

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [REDACTED] N [REDACTED] A [REDACTED] b

This is an appeal from an administrative determination of the Department of State, dated May 3, 1988, that S [REDACTED] N [REDACTED] A [REDACTED] expatriated herself on August 2, 1978 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/ Ms. A [REDACTED] b filed a timely appeal from that determination.

After the appeal was filed, the Department reviewed appellant's case and informed the Board that it decided that it could not proceed in the matter. The Department stated that because the act appellant performed did not apparently conform to the prescription of section 349(a)(2) of the Immigration and Nationality Act, as amended retroactively in

1/ In 1978 section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), 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 --

. . . .

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof;...

Pub. L. 99-953, November 14 1986, 100 Stat. 3655, 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. 99-953 also amended paragraph (2) of section 349(a) by inserting "after having attained the age of eighteen years" after "thereof".

The Immigration Technical Corrections Act of 1988, Pub. L. 100-525, 102 Stat. 2619 (October 24, 1988), amended section 349(a) by deleting "From and after the effective date of this Act", and made the foregoing amendments retroactive to December 24, 1952, the date upon which the Immigration and Nationality Act of 1952 entered into force.

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1988, appellant did not expatriate herself when she filed an application for a certificate of Mexican nationality and made a declaration of allegiance to Mexico. Accordingly, the Department 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.

We grant the request and remand the case to the Department for further proceedings.

I

A consular officer of the United States in Mexico City executed a certificate of loss of nationality in appellant's name on January 6, 1986, in compliance with the provisions of section 358 of the Immigration and Nationality Act. ^{2/} The officer certified that appellant acquired the nationality of the United States by virtue of her birth at Oakland, California on May 24, 1960; that she acquired the nationality of Mexico by virtue of her birth abroad to a Mexican citizen father; that she made a formal declaration of allegiance to Mexico on August 22, 1978, and obtained a certificate of Mexican nationality on that date; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. The Department approved the certificate on May 3, 1988, approval constituting an administrative determination of loss of nationality which may be appealed to the Board of Appellate Review. 22 CFR 7.3(a). An appeal was entered on January 31, 1989.

^{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.

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II

The Department of State, by memorandum dated June 27, 1989, requested that the Board remand the case so that it might vacate the certificate of loss of nationality. The Department based its request for remand on the following grounds.

There appears to be a question as to when Ms. [REDACTED] applied for her CMN. Some of the documentation indicates August 22, 1977 and other papers indicate August 22, 1978. The discrepancy raises very important questions in this case. Section 18 of the Immigration and Nationality Act Amendments of 1986 (Pub. L. 99-653, Nov. 14, 1986, 100 Stat. 3658) made various changes to the [sic] Section 349(a) of the Immigration and Nationality Act of 1952. The relevant change to the instant case is the change to 349(a)(2). This section now makes it necessary [sic] for the individual who takes an oath of allegiance to a foreign state to do so after the age of eighteen. The Act was originally effective from November 14, 1986 on. However, Section 23(g) of the Immigration Technical Corrections Amendments of 1988 (Pub. L. 100-525, 102 Stat. 2619) made it necessary that the oath be made after the age of eighteen on or after December 24, 1988.

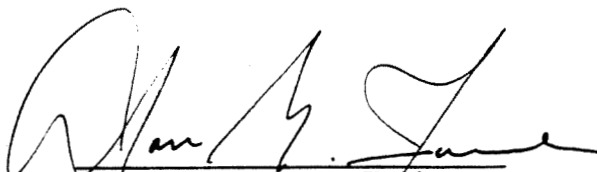
The confusion that exists in the case file is difficult to document. The Department and the Board have held that when there is a confusion of fact, the decision should be made in favor of the appellant. Therefore, the Department contends that the CLN should be vacated.

III

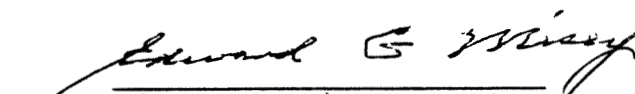
In as much as the Department believes that its original decision was erroneous, and since the Board perceives no

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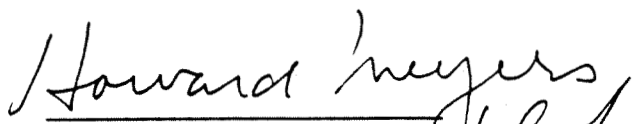
reason why we should not accede to the Department's request, we hereby remand the case for further proceedings. 3/




Alan G. James, Chairman



Edward G. Misey, Member



Howard Meyers, Member



3/ 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."