Interpretation 324.2 Reacquisition of citizenship lost by marriage.

(a) Repatriation

(b) Naturalization.

(c) Effect of expatriation reversals under Afroyim v. Rusk upon derivative citizenship rights.

(a) Repatriation. (1) Before and under the 1907 statute. A United States citizen woman who expatriated herself under the circumstances set forth in INTERP 324.1 could regain her citizenship prior to the Act of March 2, 1907, even though that statute was the first enactment which provided for such restoration of status.

Citizenship lost in accordance with the principles recognized by the Service prior to the 1907 Act was resumed upon termination of the marriage before September 22, 1922, provided the expatriate was then residing in the United States. 26/ If such expatriate resided abroad at termination time, resumption occurred upon her return to the United States for permanent residence prior to September 22, 1922, 27/ or upon her registration as a United States citizen before a United States consular officer subsequent to March 1, 1907, and within one year after termination of the marriage.

Citizenship lost under the 1907 statute was resumed under the same conditions set forth above, except that the expatriate who resided in the United States when the marriage was terminated reacquired status only upon a continuance of such residence for at least a short period beyond the termination date of the marriage. 28/

The statutes did not provide for any procedure whereby a person repatriated in accordance with the above principles could secure an official document as evidence of that fact.

(2) Act of June 25, 1936. (i) Resumption provisions. The Act of September 22, 1922, 29/ repealed the above resumption provisions of the 1907 statute without disturbing status regained thereunder, and statutory authority for the repatriation of citizen women expatriated through marriage ceased to exist until the enactment of legislation in 1936. 30/

Under the 1936 enactment, any woman, irrespective of her race or that of her husband, who had acquired citizenship at birth within or without the United States, but who, on June 24, 1836, no longer had such status because of expatriation prior to September 22, 1922, under the conditions specified in INTERP 324.1,was restored to citizenship on June 25, 1936, if her marriage had terminated on or before that date; or upon the termination of her marriage thereafter, on a date prior to January 13, 1941. 31/

Lacking termination of the marriage, as above, citizenship was resumed on July 2, 1940, if the expatriate had resided continuously 32/ in the United States since the date of the marriage. 33/

(ii) Effect of oath of allegiance. The above 1936 Act, in its original and amended forms, made provision for the oath of allegiance 34/ to be taken before a naturalization court or a legation or embassy secretary. Although some courts have held otherwise, 35/ the Service, supported by substantial authority, has taken the position that a woman contemplated by these statutory provisions was automatically reinvested with

United States citizenship by operation of law, irrespective of whether or not the oath was taken.

However, while the taking of the above oath was not a condition precedent to the vesting of citizenship, such action was necessary before the repatriated women might claim or exercise any rights as citizens. **36/**

(3) Nationality Act of 1940; Immigration and Nationality Act . (i) Applicability . The 1936 statute, as amended, was repealed by the Nationality Act of October 14, 1940, which, in turn, was superseded by the current statute; however citizenship restored under the 1936 Act, and the right to take the oath of allegiance thereunder before a naturalization court, were not affected by the later enactments. **37/**

Moreover, there were included in section 317(b) of the Nationality Act of 1940, and in current section 324 almost identical provisions providing for the restoration of citizenship to women who would have been repatriated by the 1936 Act, as amended, had their marriages terminated prior to January 13, 1941, or, lacking that factor, had maintained continuous United States residence since that date of the marriage.

Termination of the marriage to an alien continued to be a requirement of the Nationality Act of 1940 and the present law but, under both statutes, the event must have occurred on or after January 13, 1941.

The repatriation provisions of these two most recent enactments also apply to a native- and natural-born citizen woman who expatriated herself by marriage to an alien racially ineligible to citizenship, a category of expatriate not covered by the earlier 1936 legislation.

(ii) Effect of oath of allegiance . Unlike the 1936 enactment, the 1940 statute required and the current law requires as a specific prerequisite to the actual restoration of citizenship status, the taking of the oath of allegiance.

(iii) Proscription of subversives . Current section 324(c) may be distinguished from section 317(b) of the 1940 Act in that, under the present law, specific provision is made to disqualify subversive persons specified in section 313, **38/** whereas under the earlier statute it was held administratively that the somewhat similar restrictions set forth in section 305 of that statute, as amended, applied. **39/**

(4) Nature of marriage termination requirement . This requirement within the meaning of all the statutes did and does contemplate the complete dissolution of the martial status by judicial divorce or the death of the alien husband. Thus, when marriage to an alien husband ended, in the sense that he ceased to be an alien by reason of naturalization during coverture, the requirement is not satisfied.

However, if marriage to an alien was terminated in accordance with the above requirement, a subsequent marriage to the same or a different alien after September 21, 1922, other that a marriage to an alien racially ineligible to naturalization contracted prior to March 3, 1931, did not adversely affect eligibility under the 1936 statute, even though the second marriage was valid and subsisting on June 25, 1936.

(5) No foreign nationality acquired . Under the Nationality Act of 1940, as well as the present law, the repatriate must make a showing that no foreign nationality had been acquired by her affirmative act. Moreover, although this express requirement of the two most recent enactments was not found in the 1936 statute, the woman who applied to take the oath of allegiance thereunder was required by the Service to furnish testimony which, in effect, established that she had not acquired a foreign nationality in the manner stated.

The acquisition of a foreign nationality within the above context does not contemplate citizenship automatically conferred by operation of law through marriage to an alien, as discussed earlier in this interpretation, but rather has reference to other affirmative action taken by a woman to gain recognition as a citizen of a foreign state. **40/**

(6) Good faith oath of allegiance requirement . A person who has been restored to citizenship by the Act of June 25, 1936, as amended by the Act of July 2, 1940, and applies to take the oath of allegiance in order to regain the rights and privileges of citizenship, or a former citizen who applies for repatriation under current section 324(c), is required to be questioned to determine whether she intends in good faith to discharge the obligations of the oath of allegiance and whether her attitude toward the Constitution and Government of the United Stat es renders her capable of fulfilling the obligations of the oath. If the intention in good faith or the required attitude is not established, an objection to the taking of the oath or to the repatriation shall be made on the ground that the applicant is unable to take the prescribed oath of allegiance.

Shortly before enactment of the present legislation, the good faith and proper attitude described above were also required of applicants who sought repatriation by taking the oath of allegiance pursuant to section 317(b) of the Nationality Act of 1940. **41/**

(7) Restoration of citizenship is prospective . Restoration to citizenship under any one of the three statutes is not regarded as having erased the period of alienage that immediately preceded it.

The words "shall be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place on or after September 22, 1922", as they appeared in the 1936 and 1940 statutes, are prospective and restore the status of native-born or natural-born citizen (whichever existed prior to the loss) as of the date citizenship was reacquired.

(8) Evidence of repatriation . An application who has been restored to citizenship under the provisions of the 1936 Act, the Nationality Act of 1940, or the current section is not entitled to receive a certificate of naturalization such as is usually issued by the clerk of court. **42/**

The respective statutes provide, however, that the above repatriate may receive from the clerk, a certified copy of the proceedings in court, which is acceptable as evidence of the regained status. If the proceedings were conducted abroad, a similar document may be secured from the United States consul.

(b) Naturalization . At one time or another since September 22, 1922, women who expatriated themselves under the circumstances set forth in INTERP 324.1 have been able to regain citizenship by means of a simplified form of naturalization, if for any reason status had not been restored to them in accordance with the principles outlined in INTERP 324.2(a).
Generally, the statutes authorizing the above naturalization procedures **43/** modified or accorded exemptions from the usual naturalization provisions requiring a declaration of intention, United States residence, lawful entry for permanent residence, residence within the jurisdiction of the court, and the petitioner's intention to reside permanently in the United States.

The above 1922 legislation, in its original form, provided only for the naturalization of a citizen wife who had lost her status solely by marriage to an alien eligible for citizenship and expressly prohibited naturalization during continuance of the marital status if the husband lacked such eligibility. **44/** The naturalization privilege was extended by the above 1930 amendment to include a woman who had undergone expatriation as a result of her husband's loss of United States citizenship during subsistence of their marriage.

The 1931 Act cited above not only repealed the restrictive provisions of section 5 of the original 1922 enactment, mentioned above, but it also extended the scope of the earlier legislation by providing for the naturalization of those women who lost citizenship by residence abroad following marriage to an alien or by marriage to an alien racially ineligible to citizenship. In addition, it sanctioned the naturalization of those women, formerly citizens at birth, who were otherwise racially ineligible, but pr ecluded restoration of status to any women whose citizenship originated by marriage or the naturalization of a husband. **45/**

The last mentioned restriction was not continued in the Nationality Act of 1940, nor was naturalization of

racially ineligible women thereunder limited to those who had acquired status at birth. With such exceptions, the 1940 enactment contained substantially the same provisions as the 1922 Act following its final amendment in 1931, and somewhat comparable provisions are included in current section 324(a).

A petitioner for naturalization under all of the foregoing statutes was required to establish that a foreign nationality had not been acquired by her affirmative act, a requisite that has been considered in connection with repatriation under INTERP 324.2(a).

The effect of naturalization under the above statutes was not to erase the previous period of alienage, but to restore the person to the status if naturalized, native, or natural-born citizen, as determined by her status prior to loss.

(c) Effect of expatriation reversals under Afroyim v. Rusk upon derivative citizenship rights . Prior to the decision in Afroyim v. Rusk, children were held to have derived United States citizenship as a result of a parent's reacquisition of citizenship in one of the ways described in INTERP 324.2 (a) and (b) above. Whether such reacquisitions of citizenship have ceased to have validity as naturalizations for derivative citizenship purposes, because the findings of expatriation by marriage which made them necessary have been reversed under the Afroyim principle, is a question considered in INTERP 32 0.1(e)(2).