

April 1, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF B [REDACTED] A [REDACTED] Mc [REDACTED]

The Board of Appellate Review in a decision rendered November 14, 1986 reversed the Department of State's administrative determination that appellant, B [REDACTED] A [REDACTED] M [REDACTED] expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer in a prison in New Zealand. 1/

The Department of State on December 15, 1986 informed the Board that: "The Department intends to file a motion for reconsideration in the Citizenship Appeal case of B [REDACTED] A [REDACTED] M [REDACTED]. The motion will be filed during the week of December 22nd." 2/

1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), 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; . . .

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".

2/ Section 7.9 of Title 22, Code of Federal Regulations, 22 CFR 7.9, provides as follows:

Sec. 7.9 Motion for reconsideration.


The Board may entertain a motion for reconsideration of a decision, if filed by either party. The motion shall state with particularity the grounds for the motion, including any facts or points of law which the filing party claims the Board has overlooked or misapprehended, and shall be filed within 30 days from the date of receipt of a copy of the decision of the Board by the party filing the motion. Oral argument on the motion shall not be permitted. However, the party in opposition to the motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the date the Board forwards a copy of the motion to it.

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The Department filed its motion on December 23, 1986. Counsel for appellant filed a memorandum in opposition to the Department's motion on January 30, 1987, arguing solely that the Department's motion was untimely. The Board granted counsel leave to file a second memorandum dealing with the issues raised by the Department. Counsel submitted such a memorandum on February 27, 1987.

Believing that the Department has raised issues which on their face merit the Board's re-examination of the record, the Board hereby grants the Department's motion.

As prescribed by the applicable regulations, the Board will review the record, and after having done so, will affirm, modify or reverse its original decision,



Alan G. James, Chairman.



Edward G. Misey, Member



J. Peter A. Bernhardt, Member

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2/ Cont'd.

party in opposition. If the motion to reconsider is granted, the Board shall review the record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.