

October 20, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A [REDACTED] F [REDACTED] De [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, August [REDACTED] F [REDACTED] D [REDACTED], expatriated himself on March 26, 1981, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

Although the Department of State determined on June 28, 1982, that appellant lost his United States citizenship, it now submits that the evidence of record will not sustain a finding that appellant intended to relinquish United States citizenship when he acquired Canadian citizenship. Accordingly, the Department requests that the Board remand the case for the purpose of vacating the certificate of loss of nationality. The Board will grant the request.

I

On May 28, 1982, the United States Consulate General at Toronto, Canada, prepared a certificate of loss of nationality in the name of A [REDACTED] F [REDACTED] D [REDACTED]. The Consulate General certified that appellant acquired the United [REDACTED] by virtue of his birth at [REDACTED] that he was naturalized as a citizen of [REDACTED]

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

See. 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, . . .

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Canada on March 26, 1981; 2/ and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department of State approved the certificate on June 28, 1982; this action is an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board.

Appellant initiated this appeal through counsel on June 17, 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 for the purpose of vacating the certificate of **loss** of nationality. The memorandum set forth with particularity points of fact that in the Department's judgment warrant remand, and concluded that the Department: cannot bear its burden of proving by a preponderance of the evidence that appellant intended to relinquish his American nationality when he made a delayed registration with the Canadian authorities of his birth abroad to a Canadian father.

2/ Appellant's parents were Canadian citizens. As they did not register his birth within two years thereof, appellant did not acquire Canadian citizenship. However, in 1980 he applied to be registered as a Canadian citizen and in March 1981 was issued a certificate of Canadian citizenship. The Department considers this procedure to be naturalization in a foreign state in view of section 101(a)(23) of the Immigration and Naturalization Act which defines "naturalization" as the "conferring of nationality of a state upon a person after birth, by any means whatsoever."

The Department's memorandum does not, except by inference, cite ~~the~~ statutory provisions of the Immigration and Nationality Act and the applicable court decisions that require it to bear the burden of proof of appellant's intention to relinquish his United States citizenship. 3/

II

Inasmuch as the Department has now concluded that it cannot sustain its burden of proof that appellant intended to relinquish his United States nationality when he became a Canadian citizen, and, further, in the absence of manifest mistakes of law or fact, the Board is agreeable to the request of the Department that we remand the case for the purpose of vacating the certificate of loss of nationality.

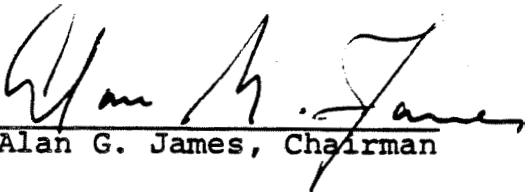
3/ As the Supreme Court held in Vance v. Terrazas, 444 U.S. 21 (1980), section 349(c) of the Immigration and Nationality Act places on the Government the burden of proving by a preponderance of the evidence that the expatriating act was accompanied by the requisite intent to relinquish citizenship.

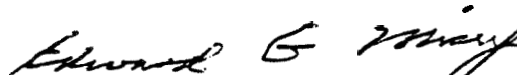
Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481, provides:

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 (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 performed were not done voluntarily.

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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.