutory U.S. citizenship and established residency in the mainland are able to vote and enjoy full benefits of residing in the States of the Union, but their citizenship is of the same statutory nature and was conferred on the same basis as those who have remained in Puerto Rico. So, the Philippine model of transfer of nationality may be the solution for Congress if the mechanics of an election of allegiance can not be worked out without vexatious exceptions that frustrate actual separation of nationality.

In the event of separate sovereignty for Puerto Rico, the correct result of a well-managed succession of state will be that Puerto Rico controls its nationality and citizenship and the United States controls its nationality and citizenship. Those who want to have and enjoy separate Puerto Rican nationality and citizenship should be empowered to do so by voting for that result and convincing a majority of their fellow Puerto Rican born U.S. citizen voters to join them in approving separate sovereignty. However, upon having and enjoying that new nationality and citizenship they should not be allowed to continue to enjoy the statutory U.S. citizenship conferred during the territorial period. An election requirement that precludes automatic dual citizenship is the only way to make the referendum on status an informed choice between valid options and ensure an effective succession of state.

The generally liberal U.S. practice regarding dual nationality will not apply in the case of a new nation of Puerto Rico, at least until after completion of the transfer of sovereignty, nationality and citizenship through an effective international succession process in which an election of allegiance requires a choice between U.S. or Puerto Rican citizenship. The U.S. thereafter can treat U.S. citizens who acquire Puerto Rican nationality and citizenship the same way it does U.S. citizens who acquire Irish, Israeli or any other foreign nationality. As long as there is no voluntary or intentional renunciation of U.S. nationality and citizenship, then dual or even multiple citizenship is not created by federal law but possible and indirectly allowed under Afroyim v. Rusk, 387 U.S. 253 (1967).

However, under Rogers v. Bellei, 401 U.S. 815 (1971), Congress has the authority to regulate the statutory citizenship it creates outside the scope of the 14th Amendment. Congress extended statutory U.S. citizenship to persons born in Puerto Rico to define the status of such persons during the period of U.S. sovereignty in the territory. In the event of a vote for separate sovereignty, there would be a legitimate federal purpose in discontinuing statutory U.S. citizenship and preventing automatic mass dual citizenship in Puerto Rico, because that would prevent the succession of sovereignty, nationality and citizenship required to actually establish Puerto Rico as a separate nation.