DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D. In Loss of Nationality Proceedings

Decided by the Board October 17, 1985

A native-born citizen of the United States obtained naturalization in Canada in 1971, alleging that she had done so to protect the career of her politically active husband in the face of party and press criticism of the fact that she was not a Canadian citizen. Upon naturalization she swore an oath of allegiance that included a renunciation of all other allegiance. Appellant's naturalization did not come to light until 1981 at which time the consulate general concerned concluded that she had expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. A timely appeal was entered after approval of the certificate of loss of nationality by the Department of State.

HELD: Although the Board accepted that pressures appellant felt to become a Canadian citizen were genuine, they did not, in the Board's opinion, rise to the judicially settled norms of duress. Appellant's naturalization was therefore an act of her own free will.

Appellant's intent to relinquish United States citizenship when she performed the expatriative act was evidenced by the renunciatory oath she made upon naturalization. That appellant made the renunciatory oath with evident reluctance did not, the Board held, vitiate the intent to relinquish United States citizenship she manifested when she forswore all other allegiance. Although appellant maintained close ties to the United States and appeared to place her loyalty to the United States uppermost, nothing in appellant's conduct after naturalization was sufficiently indicative of an intent to retain United States citizenship to overcome the highly persuasive evidence of a renunciatory intent inherent in the oath of allegiance she swore.

The Board accordingly affirmed the Department's determination of appellant's expatriation.

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This is an appeal from an administrative determination of the Department of State that appellant expatriated herself on December 12, 1971, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

Two issues are presented: whether appellant obtained naturalization in Canada voluntarily; and, if the Board so concludes, whether she intended to relinquish United States nationality.

It is the Board's conclusion that appellant became a Canadian citizen of her own free will and that she did so with the requisite intent to relinquish her United States nationality. Accordingly, we affirm the Department's determination of loss of her United States citizenship.

I

A United States citizen from birth, appellant was educated in the United States, and lived here until 1963. In that year she married a Canadian citizen active in provincial politics. Appellant lived in Canada for eight years without taking any action to acquire Canadian citizenship. As her husband became more prominent politically, appellant's lack of Canadian citizenship became a topic of discussion in political circles and was commented on in the press in terms adverse of her husband's political career. 2/

1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1) reads:

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

2/ Transcript of Hearing in the Matter of D., Board of Appellate Review, June 21, 1985 (hereafter referred to as "TR") pp. 6, 37, 38, 39.

Appellant therefore decided that in light of the clearly detrimental effect her non-Canadian citizenship might have on her husband's career, she should apply for naturalization.

On December 12, 1971, appellant became a Canadian citizen. As part of the naturalization process, she signed the then-mandatory renunciatory declaration and oath of allegiance. The renunciatory declaration read: "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." 3/ The oath of allegiance read: "I swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law, and that I will faithfully observe the laws of Canada and fulfill my duties as a Canadian citizen, so help me God."

Appellant's naturalization did not come to the attention of United States authorities in Canada until 1981.

3/ On April 3, 1973, the Federal Court of Canada declared ultra vires the requirement that all applicants for Canadian naturalization (Commonealth citizens generally excepted) renounce all other allegiance; making this declaration has not since been required.

On January 18, 1982, the Consulate General concerned advised appellant by letter she might have lost her United States citizenship, and asked her to complete a standard form entitled "Information for Determining United States Citizenship" within thirty days; if she did not do so, the Consulate General stated, the Department of State might make determination of her citizenship status on the basis of the available information. Appellant did not reply to the Consulate General's letter, although she acknowledged its receipt. Accordingly, on June 3, 1982 the Consulate General executed a certificate of loss of nationality in appellant's name. 4/ The certificate recited that appellant acquired United States nationality by birth in the United States; that she obtained naturalization in Canada upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

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

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 Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

For reasons not pertinent to our disposition of the case, the Department did not approve the certificate until December 15, 1983. Approval of the certificate is an administrative determination of loss of nationality from which a timely and properly filed appeal lies to this Board. By letter dated November 28, 1984, appellant entered this appeal. She requested oral argument, and a hearing was held on June 21, 1985 to which she was accompanied by her husband.

Appellant's case for restoration of her citizenship rests on two basic contentions: first, that she became a Canadian citizen only under duress, that is, in response to pressure on her to aid her husband's important political career, or at best avoid damaging that career irreparably; and second, that at no time did she intend to abandon or relinquish her United States citizenship.

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality "by obtaining naturalization in a foreign state upon his own application." There is no dispute that appellant became a Canadian citizen upon her own application; indeed, she expressly concedes that she did so.

The Supreme Court has long held that citizenship shall not be lost, however, unless the expatriating act was performed voluntarily. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967); Nishikawa v. Dulles, 356 U.S. 129 (1958); Perkins v. Elg, 307 U.S. 325 (1939). Appellant, however, bears the burden of proving that her act was involuntary, for under section 349(c) of the Immigration and Nationality Act, it is presumed that one who performs one of the expatriating acts described in section 349(a) did so voluntarily. That presumption may be rebutted upon a showing by a preponderance of the evidence that the act was performed involuntarily. 5/

5/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c) provides in relevant part that:

> ...Except as otherwise provided in subsection (b), any person who commits or performs or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

The essence of appellant's contention that she acquired Canadian nationality involuntarily is that it was necessary for her to do so to protect, preserve and advance her husband's political career. At the relevant time, appellant was the subject of increasing criticism for her failure to become a Canadian and her inability to participate more fully in all aspects of her husband's public life. She was also influenced by the negative effect her failure to become a Canadian appeared to have on her children, who she alleges,bore a considerable burden created by her failure to act.

At the hearing, appellant's husband gave the following interpretation of the pressure on his wife:

> Duress also takes on another form, and that is the internal pressure one must feel. The internal pressure I have experienced..., sometimes they are far greater than the external pressure of duress that one experiences in political or personal life, and I think my wife has been endeavoring to explain to the Board that it was this sense of duty, sense of concern, as to how it would impact upon my career or the impact in a negative sense on our children, who had already undergone a certain amount of public scrutiny and assessment. TR p. 44.

The record was held open for thirty days after the hearing to enable appellant to submit supplemental evidence of the circumstances surrounding her naturalization and the pressures on her to become a Canadian citizen. On July 17, 1985 she submitted evidence in the form of declarations by five prominent individuals active in public life who knew appellant at the time she became naturalized, and who attested to the specifics and strength of the pressures on appellant to take out Canadian citizenship.

In brief, appellant submitted that a compelling sense of moral obligation to her husband and children - in essence, the duress of marital and maternal devotion - caused her to do an act that she would not otherwise have done.

It is settled that duress renders performance of a statutory expatriating act invalid. Doreau v. Marshall, 170 F. 2d 721, 723 (3rd Cir. 1948): "...the very essence of expatriation is that it be voluntary," citing Perkins v. Elg, 307 U.S. 325 (1939). In Doreau an American woman who was threatened with internment during the German occupation of France obtained French naturalization to

protect herself and her unborn child from what she feared could be fatal consequences. In reversing the lower court, the Third Circuit said:

> If by reason of extraordinary circumstances, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is not authentic abandonment of his own nationality. 170 F. 2d at 724.

In a case analogous to Doreau, Schioler v. United States, 75 F. Supp. 353 (N.D. Ill. 1948), the court found that plaintiff, who obtained Danish citizenship during the German occupation to protect herself and her family, had not acted voluntarily.

A naturalized United States citizen who returned to and remained in her birthplace to care for a bed-ridden mother, did not forfeit her citizenship under the statute than applicable to naturalized citizens, because the reasons that forced her to stay in Canada - filial duty - was, the court held, equatable to duress. Ryckman v. Dulles, 106 F.Supp.739 (S.D. Tx.1952)

A plaintiff who obtained a minor government post in Italy after the war in order to live, and thus performed a statutory expatriating act, did not act voluntarily; the compelling need to find money to live rendered her act involuntary. Insogna v. Dulles, 116 F. Supp. 437 (D.D.C. 1953).

In Mendelsohn v. Dulles, 207 F. 2d 37 (D.C. Cir. 1953), plaintiff, a naturalized citizen, remained abroad, in excess of the time then allowed naturalized citizens, to care for his wife whose illness was so disabling as to prevent travel. The court held that he acted "under the coercion of marital devotion, which was just as compelling as physical restraint." 207 F. 2d at 39.

A plaintiff who joined the auxilliary policy force in Italy under conditions of economic chaos and thus performed a proscribed act did not act voluntarily because he faced "dire economic plight." Stipa v. Dulles, 223 F. 2d 551 (3rd Cir. 1956).

In Nishikawa v. Dulles, 356 U.S. 129 (1958), the Supreme Court held that the conscription of a dual citizen of the United States and Japan into the Japanese Army in World War II did not automatically result in expatriation despite the explicit

language of the statute, because the threat of penal sanctions for failure to serve forced petitioner to serve against his will.

We must measure appellant's claim that she became a Canadian citizen involuntarily against the norms of duress established by the above-cited and parallel cases.

We do not think that her circumstances can objectively be described as "extraordinary" in the sense postulated by Doreau, supra. Plainly, neither she nor her husband or children faced the stark conditions that menaced plaintiffs in Doreau or in the succeeding lines of cases. Specifically, appellant's situation cannot be compared to that of petitioners in Mendelsohn, supra, and Ryckman, supra, the leading cases on the duress of marital and filial devotion. The life and health of a loved one were not at stake in appellant's case. She could have acted differently without running the risk of almost certain dire consequences.

It might not be unfair to say that in a sense appellant was the author of her own problem; she married when her husband was already prominent in politics, and might have been expected to foresee that complications could arise for his political career were she not to become a Canadian. Moreover, there is no evidence that had she not taken that step, her marriage would have been threatened. Indeed, as she and her husband testified with disarming candor at the hearing, they did not believe their marriage would have suffered if she had not taken out Canadian citizenship. TR 19-22.

We accept that appellant perceived the pressures on her to obtain naturalization to be real. And we respect her principled decision to protect her husband's career and shield her children from intrusion into their lives. We are, however, constrained to conclude that the pressures she felt were not, as a matter of law, sufficiently coercive to render her actions involuntary.

This is a novel case, presenting a claim of duress in an elusive form. Although we take a sympathetic view of appellant's position, we must follow the settled case law until some future court finds that kind of unusual pressure "just as compelling as physical restraint."

It is, accordingly, our conclusion that appellant has not rebutted the statutory presumption that she obtained naturalization in Canada voluntarily.

III

Even though we have concluded that appellant voluntarily obtained naturalization in Canada, "the question remains whether on all the evidence the Government has satisfied its burden of proof that the expatriating act was performed with the necessary intent to relinquish citizenship." Vance v. Terrazas, 444 U.S. at 270. Under the Statute, 6/ the Government must prove a person's intent by a preponderance of the evidence, 444 U.S. at 267. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260.

The intent the Government must prove is the person's intent at the time the expatriating act was performed. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

Performing a statutory expatriating act may be highly persuasive evidence of intent but it is not conclusive evidence thereof, and it is impermissible to presume from performance of the act that the citizen intended to relinquish citizenship. Vance v. Terrazas, 444 U.S. at 268. Thus, although appellant's actions in obtaining Canadian citizenship may strongly evidence an intent to abandon United States citizenship, something more must be proved to sustain the conclusion that appellant intended to expatriate herself.

6/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), provides in pertinent part:

Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence.

Terrazas v. Haig, supra, and Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985) applied the general principles laid down by the Supreme Court in Vance v. Terrazas.

In Terrazas v. Haig, plaintiff made an oath of allegiance to Mexico, simultaneously renouncing his United States citizenship and all fidelity to the United States. The Seventh Circuit agreed with the district court that the plaintiff intended to renounce his United States citizenshp when he willingly, knowingly, and voluntarily obtained a certificate of Mexican nationality. Plaintiff, the Court noted, was of age, well educated and fluent in Spanish at the time he executed the document which contained an oath of allegiance and the renunciation of United States nationality.

He subsequently informed his draft board that he was no longer a United States citizen. Finally, plaintiff executed an affidavit in which he swore that he had taken an oath of allegiance to Mexico and had done so freely and with the intention of relinquishing United States citizenship. "We cannot conclude," the court said, "that the district court improperly found that the government had established by a preponderance of the evidence that plaintiff intended to relinquish his United States citizenship." 653 F. 2d at 289.

Plaintiff in Richards v. Secretary of State, a native born United States citizen, became a legal resident of Canada in 1965. In 1971, in order to meet the citizenship requirements for employment by the Boy Scouts of Canada, he obtained naturalization. Like appellant in the case at bar, Richards swore an oath of allegiance to the British Crown and expressly renounced "all other allegiance and fidelity." He returned to the United States in 1971 on a Canadian passport for graduate study registering as a foreign student. In 1973 he returned to Canada to teach, and later did free lance work. He received a new Canadian passport and used it to travel abroad.

After his naturalization had come to the attention of the United States authorities, Richards stated in a form he completed to determine his citizenship status that: "I did not want to relinquish my U.S. citizenship but as part of the Canadian citizenship requirement I did so."

The Ninth Circuit agreed with the district court that Richards knew and understood the meaning of the words in the renunciatory declaration, and said that: "the voluntary taking

of a formal oath of allegiance that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." 752 F. 2d at 1421. It found no factors that would justify a different conclusion. Id.

The Department argues in its brief that appellant's intent to relinquish her United States citizenship is demonstrated by the fact that she voluntarily obtained naturalization in a foreign state, an act that may be highly persuasive evidence of an intent to relinquish citizenship. The Department further maintains that the fact appellant made a declaration of renunciation of United States citizenship shows it was her intention to forfeit citizenship, citing the district court's decision in Richards v. Secretary of State, CV80-4150 slip. op. at 5 (C.D. Cal. 1982): "The taking of a 'dramatic oath' of allegiance /one that contains an express renunciation of loyalty to the country of which one was a citizen/ to another country by an American citizen effectively works renunciation of American citizenship because it evidences an intent by the citizen to so renounce."

The Department's brief continues:

> In addition, Appellant was aware that her naturalization in Canada could result in her loss of U.S. citizenship. She acknowledged to a consular officer on March 1, 1982 that she believed she had expatriated herself by her actions in 1971. 7/ In addition, her letter of November 28, 1984 /to the Board of Appellate Review/ refers to her desire to "re-establish" and "reclaim" her U.S. citizenship. These examples are clear indications of a knowledge and intent to abandon her U.S. nationality.
> 7/ /Footnote omitted/.

During oral argument on June 21, 1985, counsel for the Department submitted that appellant's intent to abandon her United States citizenship was also manifested by the fact that since her naturalization appellant voted in Canada and travelled on a Canadian passport, while she had not voted in the United States or travelled on a United States passport. TR p. 36.

The only evidence of appellant's intent at the crucial time, that is, when she became a Canadian citizen, is the fact that she

obtained naturalization upon her own application, swore an oath of allegiance to the British Crown and expressly declared that she renounced all other allegiance and fidelity to any sovereign or state. Asked at the hearing whether she recalled subscribing to the foregoing declaration and oath, appellant replied that she did. She added: "I questioned the individuals who were administering -- dealing with my case at that time, and told them I did not want to make at least part of that statement, but it wasn't allowed. And so I complied with their wishes in order to complete that application." TR p. 32.

Questioned further about what effect she thought the oath would have on her United States nationality, appellant stated: "I think I simply pushed it out of my mind and didn't think -- tried not to think about it....I was upset and angry when I came out of that office, but I didn't feel I had much choice. I could not persuade them to delete the first part of that oath... but they wouldn't do that, and I guess I finally just gave up and went ahead." TR p. 34.

The record thus establishes beyond question that appellant knowingly and understandingly made an oath of allegiance to a foreign state and simultaneously declared that she renounced all other allegiance. As Terrazas v. Haig, supra, and Richards v. Secretary of State, supra, make clear, such actions ordinarily are sufficient evidence of an intent to relinquish United States citizenship. But, both courts have also made clear, other factors must also be taken into account to determine whether they might be sufficiently persuasive to warrant a different conclusion.

We are not persuaded by the Department's submission that appellant's being aware that naturalization could result in loss of citizenship; her statements to the Board that she wanted to "re-establish" or "reclaim" her United States citizenship status; voting in Canada or using a Canadian passport add much weight to the Department's argument that appellant intended to forefeit her United States nationality.

Knowledge that one might lose one's citizenship by performing a statutorily proscribed act may not, without more, be equated to an intent to relinquish citizenship. See Richards v. Secretary of State, 753 F. 2d at 1420: "In the absence of such an intent, he does not lose his citizenship simply by performing an expatriating act even if he knew that Congress has designated the act an expatriating act."

Using arguably inartful words in presenting one's appeal is not necessarily expressive of an earlier intent. And voting in Canada and using a Canadian passport (presumably only for foreign travel, there is no evidence appellant entered the United States on a Canadian passport) are too ambiguous to be reliable indicators of one's intent many years earlier.

Nonetheless, there is no evidence in the record up to the time the appeal was entered of affirmative words or conduct that might show a clear resolve on appellant's part to retain United States citizenship, and thus overcome the very compelling evidence of a renunciatory intent she manifested in 1971. We accept that appellant's associations with the United States are close and that she cultivated them actively over the years since her naturalization, and that, as the declarants who supported her case for involuntary performance of the expatriating act attested explicitly or inferentially, she considered her first loyalty was to the United States. But we are unable to consider that these considerations outweigh the palpable evidence of a renunciatory intent expressed in clear words when she performed a statutory expatriating act.

That appellant was motivated to obtain naturalization solely by the highly principled wish to protect her husband's career and shield her children from public scrutiny and comment, we readily grant. But that she performed a statutory expatriating act reluctantly does not vitiate the legal consequences of doing so. In Richards v. Secretary of State, plaintiff did not argue that he did not mean what he said in the oath/declaration he made upon naturalization, but rather said that he lacked the necessary intent because he never had a desire to surrender his United States citizenship. "He says, and we accept his statement," the court observed, "that he became a Canadian citizen and renounced allegiance to the United States only in order to retain his employment." 752 F. 2d at 1421. But, the court added:

> We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly. Whenever a citizen has freely and knowingly chosen to renounce his United States

> citizenship, his desire to retain his citizenship has been outweighed by his reasons for performing an act inconsistent with that citizenship. If a citizen makes that choice and carries it out, the choice must be given effect. 752 F. 2d at 1421, 1422.

Reviewing the entire record, we are of the view that the Department has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish her United States citizenship when she obtained naturalization in Canada upon her own application.

IV

Upon consideration of the foregoing, the Board hereby affirms the Department's determination that appellant expatriated herself.

Alan G. James, Chairman

G. Jonathan Greenwald, Member

Howard Meyers, Member