DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

June 9, 1981

CASE OF: D M C B

This is an appeal from an administrative holding of the Department of State that appellant, Mrs. D. M. M. C. B. M. Expatriated herself on October 15, 1978, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization as a French citizen upon her own application. 1/

On April 20, 1979, the American Embassy at Paris executed a certificate of loss of United States nationality in the name of D M C The Embassy certified that appellant acquired United States nationality by virtue of her birth at that she acquired the nationality of France by virtue of her naturalization; that she obtained naturalization as a citizen of France at the French Consulate General in New York on October 13, 1978, and thereafter took up residence in France on October 15, 1978; and that she thereby expatriated herself on October 15, 1978, 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 January 31, 1980. The certificate of loss of nationality constitutes the administrative determination of the Department of State from which an appeal lies to the Board of Appellate Review. The appellant gave notice of appeal from this administrative determination by letter dated January 22, 1981.

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

Upon receipt of appellant's appeal, the Board requested Passport Services of the Department of State to submit a brief setting forth the Department's position on the appeal and the record on which the Department's determination of loss of nationality was based. On April 14, 1981, Passport Services submitted the Department's record on appellant's case and an appeal memorandum, in which it requested the Board to remand the case for the purpose of vacating the certificate of loss of nationality. The appeal memorandum discussed with particularity points of law and facts in support of remand. Passport Services concluded that the Department could not sustain its burden of proving by a preponderance of evidence that appellant had the intent to relinguish her United States citizenship when she obtained naturalization as a French citizen upon her own application. 2/ Passport Services, accordingly, requested the Board to remand the case "for cancellation of the Certificate of Loss of Nationality and such other procedures as may be necessary."

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

⁽c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

Upon review of the entire record before the Board and in light of Afroyim v. Rusk, 387 U.S. 253 (1967), the Attorney General's Statement of Interpretation of Afroyim, 42 Op. Att'y. Gen. 397 (1969), and Vance v. Terrazas, 444 U.S. 252 (1980), we are agreeable to the request for remand to vacate the certificate of loss of nationality, and hereby remand the case to Passport Services for further proceedings. 3/

Julia W. Willis, Chairman

Edward G. Misey, Member

Alan G. James, Member

^{3/} 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 the cases appealed to it.