DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: L. J. M. - Loss of Nationality Proceedings

Decided by the Board June 17, 1987

Appellant, who was born in the United States of a United States citizen father and a Belgian mother, acquired through his mother the right to elect Belgian citizenship. From early childhood he lived with his mother in Belgium. In order to qualify for admission to the Belgian Bar, appellant applied to become a Belgian citizen through election. In 1978 he was granted Belgian citizenship, and in 1980 was admitted to the practice of law. Beginning in 1980 appellant made repeated trips to the United States, travelling on a Belgian passport with a United States visa. In 1985 his naturalization in Belgium came to the attention of United States authorities when he applied for a United States passport. After investigating the case and interviewing appellant, the Embassy at Brussels executed a certificate of loss of nationality on the grounds that appellant expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in a foreign state upon his own application. The Department approved the certificate after a brief delay. A timely appeal was entered and oral argument heard.

Decision of the Board:

1. Obtaining Belgian citizenship through election is a simpler, less formal procedure than obtaining such citizenship through naturalization. Nonetheless, appellant's act clearly constituted naturalization within the meaning of section 101(a)(23) of the Immigration and Naturalization Act which defines naturalization as the conferring of nationality of a state upon a person after birth, by any means whatsoever. The right appellant acquired at birth to acquire Belgian citizenship was only inchoate; he was required to take a positive step to perfect that right. In obtaining Belgian nationality appellant thus brought himself within the purview of section 349(a)(1) of the statute.

2. With respect to the issue of voluntariness, appellant contended that he had been forced into obtaining Belgian nationality. He alleged that his circumstances and those of his mother and brother who depended upon him were exiguous; he could only provide for them and himself by gaining admission to the Belgian Bar, a precondition of which was Belgian citizenship.

The Board held that appellant had not rebutted the statutory presumption that his act was voluntary. He did not establish that his economic circumstances were truly dire or that he had sought, without success, to find employment that would have met his economic needs without placing his United States citizenship in jeopardy.

3. With respect to the issue whether appellant intended to relinquish United States nationality, the Board concluded that such was his intent. He twice obtained Belgian passports, twice sought United States visas therein, and after 1980 visited the United States six times, never having attempted to document himself as a United States citizen until he applied for a passport in 1985.

Having concluded that the Department carried its burden of proof, the Board affirmed the Department's determination that appellant expatriated himself.

* * * * * * * *

This is an appeal from an administrative determination of the Department of State that appellant, L J M , expatriated himself on April 6, 1978 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Belgium upon his own application. 1/

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

I

M was born at [redacted] so acquiring United States citizenship. His father was a United States citizen; his mother a citizen of Belgium. Through her M acquired the right to become a Belgium citizen by election. M 's parents separated shortly after his birth, and his mother took him to Belgium where he was reared and

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1/ Prior to November 14, 1986, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read as follows:

> 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,. . .

The Immigration and Nationality Act Amendments of 1986, PL 99-653, approved November 14, 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".

educated. He states that from 1956 onward his mother or he regularly renewed his United States passport. His last passport expired in 1979. In 1974 M entered university where he studied law. While in his third year and just before he reached his 22nd birthday, M gave notice to the appropriate authorities that he wished to exercise his option to elect Belgian citizenship.

During oral argument, M described the circumstances under which he became a Belgian citizen:

> ...Belgian law says that in order to practice law in Belgium, you have to be a national, to be a Belgian national, so I knew that in order to join the Bar and to practice law in Brussels, I had to become a Belgian national. That explains why I opted for Belgian nationality. I also knew by reading the law that I had to apply for nationality by option before reaching the age of 22, so I opted at the age of 21 in order to be able to join the Bar and practice law in Brussels.
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> Q. [By his attorney] When did you actually initiate this option proceeding?
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> A. I initiated proceeding in 1977, just before reaching the age of 22, since I had to file my application before reaching that age. So I was 21 years old at the time.
>
> Q. And so you were still two years before your completion of your legal studies?
>
> A. That was two years before completion of my studies. 2/

On March 20, 1978 the Court of First Instance of Brussels approved M 's declaration of election of Belgian nationality.

2/ Transcript of hearing in the Matter of L J M , December 23, 1986, Board of Appellate Review, (hereafter described as "TR"). pp 27, 28.

The court's decision was recorded by the registrar of the place of M 's residence on April 6, 1978. He was issued a Belgian passport and identity card.

After completing his studies and legal internship, M was admitted to the Bar in 1980. He now practices in Brussels. Beginning in 1980, M states, he made almost annual visits to the United States to see relatives and friends. On his first visit in 1980 he travelled on his Belgian passport in which he obtained a multiple entry visa from the United States Embassy. M renewed his Belgian passport in 1984 and obtained a second multiple-entry visitor visa from the Embassy.

Early in 1985 M applied for a United States passport at the Embassy. At that time he completed a questionnaire titled "Information for Determining U.S. Citizenship," and was interviewed by a consular officer. On March 27, 1985 a consular officer executed a certificate of loss of nationality in M 's name. 3/ The officer certified that M acquired United States nationality at birth; that he acquired Belgian nationality through option on April 6, 1978; and concluded that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The consular officer submitted the certificate to the Department under cover of a memorandum in which he summarized what M had told him about the circumstances surrounding his acquisition of Belgian nationality.

3/ 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 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.

When he exercised his option to elect Belgian citizenship, he had been advised by Belgian municipal authorities, M stated, that he might be jeopardizing his American citizenship. He acknowledged to the consular officer that he never followed up on this warning and did not consult the Embassy regarding possible loss of his citizenship. M told the consular officer that he had no reason for not seeking the advice of the Embassy when he was considering opting for Belgian citizenship; he had not the time to pursue the matter. Asked why he now wanted to pursue the matter of his United States citizenship, M told the consular officer that after his mother's death in 1979, he had re-established contact with his father and travelled extensively to the United States. Recently his emotional ties to the United States had become stronger and he wished to reinforce them by renewing his United States passport and by being considered an American citizen. There were no other reasons for his renewed interest in his United States citizenship.

The consular officer concluded his report by expressing the opinion that M took Belgian citizenship with the intention of relinquishing United States citizenship, since he assumed that that would be the consequence of acquiring Belgian nationality. That M did not consult the Embassy before acting was "strong evidence" of his intention to abandon United States nationality. M seemed "disingenuous" in talking about his sudden new interest in his citizenship. M 's use of a Belgian passport with United States visas supported a conclusion that M no longer considered himself a United States citizen.

The Department did not act on the certificate at that time. It noted that M had not clearly addressed the issue of his intent to relinquish citizenship, and therefore instructed the Embassy to obtain a statement from M about his relationship with his father prior to 1979 and the exact nature of his intent with regard to relinquishing or retaining his citizenship.

M visited the Embassy in May. An embassy officer reported to the Department that M said that prior to 1979 his contact with his father had been very minimal. M described it as "non-existent;" he did not see his father between 1958 and 1980. Further, M stated that he never intended to relinquish United States nationality when he applied for Belgian nationality. He had pointed to his 1985 application for a new passport as evidence of his intent to retain United States citizenship.

The Department approved the certificate of loss of nationality on May 28, 1985, informing the Embassy that its opinion had been strongly influenced by the fact that M travelled to the United States in 1980 on a Belgian passport

and did not communicate with the Embassy "when informed that Belgian naturalization may jeopardize his U.S. citizenship."

The Department's 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. M entered the appeal through counsel on May 9, 1986.

II

The statute provides that a national of the United States shall lose his nationality by voluntarily obtaining naturalization in a foreign state upon his own application with the intention of relinquishing United States nationality. 4/ Appellant suggests that election of Belgian nationality is not naturalization within the meaning of the statute. We find that contention insupportable under any reasonable construction of the statute.

Section 101(a)(23) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(23), defines "naturalization" as "the conferring of nationality of a state upon a person after birth, by any means whatsoever." M was not born a Belgian citizen; he merely acquired a right to obtain Belgian nationality through his Belgian citizen mother. The right remained inchoate until M acted to perfect it. It matters not under United States law that Belgian law draws a distinction between the "option" process of acquiring Belgian nationality and the more formal, protracted procedure of naturalization. Plainly, electing Belgian citizenship is naturalization with the meaning of the Immigration and Nationality Act. Accordingly, we conclude that M brought himself within the purview of the Act when he became a Belgian citizen.

III

In law it is presumed that one who performs a statutory expatriating act does so voluntarily, but the presumption may be

4/ Section 349(a)(1) of the Immigration and Nationality Act. Text supra, note 1.

rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 5/

M submits that he obtained Belgian nationality because of economic duress. He, his mother and brother "were dependent on his earning a livelihood at the type of work for which he had studied so hard;" that is, he could only provide adequately for his family by gaining admission to the Belgian Bar, a precondition of which was Belgian citizenship. He described his circumstances as "quite dire" in 1977 when he began the process to obtain Belgian citizenship. His mother was struggling as a piano teacher. He was working his way through school and had to support as well his brother who was studying.

We do not think M has rebutted the presumption that he obtained Belgian nationality voluntarily

Even if we were to grant that M 's and his family's circumstances in 1977-78 were exiguous, he has not established that they were dire and left him no choice but to perform an act that placed his United States citizenship in peril.

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

(c) 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 otherwide 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 Immigration and Nationality Act Amendments of 1986, PL 99-653, Nov. 14, 1986, repealed section 349(b) but did not redesignate section 349(c).

Economic duress avoids the effect of expatriating conduct. Insogna v. Dulles, 116 F. Supp. 475 (D.D.C. 1953). In Insogna a dual citizen of Italy and the United States accepted employment in Italy in order, as the District Court held, "to subsist." Under such circumstances, the court held, the acceptance of employment "...was the result of actual duress which overcame her natural tendency to protect her birthright...Self-preservation has long been recognized as the first law of nature." 116 F. Supp. at 474 and 475.

In Stipa v. Dulles, 233 F.2d 551 (3rd Cir. 1956), the petitioner testified that he faced dire economic plight and inability to find employment in the economic chaos of post-war Italy. The Circuit Court held that the District Court had erred in finding against petitioner and that he had indeed been subjected to economic duress.

Measured against the norms applied in Insogna and Stipa, M 's situation in 1977 does not appear to have been either unique or dire. His case is further weakened by his failure to establish that he tried to find alternate employment that would have satisfied his and his family's needs without putting his citizenship at risk. Richards v. Secretary of State, 752 F.2d 1413, 1419 (9th Cir. 1985) makes clear that one who pleads the defense of economic duress must show that he made an effort to find alternate employment that would have essentially satisfied his economic needs without jeopardizing his United States citizenship. M , however, decided that because he had been trained for the law that was the only metier for him. While he was, of course, perfectly free to opt for the law, he may not be heard to allege that he was forced by economic conditions to enter that profession, which, as he understood, required that he obtain Belgian citizenship. 6/

6/ It is ironic that M possibly might not have had to acquire Belgian citizenship in order to be admitted to the Belgian Bar. He stated that after he had obtained Belgian citizenship he learned that as a putative native of California (where he was born) he would have been exempt from the requirement to hold Belgian citizenship under a treaty (not identified) between Belgian and California (the erstwhile Republic of California?).

Duress implies absence of choice. Here, M plainly had a choice and exercised it - whether the choice he made was witting or not does not alter the conclusion of law that we draw. Surely, he could have provided (at least has not demonstrated that he could not provide) for his family by obtaining employment other than as a lawyer. Having been a permanent resident of Belgium for twenty-one years, it seems very unlikely that he could not have found employment that would not be barred because he did not hold Belgian citizenship. Therefore, obtaining naturalization in order to enter a profession he found preferable to others represents a personal choice. It is estabished that where one has opportunity to make a personal choice there is no duress. See Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971).

M has not rebutted the presumption that he acquired Belgian nationality voluntarily.

- IV -

Finally, we are required to determine whether, as the Department contends, it has proved that appellant intended to relinquish his United States citizenship when he obtained naturalization in Belgium upon his own application. Even though a citizen fails to rebut the legal presumption that he voluntarily performed the 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 requisite 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).

Performing one of the expatriating acts specified in the statute is not conclusive evidence of a citizen's intent to relinquish citizenship, Terrazas, supra, at 261. However, any one of those acts "may be highly persuasive evidence in the particular case of a purpose to abandon citizenship." Id

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7/ Section 349(c) of the Immigration and Nationalitiy Act. Text supra, note 5.

M asserts that in obtaining Belgian citizenship he did not intend to relinquish his United States citizenship, pointing out that although he performed a statutory expatriating act, he made no oath of allegiance to Belgium or declaration renouncing previous citizenship.

In the circumstances, M 's obtaining naturalization in a foreign state arguably is less persuasive evidence of an intent to relinquish citizenship than it would be had he made a declaration renouncing previous nationality or even an oath of allegiance. Nonetheless, obtaining naturalization in a foreign state is palpable evidence (whether highly persuasive or merely persuasive) of an intent to transfer allegiance from the United States to the foreign state.

In further support of his claim that he lacked the requisite intent, M introduced evidence of two people who knew him in 1978. C G who stated that she is a United States citizen living in Brussels, declared in an affidavit executed April 30, 1986 that she has known M since 1974. Her affidavit reads in pertinent part as follows:

> L had always regarded himself as a U.S. citizen even though, like me, he spent the greatest part of his life in Belgium due to family circumstances.
>
> L is very fond of the United States, and I am convinced that he asked for Belgian nationality only for professional reasons, and never intended to relinquish U.S. citizenship. Never have I seen L act in a way that was inconsistent with his U.S. citizenship.

J R of Princeton, New Jersey stated that he has known M since the latter's birth. In an affidavit executed April 11, 1986, R declared: "I know that L J. M has always considered himself and told us that he is a United States citizen. He is very fond of the United States, its persons, its government, its private institutions, and its culture."

Neither Ms.G 's nor R 's evidence is, strictly speaking, contemporaneous with M 's naturalization. Each affiant, eight years after the event, offers a general opinion about M 's lack of intent to relinquish United States nationality. Ms. G does not state the basis on which she formed the view that M lacked the requisite intent; we are not told, for example, whether M made such a statement to

her in 1977-1978, or whether it was simply her impression that he wanted to remain a United States citizen. R 's evidence is considerably vaguer. He does not indicate whether he saw or was in communication with M at the crucial time and thus was knowledgable about M 's purpose with respect to United States citizenship at the time he obtained Belgian citizenship. In brief, the evidence of these two affiants, while relevant, is insufficiently precise to permit us to resolve the issue of M 's specific intent in 1978 in his favor.

There is another factor, constructively contemporaneous with his naturalization, which also bears on the issue of intent. When his case was processed at the Embassy in 1985, M volunteered in a written statement that the Belgian authorities had advised him "of the possibilitiy of losing U.S. citizenship." The citizenship questionnaire he was asked to fill out posed the question whether he knew he might lose United States citizenship by performing the expatriating act in question. M answered as follows:

> I remember having been informed by the Belgian authorities of the possibility of losing U.S. citizenship. But I was convinced, by mistake, of the necessity of becoming a Belgian citizen for the professional reasons set forth hereabove (see item 12 b). On the other hand, since I never had any intention of relinquishing U.S. citizenship, I confess I never regarded this possibility as likely.

During oral argument on December 23, 1986, M maintained that what the Belgians actually told him was vaguer, less minatory than what he had written in the citizenship questionnaire. He said he had not been informed that naturalization could jeopardize his United States citizenship. "I was told by the Belgian authorities that by opting for Belgian nationality the U.S. authorities at a later stage might look into my case, but it was certainly never mentioned that it might result in loss of my U.S. citizenship or that it might be a serious problem." TR 30. Asked on cross-examination whether he considered the foregoing answer consistent with what he wrote in 1985, M replied that it was.

> It was a remote possibility. And, in fact, they didn't use the expression possibility of losing U.S. citizenship. What they said was that I was opting for Belgian nationality, so it was possible that later the U.S. authorities might look into my case, review my case, but they didn't mention the fact that my opting would result in the loss of American citizenship. TR 45.

The inconsistency between appellant's two versions of what the Belgians purportedly told him is too obvious to require comment. But whichever account is correct, M assuredly was on notice that naturalization might eventually cause a problem with United States authorities. Yet he ignored the caution and became naturalized without consulting United States officials regarding his legal position. Such conduct, at the very least, evidences indifference toward United States citizenship and hardly makes more credible his later professions that he lacked the intent in 1978 to relinquish United States nationality.

On balance, the evidence that is, or that may be considered, contemporaneous with M 's naturalization is insufficient to support a finding either that he intended or did not intend to relinquish United States nationality. Therefore, to make a fair determination of appellant's intent, we must evaluate his conduct after naturalization.

A party's specific intent rarely will be established by direct evidence, but circumstantial evidence surrounding voluntary performance of a statutory expatriating act may establish the requisite intent to relinquish citizenship. Terrazas v. Haig. Supra, at 288. In support of the foregoing proposition, the Seventh Circuit cited an earlier Ninth Circuit decision, King v. Rogers. 463 F.2d 1188, 1189 (9th Cir. 1972). In King the court declared that:

> ...The Secretary may prove this subjective intent by evidence of an explicit renunciation, Jolley v. Immigration and Naturalization Service, 441 F.2d 1245 (5th Cir. 1971), acts inconsistent with United States citizenship, Baker v. Rusk, 296 F.Supp. 1244 (C.D., Cal., 1969), or by 'affirmative voluntary act[s] clearly manifesting a decision to accept [foreign] nationality. . .,' In re Balsamo, 306 F.Supp. 1028, 1033 (N.D., Ill. 1969). Such proof need be only by a preponderance of the evidence. 8 U.S.C. sec. 1481(c).

In M 's case, the appropriate test to determine intent clearly is whether his proven conduct after naturalization is consistent with an intention to retain United States citizenship. In our opinion, it is not.

The salient facts of M 's post-naturalization conduct that the Department considers probative of his intent

in 1978 are: his applications for a United States visa; use of a Belgian passport rather than a United States passport to make repeated trips to the United States; and his application in 1985 for a United States passport, an action which in the Department's view represents M 's decision to recant his 1978 decision to transfer allegiance to Belgium.

M maintained at the hearing that he did not consider making repeated visits to the United States on a Belgian passport with United States visas to be inconsistent with United States citizenship. TR 52, 56.

He explained that in 1978 a Belgian passport was issued to him automatically when he became a Belgian national; he was not required to take any special action to obtain it. TR 47. He allowed his United States passport to expire in 1979, allegedly seeing no point in renewing it because he could not then afford to travel. Id. In 1980 when he was better off financially he made a decision "in a hurry" to visit the United States. Id. He stated that since he assumed it would be time consuming to renew his United States passport, he visited the Embassy to obtain a visitor visa. TR 50. He recalled that that visa was limited in validity to a period of years. TR 60. M renewed his Belgian passport in 1984 and obtained another visitor visa this time one of indefinite validity. TR 59, 61. The Board asked why had it not occurred to him in 1984 to document himself as a United States citizen rather than apply for a visa; was it because he had a Belgian passport and a U.S. visa and applying for an American passport was not worth the bother? M replied: Yes." TR 66.

The following exchange then ensued between the Board and M :

> Board: ...why didn't you, if you were interested in your U.S. citizenship? Or did you consider that you had lost your U.S. citizenship?
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> THE WITNESS: No, not all all. I had this Belgian passport and I had my visa, so I've been using this passport.
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> Board: What about when you went back in '82 or '83 or '84 to get a new visa? Did it occur to you at that time to seek a U.S. passport?

> THE WITNESS: No, it didn't. It didn't at the time, because probably the first visa had expired, and it was just a routine matter to have another one which was an indefinite visa and still the Belgian passport. So, in fact, it was no great difficulty to use that. TR 67.

We find unpersuasive M 's contention that his repeated entries into the United States on a Belgian passport with U.S. visas are not probative evidence of an intent to relinquish United States citizenship.

Although M apparently received a Belgian passport in 1978 without having to take any special steps, in 1984 he was required to make specific application for renewal of that passport. Such action gives rise to a not unreasonable inference that he made a conscious decision to document himself as a foreign national rather than as a United States citizen, especially when it is recalled that he visited the Embassy in 1980 and 1984 and neither time inquired about his citizenship status or applied for a passport. By his own admission he made six trips to the United States between 1980 and the end of 1985. Each time he travelled on a Belgian passport in contravention of United States law that United States citizens must use an American passport when entering the United States (from outside the western hemisphere) or departing the country. Section 215(b) of the Immigration and Nationality Act, 8 U.S.C. 1185(b). Arguably, a citizen's use of a foreign passport under certain limited and unusual circumstances could plausibly be explained on grounds of convenience, not as evidence of an intent to relinquish United States nationality. However, a citizen's regular travel over a five year period to the United States on a foreign passport can hardly be explained on the grounds of mere convenience. Such conduct is so blatantly inconsistent with United States citizenship that the fairest inference to be drawn from it is that the citizen no longer considered himself to be a United States national; such conduct is fully consistent with an intent to transfer his allegiance to the state whose passport he used with such insouciance and so consistently. In the circumstances, the Department's inference that M 's belated application for a United States passport suggests a wish to recant his naturalization does not strike us as unfair.

M 's applications for United States visas in 1980 and 1984 raise questions to which neither his testimony at the hearing nor the record supplies satisfactory answers. M stated that the issue of his citizenship status did not arise in

1980 or 1984, and that no one asked him why, as one born in the United States, he was applying for a visa. TR 62-65. Our difficulty in accepting M 's assertion arises from the fact that a United States citizen may not be issued a visa on a foreign passport to enter the United States. Neither the Department's brief nor any other documentation presented to the Board sheds light on the Embassy's granting visas to M in 1980 and 1984. Nevertheless, standing instructions under which all consular officials operate require them to determine eligibility of applicants for visas, and United States citizenship constitutes non-eligibility for a visa in all cases. M offered as explanation for complete disregard of his birth in the United States the fact that he was not interviewed by an American consular officer but rather dealt merely with local employees. Possibly a local employee overlooked such a vital statistic as M 's birth in the United States, but we find it very difficult to accept that on two occasions the fact of his birth in the United States, which he had to record on his applications, did not draw attention to his ineligibility to receive a visa.

In any event, the mere fact that M sought United States visas on his Belgian passport instead of documenting himself as a United States national undercuts his claim that he lacked the intent to relinquish citizenship. See Meretsky v. Department of State, et al., memorandum opinion, Civil Action 85-1985 (D.D.C. 1985). There the plaintiff admitted in a citizenship questionnaire nine years after he obtained naturalization in Canada that after naturalization he had made a visa inquiry to gain admission to the United States. His case that he lacked the requisite intent to relinquish United States nationality was further weakened, the court said, by the very fact he had made a visa inquiry without first documenting himself as a United States citizen.

M 's applications for visas thus contrast with his statement at the hearing that "I've always been willing to affirm my citizenship even before officially I lost my citizenship." TR 40.

A final question remains: whether there are any other factors in the case that would support a finding that M intended to retain his United States nationality. We find none.

M submits that ties of family and friendship to the United States and repeated visits to the United States to strengthen those connections demonstrate that he did not transfer

his allegiance from the United States to Belgium. In addition to the evidence of two friends which we have discussed above, he has submitted affidavits of his father, grandmother, brother and uncle which attest to M 's love of the United States and that he was forced by circumstances to obtain Belgian citizenship. Others, not relatives of M , who only met him after naturalization, including his fiancee, aver that he has told them he is proud to be an American and became a Belgian citizen only to be able to earn a living at the law.

We do not belittle M 's affection for family and friends in the United States, but such sentiment hardly speaks to the issue of his intent in 1978. Countless aliens have strong emotional and professional ties to the United States and go to pains to cultivate them. We cannot accord high probative value to the affidavits of M 's close relatives, for their bias, however sincere, is obvious. As to the evidence of others who knew him only some time after he became a Belgian citizen, such evidence is not persuasive, for it rests at bottom on what M told the affiants after the crucial event.

In sum, M performed several acts clearly inconsistent with United States citizenship. He obtained naturalization in a foreign state in the face of information, perhaps explicit perhaps vague, that naturalization might have consequences for his United States citizenship; twice obtained a foreign passport; twice obtained United States visas in that passport; and made six trips to the United States as an alien. In the absence of very compelling countervailing evidence, we are satisfied that the Department has carried its burden of proof.

V

Upon consideration of the foregoing, we hereby affirm the Department's determination that appellant expatriated himself by obtaining naturalization in Belgium upon his own application.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Frederick Smith, Jr. Member