

November 10, 1981

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

CASE OF: K [REDACTED] L [REDACTED] A [REDACTED] H [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, Mrs. K [REDACTED] L [REDACTED] A [REDACTED] H [REDACTED], expatriated herself on May 22, 1974, under the provisions of Section 349 (a)(1) of the Immigration and Nationality Act, by acquiring the citizenship of the United Kingdom and Colonies upon her own application. 1/

On February 23, 1975, the American Embassy at London prepared a Certificate of Loss of Nationality in the name of K [REDACTED] L [REDACTED] A [REDACTED] (sic) H [REDACTED]. The Embassy certified that appellant acquired United States nationality by virtue of her birth at [REDACTED] on [REDACTED]; that she acquired citizenship of the United Kingdom and Colonies on May 22, 1974, by registration upon her own application; and that she thereby expatriated herself under the provisions of section 349 (a)(1) of the Immigration and Nationality Act. The Department of State approved the Certificate of Loss of Nationality on August 26, 1975. The Certificate of Loss of Nationality constitutes the Department's

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

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 --

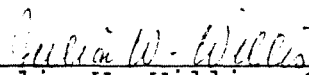
(1) obtaining naturalization in a foreign state upon his own application, . . .

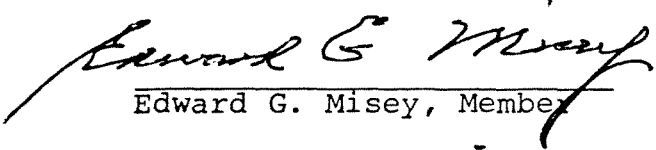
administrative determination from which an appeal lies to the Board of Appellate Review. The appellant gave notice of appeal from this administrative determination on March 1, 1980, and submitted a brief in support of the appeal on May 19, 1981.

On October 16, 1981, the Deputy Assistant Secretary for Passport Services submitted the record on which the Department's determination of loss of nationality was based and a memorandum requesting the Board to remand appellant's case to Passport Services for the purpose of vacating the Certificate of Loss of Nationality that was issued in her case. The memorandum sets forth with particularity the points of law and facts which in the opinion of the Department warrant remand. The memorandum concluded that the Department cannot sustain its burden of showing by a preponderance of the evidence that appellant intended to relinquish her United States citizenship when she became a citizen of the United Kingdom on May 22, 1974.

Upon review of the entire record before the Board and in light of Afroyim v. Rusk, 387 U.S. 253 (1967) and Vance v. Terrazas, 444 U.S. 252 (1980), we concur that the evidence of record fails to support a finding that her expatriating act was accompanied by an intent to relinquish her United States citizenship. We are, accordingly, agreeable to the request for remand to vacate the Certificate of Loss of Nationality.

The case is hereby remanded to Passport Services for future proceedings. 2/


 Julia W. Willis, Chairman


 Edward G. Missey, Member


 Warren E. Hewitt, Member

2/ Section 7.2 Title 22, Code of Federal Regulations, 22 CFR 7.2, provides in part:

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