DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J. N. W. -- In Loss of Nationality Proceedings

Decided by the Board April 11, 1986

Although qualified to practice law in the United States, appellant allegedly could not find a legal position here, and accordingly went to Canada where he had offers. In order to qualify as a solicitor in Quebec, appellant obtained Canadian naturalization early in 1973. Nine years later he consulted the Consulate General at Montreal about his citizenship status. The Department of State disagreed with the opinion of the Consulate that appellant probably did not intend to relinquish his United States citizenship, and instructed the Consulate to execute a certificate of loss of nationality under section 349(a)(1) of the Immigration and Nationality Act. The certificate which the Consulate prepared was duly approved. A timely appeal was entered.

HELD: Appellant did not rebut the statutory presumption that he did the expatriating act voluntarily. He did not show that his economic situation was so dire that he could not have subsisted had he not chosen to obtain Canadian citizenship. Although he alleged that he could find no employment in his field in the United States, he did not show that he even tried to find alternative employment that would have obviated the need to jeopardize his citizenship and would have enabled him to maintain himself and his family. Although he faced an admittedly hard choice, the mere difficulty of the choice was insufficient to excuse his performance of the expatriating act.

As to the issue of appellant's intent to relinquish United States citizenship, the Board concluded that the Department had borne its burden of proof. His intent was essentially evidenced by his swearing allegiance to Queen Elizabeth the Second and simultaneously declaring that he renounced all other allegiance and fidelity. That he allegedly became a Canadian citizen solely to fulfill a condition of his employment did not vitiate the force of the renunciatory declaration he made upon becoming a Canadian; intent to renounce citizenship does not turn on motivation. The Board was not persuaded that he had subscribed inadvertently to the renunciatory declaration; the renunciatory language was printed in bold type on the form he signed, and as a trained lawyer he had less excuse than others for not knowing Canadian law and regulations. Surveying appellant's proven conduct, the Board was satisfied that there were no elements disclosed by it that would warrant a conclusion that he did not intend to relinquish his United States citizenship.

The Board affirmed the Department's determination that appellant expatriated himself by obtaining Canadian citizenship.

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This case is before the Board of Appellate Review on the appeal of J. N. W. from an administrative determination of the Department of State that he expatriated himself on February 28, 1973 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

Two issues are presented: whether appellant voluntarily obtained Canadian citizenship; and, if it be so determined, whether he intended to relinquish his United States citizenship when he became a Canadian citizen. We find that appellant acted freely and without coercion in obtaining Canadian citizenship, and that the Department has carried its burden of proving that appellant had the requisite intent to relinquish United States citizenship. The Department's holding of loss of appellant's nationality is accordingly affirmed.

I

W. acquired United States citizenship by birth at [redacted], [redacted] He was raised and educated in the United States; served in the United States Marine Corps Reserve for nearly two years; and in 1961 joined the United States Army from which he was discharged in 1964. While serving in the United States Army, appellant met a Canadian citizen whom he married in 1963. In 1962 he obtained a United States passport which he apparently used to travel to Germany as a tourist. He received a bachelor of arts degree from Texas Technological University in 1966.

Appellant gives the following account of the subsequent events in his life:

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 naturalization, shall lose his nationality by --

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

...

4. I attended law school at the Universite de Montreal from September 1966 until my graduation in 1969 in order to learn french and to study a civil law system.

5. Although I was approached for employment by Canadian law firms in 1969, in accordance with my plans on going to Canada in 1966, I returned to the United States in 1969 to enroll in law school with the intent of remaining in the United States and supporting myself and my wife by practising law.

6. I became qualified to practice law in the State of Texas in December of 1969 and received a master of laws degree from the University of Texas in June of 1970.

7. Despite numerous attempts over a period of many months I was unable to obtain employment in the United States in my profession or in fields in which I would be able to utilize my experience or education.

8. As my wife and I were expecting our first child in early 1971 and as several Canadian law firms had expressed an interest in employing me, we returned to Montreal in September of 1970 and I was hired by a Montreal law firm on the understanding that I would become qualified to practice law in the province of Quebec as soon as possible.

9. Under the laws of Quebec only Canadian citizens can practice law in that province. 2/

10. Between September 1970 and the time when I met all qualifications for admission to the Bar of the Province of Quebec, other than Canadian citizenship, I was unable to find alternative employment which would permit me to support my family without becoming a Canadian citizen.

11. In order to be able to support my family by remaining gainfully employed I became a naturalized Canadian citizen in February of 1973.

2/ The Board notes that Division V, section 3 (61) of the Bar Act of 1967 of the Province of Quebec provides that a candidate for admission to the Bar must be a Canadian citizen.

The record shows that a certificate of Canadian citizenship was issued to W. on February 28, 1973. Before citizenship was granted appellant made the following oath:

> 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/
>
> 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 fulfill my duties as a Canadian citizen, so help me God.

Nine years later, in March 1982,appellant consulted the United States Consulate General at Montreal about his citizenship status. He completed a form for determining citizenship and an application to be registered as a United States citizen. In forwarding his case to the Department in September 1982 for a decision as to whether he might be registered as a United States citizen, the consular officer who interviewed W. observed that:

> In the consular officer's opinion it appears likely that Mr. W. become naturalized in Canada, as he says, in order to practice law here. That he did not call attention to his naturalization in Canada by inquiries at the Consulate until after he had learned of the effects of Afroyim might be seen as indicative of an intent to avoid certification of loss of citizenship which he suspected. In any case, it would appear from the evidence that sufficient doubt as to an intent to relinquish exists that he should be given the benefit of the doubt. Approval of his application for registration is recommended....

Six months later, in March 1983, the Department instructed the Consulate General to prepare a certificate of loss of nationality in appellant's name, basing its decision on the following considerations:

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> 3. It is noted that Mr. W. had not consulted with either post or Department until recently concerning his 1973 Canadian naturalization. He also has stated that he stopped voting in U.S. elections and filing U.S. tax

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3/ On April 3, 1973 the Federal Court of Canada declared ultra vires the provision of the Canadian Citizenship Regulations that prescribed that applicants for naturalization make a renunciatory declaration.

returns after that time, as he no longer considered himself as /sic/ American citizen. His third child, born after the potentially expatriating act, was not registered at post as were the two older children. Affidavits submitted by Mrs. W. and Mr. C. do not overcome Mr. W.'s own proven conduct that his naturalization in Canada was accompanied by a transfer of allegiance to Canada. There is insufficient evidence, furthermore, to suggest that his Canadian naturalization was "involuntary" due to overwhelming economic or social factors. Finally it is noted that his naturalization on 28 February 1973 included a renunciatory oath.

4. Department therefore considers that Mr. W.'s intent to relinquish U.S. citicenship concurrent with Canadian naturalization may be established by preponderance of the evidence. Please forward certificate of loss of nationality ... for final processing.

In compliance with the Department's directive and the provisions of section 358 of the Immigration and Nationality Act, the Consulate General executed a certificate of loss of nationality on October 25, 1983. 4/ The Consulate General certified that W. acquired United

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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.

States citizenship at birth; that he obtained naturalization in Canada upon his own application; and concluded that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department approved the certificate on November 18, 1983, approval being an administrative decision from which an appeal, timely and properly filed, may be taken to the Board of Appellate Review. A copy of the approved certificate was sent to the Consulate General to forward to appellant, who received it in late November 1983.

It appears that one of the two required signatures was missing on the certificate. The record does not indicate whether the missing signature was that of the consular officer who executed the certificate or of the Departmental official who approved the certificate. In any event, at the request of the Consulate General appellant returned to that office his copy of the certificate. A copy of the duly signed certificate was dispatched to him in April 1984. In April 1985 W. initiated this appeal. 5/

5/ The appeal is clearly timely, although it might appear that it was not filed within one year after approval of the certificate of loss of nationality, as required by 22 CFR 7.5(b). For one thing, we do not know when the required signature was finally affixed to the certificate secondly, the certificate itself did not carry on the reverse the correct information about appeal procedures. The information thereon cited regulations in effect from 1967 to 1979. Under those regulations, an expatriate might appeal within a "reasonable time" after receipt of notice of the Department's holding of loss of his citizenship. Clearly, any delay on the part of this appellant is so short as to warrant being considered reasonable.

II

There is no dispute that W. obtained naturalization in Canada upon his own application. He thus brought himself within the purview of section 349(a)(1) of the Immigration and Nationality Act.

Performance of a statutory expatriating act will not result in loss of citizenship, however, unless it was voluntary and the citizen intended to relinquish 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 one who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 6/ Here, appellant maintains that economic exigencies forced him to become a Canadian citizen. These he detailed as follows:

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

(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after 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 claims 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.

During the winter of 1969 I began looking for full-time employment to commence upon my graduation in the spring of 1970. I used the normal channels for discovering and interviewing for such employ, e.g., visits to local law firms, utilization of the university's placement service, sending of my resume in response to advertized positions and interviewing with law firms recruiting at the law school.

At that time I was working for a law firm on a part-time basis as a student and earning $100 a week. My wife was working as a bookkeeper at an accounting firm and earning $500 per month.

There was apparently a surplus of lawyers in the United States at that time and positions were difficult to find. Having been unsuccessful in finding employ through the normal channels I began expanding the scope of positions applied for and expanding methods for finding employ. Thus for example I contacted the local office of the Central Intelligence Agency to see if that might result in a job. It did not. I contacted the Federal Bureau of Investigation and was told that what they really needed were accountants, not lawyers. I contacted the Texas State Employment Commission and was told that they had no requests for lawyers and that I was over-qualified for any jobs that they had. I then began travelling to the larger cities in Texas at my own expense to knock on doors in search of a legal position. I also began applying by mail for openings out of state -- all to no avail.

By this time my wife was pregnant and would have to quit her job and, since I had graduated from the University of Texas, I no longer had my part-time job as a law student. I became desperate. I wrote to three firms in Montreal enquiring if they had any positions. Each of the firms suggested that I come to Montreal for an interview. I received four job offers as a result -- all with the proviso that I become qualified to practice law in Quebec as soon as possible.

> By this time my wife was no longer working and, although the salaries for beginning lawyers in Montreal were far below those normally offered in Texas ($600 per month as opposed to $800 per month), in the absence of any alternative, I accepted.
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> In the interval between my return to Canada in the fall of 1970 and the time when I had met all of the requirements (other than Canadian citizenship) for becoming an attorney in Quebec in the summer of 1972, I continued to look for employment which would not require Canadian citizenship -- again without success. By this time I had in addition to my wife, two small children to support. I had also an employer who, after more than two years, was impatient for me to become qualified to practice law in Quebec. This required that I become a Canadian citizen.
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> In sum, at the time I became a naturalized citizen of Canada, I was 32 years old; had four people to support; and no means of supporting them other than through income from employment that required me to become a Canadian citizen; had no savings -- my job then paid $12,000 a year and Canadian taxes are higher than U.S. taxes; could not look to my family to support me -- my father was killed in action while with the U.S. Army in World War II; my mother did not work and her husband had her to support as well as his son and my older sister who was having marital difficulties; and my wife had two small children to keep her occupied.

As W. describes them, the circumstances in which he and his family found themselves were difficult. But the essential question is whether the circumstances he describes were, as a matter of law, so extreme as to exempt him from the consequences of performing a statutory expatriating act. While not indifferent to his condition in 1973, we are unable to agree that he was subjected to true duress.

To excuse performance of a statutory expatriating act, the courts insist that the citizen demonstrate that the circumstances he faced were extraordinary. See Doreau v. Marshall, 170 F. 2d 721 (3rd Cir. 1948):

> If by reason of extraordinary circumstances amounting to true duress, 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.

The cases where economic duress was successfully pleaded hold that the citizen must have faced a situation where his or his family's ability to subsist would have been endangered had he not performed a proscribed act to alleviate that situation. See Stipa v. Dulles, 233 F. 2d 551 (3rd Cir. 1956) and Insogna v. Dulles, 116 F. Supp. 473 (D.D.C. 1953). In those cases, petitioners alleged that their expatriative conduct was compelled literally by the instinct for self-preservation in the economic chaos of wartime and post-war Italy. In both cases, the courts found that the petitioners accepted proscribed employment in a foreign government (Italy) in order to subsist, if not to survive. Stipa and Insogna, although decided thirty years ago, remain valid, in our view, for the proposition that extreme economic hardship must be proved in order to excuse performance of an act that puts one's United States citizenship at risk. 7/

7/ Cf. Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985). There, appellant Richards contended that he became a Canadian citizen under economic duress - the need to find employment. The court agreed with appellant that an expatriating act performed under economic duress is not voluntary, citing Stipa and Insogna. The issue before the Ninth Circuit, however, was whether the district court had erred in holding that Richards was under no economic duress when he became naturalized. The Ninth Circuit distinguished Stipa and Insogna from Richard's case, noting that conditions of economic duress had been "found under circumstances far different from those prevailing here." The court found it unnecessary, however, to decide whether economic duress "exists only under such extreme circumstances." It simply ruled that some economic hardship must be proved to support a plea of involuntariness, and found that the district court had not erred in finding that Richards was under no economic duress. 752 F. 2d at 1419.

We will accept that before he went to Canada W. sought work in the United States but found no openings in fields for which he was qualified. We also accept that once in Canada he sought employment that did not entail acquiring Canadian citizenship, but was unsuccessful. It seems clear from the record and W.'s submissions, however, that when he speaks of not being able to find work that would not have entailed his becoming a Canadian citizen, he means work for which he was qualified. He does not show that he could not have found any work at all - something to keep body and soul together. Someone of his age, experience and education could surely have found some adequate employment, if not in Canada certainly in the United States.

We know of no cases where the courts have found economic duress because the only suitable employment a party could find required that he acquire the nationality of the foreign country where he had chosen to live.

The Board appreciates that appellant confronted a difficult situation and that it may have been demoralizing for him to have had to take employment beneath his capacities and aspirations. Nonetheless, he chose to go to Canada; and once there, he chose to obtain foreign nationality in order to hold a gratifying position rather than seek something less attractive professionally that would not endanger his United States citizenship.

Where one has the opportunity to make a free choice, the mere difficulty of the choice is not deemed to constitute duress. See Prieto v. United States, 298 F. 2d 12 (5th Cir. 1961), and Jubran v. United States, 255 F. 2d 81 (5th Cir. 1958). Similarly, Jolley v. Immigration and Naturalization Service, 441 F. 2d 1241, 1245 (5th Cir. 1971): "But the opportunity to make a decision based upon personal choice is the essence of voluntariness."

To choose foreign citizenship for economic reasons that objectively fall short of grave necessity cannot be considered to be an involuntary act. W. has failed to show that naturalization was forced upon him by factors he could not control. Accordingly, we conclude that he became a Canadian citizen of his own free will.

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, 8/ 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).

In applying the Supreme Court's rule in Vance v. Terrazas to loss of nationality proceedings, the courts have held that knowingly and intelligently making an oath to a foreign state that includes renunciation of United States citizenship is ordinarily sufficient to prove the citizen's intent to relinquish his United States citizenship. Terrazas v. Haig, supra; Richards v. Secretary of State, supra; and Meretsky v. Department of State et al., Civil Action 85-1985, memorandum opinion (D.D.C. 1985). Richards and Meretsky are particularly apposite to the case now before the Board, as those plaintiffs, like W., obtained naturalization in Canada and made precisely the same oath of allegiance with the same renunciatory clause.

Under the applicable case law, W. plainly evidenced an intent to relinquish his United States nationality. But, he argues, he never "knowingly renounced expressly or implicitly" his United States citizenship. Furthermore, W. contends:

> I did not become a Canadian citizen for any of the reasons set forth in the Richards' case, i.e. to avoid the obligations of United States citizenship; to make more money; to advance my career or any other relationship; to gain someone's hand in marriage; or to participate in the political process of Canada. I became a Canadian citizen because it was a requirement of the only job I had been able to locate during a three year period...

The issue of the plaintiff's motives arose in the case of Meretsky, who like W., obtained naturalization in Canada solely in order to be called to the Bar. Meretsky argued that he never intended to relinquish his United States citizenship when he became a Canadian

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

citizen; he had become a naturalized citizen of Canada for the limited purpose of satisfying the technical licensing requirement to practice law in Canada. "In essence," the District Court said, "plaintiff argues that his specific intent is lacking because his renunciation of United States citizenship was motivated solely by his desire to become a practicing lawyer in Canada." The District Court was not persuaded that Meretsky's particular motivation negated his intent to relinquish his United States citizenship. "The identical argument was made in Richards v. Secretary of State," the District Court observed, and rejected by the Ninth Circuit. Continuing the District Court said:

> In Richards, the court found that an effective renunciation of citizenship is not limited to cases in which a plaintiff's 'will' to renounce his citizenship 'is based on a principled, abstract desire to sever allegiance to the United States.' 752 F.2d at 1421. The Court stated:
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> > /It is/ abundantly clear that a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, /or/ to advance a career...a United States citizen's free choice to renounce his citizenship results in loss of that citizenship. Id.
>
> In essence, the Richard's court concluded that an alleged expatriate's specific intent to renounce his citizenship does not turn on his motivation. Id. at 1422.
>
> This court agrees fully with the reasoning of the Ninth Circuit.

W. submits the following arguments to support his contention that he did not subscribe knowingly to the renunciatory clause of the oath of allegiance:

> ...By reason of the line up to receive such certificates, there was no opportunity to do more than glance at the form while signing. Among the over 500 words appearing on the form there is included the 27 word statement that '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 can only advance the defense of 'non est factum,' i.e. I cannot be said to have signed that part of the form as I did not see those words at the time I signed the form and they most assuredly were not brought to my attention.
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> ...unlike Richards, I did not become aware that I would have to renounce my United States citizenship until the actual ceremony was in progress. I was so surprized when the renunciatory words were read that I was dumbstruck and did not repeat them....

We do not think W. has proved that he subscribed inadvertently to the oath of allegiance and declaration renouncing all other allegiance. The renunciatory clause was printed in bold type on the one-page form that W. says he signed hurriedly. He should have read the statement more carefully before he signed it. More importantly, he had a responsibility to inform himself well before the ceremony of the implications of acquiring Canadian citizenship, its commitments as well as privileges. A trained lawyer, W. had less excuse than others for not knowing the law.

On the evidence, we are of the opinion that W. knowingly and intelligently pledged allegiance to Canada and transferred his allegiance from the United States to that state.

But we must be satisfied that there are no elements in W.'s case that would warrant a different conclusion. Examining the record carefully we find no evidence of sufficient weight that would vitiate the highly persuasive character of the evidence of his specific intent at the relevant time - when he obtained naturalization. He did nothing of record from 1973 to 1982 to manifest an interest in preserving his United States citizenship. We will not gainsay his statement that he has filed United States income tax returns since 1981, but we regard its probative value on the issue of W.'s intent in 1973 to be marginal in the particular circumstances of his case.

By his words and conduct, appellant manifested an intention to transfer his allegiance to Canada from the United States, for his oath of allegiance and declaration of renunciation of allegiance to the United States placed him in complete subjection to Canada.

On all the evidence, we believe that the Department has satisfied its burden of proof that appellant intended to relinquish his United States citizenship when he made a formal declaration of allegiance to Canada and expressly renounced his United States citizenship.

IV

Upon consideration of the foregoing, we hereby affirm the determination of the Department of State that appellant expatriated himself when he obtained naturalization in Canada upon his own application.

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Member