

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: E [REDACTED] W [REDACTED] T [REDACTED]

This is an appeal from an administrative determination of the Department of State, dated November 20, 1986, holding that appellant, E [REDACTED] W [REDACTED] T [REDACTED], expatriated himself on September 19, 1978 under the provisions of section 349(a)(4) of the Immigration and Nationality Act by serving in the Legislature of the Province of Nova Scotia, Canada. 1/

After the appeal had been entered, the Department decided, upon further review of the matter, that the record upon which it based its original determination that appellant expatriated himself would not support a finding of loss of nationality. The Department therefore requested that the Board remand the case so that it might vacate the certificate of loss of nationality that it had approved in appellant's name.

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1/ Section 349(a)(4)(A) of the Immigration and Nationality Act, 8 U.S.C. 1481, read 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 --

...

(4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof, if he has or acquires the nationality of such foreign state:..

Pub. L. 99-653, 100 Stat. 3655 (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". Pub. L. 99-653 also amended subparagraph (A) of paragraph (4) by inserting "after attaining the age of eighteen years" after "foreign state or political subdivision thereof,".

- 2 -

The case is hereby remanded so that the certificate of loss of nationality may be vacated.

## I

An officer of the United States Consulate General at Halifax executed a certificate of loss of nationality in appellant's name on November 4, 1986, in accordance with the provisions of section 358 of the Immigration and Nationality Act. 2/ The consular officer certified that appellant acquired United States nationality by virtue of birth in Canada of a United States citizen father; 3/ that he acquired the nationality of Canada by birth therein; that he "accepted and served in an important political post" as a member of the Nova Scotia Legislature beginning on September 19, 1978; and thereby expatriated himself under the provisions of section 349(a)(4)(A) of the Immigration and Nationality Act. In reporting the case to the Department, the consular officer expressed the opinion that: "From the lack of evidence to the contrary, it appears that Mr. [REDACTED] was unaware of his claim to U.S. citizenship."

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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.

3/ That is to say, that appellant derived citizenship from his father pursuant to section 1993 of the revised Statutes of the United States.

The consular officer therefore recommended that the certificate of loss of nationality that had been executed not be approved. The Department was of a different view, however, and on November 20, 1986 approved the certificate, approval constituting administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. [REDACTED] entered this appeal, *pro se*, on June 10, 1987.

II

The Deputy Assistant Secretary for Consular Affairs (Passport Services) on October 29, 1987 submitted the administrative record upon which the Department based its holding of appellant's 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:

The Department has reexamined this case and has concluded that the evidence in the case file does not support a finding that Mr. T [REDACTED] was aware that he was a United States citizen at the time he served in the Nova Scotia Legislative Assembly. Having determined Mr. [REDACTED] was unaware of his claim to U.S. citizenship, there is no basis for making a determination of intent to relinquish. 4/

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4/ 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 when he voluntarily performed a statutory expatriating act. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyin v. Rusk, 387 U.S. 253 (1967).

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

Pub. L. 99-653, 100 Stat. 3655 (1986) repealed subsection (b) of section 349 but did not redesignate subsection (c).

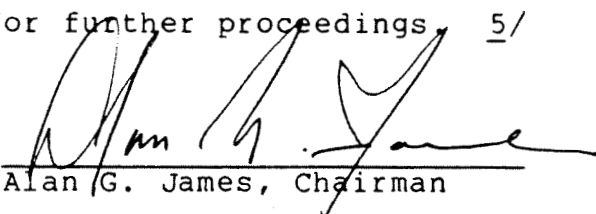
- 4 -

The Department therefore requests the Board to remand the case so that the Certificate of Loss may be cancelled. Mr. [REDACTED] will be invited to apply for documentation as a U.S. citizen.

## III

The Department's submission seems to the Board to be unduly abbreviated; for one thing, it has not stated the grounds for its conclusion that appellant was unaware he was a United States citizen at the time he performed the statutory expatriating act. Nonetheless, since the Department, upon reexamination, has concluded that appellant was unaware of his derivative claim to United States nationality and that it is unable to carry its burden of proving by a preponderance of the evidence that he intended to relinquish his United States nationality when he served in the Legislature of Nova Scotia, and in the absence of manifest errors of law or fact, the Board perceives no reason why it should not accede to the Department's request that the case be remanded for the purpose of vacating the certificate of loss of nationality.

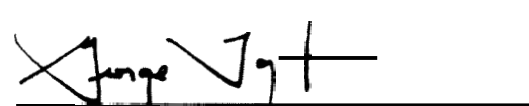
The case is hereby remanded for further proceedings, 5/



Alan G. James, Chairman



Edward G. Misey, Member  
Edward G. Misey, Mem



George Taft, Member

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5/ 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.