

June 7, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: E [REDACTED] B [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, E [REDACTED] B [REDACTED], expatriated herself on May 26, 1959, under the provisions of section 352(a)(2) of the Immigration and Nationality Act by having a continuous residence for five years in a foreign state, Mexico. 1/

I

The American Consulate General at Monterrey, Mexico, on October 6, 1961, executed a certificate of loss of nationality in the name of appellant, E [REDACTED]

1/ Section 352(a) of the Immigration and Nationality Act, 8 U.S.C. 1484(a), read:

Sec. 352(a). A person who has become a national by naturalization shall lose his nationality by --

(1) having a continuous residence for three years in the territory of a foreign state of which he was formerly a national or in which the place of his birth is situated, except as provided in section 353 of this title, whether such residence commenced before or after the effective date of this chapter;

(2) having a continuous residence for five years in any other foreign state or states, except as provided in sections 353 and 354 of this title, whether such residence commenced before or after the effective date of this act.

The Supreme Court in Schneider v. Rusk 377 U.S. 163 (1964) held section 352(a)(1) unconstitutional.

- 2 -

B [REDACTED], as required by section 358 of the Immigration and Nationality Act 2/. The Consulate General certified that appellant, who was born in [REDACTED], Germany on [REDACTED], [REDACTED], acquired United States nationality by virtue of naturalization on [REDACTED] 1951; that she left the United States on [REDACTED], 1954; that she resided thereafter continuously for five years in Mexico; and that she had thereby expatriated herself on [REDACTED] 1959, under the provisions of section 352(a)(2) of the Immigration and Nationality Act. The Department on [REDACTED], 1961, approved the certificate of loss of nationality.

Appellant gave notice of appeal from this administrative holding through counsel on April 26, 1982.

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 the 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.

- 3 -

Upon receipt of appellant's brief on [REDACTED], 1982, the Board requested Passport Services to submit the Department's brief on the appeal and the case record upon which the holding of loss of citizenship was based. On May 26, 1982, Passport Services, on behalf of the Department, submitted the record, accompanied by a memorandum, in lieu of a brief, setting forth the position of the Department on the appeal.

Noting that the Supreme Court held in Schneider v. Rusk, 377 U.S. 163 (1964) that a United States citizen could not be held to have lost his or her citizenship under section 352 because it was a discriminatory burden placed on naturalized citizens and not upon citizens by birth, and therefore unconstitutional, the memorandum concluded:

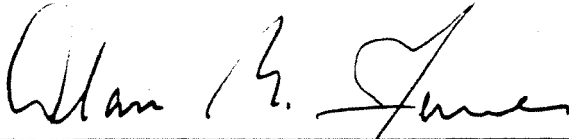
After the Schneider decision, all determinations of loss made under section 352 of the Immigration and Nationality Act are void. Whenever a determination of loss under this section comes to the attention of the Department, it is automatically vacated by an administrative act and the person is held never to have lost her citizenship.... Since the holding is void under the Supreme Court decision in Schneider, Passport Services requests the Board to remand this case for cancellation of the Certificate of Loss and other administrative procedures necessary to this case.

- 4 -

II

Upon review of the entire record before the Board and in light of Schneider v. Rusk, 377 U.S. 163 (1964), we agree to the request for remand to vacate the certificate of loss of nationality 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.