

July 16, 1990

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: E [REDACTED] H [REDACTED] W [REDACTED]

The Department of State determined on June 23, 1987 under the provisions of section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), that E [REDACTED] H [REDACTED] W [REDACTED] expatriated himself on July 19, 1983 by obtaining naturalization in Panama upon his own application. W [REDACTED] entered a timely appeal from that determination.

Briefs were filed on behalf of appellant and the Department of state. Oral argument was heard by the Board on October 3, 1989. The Board considered the appeal during the spring of 1990 but had not issued a decision on the appeal by April 16, 1990, the date on which the Department adopted new evidentiary guidelines to determine the issue of a person's intent to relinquish United States citizenship. The guidelines, according to the instruction sent to all diplomatic and consular posts, are based on the premise that united States citizens who perform an act potentially expatriating under sections 349(a)(1), (2), (3) and (4) of the Immigration and Nationality Act, 8 U.S.C. 1481, intended to retain their United States nationality.

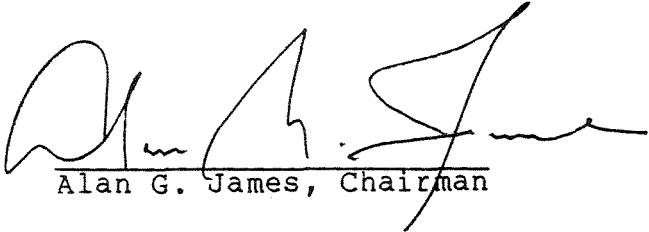
In May 1990, the Department informed the Board that it believed it would be appropriate to re-examine several cases then pending before the Board to determine whether under the new evidentiary guidelines the certificate of loss of nationality should be vacated. The Department therefore requested that the Board defer final action on those appeals until the Department could complete its re-examination and determine whether it would ask the Board to remand those cases so that the certificate of loss of nationality might be vacated. The instant appeal was not one of those the Department stated it wished to re-examine. However, the Board sent a memorandum to the Department on June 4, 1990, inquiring whether, since the Department asked to re-examine some appeals, it might not be appropriate for the Department to re-examine other pending appeals which the Board had not decided, including the appeal of W [REDACTED].

On July 11, 1990, the Deputy Assistant Secretary of State for Consular Affairs (Passport Services) informed the Board that the Department had concluded that under the new evidentiary guidelines it was now unable to carry its burden of proving that W [REDACTED] intended to relinquish his United states

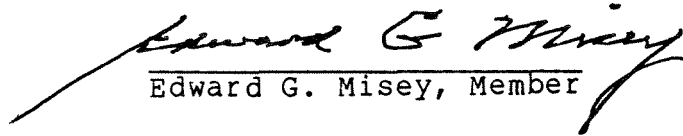
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citizenship when he obtained naturalization in Panama. Accordingly, the Department stated that if the Board were to dismiss the appeal, the Department would vacate the certificate of loss of We [redacted]'s nationality.

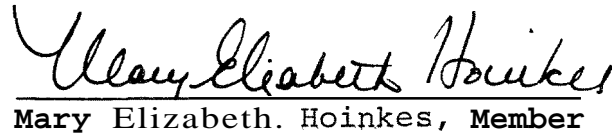
Inasmuch as the Department has concluded that it cannot bear the burden of proof on the issue of whether appellant W [redacted] intended to relinquish his United states citizenship, the Board hereby dismisses the appeal so that the Department may take further administrative action by vacating the certificate of loss of nationality that was approved in appellant's name.



Alan G. James, Chairman



Edward G. Misey, Member



Mary Elizabeth Hoinkes, Member

PROPERTY OF THE STATE