

May 13, 1982

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

CASE OF: V [REDACTED] C [REDACTED]

This is an appeal from an administrative determination of the Department of State that appellant, V [REDACTED] C [REDACTED], expatriated herself on June 24, 1976, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

I

Appellant, V [REDACTED] C [REDACTED], was born at [REDACTED], [REDACTED], thus acquiring [REDACTED] citizenship at birth. She resided in the United States until July 14, 1974, when she moved to Canada with her first husband, a Canadian citizen. Appellant alleges in her affidavit executed on February 1, 1982, that shortly after they arrived in Canada her husband asked her to become a Canadian citizen. She further alleges that after two years' reflection and "the constant urging" of her husband, she acceded to his request.

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

Sec. 349. 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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Having applied for Canadian naturalization on February 17, 1976, Mrs. C [REDACTED] took the Canadian oath of allegiance on June 24, 1976, and became a Canadian citizen. Her marriage to her first husband was terminated in 1977; later that same year she married another Canadian citizen.

In 1981 Mrs. C [REDACTED] applied at the Embassy at Ottawa for registration as an American citizen with the object of returning to the United States to live.

Her naturalization in Canada having come to light, the Embassy on July 9, 1981, prepared a certificate of loss of nationality, as required by section 358 of the Immigration and Nationality Act. 2/ The Embassy certified that

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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appellant was born at Syracuse, New York, on July 12, 1953; that she acquired United States citizenship by virtue of birth in the United States; that she acquired the nationality of Canada by virtue of naturalization upon her own application; and that she had thereby expatriated herself on June 24, 1976, under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department approved the certificate on September 15, 1981. Approval of the certificate constitutes an administrative holding of loss of nationality from which an appeal lies to the Board of Appellate Review.

Through her attorney, appellant gave notice of appeal from this administrative holding of loss of nationality on February 3, 1982. Counsel for appellant submitted a legal brief in support of the appeal. Appellant alleges that she did not intend to relinquish her United States citizenship by becoming naturalized in Canada; and that the naturalization was "a perfectly consistent desire on the part of the wife (appellant) to try to please her husband and to keep harmony in the marriage."

Upon receipt of appellant's brief, the Board of Appellate Review forwarded it to the Deputy Assistant Secretary for Passport Services for the preparation of the Department's brief and submission of the case record upon which the holding of loss of nationality was based.

On April 29, 1982, Passport Services submitted the case record and a memorandum in lieu of a brief requesting, on behalf of the Department, that the Board remand appellant's case for the purpose of vacating the certificate of loss of nationality. The memorandum set forth points of law and fact which in the judgment of the Department warranted remand, and concluded:


Resolving any doubts on the evidence in favor of the citizen, the Department considers that it cannot sustain its burden of proving by a preponderance of the evidence that Mrs. Chenowski (sic) intended to relinquish her United States citizenship when she naturalized in Canada. The Board is therefore requested to remand this case for cancellation of the Certificate of Loss of Nationality and for such other procedures as may be necessary.

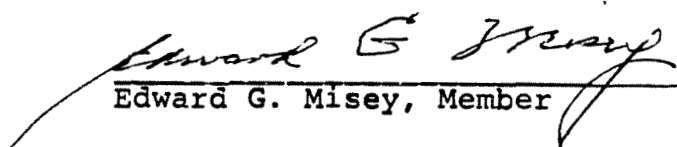
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II

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 are agreeable to the request for remand to vacate the certificate of loss of nationality which was issued in appellant's name.

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


Alan G. James, Chairman


Edward G. Misey, Member


J. Peter A. Bernhardt, 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.