DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

Decided by the Board July 7, 1987

Appellant, a native-born United States citizen, married a French citizen and moved with her to France in 1981. In 1982 he applied for and obtained French citizenship as the spouse of a French national. His naturalization came to the attention of the United States Embassy at Paris in 1985 when he applied for non-immigrant visas for himself and his two children who had been born in France. After investigating appellant's case and interviewing him, a consular officer executed a certificate of loss of nationality and referred the case to the Department under cover of an exceptionally carefully drawn report. The Department approved the certificate shortly after its submission. A timely appeal was entered by appellant pro se.

Since appellant conceded that he performed a statutory expatriating act and done so voluntarily, the sole issue for determination was whether appellant intended to relinquish United States nationality.

HELD:

The Board concluded that the Department had carried its burden of proving by a preponderance of the evidence that appellant intended to relinquish United States nationality.

In reaching its decision the Board was influenced by two principal considerations: first, appellant knew obtaining naturalization was expatriatory; he had been expressly warned by the United States Embassy of the consequences of obtaining French citizenship before he applied. Yet he proceeded without making any attempt to seek official advice or protect his position. A fair inference to be drawn from such conduct was that he intended to divest himself of United States citizenship. Second, in 1985 appellant applied for U.S. visas for himself and his children. This, the Board believed, was not the act of a person who believed himself a United States citizen and wished so to remain. The record failed to show any act by appellant that countervailed the fair inference to be drawn from foregoing evidence that it was appellant's intent to relinquish United Statess nationality when he became a French citizen.

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

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This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, C. M. C , expatriated himself on February 5, 1982 under the provisions of section 349(a)(1) of the Immigration and Naturalization Act by obtaining naturalization in France upon his own application. 1/

The sole issue for the Board to decide is whether appellant intended to relinquish his United States nationality when he acquired French nationality. For the reasons that follow, we conclude that the Department has carried its burden of proving that C. intended to transfer his allegiance from the United States to France. We will therefore affirm the Department's holding of loss of his nationality.

I

C acquired United States nationality by virtue of his birth at [redacted]. The record reveals little of his background, but he states that he resided

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

Public Law 99-653, approved November 14, 1986, 100 Stat. 3655, 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".

briefly in Martinique in 1973; was employed by the Environmental Protection Agency from 1976 to 1979; and went to France in April 1979 where he resided for a year and a half. The record shows that he was issued a United States passport at Trieste, Italy in October 1979 which he did not renew when it expired. It appears that C returned to the United States in the autumn of 1980 and here married a French citizen. Early in 1981 the couple moved to France where appellant has since lived. A son was born in France in the autumn of 1981. On February 5, 1982 C appeared before a Juge du Tribunal d'Instance of the 14th Arrondissementof Paris and declared that having married a French citizen, he wished to apply for French nationality, pursuant to the applicable provisions of the French Nationality Code. C became a French citizen as from February 5, 1982. A second child, a daughter, was born in 1984.

In the spring of 1985 C 's naturalization came to the attention of United States authorities. According to the records of the Embassy at Paris, C was referred to the citizenship section by the visa section for a determination of his citizenship status "because he had applied for U.S. visas for himself, his French wife and their two children born in France...." C completed a form titled "Information for Determining U.S. Citizenship," and, since he had immediate plans to travel to the United States, an application for a passport. A passport of limited validity was issued to C at the end of March. At the suggestion of an Embassy officer, C executed a report of birth of his son born in 1981 who was then issued a United States passport. His daughter, whose citizenship status depended on the outcome of the determination of C 's citizenship, was issued a temporary passport.

Subsequently, on May 22, 1985, as required by law, the consular officer who processed appellant's case executed a certificate of loss of nationality. 2/ The consular officer

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2/ 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.

certified that C acquired United States nationality by virtue of his birth in the United States; that he acquired the nationality of France 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 consular officer forwarded the certificate to the Department under cover of a detailed, carefully reasoned memorandum in which she recommended that the Department approve the certificate. The Department did so on September 10, 1985, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. C filed the appeal pro se a year later.

II

It is not disputed that C obtained naturalization in France upon his own application, thereby bringing himself within the purview of section 349(a)(1) of the Immigration and Nationality Act. However, under the statute (supra, note 1) and the cases, nationality shall not be lost unless the citizen performed the expatriating act voluntarily with the intention of relinquishing United States nationality. Vance v. Terrazas, 444 U.S. 252 (1980), and Afroyim v. Rusk, 387 U.S. 252 (1967). C expressly concedes that he sought and obtained French nationality of his own free will. The single issue we are called upon to decide therefore is whether C intended to relinquish United States nationality when he acquired French citizenship.

Although appellant voluntarily obtained naturalization in France, the question remains whether on all the evidence the Department "has satisfied its burden of proof that the expatriating act was performed with the necessary intent to relinquish citizenship." Vance v. Terrazas, supra, at 270. Under the Statute, 3/ 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

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

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...

proven conduct. Id. at 260. The intent that the government must prove is the party's intent when the expatriating act was done, in appellant's case 1982 when he obtained French nationality. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

Performing any of the statutory expatriating acts may be highly persuasive evidence of an intent to reliniquish United States nationality, although it is not conclusive evidence of such an intent. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958), (Black, J. concurring.) We note that when he was accorded French citizenship C was not required to make an oath of allegiance or statement renouncing previous allegiance. On these facts the probative weight of naturalization arguably is somewhat reduced. Nonetheless, obtaining a foreign citizenship suggests that one's purpose is to abandon United States citizenship. The pertinent inquiry is whether other evidence corroborates the evidence of an intent to relinquish citizenship manifested by performance of the statutorily proscribed act.

Here there is almost no direct evidence of appellant's intent to relinquish or retain citizenship. This is not unusual, however, as the court observed in Terrazas v. Haig, supra, at 288: "Of course, a party's specific intent to relinquish his citizenship rarely will be established by direct evidence. But, circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship." 4/ [Footnote omitted.]

In C 's case, circumstantial evidence strongly suggests that he intended to relinquish United States nationality when he acquired French nationality. His proven conduct around the time of his naturalization and afterwards is inconsistent with United States citizenship, and, objectively considered, contradicts his professed lack of intent to abandon United States citizenship.

First of all, he knew that acquiring French nationality was an expatriative act, for he had been expressly warned by the notarial section of the Embassy late in 1981 that obtaining naturalization in France could result in loss of his United States citizenship. See his reply to question 13 of the citizenship questionnaire he completed in March 1985:

> 13. Did you know that by performing the act described in item 7 above you might lose your citizenship? Explain your answer.

> Yes. At the U.S. consulate in Paris when I had to get a form signed at the notary section in connection with getting french nationality after marriage.

See also the report the consular officer who processed his case sent to the Department in May 1985:

> In the attached "Information for Determining U.S. Citizenship" form, Mr. C acknowledged that he was aware he might lose his U.S. citizenship by requesting French nationality. He said he came to the Embassy's Notarial Unit in order to obtain a document required by the French authorities in connection with his application for French nationality, at which time, he said, he was informed that he might lose his U.S. citizenship as the result of his French naturalization.

Appellant suggests that the fact he was aware that he could jeopardize his United States citizenship by obtaining naturalization in France has little probative value. "I assumed that possible loss of U.S. citizenship due to taking French citizenship would not apply to me," he stated to the Board, "because I used to work for the United States American government." (As noted above, he purportedly worked for the Enviromental Protection Agency in the 1970's.) The relevance of appellant's prior employment with the United States government to his naturalization in a foreign state escapes us. Surely he does not really believe that former employees of the United States government are somehow different from other citizens and may without risk to their United States nationality perform a statutory expatriating act.

Arguably, mere knowledge or belief that performance of an expatriating act could result in expatriation might not suffice to prove intent to relinquish citizenship for it is arguable whether knowledge is equatable to intent. But here appellant was, by his own admission, warned officially that obtaining French citizenship could cost him his citizenship; yet he proceeded in the face of that caution. Such conduct strongly suggests an indifference to retention of United States citizenship, and the fair and logical inference to be drawn from it is that C intended to transfer his allegiance from the United States to France. The record does not indicate whether the notarial personnel suggested to C that he clarify his position with the citizenship section before proceeding with naturalization, but it would not be unreasonable to assume that the suggestion was made. In any event, given the warning, C must be assumed to have deliberately passed up a crucial opportunity to clarify what his legal position would be with

respect to his United States citizenship if he obtained naturalization.

The inference of an intent to relinquish United States citizenship we draw from appellant's acquisition of French nationality despite an express warning that it could have adverse consequences for his United States citizenship, is reinforced by the fact that in March 1985 appellant applied for United States visas for himself and his two children to travel to the United States and did not renew his United States passport when it expired in 1984 but rather chose to obtain a French passport.

C asserts that he did not obtain a new United States passport when the one issued to him in 1979 expired because he had no intention of travelling. However, when his mother telephoned him in March 1985 to say that she proposed to buy tickets in two weeks for appellant and his family to visit the United States, "I quickly obtained a French passport;...I consider this a perfectly normal thing for a newly naturalized citizen to do. I then applied for visas for the whole family which are free, rather than passports (U.S.) which cost money." And he states firmly that: "I most certainly did believe myself to be a U.S. citizen when I asked for a visa to enter the United States." In this connection, we note that the consular officer who processed C 's case observed in her report to the Department that "buying a French passport is more expensive than an American one."

Appellant's actions are inconsistent with United States citizenship and belie his protestations that he never intended to relinquish United States citizenship. Between 1981 (when he arrived in France) and 1985 (when he applied for a United States visa) he had only one transaction with the Embassy - in 1981 when he requested notarial services. Is it unreasonable therefore to infer that when he asked for United States visas in French passports he was for all intents and purposes holding himself out to United States authorities as an alien? His contention that using a French passport and obtaining United States visas were simply matters of convenience and economy is not convincing. We are not persuaded that he was forced to leave France so quickly that he could not arrange his affairs prudently; certainly, had he wanted to travel as a United States citizen he would have explained to his mother that in order to travel to the United States he and his children would first have to obtain United States passports, and asked her not to commit the family to specific travel dates until he had time to document himself and his two children as United States citizens.

So, appellant's case is weakened by the fact that he applied for United States visas in foreign passports rather than first seeking documentation as a United States citizen. See Meretsky v. Department of State, et al., memorandum opinion, Civil Action 85-1985 (D.D.C 1985); affirmed, Meretsky v. U.S. Department of Justice, et al., memorandum opinion, CA 85-01895 (D.C.C. May 1, 1987). In Meretsky plaintiff obtained naturalization in Canada. A number of years later he completed a citizenship questionnaire in which he admitted that he made a visa inquiry to gain entry into the United States, rather than first seeking documentation as a United States citizen. In that action the court found additional evidence of plaintiff's intent to relinquish United States nationality at the time he became a Canadian citizen.

In sum, disregarding an official caveat that he think before acting, C obtained naturalization in a foreign state, an act that evidences an intent to relinquish United States citizenship. 4/ In addition, C performed other

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4/ C rejects the proposition laid down by the Supreme Court that voluntary performance of a statutory expatriating act may be highly persuasive evidence and intent to relinquish citizenship. "I do not think voluntary naturalization in France is highly persuasive evidence of my intent to relinquish U.S. citizenship," he wrote in reply to the Department's brief, "since it was done for social security benefits which include free medical care, a/ allows me to find work more easily if needed, and allows me to live in France without having to get visas."

In this regard, the holding of the United States Court of Appeals for the Ninth Circuit in Richards v. Secretary of State, 752 F.2d 1413 (1985) is relevant: whatever the motivation, a citizen's free choice to relinquish citizenship results in loss of that citizenship. In C 's case, his choice to relinquish citizenship is reflected in acts inconsistent with United States citizenship; his motivation in performing the statutory expatriating act is thus irrelevant.

a/ According to the consular officer who processed his case, C is misinformed. As the official observed in her report "Although Mr. C states that he applied for French nationality in order to obtain French Social Security, the Embassy must take notice of French law which automatically extends coverage to the spouse of anyone working in France regardless of nationality.

acts from which one might fairly infer an intent in 1982 to relinquish his United States nationality. Nothing of record, save appellant's unsubstantiated assertions that he lacked the requisite intent, countervails the evidence of his renunciatory intent. Over a four-year period, he made no effort to hold himself or his children out as United States citizens or to document himself or them as such. 5/ In a word, one looks in vain for evidence of any positive act by C. after 1982 suggestive of a will and purpose to retain his United States nationality.

In determining whether a citizen who performed a statutory expatriating act intended to relinquish citizenship, the trier of fact must base his conclusion upon hard facts not unsupported disclaimers of the citizen that he lacked the requisite intent. Subjective intent is only knowable to the extent it is externalized by words and proven conduct. Here the objective evidence demonstrates that more probably than not appellant intended to forfeit United States citizenship when he obtained French citizenship upon his own application.

On all the evidence, the Department has sustained its burden of proving by a preponderance of the evidence that C. intended to relinquish United States nationality when he acquired the nationality of France upon his own application.

5/ With respect to the fact that he did not register the births of his children at the Embassy, C. stated to the Board in his reply to the Department's brief that:

> ...I did not register my children at the consulate because I did not know that children were supposed to be registered. My wife is opposed to my children's registration as U.S. citizens because 'I don't want you to be able to suddenly take the children off to the U.S. without my being able to do anything about it'. She stated this when the children were being registered, and I put it in my questionaire [sic] which was filled out shortly after the children were registered....

III

Upon consideration of the foregoing, we hereby affirm the Department's determination that C expatriated himself.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Howard Meyers, Member