September 2, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

THE MATTER OF: V[redacted] S[redacted] H[redacted] C[redacted]

This case is before the Board of Appellate Review on e appeal of V[redacted] S[redacted] H[redacted] C[redacted] from an ministrative determination of the Department of State, ted November 20, 1987, that she expatriated herself on bruary 5, 1960 under the provisions of section 349(a)(1) the Immigration and Nationality Act by obtaining turalization in Sweden upon her own application. 1/

After the appeal was entered, the Department -examined the record and concluded that there was sufficient evidence to enable it to carry its burden of oving by a preponderance of the evidence that appellant tended to relinquish her United States nationality when e performed the statutory expatriating act. Accordingly, e Department requested that the Board remand the case so at it might vacate the certificate of loss of nationality at it previously approved in appellant's name. We grant e Department's request.

I

An officer of the United States Embassy at Stockholm tcuted a certificate of loss of nationality in appellant's

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In 1960, section 349(a)(1) of the Immigration and :ionality Act, 8 U.S.C. 1481(a)(1), read in pertinent part 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, Nov. 14, 1986, 100 Stat. 3658, amended >section (a) of section 349 by inserting "voluntarily :forming any of the following acts with the intention of .inquishing United States nationality:" after "shall lose ; nationality by".

ame on September 16, 1987. 2/ Therein he certified that ppellant acquired the nationality of the United States by irth at [redacted] 3/ hat she resided in the United States from 1920 to 1925; / that she was presently residing in Sweden; that she cquired the nationality of Sweden on February 5, 1960 by irtue of naturalization upon her own application; and hereby expatriated herself under the provisions of ection 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on ovember 20, 1987, approval constituting an administrative etermination of loss of nationality from which a timely nd properly filed appeal may be taken to the Board of ppellate. Review. 22 CFR 7.3(a). An appeal was entered nrough counsel on March 10, 1988.

/ Section 358 of the Immigration and Nationality Act, 8 ,S .C. 1501, **provides that:**

> 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.

She also acquired at birth the nationality of Finland rough her Finnish citizen father. Although he and her ther were Finnish nationals, they were, appellant ates, of Swedish ethnicity.

Appellant's parents took her to Finland in 1925. ere she resided until 1954 when she, her husband and ildren moved to Sweden.

II

The Department (the Office of Citizenship Appeals 3 Legal Assistance of the Bureau of Consular Affairs) omitted the record upon which the Department's holding loss of appellant's nationality was based and a morandum, dated August 30, 1988, in which the Department quested that the Board remand the case so that the partment might vacate the certificate of loss of tionality.

The Department's memorandum read as follows:

> The Department has reviewed Mrs. Carison's citizenship file and has determined that it cannot sustain its burden of proving by a preponderance of the evidence that she relinquished her U.S. citizenship when she naturalized in Sweden. We therefore request the Board to remand her case for cancellation of the Certificate of Loss of Nationality.
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> The Department's burden under Vance v. Terrazas, 444 U.S. 252 (1980) to prove intent to relinquish citizenship by a preponderance of the evidence is heavy. Mrs. [redacted] was a dual national from birth and it can be concluded from the record that she claimed no benefit, right or privilege of U.S. citizenship until late in life. However, her recent statements asserting no intent to relinquish are the only evidence which bears unambiguously on intent. This and the other facts in evidence do not establish by a preponderance of the evidence her intent regarding U.S. citizenship.

III

Inasmuch as the Department submits that in the ticular circumstances of this case it is not able to ry its statutory burden of proving by a preponderance the evidence appellant's intent to relinquish her ted States nationality, and in the absence of manifest ors of law or fact that would mandate a different ult, we grant the Department's request that the case be anded so that it may vacate the certificate of loss of ionality.

The case is hereby remanded for further pro-
·edings. >/

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

George Taft, Member

Section 7.2(a) of Title 22, Code of Federal
gulations, 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.