DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: H[redacted] H[redacted] W[redacted]

This is an appeal from an administrative determination of the Department of State, dated August 14, 1986, that appellant, H[redacted] H[redacted] W[redacted], expatriated himself on May 12, 1970 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Poland upon his own application. 1/

Although we conclude that appellant voluntarily obtained Polish nationality, we are of the opinion that the Department has not carried its burden of proving that he intended to relinquish his United States nationality. Accordingly, we reverse the Department's holding that appellant expatriated himself.

I

Appellant W[redacted] acquired United States citizenship by virtue of his birth at [redacted]. According to his submissions, he had a disturbed childhood and received a limited education. In 1949, at age 18, he enlisted in the United States Army in order, as he put it, to get an education. Shortly after North Korea invaded South Korea, his unit was ordered to Korea where it arrived in August 1950 and immediately went into action. Appellant was captured by Chinese forces in December 1950 and for the next three years was a prisoner of war. When the armistice was signed in 1953, he refused to be repatriated with other American prisoners of

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1/ In 1970 when appellant obtained Polish citizenship, 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 (Nov. 14, 1986), 100 Stat. 3655, amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

war, to protest against U.S. involvement in the war. 2/ He allegedly wanted to go home but did not believe he could criticize U.S. policy and work for peace "in McCarthy's America." 3/

Instead, he requested that he be turned over to the Neutral Nations Commission. In January 1954 he elected to go to China where he spent the next six years. He states that he completed his high school education and received a degree from Wuhan University. While living in China appellant met a Polish woman to whom he became engaged. He travelled to Poland in 1960 and there married his fiancee. Upon settling in Poland appellant allegedly was issued a residence card that listed him as a stateless person.

From 1960 to 1968 appellant's life in Poland appears to have been uneventful. He was a private tutor of English, his wife a university teacher. The couple later separated, and in 1968 were divorced. That same year appellant married another Polish citizen by whom he has two children.

Following the Soviet invasion of Czechoslovakia in August 1968, "tnings became very tense" in Katowice where appellant and his wife lived, and "people were especially suspicious of foreigners." 4/ From then until he obtained Polish citizenship in May 1970, appellant was allegedly interrogated at his home by the police at least six to eight times during that period. 5/ The visits of the police alarmed appellant and his wife, who feared that the police were trying to build a case against him. 6/ Appellant was particularly concerned about what might happen to him after his wife became pregnant in the fall of 1969, and was anxious to protect her against worry and harrassment. 7/ At his wife's urging, appellant told his employer, Maciej Szczepanski, Editor-in-Chief of the "Peoples Daily Tribune" and a prominent political figure, about the police visits, and asked him what he should do. 8/ Szczepanski reportedly advised

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2/ Affidavit, October 9, 1987, p. 7.

3/ Id.

4/ Id., p. 13.

5/ Id. p. 14.

6/ Id. p. 14, 15, 16.

7/ Id. p. 16.

8/ Id. p. 16.

appellant that the best way to protect his family and himself would be to acquire Polish citizenship. 9/ With the help of one of his English-language students, appellant composed a letter to the Polish authorities, stating that he had been a prisoner of war in Korea, had lived in Poland since 1960, was married to a Polish citizen and sought Polish citizenship "for my safety and security." 10/ A short time later, Szczepanski handed appellant a document which stated that appellant was a Polish citizen. 11/

The record shows that the Council of State granted Polish citizenship to appellant by decree dated May 12, 1970, pursuant to articles 8 and 16 of the Polish Citizenship Law of February 15, 1962. 12/ According to appellant, he was not required to renounce his United States nationality or even to make an oath of allegiance. 13/ There is no evidence of record to the contrary.

From 1970 to 1985 appellant continued to live in Poland. He retired on a pension in 1982. Having been invited by his sister to visit her in the United States, appellant went to the United States Consulate at Krakow in the early summer of 1985 to find out what documents he would need. He was referred to an officer responsible for consular services to American citizens who said he was very busy and could spare appellant only a few minutes. 14/ Appellant told the consular officer that he was

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9/ Id.

10/ Id.

11/ Id.

12/ Article 8 provides that "1: "An alien may, upon application, be granted Polish citizenship if he or she has resided in Poland for five years.... and 3. Conferrral of Polish citizenship may depend on submittal of proof of loss of or release from foreign citizenship."

Article 16.1 provides that: "Conferral, permission for change, and deprivation of Polish citizenship are decided by the Council of State."

English translation, Division of Language Services, Department of State, LS No. 125219, 1988 (Polish).

13/ Affidavit, p. 16.

14/ Id. p. 19.

an American who had stayed in Korea. 15/ In response to the officer's inquiry whether he would like to travel on a United States passport, appellant said he didn't know whether it made a difference or not. 16/ The officer then referred him to the visa section where a B-2 visa (visitor for pleasure) was stamped in appellant's Polish passport. He entered the United States a few days later.

In the Autumn of 1985, the Immigration and Naturalization Service (INS) informed the Department that it intended to initiate deportation proceedings against appellant, and requested the Department's assistance in securing evidence of appellant's acqusition of Polish citizenship. The Department informed the Embassy at Warsaw of INS' intention to deport appellant, noting that he had advised INS that he was a United States citizen and wished to remain in the United States and have his family join him here. The Department requested that the Embassy check its records and forward any information it held on appellant. The Department's telegram was answered by the Consulate at Krakow which reported that it had issued a visa to appellant, adding that: "Interviewing officer's notes do not indicate whether subject's claim to citizenship was discussed during interview. Post has no further information."

The Department thereafter directed both the Embassy and the Consulate to submit a summary of Polish naturalization laws and the texts of such oaths of allegiance and renunciation of former citizenship as might be required in connection with naturalization. The posts were also asked to obtain confirmation of appellant's naturalization from the Polish authorities. In its telegram, which appears to have been addressed to both the Embassy and Consulate, the Department requested that the Information it sought be sumitted "under cover of OM [Operations Memorandum] with consular officer opinion." In due course, the Consulate forwarded to the Department a copy of appellant's application for a non-immigrant visa, and the Embassy forwarded copies of the relevant Polish law and the Polish Government's confirmation that appellant had obtained naturalization upon his own application. 17/ The record contains no opinion of a consular officer at the Consulate in Krakow regarding appellant's case.

15/ Id.

16/ Id.

17/ Diplomatic Note, Polish Ministry of Foreign Affairs to the United States Embassy, March 6, 1986. English translation Division of Language Services, Department of State, LS No 125219, 1988 (Polish).

Appellant applied for a United States passport at Louisville, Kentucky in January 1986, and in February completed a questionnaire to facilitate determination of his citizenship status. His passport application was forwarded to the Department for decision. The Department official to whom appellant's case was assigned interviewed appellant a number of times by telephone, "between eight and ten times and I suspect it was more than that," she testified during oral argument, adding that on occasion appellant called her as well. 18/ Shortly after the official interviewed appellant at some length on June 18, 1986, the Department instructed the Consulate at Krakow to execute a certificate of loss of nationality in appellant's name. This the Consulate did on July 23, 1986. 19/ It certified that appellant acquired United States nationality by virtue of birth in the United States; acquired the nationality of Poland by virtue of naturalization; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department approved the certificate on August 14, 1986, and sent a copy to appellant and to the Immigration and Naturalization Service. Approval of the certificate constitutes a determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. On August 5, 1987 counsel for appellant entered this appeal on his behalf. A hearing at which appellant and his counsel were present was held before the Board on February 18, 1988.

18/ Transcript of hearing in the Matter of H[redacted] H[redacted] W[redacted], Board of Appellate Review, February 18, 1988 (hereafter referred to as "TR") p. 154.

19/ 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.

II

The statute prescribes 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. 20/

There is no dispute that appellant obtained naturalization in Poland upon his own application, and thus brought himself within the purview of the applicable provisions of the statute. The issues for decision therefore are whether he acted voluntarily and with the intention of relinquishing his United States nationality. We address first the issue of voluntariness.

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. 21/

Appellant asserts that his naturalization in Poland was not an act of his own free will but was coerced. The police

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

21/ 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), 100 Stat. 3655, repealed section 349(b) but did not redesignate section 349(c) or amend it to reflect repeal of section 349(b).

visits to his home that began around the time of the Russian invasion of Czechoslovakia and continued until May 1970, when he obtained Polish citizenship, so alarmed appellant and his wife that they concluded he was in danger of being taken away. 22/ After consulting his employer, Szczepanski, who allegedly had great influence in Silesia where appellant lived, and being advised that he could most effectively protect himself and his family if he were to obtain Polish citizenship, appellant saw his choice as one between prison and performing an expatriative act; this was not a choice, he contends, of his own making. 23/ Under governing case law, argues counsel for appellant, the alternative to performing an expatriative act does not have to be life-threatening; the threat of separation from his wife and unborn baby for an indefinite period and imprisonment was more than sufficient to constitute duress. "An act is involuntary," counsel submits, "if the consequences of not doing it are such that a normal person would be reluctant to suffer them." 24/

Duress connotes absence of choice. It means lack of an alternative to doing an expatriative act because the consequences of not doing the proscribed act would be demonstrably graver than risking one's United States citizenship. Even if we were to concede that appellant's fears of arrest during the period 1968-1970 were genuine, his performing an expatriative act in order to avert that calamity, cannot, as a matter of law, constitute a valid defense unless he is able to establish (as he obviously has the burden to do) that he had no meaningful way to protect himself and his family except by becoming a Polish citizen.

The cases make it clear that in order for a defense of duress to prevail, the party pleading it must show that he attempted to find a way to eliminate a threat to his well-being that would not require him to place his United States citizenship in jeopardy. See Richards v. Secretary of State, 752 F.2d 1413, 1419 (9th Cir. 1985): "...it does not appear that, upon becoming aware he would have to renounce his United States citizenship in order to acquire Canadian citizenship, Richards made an attempt to find employment that would not

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22/ TR 42.

23/ Appellant also argues that once having consulted Szczepanski and been advised to obtain Polish citizenship, his freedom of choice was even more restricted. He could scarcely ignore the advice of someone as powerful as Szczepanski without running the risk of alienating him and being made to regret it. TR 46, 47.

24/ Opening Brief, p. 14.

require him to renounce his United States citizenship." Plaintiff in Schioler v. United States, 75 F.Supp. 353 (N.D. Ill. 1948) established that her naturalization as a Danish citizen during the German occupation of Denmark was involuntary because it was the only way she could protect herself and her children from the Germans, departure from territory occupied by the Germans obviously having been impossible. Similarly, Doreau v. Marshall, 170 F.2d 721 (S.D.N.Y. 1948).

Appellant has not established that he could not have protected his wife and himself as effectively by leaving Poland as by obtaining naturalization. As a United States citizen he was free to leave Poland at any time. To do so he simply needed to obtain a United States passport from either the Embassy at Warsaw or the Consulate at Krakow. As far as we can discern, appellant could have left Poland without leaving his wife in the lurch. Although pregnant, she apparently was not unwell. Poland was her home and she had close family near by. Furthermore, it is not unreasonable to assume that if appellant had left the country, his wife would not have been further harrassed. (We appreciate, of course, that appellant was naturally reluctant to leave his wife and unborn child behind, but he did so in 1985 under circumstances that were less auspicious for family reunification than in 1968-1970.) Appellant, however, did not seriously consider leaving Poland.

Appellant explains his decision not to leave Poland on the basis that he was afraid to approach the Consulate at Krakow for any kind of assistance. "I felt that there was a great possibility since I was an American citizen they would be able to take me in and get me out of Poland and I would suffer the consequences of my protest in Korea." 25/ Moreover, he was afraid that if he returned to the United States he would be punished for not returning to the United States after the Korean war. 26/ What he read in American magazines to which he had access about protests in America over the Viet Nam war and the way the police handled the protestors made him fearful that as a Korean war protestor he might get equally harsh treatment.

We are unable to accept that in 1968-1970 appellant had a well-founded fear that if he decided to return to the United States the Consulate would deny him a passport and that he would be singled out and upon arrival in the United States punished or officially discriminated against. We are all the more unable to accept appellant's reasons for not extricating himself from a

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25/ TR 49.

26/ TR 52.

difficult situation since there is not a scintilla of evidence that appellant made the slightest attempt, either directly or through an intermediary, to find out what his position would be if he were to return to the United States. (We dismiss as unworthy of discussion his suggestion that the Consulate might abduct him.) How therefore can appellant maintain that he was justified in not stopping the alleged police harrassment by returning to the United States when he made no effort to find out if his concerns about returning had any basis in fact?

In our opinion, appellant has failed to show that he lacked a reasonable alternative to procuring naturalization in Poland. We therefore conclude that he has not rebutted the statutory presumption that his naturalization was voluntary.

III

There remains to be determined the issue whether appellant intended to relinquish his United States nationality when he obtained naturalization in Poland upon his own application. Under the holding of the Supreme Court in Vance v. Terrazas, 444 U.S. 252, 263 (1980), the government (here the Department of State) bears the burden of proving that the party concerned performed the statutory expatriating act with the intent of relinquishing his United States citizenship. The government must prove such intent by a preponderance of the evidence. Id. at 267. Intent, the Court declared, may be expressed in words or found as a fair inference from the party's proven conduct. Id. at 260. It is the individual's intent at the time the expatriating act was performed that the government is required to prove. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

The Department submits that appellant's naturalization in Poland is the initial evidence of his intent to relinquish United States citizenship. Beyond this, his overall attitude and entire course of conduct reflect a disinterest and lack of concern about his United States citizenship that suffice to permit one to infer that he intended in 1970 to relinquish his citizenship. The Department argues that appellant's specific intent to relinquish citizenship is illustrated by the following factors:

> -- Once naturalized, he thought of himself as an ex-American who had married a Polish citizen and intended to reside in Poland permanently.
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> -- He failed to maintain registration as a U.S. citizen; and he never registered the births of his children, or had any contact with United States authorities for 30 years.

-- He obtained naturalization without first ascertaining its consequences for his American citizenship.

-- As an educated man, he must have been cognizant of the ramifications of his actions in 1970. Now his situation has changed and he wants to reclaim his lost citizenship.

At the hearing the Department also developed the argument that appellant's obtaining and using a visa in his Polish passport to enter the United States is further evidence of an intent to relinquish his United States nationality.

Obtaining naturalization in a foreign state may be highly persuasive (but not conclusive) evidence of an intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. at 261. However, since appellant did not make an oath of allegiance or renounce his United States citizenship, his obtaining foreign naturalization can hardly be considered very compelling evidence of an intent to relinquish United States nationality. The only hard facts dating from 1970 are appellant's application for and acceptance of Polish citizenship, facts in themselves legally insufficient to support a finding of intent to relinquish United States citizenship. Circumstantial evidence must therefore be examined to determine whether it supplies the requisite intent. Terrazas v. Haig, supra, at 288. We are interested not only in the time when appellant became a Polish citizen but also the time thereafter. His conduct prior to 1970, particularly in 1953 after he was released from prison camp in Korea, is not, in our judgment, relevant to the state of his mind seventeen years later.

In weighing the circumstantial evidence that the Department presents to support its contention that appellant intended in 1970 to abandon United States citizenship, the test to be applied is whether that evidence is so expresssive of a will and purpose to surrender citizenship that the trier of fact may fairly conclude it is more likely than not that appellant intended to relinquish his citizenship.

To construe a person's words and conduct after performance of a particular act in order to determine the intent with which the act was done is, of course, an accepted method of evidential inquiry. Still, as we have asserted in a number of cases where, as here, the case turned on the probative weight to be given to circumstantial evidence, the device of gauging earlier intent from later conduct should be used circumspectly. Absent words or conduct in derogation of allegiance to the United States one should draw adverse inferences with a great deal of care. This should be so because "when we deal with

citizenship we tread on sensitive ground," 27/ and because in such proceedings "the facts and the law should be construed as far as is reasonably possible in favor of the citizen." 28/ Furthermore, except where a party's words or conduct do indicate a clear purpose, there is quite a bit of room for erroneous interpretation.

The factors in appellant's case upon which the Department seems to rely most heavily are: he was married to a Polish citizen, and once naturalized intended to live in Poland permanently; did not assert a claim on behalf of himself or his children to United States citizenship for many years; and obtained a United States visa in his Polish passport. We consider these factors totally insufficient to support a finding that appellant intended in 1970 to relinquish his United States nationality.

On what logic can living abroad for many years, even animo manendi, be considered an indication that when one did an expatriating act one intended to relinquish United States citizenship? "A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship....Living abroad....is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance. It may be compelled by family, business, or other legitimate reasons." Schneider v. Rusk, 377 U.S. 163, 169 (1964).

Of course appellant was unwise not to assert a claim to United States citizenship well before he finally did so. He was irresponsible not to think about documenting or attempting to document his children as United States citizens. He claimed in his submissions and at the hearing that he was fearful about visiting the Consulate in Krakow. Although we do not consider his alleged fear persuasive in connection with his contention that he became naturalized involuntarily, he may well have perceived that he would invite trouble if he were to consult or seek assistance from the Consulate. The point is that as triers of fact we cannot feel very confident that the fact he shunned United States authorities for so long was, more likely than not, because he had really intended to relinquish United States nationality in 1970.

The Department contends that appellant's use of a United States visa in his Polish passport to visit the United States in

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27/ United States v. Minker, 350 U.S. 179, 197 (1956).

28/ Nishikawa v. Dulles, 356 U.S. 129, 134 (1958).

1985 indicates that appellant intended to relinquish his United States citizenship. We find this argument unsustainable. Close examination of the circumstances surrounding issuance of a visa to appellant reveals, on the contrary, a lack of intent to surrender his American nationality.

Appellant visited the Consulate at Krakow in July 1985 after receiving an invitation from his sister to visit her in the United States. At the entrance to the Consulate he met a man (actually a consular officer) to whom he identified himself as "an American, an ex-prisoner of war that refused to go home after the war, and I want to know the possibilities of visiting my family,..." 29/ The official told appellant not to get in the visa line, and directed him to another office where appellant said he understood there would be "an armed service officer" (sic - actually American Services Officer). 30/ Upon meeting appellant, the second consular officer said he had only five minutes to spare and asked what did appellant want. "I began to tell him," appellant stated, "that I am an ex-prisoner of war from Korea. I refused to go back." 31/ The consular officer indicated that he had spoken to his colleague at the door and knew appellant was a former POW. The consular officer then asked appellant if he wanted to travel on an American passport. Apellant replied that he did not know whether it made any difference. 32/ The officer then wrote something on the back of his calling card, and told appellant to take it to the visa section. 33/ The interview lasted less than five minutes. 34/ Appellant completed an application for a visa, entering "Polish" in the box marked "Citizenship." 35/ He received a non-immigrant visa shortly afterwards.

29/ TR 55.

30/ TR 56.

31/ Id.

32/ TR 57.

33/ Id. The consular officer wrote: "Ex-U.S. cit. - war veteran - to visit sister - recommend issuance." Appellant allegedly did not read the notation until after he received his visa.

34/ Id.

35/ Appellant indicated that he was hesistant about what to write in the citizenship block. "I considered whether to put American or to put Polish and I marked it over several times that way." TR 77. As noted, he finally wrote "Polish."

At the hearing the official who was the American Services Officer in 1985 at Krakow testified that he recalled asking appellant whether he wanted a passport or a visa, although he acknowledged that he realized at the time appellant was an American citizen. 36/ He said that appellant explained the circumstances of his life in Poland, and showed him a Polish passport but "I didn't ask a lot of questions. That particular morning it was very rushed for me." 37/ The officer acknowledged that he should not have handled appellant's case the way he did. "[Appellant] was not interviewed in depth as he should have been." 38/ Referring to the fact that appellant had a claim to United States citizenship, the officer stated at the hearing that under standard procedures "you cannot give them a visa....They must either be documented as an American citizen or they must renounce their American citizenship. 39/ He was, however, under the impression that appellant wanted a visa. "He didn't indicate he was interested in pursuing the claim and I didn't offer any further information on it at that point. To me, it was a visa case." 40/ Asked: "...you don't think anything that you might have said would have led him to believe that if he went the visa route, he might be jeopardizing his status as a citizen in any way," the officer replied, "No, no." 41/ By sending appellant to the visa section, the officer conceded he had closed the door to exploration of the issue of appellant's claim to United States citizenship. 42/ "I was negligent in doing my tasks as they should have been done," he stated forthrightly. 43/

In determining what the fair inference may be drawn from appellant's acquisition of a visa to enter his native country, we must first note that appellant should have pressed his claim to be documented as a United States citizen, although he allegedly feared (with what justification he did not say) that

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36/ TR 116.

37/ Id.

38/ TR 118.

39/ TR 118, 119.

40/ TR 119.

41/ TR 144.

42/ TR 137.

43/ TR 139.

if he were to try to leave Poland on a United States passport the Polish authorities might bar his way. The consular officer who recommended that appellant get a visa had the greater duty, however. As he conceded with laudable candor, he erred in not making time to clarify appellant's citizenship status and in not warning appellant that if he were to obtain and use a visa to enter the United States, he might signal that it had been his intent when he became a Polish citizen to transfer his allegiance to Poland from the United States. Since there was no development of appellant's case in Krakow and since he was allowed to apply for and receive a visa without the slightest effort being made to clarify his citizenship status, the fact that he used that visa in 1985 cannot give rise to an inference that appellant intended in 1970 to relinquish his United States nationality.

In this appeal, as in all loss of nationality appeals, the Board's responsibility is to determine whether the Department has made a convincing case that the appellant had a renunciatory state of mind when he performed a statutory expatriating act. The evidence here dating from 1970 when appellant became a Polish citizen is exiguous. Having examined the rather hapless situation in which appellant found himself in 1970, we do not find it difficult to believe that he might not have given any thought in 1970 to the possible consequences for his United States nationality of obtaining Polish citizenship. And his words and conduct after naturalization, which objectively are susceptible of more than one fair construction, do not illuminate with any satisfactory degree of clarity the issue of his intent in 1970. Appellant has shown himself short on civic responsibility; his lapses suggest indifference to the precious right of American citizenship. But the object of the task with which we are charged is to determine whether he intended, more probably than not, to divest himself of United States citizenship in 1970. The evidence the Department has presented to us is insufficient to convince us that such was his intent.

Accordingly, we conclude that the Department has not carried its burden of proof.

IV

Upon consideration of the foregoing analysis, it is our conclusion that appellant did not expatriate himsel when he obtained naturalization in Poland. Accordingly, we hereby

reverse the Department of State's determination of loss of his United States nationality.

Alan G. James, Chairman

Edward G. Misey, Member

Mary Elizabeth Hoinkes, Member