

June 18, 1982

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

CASE OF: S ■■■ J ■■■ N ■■■ E ■■■

This is an appeal from an administrative holding of the Department of State that appellant, S ■■■ J ■■■ N ■■■ E ■■■, expatriated herself on July 13, 1981, under the provisions of section 349(a) (1) of the Immigration and Nationality Act ^{1/} by obtaining registration as a citizen of the United Kingdom and Colonies upon her own application.

I

Appellant, S ■■■ J ■■■ N ■■■ E ■■■, a native born citizen of the United States married ■■■ British citizen in 1974, and has since resided in the United Kingdom. As a wife of a British citizen entitled to acquire British citizenship through registration, appellant so registered on July 13, 1981. Having been informed by the Home Office of Mrs. E ■■■ registration as a British citizen, the United States embassy at London, after extensive correspondence with appellant, prepared a certificate of loss of

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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nationality in her name, as required by section 358 of the Immigration and Nationality Act. 2/

The Embassy certified that S [REDACTED] J [REDACTED] N [REDACTED] E [REDACTED] was born at New York City on December 14, 1951; that she acquired United States citizenship by virtue of her birth therein; that she acquired the nationality of the United Kingdom and Colonies by virtue of registration upon her own application; that she obtained registration as a citizen of the United Kingdom and Colonies on July 13, 1981; and that she had thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on December 22, 1981, such approval constituting an administrative holding of **loss** of nationality from which an appeal lies to the Board of Appellate Review.

Appellant, through counsel, took this appeal on April 16, 1982. She argued that in seeking and obtaining registration as a British citizen she did not intend to relinquish her United States citizenship.

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.

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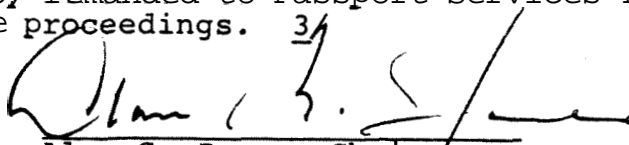
Upon receipt of appellant's brief, the Board of Appellate Review on April 27, 1982, requested that Passport Services submit the case record upon which the holding of **loss** was based and a brief setting forth the Department's position on the appeal. On June 7, 1982, the Director of the Office of Citizenship Appeals and Legal Assistance, on behalf of the Department, submitted the record and a memorandum, in lieu of a brief, requesting that the Board remand appellant's case for the purpose of vacating appellant's certificate of **loss**. The memorandum concluded:

The Department, having examined the record, has concluded that it cannot sustain its burden of proving by a preponderance of the evidence that Mrs. E. [REDACTED] intended to relinquish her citizenship when she registered as a British citizen. The Board is therefore requested to remand this case for cancellation of the Certificate of loss and such other administrative procedures as may be necessary.

II

Upon consideration of the entire record before us and in the light of the Supreme Court's decisions in Afroyim v. Rusk, 387 U.S. 253 (1967) and Vance v. Terrazas, 444 U.S. 252, (1980), the Board is agreeable to the request for remand for the purpose of vacating 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


Gerald A. Rosen, 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.