

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: V. P. -- In Loss of Nationality Proceedings

Decided by the Board November 20, 1986

Appellant, who was born in the United States, was taken by her father, a naturalized United States citizen, to Spain in 1960. She was then 14 years old. In 1961, her father applied to reacquire and was granted his Spanish nationality of origin. He also applied to have Spanish nationality conferred on his minor child, appellant. It was unclear from the record whether, as a matter of law, appellant automatically acquired Spanish nationality in 1961. She asserted in her appeal, however, that from 1961 onward she believed she had become a Spanish citizen and automatically lost her United States citizenship.

In 1967 appellant married a German citizen. Shortly after her marriage she obtained German citizenship by registration, as permitted by German law to the alien wife of a German citizen. She neither made an oath of allegiance nor a declaration of renunciation of previous nationality. In 1983 she visited the United States Embassy at Madrid to obtain a visa in her German passport to visit the United States. Her naturalization in Germany thus came to the attention of United States authorities. The Embassy did not accept appellant's claim that she was not aware she was a United States citizen when she acquired German citizenship. Accordingly, it executed a certificate of loss of nationality under section 349(a)(1) of the Immigration and Nationality Act. Shortly after the Department approved the certificate appellant entered an appeal.

HELD: Since appellant conceded that she became a German citizen voluntarily, the sole issue for decision was whether she became naturalized with the intention of relinquishing her United States nationality. The Board concluded that the Department had not carried its burden of proving that appellant intended to abandon United States citizenship.

The Board found credible appellant's assertion that after her father had petitioned on her behalf to acquire Spanish nationality, she was absolutely certain she had lost United States citizenship, and thus, under the doctrine of unawareness, lacked the intention to relinquish United States

- ii -

citizenship. The Board conceded that appellant would have been prudent to verify her United States citizenship status before acquiring German nationality, but the reasons she gave for not doing so were perfectly plausible, and the Board could not accept that because she was lacking in prudence she had manifested an intention to relinquish her United States citizenship which she argued with conviction that she believed she had lost five years before. Even if one were not able to accept appellant's unawareness theory, the record disclosed no express words or act that indicated appellant's intention to relinquish United States citizenship. Her passive conduct for a number of years with respect to United States citizenship could not fairly be construed, the Board stated, as a knowing and intelligent waiver of appellant's right to remain a United States citizen.

The Board reversed the Department's administrative determination that appellant expatriated herself.
