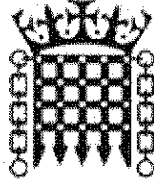


MORRIS, Colette

From: MORRIS, Colette
Sent: 23 June 2008 11:47
To: 'accountax2000@yahoo.com'
Subject: Response from Andrew Dismore MP
Attachments: 114421.PDF

Response from Andrew Dismore MP – Our Ref: I/03/06/0004

Andrew Dismore MP
Labour Member of Parliament for Hendon



www.AndrewDismoreMP.com
AndrewDismoreMP@parliament.uk

Our Reference: I/03/06/0004

Please quote reference on all related correspondence

Dear Nitin,

Please find attached a copy of a letter I received from Arabella Thorp from the House of Commons Library, dated 18th June, which I thought you would like to see in relation to the issues that you raised with me.

Yours sincerely,

Andrew Dismore MP

(Dictated by Andrew Dismore MP and transmitted by Daniel Sage)

23/06/2008



Subject: Overseas Citizens of India
To: Andrew Dismore MP
From: Arabella Thorp, Home Affairs Section
Reference: 2008/5/145-HAS; your ref: I/03/06/0004
Date: 18 June 2008

A constituent of yours asked whether someone who takes up Overseas Citizen of India status would still have full protection from the British Embassy whilst in India.

This information is provided to Members of Parliament in the performance of their parliamentary duties, and may not fully address the specific circumstances of any particular individual. It should not be relied upon by either Members or others as legal or professional advice, or a substitute for it. If specific advice is needed, a suitably qualified professional should be consulted. The website of the Office of the Immigration Services Commissioner explains about the regulation of immigration advisers and includes a useful online 'adviser finder': <http://www.oisc.org.uk/adviser-finder/00-adviser-finder.asp>. The Immigration Law Practitioners' Association www.ilpa.org.uk may be able to suggest someone with experience in this area from its list of specialist practitioners. The Immigration Advisory Service www.iasuk.org/ provides advice and representation free of charge, and the Community Legal Service website may also be helpful: www.clsdirect.org.uk.

Article 4 of the 1930 *Hague Convention on Certain Questions relating to the Conflict of Nationality Laws*¹ provides that "a State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses". The question is therefore whether Overseas Citizen of India status amounts to nationality. According to Article 2 of that Convention, "Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State".

It does not appear that the Indian government recognises Overseas Citizenship of India (OCI) as Indian nationality. For instance, it does not give OCIs an Indian passport or another independent travel document - only a 'registration certificate' which looks like a passport. Instead it requires them to carry a 'foreign' passport and have a visa (a multi-entry 'U' visa) in that passport.² OCIs cannot hold jobs in the Indian government or judiciary, cannot acquire agricultural land and are not granted the right to vote. Moreover, there is a provision for a person who has been registered as an OCI for five years and has lived in India for one year before making the application to apply for Indian Citizenship.³

The British Home Office does appear to recognise OCI as a citizenship or nationality status for certain purposes. The *Nationality, Immigration and Asylum Act 2002* granted British

¹ http://www.coe.int/t/e/legal_affairs/legal_co-operation/foreigners_and_citizens/nationality/documents/legal_instruments/Conv%20conflict%20nationality%20The%20Hague%2004_1930.pdf

² Indian High Commission, London:
<http://www.hcilondon.net/Overseas-Indian-Citizenship/index.html>

³ section 5(1) (g) of the Indian *Citizenship Act*, 1955: http://www.mha.nic.in/uniquepage.asp?ID_PK=78

Overseas Citizens, British Subjects and British Protected Persons the right to register as full British citizens only if they have no other citizenship or nationality and have not since 4 July 2002 renounced, voluntarily relinquished or lost through action or inaction any other citizenship or nationality. As Baroness Scotland explained in answer to a PQ, the Government's position is that acquiring OCI will extinguish the entitlement of a British Overseas citizen, British subject or British protected persons to register as a British citizen:

British Citizenship

Lord Avebury asked Her Majesty's Government:

Whether (a) a British subject under the British Nationality Act 1981, other than by connection to the Republic of Ireland, or (b) a British protected person who acquires by registration Overseas Citizenship of India would automatically lose the status as a British subject or British protected person as a consequence; and

Whether an otherwise stateless British overseas citizen, British subject under the British Nationality Act 1981 or British protected person who acquires overseas citizenship of India would automatically cease to have an entitlement to register as a British citizen under Section 4B of the British Nationality Act 1981. [HL730]

Baroness Scotland of Asthal: If a British subject under the British Nationality Act 1981, other than by connection to the Republic of Ireland, or a British protected person acquired India overseas citizenship they would automatically lose their status as a British subject or British protected person. Any British national holding Indian overseas citizenship would be ineligible for registration under Section 4B since they could not meet the requirements of Section 4B(2)(b) of the British Nationality Act 1981 to hold no other citizenship or nationality.⁴

However, according to Foreign Office officials,⁵ OCI is not regarded as citizenship for consular purposes under the 1930 Hague Convention. A British citizen who is also an OCI would therefore still be entitled to British consular protection in India.

By way of comparison, the USA does not categorise OCI status as citizenship or nationality. Its embassy in New Delhi says:

The Indian government recently launched a program called "Overseas Citizens of India" or "OCI". This program often has been mischaracterized as "dual nationality" or "dual citizenship." However, a person who holds an OCI Card in reality is granted an Indian visa, not Indian citizenship. Thus, an American citizen who obtains OCI status remains a citizen only of the United States. The OCI Card is a special visa which grants the holder the right to indefinitely visit, study or work in India, and also the right to own most types of property in India (excluding certain agricultural and plantation properties). A holder of an OCI card also need not register with local police/immigration authorities, unlike other holders of Indian visas. An OCI holder, however, does not receive an Indian passport, and has no other political rights in India, including the right to vote or eligibility for government employment.⁶

⁴ HC Deb 6 Jul 2005 c91WA

⁵ personal communication, 18 June 2008

⁶ <http://newdelhi.usembassy.gov/acsdualnation.html>