

November 13, 1981

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

CASE OF: E [REDACTED] J. M [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, Mrs. E [REDACTED] J [REDACTED] M [REDACTED], expatriated herself on June 15, 1975, under the provisions of Section 350 of the Immigration and Nationality Act by voluntarily seeking and claiming the benefits of her British nationality through her use of a British passport in 1972 and residing in England continuously for a period of three years from June 15, 1972 to June 15, 1975. 1/

On July 14, 1975, the American Embassy at London executed a Certificate of Loss of Nationality in the name of E [REDACTED] J [REDACTED] M [REDACTED]. The Embassy certified that appellant acquired United States nationality by virtue of her birth in [REDACTED]; that she acquired the citizenship of the United Kingdom and Colonies by virtue of birth in the United States of a British citizen father; and that she expatriated herself under Section 350 of the Immigration and Nationality Act of 1952, by voluntarily seeking and claiming the benefits of her British nationality by obtaining and using a British passport

1/ Section 350 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1482, provided:

Sec. 350. A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state shall lose his United States nationality by hereafter having a continuous residence for three years in the foreign state of which he is a national by birth at any time after attaining the age of twenty-two years...

Section 350 was repealed on October 10, 1978. The repeal was not made retroactive.

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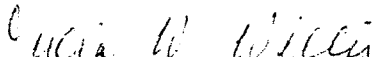
in 1972 and by residing continuously in England for a period of three years from June 15, 1972 to June 15, 1975. The Department of State approved the Certificate of Loss of Nationality on August 15, 1975. This Certificate of Loss of Nationality constitutes the Department's administrative determination from which an appeal lies to the Board of Appellate Review. The appellant gave notice of appeal from this administrative determination on February 25, 1981. Appellant submitted her sworn statement of February 25, 1981, and a further explanation in her letter of June 4, 1981 to support her appeal.

On September 30, 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 requiring 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 set forth with particularity points of law and facts which in the opinion of the Department warrant remand, and concluded that the Department could not sustain its burden of showing by a preponderance of the evidence that appellant intended to relinquish her United States citizenship when she sought and claimed the benefits of her British nationality by obtaining and using a British passport and by residing continuously in England for three years.

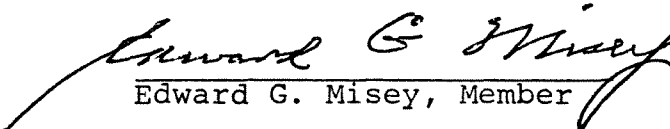
Upon review of the entire record before the Board and in light of Afroyim v. Rusk, 387 U.S. 253 (1967) and Vance v. Terrazas, 444 U.S. 252 (1980), we concur that the evidence of record fails to support a finding that appellant's expatriating act was accompanied by an intent to relinquish her United States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

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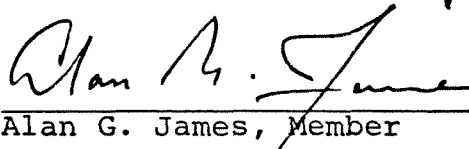
The case is hereby remanded to Passport Services for further proceedings. 2/



Julia W. Willis, Chairman



Edward G. Misey, Member



Alan G. James, 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.