

April 1, 1982

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

CASE OF: M ██████ H ██████

This is an appeal from an administrative holding of the Department of State that appellant, M ██████ H ██████, expatriated herself on May 9, 1968, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining the nationality of the Netherlands upon her own application. 1/

On September 30, 1980, the Branch Office of the United States Embassy at Geneva executed a certificate of loss of nationality in the name of M ██████ H ██████. The Branch Office certified that *Mrs.* H ██████ by virtue of her birth ██████ that she acquired the nationality of the Netherlands by virtue of her naturalization on May 9, 1968; and that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department of State approved the certificate of loss of nationality on November 19, 1980. The approval of the certificate constitutes the Department's administrative holding from which this appeal lies to the Board of Appellate Review. Appellant gave notice of appeal from this administrative determination on November 2, 1981, and submitted a sworn statement of the same date which constituted her brief in support of her appeal.

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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, . . .

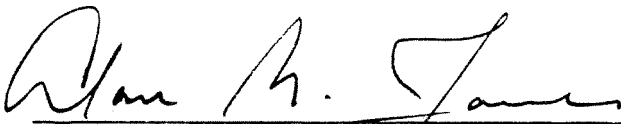
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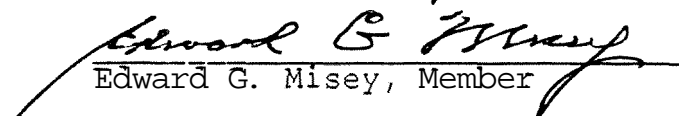
Upon receipt of appellant's statement, the Board, on November 20, 1981, requested Passport Services to submit the case record upon which the administrative determination of **loss** of nationality was based and a brief in support of the Department's position. On March 11, 1982, the Deputy Assistant Secretary for Passport Services submitted the record and a memorandum, in lieu of a brief, requesting the Board to remand appellant's case to Passport Services for the purpose of vacating the certificate of loss of nationality which was issued in her name. The memorandum set forth with particularity points of law and fact in support of the Department's position and stated:

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

Upon review of the entire record before the Board and in light of Afroyim v. Rusk, 387 US 253 (1967) and Vance v. Terrazas, 444 US 252 (1980), we concur that the evidence of record fails to support a finding that appellant's expatriating act was accompanied by an intent to divest herself of her United States citizenship. We are, therefore, agreeable to the request for remand to vacate the certificate of loss of nationality.

The case is hereby remanded to Passport Services for further proceedings. 2/

  
Alan G. James, Chairman

  
Edward G. Misesy, Member

  
Warren E. Hewitt, Member

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2/ 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.