June 15, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: P[redacted] J[redacted] H[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, P[redacted] J[redacted] H[redacted], expatriated herself on August 2, 1978 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 sole issue we must decide is whether the Department has carried its statutory burden of proving by a preponderance of the evidence that appellant intended to relinquish United States nationality when she became a Canadian citizen. It is our conclusion that the Department has not met its burden of proof. Accordingly, we reverse the Department's determination that appellant expatriated herself.

1/ Prior to November 14, 1986, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read in relevant part as follows:

> 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, . . .

Public Law 99-653, approved November 14, 1986, 100 Stat. 3655, amended subsection (a) of section 349 by inserting "involuntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

- I -

Appellant became a United States citizen by birth at [redacted]. She graduated from high school in Libertyville and in 1956 she married Dudley James [redacted] whose appeal we also decide today. In 1972 appellant and her husband moved to Canada as landed immigrants. She applied for Canadian citizenship, and on August 2, 1978 was granted Canadian citizenship after making the following oath of allegiance:

> I, ... swear that I [redacted] Elizabeth the Second, her heirs and successors according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen.
>
> So help me God.

As her husband did, she obtained a Canadian passport in August 1984. Although she too held a United States passport issued in 1969 which she apparently did not renew when it expired.

Appellant's naturalization came to the attention of United States authorities in Canada at the same time her husband's did. Ater processing appellant's case, a consular officer executed a certificate of loss of nationality in Mrs. [redacted] name on January 28, 1986. 2/ Therein he

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

certified that appellant acquired United States nationality at birth; that she obtained naturalization in Canada upon her own application: and concluded that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The consular officer who processed her case submitted an opinion identical to the one he submitted in the case of her husband and recommended approval of the certificate he executed in her name.

The Department approved the certificate on February 18, 1986, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken. She and her husband entered appeals jointly on March 13, 1986. Each argued lack of intent to relinquish United States nationality by acquiring Canadian citizenship.

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As did her husband, appellant conceded that she obtained naturalization in Canada and did *so* voluntarily. As in her husband's case, the sole issue in appellant's case is whether she intended to relinquish United States nationality.

Since the cases of husband and wife are virtuallv indistinguishable on the material facts, the reasons adduced in our opinion on the appeal of appellant's husband in support of a finding that he lacked the requisite intent to relinquish citizenship apply with equal vigor in the case of Mrs. [redacted]

We therefore conclude that the Department has not carried its burden of proving that Mrs. H[redacted] intended to relinquish United States nationality when she [redacted] a Canadian citizen.

- III -

Upon consideration of the foregoing, we hereby reverse the Department's determination that appellant expatriated herself.

Alan G. James, Chairman

Gerald A. Rosen, Member

George Taft, Member