

May 13, 1982

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

CASE OF: F [REDACTED] R [REDACTED] F [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, F [REDACTED] R [REDACTED] F [REDACTED] expatriated himself on June 8, 1973, under provisions of section 350 of the Immigration and Nationality Act by obtaining and using a French passport and residing in France for three years after his twenty-second birthday. 1/

I

[REDACTED] F [REDACTED] F [REDACTED], was born at [REDACTED] [REDACTED] with [REDACTED] acquiring United States citizenship. He also acquired French nationality through his French citizen mother. Appellant's mother took him to France in 1948, where he has since resided.

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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....

- 2 -

Foster alleges that in 1966 he consulted an official of the United States Embassy at Paris about his status as a dual national. He was reportedly advised at that time that he was required to register under the Selective Service System when he became eighteen years of age, and should therefore do so as soon as possible. This, F█████ did on March 14, 1966. When he registered for the Draft, F█████ allegedly made further inquiries at the Embassy about how he could retain his United States citizenship.

The French passport his mother had obtained for him during his minority having expired, F█████ applied for and received a new one on June 8, 1970. Some time thereafter he apparently again visited the Embassy, to ascertain whether there had been any change in United States law affecting dual nationality and to learn the procedure for being documented to travel to the United States. When he informed a Vice Consul that he had a French passport he was advised that if he wished to travel to the United States, he should do so on an American passport.

Unable to travel to the United States at that time, F█████ did not pursue a passport application.

Having been awarded a fellowship to study in the United States, F█████ returned to the Embassy in July 1974 to apply for a passport. The Consular official noted that he might have expatriated himself under section 350 of the Immigration and Nationality Act by having used a French passport. In referring F█████ passport application to the Department, the Consular official stated:

Until November 1973 this office did not in practice warn dual nationals of the provisions of section 350 or of the possibility that using a French passport could bring them within the provision of that section.

The officer added that it appeared F█████ had not performed any other act which would jeopardize his United States citizenship, and concluded there was no persuasive evidence in Foster's case to indicate that he intended to abandon his United States citizenship by applying for and using a French passport.

As subsequently instructed by the Department and as required by section 358 of the Immigration and Nationality Act, the Embassy on August 29, 1974, prepared a certi-

- 3 -

ificate of loss of nationality in appellant's name. 2/  
The Embassy certified that appellant was born on July 14, 1946, at Miami, Oklahoma; that he acquired the nationality of the United States by virtue of his birth in the United States; that he acquired the nationality of France by virtue of his birth to a French mother; that he obtained and used a French passport and thereafter resided in France for three years after his twenty-second birthday; and that he thereby expatriated himself on June 8, 1973, under the provisions of section 350 of the Immigration and Nationality Act.

On February 20, 1975, the Department approved the certificate which is the administrative holding of loss of

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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.

- 4 -

nationality from which an appeal may be taken to the Board of Appellate Review. Appellant gave notice of appeal to this Board in December 1981. He contended that there was no persuasive evidence that he intended to relinquish his United States citizenship by obtaining and using a French passport and that he had been misinformed by the United States Embassy at Paris of the possible **loss** of citizenship by his use of a French passport.

Upon receipt of appellant's statement, the Board, on January 29, 1982, requested Passport Services to submit the case record upon which the administrative determination of loss of nationality was based and a brief in support of the Department's position. On March 30, 1982, the Deputy Assistant Secretary for Passport Services submitted the record and a memorandum, in lieu of a brief, requesting that the Board remand appellant's case for the purpose of vacating the certificate of **loss** of nationality which was issued in his name. The memorandum set forth with particularity points of law and fact which in the judgment of the Department warranted remand, and concluded:

Based upon the entire record, the Department deems that it cannot sustain its burden of showing by a preponderance of the evidence that Mr. F [REDACTED] intended to relinquish his U.S. citizenship when he obtained and used a French passport. 3/

## II

Upon review of the entire record before the Board; in consideration of the circumstances of the case, including the fact that section 350 of the Immigration and Nationality

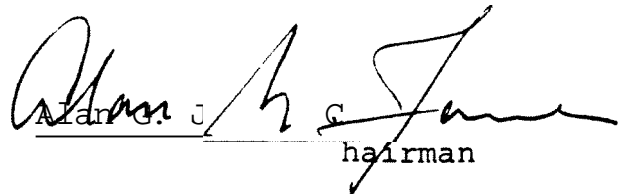
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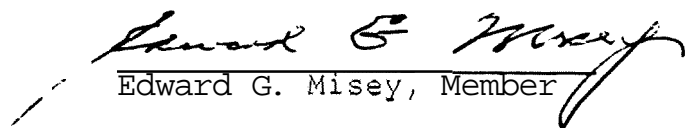
3/ The memorandum of the Deputy Assistant Secretary for Passport Services, dated March 30, 1982, does not address the question of whether the appeal taken here was filed within the time prescribed by the regulations of the Department of State. See 22 CFR 7.5 (1981); 22 CFR 50.60 (1975). This is a threshold question that confronts the Board of Appellate Review in a case before it. If an appeal is determined to be time barred, the Board is without authority to consider the case.

- 5 -

Act was repealed four years ago; 4/ and in light of the requirements of Afroyim v. Rusk, 387 U.S. 253 (1967) and Vance v. Terrazas, 444 U.S. 252 (1980) that the Government must establish appellant's intent to relinquish his citizenship by a preponderance of the evidence and that it does not believe it is able to do so, the Board agrees to the request for remand to vacate the certificate of loss of nationality.

The case is hereby remanded to Passport Services for further proceedings. 5/

  
Alan J. Jones  
Chairman

  
Edward G. Mizey, Member

  
James G. Sampas, Member

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4/ Section 350 of the Immigration and Nationality Act provides that a person, who at birth, acquired the nationality of the United States and a foreign state who has sought the benefits of his foreign nationality loses his United States citizenship if he resides for three years after the age of 22 in that foreign state unless he takes an oath of allegiance to the United States. Note 1 supra. It is understood that this section was rarely used to revoke citizenship, that it was difficult for the administrative authorities to show an intent to relinquish citizenship or that the act was done in derogation of allegiance to the United States, and that its validity was suspect in light of Afroyim v. Rusk, 387 U.S. 253 (1967). Section 350 of the Immigration and Nationality Act was repealed, effective October 10, 1978. Pub. L. 95-432 (Oct. 10, 1978) 92 Stat. 1046.

5/ 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.