

May 7, 1982

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

CASE OF: K [REDACTED] J [REDACTED] P [REDACTED]

This is an appeal from an administrative determination of the Department of State that appellant, K [REDACTED] J [REDACTED] P [REDACTED], expatriated herself on June 27, 1978, under the provisions of section 349(a) (1) of the Immigration and Nationality Act, by becoming a citizen of the Republic of Austria upon her own application. 1/

I

[REDACTED] lla [REDACTED] K [REDACTED] P [REDACTED] V [REDACTED], was born at [REDACTED], T [REDACTED], I [REDACTED], [REDACTED] t [REDACTED] acquiring U [REDACTED] S [REDACTED] citizenship at birth. She resided in the U [REDACTED] S [REDACTED] from birth until 1969 when she went to A [REDACTED] she has since lived and worked. Appellant registered with the United States Embassy at Vienna in 1973 and was issued a new passport. She stated at that time that she proposed to remain in Austria for two or three years. In March 1978, Mrs. P [REDACTED] again registered, this time with the former Consulate at Salzburg and received a new

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

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passport. On the latter occasion she stated that she was employed at the University of Salzburg and intended to continue to live in Austria for two or three years.

On June 27, 1978, appellant married an Austrian citizen at Salzburg. On the day of her marriage appellant signed a declaration before the Mayor of Salzburg to the effect that she wished to be a loyal citizen of the Republic of Austria. Accordingly, she was granted Austrian citizenship also on June 27, 1978, in accordance with Section 9 of the Austrian Citizenship Law of 1965.

Appellant contends that she lost her American passport in Spain in June 1980. In reporting the loss, appellant stated in reply to a query of a consular official of the Embassy at Vienna that she had encountered no difficulty in re-entering Austria because she held an Austrian passport. As requested by the Embassy, appellant completed a questionnaire to determine her citizenship status and furnished documentation concerning her marriage and acquisition of Austrian citizenship. On November 14, 1980, the Embassy, as required by section 358 of the Immigration and Nationality Act, prepared and forwarded to the Department a certificate of **loss** of nationality in her name. 2/

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 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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The Embassy certified that appellant had been born at Texarkana, Texas, on February 23, 1950; that she acquired the citizenship of the United States by virtue of her birth in the United States; that she acquired the nationality of Austria by virtue of naturalization upon her **OWN** application on June 27, 1978; and that she had thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

On April 6, 1981, the Department approved the certificate, which constitutes the administrative holding of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

Appellant gave notice of appeal in a letter to the Board dated December 17, 1981. Therein she stated:

I acquired Austrian citizenship on June 27, 1978, through marriage. I did not renounce my former U.S. nationality and did not intend to relinquish my US citizenship as I received the Austrian nationality. 3/

Upon receipt of appellant's statement, the Board on January 8, 1982, requested that Passport Services submit the case record upon which the determination of loss of nationality was based, and a brief setting forth the Department's position on the appeal. On April 16, 1982, Passport Services submitted the case record and a memorandum in lieu of a brief requesting on behalf of the Department remand of appellant's case for the purpose of vacating the certificate of loss of nationality issued in her name. The memorandum set forth points of law and fact which in the judgment of the Department warranted remand, and concluded:

Passport Services considers for the above reasons that it cannot sustain the Department's burden of proving by a preponderance of the evidence that Dr. P [redacted] intended to relinquish her United States citizenship when she registered as an Austrian. The Board is therefore requested to remand the case for cancellation of the Certificate of Loss of Nationality and such other ministerial procedures as may be necessary.

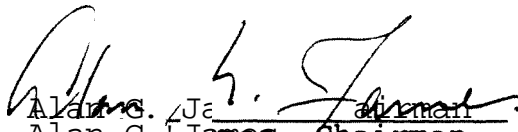
3/ Appellant also stated: "I also understand that according to US law, it is possible to obtain dual citizenship in case of marriage to a foreign spouse. I therefore appeal the loss of my US nationality due to these facts and hereby declare my intent to apply for dual citizenship."


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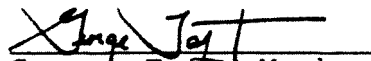
II

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 concur that the evidence of record fails to support a finding that appellant's expatriating act was accompanied by an intent to divest herself of her United States citizenship. We are, therefore, agreeable 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
 Alan G. James, Chairman


 Edward G. Misey, Member


 George Taft, 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 cases appealed to it.