August 3, 1990

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF': M[redacted] G[redacted]

The Department of State determined on December 24, 1987 that M[redacted] G[redacted], formsrly M[redacted] K[redacted], expatriated herself on June 4, 1969 under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining naturalization in Canada upon her own application. 1/ Mrs. G[redacted] filed a timely appeal.

After pleadings were completed but before a date was set for oral argument, the Department of State informed the Board of Appellate Review on May 18, 1990, that it considered it appropriate to re-examine this case in light of the evidentiary guidelines for determining the issue of intent to relinquish U.S. citizenship in loss of nationality proceedings which were recently promulgated. By memorandum dated July 12, 1990, the Department informed the Board that after careful review, the Department concluded that there was insufficient evidence to sustain its burden of proving by a preponderance of the evidence that appellant intended to relinquish her U.S. citizenship at the time she naturalized in Canada. The Department therefore requested that the case be remanded so that it might vacate the Certificate of Loss of Nationality (CLN). We grant the request.

1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), provides 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 filed by a duly authorized agent, after having obtained the age of eighteen years; ...

I

An officer of the United States Consulate General at Toronto executed a CLN on December 9, 1987 in appellant's name, in compliance with 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] /sic - should read 1918/, - until 1923; that she was then residing in Canada; that she obtained naturalization in Canada upon her own application on June 4, 1969; and that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department of State approved the certificate on December 24, 1987, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board. An appeal was entered in December 1988. 2/

II

Appellant and the Department filed briefs. Oral argument was requested and a date was under consideration when on May 18, 1990 the Department informed the Board that it believed it appropriate to re-examine appellant's case in the light of new evidentiary standards for adjudicating loss of nationality cases which were promulgated on April 16, 1990.

2/ The following additional facts are relevant:

-- Appellant married a Canadian citizen in 1938. In order to accompany her husband on a trip abroad, appellant allegedly was told she should have a Canadian passport. She therefore applied for and obtained naturalization in Canada so that she might obtain one. Upon being granted Canadian citizenship, she made an oath of allegiance that included a declaration of renunciation of previous nationality.

-- In 1987 appellant inquired of the united States authorities in Canada about the citizenship status of her son, born in Canada in 1939, and applied for an American passport. Her case was then processed by the Consulate General at Toronto, a CLN was ex-exuted and later approved by the Department.

On July 16, 1990, the Deputy Assistant Secretary of state for Consular Affairs (Passport Services) submitted a memorandum requesting that the Board remand appellant's case so that the CLN might be vacated.

The sole issue to be determined in appellant's case, the Department stated in its memorandum, is whether appellant intended to relinquish her United States citizenship when she obtained naturalization in Canada. Noting that the Department bears the burden of proving by a preponderance of the evidence that appellant intended to relinquish citizenship, Vance v. Terrazas, 444 U.S. 252 (1980), the Department maintained that it is unable *to* satisfy its burden of proof.

The Department adduces these considerations to explain why it is unable to bear its burden of proof on the issue of appellant's specific intent:

> A 'uniform evidentiary standard within the Department' was recently promulgated to simplify and make more uniform the judgment of intention in determining possible loss of citizenship where a U.S. citizen has performed certain potentially expatriating statutory acts. The new standard presumes intention to retain citizenship when a U.S. citizen obtains naturalization in, declares allegiance to, or accepts a non-policy level position in, another state. In those circumstances, the presumption is considered inapplicable only:
>
> > ... when ... the proven conduct is so inconsistent with obligations to the united States as to compel the conclusion that the intent to relinquish was present (we envision cases in this category would be quite rare and would involve fact situations substantially beyond pro forma disavowals of allegiance to the U.S.), or ... when an individual ... formally advises the consular officer in writing that /it was/ his or her intent to relinquish U.S. nationality.

> Applying this avidentiary standard to the facts of the present appeal, it is manifest that the evidence does not overcome the presumption that Mrs. G[redacted] intended to retain her U.S. citizenship when she naturalized in Canada.
>
> There is no direct, contemporaneous evidence of appellant's intent at the time of her naturalization. Her intentions must be inferred from the surrounding circumstantial evidence.
>
> The relevant circumstancas include: her traveling on a Canadian passport; she acknowledges her Canadian citizenship when crossing the U.S./Canadian border; she has no ties with the United States and has had no association with the U.S.
>
> When considered together, this evidence can be said to be probative of an intention to give up U.S. nationality. However, in the judgment of the Department, such a conclusion, resting solely on inference and contradicted by appellant's subsequent direct statements of intent cannot be said to overcome persuasively the presumption of state 121931 /Telegram to all diplomatic and consular posts7 that citizens ordinarily intend to retain their U.S. nationality even when acquiring foreign nationality. Therefore the Depratment cannot meet its burden of proving the requisite intent in this appeal.

III

Inasmuch as the Department has concluded that it is unable to carry tne burden of proving that appellant here intended to relinquish her United States nationality, we grant the Department's request that the case be remanded so that the certificate of loss of appellant's nationality may be vacated.

The case is hereby remanded for further proceedings. 3/

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member

3/ 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.