

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A [REDACTED] U [REDACTED]

The Department of State determined on January 23, 1987 that A [REDACTED] Urrutia expatriated herself on July 22, 1987 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Spain upon her own application. 1/ determination.

After the appeal was entered, the Department re-examined the record and concluded that there was insufficient evidence to enable the Department to meet its burden of proving by a preponderance of the evidence that A [REDACTED] Urrutia relinquished her United States nationality when she obtained Spanish citizenship. The Department accordingly requested that the Board, remand the case so that the certificate of loss of appellant's nationality might be vacated. We grant the Department's request.

I

An officer of the United States Consulate at Bilbao executed a certificate of loss of nationality in

---

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

(1) obtaining naturalization in a foreign state upon his own application or upon an application

after having obtained the age of eighteen years: ...

Ms. U [REDACTED] name on [REDACTED] [REDACTED] [REDACTED] pursuant to the provisions of section 358 of the Immigration and Nationality Act. Therein the officer certified that appellant acquired the nationality of the United States by virtue of her birth at [REDACTED]; that she resided in the United States from birth until 1965 (since appellant's father was a Spanish citizen, she also acquired the nationality of Spain at birth); that she acquired the nationality of Spain by virtue of naturalization on July 22, 1987; and thereby expatriated herself on that date under the provisions of section 349(a)(1) of the Immigration and Nationality Act. 2/

The Department of State approved the certificate on [REDACTED] 9, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of [REDACTED] [REDACTED]

11

The Acting Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on April 16, 1990

---

2/ In its memorandum, the Department summarized the other facts of record as follows:

The Spanish government at that time only recognized Ms. [REDACTED] father's Spanish citizenship as hers. [REDACTED] clarify her citizenship, however, Ms. [REDACTED] mother was told by the Spanish authorities that her daughter's birth would have to be registered with a District Judge and that appellant would have to renounce her U.S. citizenship. In 1977 appellant's mother consulted with the U.S. Embassy and was assured that an individual could not renounce her U.S. citizenship before a Spanish Judge. If such an act took place, it would have no validity as far as the U.S. authorities were concerned.

Because Ms. [REDACTED] had no Spanish papers, in 1986 she decided to consult with a Spanish Judge. He agreed that her birth had to be registered and that she had to relinquish her U.S. citizenship. She then made an oath thinking it a mere formality; she was not worried about her U.S. nationality because of the information her mother had previously received from the U.S. Embassy.

- 3 -

submitted the record upon which the Department's holding of loss of appellant's citizenship was based and a memorandum in which the Department requested that the Board remand the case so that the certificate of loss of nationality might be vacated.

Noting that it is the government's burden in loss of nationality proceedings to prove that a citizen who performs a statutory expatriative act did so with the intention of relinquishing citizenship, the Department maintains that it is unable to carry its burden of proof in the instant case. <sup>3/</sup> The Department is of the opinion that the evidence will not support a holding of loss of nationality, giving the following reasons:

The evidence that has been submitted in support of the Department's case is the 'Questionnaire for Determining U.S. Citizenship.' In addition, at the time the Embassy prepared Ms. [REDACTED] Certificate of loss of Nationality in 1988, the Consul recommended that she should not lose because she did not demonstrate an intent to relinquish, and he found her story quite credible.

The Embassy had a record of her mother's meeting in 1977. There is no evidence to repudiate the validity of appellant's claim that she never intended to relinquish her U.S. citizenship when she naturalized in Spain.

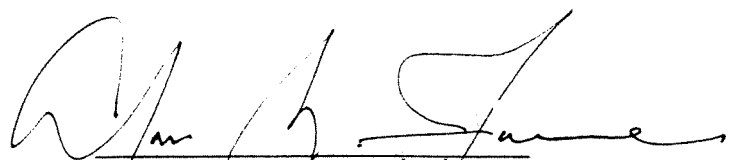
### III

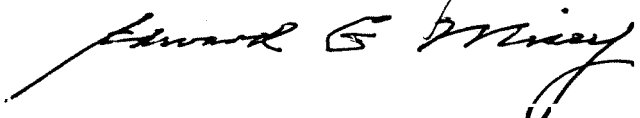
Inasmuch as the Department has concluded that it is unable to carry the burden of proving that appellant intended to relinquish her United States nationality, and since we perceive no grounds that would warrant our denying the Department's request, we hereby remand the case so that the

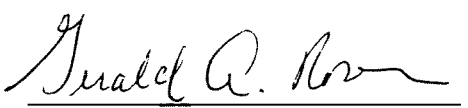
---

<sup>3/</sup> See Vance v. Terrazas, 444 U.S. 252 (1980).

Department may vacate the certificate of loss of appellant's nationality. 4/

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
Gerald A. Rosen, Member

---

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.