

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Can you advise whether somebody born in India 1965 would have been an Indian citizen at birth or what conditions needed to be met at that time, for example the citizenship status of the father or mother?**
- 2. Can you advise whether South Africa require new citizens to renounce other citizenships such that a person who migrated from India would no longer be an Indian citizen?**

RESPONSE

- 1. Can you advise whether somebody born in India 1965 would have been an Indian citizen at birth or what conditions needed to be met at that time, for example the citizenship status of the father or mother?**

According to the Indian Ministry of Home Affairs (MHA), a person is deemed to be an Indian citizen by birth if they were “born in India on or after 26th January 1950 but before 1st July 1987 ...irrespective of the nationality of his parents”. The following pertinent extracts were sourced from the Indian Citizenship section of the MHA’s website:

Indian citizenship can be acquired by birth, descent, registration and naturalization. The conditions and procedure for acquisition of Indian citizenship as per the provision of the Citizenship Act, 1955 are given below:

1) By Birth (Section 3)

- (i) A person born in India on or after 26th January 1950 but before 1st July, 1987 is citizen of India by birth irrespective of the nationality of his parents.

(ii) A person born in India on or after 1st July, 1987 but before 3rd December, 2004 is considered citizen of India by birth if either of his parents is a citizen of India at the time of his birth.

(iii) A person born in India on or after 3rd December, 2004 is considered citizen of India by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not **an illegal migrant** at the time of his birth... ('Acquisition of Indian Citizenship (IC)' (undated), Government of India Ministry of Home Affairs website <http://mha.nic.in/CITI.HTM> – Accessed 15 January 2008 – Attachment 1).

It should be noted that the Indian Citizenship Act 1955 does not allow dual citizenship; "if an Indian citizen becomes a citizen of another country, they automatically lose their Indian citizenship" (Department of Foreign Affairs and Trade (DFAT) 2002, Email to RRT, *DFAT Report No. 215 – RRT Information Request: IND15548*, 2 December – Attachment 2). However, in 2005 the Indian government reportedly offered "dual citizenship to all overseas Indians who migrated from the country after January 26, 1950, as long as their home countries allow dual citizenship under their law" ('All Overseas Indians Will Be Eligible For Dual Citizenship' 2005, Immigration.com website, 7 January <http://www.immigration.com/india/dualcitjan05.html> – Accessed 15 January 2008 – Attachment 3).

Media releases began reporting on the legislative change that allegedly offered dual citizenship to most Persons of Indian Origin (PIO). The official reports did not refer to this status as dual citizenship, but as 'Overseas Citizenship of India (OCI)'. Persons with OCI can obtain a specific OCI passport (different to an Indian passport held by an Indian citizen); do not have any voting rights; and are not eligible for election to Lok Sabha/Rajya Sabha/Legislative Assembly/Council or for holding Constitutional posts. The following extract from the Embassy of India's website in Washington DC provides further explanation:

Registered OCIs shall be entitled to following benefits:

- (i) Multiple entry, multi-purpose life long visa to visit India;
- (ii) Exemption from reporting to Police authorities for any length of stay in India; and
- (iii) Parity with NRIs in financial, economic and educational fields, except in the acquisition of agricultural or plantation properties.

3. Any further benefits to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under section 7B(1) of the Citizenship Act, 1955.

4. A person registered as OCI is eligible to apply for grant of Indian citizenship under section 5(1)(g) of the Citizenship Act, 1955 if he/she is registered as OCI for five years and has been residing in India for one year out of the five years before making the application [researcher emphasis] ('Overseas Citizenship of India (OCI) Scheme' 2008, Embassy of India Washington DC website, 14 January http://www.indianembassy.org/New_Template/oci.asp – Accessed 15 January 2008 – Attachment 4).

The MHA's website incorporates a section explaining the OCI scheme and states that the scheme has been operational from the 2nd of December 2005 ('Overseas Citizenship of India

(OCI)' (undated), Ministry of Home Affairs, Government of India website <http://www.mha.nic.in/oci/intro.pdf> – Accessed 15 January 2008 – Attachment 5).

2. Can you advise whether South Africa require new citizens to renounce other citizenships such that a person who migrated from India would no longer be an Indian citizen?

According to *Citizenship Laws of the World*, published by the United States Office of Personnel Management, South Africa does recognise dual citizenship “if the person requests permission from the Department of Home Affairs to retain or acquire another citizenship” (US Office of Personnel Management 2001, *Citizenship Laws of the World*, OPM website, March, pp. 182-183 – Attachment 6).

The South African Department of Home Affairs website includes a webpage addressing citizenship and confirms that South Africa allows dual citizenship subject to approval ('South African Citizenship' (undated), South African Department of Home Affairs website http://www.home-affairs.gov.za/sa_citizenship.asp – Accessed 14 January 2008 – Attachment 7). That said, considering India does not allow dual citizenship, a person automatically loses their Indian citizenship when they become a citizen of another country. What would be available for that person is the newly introduced Overseas Citizenship of India (OCI) scheme, as mentioned above in Attachment 4 and Attachment 5.

Also of relevance is the South African Citizenship Amendment Act of 2004, which came into effect on 15 September 2004. Essentially, the Act provides that a South African citizen with dual citizenship “can freely use his or her foreign passport outside South Africa. However, they must use their South African passport to depart from or enter South Africa” ('South African Citizenship' (undated), South African Department of Home Affairs website http://www.home-affairs.gov.za/sa_citizenship.asp – Accessed 14 January 2008 – Attachment 7).

List of Sources Consulted

Internet Sources:

Search Engines

Google search engine <http://www.google.com.au/>

Databases:

FACTIVA (news database)

BACIS (DIMA Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

RRT Library Catalogue

List of Attachments

1. 'Acquisition of Indian Citizenship (IC)' (undated), Government of India Ministry of Home Affairs website <http://mha.nic.in/CITI.HTM> – Accessed 15 January 2008.

2. DFAT 2002, E-mail to RRT, *DFAT Report No. 215 – RRT Information Request: IND15548*, 2 December.
3. ‘All Overseas Indians Will Be Eligible For Dual Citizenship’ 2005, Immigration.com website, 7 January <http://www.immigration.com/india/dualcitjan05.html> – Accessed 15 January 2008.
4. ‘Overseas Citizenship of India (OCI) Scheme’ (2008), Embassy of India Washington DC website, 14 January http://www.indianembassy.org/New_Template/oci.asp – Accessed 15 January 2008.
5. ‘Overseas Citizenship of India (OCI)’ (undated), Ministry of Home Affairs, Government of India website <http://www.mha.nic.in/oci/intro.pdf> – Accessed 15 January 2008.
6. US Office of Personnel Management 2001, *Citizenship Laws of the World*, OPM website, March, pp. 182-183.
7. ‘South African Citizenship’ (undated), South African Department of Home Affairs website http://www.home-affairs.gov.za/sa_citizenship.asp – Accessed 14 January 2008.