

October 28, 1982

## DEPARTMENT OF STATE

## BOARD OF APPELLATE REVIEW

CASE OF: E A R

This case is before the Board of Appellate Review on appeal from an administrative determination of the Department of State that appellant, E [REDACTED] A [REDACTED] R [REDACTED], expatriated himself on April 18, 1974, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

## I

The United States Consulate General at Toronto on October 21, 1976, in compliance with section 358 of the Immigration and Nationality Act, prepared a certificate of loss of nationality in the name of appellant, Bruce Alan Rosensweet. 2/

---

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

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, . . .

2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of part III of this subchapter, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

- 2 -

The Consulate General certified that R [REDACTED] was born at D [REDACTED], M [REDACTED] on [REDACTED]; that he acquired the nationality of the United States by virtue of his birth therein; that he acquired the nationality of C [REDACTED] on [REDACTED]; and had thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act,

The Department did not approve the certificate at that time because Rosensweet had not had an opportunity to explain why he had sought and obtained naturalization in Canada.

For two years the Consulate General, on the Department's instructions, endeavored to locate R [REDACTED] to offer him an opportunity to furnish information to enable the Department to determine his citizenship status. Finally, in response to one of the Consulate General's letters, Canadian counsel for appellant informed the Consulate General on [REDACTED], that his client had instructed him to advise the Consulate General that appellant never intended to relinquish his United States citizenship. Despite subsequent attempts by [REDACTED] Consulate General to elicit the required information, R [REDACTED] did not reply to any of its letters.

On [REDACTED], the Department approved the certificate, approval constituting an administrative determination of loss of nationality from which an appeal lies to the Board of Appellate Review.

Through counsel in the United States, R [REDACTED] initiated this appeal on [REDACTED] [REDACTED] [REDACTED].

Upon receipt of appellant's brief, the Board on [REDACTED], requested Passport Services to submit the administrative record upon which the determination of loss of nationality was based and a brief in support of the Department's position on this appeal.

On [REDACTED], the Deputy Assistant Secretary for Passport Services submitted the record and a memorandum

- 3 -

in lieu of a brief, requesting remand of appellant's case for the purpose of vacating the certificate of loss of nationality issued in appellant's name. The memorandum set forth points of law and fact which in the Department's judgment warranted remand. The Department's memorandum summarized the Department's grounds for requesting remand as follows:

It is therefore clear from the sparse record that the Department is unable to meet its burden to prove that Mr. [REDACTED] had an intent to relinquish his United States nationality when he became a naturalized Canadian citizen.

## II

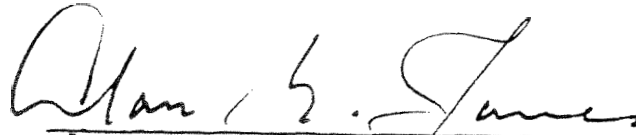
Appellant's counsel stated in her brief that [REDACTED] does not dispute that his naturalization was voluntary. The sole issue in this case is therefore whether appellant had the intention to relinquish his United States citizenship when he obtained naturalization in Canada upon his own application.

The record before the Board is very sketchy. There is no evidence of appellant's contemporaneous or subsequent words or conduct which would show clearly intent (or lack of intent) to relinquish his native nationality by obtaining Canadian nationality. His averment through his Canadian counsel made four years after obtaining naturalization that he never had such an intent, stands uncontradicted.

Upon review of the record before the Board and in light of *A [REDACTED] v. Rusk*, 387 U.S. 253 (1967) and *V [REDACTED] v. T [REDACTED]*, 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 divest himself of his United States citizenship. We are, therefore, agreeable to the Department's request that the case be remanded for the purpose of vacating the certificate of loss of nationality issued in appellant's name.

- 4 -

The case is hereby remanded to Passport Services for further proceedings. 3/ 4/

  
Alan G. James, Chairman

  
J. Peter A. Bernhardt, Member

  
George Taft, 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 cases appealed to it.

4/ We consider R [REDACTED]'s apparently deliberate refusal to furnish information [REDACTED] determine his citizenship status irresponsible, and agree with the Department that such lack of cooperation cannot be condoned.