

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF

J. G. [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, [REDACTED] expatriated himself on August 6, 1965 under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer of the United States at Reykjavik, Iceland. 1/

The Department of State approved the certificate of loss of nationality that was executed in this case on September 10, 1982. An appeal from that determination was entered on September 8, 1983. After reviewing G. [REDACTED]'s case, the Department now is of the view that there is insufficient evidence to enable it to undertake its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality. The Department therefore requests that the Board remand the case for the purpose of vacating the certificate of loss of nationality. The Board will grant the request.

1/ Section 349(a)(5) 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 --

. . .

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; . . .

Public Law 95-432, approved October 10, 1978, 92 Stat. 1046, renumbered paragraph (6) of section 349(a) of the Immigration and Nationality Act as paragraph (5).

The Immigration and Nationality Act Amendments of 1986, PL 99-653, approved November 14, 1986, amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

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I

The United States Embassy at [REDACTED] [REDACTED] executed, as required by law, a certificate of loss of nationality in the name of J [REDACTED] G [REDACTED] on August 9, 1965. 2/ The certificate recited that G [REDACTED] acquired United States nationality by virtue of his birth at Jersey City, New Jersey, on August 4, 1949; that he made a formal renunciation of his United States nationality on August 6, 1965; and thereby expatriated himself under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act.

The Department informed the Embassy the following month that it would not approve the certificate, giving the following rationale:

The Department agrees that the subject has executed a valid oath of renunciation as required under Section 349(a)(6) of the Immigration and Nationality Act. However, the certificate of loss under reference is disapproved since the subject will not attain the age of eighteen years until August 4, 1967. If he fails to assert his claim to United States nationality under Section 351(b) within six months after his eighteenth birthday, a new certificate of loss should be prepared and submitted to the Department for consideration. 3/ See 8 FAM 224.1b (Procedures).

2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C I501, reads as follows:

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/ Section 351(b) of the Immigration and Nationality Act, 8 U.S.C I483(b), then provided that:

Sec. 351.

(a)...

(b) A national who within six months after attaining the age of eighteen years asserts his claim to United States

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Nearly one year later the Embassy wrote to appellant to inform him of the Department's decision and to explain what he would have to do to retain United States citizenship. G [REDACTED] did not act on this letter which he alleges he never received. In early 1982 G [REDACTED] visited the Embassy and asserted that he should never have lost his nationality when he renounced his citizenship because he was only 16 years of age. As the Embassy informed the Department, G [REDACTED] stated that he very much wanted to be a United States citizen and requested that the previous holding of loss of his nationality be reconsidered. On February 22, 1982 the Embassy executed and sent to Washington a second certificate of loss of nationality, recommending approval.

For reasons that are not essential for us to restate, the Department on September 10, 1982 approved the certificate of loss of nationality executed in 1965, not the one submitted in 1982. Approval of the certificate constitutes 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 within one year of approval of the certificate of loss of nationality. 4/

II

Eight months after appellant filed his opening brief, the Department submitted a memorandum to the Board dated February 19, 1987 requesting that the Board remand the case for the purpose of vacating the certificate of loss of nationality that was approved in G [REDACTED]'s name. The Department's memorandum reads as follows:

3/ Cont'd.

nationality, in such manner **as** the Secretary of State shall by regulation prescribe, shall not be deemed to have expatriated himself by the commission, prior to his eighteenth birthday, or any of the acts specified in paragraphs (2), (4), (5), and (6) of section 1481(a) of this title.

Public Law 97-116, approved December, 1981, amended section 351(b) by renumbering paragraphs (2), (4), (5) and (6) as (2), (4) and (5).

Public Law 99-653, approved November 14, 1986, further amended section 351(b) by striking "paragraphs (2), (4)" and inserting in lieu thereof "paragraph (3)."

4/ Processing the appeal has been unusually protracted, due to a number of factors, notably: appellant's delay in submitting information in support of his appeal; his belated decision to retain legal counsel; and the extraordinarily long time entailed in the Department's locating its administrative record.

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The Department has closely reviewed this case and has concluded that there is insufficient evidence to meet the Department's burden of proving by a preponderance of the evidence that the appellant intended to relinquish his U.S. citizenship at the time he renounced his U.S. nationality in Reykjavik, Iceland.

██████████ was born on August 4, 1949 in Jersey City, New Jersey. He thereby acquired U.S. nationality under the Fourteenth Amendment to the Constitution. At a young age he moved with his family to Iceland.

A few days before Mr. Gu██████████'s sixteenth birthday, in 1965, he came to the U.S. Embassy in Reykjavik for a visa. He was told that he was a U.S. citizen and therefore, did not need a visa. A couple of days after his sixteenth birthday Gu██████████ returned to the Embassy and renounced his U.S. citizenship. A Certificate of Loss of Nationality (CLN) was prepared by Donald D. Haught, consular officer, on August 9, 1965 and sent to the Department. Mr. Haught in transmitting the CLN did not comment on the boy's age, competency, or legal capacity to renounce his citizenship. There was no statement of understanding, attestation clause, or witnesses.

The Department disapproved the CLN and proposed that the post should wait until ██████████ was eighteen and one-half years old and then prepare and submit a new CLN. This was in compliance with Section 351(b) of the Immigration and Nationality Act.

No further action was taken by the Post. In 1982 Mr. ██████████ came to inquire as to his citizenship status. The Post neither re-developed the case nor required Mr. ██████████ to complete a questionnaire. Nothing was done to make a stale case comply with the procedural requirements of a renunciation case. Mr. Whittlesey, the consular officer, prepared new CLN's and also sent the CLN that had been prepared in 1965 to the Department. The Department approved the 1965 CLN on September 10, 1982.

Appellant claims and offers as evidence various affidavits to the effect that his English was very poor in 1965. The consular officer and

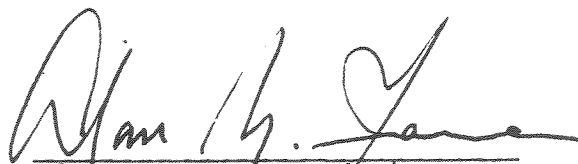
employees of the Embassy who were stationed in Iceland in 1965 have no recollection of the case.

With insufficient documentation, the Department contends that it is unable to go forth with this case and justifiably carry its burden of demonstrating a preponderance of evidence that the appellant intended to relinquish his U.S. citizenship. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated.

III

Inasmuch as the Department has concluded that it is unable to carry its burden of proof and in the absence of manifest error of fact or law warranting a different disposition, the Board agrees 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 5/


Alan G. James, Chairman


Edward G. Misey, Member


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.