DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J C L

L appeals an administrative determination of the Department of State, dated June 26, 1987, that he expatriated himself on March 21, 1978 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

After the appeal was entered, the Department re-examined the record and concluded that there was insufficient evidence to enable the Department to meet its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality when he obtained Canadian citizenship. The Department accordingly requested that the Board remand the case so that the Department may vacate the certificate of loss of appellant's nationality. We grant the Department's request.

I

An officer of the United States Consulate General at Vancouver on June 17, 1987 executed a certificate of loss of

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1/ In 1978, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read in pertinent part as follows:

> Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --
>
> (1) obtaining naturalization in a foreign state upon his own application,...

Pub. L. 99-653 (Nov. 14, 1986), 100 Stat. 3655, amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

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nationality in appellant's name, as required by law. 2/ The certificate recited that appellant acquired United States nationality by virtue of his birth at [redacted]; that he resided in the United States from birth to 1974 when he moved to Canada; that he acquired the nationality of Canada upon his own application on March 21, 1978; 3/ and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. When it forwarded the certificate to the Department, the Consulate General recommended that the certificate be approved. The Consulate General was of the view that although naturalization for the purpose of continued employment (appellant stated that he obtained Canadian naturalization to obtain permanent employment in the British Columbia Ministry of Health) was not, in itself, sufficient grounds for loss of nationality, other factors indicated that L considered himself to be and represented himself as a Canadian citizen exclusively. 4/. The Consulate

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2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads as follows:

> Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

3/ Upon being granted a certificate of Canadian citizenship, appellant made a simple, non-renunciatory oath of allegiance to Queen Elizabeth, the Second, Queen of Canada.

4/ The record shows, among other things, that appellant participated fully in Canadian life after naturalization; made no contact with U.S. authorities until 1986 when he

General attached particular importance to the fact that he obtained a Canadian passport in order to represent Canada at an international conference of a major international organization. The Department approved the certificate on June 26, 1987, having been persuaded, it informed the Consulate General, that L intended to relinquish his United States nationality by the fact that he had obtained a Canadian passport and had identified himself in official circles as a Canadian.

Approval of the certificate constitutes an administrative determination of loss of United States nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. A timely appeal was entered.

II

The Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on October 26, 1988 submitted the record upon which the Department's holding of loss of appellant's citizenship was based and a memorandum in which the Department requested that the Board remand the case so that the certificate of loss of nationality might be vacated.

The Department gave the following rationale for requesting remand:

> The Consul and the Department were persuaded of Mr. L 's relinquishment [intent to relinquish his United States nationality] by his obtaining a Canadian passport and his representation of the province of British Columbia at an international conference. These acts are too remote, in our view, to reflect on his intent some eight years earlier when he was naturalized. If Mr. L had become naturalized in order to take a senior level government position that

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4/ Cont'd.

inquired about the citizenship status of his Canadian-born children; and identified himself at the U.S./Canadian border as a dual citizen.

> required official representation abroad, or had he acquired a Canadian passport for that purpose soon after becoming naturalized, there would have been some nexus. But none is evident here. There is no evidence that he occupied a senior civil service position or that he otherwise expected to represent Canada on an official level at the critical time in 1978 when he was naturalized. In the ordinary course of events, it seems likely that Mr. L has risen in the ranks over the years to his present position and responsibilities as the second ranking civil servant in the Ministry. In sum, we believe that his acquisition and use of the passport to attend the WHO conference are too removed in time and circumstances to reflect on his intent at the time of naturalization. 5/

III

Inasmuch as the Department has concluded that it is unable to carry its burden of proving that appellant here intended to relinquish his United States nationality, and in the absence of manifest errors of fact or law that would mandate a different result, we grant the Department's request that the case be remanded so that the certificate of loss of appellant's nationality may be vacated.

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5/ In loss of nationality proceedings, the government bears the burden of proving by a preponderance of the evidence that the citizen intended to relinquish United States nationality when he or she performed the expatriative act in question. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

The case is hereby remanded for further proceedings. 6/

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member

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6/ Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part that:

> ...The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.

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