

February 23, 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 January 25, 1980, 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 on June 18, 1981, determined that appellant had expatriated herself. It now submits that after further examination of the record, it cannot sustain its burden of proving that appellant intended to relinquish her United States 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

The United States Consulate General at Toronto prepared a certificate of **loss** of nationality in appellant's name on June 3, 1981. The Consulate General certified that appellant became a citizen of the United States by birth at [REDACTED], Michigan, on [REDACTED]; that she obtained naturalization in Canada upon her own application; and thereby expatriated herself under the provisions **of** section 340(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on June 18, 1981, approval constituting an administrative determination *of loss* of nationality from which an appeal, properly and timely filed, may be brought to this Board.

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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Appellant entered this appeal on September 23, 1983.

On February 1, 1984, the Deputy Assistant Secretary for Consular Affairs submitted the **administrative** record upon which the Department's holding **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 Department noted that on July 15, 1981, the Consulate General at Toronto sent a copy of the approved certificate of loss of nationality to appellant. The certificate, however, had been returned marked "moved." The record shows that appellant inquired at the Consulate General in August 1982 what disposition had been made of her case and that the Consulate General sent appellant another copy of the certificate on October 4, 1982, receipt of which appellant acknowledged. Less than a year later appellant gave notice **of** appeal.

In an affidavit executed November 25, 1983, appellant stated that "at all material times **I** left change of address notices with the Canadian Postal system when **I** moved and my mail was forwarded to me at my new address." She was at a loss to understand why she had not received the certificate in 1981.

In requesting that the case be remanded, 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, as required by the Supreme Court's decision in Vance v. Terrazas, 444 U.S. 252 (1980), ^{2/} that appellant **intended** to relinquish her United States citizenship when she obtained naturalization in Canada upon her own application.

^{2/} The Supreme Court held in Vance v. Terrazas 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 in pertinent part:

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....

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II

The Department's regulations prescribe that an appeal from an administrative determination **of loss of** nationality shall be brought within one year after approval of the certificate. ^{3/} **An** appeal filed after that time shall be denied unless the Board, for good cause shown, determines that the appeal could not have been brought within the prescribed limitation. ^{4/}

This appeal was entered more than two years after the Department approved the Certificate of **loss** of nationality. We find, however, that in the particular circumstances of this case there has been a sufficient showing why the appeal could not have been entered **within** the one-year grace period. Accordingly, we deem the appeal **to** have been timely filed, and we will assert jurisdiction.

^{3/} Section 7.5(b) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b), provides:

A person who contends that the Department's administrative determination of **loss** of nationality or expatriation under Subpart C of Part 50 of this chapter is contrary to law or fact, shall be entitled **to** appeal such determination to the Board upon written request made within one year after approval of the Department of the certificate of **loss** of nationality or a certificate of expatriation.

^{4/} 22 CFR 7.5(a) provides:

A person who has been the subject of an adverse decision in a case falling within the **purview** of **sec.** 7.3 shall be entitled upon written request made **within** the prescribed time to appeal the decision to the Board. The appeal shall be in writing and shall state with particularity reasons for the appeal. The appeal may be accompanied by a legal brief. An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time.

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III

Inasmuch as the Department has concluded that it is unable to carry its burden of proof that appellant intended to relinquish her United States citizenship, 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. 5/

Alan G. James
 Alan G. James, Chairman

Edward G. Misesy
 Edward G. Misesy, Member

George Taft
 George Taft, Member

5/ 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.