

February 16, 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 April 5, 1979, 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 October 7, 1982, that appellant **had** surrendered her United States nationality. It now submits that upon re-examination of the record **in** this case, it cannot carry its burden of proving by a preponderance **of** the evidence 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.

The Board will grant the request.

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The United States Consulate **General** at Toronto, Canada, prepared a certificate of loss of nationality in appellant's name on September 16, 1982. The Consulate General certified that appellant acquired United States nationality by birth at [REDACTED], Ohio, on [REDACTED]; that she obtained naturalization in Canada upon her own application; and thereby expatriated herself under the provisions of section **349(a)(1)** of the Immigration and Nationality Act.

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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The Department approved the certificate on October 7, 1982, approval constituting an administrative determination of **loss** of nationality from which a timely and properly filed appeal may be brought to this Board.

The appeal in this case was entered through counsel on September 28, 1983.

On February 7, 1984, the Deputy Assistant Secretary for Consular Affairs submitted the administrative record upon which the Department's holding of **loss** was based, and a memorandum requesting that the Board remand the case for the purpose of vacating the certificate of loss of nationality that was approved in appellant's name. Citing the Supreme Court's decision in Vance v. Terrazas 444 U.S. 252 (1980), ^{2/} the Department stated that upon further examination 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:

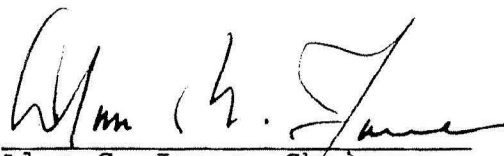
Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish 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 provision 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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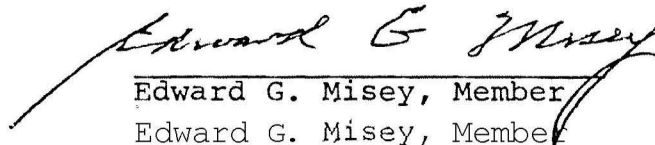
II

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, 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

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.