

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D MCM K

January 26, 1994

This is an appeal from a determination of the Department of State, dated April 19, 1993, holding that appellant, D MCM K, expatriated herself on March 12, 1993 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Hong Kong. 1

After the appeal was entered, the Department concluded that there is "substantial evidence showing that appellant lacked the requisite mental capacity to understand the nature and consequences of her actions" when she renounced her citizenship. The Department therefore requested that the Board remand the case so that it might vacate the certificate of loss of nationality that was approved in her name.

The Board herewith remands the case so that the certificate of nationality may be vacated.

I

An officer of the United States Consulate General at Hong Kong executed a certificate of loss of nationality in appellant's name on March 15, 1993, as required by section 358 of the Immigration and Nationality Act. The officer

1. Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), provides:

Sec. 349. (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality --

. . . .

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;

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certified that appellant acquired United States nationality by virtue of her birth at [REDACTED], Illinois on [REDACTED], [REDACTED]; that she formally renounced her United States nationality on March 12, 1993, thereby expatriating herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. In reporting the case to the Department, the Consulate General stated that "She /appellant/ was aware of the consequences of this expatriating act, and appeared to be of sound mind when taking the Oath of Renunciation...." The Department approved the certificate on April 19, 1993, approval constituting an administrative determination of loss of nationality from which a proper and timely appeal may be taken to this Board. A pro se appeal was entered on May 28, 1993.

Appellant alleges that she lacked the capacity to perform a voluntary act of renunciation because she could not understand the nature and consequences of that act. The psychiatric evidence she submitted showed that since 1979 she had been treated for bipolar (manic-depressive) affective disorder, characterized by hypomanic episodes; that she was admitted to hospital, after experiencing a hypomanic episode, only days after she renounced her citizenship; and that the attending psychiatrist was of the opinion that she renounced her citizenship while suffering impaired judgment.

II

The Deputy Assistant Secretary for Consular Affairs (Passport Services) on January 10, 1994, submitted the administrative record upon which the Department based its decision of expatriation 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 was of the view that despite the statement of the Consulate General that appellant seemed of sound mind, the evidence appellant submitted was sufficient to rebut the legal presumptions that she acted voluntarily and was mentally competent at the time of her renunciation.

III

Since the Department has concluded upon re-examination that appellant was unable mentally to perform a voluntary act of renunciation, and in the absence of manifest errors of fact or law, the Board will accede to the Department's request that the case be remanded so that the certificate of loss of nationality may be vacated.

The case is hereby remanded for further proceedings. 2

Alan G. James, Chairman
J. Peter A. Bernhardt, Member
Gerald A. Rosen, Member

2. Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part:

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