

October 14, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D [REDACTED] C [REDACTED] G [REDACTED]

This is an appeal from an administrative determination of the Department of State, dated March 5, 1987, holding that appellant, D [REDACTED] C [REDACTED] G [REDACTED] expatriated himself December 8, 1977 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

The Department, replying to appellant's opening brief, submits that after reviewing the matter, it finds insufficient evidence to enable it to carry its burden of proving by preponderance of the evidence that appellant intended to relinquish his United States citizenship when he obtained naturalization in Canada. Accordingly, the Department requests that the Board remand the case so that the Department may vacate the certificate of loss of nationality that was executed and approved in appellant's name.

The Board grants the Department's request for remand.

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1/ When appellant obtained naturalization in Canada, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1401 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,...

P.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".

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## I

A consular officer of the United States Embassy at Ottawa executed a certificate of loss of nationality in appellant's name on January 23, 1987. 2/ Therein the official certified that appellant acquired United States nationality by virtue of birth in [REDACTED]; that he acquired the nationality of Canada on December 8, 1977 by virtue of naturalization; and thereby expatriated himself. The Department approved the certificate on March 5, 1987, an action that constitutes an administrative determination of loss of nationality from which the adversely affected person may take an appeal to the Board of Appellate Review. Appellant entered an appeal pro se on April 30, 1987.

## II

The Deputy Assistant Secretary for Consular Affairs (Passport Services) on October 1, 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:

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

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.

Position of the Department

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 naturalized in Canada. 3/

FACTS

D [REDACTED] G [REDACTED] was born on May 17, 1948 in Manchester, New Hampshire. He thereby acquired U.S. nationality under the 14th Amendment of the Constitution. Denis and his brother, Clau, emigrated to Canada in August 1970 and July 1971 respectively. Both brothers enrolled in universities in Canada and studied chemical engineering.

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3/ 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); Afroyim v. Rusk, 387 U.S. 253 (1967).

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

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

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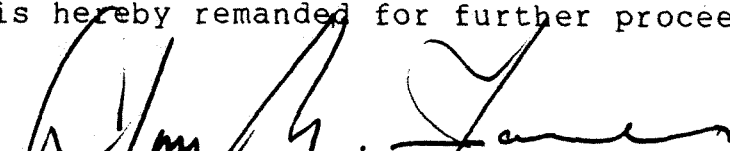
engineering. Having difficulty acquiring employment, they both naturalized as Canadian citizens, Claude on November 16, 1976, Denis on December 18, 1977. On May 24, 1985 [REDACTED] [REDACTED] made an application for a U.S. passport. His citizenship status was investigated, and it was determined that he had not lost his U.S. nationality. [REDACTED] [REDACTED] applied for a U.S. passport on January 20, 1987; he was found to have lost his U.S. citizenship.

Since the facts of the brothers' cases are similar, the Department contends that it will not be able to sustain its burden in Mr. [REDACTED] case. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated.

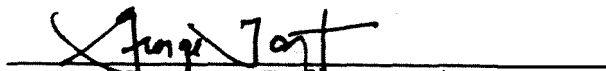
## III

Inasmuch as the Department has concluded that it is unable to carry its burden of proving by a preponderance of the evidence that [REDACTED] intended to relinquish his United States nationality when he obtained naturalization in Canada upon his own application, 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. 4/

  
 Alan G. James, Chairman

  
 J. Peter A. Bernhardt, Member

  
 George Taft, Member

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4/ 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.