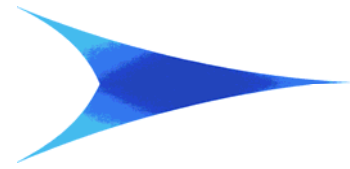


The Southern Cross Group

Promoting Mobility in the Global Community



The Hon Kevin Andrews MP
Minister for Immigration and Citizenship
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600
AUSTRALIA

Via fax: 0061 2 6273 4144 and 0061 3 9848 2741

By e-mail to Kevin.Andrews.MP@aph.gov.au

14 May 2007

Australian-born Children of War Brides – Citizenship Status

Dear Minister

The Southern Cross Group (SCG) is presently receiving many citizenship queries from war brides and their families in the United States. You may be aware that 95 Australian-born World War II war brides and their families were honoured by the Australian Embassy in Washington DC on ANZAC Day in April this year.

These families are for the most part very excited at the prospect of the coming into force of the *Australian Citizenship Act 2007* later this year. For many war brides who forfeited their Australian citizenship under the now-repealed Section 17 of the *Australian Citizenship Act 1948* when they became naturalised US citizens, simplified resumption will become possible, allowing them to become dual citizens. The new Act also has implications for many of their children.

We wanted to raise with you a particular legal scenario that is presenting itself in a significant percentage of these families. This letter is copied to Australia's Ambassador to the USA, Mr Dennis Richardson AO, as well as the Principal Migration Officer in Washington DC, Ms Robyn Legg, as the Australian Embassy in Washington is likely to encounter a number of these cases once the 2007 Act comes into force.

Many of the Australian war brides gave birth to children in Australia while the war was on, or just after the war, before they boarded ships to go to the United States to join their US servicemen husbands and fiancés. We have a number of families in our database where the first child and sometimes the first two children were born in Australia in the period 1943-1947, with later siblings being born in the United States.

It is our legal assessment that in many of these cases, the now-adult Australian-born child of the war bride is an Australian citizen today. These particular individuals will not need to apply for Australian citizenship under the *Australian Citizenship Act 2007* after it comes into force later this year.

The individuals we have come across to date in this situation have generally not been aware that they are already Australian citizens until their interface with the SCG. It is clear to the SCG that over the years there have been many citizenship myths perpetuated and for the most part no clear understanding by these people of their own Australian citizenship status.

We set out below a typical case of a fictitious Australian-born war bride child named Sarah Brown, and provide our legal assessment of that case. We would be grateful if you could confirm that our understanding of the law is correct. The Australian Citizenship Instructions in their current version provide some piecemeal guidance on this scenario, but the SCG submits that it would be extremely helpful if more specific and precise information were contained in the revised ACIs being prepared at the present time to accompany the 2007 Act. The SCG estimates that there are perhaps as many as 5,000 Australian-born children of war brides in the United States today.

Facts:

Joan Small was born in Australia in 1925. In 1943 she married an American GI named Thomas Brown while he was on leave in Australia. In late 1944, Joan gave birth to a daughter Sarah in Australia. In 1946, she and Sarah moved to the United States to be with Thomas. On 3 September 1952, Joan became an American citizen.

Analysis:

Born a British subject in Australia in 1944, Sarah, like her mother Joan, became an Australian citizen on commencement of the *Australian Citizenship Act 1948*, i.e. on 26 January 1949, due to her birth in Australia (under Section 25(1)(a) of the transitional provisions of the 1948 Act). This is so despite the fact that Sarah left Australia to live in the US in 1946.

No Automatic Loss under Section 23 as a Minor

When Joan took US citizenship on 3 September 1952 (automatically forfeiting her Australian citizenship under Section 17), Sarah did not lose her Australian citizenship under Section 23 of the 1948 Act.

This is because Section 23 (as it was in force on or after 26 January 1949 and before 8 October 1958) only operated to strip minors of their Australian citizenship when the responsible parent lost their Australian citizenship.

Sarah's mother was not the responsible parent in the eyes of Australian law. On or after 26 January 1949 and before 22 November 1984, s 5(1) of the 1948 Act defined "responsible parent" thus:

"Responsible parent", in relation to a child, means the father of that child, or, where the father is dead or the mother has been given custody of the child by order of a court, or the child was born out of wedlock and resides with the mother, means the mother of that child".

Because Sarah was born after her parents were married, and because her father was still alive in 1952, and because her mother had not been granted custody of her by court order, Sarah remained an Australian citizen even when her mother lost her Australian citizenship in 1952.

Exceptions: Sarah would have lost her Australian citizenship under Section 23 on 3 September 1952 if her father had died before that date (e.g. if he had been killed in the war), **or** if her parents were separated or divorced and her mother had been awarded custody of her, **or** if her parents had not been married at the time of her birth. If any one of these situations had occurred, Sarah would nevertheless soon be able to apply for resumption of her Australian citizenship under Section 29(3)(a)(iv) of the 2007 Act.

No Automatic Loss under the Section 17 as an Adult

Since reaching adulthood (i.e. since the reaching the age of 21 in 1965) and before 4 April 2002, Sarah has not acquired the nationality or citizenship of a country other than Australia.

Exceptions: If Sarah had naturalised as an adult in the United States or in any other country before 4 April 2002, she would have lost her Australian citizenship.

For example, if Sarah had not become a US citizen at birth under US law through her US-citizen father, and therefore entered the US in 1946 as only a British subject on a US visa, she may later have chosen to naturalise in the United States as an adult after many years of permanent residency in the US. **NB:** If Sarah became a naturalised US citizen while still a minor (e.g. with her mother in 1952), Section 17 would not have applied to her.

In these cases, it is important to examine whether the child obtained US citizenship at birth in Australia through their US-serviceman father under US citizenship law and to ask what if any US citizenship documentation the person might have. Where the Australian-born child did not acquire US citizenship at birth, the chances of them having naturalised in the US later in life are obviously high. If naturalisation occurred after the person reached the age of majority, and this was before 4 April 2002, then a Section 17 loss of Australian citizenship occurred. In those circumstances, the individual will qualify to apply for resumption under Section 29(3)(a)(i) of the 2007 Act.

No Formal Renunciation under Section 18 as an Adult

Since reaching adulthood, Sarah has never made a declaration of renunciation of Australian citizenship under Section of the 1948 Act.

Exception: If Sarah had chosen to formally renounce her Australian citizenship as an adult under Section 18, she would no longer be an Australian citizen but would qualify to resume her citizenship under Section 29(3)(a)(ii) of the 2007 Act.

This should be a relatively easy criterion to check with Australian-born children of war brides, because those few who might have formally renounced will probably remember physically going and making the declaration of renunciation at an Australian consular post.

No Loss under Section 19

Section 19 of the 1948 Act provides for the loss of Australian citizenship by reason of service in the armed forces of an enemy country. This is moot, because since 26 January 1949 the SCG understands that no-one has lost his or her citizenship under Section 19 as Australia has not been at war with another country (see further Rubenstein, *Australian Citizenship Law in Context*, 2002, page 147, footnote 471).

No Loss under the now-repealed Section 20

Section 20 operated between 26 January 1949 and 8 October 1958. It provided that an Australian citizen who was naturalised, and who had resided outside Australia and New Guinea for a continuous period of seven years ceased to be an Australian citizen unless certain conditions had been met.

This method of loss of citizenship is inapplicable to Australian-born children of war brides because they were never Australian citizens by naturalisation but rather by birth.

No Deprivation of citizenship under Section 21

Deprivation of Australian citizenship can only happen to persons who have obtained citizenship by grant. This method of loss of citizenship is therefore also inapplicable to Australian-born children of war brides.

Conclusion:

Since the facts in Sarah's case do not give rise to loss or renunciation of Australian citizenship, and because none of the exceptions referred to apply in her case after investigation of the factual background, Sarah has in fact been an Australian citizen since birth. Even though she is now in her 60s, and has never held an Australian passport, she can apply for an Australian passport at any time because she is already an Australian citizen.

Sarah's US-born Children

We note that any children born to Sarah in the United States while she was an Australian citizen, if not already registered as Australian citizens by descent, will have a right to apply for citizenship by descent under Section 16(2) of the 2007 Act.

If Sarah had lost her Australian citizenship under Section 17 before 4 April 2002, any children born to her outside Australia after her date of loss would qualify to apply for citizenship by conferral under Section 21(6) of the 2007 Act.

This in effect means that the grandchildren of some war brides in the US can become Australian citizens under the 2007 Act where the child of the bride (i.e. the grandchild's mother or father) was born in Australia.

The three SCG volunteers who attended the ANZAC Day events in Washington were asked by a number of families whether the US-born grandchildren of war brides would have a route to Australian citizenship under the 2007 Act. In fact, a number of families already seemed convinced that this would be the case, although the SCG has never indicated on its website or in any other communications that grandchildren would be covered. In all instances, we asked the families concerned that we spoke to in DC to send us key dates and facts so that we could look at the case in further detail to see whether grandchildren might be covered. Our response in the first instance to all queries about grandchildren is that in most cases, grandchildren of war brides will not have a right to apply under the 2007 Act, but that there are some special situations, and that all cases have to be looked at on a case-by-case basis.

Unfortunately it does appear, however, that many of the families are labouring under the false impression that “all war bride grandchildren will be able to become Australian citizens”. We are doing our best to explain to those who contact us that this is not the case, and why.

As stated above, we would be glad of your confirmation that our analysis of scenario of Australian-born children of war brides and their US-born children is correct. These cases are proving to be a more and more frequent part of our caseload as increasing numbers of families are learning of the 2007 Act and contacting the SCG.

We look forward to your response.

Kind regards,

Anne MacGregor
Co-founder

Cc: Mr Tony Burke, MP
Shadow Minister for Immigration, Integration and Citizenship

Mr Dennis Richardson AO
Australian Ambassador to the United States

Ms Robyn Legg
Principal Migration Officer, Australian Embassy, Washington

Ms Mary–Anne Ellis, DIAC (via e-mail only)
Ms Nadine Clode, DIAC (via e-mail only)