

# American Citizens Abroad

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## **A Perfect Catch-22 for an Overseas American**

Americans living and working overseas have long complained, and often bitterly, about the unfairness of the US requirement that they have to file tax returns and pay US taxes over and above the taxes they already have to pay on their foreign source income to the governments of the countries where they reside. But what about a fellow who wants to file a US tax return but can't? This extraordinary case has recently come to our attention at American Citizens Abroad and we have his permission to share his improbable tale with you. For understandable reasons, and to protect his privacy, let's just call him "Joe".

He was born in the United States 45 years ago. With his English mother and American father he moved to England when he was two years old. Joe has a British passport and an American passport too. He was brought up essentially as an Englishman and has visited the US only a few times for vacations and business trips. He attended British primary and secondary schools and won a place at Cambridge University where he earned a PhD in 1992. He was then a lecturer at University College in Dublin until 2002. He is currently an associate professor at an important Swiss University.

Last year, when Joe renewed his US passport, he discovered in reading the small print inside that he was required as an overseas American to report his worldwide income to the IRS. Joe had never been aware of any tax obligations to the US before, and so as a good American he subsequently attempted to correct this situation. In early 2007, he tried to file tax returns for tax years 2005 and 2006, but then learned to his surprise that this was not as easy as he had assumed. The IRS told him that his tax returns could not be processed because he did not include his US Social Security number (SSN) on the form. This would turn out to be a major complication because he did not have a Social Security number. When he was born, Social Security numbers were not routinely issued at birth in the United States and he had never subsequently sought one. Not to worry, he was told, he could apply right away for a US Social Security number with the assistance of the US Embassy in Bern.

That's when he made another interesting discovery. The Social Security administration has to independently confirm the veracity of his claim to have been born in the United States. To his astonishment sending a copy of his original birth certificate was not sufficient. The Social Security people also sought proof that he had just cause for never having had a SSN by the age of 45. To satisfy this latest requirement, Joe has also sent in many additional documents, including British school certificates and professional records, to try to prove to their satisfaction that he has never lived in the USA since he left as a baby. Ironically, it is now quite evident that it would have been a lot easier for Joe to get a SSN if he had been born overseas and had acquired his US citizenship through a foreign birth registration.

The Embassy had warned him that the application process could take many months because of widespread fraud that has been plaguing of the SSN system and also because of rampant identity theft in the US. They were right. Three months have now passed and Joe is still waiting for his SSN.

Why is Joe so impatient, – after all, who is anxious to file tax returns? Well, the answer is that he has recently been invited by a major US university to take up a very prestigious position as a full professor with tenure in the field of Public Health Epidemiology. His specialty is diseases that are transmitted from animals to humans. He was offered this professorship because he has already earned a considerable global reputation in this area. Many new diseases emerging in humans have their origins in animals and hence this is considered to be a very important academic area for our nation's bio-security and the health of our population. The American university would like Joe to initiate an international public health program. This is an exciting professional opportunity for Joe, but to accept he needs his US social security number and this is not just to be able to file his overdue tax returns. It is even more complicated than just that because he learned that he has to file three previous years of tax returns in order to get the affidavits of financial support that are now required for his wife and children to get their US visas to accompany him. So he is stuck and cannot do anything more until he gets this Social Security Number situation sorted out.

The absurdity of this situation is even more apparent when we take a look at Joe's case from the perspective of the aggregate US national interest. Joe works in a field where the United States faces a dire shortage of qualified professionals. This July, the US Senate passed without opposition the Veterinary Public Health Workforce Expansion Act as an amendment to the Higher Education Authorization Bill. This bill had already been adopted in the House in February. It authorizes \$1.5 billion for a grants program aimed at relieving a national shortage of practicing veterinarians. Veterinary professionals are seen as integral to U.S. national security and the safety of our national food supply. The American Veterinary Medical Association has stated that recent studies show dramatic shortfalls of veterinarians in key public health practice areas such as bioterrorism and emergency preparedness, environmental health, and the security of our food supply system.

Time will soon run out on this offer to Joe of a professorship in the US, because someone has to fill this role soon and Joe still can't assure the University that he will be available to teach there by the required date.

Joe has not yet given up, but the way the system functions continues to amaze him. When he called the Social Security processing office in Baltimore to try to trace his file – a major feat in itself, the first thing the automated answering machine asked for was his SSN!. When he finally made contact with a human voice he was told that the Baltimore Social Security office had

received the file from the Bern embassy in mid June, one month after Joe had first made the application, and it had been indeed been clearly marked “urgent”.

Social Security has now passed the file on to Homeland Security and it is anyone’s guess what happens now in this notorious black hole. Only time will tell whether Joe will finally be able to accept the offer from this prestigious American university, or whether Homeland Security by diligence or default will deprive the United States of this vitally needed professional, who is an American citizen by birth and passport.

Joe realizes that if he had been only British, and not also American, he would have already been able to accept the position and would now be working in the US. He would have easily qualified for an Extraordinary Ability Visa (EB1), an Outstanding Researcher Visa (EB2) or a National Interest Waiver (EB2). Being an American has made the process much more complicated for Joe and his family.

How many other Americans living overseas are also caught up in this current discordant maze of US laws and procedures is anyone’s guess. But for national security reasons alone, isn’t it high time for the US Government to wake up and put American citizens’ rights and rational national interest issues ahead of this latest manifestation of paralytic bureaucratic inertia if not paranoia?

Oh, and by the way, when completing his US tax forms, Joe was also dumbfounded to learn that he could not take deductions on his 1040 forms for his young children living in his household overseas because they are not American citizens. Yet, the law prohibits him from passing on his American nationality to his children as he did not meet the five year prior US residency requirement to transmit US citizenship to his children who were born overseas.

If he eventually gets all of the necessary paperwork done to be able to teach in the United States that children deduction problem will fortunately get resolved. Even though overseas American taxpayers are not allowed to take deductions for their children if these children are not US citizens (unless the taxpayer lives in Canada or Mexico) this discrimination vanishes and his children will become acceptable deductions if they are living with him and he begins filing his tax forms in the United States. That, at least, came as a welcome surprise.

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*This article was prepared by Jackie Bugnion, with contributions by Andy Sundberg. Jackie and Andy are Directors of ACA and frequent authors of ACA Press Service articles.*