

July 14, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J [REDACTED] K [REDACTED]

This is an appeal from an administrative determination of the Department of State of October 28, 1981, that appellant, J [REDACTED] K [REDACTED], expatriated herself on June 3, 1975, under the provisions of Section 349(a) (1) of the **Immigration and Nationality Act**, by acquiring the citizenship of Canada upon her **own** application. 1/

On October 6, 1981, the Consulate General at Toronto prepared a Certificate of **Loss** of Nationality in the name of J [REDACTED] K [REDACTED]. The Consulate General certified that appellant acquired [REDACTED] virtue of her birth at [REDACTED]; that she acquired citizenship [REDACTED] Canada on June 3, 1975, by registration upon her **own** application; 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 October 28, 1981. The Certificate of Loss of Nationality constitutes the Department's administrative determination from which an appeal lies to the Board of Appellate Review. The appellant gave notice of appeal from this administrative determination on October 25, 1982, and submitted a brief in support of the appeal on March 30, 1983.

1/ Section 349(a) (1) of the **Immigration and Nationality Act**, 8 U.S.C. 1481 (a) (1), reads:

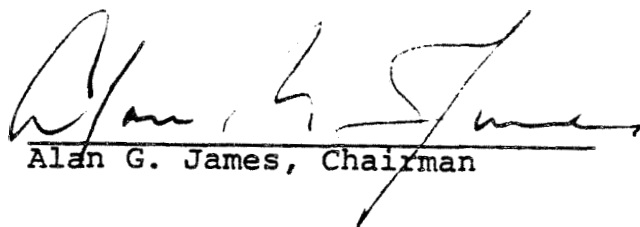
Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

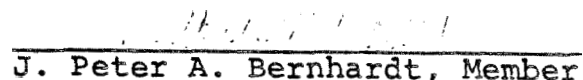
(1) obtaining naturalization in a foreign state upon his **own** application, . . .

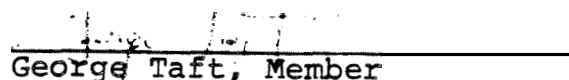
On June 24, 1983, the Deputy Assistant Secretary for Passport Services submitted the record on which the Department's determination of loss of nationality was based and a memorandum requesting the Board to remand appellant's case to Passport Services for the purpose of vacating the Certificate of Loss of Nationality that was issued in her case. The memorandum sets forth with particularity the points of law and facts which in the opinion of the Department warrant remand. The memorandum concluded that the Department was unable to meet its burden to prove that appellant intended to relinquish her United States citizenship when she became a citizen of Canada on June 3, 1975.

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 concur that the evidence of record fails to support a finding that her expatriating act was accompanied by an intent to relinquish her United States citizenship. We are, accordingly, 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


J. Peter A. Bernhardt, Member


George Taft, Member

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.