

HR Law Hotline

January 31, 2006

DUAL CITIZENSHIP - DOES IT LIVE UP TO PROMISE?

The Government of India recently decided to grant Overseas Citizenship of India ("OCI"), making it operational from December 2, 2005. OCI grants or restores Indian citizenship to Persons of Indian Origin ("PIOs") residing abroad who had either surrendered their Indian citizenship upon grant of citizenship of their host country or were born in such host country of such parents, or had grandparents who had emigrated from India.

The grant of OCI thus confers dual citizenship to PIOs who had become citizens of their country of residence. PIOs, whose parents, grandparents or even the person himself or herself who were, or were eligible to become, Indian citizens as of January 26, 1950, and their minor children are eligible to apply for OCI. The scope of OCI has been extended to PIOs of all nationalities residing in countries other than Pakistan and Bangladesh, that allow dual citizenship under their local laws. PIOs who had formerly been resident of territories such as Goa, Pondicherry and Sikkim which merged with the Indian Union after 15th August, 1947 are also eligible to apply.

A Press Note issued by the Government of India on December 2, 2005, provides that persons registered as OCIs will be entitled to the following benefits:

- Multiple entry, multi-purpose life long visa to visit India;
- Exemption from registration with Foreigners Regional Registration Officer/Foreigners Registration Officer for any length of stay in India;
- Parity with all benefits offered to Non-Resident Indians ("NRIs") in the financial, economic and educational fields except in the acquisition of agricultural or plantation properties.

The Press Note also states that registered OCIs will not be granted any right of election to Constitutional offices such as the President or Vice President of India, or as judges of the Supreme Court or High Courts, or members of Parliament or the Legislative Assembly/Council. Registered OCIs, will not be entitled to any voting rights. However, the Government of India is considering the grant of voting rights, according to Oscar Fernandes, the Minister of Overseas Indian Affairs. Registered OCIs will also not be entitled to the rights conferred on a citizen of India under Article 16 of the Indian Constitution with regard to equality of opportunity in matters of public employment. The grant of OCI status is therefore a restricted right to Indian citizenship.

Accordingly, the Citizenship Act, 1955 ("Act") and the Citizenship Rules, 1956 have been amended to simplify the application process and streamline the procedure for grant of OCI registration.

If, on scrutiny, there is no adverse information available against the eligible applicant, the Indian Mission/Post will register such applicant as an OCI within 30 days of application and the case shall be referred to the Ministry of Home Affairs ("MHA"), Government of India, for post-verification of the antecedents of the applicant. The MHA may approve or reject the grant of registration within 120 days.

A registration certificate in the form of a booklet will be issued and a multiple entry, multi-purpose lifelong OCI "U" visa sticker will be affixed on the foreign passport of the applicant upon grant of registration.

It has been anticipated that a large number of the Indian diaspora will benefit from this scheme, paving the way for a hassle-free entry into and stay in their motherland while adding significant value and benefits to the Indian economy, thereby contributing to India's development process. Though this is a step in the direction for dual citizenship, it is seen as falling short of the promise made to the Indian diaspora.

- Khushboo Baxi & Rina Kamath

Source: Ministry of Home Affairs - www.mha.nic.in

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