DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A. C. L. - In Loss of Nationality Proceedings

Decided by the Board August 29, 1986

Appellant, a naturalized United States citizen, returned to Korea after living in the United States for a number of years, allegedly to care for his ailing father. While in Korea he married. The date of his marriage was incorrectly recorded. When his bride, for whom he had obtained an immediate relative visa, applied for a Korean passport, her application was denied on the grounds that she was not legally married, the date of the marriage having been incorrectly recorded. Allegedly, the only way the problem could be resolved was either through divorce or annulment, and remarriage. Appellant's wife purportedly refused to agree to the proposed bureaucratic solution, and told appellant that if he wished to preserve their marriage he would have to stay with her in Korea. Appellant then applied for restoration of his Korean nationality which was granted on condition that he submit proof within 6 months that he had relinquished his United States nationality. He supplied the necessary proof within the stipulated period. The Embassy at Seoul executed a certificate of loss of nationality in appellant's name under section 349(a)(1) of the Immigration and Nationality Act. Shortly after the Department approved the certificate, he entered this appeal.

Held: Appellant did not rebut the statutory presumption that he obtained naturalization voluntarily. He may have acted out of devotion to his wife (and parents - he submitted that he reacquired his Korean nationality out of concern for them as well). However, he did not show that his circumstances were comparable to those of petitioners who had successfully pleaded the duress of familial devotion. Nor did he show that he had no alternatives to solving his problem by obtaining naturalization in Korea.

Appellant's intent to relinquish his United States nationality was inherent in his act of obtaining naturalization. He expressly sought to establish that he had surrendered his United States citizenship precisely in order to meet the condition subsequent to the re-acquisition and retention of his original Korean nationality.

The Board affirmed the Department's determination holding that appellant expatriated himself.

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This is an appeal from an administrative determination of the Department of State holding that appellant, A. C. L., expatriated himself on October 12, 1983 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Korea upon his own application. 1/

For the reasons set forth below, we conclude that appellant voluntarily obtained naturalization in Korea with the intention of relinquishing his United States nationality. The Department's determination that he expatriated himself accordingly is affirmed.

I

L. was born at [redacted] He immigrated to the United States in 1975 or 1976, married here and had a son. The marriage was dissolved in 1981. On February 25, 1982 L. was naturalized before the United States District Court for the District of Oregon. By voluntarily obtaining naturalization in a foreign state, he automatically lost his Korean nationality by operation of law. Shortly after naturalization L. obtain a United States passport.

He returned to Korea in 1983, reportedly because his father was in poor health:"... I have been under extreme pressure from my family to return to Korea in order to take care of my parents as an eldest child. More than anything else, I had to fullfil /sic/ my obligation as a dutiful and obedient son...."

L. was married in Seoul on April 19, 1983. It appears that the marriage was recorded in Taejeon City (presumably where appellant's family registry was maintained) as having occurred on April 9, 1983. Intending to take his bride to the United States, L. filed a petition on her behalf for an immediate relative visa which was approved by the Immigration and Naturalization Service around late spring 1983. However, when

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

> 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, . . .

Mrs. L. applied for a Korean passport to travel to the United States, the authorities refused to issue her one, "unless," appellant stated in his opening brief,"she obtained an annulment or divorce in order to re-register their marriage in accordance with the registration laws of Korea." The refusal of Korean passport officials to acknowledge the marriage, the brief continues, "was based on their interpretation that Appellant's wife was not the lawful wife of Appellant under Korean law....It was held to be unlawful to register the marriage prior to the actual marriage...."

Denied a Korean passport, appellant's brief continues, Mrs. L.

> stubbornly refused to comply with the advise /sic/ of the Korean government official and threatened her husband that she would not go through with the meaningless divorce proceedings because they are already married. Unless she is issued her immigrant visa to come to the United States, she would then be content to live in Korea and that Appellant should remain in Korea if he wants to preserve the marriage.

"Appellant's fervent desire to preserve the marriage intact, coupled with his moral obligation to care for his gravely ill father," appellant's brief asserts, "forced him to take the necessary steps to reacquire the nationality of origin." L.'s application to reacquire his Korean nationality was granted, as attested by Ministry of Justice Official Notice No. 781, dated October 12, 1983, which reads as follows:

> The following person was originally Korean, became a /sic/ American citizen by virtue of naturalization on February 25, 1982 and lost Korean nationality. And now he wants to restore his Korean nationality. We are hereby granting his Korean nationality in accordance with Korean Nationality Act #14-1.
>
> But he must renounce U.S. citizenship within 6 months from this date. 2/

2/ In its brief the Department takes the position that although Official Notice No. 781 uses the term "renounce", the term is not meant in that context. "The word 'renounce' may have been used in the translation, but the Koreans only wanted verification that the individual had in some way (not necessarily by renunciation) given up his U.S. citizenship."

The Department's position appears to us to be sound.

> Otherwise he will lose Korean nationality again. 3/

The Ministry informed L. on October 12th that:

> 1. ...the permission to restore your Korean Nationality requested by you has been permitted by the Ministry of Justice Official Notification #781.
>
> 2. But you must give up and lose U.S. citizenship within 6 months from this date, October 12, 1983. If you don't give up the U.S. citizenship, you shall lose Korean Nationality again. You must send the copy made from American Embassy to verify the fact that you gave up and lost the American citizenship to the Ministry of Justice.

L. visited the United States Embassy at Seoul on March 19, 1984, presumably to initiate the process of terminating his United States citizenship. He completed a form titled "Information for Determining U.S. Citizenship" in which he expressly acknowledged that he had obtained naturalization in a foreign state and had done so voluntarily with the intention of relinquishing his United States citizenship. He surrendered his passport and certificate of naturalization. A consular officer apparently interviewed L., but there is no account of their conversation in the record. On March 20, 1984 a consular officer executed a certificate of loss of nationality in L.'s name. 4/ He certified that L. acquired United States nation-

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3/ This document and the other documents of the Korean Government quoted in our opinion were evidently translated by the Embassy at Seoul.

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.

-ality by virtue of naturalization; that he was naturalized upon his own application in Korea on October 12, 1983; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Embassy forwarded the certificate to the Department which approved it on May 15, 1984. Approval of the certificate constitutes an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. L. entered this appeal through counsel on April 30, 1985.

After appellant filed his opening brief, the Department instructed the Embassy to ascertain whether L. had fulfilled the requirement of notifying the Korean authorities that he had relinquished his United States citizenship and whether the Koreans had restored his citizenship. On December 17, 1985 the Ministry of Justice sent the Embassy the following reply to the inquiries it had addressed to the ministry as instructed by the Department;

> Mr. L., A. C. (DOB: October 1, 1946) have /sic/ relinquished Korean nationality upon acquiring U.S. citizenship dated February 25, 1982. According to Official Notification No. 781 issued by Ministry of Justice dated October 12, 1983, Mr. L. reacquired Korean nationality and on March 20, 1984, he submitted a documentation which informed he relinquished U.S. citizenship.
>
> If in case he did not acquire foreign nationality after submission of the documentation, he still retains Korean nationality.

The Ministry did not indicate the nature of the "documentation" L. presented to satisfy their requirements. However, since he made a submission to the Ministry on March 20, 1984, the same day the Embassy executed the certificate of loss of his nationality, possibly he exhibited a copy of that document. In any event the Koreans obviously were satisfied even before the Department approved the certificate of loss of nationality that L. had taken effective steps to relinquish his United States citizenship.

II

The statute (section 349(a)(1)) prescribes that a national of the United States shall lose his nationality by obtaining

naturalization in a foreign state upon his own application. 5/ There is no dispute that by reacquiring his Korean nationality of origin L. obtained naturalization in a foreign state within the meaning of the statute.

Nationality shall not be lost through performance of a statutory expatriating act, however, unless the citizen acted voluntarily and with the intention of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

In law, it is presumed that performance of a statutory expatriating act is voluntary, although the citizen may rebut the presumption upon a showing by a preponderance of the evidence that the act was involuntary. 6/

L. submits that his naturalization was involuntary because it was the result of pressure from his wife and his family so extreme as to leave him no choice or reasonable alternatives.

> He did not go to Korea to make a life there. He went to Korea purely to visit his gravely ill father and to bring his wife to the United States. He applied for the certificate of Korean nationality during a time of mental depression and under duress of his wife and his family. He was faced with threat of his wife to breakup the marriage. He has filed in his previous marriage, and therefore, he was determined to keep the marriage intact. It must be concluded that his reacquisition of nationality of origin was involuntary.

5/ Text supra, note 1.

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

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. 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.

It is settled that duress nullifies an expatriating act. Doreau v. Marshall, 170 F.2d 721 (3rd Cir. 1948). Doreau laid down the general standard for gauging duress:

> 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 no authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. He cannot be truly said to be manifesting an intention of renouncing his country. On the other hand it is just as certain that the forsaking of American citizenship, even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress. 170 F.2d at 724.

Courts have recognized that the duress of marital and filial devotion may be as coercive as physical constraints or other kinds of pressures, and may lead one to perform an expatriating act against his fixed will and intent to do otherwise. Mendelsohn v. Dulles, 207 F.2d 37 (D.C. Cir. 1953); Ryckman v. Acheson, 106 F. Supp. 739 (S.D. Tex. 1952). In those cases, a husband (Mendelsohn) and a daughter (Ryckman) contended that they were forced to perform an expatriative act in order to care for a gravely ill wife and mother respectively for whom there was no one else to minister. "Mendelsohn acted, it seems to us, under the coercion of marital affection which was just as compelling as physical restraint." Mendelsohn, 207 F.2d at 39. "Should such a dutiful daughter be deprived of the priceless possession of her American citizenship for doing nothing other than her filial duty? I think not." Ryckman, 106 F.Supp. at 741.

Performing an expatriative act simply because one wants to be with one's spouse does not, as a matter of law, prevent loss of citizenship. The party pleading marital devotion must prove that the duress was sufficient to make the act involuntary. Norio & Miyoko Kiyama v. Rusk, 291 F.2d 10 (9th Cir. 1961). There the husband petitioner had made a formal renunciation of his United States nationality. His wife did so as well. She alleged in part that she had acted out of marital devotion. The court said:

> ...To hold such 'marital compulsion' as a matter of law entitles any wife to a finding that her acts were involuntary on

> her part would render the congressional enactment operative as to one spouse - the husband - but not as to both. We cannot believe this to be the law. 291 F.2d at 20.

To prove duress one must, of course, be able to show that there were no viable alternatives to performing an expatriative act. If one could reasonably be held to have had opportunity to follow a different course and thus avoid jeopardizing United States citizenship, there is no duress. "/O/pportunity to make a decision based upon personal choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971).

L. has not persuaded us that he had no viable alternatives to obtaining naturalization. First of all, he has submitted no evidence from his wife or his parents or other sources to substantiate his allegations that he was coerced by an overpowering sense of obedience and affection to reacquire Korean nationality. Nonetheless, for purposes of analysis, we will accept that his wife did demand that he stay in Korea if he wanted to preserve their marriage and that his family, after learning of his problem with his wife, pressed L. to stay and care for them.

The fundamental weakness of appellant's case is that he has not shown he made an effort to solve his problems without endangering his United States citizenship - that despite genuine exploration he found all reasonable options closed to him. With respect to his parents, L. has not shown that others (he indicates he had at least one brother or sister) could not have given them the kind of care they required. His sense of filial duty is admirable, but, in the circumstances, he has not shown that his parents, particularly his father who allegedly was seriously ill, needed his (and only his) ministrations.

With respect to the demands of his bride, it seems to us that L. acted precipitately. They married in April; sometime in the summer Mrs. L. learned that the Korean authorities would not issue her a passport unless she and L. took an action distasteful to her; L. applied for reacquisition of his Korean nationality sometime thereafter; and in October received a favorable ruling. He has not shown that he tried but was unsuccessful in finding some way to resolve the problem with his wife, or explained why the Korean authorities insisted that the only way of rectifying an obvious clerical error was through divorce and remarriage.

L. apparently did not try to persuade the competent Korean authorities to amend the marriage registration records administratively and issue his wife a passport. As a United States citizen he was entitled to call on the Embassy to intervene on his behalf. We do not, of course, know what success the Embassy would have had if it had intervened, but his case is flawed for his not having demonstrated that he made even a minimal effort to solve his problem before moving to reacquire his original nationality.

Measured against established criteria for gauging whether a citizen has done an expatriative act voluntarily, L.'s obtaining Korean nationality can hardly be considered to have been coerced. Given the worth of United States citizenship, a citizen must establish that forces truly beyond his control drove him to do the proscribed act. Here L. has failed to show that his circumstances were equatable to those of petitioners in the leading cases who successfully pleaded familial duress, or that he made a sincere effort to avoid putting his United States citizenship on the line.

We conclude that L. has not rebutted the statutory presumption that he reacquired Korean nationality voluntarily.

III

Finally, we must determine whether L. intended to relinquish his United States nationality when he reacquired his Korean nationality. Even though a citizen fails to rebut the legal presumption that he acted voluntarily in performing a statutory expatriating act, the question remains whether on all the evidence the Government has met its burden of proof that the expatriating act was performed with the necessary intent to relinquish citizenship. Vance v. Terrazas, 444 U.S. 252, 270 (1980). Under the statute, 7/ the government must prove a person's intent by a preponderance of the evidence, Id. at 267. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The intent to be proved is the person's intent at the time the expatriating act was performed. Terrazas v. Haig, 653 F.2d 285, (7th Cir. 1981).

7/ Section 349(c) of the Immigration and Nationality Act. Text supra, note 6.

The expatriating acts specified in the statute are not to be considered as the equivalent of or as conclusive evidence of a citizen's intent to relinquish citizenship, Terrazas, 444 U.S. at 261. However, any of those acts "may be highly persuasive evidence in the particular case of a purpose to abandon citizenship." Id.

L.'s voluntary action in seeking restoration of his Korean citizenship thus strongly suggests an intention to divest himself of United States citizenship. In the circumstances of this case, L.'s intent in 1983/1984 is abundantly clear. He decided, for reasons he considered imperative, to apply to recover his original nationality. To do so and to make reacquisition binding, he was required to prove to the Korean authorities that he had, in some effective manner, divested himself of his United States citizenship. Inherent in the action he took after being advised that his Korean citizenship had been restored is a will and purpose to forfeit United States nationality. Less than one month before expiration of the period allowed, L. visited the United States Embassy where we may assume he informed a consular officer that he had regained Korean nationality but to perfect the process would have to show the Koreans he had relinquished United States citizenship. To this end he set forth in the citizenship questionnaire he executed that he had obtained naturalization in Korea voluntarily with the intention of relinquishing his United States citizenship.

It is evident, too, that L. acted knowingly and intelligently. He had lived in the United States for seven or eight years, obviously spoke English, and probably was not unfamiliar with the Embassy and its procedures (two Korean employees of the Embassy were witnesses at his wedding in April 1983). Furthermore, L. duly completed the required procedure for regaining Korean nationality by delivering to the Korean authorities on March 20, 1984 a "documentation" which satisfied them that he had severed his allegiance to the United States.

Finally, L. candidly admits that he underwent a change of heart after Korean nationality was restored.

> After renouncing my U.S. citizenship, I came to change my mind based on changed circumstances. Firstly, my father still is in poor heath, /sic/ but he realized that I have done my very best to please him and to be with him but I have to have my own life to live. Therefore, he consented and urged me to return to U.S. to have and enjoy a normal life in the U.S.
>
> Secondly, my wife who is 8 months pregnant, is now confident of our

> strong relationship that she has consented to go through the necessary procedures in order that she may immigrate to the U.S. with me.
>
> Thirdly, I have a legal right to visit my son, B. L., who is in the custody of my former wife, residing /sic/ Portland Oregon. /sic/ I would like to visit my son regularly in order for him to have a natural and normal child life. This, I cannot do unless I return to the U.S.

Can there be any doubt that at the moment L. recovered his Korean nationality his will and purpose were to divest himself of his United States nationality? We think not. Plainly, the Department has met its burden of proof.

IV

Upon consideration of the foregoing, it is our conclusion that the Department's determination that L. expatriated himself by reacquiring his Korean nationality should be and hereby is affirmed.

Alan G. James, Chairman

Howard Meyers, Member

George Taft, Member