

# **SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT SUBMISSION**

## **REQUEST FOR DETERMINATION OF POSSIBLE LOSS OF UNITED STATES CITIZENSHIP (No.1405-0178 Form DS-4079)**

### **A. JUSTIFICATION**

1. Section 349(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1481(a), establishes the statutory basis upon which United States citizens may voluntarily relinquish their U.S. nationality. As described in 7 FAM 1211 regarding loss of nationality, “A U.S. citizen by birth or naturalization (8 U.S.C. § 1401, 8 U.S.C. § 1421) or a U.S. non-citizen national (8 U.S.C. § 1408, 8 U.S.C. § 1101(29)) will lose U.S. nationality (“expatriate”) her or himself by committing a statutory act of expatriation (as defined in 8 U.S.C. § 1481 (Section 349 INA) if the act is performed (1) voluntarily and (2) with the intention of relinquishing U.S. citizenship”. Expatriation can occur only if the party demonstrated a specific subjective intent to relinquish U.S. citizenship. *See generally Afroyim v. Rusk*, 387 U.S. 253, 258 (1967) (Congress cannot, consistent with the Fourteenth Amendment, enact a law stripping a U.S. citizen of his citizenship which he has never voluntarily renounced or given up).

Persons seeking to document their relinquishment of U.S. nationality complete the information collection. Consular Officers may also request that persons who have performed potentially expatriating acts complete it. The information collection is utilized to make determinations regarding loss of nationality based upon the voluntary performance of a potentially expatriating act with the intent to relinquish U.S. nationality. It also serves as primary evidence of the individual’s intent at the time of relinquishment in connection with subsequent requests to reconsider the determination that an individual lost his or her U.S. nationality. Section 349(b) of the INA, 8 U.S.C. § 1481(b) places the burden of establishing that loss occurred on the party asserting loss. This information collection is often the determinative piece of evidence in these reconsiderations.

2. U.S. citizens complete the information collection when they wish to document a loss of U.S. nationality. Moreover, when there is reason to believe that a person may have relinquished his or her U.S. nationality, U.S. consular officers overseas may also request that such a person complete the information collection. The person completes the information collection and submits it to a consular officer at an overseas U.S. embassy or consulate post. The consular officer reviews the information collection and sends it to the Directorate of Overseas Citizens Services in Washington. The information collection provides information that assists in determining the basis upon which the person acquired U.S. citizenship, whether an expatriating act occurred, and if so, whether the person voluntarily performed the expatriating act with the

intent to relinquish his or her U.S. nationality. This information collection is used as documentary evidence for determining whether a loss of U.S. nationality has occurred.

The data provided in this information collection is critical in establishing whether the three elements of loss of nationality are present. Those three elements as stated above are performance of a potentially expatriating act, the voluntary performance of that act, and the requisite specific subjective intent to relinquish U.S. nationality. If the documentary and any other evidence lead to the conclusion that a loss of nationality has occurred, a finding of loss of nationality is approved by Overseas Citizens Services. The information collection becomes part of the file associated with an approved Certificate of Loss of Nationality and is available for review if there is any future request to reconsider the finding of loss.

3. The Department is in the process of incorporating an electronic element for the DS 4079 form. The respondent will input all the necessary data into the form online. The respondent will be able to submit the data on the form by clicking the “submit” button located on the form. Once the respondent clicks the “submit” button, the data on the form will populate a case file in the American Citizen Services Database (ACS) for easy access by the Consular Officer(s) at the U.S. Post handling the case. If the respondent is completing the form online, the respondent will be required to print the form and provide his or her signature(s) to the form manually. The form is not valid until the respondent and Consular Officer handling the case provides their hand-written signature(s) in the appropriate sections on the form.

Scanned copies of the information collection are maintained as part of the file documenting loss of nationality and are retrievable electronically through the Passport Lookout Tracking System (PLOTS). This minimizes the burden of production when requests are received to review a previous finding of loss of nationality. This approach provides an electronic option while complying with Federal regulations

4. The information in the DS-4079 is not duplicative of information maintained elsewhere or otherwise available.
5. The information collection does not involve or impact small businesses or other small entities.
6. The information collection facilitates the determination of whether a loss of nationality occurred under Section 349(a) of the INA, 8 U.S.C. §1481(a). Section 349 (b) of the Immigration and Nationality Act places the burden of proof on the person claiming that the loss has occurred. When findings of loss or non-loss of U.S. nationality are challenged, the information collection is primary evidence that the Department can use to defend its decisions.

The elimination of the information collection would be a loss of primary evidence and significantly affect the ability of the Department of State to defend its decisions concerning losses or non-losses of U.S. nationality. Because Federal law mandates the circumstances under which loss of nationality occurs, the Department cannot take measures that would reduce the frequency of collection nor can it reduce the burden.

7. No special circumstances exist.

**8.** The 60-day notice for the current OMB approval for this information collection was published in the *Federal Register* Vol. 75, No. 118 / June 21, 2010, pages 35,118-35,119. The purpose of the *Federal Register* notice was to solicit comments from the public. Two public comments were received. The public comments were discussed but the consensus decision is to keep the content of the form as is.

- Comment 1 – This comment dealt American Formosan Indians and U.S. Nationality. No changes were made to the form because the claim was inaccurate.
- Comment 2 – The second comment was from a person complaining about the renunciation process. The changes he recommended would make the process much more difficult instead of easier.

**9.** No payment or gift is provided to respondents.

**10.** No assurance of confidentiality is given.

**11.** No sensitive questions are asked.

**12.** An estimated 1,132 U.S. citizens worldwide submit the information collection annually to U.S. Consular Officers in order to document loss of U.S. nationality. The total annual hour burden to complete the information collection for all respondents is an estimated 283 hours. The cost to a respondent to complete and submit the information collection is zero.

An average time of completion (15 minutes) was calculated by dividing the total elapsed time of all the respondents by the total number of respondents. The annual hour burden was calculated by multiplying the total number of estimated respondents by 15 minutes.

**13.** The total cost burden to respondents is de minimis. There is no application fee.

**14.** The Federal government will incur an annualized estimated cost of \$76,387. Reviewer burden hours, estimated average hourly rate per reviewer and the number of reviewers were determined to calculate the annualized estimated cost. The process to reach the annualized estimated cost to the Federal government began with the calculation of the estimated average hourly rate multiplied by the total reviewer burden hours ( $\$33.74 \times 2 \text{ hours} = \$67.48$ ). The preceding total was then multiplied by the total number of respondents to the information collection ( $\$67.48 \times 1,132 \text{ respondents} = \$76,387$ ).

**15.** This collection was first created in 2007. During the 3 years that this collection has been used, CA/OCS has refined its estimating procedures. The decrease in burden shown is due to this improvement.

**16.** General statistical information regarding U.S citizens and Loss of Nationality is maintained in the “Consular Package,” the Consular Workload Statistical System (CWSS) system. This is raw data broken down by the Foreign Service post issuing the report.

**17.** The OMB expiration date will be displayed.

**18.** No exceptions are requested.

**B. STATISTICAL METHODS**

This collection does not employ statistical methods.