

October 20, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D [REDACTED] I [REDACTED] H [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative order at [REDACTED] of the Department of State that appellant, D [REDACTED] I [REDACTED] H [REDACTED], expatriated herself on July 19, 1976, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

On April 28, 1982, the Department of State determined on the basis of the record before it that appellant lost her United States citizenship. It now takes the position that there is insufficient evidence that appellant intended to relinquish her United States nationality when she performed the allegedly expatriating act. The Department therefore requests the Board remand the case for the purpose of vacating the certificate of loss of nationality. The Board will agree to the request.

I

On April 6, 1982, the United States Consulate General at Toronto, Canada, [REDACTED] par [REDACTED] a [REDACTED] ificate of loss of nationality in the name of D [REDACTED] I [REDACTED] H [REDACTED]. The Embas [REDACTED] certified that appellant was born at [REDACTED], [REDACTED], [REDACTED] that she acquired the nationality [REDACTED] t [REDACTED] United States

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

by virtue of her birth therein; that she acquired the nationality of Canada by naturalization on July 19, 1976; 2/ and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act,

The Department of State approved the certificate on April 28, 1982, approval being an administrative determination of loss of nationality from which a properly and timely filed appeal may be brought to this Board.

Appellant gave notice of appeal on April 26, 1983.

On September 30, 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 memorandum 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 memorandum set forth with particularity points of fact which in the Department's judgment warrant remand.

2/ Appellant's parents were Canadian citizens. As they did not register her birth within two years thereof, appellant did not acquire Canadian citizenship. In 1976 appellant applied to be registered as a Canadian citizen and received a certificate of citizenship. The Department considers this procedure to be naturalization in a foreign state in view of the provisions of section 101(a)(23) of the Immigration and Nationality Act which defines "naturalization" as the "conferring of nationality of a state upon a person after birth, by any means whatsoever."

- 3 -

The Department suggests only inferentially that it cannot bear its burden under section 349(c) of the Immigration and Nationality Act ^{3/} of proving by a preponderance of the evidence that appellant intended to relinquish her United States nationality when she registered as a Canadian citizen.

^{3/} 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** accompanied by the requisite intent to relinquish citizenship.

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

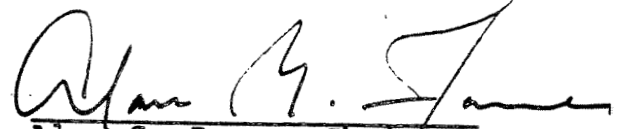
Whenever the **loss** of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, **the** burden shall be upon the person or party **claiming** that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (a), 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.


II

Inasmuch as the Department maintains that the evidence of record is insufficient to show **that** appellant intended to relinquish her United States nationality when she obtained Canadian citizenship, and **in** the absence of any manifest **errors of fact or law in these proceedings, the Board is agreeable to the request for remand for the pu** vacating the certificate of loss of nationality.

The case is hereby remanded for further proceedings.

4/


Alan G. James, Chairman


Edward G. Misey, Member


George Taft, Member

4/ Section 7.2(a) of 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.