

May 9, 1984

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, [REDACTED], expatriated herself on February 13, 1937, under the provisions of section 2 of the Act of March 2, 1907, by being naturalized as a British subject in Canada. 1/

On June 7, 1983, the Department of State determined on the basis of the record before it that appellant had lost her United States citizenship. The appeal was entered on July 13, 1983. After briefs had been exchanged, the Department informed the Board that upon further review of the case, it found insufficient evidence that appellant intended to relinquish her United States citizenship when she performed the statutory expatriating act. The Department therefore requested that the Board remand the case for the purpose of vacating the certificate of loss of nationality. The Board will grant the Department's request.

---

1/ Section 2 of the Act of March 2, 1907, 34 Stat. 1228, provided in pertinent part:

...any American citizen shall be deemed to have expatriated himself when he has been naturalized in any foreign state in conformity with its laws, or when he has taken an oath of allegiance to any foreign state....

- 2 -

I

On May 18, 1983, a consular officer of the United States Consulate General at Toronto prepared a certificate of expatriation in appellant's name, in compliance with section 50.51 of Title 22, Code of Federal Regulations. 2/

---

2/ Section 50.51 of Title 22, Code of Federal Regulations, 22 CFR 50.51, provides as follows:

The procedures under this part shall also apply to the preparation, approval or disapproval of certificates of expatriation. Where loss of nationality occurs under provisions of law other than those specified in section 358 of the Immigration and Nationality Act of 1952, the diplomatic or consular officer shall prepare a certificate of expatriation instead of a certificate of loss of nationality.

Section 223, 8 Foreign Affairs Manual prescribes the form in which the certificate of expatriation shall be prepared.

- 3 -

The consular officer certified that appellant acquired United States citizenship by birth at [REDACTED], Minnesota on [REDACTED]; that she was naturalized as a British subject in Canada on February 13, 1937, under section 13(5) Series H of the Naturalization Act, as amended (Revised Statutes of Canada, 1927); 3/ and thereby expatriated herself under the provisions of section 2 of the Act of 1907.

The Department approved the certificate of expatriation on June 7, 1983, approval being an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board. The appeal was entered on July 13, 1983.

After both parties had filed briefs, the Department informed the Board on May 3, 1984, that:

Upon re-examining the [REDACTED] record, the Department has concluded that it cannot sustain this burden of proof. 4/ It is requested, therefore, that the Board remand Mrs. [REDACTED]'s case for cancellation of the Certificate of Loss of Nationality.

---

3/ The oath of allegiance that appellant was required to take by the Naturalization Act read as follows:

I, ... Swear by Almighty God that I will be faithful and bear true Allegiance to His Majesty King Edward the Eighth, his Heirs and Successors according to law.

SO HELP ME GOD.

There was no requirement that an applicant for naturalization in 1937 renounce his or her previous nationality: nor, as the record shows, did appellant renounce her United States citizenship.

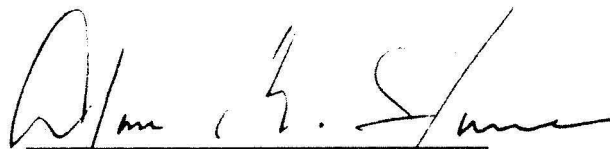
4/ The Department cited the Supreme Court's decision in Vance v. Terrazas, 444 U.S. 252 (1980) wherein the Court held that a person could not be found to have expatriated him or herself unless the Government could show by a preponderance of the evidence that he or she had performed an act, prescribed by Congress as expatriating, with the intent to relinquish United States citizenship.

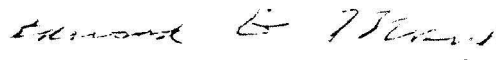
- 4 -

## III

Inasmuch as the Department submits that **it** cannot sustain its burden of proof, and in the absence of any manifest errors of law or fact in these proceedings, the Board is agreeable to the Department's request for remand for the purpose of vacating the certificate of loss of nationality.

The case is hereby remanded **for** further proceedings. 5/

  
 Alan G. James, Chairman

  
 Edward G. Misey, Member

  
 Howard Meyers, Member

---

5/ Section 7.2(a) of Title 22, Code of Federal Regulations, 72 CFR 7.2(a) provides in part:

...The Board shall take any action **it** considers appropriate and necessary to the disposition of cases appealed to **it**.