

March 2, 1989

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M. L. S.

The Department of State determined on April 15, 1986 that M. L. S. expatriated herself on March 13, 1964 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. S. appeals that decision.

For the reasons stated below, we will affirm the Department's holding of loss of appellant's nationality.

I

Appellant acquired United States nationality by virtue of birth at [REDACTED]. She received primary and secondary schooling in the United States, and in 1958 enrolled in the University of Toronto. In her third year at university appellant met her future husband, A S, a Canadian citizen. It appears that in the fall of 1961 she took S. to Connecticut to meet her family. When appellant's widowed mother (in appellant's words, authoritarian, repressive and a strict Catholic) learned

1/ In 1964 section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read in pertinent part as follows:

Section 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 --

...

(1) obtaining naturalization in a foreign state upon his own application,....

Pub. L. No. 99-653, 100 Stat. 3655 (1986), amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

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that S. [redacted] was Jewish, a foreigner and from a working class family, she reportedly became furious that appellant contemplated marrying him, and attempted, unsuccessfully, to prevent her daughter from returning to Canada. Thereafter, in Canada, appellant testified during oral argument, a number of problems arose for her and S. [redacted]. 2/ Her mother arranged that she should be denied access to funds her father had left for her education. "Another harrowing experience" was that private detectives "began following me a good deal of the time." 3/ As she put it in an affidavit, dated April 10, 1987, she noticed that she was being followed by "strange men, who turned out to be private investigators hired by my mother." She believed that she was being harrassed by her mother who thought "she could control and manipulate me, as she had done when I was a child."

Around this time, [redacted] (late autumn 1961) appellant reportedly was ordered to be deported from Canada because her student visa had been cancelled. While in a Canadian immigration office appellant states that she saw or was shown a letter on the stationery of the bank in Albany, New York of which her uncle was president; it thus seemed clear to appellant that her uncle was instrumental in persuading the Canadian authorities to cancel her student visa. S. [redacted] seems to have been able to obtain a stay of appellant's deportation, however, and the couple took out a marriage license, intending to marry at some indefinite date. But after appellant's brother was sent by the family to Canada to dissuade her from marrying S. [redacted], and after an incident in a store that appellant believed was an attempt to kidnap her, they decided to marry immediately and were married on Christmas Day 1961. Immediately thereafter, appellant applied for landed immigrant status in Canada, which was granted on January 3, 1962.

After appellant and S. [redacted] were married, appellant allegedly was still harassed and feared being kidnapped. It appears she was especially worried that she might suffer the fate of a cousin, daughter of her banker uncle, who reportedly was institutionalized because she made a marriage of which appellant's uncle disapproved. As a result of those fears, she decided to apply for Canadian citizenship "so that I could receive protection from my mother and uncle by the Canadian authorities." (Affidavit of February 9, 1988.) Appellant

2/ Transcript of Hearing in the Matter of M. L. [redacted] before the Board of Appellate Review, November 7, 1988 (hereafter referred to as "TR"). TR 15-18.

3/ Id.

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apparently applied for naturalization in the fall of 1963 and was given a citizenship interview in January 1964. On March 13, 1964, after making the following declaration and oath of allegiance, she was granted a certificate of Canadian citizenship :

I hereby renounce all allegiance and fidelity to any foreign sovereign or state of whom or which I may at this time be a subject or citizen.

I swear that I will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, her Heirs and Successors, according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen, so help me God.

Twenty years later appellant's naturalization in Canada came to the attention of American authorities in Canada when she inquired at the Consulate General in Toronto in 1985 about her citizenship status. After the Canadian authorities confirmed that appellant had obtained naturalization, the Consulate General informed appellant by letter dated December 27, 1985 that she might have expatriated herself, and asked her to complete a questionnaire to facilitate determination of her citizenship status. If she did not complete and return the form within 30 days, the Consulate General wrote, the Department would make a determination of her citizenship status on the basis of available information. She was invited to discuss her case with a consular officer. After three months had passed without a reply from appellant, a consular officer executed a certificate of loss of nationality in appellant's name on April 4, 1986, in compliance with the provisions of section 358 of the Immigration and Nationality Act. 4/ The certificate recited that appellant acquired

4/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads as follows:

Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the

