

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D ■■■ I ■■ E ■■■■

This is an appeal from an administrative determination of the Department of State that appellant, D ■■■ I ■■ E ■■■■, expatriated herself on October 18, 1972 under the provisions of section 349(a)(1) of the Immigration and Nationality Act. 1/

The Department made its determination of appellant's expatriation on September 30, 1986. After appellant took this appeal, the Department reviewed the record and concluded that appellant "is able to rebut adequately" the legal presumption that she voluntarily obtained naturalization in Canada. Accordingly, the Department requests that the Board remand the case so that it might vacate the certificate of loss of nationality that was executed in appellant's name. We grant the request for remand.

I

An officer of the United States Consulate General at Montreal executed a certificate of loss of nationality in appellant's name on September 3, 1986. 2/ Therein she

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

Pub. L. 99-653, 100 Stat. 3655 (Nov. 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 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

certified that appellant acquired United States nationality by virtue of her birth at [REDACTED] that she obtained naturalization in Canada upon her application on October 18, 1972; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

In a memorandum transmitting the certificate to the Department the Consulate General made the following report about her case:

Miss E [REDACTED] has applied for registration as a U.S. citizen. In her statements concerning her naturalization as a Canadian, she maintains that her actions were done under duress and therefore were involuntary due to the extreme pressure (including physical threats) applied by her former husband, R [REDACTED] W. F [REDACTED]. She states that she did not wish nor intend to lose her U.S. citizenship, and has always considered herself to be American.

The consular officer believes that [REDACTED] [REDACTED] expatriated herself by becoming a citizen of Canada on October 18, 1972. Although she admits that the harassment by her husband are mitigating circumstances, that harassment does not eliminate the fact that, whatever her current regrets, she did renounce all other allegiances in swearing the oath of allegiance to Canada upon becoming a Canadian citizen in 1972. The Department's decision is requested.

2/ Cont'd.

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

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The Department approved the certificate on September 30, 1986, approval 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. Appellant entered the appeal through counsel on September 8, 1987.

II

The Deputy Assistant Secretary of State for Consular Affairs (Passport Services) submitted to the Board on December 8, 1987 the record upon which the Department made its determination that appellant expatriated herself and a memorandum requesting that the Board remand appellant's case so that the Department might vacate the certificate of loss of nationality that it had previously approved. The Department's memorandum noted that appellant married a Canadian citizen, one Paskar, in the United States in 1971 and moved with him to Canada; and that appellant's 1972 naturalization in Canada came to the attention of United States authorities in 1986 when appellant went to the Consulate General at Montreal to register as a United States citizen. After quoting from the memorandum the consular officer sent to the Department about appellant's case in September 1986 (see above), the Department's memorandum continued:

Without any further investigation into the allegation of duress, the consul prepared a Certificate of Loss of Nationality on September 3, 1986 which was approved by the Department on September 30, 1986. 3/

2/ Cont'd.

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.

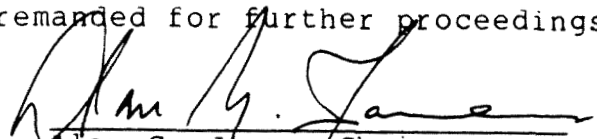
3/ We share the Department's evident concern that the consular officer did not develop appellant's case more fully before referring it to the Department for decision. The record suggests that appellant had reason to fear her husband and that she might be able to make a prima facie case of duress. We are even more surprised that the Department should have approved the certificate so readily in light of the record submitted by the Consulate General.

When entering her appeal, Mrs. [REDACTED] has supplied numerous affidavits attesting to the situation she was faced with and substantiating the fact that she did not voluntarily expatriate herself. ^{4/} There is nothing in our file to question the validity of appellant's claim that her action was a product of duress and the evidence that she did not act voluntarily. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated.

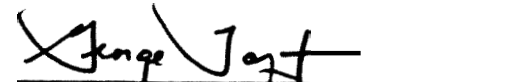
III

Inasmuch as the Department has concluded that appellant has successfully rebutted the statutory presumption that she obtained naturalization in Canada voluntarily, and in the absence of manifest errors of fact or law that would mandate a different result, the Board grants the Department's request that we remand appellant's case in order that it may vacate its certificate of loss of her nationality.

The case is hereby remanded for further proceedings. :


Alan G. James, Chairman


Edward G. Missey, Member


George Taft, Member

^{4/} Section 349(c) of the Immigration and Nationality Act, U.S.C. 1481(c), provides a legal presumption that one who performed a statutory expatriating act did so voluntarily. The presumption may be rebutted upon a showing by preponderance of the evidence that the act was not performed voluntarily.

^{5/} Section 7.2(a) of Title 22, Code of Federal Regulations, 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.