**August 7, 1990**

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J[redacted] F[redacted] C[redacted]

The Department of State determined on June 2, 1988 tnat J[redacted] F[redacted] C[redacted] expatriated himself on January 2, 1967 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/ C[redacted] filed a timely appeal.

After pleadings were completed but before oral argument was heard, the Department of State informed the Board of Appellate Review on May 18, [redacted] that it considered it appropriate to re-examine C[redacted] case in light of the new evidentiary guidelines for determining the issue of intent to relinquish citizenship which were promulgated on April 16, 1990. On July 3, 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 his U.S. citizenship at the time he naturalized in Canada. The Department therefore requested that the case be remanded to permit the Certificate of Loss of Nationality (CLN) to be vacated. we remand for further proceedings.

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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 Calgary executed a CLN in C[redacted] name on May 9, 1988 in compliance with the provisio[redacted] section 358 of the Immigration and National [redacted]ct, 8 U.S.C. 1503. Therein the officer certified that C[redacted] acquired the nationality of the United States by birth at [redacted]; that he lived in the United States until 1961 when he moved to Canada; that he acquired the nationality of Canada by naturalization; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department of State approved the CLN on June 2, 1988, approval constituting an administrative determination of loss of nationality from which appellant might take an appeal to the Board of Appellate Review. Appellant initiated this appeal on May 4, 1989. 2/

II

After appellant and the Department filed briefs, and while a date for oral argument was being considered the Department informed the Board on May 18, 1990 that it believed it appropriate to re-examine appellant's case in the light of new evidentiary guidelines for determining the issue of intent to relinquish U.S. citizenship for application in loss of nationality proceedings which were promulgated on April 16, 1990.

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2/ The following are additional relevant facts:

-- Toward the end of the legal studies he was pursuing in Canada, C[redacted] learned that in order to be able to practice law in the province of Alberta he would have to be a Canadian citizen or British subject.

-- After graduation from law school, C[redacted] was employed by a United States company operating in Canada; continued employment, he was allegedly told was conditional upon his becoming licensed to practice law in Alberta.

-- C[redacted] applied for Canadian citizenship which was granted to him on January 12, 1967; at that time he was required to make and did make an oath of allegiance that included a declaration renouncing all other allegiance.

On July 3, 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 Department might vacate the CLN it had approved in his name.

In its memorandum, the Department noted that the sole issue for determination is whether appellant intended to relinquish his United States citizenship when he obtained naturalization in Canada. The Department further noted that it bears the burden of proving appellant's intent to relinquish citizenship by a preponderance of the evidence. Vance v. Terrazas, 444 U.S. 252 (1980).

The following considerations are adduced to explain why the Department believes it is unable to carry its burden of proof in this case:

> 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:
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> > ... when ... the proven conduct is *so* inconsistent with obligations to the United states as

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2/ (Cont'd.)

> -- In late 1986 when he sought to clarify his citizenship status, his naturalization in Canada came to the attention of the United States consular authorities in Canada. His case was processed as one of loss of nationality and the Department approved it on June 2, 1988. A CLN was executed in his name

> 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 evidentiary standard to the facts of the present appeal, it is manifest that the evidence does not o[redacted]me the presumption that Mr. C[redacted] intended to retain his U.S. citizenship when he naturalized in Canada.

There is no direct, contemporaneous evidence of appellant's intent at the time of his naturalization. His intentions must be inferred from the surrounding circumstantial evidence available,

The relevant circumstances include: his petition to the Law Society of Alberta in which he requested permission to continue his legal education with the understanding that he would not become a member until he naturalized as a Canadian citizen; his acceptance of a job that required Canadian citizenship: and his statement that he feared by becoming a Canadian he might jeopardize his U.S. citizenship.

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 posts/ that citizens ordinarily intend to retain their U.S. nationality even when acquiring foreign nationality. Therefore the Department 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 the burden of proving that appellant here intended to relinquish his 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

Howard Meyers, Member

Gerald A. Rosen, Member

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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."