

January 20, 1984

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [REDACTED]

[REDACTED] has brought this appeal to the Board of Appellate Review from the Department of State's administrative determination that she expatriated herself on February 12, 1974, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

The Department of State determined on September 22, 1984 that appellant lost her United States nationality. It now submits that upon re-examination of the record in this case, it cannot sustain its statutory burden of proving that appellant intended to relinquish her United States citizenship. Accordingly, the Department asks the Board to remand the case for the purpose of vacating the certificate of loss of nationality that was approved in her name. The Board will grant the request.

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, . . .

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I

The United States Consulate General at Toronto prepared a certificate of loss of nationality in appellant's name on August 11, 1982. The Consulate General certified that appellant became a citizen of the United States by birth at ██████████, Ohio, on ██████████; that she acquired the nationality of Canada by naturalization upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on September 22, 1982, an action constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be brought to this Board.

Appellant entered this appeal on September 12, 1983.

On January 6, 1984, the Deputy Assistant Secretary for Consular Affairs submitted the administrative record upon which the holding of loss of appellant's nationality was based, and a memorandum requesting that the Board remand appellant's case to the Department for the purpose of vacating the certificate of loss of nationality that was issued in her name. Citing the Supreme Court's decision in Vance v. Terrazas, 444 U.S. 252 (1980), ^{2/} the Department stated that upon a further review of the record, it was of the view that it could not sustain its burden of proving by a preponderance of the evidence that appellant intended to relinquish her United States nationality when she obtained naturalization in Canada upon her own application.

2/ The Supreme Court held that in order to establish loss of nationality, the Government must, under section 349(c) of the Immigration and Nationality Act, prove by a preponderance of the evidence that a person intended to relinquish citizenship.

Section 349(c) of the Act provides:

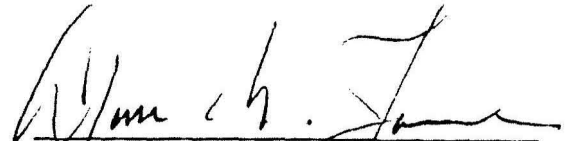
Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish 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 has concluded that it cannot carry its burden of proving appellant's intention to relinquish her United States citizenship when she became a citizen of Canada, and further, in the absence of manifest errors of law or fact, the Board is agreeable to the request of the Department that the case be remanded for the purpose of vacating the certificate of loss of nationality.

The case is hereby remanded for further proceedings. 3/


 Alan G. James, Chairman


 Edward G. Misey, Member


 George Taft Member

3/ Section 7.2(a) of Title 22, Code of Federal Regulations, 22 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.