

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

April 20, 1981

CASE OF: S [REDACTED] I [REDACTED] H [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, Mrs. S [REDACTED] L [REDACTED] H [REDACTED], expatriated herself on February 21, 1973, 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 April 2, 1974, the American Embassy at London executed a certificate of loss of nationality in the name of S [REDACTED] L [REDACTED] H [REDACTED]. The Embassy certified that appellant acquired United States nationality by virtue of her birth in [REDACTED] on [REDACTED]; that she acquired the citizenship of the United Kingdom and Colonies by registration on February 21, 1973; 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 December 9, 1974. The 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 in an affidavit and certain accompanying documents which she executed at the Embassy at London on November 2, 1979. The Embassy forwarded these documents to the Department on July 23, 1980.

On October 16, 1980, appellant submitted a brief in support of her appeal and requested a hearing before the Board. On February 24, 1981, Passport Services submitted the brief of the Department of State and the original record on which the administrative

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

Sec. 349. 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, . . .

- 2 -

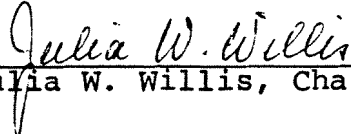
determination of loss of nationality was based. Appellant filed a reply brief by letter dated March 10, 1981. The Board scheduled a hearing for April 23, 1981.

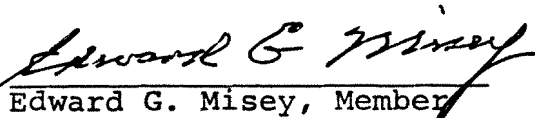
By memorandum dated April 10, 1981, Passport Services submitted the Department's answer to appellant's reply brief and requested the Board to remand appellant's case for the purpose of vacating the certificate of loss of nationality. Passport Services concluded in the memorandum responding to appellant's reply brief that the Department "cannot sustain the burden of proving by a preponderance of the evidence that Sally Louise H [REDACTED] intended to relinquish her United States citizenship when she naturalized as a citizen of Britain in Algeria on February 21, 1973."

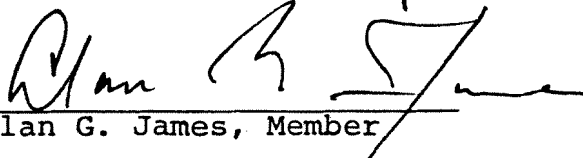
Upon review of the entire record before the Board and in light of Afroyim v. Rusk, 387 U.S. 253 (1967) and Vance v. Terrazas, 444 U.S. 252 (1980), we are agreeable to the request for remand. In addition to the reasons given in the Department's answer to appellant's reply brief, we find that the record leaves the issue of her intent to relinquish her United States citizenship in doubt. In such circumstances, we are compelled to resolve any and all doubts in favor of the retention of citizenship. The Supreme Court has said that, in actions instituted for the purpose of depriving one of the precious right of citizenship previously conferred, the facts and the law should be construed as far as reasonably possible in favor of the citizen. Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); Schneiderman v. United States, 320 U.S. 118, 122 (1943).

- 3 -

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, 44 Fed. Reg. 68825 (1979), provides in part:

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