

June 25, 1982

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

CASE OF: J [REDACTED] A [REDACTED] G [REDACTED]

This is an appeal from an administrative determination of the Department of State that, appellant, J [REDACTED] A [REDACTED] [REDACTED], expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act ^{1/} by obtaining naturalization in Canada upon her **own** application.

I

Appellant, J [REDACTED] A [REDACTED] G [REDACTED], who was born in the [REDACTED] [REDACTED] married a [REDACTED] [REDACTED] in 1963 and moved to [REDACTED] with him. Appellant became a naturalized Canadian citizen upon her **own** application on December 19, 1975. She alleges she became a Canadian citizen to have the same nationality as her husband and to be eligible for a Canadian commercial fishing license in order that she might assist him in his business.

Upon learning from the Canadian authorities that *Mrs.* G [REDACTED] had become a naturalized Canadian citizen, and after receiving evidence from her concerning the reasons and circumstances of her naturalization, the United States Consulate General at Vancouver on January 22, 1981, as

^{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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required by section 358 of the Act 2/ prepared a certificate of loss of nationality in appellant's name.

The Consulate General certified that J [REDACTED] A [REDACTED]-G [REDACTED] was born at Bellingham, Washington, on August 4, 1944; that she acquired the nationality of the United States by virtue of birth therein; that she acquired the nationality of Canada by virtue of naturalization upon her own application on December 19, 1975; and that she thereby expatriated herself under the provisions of section 349(a) (1) of the Immigration and Nationality Act.

The Department approved the certificate of **loss** on March 24, 1981, approval constituting an administrative determination of **loss** of nationality from which an appeal lies to the Board of appellate Review. Appellant initiated this appeal on February 19, 1982, contending that although she did become a citizen of Canada, "at no time was this done willingly or with the intent to give up her American citizenship."

Upon receipt of appellant's brief, on May 7, 1982, the Board of Appellate Review forwarded it to Passport Services, requesting submission of the Department's brief on the appeal and the case record upon which the determination of **loss** was based.

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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On June 14, 1982, the Deputy Assistant Secretary for Passport Services submitted the case 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. The memorandum set forth with particularity points of fact and law which in the judgment of the Department warranted remand. The memorandum stated in pertinent part:

The Department believes, after a review of the record, that it cannot sustain its burden of showing, by a preponderance of the evidence, that Ms. G. [REDACTED] intended to relinquish her United States nationality by her naturalization in Canada. Therefore, we request the Board of Appellate Review to remand this case for vacation of the certificate of **loss**.


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 that 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. Misesy, Member


George Taft, 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.