

October 23, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J [REDACTED] E [REDACTED] F [REDACTED]

This is an appeal from an administrative determination of the Department of State holding that appellant, J [REDACTED] E [REDACTED] F [REDACTED], expatriated herself on December 10, 1974 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in France upon her own application, 1/

The Department of State determined on January 10, 1986 that appellant expatriated herself by reintegrating herself into [REDACTED] nationality which she had acquired by her birth in [REDACTED] but which she later lost by virtue of her naturalization in the United States. The Department now submits, after further examination of the case, that there is insufficient evidence to enable the Department to carry its burden of proving by a preponderance of the evidence that Mrs. F [REDACTED] intended to relinquish her United States nationality when she reacquired French nationality. Accordingly, the Department requests that the Board remand the matter for the purpose of vacating the certificate of loss of nationality that was approved in Mrs. [REDACTED] name. cod

The Board will grant the request for remand.

I

An official of the United States Embassy at Paris executed a certificate of loss of nationality in Mrs. P [REDACTED] s name on December 16

1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), provides that:

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, ...

1985. 2/ The official certified that Mrs. P [REDACTED] acquired the nationality of the United States in 1959 by virtue of naturalization; that she obtained French nationality 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 January 10, 1986, an action constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. The appeal was filed through counsel on June 3, 1986.

II

The Acting Deputy Assistant Secretary for Consular Affairs (Passport Services) on October 15, 1986 submitted the administrative record upon which the Department based its holding of expatriation and a memorandum in which the Department requested that the Board remand the case for the purpose of vacating the certificate of loss of nationality. The Department's memorandum reads as follows:

Position of Department

The Department has closely reviewed this case and has concluded that here [sic] is insufficient evidence to meet the Department's burden of proving by a preponderance of the evidence that the appellant intended to relinquish her U.S. citizenship at the time she reintegrated into French nationality in Paris, France. 3/

2/ Section 358 Of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

3/ In loss of nationality proceedings the Government bears the burden under the statute, a/ of proving by a preponderance of the evidence that the party intended to relinquish his United States citizenship

- 3 -

Facts

Je [REDACTED] [REDACTED] e [REDACTED] was born on April 9, 1926, in Verdun, France. She married a U.S. citizen in 1950 and immigrated to the U.S. in 1951. On July 27, 1959 Mrs. [REDACTED] naturalized as a U.S. citizen in New York. As a result of her naturalization, she automatically lost her French nationality. In 1970 Mrs. P [REDACTED] left the U.S. to reside in France. She was reintegrated into French nationality upon her own application by signing a declaration before the Juge d'Instance in the 18th District of Paris on December 10, 1974.

Mrs. P [REDACTED] applied for and received a new U.S. passport on October 21, 1975. On October 2, 1985 she applied again for a passport.

Appellant in an interview and her Questionnaire for Determining Citizenship stated she was unaware that she could jeopardize her U.S. citizenship when she applied for French nationality. She noted that since she was originally a French citizen she did not realize she could endanger her U.S. citizenship as a result of reintegrating into the nationality she had acquired at birth.

Ms. P [REDACTED] actions and statements are fully credible and uncontradicted by any evidence. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated.

3/ Cont'd.

when he voluntarily performed^a a statutory expatriating act. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1957).

a/ Section 349(c) of the Immigration and Nationality Act 8 U.S.C. 1481(c) provides in pertinent part that:

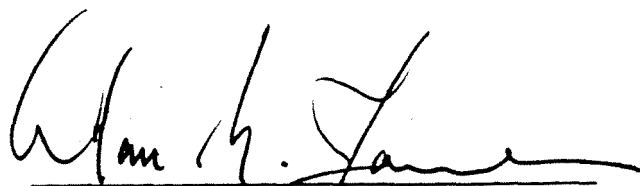
(c) Whenever the **loss** of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence....

- 4 -

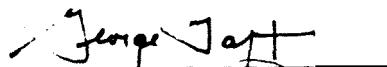
III

Inasmuch as the Department has concluded that it is unable to carry its burden of proving by a preponderance of the evidence that Mrs. P [redacted] intended to relinquish her United States nationality when she reacquired her French nationality of origin and in the absence of manifest errors of law or fact, the Board is agreeable to the Department's request that the case be remanded for the purpose of vacating the certificate of loss of nationality.

The case is hereby remanded for further proceedings. 4/


Alan G. James, Chairman


Warren E. Hewitt, Member


George Taft, Member

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

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