

December 3, 1981

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

CASE OF: C [REDACTED] V [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, C [REDACTED] V [REDACTED], expatriated himself under the provisions of Section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico on October 8, 1976, and obtaining a Certificate of Mexican Nationality on January 24, 1977. 1/

On February 1, 1979, the American Embassy at Mexico, D.F., Mexico executed a Certificate of Loss of Nationality in the name of C [REDACTED] V [REDACTED]. The Embassy certified that appellant acquired United States citizenship by virtue of his birth in [REDACTED] on [REDACTED]; that he acquired the nationality of Mexico by virtue of his birth to a Mexican citizen father; and that he expatriated himself under the provisions of Section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico on October 8, 1976, and obtaining a Certificate of Mexican Nationality on January 24, 1977. The Department of State approved the Certificate of Loss of Nationality on July 5, 1979. This Certificate

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1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2) reads:

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 --

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof;...

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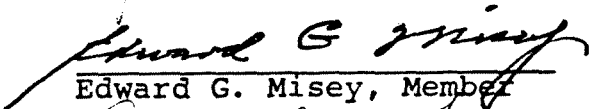
of Loss of Nationality constitutes the Department's administrative determination from which an appeal lies to the Board of Appellate Review. The appellant gave notice of appeal from this administrative determination on April 10, 1981, and submitted a brief in support of his appeal on June 3, 1981.

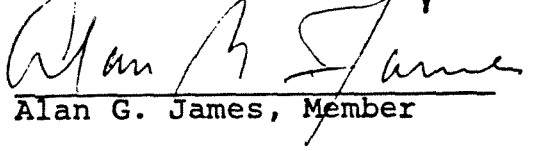
On October 23, 1981, the Deputy Assistant Secretary for Passport Services submitted the record on which the Department's determination of loss of nationality was based, and a memorandum requesting the Board to remand appellant's case to Passport Services for the purpose of vacating the Certificate of Loss of Nationality that was issued in his case. The memorandum set forth with particularity points of law and fact 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 his United States citizenship when he made a declaration of allegiance to Mexico on October 8, 1976 and obtained a Certificate of Mexican nationality on January 24, 1977.

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 are unable to conclude that the record, as it now stands, would support a finding of an intent on the part of the appellant to relinquish his 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 further proceedings. 2/

  
 Julia W. Willis, Chairman

  
 Edward G. Misey, Member

  
 Alan G. James, Member

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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.