

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R.L.Z. - In Loss of Nationality Proceedings

Decided by the Board December 1, 1987

Appellant, a native-born United States citizen, went to Brazil in 1961 where he held a variety of visiting professorships at the University of Sao Paulo. Subsequently he married a Brazilian citizen. In 1984 he petitioned to be naturalized as a Brazilian citizen since appointment to a university position to which he aspired (a tenured professorship) required Brazilian citizenship. In August 1984 a certificate of naturalization was delivered to appellant at a "solemn" judicial proceeding. On the reverse of his naturalization certificate a judicial official attested that appellant had that day sworn to fulfill the duties of Brazilian citizenship and declared that he renounced his previous nationality.

A year later the United States Consulate General at Sao Paulo executed a certificate of loss of nationality in appellant's name, certifying that he expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. Shortly after the Department approved the certificate appellant entered an appeal to the Board.

HELD: Appellant's naturalization plainly was an act of free will, despite his assertion that he acted involuntarily because he had no alternative if he wished to obtain a prestigious professional position. The Board was of the view that appellant made a free choice from the outset when he decided to make his professional career in Brazil. He alone created the circumstances that ultimately required him to elect between naturalization and satisfying his career ambitions in a way that would not jeopardize his United States citizenship.

With respect to the issue of whether appellant intended to relinquish his United States citizenship by obtaining Brazilian citizenship, the Board concluded that the Department had carried its burden of proof. Although he emphatically denied he had renounced United States citizenship, the record (the notation on the certificate of naturalization) attested that he had done so; the Board could not impute fraud or non-compliance with Brazilian law and regulations to the official who certified that appellant renounced United States citizenship. Clearly, appellant acted knowingly and intelligently, as well as voluntarily, when he sought and accepted Brazilian citizenship. The fact that in some respects he conducted himself as a United States citizen before and after naturalization did not, in the Board's view, outweigh his express renunciation of United States

citizenship, an act that left no room for ambiguity as to appellant's specific intent at the time he obtained naturalization in Brazil.

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

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This case is before the Board of Appellate Review on the appeal of R L Z from an administrative determination of the Department of State, dated January 17, 1986, that he expatriated himself on June 1, 1984 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Brazil upon his own application. 1/

For the reasons that follow, we conclude that appellant's naturalization was voluntary and obtained with the intention of relinquishing his United States nationality. Accordingly, we affirm the Department's holding of loss of his citizenship.

I

Appellant acquired United States nationality by virtue of his birth in [REDACTED]. He went to high school in South Dakota and attended the South Dakota School of Mines and Technology. Thereafter, he studied, did research and taught at a number of prominent institutions and research establishments in the United States until 1961 when he went to Brazil. In Brazil, he states, he "was a United Nations visiting expert, a USAID professor, a Fulbright scholar, a Ford Foundation consultant....". Beginning in 1967 he held a temporary appointment as "Collaborating Professor" at the

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1/ When appellant obtained naturalization in Brazil, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481, 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 --

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

Pub. L. 99-653, 100 Stat. 3655 (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".

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University of Sao Paulo. Appellant married a Brazilian citizen in 1977. It appears that while living in Brazil appellant periodically renewed his United States passport and registered as an American citizen. He obtained a full validity passport from the Consulate General in Sao Paulo in 1979 and was most recently registered as a citizen in 1982.

On January 4, 1984 appellant petitioned the Brazilian Ministry of Justice for naturalization. In the petition he stated, inter alia, that he intended to renounce his current nationality; had been living in Brazil for over twenty years; and read and wrote Portuguese.

He visited the United States Consulate General in Sao Paulo in May 1984, apparently to apply for a passport since the one issued to him in 1979 was about to expire. There, on May 25, 1984, he completed a form titled "Information to Determine U.S. Citizenship". In it he acknowledged that he had applied to be naturalized as a Brazilian citizen in order to advance his university career; and had served in a post of a foreign government ("tenure-track professor in the University of Sao Paulo (Sao Carlos), a state institution, since September 1971"). He apparently discussed his case at that time with a consular officer, for some months later in a letter to the Consulate appellant stated that the previous May a consular officer "made it clear that my American citizenship was at risk and in general terms what chance I had both to satisfy the University requirement of Brazilian citizenship and to retain my American citizenship." The Consulate issued him a passport on May 25th, limited in validity to one year.

By Ministry of Justice ordinance No. 0235 of May 21, 1984, appellant was granted Brazilian citizenship pursuant to Article 145, II(b)(3) of the Federal Constitution, and in accordance with Article III of Law No. 6,815, of August 19, 1980, as amended by Law No. 6,964 of December 9, 1981. 2/

Appellant wrote to the Consulate again on June 26, 1984 to report that he had been notified by the Brazilian Federal Justice Department that a certificate of naturalization had been issued in his name on June 1 and that it had been sent to a federal judge "who will call me for a ceremonial presentation.

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2/ Certificate of Naturalization, Ministry of Justice, Federal Department of Justice, Brasilia, June 1, 1984. English Translation, Division of Language Services, Department of State, LS No. 123140-A, Portuguese 1987.

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Presumably, I will be asked to declare allegiance to the Brazilian Government at that time." He added: "I realize that such action can jeopardize my American citizenship." He had an opportunity to advance to tenured, full professorship at the University of Sao Paulo, he continued, noting that Brazilian citizenship is one requirement. A competition would be held at the end of June for promotion to full professor, and he intended to participate in it. He concluded by stating that: "If I lose the competition, I will decline Brazilian naturalization. If I win the competition, I respectfully ask your help in protecting my American citizenship without sacrificing my career at USP."

Appellant communicated with the Consulate next on August 22nd. He had successfully completed the examinations for promotion to full professor of physics, he wrote. The Director of the Faculty of Philosophy, Science and Letters of the Ribeirao Preto campus of the University of Sao Paulo had, however, "respon[ded] negatively" to his request for a waiver of the requirement that he hold Brazilian citizenship. <sup>3/</sup> Since the promotion "brings me the once-in-a-career opportunity...I feel forced to submit to naturalization...." He had been notified, he stated, to appear before a federal judge on August 27, 1984, to receive his certificate of naturalization. "From that date," appellant concluded, "my American citizenship will be at risk, and I appeal to you to help me from losing it." Appellant appeared before a federal judge on August 27. The proceedings of that day are recorded on the reverse of the certificate of naturalization that was delivered to appellant:

In a formal document drawn up this day, the individual to whom this certificate refers swore to faithfully fulfill the duties of

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3/ The letter, which is dated July 13, 1984, reads as follows.

In response to your inquiry we wish to inform you that, under Federal Law No. 7,192/74, only native-born or naturalized Brazilians may hold government jobs.

Under the above legislation and the general regulations of the University of Sao Paulo, it would be impossible for you to be installed as a full professor in this department unless you become naturalized.

English translation, Division of Language Services,  
Department of State, LS No. 123140-D, Portuguese, 1987.

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Brazilian citizenship, demonstrated--by reading and copying articles from the Federal Constitution--that he knows how to read and write the Portuguese language, and declared that he renounces, for all intents and purposes, his previous nationality.

Sao Carlos, August 27, 1984.

[illegible signature] 4/

One year passed. On September 1, 1985 appellant addressed a further communication about his case to the Consulate, enclosing a copy of his naturalization certificate and application therefor. He observed that although it was stated on the reverse of the certificate that "I renounced previous nationalities, I made no such statement, verbally or written." He reiterated why he had applied for and accepted Brazilian citizenship; that he realized he might lose his United States citizenship thereby, but asserted that "[d]efending my American citizenship continues to be my first priority." He had tried unsuccessfully to get a waiver of the citizenship requirement (see note 3, supra), but could not pass up the professional and retirement benefits that would flow from occupying a tenured position.

There is no record that the Consulate replied to appellant's letter or that he was interviewed at that time. On September 16, 1985, in compliance with the requirements of section 358 of the Immigration and Nationality Act, a consular officer executed a certificate of loss of nationality in

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4/ English translation, Division of Language Services, Department of State, LS No. 123140-A, Portuguese, 1987.

Article 128(1) of Law No. 6,815 of August 19, 1980, as amended by Law No.6,964 of December 9, 1981, prescribes that at the naturalization ceremony the naturalized citizen must:

I. Demonstrate that he can read and write Portuguese, according to his circumstances, by reading passages from the Federal Constitution;

II. Declare expressly that he renounces his previous citizenship;

III. Undertake a commitment duly to fulfill the duties of a Brazilian citizen.

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appellant's name. 5/ The officer certified that appellant acquired United States nationality by virtue of his birth in the United States; acquired the nationality of Brazil upon his own application; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. In forwarding the certificate of loss of nationality and supporting documents, including appellant's correspondence, to the Department, the Consulate offered no opinion on his case; it merely stated that the post would appreciate being informed of the Department's decision. The Department approved the certificate on January 17, 1986, and later informed the Consulate that in its opinion appellant had failed to rebut the presumption that he obtained naturalization in Brazil voluntarily. Further, his intent to relinquish United States nationality was manifest in the various renunciatory statements he signed in the proceedings leading to and culminating in his naturalization in Brazil.

Approval of the certificate of loss of nationality 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. Appellant entered an appeal pro se on November 14, 1986.

## II

Section 349(a)(1) of the Immigration and Nationality Act prescribes that a United States citizen shall lose his citizenship by voluntarily obtaining naturalization in a foreign

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5/ 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.

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state with the intention of relinquishing his nationality. 6/ Appellant does not dispute that he obtained naturalization in Brazil upon his own application. He thus brought himself within the purview of the Act. Section 349(c) of the Act prescribes a legal presumption that one who performs a statutory expatriating act does so voluntarily, although the actor may rebut the presumption upon a showing by a preponderance of the evidence that he acted involuntarily. 7/

Appellant submits that he acquired Brazilian citizenship solely in order to obtain a full professorship, which, in his words, was "[a]n undreamed of professional opportunity." He performed the expatriative act only after he had verified that he might not hold the position unless he were a Brazilian citizen.

When his case was processed at the Consulate in the autumn of 1985, appellant took the position in a letter to a consular officer that "my actions to naturalize Brazilian were made under duress." "[P]erhaps you may imagine the pressures placed on a 55-year old physics professor given the once-only chance to gain tenure on the professionally most important

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6/ Text supra, note 1.

7/ 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, Pub. L. 99-653, 100 Stat. 3655 (1986), repealed section 349(b) but did not redesignate section 349(c), or amend it to reflect repeal of section 349(b).



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campus of his university." Had he renounced the promotion offered, he doubted that "my next temporary contract would have been renewed. That strong feeling of no other choice may be described as duress."

We accept that in order to gain the academic standing and professional gratification to which he aspired, appellant was required to obtain naturalization in Brazil. The pressures he allegedly felt to become a Brazilian citizen do not in our view, however, rise to the level of legal duress.

Duress implies absence of choice. It assumes that one was faced with circumstances not of his own making that left him no alternative but to perform a proscribed act in order to avert a more adverse situation. The rule was formulated this way in Doreau v. Marshall, 170 F.2d 721 (3rd Cir. 1948):

If by reason of extraordinary circumstances amounting to true duress an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is no authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. He cannot be truly said to be manifesting an intention of relinquishing his country. [Emphasis added]

170 F. 2d at 724.

Appellant made free choices from the outset. He chose to make his professional life in Brazil, so creating the circumstances that ultimately required him to elect between obtaining naturalization and taking a course of action that would not require him to jeopardize his United States citizenship. Furthermore, as a matter of law, he had an alternative to placing his United States citizenship in peril: he could have passed up the position that required him to hold Brazilian citizenship. We understand appellant's perfectly natural desire to attain professional pre-eminence, but he may not be heard to argue that with his education, experience and apparent skills he would not have been able to provide adequately, for himself and his family had he not chosen to elect Brazilian citizenship. The compulsion appellant felt to perform a statutory expatriating act thus was of his own making. "[The] opportunity to make a decision based upon personal choice is the essence of voluntariness." Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971).

In our opinion, appellant has failed to rebut the legal presumption that he obtained naturalization in Brazil of his own free will.

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## III

The question remains whether appellant performed the expatriative act with the intention of relinquishing his United States citizenship. Under the Supreme Court's holding in Vance v. Terrazas, 444 U.S. 252 (1980), the government bears the burden of proving by a preponderance of the evidence that the citizen intended to relinquish citizenship when he performed the proscribed act. 444 U.S. at 270. Intent may be proved by a person's words or found as a fair inference from proven conduct. Id. at 260. A person's intent is determined as of the time of the performance of the statutory act of expatriation; the person's own words or conduct at the time the expatriating act occurred are to be looked at in determining his or her intent to relinquish citizenship. Terrazas v. Haig, 653 F.2d 285 (7th Cir. 1981). In the case before the Board the intent that the government must prove is Z's intent when he obtained Brazilian citizenship.

Obtaining naturalization in a foreign state may be highly persuasive evidence of an intent to relinquish United States citizenship, although it is not the equivalent of, or conclusive, evidence "of the voluntary assent of the citizen." As the Supreme Court expressed the principle in Vance v. Terrazas, supra,

..., we are confident that it would be inconsistent with Afroyim to treat the expatriating acts specified in section 1481(a) as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen. 'Of course', any of the specified acts 'may be highly persuasive evidence in the particular case of a purpose to abandon citizenship.' Nishikawa v. Dulles, 356 U.S. 129, 139 (1959) (Black, J., concurring). But the trier of fact must in the end conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute, but also intended to relinquish his citizenship.

444 U.S. at 261.

The cases hold that a United States citizen who knowingly, intelligently and voluntarily performs a statutory expatriating act and simultaneously renounces United States citizenship demonstrates an intent to relinquish United States citizenship, provided there are no offsetting factors that would mandate a different result.

The plaintiff in Terrazas v. Haig, 653 F.2d 285 (7th Cir. 1981), made a formal declaration of allegiance to Mexico and simultaneously renounced United States citizenship. The Court of Appeals held that there was "abundant evidence" that the plaintiff knowingly and intelligently performed the proscribed act with the intention of relinquishing United States nationality. He was 22 years old, well-educated and fluent in Spanish when he applied for a certificate of Mexican nationality that contained an oath of allegiance to Mexico and a renunciation of United States citizenship. His subsequent conduct also cast doubt on his intent.

Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985), involved the naturalization in Canada of a United States citizen who swore an oath of allegiance and made a concomitant declaration renouncing all other allegiance. The Court of Appeals for the Ninth Circuit agreed with the district court that "the voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." 753 F.2d at 1421. "We also believe that there are no factors here that would justify a different result." Id. The court of appeals agreed with the district court that the plaintiff wished to become a Canadian citizen and would have liked also to remain a United States citizen, but because Canada required relinquishment of his other citizenship, he chose to renounce United States citizenship in order to obtain Canadian citizenship. Appellant argued that he lacked the requisite intent because he never desired to surrender his United States citizenship. Since he had no wish to become a Canadian citizen independent of a perceived need to advance his career, the necessary intent was lacking, he asserted. The court disagreed, saying that if a citizen freely and knowingly chooses to renounce his citizenship and carries out that decision, his choice must be given effect. In brief, a citizen's specific intent to renounce his citizenship does not turn on motivation.

A "remarkably similar case" to Richards is Meretsky v. Department of Justice, et al., memorandum opinion, No. 86-5184 (D.C. Cir. 1987). In Meretsky, plaintiff took an oath of allegiance to Canada that explicitly required him to renounce allegiance and fidelity to the United States. He argued that he should not be found to have had the requisite intent to renounce his United States citizenship because he only became a Canadian citizen so that he might be admitted to the practice of law in Canada. Finding that plaintiff failed to produce evidence that he took the Canadian oath under duress, the court adopted the reasoning of the 9th Circuit in Richards, supra, to the effect that "a United States citizen's free choice to renounce his citizenship results in loss of that citizenship." The oath plaintiff took, the Meretsky court declared, renounced his United States citizenship "in no uncertain terms." Memo. op. at 5.

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In contrast to the foregoing cases, is the case of Parness v. Shultz, memorandum opinion, Civil Action No. 86-1456 memorandum opinion (D.D.C. July 1987). There plaintiff applied for naturalization as an Israeli citizen. He testified that after waiting in a long line at a government office, he stood at a clerk's counter to give oral answers to the clerk's questions as the latter filled out his application form. He stated that he responded to what he was asked and did no more, that he was never told he would have to renounce his U.S. citizenship, that he did not knowingly or intentionally renounce his citizenship, and that he did not read the naturalization application, which stated in preprinted text that he renounced his citizenship. Plaintiff further testified that he did not cross out a section of the application in which he could have exercised his right to an exemption, nor did he know who did. He acknowledged that he should have read the document but contended that his obvious carelessness did not result from indifference to the possibility, or knowledge, that he might lose his U.S. citizenship. The unusually casual way in which plaintiff applied for Israeli citizenship closely paralleled the manner in which the form was completed by the Israeli clerk. The application was clearly incomplete, inaccurate and was not signed by any Israeli authority. After his application had been accepted, plaintiff swore an oath of allegiance to Israel. The oath made no mention of renunciation of other citizenship.

On the foregoing facts, the district court concluded that plaintiff lacked the requisite intent to relinquish citizenship. Plaintiff's testimony was highly credible and most persuasive, the court said. The circumstances of his application for Israeli citizenship were unique, and the testimony and much documentation supported the plaintiff's contention that, despite his gross negligence, he never intended to relinquish his United States citizenship.

In the case we are considering, appellant obtained naturalization in Brazil and made an oath of allegiance to Brazil and simultaneously renounced his present nationality. Such conduct is highly probative of an intent to relinquish United States citizenship. Appellant, however, strenuously denies that he renounced his United States citizenship. As he put it in a letter to the Board dated August 26, 1987:

Neither verbally nor in writing did I renounce my United States citizenship. A statement that I did so, signed by a Brazilian clerk on the back of my Certificate, may be convenient, even required, but it is untrue. Present were witnesses who may describe the nature of the ceremony [sic], and its date, 27 August 1984....

Brazilian law provides that after the Federal Department of Justice has issued a certificate of naturalization, it shall send the certificate to the federal judge of the city where the applicant has his domicile, for delivery at a "solemn public ceremony, either individual or collective, at which the Magistrate shall discuss the significance of the instrument and the duties and rights derived therefrom." 8/

As we have previously noted, on August 27, 1984, a judge, magistrate or other official of the Federal Court at Sao Carlos signed a statement on the reverse of appellant's certificate of naturalization recording that in a "formal document drawn up this day," appellant swore an oath of allegiance, and renounced, "for all intents and purposes, his previous nationality." 9/

The "formal document" referred to above is the record of the naturalization ceremony. Under Brazilian law, delivery of the certificate shall be entered in the record of the hearing, "which shall be signed by the judge and the naturalized person." 10/ The date on which the naturalized person undertook the commitment to fulfill the duties of Brazilian citizenship and the fact that it was entered in the record shall be noted on the certificate. 11/

On the evidence, we must accept as a fact that on August 27, 1984 appellant made a declaration expressly renouncing "his previous nationality." Appellant has submitted no evidence to call into question the declaration of the judicial official that he did so. Appellant's unsupported allegation is insufficient to permit us to conclude that the "solemn ceremony" was not as described in the statement on the reverse of his certificate of naturalization. It has been long settled that the presumption of regularity that attaches to the public acts of United States officials also extends to the public acts of foreign officials. See United States v. King, 3 How. 773, (1845).

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8/ Article 128(1) of Law No. 6,815, August 21, 1980, as amended by Law No. 6,964, December 9, 1981. English translation, Division of Language Services, Department of State, LS No. 123327, Portuguese, 1987.

9/ See note 4, supra.

10/ Article 129 of Law No. 6,815, August 21, 1980, as amended by Law No. 6,964, December 9, 1981.

11/ Id, article 129(2).

It is inconsistent with the comity due to the officers of a foreign government to impute to them fraud where their conduct has not been questioned by the authority under which they were acting and to which they were responsible...and as regards the interests of others, the acts of the officer in line of his duty will prima facie be considered as performed honestly and in good faith.

3 How. at 786.

Although the evidence is compelling that it was appellant's intent to relinquish United States nationality, we must be satisfied that appellant knowingly and intelligently, as well as voluntarily, obtained naturalization in Brazil and swore an oath of allegiance that included renunciation of his United States citizenship. From the evidence of record, it is apparent that he acted with full awareness of the legal consequences of his act. He was 55 years old when he applied for and obtained naturalization, well-educated, fluent in Portuguese, and evidently understood precisely what he would have to do to obtain Brazilian citizenship. By his own admissions he knew he would put his United States citizenship at risk if he obtained naturalization.

In the petition for naturalization he executed January 4, 1984, he declared that he "intend[ed] to acquire Brazilian citizenship and to renounce his present nationality..." In the letter he addressed to the Secretary of Public Security of Sao Paulo, requesting that that official forward his petition to the appropriate authorities, he reiterated that he intended to renounce his present nationality. We find unconvincing his assertion (see his reply to the Department's brief) that he read neither of those very short, simple forms. Furthermore, he concedes that in May 1984 a consular officer made clear to him that naturalization would place his United States citizenship at risk. And in letters to the Consulate General written in June and August 1984, he acknowledged that naturalization could jeopardize his American citizenship.

Finally, we must ascertain whether there are any factors of sufficient evidential weight that would countervail the foregoing evidence that appellant intended to relinquish his United States citizenship.

In addition to denying that he renounced his United States citizenship (a claim we are unable to accept for the reasons stated above), appellant adduces other factors which he contends show lack of the requisite intent. He travelled abroad from Brazil on a United States passport shortly before and a few months after naturalization; has filed income tax returns in the

United States allegedly since 1954 (he submitted only copies of partial and incomplete returns for 1983, 1984 and 1985); has close family ties in the United States; and maintains a residence in Philip, South Dakota "for voting and other purposes." "Most compelling," appellant wrote to the Board in January 1987, "I have no conceivable motive for relinquishing my American citizenship."

The record further shows that on three occasions prior to obtaining a certificate of Brazilian naturalization, appellant indicated that even if he went through with naturalization, he wished to retain his United States citizenship. In the citizenship questionnaire he completed in May 1984 he stated that: "My intent in applying for Brazilian citizenship was to meet....the university requirements....I do not intend to jeopardize my United States citizenship...." In June 1984 he wrote to the Consulate to explain why he was proceeding with naturalization, and concluded by stating that: "If I win the competition [for full professorship] I respectfully ask your help in protecting my American citizenship without sacrificing my career at USP." Finally, only five days before the ceremony at which he received his certificate of naturalization, he again wrote to the Consulate and appealed to that office "to help me from losing it."

Expressly renouncing United States citizenship before a foreign official in the course of performing a statutory expatriating act plainly is an act in "derogation of allegiance to this country." 42 Op. Atty. Gen., 397, 400 (1969). It leaves "no room for ambiguity" as to the intent of the citizen. United States v. Matheson, 400 F.Supp. 1241, 1245 (S.D.N.Y. 1975); aff'd 502 F.2d 809 (2nd Cir. 1976); cert. denied 429 U.S. 823 (1976). But, we must now ask, do appellant's words before naturalization disclaiming intent to relinquish citizenship and the pattern of his conduct showing ties to and with the United States outweigh evidentially the renunciatory oath of allegiance to which he subscribed?

We do not doubt that appellant wanted to retain his United States citizenship and that his motive in obtaining Brazilian citizenship was to promote his academic career. Or, to put it differently, because appellant had no wish to become a Brazilian citizen independent of his wish to realize career ambitions, he allegedly lacked the requisite intent. The motive with which an act is done is for the most part immaterial. An expatriating act is not excused because it is done with the best of motives. The petitioner in Richards v. Secretary of State, supra, made essentially the same argument as appellant here. The Ninth Circuit held it to be without legal merit.

...a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to

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make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship.

We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly. Whenever a citizen has freely and knowingly chosen to renounce his United States citizenship, his desire to retain his citizenship has been outweighed by his reasons for performing an act inconsistent with that citizenship. If a citizen makes that choice and carries it out, the choice must be given effect.

752 F.2d at 1421, 1422.

Notwithstanding appellant's statements and contentions relative to his lack of intent to relinquish United States citizenship, the critical issue to be determined is appellant's intent at the time he sought and obtained naturalization in Brazil. As we have seen, appellant, on January 4, 1984, petitioned the Minister of Justice for naturalization and stated that he intended to acquire Brazilian citizenship and to renounce his present citizenship; and, on August 27, 1984, at a formal ceremony and in a formal document, in connection with the delivery to him of his naturalization certificate, appellant swore to fulfill faithfully the duties of Brazilian citizenship and declared that he renounced his previous nationality. We are persuaded that these actions contravene appellant's assertions of lack of intent to transfer allegiance to Brazil and relinquish United States citizenship. In our judgment, the Department has satisfied its burden of proof that appellant's expatriating act was performed with the requisite intent to relinquish citizenship.



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IV

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

Alan G. James, Chairman

Howard Meyers, Member

Gerald A. Rosen, Member