

June 16, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: G E -S

This is an appeal from an administrative determination of the Department of State of April 6, 1981, that appellant, G E , expatriated himself on February 5, 1981, under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States citizenship before a consular officer of the United States at Geneva, Switzerland.*

Appellant initiated this appeal on March 30, 1982, and requested a hearing before the Board of Appellate Review, Subsequent to the hearing, which was held on January 28, 1983, the Board requested that appellant submit supplementary medical information and evidence. The supplemental evidence that was submitted was in further support of appellant's contention that he lacked the requisite mental capacity to perform a meaningful act of renunciation of citizenship on February 5, 1981. The Department of State, upon review of the supplemental evidence, maintained that it should be given little evidentiary weight with respect to appellant's mental capacity on February 5, 1981, the date on which he renounced his United States nationality. The Department further maintained that such evidence was insufficient to rebut the legal presumption of competency,

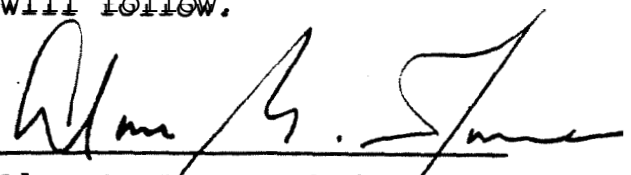
*/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5) reads:


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 by naturalization, shall lose his nationality by...

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; ...

Upon review of all the evidence and the entire record of proceedings before the Board, we are unable to conclude that appellant had the requisite capacity on February 5, 1981 to perform an act of formal renunciation of his United States citizenship with comprehension of its nature, scope and consequences, and accordingly reverse the Department's administrative determination of April 5, 1981, of loss of appellant's nationality.

In accordance with section 7.8 of Title 22, Code of Federal Regulations, an opinion setting forth the Board's findings of fact and conclusions of law in support of the decision will follow.


 Alan G. James, Chairman


 Edward G. Misey, Member


 George Taft, Member