

July 30, 1990

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A [REDACTED] L [REDACTED] J [REDACTED]

This case is before the Board of Appellate Review on the appeal of A [REDACTED] L [REDACTED] J [REDACTED] from an administrative determination of the Department of State that she expatriated herself on January 7, 1988, under the provisions of section 349(a)(2) of the Immigration and Nationality Act, by making a formal declaration of allegiance to Mexico. 1/

After the appeal was entered, the Department made a further review of the case and informed the Board that it could not carry its burden of proving that appellant intended to relinquish her United States nationality when she made a formal declaration of allegiance to Mexico. Accordingly, the Department requested that the Board remand the case so that the certificate of loss of appellant's nationality might be vacated. We remand the case for further proceedings.

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), 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 of relinquishing United States nationality -

* . *

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; ...

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I

An officer of the United States Embassy at Mexico City executed a certificate of loss of nationality in the name of A [REDACTED] L [REDACTED] J [REDACTED] on April 21, 1988, in compliance with section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501. Therein the officer certified that appellant acquired United States nationality by virtue of her birth at [REDACTED]; that she also acquired the nationality of Mexico by virtue of her birth abroad of Mexican citizen parents; that she resided in the United States for about one year after her birth (she has resided in Mexico since March 1965); that she made a formal declaration of allegiance to Mexico that included a declaration of renunciation of United States citizenship on January 7, 1988, and acquired a certificate of Mexican citizenship on the same day, thereby expatriating herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act,

The Department of State approved the certificate of loss of United States nationality on September 1, 1988, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board. A timely appeal was entered.

II

The Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on July 11, 1990 submitted the record upon which the Department based its decision that appellant expatriated herself and a memorandum in which the Department stated:

After careful review, the Department has concluded that there is insufficient evidence to sustain its burden of proving that appellant intended to relinquish her U.S. citizenship at the time she formally declared allegiance to Mexico and obtained a Certificate of Mexican Nationality. It is therefore requested that the case be remanded to permit the Certificate of Loss of Nationality to be vacated. 2/

2/ The government bears the burden of proving by a preponderance of the evidence that a United States citizen who performed a statutory expatriative act did so with the intention of relinquishing citizenship. Vance v. Terrazas, 444 U.S. 252, 261 (1980); section 349 (b) , Immigration and

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The Department further stated the following grounds for its request for remand:

A uniform administrative standard of evidence within the Department, based on the premise that United States nationals intend to keep their U.S. nationality when they obtain the nationality of another state, was recently promulgated. Applying this evidentiary standard to the facts of the present appeal, the evidence will not sustain a finding that Ms. J. [REDACTED] intended to abandon her U.S. citizenship when she obtained a CMN.

While appellant's explicit declaration renouncing U.S. citizenship may be said to imply intent to abandon, such a secondary statement to foreign officials does not compel such a conclusion nor preclude a reasonable finding, in the circumstances of this case, that Ms. J. [REDACTED] did not intend to give up her U.S. citizenship.

III

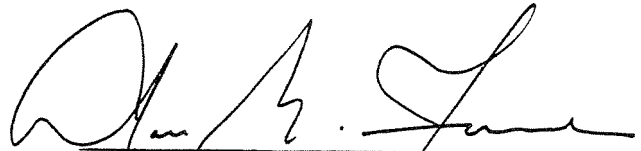
Inasmuch as the Department has concluded that it is unable to carry the burden of proof that appellant intended to relinquish her United States citizenship, we hereby remand the case to the Department so that the Department may vacate the

2/ (Cont'd.)

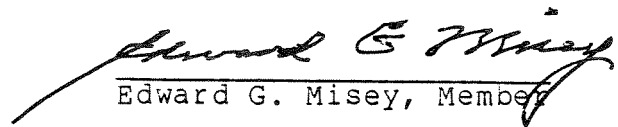
Nationality Act, 8 U.S.C. 1481(b). There is no dispute that appellant performed a valid statutory expatriative act and that she did so voluntarily. Therefore the sole issue to be determined is whether she intended to relinquish her United States citizenship.

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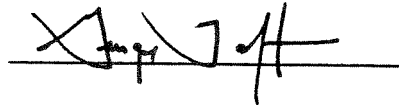
certificate of loss of **nationality** that it approved in appellant's name. 3/



Alan G. James, Chairman



Edward G. Misey, 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. "