

September 16, 1983

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: V [REDACTED] T [REDACTED]

This case is before the Board of Appellate Review on an appeal by V [REDACTED] [REDACTED] from an administrative determination of the Department of State that she expatriated herself on March 24, 1981, under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

Although the Department of State determined on May 11, 1982, that appellant lost her United States nationality, it now submits that it cannot bear the burden of proving by a preponderance of the evidence that appellant intended to relinquish her United States citizenship when she made a formal declaration of allegiance to Mexico. The Department therefore requests that the Board remand the case for the purpose of vacating the certificate of loss of nationality that was issued in appellant's name. The Board will agree to the request for remand.

I

On March 3, 1982, the United States Embassy at Mexico, D.F. pre c e of loss of nationality in the name of [REDACTED] [REDACTED] fied that appellan r [REDACTED] [REDACTED] that she acquired the [REDACTED] ed by virtue of birth to an American citizen father; that she acquired the nationality of Mexico by virtue of her birth therein; that she made a formal declaration of allegiance to Mexico on February 17, 1981; that she obtained a certificate of Mexican nationality on March 24, 1981; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provides:

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 --

- (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; . . .

The Department of State approved the certificate on May 11, 1982, approval constituting an administrative determination of loss of nationality from which an appeal, proper and timely filed, may be brought to this Board.

Appellant gave notice of appeal through counsel on March 9, 1983, and submitted a brief in support of her appeal on May 9, 1983.

On August 26, 1983, the Special Counsel, Office of Citizenship Appeals and Legal Assistance, Bureau of Consular Affairs, submitted the record upon which the Department's determination of **loss** of nationality was based, and a brief requesting that the Board remand the case to the Department for the purpose of vacating the certificate of loss of nationality that was issued in appellant's name. The brief set forth with particularity points of law and fact that in the Department's judgment warranted remand.

Although the Department maintains that appellant's formal declaration of allegiance to Mexico was a voluntary act, it asserts that there is insufficient evidence to support a finding that appellant intended to relinquish her United States nationality when she performed the allegedly expatriating act; the Department cannot therefore bear its statutory burden of proving by a preponderance of the evidence that appellant intended to surrender her American nationality

2/ As the Supreme Court held in Vance v. Terrazas, 444 U.S. 252 (1980), section 349(c) of the Immigration and Nationality Act places on the Government the burden of proving by a preponderance of the evidence that the expatriating act was performed with the necessary intent to relinquish citizenship

Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481, provides:


Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

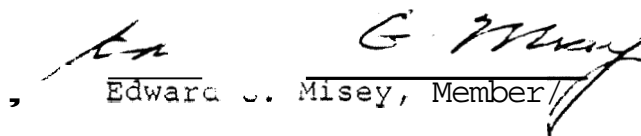
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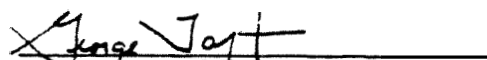
II

Inasmuch as the Department maintains that it cannot sustain its burden of proof, and absent any manifest mistake of law or fact in these proceedings, the Board is agreeable to the request for remand for the purpose of vacating the certificate of loss of nationality.

The case is hereby remanded for further proceedings. 3/


Alan C. James, Chairman


Edward S. Misey, 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.