

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

Decision # 95-1

June 1, 1995

IN THE MATTER OF: J E S

This is an appeal from an administrative determination of the Department of State that J E S expatriated herself on November 30, 1992, under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States citizenship before a consular officer of the United States at Berlin, Germany.¹

After reviewing evidence appellant submitted at the conclusion of the pleadings, the Department informed the Board that it is unable to carry its burden of proof that appellant voluntarily renounced her citizenship with the intention of relinquishing it. The Department therefore wishes to vacate the certificate of loss of nationality that was approved in appellant's name. The Board is pleased to remand the case so that the certificate of loss of nationality may be vacated.

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; . . .

I

A consular officer of the United States Mission on November 30, 1992, executed a certificate of loss of nationality (CLN) in appellant's name. Therein the officer certified that appellant was born at [REDACTED], California, on [REDACTED]; that she made a formal renunciation of her United States citizenship on November 30, 1992, and thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.²

The Department of State approved the CLN on February 16, 1993, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board. A timely appeal was entered in April 1994.

Appellant contended that she did not renounce her citizenship voluntarily or with the intention of relinquishing it. When she renounced, she was allegedly experiencing severe emotional problems which included anxiety about her mother's health and her own personal life.

² Appellant had applied to be naturalized as a German citizen. Although born of a German citizen mother, she did not acquire German citizenship, for at that time children born abroad of one alien parent and one German parent did not acquire German citizenship unless the father were a German citizen. Appellant renounced her United States citizenship because German law in 1992 required that applicants for Germany naturalization relinquish his or her other nationality before naturalization would be granted.

II

The Department filed a brief in which it contended that appellant voluntarily renounced her citizenship with the intention of relinquishing it. Appellant replied to the Department's brief in January 1995, essentially reiterating her initial arguments. At that point the Board was of the view that it would be helpful if appellant were to ask her doctor to address points made by the Department in its brief that raised questions about the germaneness of the evidence he had given regarding appellant's physical and mental state at the time she renounced. Accordingly, the Board invited appellant to amplify her case by submitting an additional statement from her doctor and any other evidence she deemed relevant to her case. In April she submitted additional evidence, including a more precise medical evaluation and statements from two individuals who knew appellant when she renounced and who attested that they noticed she was under severe strain at that time.

III

The Acting Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on May 16, 1995, advised the Board that:

On review of the above appeal, and the additional information provided by Ms. S in the course of her appeal, the Department has determined that it cannot sustain the finding that appellant committed an expatriating act voluntarily and with the intention of relinquishing United States citizenship. Accordingly, the Department proposed to set aside the determination of loss of citizenship and therefore requests that the appeal be dismissed as moot.

Upon being notified that the Board has dismissed the appeal and has so informed appellant, the Department will vacate the certificate of loss of nationality and inform appellant that it has done so.

IV

Inasmuch as the Department has concluded that it cannot carry its burden of proof that appellant voluntarily renounced her citizenship with the intention of relinquishing it, we hereby remand the case to the Department so that the certificate of loss of nationality that was approved in her name may be vacated.³

Alan G. James, Chairman
Mary Elizabeth Hoinkes, Member
George Taft, Member

³ Section 7.2(a) of Title 22, Code of Federal regulations, 22 CFR 7.2(a), provides in part:

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

Although the Department requested that the Board dismiss the appeal as moot, the Board is of the opinion that it is more appropriate to adhere to the well established procedure in cases like this one, and to remand the case for further proceedings rather than simply dismiss the appeal.