

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

August 6, 1981

CASE OF: E █████ E. H █████

This is an appeal from an administrative holding of the Department of State that appellant, Mr. E █████ E. H █████, expatriated himself on July 7, 1946, under the provisions of section 401(e) of Chapter IV of the Nationality Act of 1940 by voting in a political election in Mexico. 1/

On December 14, 1955, the American Consulate at Matamoros, Tamaulipas, Mexico, executed a Certificate of Loss of Nationality in the name of E █████ E █████ H █████ C █████. The Embassy certified that appellant acquired United States nationality by virtue of his birth in █████; that he voted in a political election in Mexico on July 7, 1946; and that he thereby expatriated himself under the provisions of section 401(e) of the Nationality Act of 1940. The Department of State approved the Certificate of Loss of Nationality on January 2, 1956. 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 June 4, 1981. In an affidavit executed on June 4, 1981 in support of his appeal, he stated that his appeal was made at this time because he had recently learned of the Supreme Court's decision in Afroyim v. Rusk, 387 U.S. 253 (1967) reversing the law under which he had lost his United States nationality.

On July 31, 1981, the Acting 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.

1/ Section 401(e) of the Nationality Act of 1940,
8 U.S.C. 801, reads:

Sec. 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

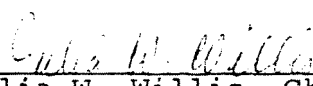
(e) voting in a political election in a foreign state

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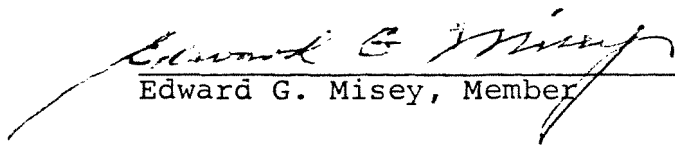
The memorandum sets forth with particularity points of law and facts which in the opinion of the Department warrants remand. The memorandum contained the explanation that pursuant to the Supreme Court's decision in Afroyim v. Rusk, 387 U.S. 253 (1967), all determinations of loss under section 401(e) of the Nationality Act of 1940 and its successor statute, section 349(a)(5) of the Immigration and Nationality Act of 1952 are void, and that whenever determinations of loss under either of these sections come to the attention of the Department, they are automatically vacated by an administrative act.

Upon review of the entire record before the Board, and in light of Afroyim v. Rusk, 387 U.S. 253 (1967), we are agreeable to the request for remand to vacate the Certificate of Loss of Nationality.

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



Julia W. Willis, Chairman



Edward G. Misey, 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.