

September 29, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: G [REDACTED] L [REDACTED] Q [REDACTED]

This case is before the Board of Appellate Review on an appeal by G [REDACTED] I [REDACTED] Q [REDACTED] from an administrative determination of the Department of State that he expatriated himself on January 15, 1972, 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 June 8, 1982, that appellant lost his 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 his United States citizenship when he 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 September 8, 1980, the United States Embassy at Mexico, D.F. pre a ca loss of nationality in the name of G [REDACTED] L [REDACTED] Q [REDACTED] Embassy
appellant was [REDACTED]

by virtue of birth to an American citizen mother; that he acquired the nationality of Mexico by virtue of his birth therein: that he made a formal declaration of allegiance to Mexico on December 2, 1971; that he obtained a certificate of Mexican nationality on January 15, 1972; and thereby expatriated himself 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 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 --

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(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 June 8, 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 on June 1, 1983; his letter of that date and enclosures constituted his brief.

On September 20, 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 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 his United States nationality when he performed the allegedly expatriating act; the Department cannot therefore bear its statutory burden of proving by a preponderance the evidence that appellant intended to surrender his American nationality. 2/

2/ As the Supreme Court, held in Vance v. Terrazas, 444 U.S. 752 (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 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 (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.

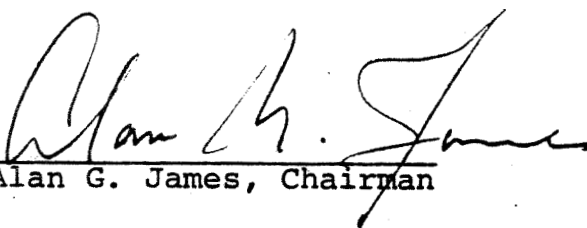
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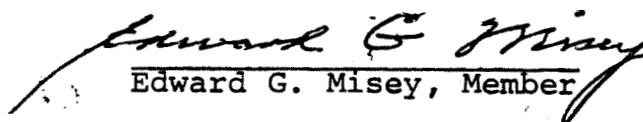
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II

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.

-Without taking any position on the merits, the Board hereby remands the case for further proceedings. 3/


 Alan G. James, Chairman


 Edward G. 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.