DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R. I. P. - In Loss of Nationality Proceedings

Decided by the Board February 6, 1987

Appellant, a native-born United States citizen, moved to Canada with his wife in 1974 to take a position as a research scientist with an agency of the Canadian Government. In 1976 he registered his Canadian-born son as a United States citizen at the Consulate in Calgary. In 1976 he applied for a passport at the Consulate in anticipation of travelling abroad on Canadian Government business. A passport issued but was limited to one year, pending a determination by the Department whether he expatriated himself by making an oath of allegiance when he entered upon employment with the Canadian Government. In January 1978 appellant applied to have his passport extended to full validity and presented evidence from the Canadian authorities that he was not required to make the oath but had been asked to do so because the authorities concerned misunderstood the applicable regulations. Since appellant thus proved he had not performed an expatriative act, the Consulate extended his passport to full validity.

In late 1977 or early 1978 appellant applied to be naturalized as a Canadian citizen. He made the standard oath of allegiance on March 1, 1978 and became a Canadian citizen. Shortly afterwards he left Canada on a United States passport for a trip abroad on Canadian government business, during the course of which he used first an official and later an ordinary Canadian passport.

In 1985 appellant made contact with United States authorities in Canada for the first time in seven years when he visited the consulate in Calgary to clarify his citizenship status. The Department later that year approved the certificate of loss of nationality that a consular officer executed after having concluded that appellant expatriated himself under section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in a foreign state.

HELD:

1) Appellant did not rebut the statutory presumption that he became a Canadian citizen voluntarily. He alleged that economic necessity forced him to become naturalized; a prospective budget cut would eliminate his job and he would have a better chance of remaining with the agency where he had worked for several years if he obtained Canadian citizenship. Appellant could

not prove that he actually faced dire economic plight. Nor could he show that he tried to find alternative employment. It appeared to the Board that he was more interested in remaining in the kind of employment he preferred (even at the risk of losing his citizenship) than searching for employment that would not require him to acquire foreign nationality.

2) With respect to the issue of appellant's intent to relinquish United States citizenship, the Board concluded that the Department had not met its burden of proving that he so intended. Naturalization and use of a Canadian passport aside, appellant performed no act that clearly indicated an intention to transfer his allegiance to Canada. The Board was impressed by these facts: that appellant made no renunciatory declaration upon being granted Canadian citizenship; that around the time he became naturalized he applied to have his documentation as a United States citizen confirmed; that he held himself out consistently after naturalization as a United States citizen; that he maintained personal and professional ties to the United States. There was no persuasive evidence, the Board concluded, that appellant knowingly and intelligently intended to forfeit his United States citizenship when he became a Canadian citizen.

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

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This is an appeal from an administrative determination of the Department of State holding that appellant, R I P , expatriated himself on March 1, 1978 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

The dispositive issue here is whether the Department has carried its burden of proving by a preponderance of the evidence that P intended to relinquish his United States citizenship when he acquired Canadian citizenship. For the reasons set forth below, it is our conclusion that the Department has not sustained its burden of proof. Accordingly, we will reverse the Department's determination of appellant's expatriation.

I

P was born on [redacted] and thus acquired United States citizenship. He holds a bachelor's degree in electrical engineering and a doctorate in meteorology. He states that he served in the United States Marine Corps Reserve from 1958 to 1966. From 1956 to 1960 he worked for a private company. Between 1960 and 1974 he was employed first by the United States Bureau of Reclamation and later by the United States Forest Service. According to his curriculum vitae, he is an authority on snow avalanches and mountain hydrology, and is the author of numerous books, government reports and monographs in those fields.

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".

P and his wife, who is a United States citizen, moved to Canada in June 1974 where he was hired by Environment Canada, an agency of the Canadian government, as a snow and avalanche research scientist. A child was born to the P in August 1975. The next year they registered his birth as a United States citizen at the Consulate General (the Consulate) in Calgary.

In April 1976 P applied for a United States passport at the Consulate in Calgary, stating that he planned to travel shortly to the Soviet Union on Canadian government business. He also informed the Consulate that in order to fulfill a condition of his employment with Environment Canada he had sworn an oath of allegiance to Queen Elizabeth the Second and an oath of secrecy on July 1, 1974. The Consulate issued P a passport but limited its validity to one year pending determination of his citizenship status. In requesting the Department's guidance on its action, the Consulate expressed the view that P might have expatriated himself under the provisions of section 349(a)(4)(B) of the Immigration and Nationality Act (INA) by making an oath of allegiance to a foreign state. 2/

The Department advised the Consulate in January 1977 that if P had not been required to make the oath of allegiance, "regardless of whether he actually took the oath," his case would not come within the purview of section 349(a)(4)(B) of the INA. Therefore, if P applied to have his passport extended to full validity, the Consulate might,

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2/ Prior to November 14, 1986, section 349(a)(4)(B) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(4)(B), read as follows:

Sec. 349. (a) From and after the effective date of this chapter a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

(4) (A)...

(B) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required;...

The Immigration and Nationality Act Amendments of 1986, PL 99-653, approved Nov. 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"; and amended subparagraph (B) of paragraph (4) of section 349(a) by inserting "after attaining the age of eighteen years" after "foreign state or political subdivision thereof".

the Department stated, make the extension, provided it was established that P had not been required to make the oath.

In January 1978 P applied to have his passport extended to full validity, i.e., to 1981. He presented a letter from the Canadian authorities stating that he had not been required to swear an oath of allegiance, but had been asked to do so because the agency employing him had misunderstood the applicable legal requirements. Accordingly, on January 16, 1978 the Consulate extended P 's passport to full validity.

It appears that around this time P applied for naturalization as a Canadian citizen; the precise date of his application is not disclosed by the record, but possibly it was in late 1977. On March 1, 1978 he was granted Canadian citizenship after swearing the following oath of allegiance:

> 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 fulfil my duties as a Canadian citizen.

Shortly after obtaining Canadian citizenship, P went to India on Canadian Government business. According to his replies to the Board's inquiries, he left Canada on or about March 10, 1978, carrying a United States passport. In flight he was handed an official Canadian passport which he used to enter India where he lectured at a snow and avalanche school. On March 31st he exchanged the official passport for a regular (tourist) passport and used the latter to visit the USSR. He left the USSR on April 12th and returned to Canada, entering on a Canadian tourist passport.

Around July 1985 P visited the Consulate, ostensibly to clarify his citizenship status. He completed forms for determining United States citizenship status and on July 2nd was interviewed by a consular officer. On July 4th he wrote to the consular officer to supplement information he gave the latter during the July 2nd interview. After the Consulate received confirmation from the Canadian authorities that P had obtained naturalization, a consular officer executed a certificate of loss of nationality on September 25, 1985. 3/

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

The officer certified that P acquired United States citizenship at birth; that he obtained naturalization in Canada upon his own applicatio and concluded that he thereby expatriated himself under the provisions of section 349(a)(1) of the INA. The consular officer submitted the certificate to the Department under cover of a detailed memorandum explaining why he believed the Department should approve the certificate.

The Department agreed that the record supported a finding of loss of nationality, and accordingly approved the certificate on October 16, 1985. This action of the Department 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. P entered an appeal pro se on December 7, 1985.

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/ There is no dispute that P duly obtained naturalization in Canada upon his own application and so brought himself within the purview of the statute. So our first inquiry is whether P acted voluntarily.

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. 5/

3/ Cont'd.

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.

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

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

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

On appeal P alleged that : "My decision to become a Canadian citizen was motivated by strong job pressures." In the letter he wrote to a consular officer on July 4, 1985 he stated that:

> Sometime between 1977 and 1978, a budget review forced my immediate supervisor to transfer and at the same time abolished my position. I tried unsuccessfully to return to my old job with the USDA Forest Service, where budget cuts were also going into effect. My new supervisor told me I could compete for an Environment Canada opening if I was a Canadian citizen. Early in 1978 I was granted Canadian citizenship, and was transferred into a new position.
>
> Many times in the last 10 years I have tried for reinstatement with the U.S. Civil Service in order to build upon my 10 years with the U.S. Government. In 1982, I obtained a position with the U.S. Department of Energy, but after a long and painful period of procrastination decided it was too late in life for me to make a major change in research.

In commenting on P 's contention that he was forced to obtain naturalization for employment reasons, the consular officer who handled his case observed in his memorandum to the Department of September 25, 1985 that:

> ...as Dr. P is a scientist in a very specialized area and that the Canadian government originally brought him to Canada as an employee it would seem unlikely that they would dispose of him in a budget cut without considering him for an alternative position which he was qualified for. As he has not provided any evidence of pressure to naturalize in Canada we are unable to supply it to Department....

In support of his contention that he was forced to obtain naturalization, P has submitted in evidence a letter from D.K. M , Chief, Surface Water Division, National Hydrology Research Institute, Ottawa, dated February 19, 1986. M wrote that: "I was R P 's supervisor [presumably he means overall, not immediate supervisor; see P 's statement above] in the years 1976-1980. Sometime in April 1978 it was almost certain that he would have lost his job had he not acquired Canadian citizenship." To corroborate his contention that he tried actively to find suitable employment in the United States, P has submitted a letter from Dr. R A. S , U.S. Forest Service, dated March 5, 1986. S , who describes himself as a professional associate and longtime personal friend of P , stated that P expressed reluctance to leave the United States in 1974, but concluded that he position he was offered in Canada would further his career. "I can state without

reservation," S continued, "that since he left the U.S. he has been actively seeking a way to return that would be without detriment to his career and family. I have written letters of recommendation for him and I know he was second choice on at least two occasions." 6/

We will not dispute that P might have lost his position with Environment Canada had he not become a Canadian citizen, and that he did try over an extended period of time to find suitable employment in the United States. The question arises, however, whether the circumstances in which he found himself around the time of his nationality were such that, as a matter of law, he could be considered to have been forced into obtaining Canadian citizenship against his fixed will and intent to act otherwise.

It is settled that duress voids an expatriating act. Doreau v. Marshall, 170 F.2d 721 (3rd Cir. 1948). Considering the inestimable worth of United States citizenship, the courts have insisted, not surprisingly, however, that a citizen who performs a statutory expatriating act and alleges that he was forced to do it, must prove he so acted because of the extraordinary circumstances in which he found himself. The rule was laid down in Doreau, supra.

> ...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 not 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.

6/ P has also submitted copies of correspondence he conducted with U.S. government agencies and private institutions in the United States evidencing an effort to find employment in the United States. This correspondence, however, dates from mid-1978, after he obtained naturalization. While relevant to the issue of his intent to relinquish United States citizenship, as we discuss below, that correspondence does not appear germane to the issue of voluntariness.

Economic duress avoids the effect of expatriating conduct. Insogna v. Dulles, 116 F.Supp 473 (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.

Thirty years after Insogna and Stipa, the Ninth Circuit examined the issue of economic duress in Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985). Petitioner Richards argued that his naturalization in Canada was not voluntary because he was under economic duress when he obtained Canadian citizenship; he was teaching school when he decided to accept a job in the Boy Scouts, a position requiring Canadian citizenship. The Circuit Court agreed with Richards that an expatriating act performed under economic duress cannot be said to have been voluntary, citing Insogna and Stipa, supra. The court then said:

> ...Conditions of economic duress, however, have been found under circumstances far different from those prevailing here. In Insogna v. Dulles for instance, the expatriating act was performed to obtain money necessary 'in order to live.' 115 F. Supp. at 475. In Stipa v. Dulles, the alleged expatriate faced 'dire economic plight and inability to obtain employment.' 233 F.2d at 556. Although we do not decide that economic duress exists only under such extreme circumstances, we do think that, at the least, some degree of hardship must be shown. The district court in this case found that Richards was under no hardship of any kind when he executed the documents containing the renunciation of United States citizenship.

Richards should not, in our opinion, be read as setting a new, less rigorous standard of proof of economic duress. In deciding the case, the Ninth Circuit merely held that at a minimum some degree of hardship must be shown to demonstrate economic duress. The Ninth Circuit was required to determine only whether the district court erred in finding that Richards had not been subjected to any economic pressures when he obtained Canadian citizenship. There was no need for the Appeals Court to establish any other standard against which to measure economic duress when it found that the district court had not erred in holding there was no evidence Richards had been subject to coercion arising from his economic circumstances.

Measured against the standards of Insogna, Stipa and Doreau P 's situation could not be described as extraordinary or unique. Even weighed against a less rigorous norm, his circumstances do not appear to us to have been such that he had no practical alternative to becoming a Canadian citizen. He may, as the letter from Dr. S attests, have explored alternatives to obtaining naturalization without success, but he has not shown that he could not have found any employment in the United States or Canada that would not have required risking United States citizenship while enabling him to provide for himself and his family. It is difficult to believe that with his education and experience he could not have managed to make ends meet short of obtaining foreign naturalization. Finding it difficult to remain in or obtain ideal employment, except by putting United States citizenship at jeopardy,cannot, as a matter of law, be considered to be duress.

P thus had choices; he has not proved he had none. Involuntariness implies absence of choice, but the opportunity to make a personal choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971). On the facts presented P has not proved, as he must do to overcome the legal presumption of voluntariness, that he had no choice and thus was forced to apply for Canadian citizenship. We therefore conclude that his naturalization in Canada was voluntary.

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," as the Supreme Court said in Vance v. Terrazas, 444 U.S. 252, 270 (1980). Under the statute, 7/ the government bears the burden of proving intent and must do so by a preponderance of the evidence. 444 U.S. 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 party's intent at the time the expatriating act was done. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981). Thus, evidence contemporary with the proscribed act is, of course, the most probative of the issue of a party's intent.

In P 's case the only evidence, beyond his obtaining naturalization and swearing a concomitant oath of allegiance, is the fact that shortly before he was granted Canadian citizenship he applied to have his United States passport extended to full validity. Naturalization, like the other enumerated statutory expatriating acts, may be highly persuasive, but is not conclusive, evidence of an intent to relinquish United States citizenship. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (Black, J. concurring.) Similarly, making an oath of allegiance to a foreign sovereign or state, while alone insufficient to prove intent to relinquish citizenship, also provides substantial evidence of intent. King v. Rogers, 463 F.2d 1188, 1189 (9th Cir. 1972). However, an oath of allegiance that contains only an express affirmation of loyalty to the country whose

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

citizenship is being sought leaves "ambiguous the intent of the utterer regarding his present nationality." Richards v. Secretary of State, CV80-4150, memorandum opinion, (C.D.Cal. 1980) at 5. Applying for extension of his passport to full validity just two months before he was granted Canadian citizenship is on its face the act of someone who considers himself a United States citizen and intends to remain one. The Department, however, argues that P 's application should not be interpreted as evidence of an intent to retain United States citizenship, maintaining that:

> In 1976 when Mr. P 's passport was limited because there was a possibility that he had lost his U.S. citizenship, he did nothing to rectify the situation until 1978 when he needed a new passport. At the time of his application for a passport in 1976 he stated in the questionnaire prepared on April 27, 1976, 'I maintain allegiance to the U.S.A., providing it does not conflict with my present job allegance [sic] to the Canadian Government.' (Emphasis added.) Appellant's attitude appeared to be that he would maintain his citizenship as long as it was convenient.

P pointed out in his reply to the Department's brief that he could have allowed his passport to expire, suggesting that he did not do so because it was important to him to be documented as a United States citizen. Since he knew he would shortly be granted Canadian citizenship and would then be eligible to obtain a Canadian passport, one might argue that had he intended to relinquish United States citizenship he would have documented himself solely as a Canadian. With respect to the inferences the Department draws from his 1976 statement regarding allegiance, P commented that:

> I recall my confusion over the allegiance question, and I was perplexed how I could give an answer which reconciled my allegiance to the USA with the statement that I was under a 1974 oath to serve Canada. In any case, because of the specialized nature of my research I did not expect that "conflict" to develop.

We are not persuaded that P 's statement two years before he applied for an extension of his passport vitiates the significance of that act. At worst the statement might be regarded as an equivocal or unguarded remark.

On balance, the contemporary evidence in this case is insufficient to support either a finding that P intended to relinquish citizenship or intended to retain it. We must therefore pursue our inquiry into his intent in 1978 by examining the circumstantial

evidence in the case. As the court stated in Terrazas v. Haig, 653 F.2d 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." In other words, a party's words and conduct at times other than the time the expatriating act was done may shed light on his state of mind at the relevant moment.

In the main, the Department's case that P intended to abandon his United States citizenship in 1978 is based on the following proposition:

> An overall attitude and behavior often reflects an individual's disinterest and lack of concern in his or her U.S. citizenship and permits an inference of an intent to relinquish U.S. citizenship.
>
> Mr. P contends that he never intended to relinquish his U.S. citizenship when he naturalized as a Canadian citizen. It is the Department's position that Appellant's intent can be clearly detected from his behavior before and after his naturalization.

P 's conduct from 1974 when he arrived in Canada up to 1978 when he obtained naturalization demonstrably is not that of a person who intends to transfer his allegiance from the United States to Canada.

The fact that P took employment with a Canadian government agency certainly is not probative of an intent to transfer his allegiance to Canada, as the Department acknowledged in 1977. Registering his son and applying for a passport in 1976 are indisputably the acts of a person who considers himself to be a United States citizen and who intends to remain one. As to the somewhat compromising statement he made in the citizenship questionnaire he completed in 1976 about his allegiance to the United States and Canada, we have already indicated that we do not believe that it is of major significance.

P 's post-naturalization conduct is susceptible of slightly more mixed inferences. He applied for a Canadian passport and used it to travel on Canadian government business and later used a Canadian tourist passport for a personal trip to the USSR. While it may be inconsistent with United States citizenship to use a foreign passport, he was after all representing the Canadian government. So it was consistent with his status in Canada to use a Canadian passport, and in the circumstances possibly more convenient than using a United States passport. Note that he alleges he did not use a Canadian

passport to enter the United States. He asserted in response to the Board's inquiries that:

> After March 1978 I carried a United States passport on my trips from Canada to the United States and return. When I identified myself as a United States citizen at airline check-ins and to immigration and custom authorities I would sometimes be asked if I had a United States passport, and I would answer yes. Sometimes I would be asked to show the passport, and I would comply.

The foregoing statement stands uncontradicted by the record.

P has submitted evidence that from mid-1978 to early 1985 he endeavored to find suitable employment in the United States. In two applications he made for federal employment he stated under penalty of perjury that he was a United States citizen. 8/ In a United States income tax return he filed in May 1985 he also declared that he was a United States citizen. In the circumstances it may have been to his advantage to hold himself out as a United States citizen. But the point is that he did represent himself to be a United States citizen before he visited the Consulate in Vancouver and was officially advised that he might have lost his United States citizenship. In brief, we have no grounds to question the spontaneity of P 's assertions that he was a United States citizen.

After P moved to Canada he appears to have maintained family and professional ties to the United States as evidenced by visits, membership in professional organizations, participation in the work of scientific bodies in the United States and renewal in April 1985 of his Utah secondary teaching certificate.

That seven years elapsed between his naturalization and his 1985 visit to the Consulate to clarify his citizenship status, however, raises a question about his professed lack of intent to relinquish United States citizenship. The matter was discussed when P was interviewed in January 1985 at the Consulate just before he filed his appeal. According to the record made by the consular officer to whom he spoke:

> P ...said he did not contact this office for seven years after having naturalized precisely because he was afraid that the result would be the loss of his citizenship. He asked that the

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8/ For example, in an application he completed in October 1981 he responded to a question about his citizenship status with the following answer:

		YES	NO
18.	Are you a citizen of a foreign country? (If YES, list country of your citizenship in item 23 below.) (If you hold dual citizenship in the United States and any other country you should answer this question "NO.")	/ /	/X/

> lack of contact he entered as evidence that he did not intend to give up his citizenship but instead wished to keep it. Conoff pointed out that abandoning contacts with the Consulate might also be construed as evidence that he no longer was interested in his U.S. citizenship. Conoff asked why he had not contacted us now. He stated that he had come to the office at this time as he now wants to return to the United States to reside. Conoff asked whether, if he had not planned to return to the U.S. for another ten years, he would have continued to avoid contacts, and he replied in the affirmative.

P on the other hand has argued that absence of contact should not be construed as indifference to remaining an American citizen. "The Department suggests," he wrote in his reply to the Department's brie

> ...that I had a 'disinterest and lack of concern' about my citizenship, then reports that I was 'afraid' I would lose my citizenship. I thought and worried about my citizenship between 1978 and July 2, 1985, when I decided to make the trip to the Consulate. Some statements in the Department's brief are misleading. I made the July 2, 1985 trip (without my wife) to inform the Consulate that I was naturalized in Canada in 1978, and that I wanted advice on how I could retain my citizenship. Although my family wishes to return eventually to the USA, that was not the purpose of my trip.

As the consular officer observed, P 's avoidance of contact with the United States officials for a number of years could be interpreted as lack of interest in United States citizenship. But is it not just as plausible to infer that lack of contact was the result of P 's simultaneously fearing he might have lost his citizenship while hoping he had not without being able to bring himself to get the facts earlier. In any event we do not consider that avoiding the Consulate outweighs other positive factors in P 's factor. There is, however, one final negative factor which we must consider.

When P visited the Consulate in July 1985 he completed a form for determining United States citizenship. In it he gave this response to the following question:

> 14. Did you know that by performing the act described in time 7 [obtaining foreign naturalization] you might lose U.S. citizenship? Explain your answer.
>
> Yes, but at the time it seemed I didn't have a choice.

Do these words bespeak an intent in 1978 to relinquish United States citizenship? Obviously, it could be argued that they are an admission that P was aware he might lose his citizenship yet proceeded in the face of that knowledge to obtain Canadian citizenship, thus manifesting a will and purpose to forfeit his United States citizenship. But, we think, it would be no less reasonable to construe

P 's statement as signifying simply that he knew he might have a problem but was prepared to accept the consequences without necessarily intending that the consequences should ensue.

Knowledge and intent are not necessarily synonomous, as the Department acknowledged in the guidance it sent to diplomatic and consular posts regarding the processing of potential expatriation cases in light of the Supreme Court's decision in Vance v. Terrazas, supra. Circular Airgram, A-1767, August 27, 1980. The Department gave several examples to illustrate application of general principles to determine whether a party intended to relinquish citizenship. In one example, the party obtained naturalization in D, a foreign state that did not require applicants to renounce previous nationality. She lived many years in that country, travelled on its passport; did not seek a United States passport after her original one expired; and did not file income tax returns or pay U.S. taxes. The evidence in the hypothetical case suggested that the party no longer considered herself to be a United States citizen after her naturalization. "The problem here," the Department commented

> ...is that an awareness of having lost citizenship, under the law as it stood at the time of her expatriating act, is not necessarily the same thing as an intention to give up citizenship. But in view of her prolonged absence from the U.S. and the absence of any ties with this country or any apparent effort to maintain her links with the U.S., it seems more probable than not that by obtaining naturalization in D she intended to sever her ties to the U.S. On these facts, a finding of loss would be made.
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> A-1767 at 9.

Although P has lived in Canada for twelve years, there is credible evidence that he endeavored during that time to maintain close associations with the United States on both a personal and professional level. Despite some equivocal statements and actions, he has shown that he consistently held himself out after naturalization as a United States citizen, in particular to private institutions in the United States and U.S. agencies to which he applied for employment. And we have no reason to doubt his statement that when he entered the United States from Canada he consistently stated that he was a United States citizen.

The only affirmative acts of P 's which on their face are inconsistent with United States citizenship are his naturalization and his use of a Canadian passport. But neither is in itself conclusive evidence of an intent to relinquish United States citizenship. In brief, there is no firm evidence that P knowingly and intelligently intended to forfeit his United States citizenship when he obtained naturalization in Canada. From this we conclude that the Department has not met its burden of proof.

Upon consideration of the foregoing, we hereby reverse the Department's administrative determination that P expatriated himself.

Alan G. James, Chairman

G. Jonathan Greenwald, Member

Gerald A. Rosen, Member