

February 21, 1985

## DEPARTMENT OF STATE

## BOARD OF APPELLATE REVIEW

IN THE MATTER OF: T [REDACTED] G [REDACTED] [REDACTED]

This is an appeal from an administrative determination of the Department of State that appellant, T [REDACTED] G [REDACTED] [REDACTED] expatriated himself on February 10, 1983, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Venezuela upon his own application. 1/

On January 28, 1985, the Department informed the Board that, upon reconsideration, the evidence of record is insufficient to support a finding of loss of nationality and requested remand of the case. We will grant the request for remand.

## I

The American Embassy at [REDACTED], V [REDACTED] on October 11, 1983, prepared a certificate of loss of United States nationality in the name of T [REDACTED] G [REDACTED] [REDACTED]. The Embassy certified that appellant acquired United States nationality by virtue of his birth in [REDACTED] that he

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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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acquired the nationality of Venezuela on February 10, 1983, by naturalization upon his own application; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate of loss of nationality on October 25, 1983, such approval constituting the Department's administrative determination of loss of nationality. Appellant entered an appeal from that determination on October 8, 1984.

After reviewing appellant's brief and accompanying documents on appeal, the Department concluded that the government could not satisfy its burden of proof that the expatriating act was performed with the requisite intent to relinquish citizenship. Vance v. Terrazas, 444 U.S. 252 (1980).

On January 28, 1985, the Deputy Assistant Secretary of State for Consular Affairs submitted to the Board the administrative record in the case and a memorandum requesting remand for the purpose of vacating the certificate of loss of nationality. The memorandum read in part:


The Department has re-examined the evidence in this case in light of the new evidence presented by the appellant on appeal and has concluded that the preponderance of the evidence does not demonstrate an intent to relinquish United States citizenship. The Department is especially persuaded by Mr. [REDACTED]'s continuing business and social ties to the United States and by the affidavits of such persons as Robert Casey, an attorney with the Internal Revenue Service, to the effect that Mr. [REDACTED] at all times desired and assumed at the time of his naturalization that he would become a dual national and that he was not performing an act declared by law to be expatriating. The Department would further remark that had such evidence been made available to the consular officer in Caracas, as originally requested, the Department would not have made a determination of loss of nationality in the first place. Since the Department has determined that the preponderance of the evidence does not support a finding of loss of nationality, it respectfully requests the Board to remand Mr. [REDACTED]'s case for cancellation of the Certificate of Loss of Nationality.

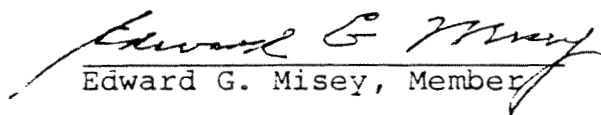
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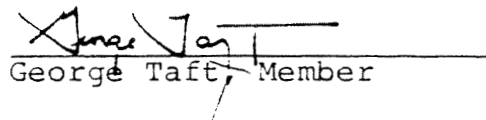
## II

Upon review of the record now before the Board and in the absence of manifest errors of law or fact, we agree to the Department's request for remand to vacate the certificate of loss of nationality.

The case is hereby remanded to the Department for further proceedings. 2/

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
George Taft, Member

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2/ - 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.