DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: I A R de la V

This is an appeal from an administrative determination of the Department of State, that appellant, I A R de la V , expatriated herself on November 27, 1985, under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining naturalization in Spain upon her own application. 1/

The principal issue to be decided in this appeal is whether appellant's naturalization was performed with an intent to relinquish United States citizenship. For the reasons that follow, we conclude that the government has satisfied its burden of proof that the expatriating act was performed with such intent. Accordingly, we affirm the Department's determination of loss of United States nationality.

I

Appellant acquired United States citizenship by virtue of her birth at [redacted]. Her mother, a native of Spain, was a French national; her father was a United States citizen.

Appellant received her elementary and secondary education in Washington, D.C. and Virginia, and then spent a year of study in Paris. From 1969 to 1973, she attended Stanford University where she completed her pre-medical studies and majored in economics. Following her graduation, she attended medical

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1/ In 1985, when appellant obtained naturalization in Spain, 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 --
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> (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".

school in Spain for five years, developing special interests in physiology and endocrinology. In 1978, she entered a residency training program at the teaching hospital of the University of Madrid.

In December 1983, at the end of her residency program, the medical director of the hospital informed appellant of a position to be established in the endocrinology department and invited her to apply. 2/ Appellant was excited at the prospect because it would be a position in "one of the best endocrinology departments in Europe" and would enable her "to get a doctoral thesis."

In early January 1984, appellant learned that one of the requisites for the position of chief resident in endocrinology at the hospital was the requirement of Spanish citizenship status. She consulted a Spanish lawyer to assertain the procedure for acquiring Spanish citizenship. She also visited the American Embassy to discuss the implications Spanish naturalization would have on her citizenship and request a letter from the Embassy regarding her registration as a United States citizen, for use in the Spanish naturalization process.

The entry on the Embassy's passport and nationality card, maintained for appellant, regarding appellant's visit on January 4, 1984, read:

> Discussed result on loss of US cit. her possible naturalization as a Spanish cit. in order to practice Medicine in Spain. She graduated here, plans to marry a Spanish citizen & mother is Spaniard. Advised above facts do not entitled [sic] her to Spanish nationality & her voluntary naturalization will entail loss of US cit. under section 349(a)(1). Excerpts of law given to her.

Appellant testified, with regard to the visit, that the consular officer informed her that, as part of the naturalization process in Spain, she would be required to pledge allegiance to Spain and renounce her previous nationality, and

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2/ Transcript of Hearing in the Matter of I A R de la V , Board of Appellate Review, Department of State, January 14, 1986, (hereafter referred to as "TR"), at 30-32.

"that could constitute a loss of U.S. citizenship." 3/ She stated that she became upset at the possibility of losing her citizenship, but that after reading certain informational material, which she was given at the same time, concluded that she would not lose her United States citizenship if she did not intend to do so when obtaining Spanish citizenship. 4/

Appellant returned to the Embassy on January 26, 1984, to receive the Embassy's letter, which she earlier requested for use in connection with the naturalization process in Spain. The Embassy's letter, addressed to the District Court, Charmatin, Madrid, stated that appellant acquired United States nationality by birth in Baltimore on June 25, 1951, was registered at the Embassy, and possessed a United States passport issued in 1979. According to appellant, the consular officer also reminded her to read carefully the informational material on loss of citizenship previously given to her.

Appellant applied for Spanish naturalization "at the end of January" (1984). 5/ On January 31, 1984, she submitted her application for the position of chief resident in endocrinology at the San Carlos Clinical Hospital of the University of Madrid. In her application, she declared that her Spanish citizenship was "in process."

On June 6, 1984, appellant visited the Embassy to obtain a new U.S. passport. On that occasion, the Embassy gave her additional informational material on the subject of loss of citizenship. 6/ Appellant stated that the information completely convinced her of her earlier interpretation of the law that she could not lose her United States citizenship unless she intended to relinquish it. 7/

3/ TR at 38.

4/ The record does not identify or contain a copy of the informational material said to have been given to appellant on the occasion of her visit to the Embassy on January 4, 1984. According to the Embassy's notation of that visit on appellant's passport and nationality card, she was given "excerpts of law."

5/ TR at 41.

6/ The informational material was a handout of eight pages, entitled LOSS OF UNITED STATES CITIZENSHIP, issued by Passport Services, Bureau of Consular Affairs, Department of State; M-321, 6-84.

7/ TR at 44-46.

On September 24, 1985, twenty months after she applied for naturalization, appellant was granted Spanish nationality pursuant to a decree of the Ministry of Justice. On November 20, 1985, she appeared before a magistrate of the Central Civil Registry, Ministry of Justice; she declared her desire to accept the granted nationality, swore fidelity to the King of Spain and obedience to Spanish laws, and renounced her former nationality. Appellant signed with the magistrate a document attesting her acceptance of Spanish nationality and the oath that she took. 8/

Appellant later registered herself as a Spanish citizen at the civil registry, as required by law, to complete the

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8/ In view of the confusion and uncertainty concerning the nature of the oath that appellant made when she acquired Spanish nationality, it was determined at the conclusion of the hearing held on January 14, 1988, that the Department would endeavor to obtain from the Spanish authorities a copy of the oath of allegiance that she took. On April 22, 1988, the Spanish Ministry of Justice furnished the American Embassy at Madrid an authenticated copy of her act of acceptance of Spanish nationality and oath, with renunciation of her former nationality, which appellant signed with the presiding Spanish magistrate at the Central Civil Registry, Ministry of Justice, on November 20, 1985. The text of the document, as translated, read as follows:

ACT OF ACCEPTANCE AND OATH, MAKING EFFECTIVE SPANISH NATIONALITY GRANTED THROUGH RESIDENCE

In Madrid, at 11:00 a.m., November 20, 1985 appears before this Registry I. A R de la V whose identification and domicile data is made of record on the declaration sheet signed by the affiant. She is identified by U.S. passport number Z491178 which she exhibited and kept. She declares that Spanish nationality has been granted to her through naturalization certificate by order of the Ministry of Justice dated September 24, 1985. (evidence of above, issuance of the order of November 7, 1985, is presented by her.) That it is her desire to accept and make effective the granted Spanish nationality as soon as possible. Having been invited to take an oath, in a formal manner, she swears fidelity to His Majesty the King of Spain and obedience to the Spanish laws, renouncing her former nationality. She requests that the inscription of her birth show, at the margin, the Spanish nationality granted by certificate of naturalization, to which I agree and order. I read the act, she finds it correct and signs it with me.

naturalization process, and, on December 18, 1985, obtained a Spanish identity card. In June 1986, she obtained a Spanish passport.

Sometime in January 1986, appellant informed the Embassy of her newly acquired Spanish citizenship. She was asked to complete a citizenship questionnaire to determine her present citizenship status. Appellant stated that she procrastinated answering the questionnaire "for about five months" because she was frightened of the consequences. She completed the questionnaire in June 1986, and, on July 14, 1986, had an interview with a consular officer to discuss her case.

On July 31, 1986, the Embassy issued a certificate of loss of United States nationality in appellant's name, in compliance with section 358 of the Immigration and Nationality Act. 9/ In its memorandum transmitting the certificate to the Department for consideration, the Embassy observed:

> While remaining cognizant of the fact that before she was naturalized Dr. R de la V was advised of the consequences of her

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8/ Cont'd.

In a declaration executed on May 21, 1988, appellant acknowledges her signature appearing on the act of acceptance and oath, but claims she has "no recollection of seeing this document, or signing it."

9/ 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.

> acquisition of Spanish citizenship, one may argue that her naturalization as a Spanish citizen was dictated by circumstances peculiar to her chosen career. To that extent, therefore, her actions were involuntary. There are mitigating circumstances, and she has sufficient ties to the United States, to support the claim that she did not intend to lose her United States citizenship. Undoubtedly Dr. R de la V performed the acts proscribed by sections 349(a)(1) and (a)(2) of the Immigration and Nationality Act of 1952, as amended. As the Supreme Court stated in Vance v. Terrazas, however, 'In the last analysis, expatriation depends on the will of the citizen rather than on the will of Congress and its assessment of his conduct.'
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> Notwithstanding the above, in view of the guidelines established by the Ninth Circuit Court of Appeals in the Richards case, Post is obligated to recommend that a finding of loss be entered in this case.

The Department approved the certificate on August 26, 1986, approval constituting an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be taken to this Board. The Embassy forwarded to appellant a copy of the approved certificate of loss of nationality and informed her of her right of appeal to the Board.

This appeal followed. Appellant contends that she did not intend to relinquish her United States citizenship when she sought and obtained naturalization in Spain. A hearing was held before the Board on January 14, 1988.

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality by voluntarily obtaining naturalization in a foreign state with the intention of relinquishing United States nationality. There is no dispute that appellant sought and obtained Spanish citizenship, nor is there any dispute that she voluntarily became a Spanish citizen. Appellant admitted in her citizenship questionnaire that her decision to become a Spanish citizen was voluntary. Her counsel also stated in his submissions to the Board that, although appellant acquired Spanish nationality to obtain employment, appellant does not argue that her actions were involuntary in the legal sense of that term; neither does she contend that she became naturalized because of economic duress.

Under section 349(c) of the Immigration and Nationality Act, a person who performs a statutory act of expatriation is presumed to have done so voluntarily. 10/ Such presumption, however, may be rebutted upon a showing by a preponderance of the evidence, that the act of expatriation was not done voluntarily. Appellant here does not seek to rebut that statutory presumption.

Although appellant voluntarily obtained naturalization in Spain, there remains the issue whether her expatriating act was performed with the intent to relinquish United States citizenship. It is settled that, even though a citizen voluntarily performs a statutory expatriating act, loss of citizenship will not ensue unless it is proved that the citizen intended to relinquish his United States nationality. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967). It is the government's burden to prove a party's intent by a preponderance of the evidence. Vance v. Terrazas, supra, at 267. Intent may be expressed in words or found as fair inference from proven conduct. Id., at 260. Such intent is to be determined as of the time the act of expatriation took place; in appellant's case, her intent when she voluntarily obtained naturalization in Spain. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

The court noted, in Terrazas v. Haig, supra, at 288; "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." The court referred to an earlier Ninth Circuit decision in King v. Rogers, 364 F. 2d 1188 (9th Cir. 1972), in which the latter court stated that the Secretary of State may prove intent by acts inconsistent with United States citizenship

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

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

Pub. L. 99-653 (approved Nov. 14, 1986), 100 Stat. 3655, repealed section 349(b) but did not redesignate section 349(c) or amend it to reflect repeal of section 349(b).

or by affirmative acts clearly manifesting a decision to accept foreign nationality.

Obtaining voluntary naturalization in a foreign state may be highly persuasive evidence of an intent to relinquish citizenship; it is not, however, conclusive evidence of the assent of the citizen. The Supreme Court stated in Vance v. Terrazas, supra, at 261:

> ...,we are confident that it would be inconsistent with Afroyim to treat the expatriating acts specified in sec. 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 (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.

In cases where the foreign state requires that an applicant for naturalization expressly renounce previous nationality while swearing an oath of allegiance to the foreign state, the courts have held that naturalization with such a renunciatory oath constitutes compelling evidence of an intent to relinquish United States citizenship. A citizen who seeks naturalization, and knowingly, understandingly, and voluntarily pledges allegiance to a foreign state and renounces United States nationality shows plainly an intent to relinquish United States citizenship. The trier of fact, however, must be satisfied there are no other factors in the record that would warrant a different result. Terrazas v. Haig, supra; Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985); Meretsky v. Department of Justice, et al., memorandum opinion, No 86-5184 (D.C. Cir. 1987).

In Terrazas v. Haig, supra, plaintiff, Terrazas, made a formal declaration of allegiance to Mexico and at the same time expressly renounced his United States nationality. The court of appeals found that there was abundant evidence that Terrazas intended to relinquish his United States citizenship when he "willingly, knowingly, and voluntarily" declared his allegiance to Mexico and renounced his United States citizenship. The court noted that Terrazas was twenty-two years of age and fluent in Spanish when he executed the application for a certificate of Mexican nationality which contained an oath of allegiance to

Mexico and the renunciation of United States citizenship. His conduct also cast doubt on his lack of intent to give up his United States citizenship. He executed the application for a certificate of Mexican nationality just one week after passing his Selective Service physical examination, and later approached United States authorities about his citizenship status after he had been classified 1-A. Moreover, when informed that he might have expatriated himself, plaintiff immediately informed his draft board that he was no longer a citizen. Finally, he executed an affidavit stating that he had taken the oath of allegiance to Mexico voluntarily with the intention of relinquishing United States nationality.

In Richards v. Secretary of State, supra, appellant, Richards, obtained naturalization in Canada in 1971 upon pledging allegiance to Queen Elizabeth the Second and declaring that he "renounced all allegiance and fidelity to any sovereign or state of whom or of which I may at this time be a subject or citizen." The court of appeals (Ninth Circuit), in affirming the district court's judgment that Richards expatriated himself, stated that "the renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." 753 F.2d at 1421. The court accepted that Richards 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 retain his employment. Appellant argued that he lacked the requisite intent because he never desired to surrender his United States citizenship; he had no wish to become a Canadian citizen independent of his employment. The court of appeals disagreed. In rejecting his argument, the court said:

> In Terrazas, the Court established that expatriation turns on the 'will' of the citizen. We see nothing in that decision, or in any other cited by Richards, that indicates that renunciation is effective only in the case of citizens whose 'will' to renounce is based on a principled, abstract desire to sever ties to the United States. Instead, the cases make it abundantly clear that a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, 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.

The plaintiff, Meretsky, in Meretsky v. Department of Justice, supra, obtained naturalization in Canada, and, in the process, swore an oath of allegiance to Canada and renounced allegiance and fidelity to the United States. Meretsky argued that he should not be found to have had the requisite intent to renounce his citizenship because he only became a Canadian citizen so that he could be admitted to the Canadian bar and practice law. The court of appeals (District of Columbia Circuit) agreed with the district court's conclusion that Meretsky intended to, and did, renounce his United States citizenship; the "oath he took renounced that citizenship in no uncertain terms." The court of appeals adopted the reasoning of the Ninth Circuit in Richards, supra, to the effect that "a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship."

Although naturalization with a renunciatory oath of allegiance to a foreign state is compelling evidence of an intent to relinquish citizenship, a different result was reached in Parness v. Schultz memorandum opinion, Civil Action 86-1456 (D.D.C. 1987). Plaintiff, Parness, signed an application for naturalization in Israel, which stated that he renounces United States citizenship. Other factors in the record negated the evidence of renunciatory intent inherent in foreswearing allegiance to the United States.

Parness, in applying for Israeli citizenship, stood at a clerk's counter to give oral answers to the clerk's questions as the clerk filled in his application form. Parness testified that he responded to what he was asked and did no more, that he was never told he would have to renounce his United States 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. Parness acknowledged that he should have read the document. He contended that his carelessness did not result from indifference to the possibility that he might lose his United Statess citizenship, but from his normal conduct of not taking the time to read what the document said. His application for Israeli citizenship was accepted, and he signed an oath of allegiance to Israel, which made no mention of renunciation of other citizenship.

The district court was unable to conclude that Parness knowingly, willingly, and intentionally renounced his citizenship. The court found that the circumstances of his naturalization application were unique. Due in part to his negligence and the carelessness of an Israeli clerk, the naturalization application was incomplete and inaccurate. The court also found his testimony at the trial highly credible, and that his demeanor, obvious sincerity and general conduct demonstrated a lack of intent to renounce his United States citizenship. The government, the court stated, failed to show

by a preponderance of the evidence that Parness ever specifically intended to relinquish his United States citizenship.

Appellant's counsel in his submissions to the Board contends that appellant's case is "virtually identical to the Parness case." We do not agree. Appellant here was informed by the Embassy prior to applying for naturalization, that naturalization, involving an oath of allegiance with a renunciation of previous nationality, would entail loss of citizenship, and, despite being aware of that possibility and fearful of the consequences, she nonetheless sought and obtained naturalization in Spain. She took the required oath of allegiance to Spain and renounced her previous nationality. Parness testified, to the contrary, that he did not even consider the possible impact of his application for Israeli citizenship on his United States citizenship and did not knowingly renounce his United States citizenship.

III

On the issue of intent, the record before us shows that the Embassy advised appellant, on January 4, 1984, prior to her applying for Spanish citizenship, that naturalization in Spain, which required an oath of allegiance to Spain and a renunciation of her United States nationality, "will entail" loss of United States citizenship. In her response to the citizenship questionnaire, which she executed in June 1986, appellant stated that she was informed that acquiring Spanish citizenship "could imply loss of citizenship," and that her intention was to become a Spanish national, "not to lose my U.S. citizenship although I was aware that the latter could be a consequence of the former." Appellant also alleges on appeal that she was told by the Embassy's consular officer that she "could" lose her citizenship. Apart from the Embassy's contemporaneous record of appellant's visit on January 4, 1984, there is no corroborative evidence that would support appellant's alleged version of the advice given her on that date.

The record also shows that appellant, on January 4, 1984, was given informational material on the relevant law. As we have seen, appellant concluded from her later reading of the material that she would not lose her citizenship unless she had the intent to give it up. It does not appear that she discussed this conclusion with the Embassy, as it related to her contemplated naturalization. Nevertheless, notwithstanding the advice of the Embassy that her voluntary naturalization in Spain, would entail loss of United States citizenship, appellant chose to act on the basis of her own interpretation of the law, and applied for Spanish naturalization at the end of January 1984.

While appellant's application for naturalization was in process, the Embassy, on June 6, 1984, in connection with the issuance of a U.S. passport to appellant, gave her additional informational material on loss of citizenship. This material, which was prepared by Passport Services of the Department, did state, as a general matter, that a person can lose United States citizenship only if he or she voluntarily performs an expatriating act with the intent to relinquish. But, it also urged citizens who have performed or intend to perform an expatriating act, or who have any questions concerning the rights and duties of citizenship, the nature of the statutory expatriating acts, or the question of intent to relinquish citizenship, to "contact" the nearest U.S. embassy or consulate. Appellant testified that this additional informational material convinced her that her earlier interpretation of the law regarding intent was correct and that she discussed the matter with friends and family. She did not "contact" the Embassy. Appellant doubtless could have obtained an official view concerning the issue of intent in the circumstances of her case.

The record further shows that appellant was granted Spanish nationality, and in that connection, swore fidelity to the King of Spain and obedience to Spanish laws, and renounced her former nationality. She subsequently registered as a Spanish citizen at the civil registry and obtained a Spanish identity card and passport.

Regarding the oath that appellant made, she stated in her citizenship questionnaire that she signed in the presence of a Spanish judge at the civil registry a statement which stipulated "that I would be faithful to the Spanish Constitution and that I renounced my previous nationality." However, in her testimony before the Board, she said that she signed an oath of allegiance to the "principles of the movement" and renounced her previous nationality. She described the proceedings at the civil registry as follows:

> ...I was given a sheet of paper to sign. The judge told me to sign there. And I read the sheet, and it was a sheet of paper with lines on it. I can't remember much else. And it said that -- swears allegiance to the principles of the movement -- or some version like that. And the second part said -- renounced to a previous nationality. I believe it said North American nationalitiy; I can't be sure.
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> I was amazed by the 'principles of the movement.' It was the tenth anniversary of Franco's death, and I was amazed at

> the texts I had. I had not expected to see that. The 'principles of the movement' referred to the Spanish Falangist Party, which were the main principles established in the thirties by the Spanish Falangist Party -- and upon which, supposedly, Franco's Government was based in the following decade. There had been several years in the Spanish Constitution, which I believe was approved in 1977 or '78.
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> So it was -- in '85 I was amazed, and I pointed it out to my lawyer. I said, 'Look at this.' He said, 'It makes no difference, sign, sign. It makes no difference now. Sign it, sign it, sign it.' So I signed it. 11/

Appellant's act of acceptance of Spanish nationality and oath, which she signed with the presiding Spanish magistrate on November 20, 1985, however, does not refer to "principles of the movement". 12/ Notwithstanding, appellant asserts in her declaration of May 21, 1988, after reviewing her signed act of acceptance and oath, that she has "a firm recollection" of being "asked to sign, and did sign" an oath swearing allegiance to "principios del movimiento". There is nothing in the record that would support appellant's testimony at the hearing or recollection in the declaration that she was constrained to sign an oath of allegiance to the "principles of the movement."

As evidence of her lack of intent to relinquish citizenship, appellant submitted affidavits of five friends, a writer and four Spanish physicians, with whom she allegedly discussed her naturalization in Spain. The five affidavits are similar in content, and merely state that the affiant spoke with appellant before she took her oath of allegiance to Spain (November 1985) and that she had no desire to lose her United States citizenship. Appellant testified that she obtained these affidavits at the request of her attorney for use on appeal and that she wrote or suggested the texts for the affiants. In the circumstances, the affidavits appear to be of a self-serving nature and of questionable probative value.

11/ TR at 54-55.

12/ See note 8, supra.

Appellant also enumerated ties that she retains with the United States. She stated that she maintains close ties with her family and friends in the United States, keeps in contact with professors at Stanford University, subscribes to Stanford publications, jointly owns a home in Virginia, votes in elections, and through the literature keeps abreast of developments in the United States. There was practically no evidence on these matters, excepting a copy of a notice, dated October 23, 1984, from the registrar of Fairfax, Virginia, denying appellant's application for Virginia voter registration because of untimely filing. In her testimony, appellant stated that, while living in Spain, she voted in United States elections in 1976, and attempted to vote in 1984. 13/

IV

Appellant's counsel argues that there are three factors that distinguish the instant case from other naturalization cases that require a renunciation of United States nationality, such as, Terrazas v. Haig, supra; Richards, supra; and Meretsky, supra. The first factor is that, before appellant applied for naturalization in Spain, the Embassy told her that she "might" lose her citizenship, and gave her informational material that said that the test for loss of citizenship was whether she intended to relinquish citizenship. It is argued that the alleged "uncertainty" of the Embassy's position on loss of citizenship and appellant's understanding that the test was intent to relinquish citizenship led her to doubt the import of the Spanish oath of allegiance and to discount the renunciatory language in the text. Further, it is argued that the consular officer should have warned appellant in no uncertain terms that she would lose her United States nationality if she took the oath of allegiance to Spain and renounced her United States nationality.

The record, in fact, does show, as we have noted, that the consular officer informed appellant that her acquisition of Spanish citizenship would entail loss of United States citizenship. And, in June 1986, in response to the question in the citizenship questionnaire, "Did you know that by performing the act...you might lose U.S. citizenship?", appellant stated that she had been duly informed by the Consulate "that my acquiring Spanish citizenship could imply loss of U.S. citizenship." Appellant, in our view, was informed and understood that her United States citizenship status was in jeopardy.

13/ TR at 74.

As to the alleged "uncertainty" of the Embassy's position on loss of citizenship, we are not persuaded that it would be practicable or proper for a consular officer to categorically state to a citizen that subscribing to a renunciatory oath would "automatically" result in loss of citizenship, as appellant's counsel asserted. The set of circumstances surrounding a voluntary naturalization in a foreign state vary greatly from case to case. Naturalization cases involving a renunciatory oath particularly require a thorough evaluation by the Department of all the circumstances surrounding naturalization before a decision on expatriation can be made.

The second factor, according to appellant's counsel, that distinguishes the instant case, is appellant's swearing to an outdated oath of allegiance to the "principios del movimiento" of the Spanish fascist party, which gave her reason to doubt the importance of the literal text of the oath. Appellant and her Spanish attorney, it is said, both understood that she was performing a bureaucratic ritual, in order to obtain a position in a Spanish hospital, and "that the words of the oath did not matter." Counsel admits that the text contained a renunciation of other allegiance, but argues that appellant did not intend thereby to relinquish her United States citizenship any more than she intended "to swear allegiance to the ghost of Francesco Franco."

Apart from appellant's testimony about an oath of allegiance to the "principles of the movement," the record is devoid of any evidence of such an oath. As we have seen, there is in the record, a copy of the act of appellant's acceptance of Spanish naturalization and renunciation of her former nationality, signed by her and the Spanish magistrate before whom she appeared on November 20, 1985. She declared therein that she swore fidelity to the King of Spain and obedience to the laws of Spain, and renounced her former nationality. Even assuming, without conceding, that appellant signed an oath of allegiance to the "principles of the movement," she does not deny that as part of the naturalization proceedings she renounced her former nationality, her United States citizenship.

As the third distinguishing factor, counsel for appellant maintains that other than the renunciatory text of the oath itself the record does not contain any facts supporting an intent to relinquish citizenship. To the contrary, it is said that the record contains clear and overwhelming evidence that appellant did not intend to relinquish her citizenship. Appellant was only told by a consular officer that she might lose her citizenship; she subscribed to an outdated oath of allegiance, which led her to believe that the literal text of the oath was meaningless. Counsel contends that appellant's strong family ties to the United States, her ownership of property and voting in local elections, completing the Embassy's

citizenship questionnaire, and pursing this appeal -- further demonstrate her intent to retain her United States citizenship.

As noted above, the courts have held that a citizen, who, while obtaining foreign naturalization, voluntarily, and knowingly takes an oath of allegiance to the foreign state that includes a renunciation of United States nationality, demonstrates an intent to relinquish United States citizenship. The voluntary taking of such an oath "is ordinarily sufficient to establish a specific intent to renounce United States citizenship." Richards v. Secretary of State, supra, at 1421. Appellant, in our view, has not produced evidence sufficient to offset or contravene the oath she took whereby she renounced her previous United States nationality.

We believe that appellant's statements and conduct, viewed in entirety, establish the indispensable voluntary assent of the citizen to relinquish United States citizenship at the time she obtained naturalization. Her contention that she did not intend to give up her United States citizenship is contravened by her voluntarily becoming naturalized on her own application, by taking an oath of allegiance to Spain, by renouncing her United States nationality, and by registering as a Spanish citizen.

That appellant knowingly and willingly sought and obtained naturalization in Spain appears unquestionable. The Supreme Court in Terrazas v. Haig, supra, recognized that voluntary naturalization in a foreign state may be highly persuasive evidence of an intention to relinquish citizenship.

It is also clear that appellant gave her full consent to accept Spanish nationality with the knowledge that she may lose her United States citizenship. In her citizenship questionnaire she stated that she was informed by the Embassy that her impending naturalization "could imply loss of citizenship" and that she was aware that loss of United States citizenship "could be a consequence" of becoming a Spanish national. Appellant doubtless did not desire that consequence; nonetheless, she acted with that knowledge. Appellant, who has lived in Spain since 1973, is a medical doctor, well-educated and fluent in Spanish. We believe she knew and understood what she was subscribing to when she took the legally required oath and renounced her previous nationality.

Further, during the period appellant sought naturalization, she could have easily obtained an official view concerning her own interpretation of the law and the Embassy's informational material on the question of intent to relinquish citizenship. Instead, appellant relied on her own judgment that she would not lose her citizenship. She proceeded at her own risk in acquiring Spanish citizenship.

Upon consideration of the evidence of record and taking into account the facts and circumstances surrounding appellant's naturalization in Spain, we are of the view that appellant's naturalization was accompanied by an intent to give up citizenship. In our judgment, the Department has satisfied its burden of proving by a preponderance of the evidence appellant's expatriating act was performed with the intent to relinquish United States citizenship.

V

On consideration of the foregoing, we hereby affirm the Department's determination that appellant expatriated herself.

Alan G. James, Chairman

Edward G. Misey, Member

Frederick Smith, Jr., Member