

June 30, 1989

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: S [REDACTED] J [REDACTED] P [REDACTED]

The Department of State made a determination on October 13, 1987 that S [REDACTED] J [REDACTED] P [REDACTED] expatriated herself on December 23, 1986 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Tel Aviv, Israel. 1/ Ms. [REDACTED] entered an appeal from that determination on December 15, 1988.

After the appeal was entered and appellant set forth her position, the Department made a further review of the case, and informed the Board it had concluded that it could not meet its burden of proving that appellant intended to relinquish United States nationality. Accordingly, the Department requested that the Board remand the case so that the certificate of **loss** of nationality that was approved in appellant's name might be vacated. We grant the request and remand the case to the Department for further proceedings.

I

An officer of the United States Embassy in Tel Aviv executed a certificate of **loss** of nationality in the name of [REDACTED] on [REDACTED], as required by

1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), reads 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 voluntarily performing any of the following acts with the intention on relinquishing United States nationality --

. . .

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State: . . .

- 2 -

law. 2/ The officer certified that appellant acquired the nationality of the United States by virtue of her birth at Marianne, Arkansas on June 7, 1957: that she lived in the United States from birth to July 15, 1979 when she moved to Israel: 3/ that she made a formal renunciation of her United States nationality on December 23, 1986 before a consular officer of the United States in the Embassy at Tel Aviv; and thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. Ten months later, October 13, 1987, the Department approved the certificate of loss of nationality, approval being an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review pursuant to section 7.3(a) of Title 22, Code of Federal Regulations, 22 CFR 7.3(a) (1988). Ms. [REDACTED] entered an appeal from that holding on December 15, 1988,

II

The Department filed a memorandum dated June 7, 1989, in which it requested that the Board remand appellant's case so that the certificate of loss of her nationality might be vacated. The Department's memorandum reads in pertinent part as follows:

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/ Appellant states that she joined the Black Hebrew sect in 1978, and in 1979 went to Dimona, Israel, a Black Hebrew settlement, with her two children.

- 3 -

Although the timeliness of this appeal is questionable (seven weeks after the due date of the appeal), the Department contends that ... the issue is irrelevant. The Department has concluded that it cannot go forward with this case and recommends that the Board of Appellate Review remand the case in order that the Certificate of Loss may be vacated. The Department has closely reviewed this case and has determined that it demonstrates the dilemma that arises when the facts can address both the issues of voluntariness and intent. In such cases where the issues are inextricably entwined, it is difficult to discuss the issues separately. ...

It is the Department's burden to prove by a preponderance of the evidence that Ms. █████ intended to divest herself of U.S. citizenship when she renounced her citizenship in Israel. [Vance v. Terrazas, 444 U.S. 252, 270 (1980)] The intent to be shown is the intent at the time of the expatriating act. Based on the evidence submitted, the Department contends that it will not be able to meet its burden in that the circumstances surrounding the renunciation tend to undermined [sic] the appellant's intent.

III

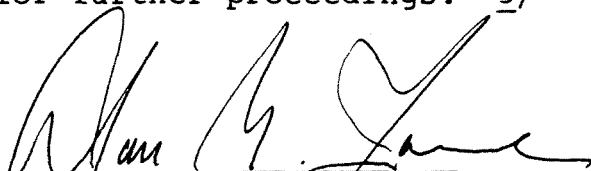
Before we may consider the Department's request that the Board remand the case, we must establish whether the Board has jurisdiction to entertain the appeal. The Board's jurisdiction depends on whether the appeal is, or may be deemed to be, timely. The appeal was filed on December 15, 1988, that is, one year and two months after the Department approved the certificate of loss of nationality that was executed in her name. The limitation on appeal is one year after approval of the certificate of loss of nationality. 22 CFR 7.5(b)(1). An appeal filed after one year shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the one-year period. 22 CFR 7.5(a).

The Board did not ask Ms. █████ to explain nor did she indicate why she did not initiate the appeal on or before October 13, 1988.

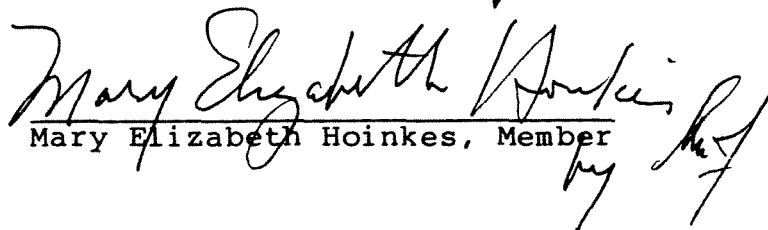
- 4 -

IV

The Board takes no position on the arguments the Department advances to support its request that the Board remand the case so that it may vacate the certificate of loss of nationality. Nonetheless, since the Department has concluded that it is unable to sustain its burden of proof on the issue whether appellant intended to relinquish United States nationality, and since we perceive no reason why we should not grant the Department's request for remand, we hereby remand the case for further proceedings. ^{5/}


 Alan G. James, Chairman


 Edward G. Misey, Member


 Mary Elizabeth Hoinkes, Member

^{5/} Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part as follows: "The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it."