

April 23, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: B [REDACTED] T [REDACTED] C [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, B [REDACTED] T [REDACTED] C [REDACTED], expatriated himself on March 21, 1971, under the provisions of section 350 of the Immigration and Nationality Act by having voluntarily sought and claimed the benefits of his British nationality by obtaining and using a British passport and residing in the United Kingdom for a period of three years after his twenty-second birthday. 1/

I

Appellant B [REDACTED] T [REDACTED] C [REDACTED] was born at [REDACTED] [REDACTED] thus acquiring United States citizenship at birth. He also acquired British nationality through his father, a United Kingdom subject. 2/

1/ Section 350 of the Immigration and Nationality Act of 1952, 8 U.S.C. 1482, provided, in part:

Sec. 350. A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state shall lose his United States nationality by hereafter having a continuous residence for three years in the foreign state of which he is a national by birth at any time after attaining the age of twenty-two years...

Section 350 was repealed on October 10, 1978. Pub. L. 95-432 (Oct. 10, 1978) 92 Stat. 1046. The repeal was not made retroactive.

2/ Appellant's mother was a naturalized American citizen at the time of his birth, not a British subject as stated in his certificate of loss of nationality.

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When C [REDACTED] was three years old his parents took him to the United Kingdom where he has resided since. From birth until he was sixteen years old, C [REDACTED] travelled on his parents' passport. In 1962 his parents obtained a British passport for him which he apparently used on one occasion for a family vacation abroad prior to attaining the age of eighteen, there is no evidence before the Board that he used that passport thereafter.

It appears that in 1967 appellant called at the United States Embassy in London to inquire about his citizenship status and to obtain a visa to travel to the United States. He alleges he was informed that he was an American citizen and as such eligible to be issued a passport. Appellant affirms that he was also told that as long as he did not vote in the United Kingdom or serve in its military forces, his United States citizenship would remain intact. He was not, he asserts, informed of the applicability of section 350 of the Immigration and Nationality Act to persons situated like himself. C [REDACTED] apparently decided not to go to the United States at that time and therefore did not pursue a passport application. Meanwhile, on April 7, 1972, he applied for and obtained a British passport, the only passport of record in the evidence before the Board.

Two years later, in 1974, C [REDACTED] again visited the Embassy to apply for a passport. The consular official who interviewed him, noting that he held and had used a British passport, raised the issue of his possible loss of United States citizenship under section 350 of the Immigration and Nationality Act. He was therefore invited to complete a questionnaire to determine his citizenship status, and did so on May 24, 1972. In the questionnaire, C [REDACTED] stated that he had sought and obtained British passports in 1962 and 1972 and had last used a passport in June 1973. He did not differentiate between the 1962 and the 1972 passports or the dates of their use, simply explaining that he had sought British passports for business and pleasure travel to Europe, Africa and the Middle East. On May 24, C [REDACTED] also executed an affidavit of expatriated person, doing so, he alleges, so that he might receive a visa to travel to the United States without awaiting a decision by the Department on his citizenship.

On October 9, 1974, in accordance with section 358 of the Immigration and Nationality Act 3/ the Embassy prepared a certificate of loss of nationality in appellant's name. The Embassy certified that appellant was born on March 22, 1946, at New York City, N.Y.; that he acquired the nationality of the United States by virtue of his birth therein; that he acquired the nationality of the United Kingdom and Colonies by virtue of being born of two British parents; that he voluntarily sought and claimed the benefits of his British nationality acquired at birth, by the obtention and use of a British passport and residing for a period of three years after his twenty-second birthday (i.e. March 22, 1968) in the United Kingdom; and that he thereby expatriated himself on March 21, 1971, under the provisions of section 350 of the Immigration and Nationality Act of 1952.

The Department of State on December 5, 1974, approved the certificate of loss of nationality, which constitutes the administrative holding from which an appeal lies to the Board of Appellate Review. A copy of the certificate was forwarded to C [REDACTED] by the Embassy on April 29, 1975. Appellant acknowledged receipt of the copy of the certificate in a letter to the Embassy dated May 7, 1975, and also informed the Embassy of his wish to appeal the Department's holding. On October 10, 1980, appellant's attorney gave notice of his appeal to the Board of Appellate Review.

Appellant contends that the record discloses no passport application or travel between March 22, 1964, the date of his eighteenth birth, and March 21, 1971, the alleged date of the loss of his United States nationality. Therefore, appellant argues, he performed no act of expatriation during the three years immediately preceding the alleged loss of United States citizenship.

3/ 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 chapter 3 of this title, 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.

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II

Upon receipt of appellant's brief, the Board requested the Office of Passport Services to submit the Department's brief on the appeal and the record upon which the Department's determination of loss of nationality was based. On March 23, 1982, the Deputy Assistant Secretary for Passport Services submitted the record, accompanied by a memorandum, in lieu of a brief, setting forth the position of the Department on the appeal. The memorandum requested that the Board remand appellant's case to Passport Services for the purpose of vacating the certificate of loss of nationality. The memorandum set forth with particularity points of law and fact which in the opinion of the Department warranted remand, and concluded:

....the Department believes the Certificate of Loss for Mr. C [REDACTED] was approved in error. Mr. Canadine's obtention and use of his 1972 passport cannot be the basis for the Certificate of Loss, as the other conditions of Section 350 were not met. The 1962 British passport cannot be the basis for the Certificate since there is no evidence in the record that Mr. C [REDACTED] independently used that passport or that he was aware of his claim to U.S. citizenship at that time.

Upon review of the entire record before the Board, we concur that the evidence of record fails to show that the conditions of section 350 of the Immigration and Nationality Act required for a holding of loss of nationality were fulfilled. Accordingly, we agree to the request for remand for the purpose of vacating the certificate of loss of nationality.

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


Alan G. James, Chairman


Edward G. Missey, Member


Warren E. Hewitt, Member

4/ 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