DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: F J H , III

The Department of State made a determination on June 21, 1988 that F J H , III expatriated himself on January 23, 1975 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/ Through counsel H filed a timely appeal from the Department's determination of loss of his nationality.

The sole issue to be determined is whether appellant intended to relinquish his United States nationality when he obtained naturalization in Canada. For the reasons given below, we conclude that appellant so intended. Accordingly, we will affirm the Department's holding that appellant expatriated himself.

I

Appellant, F J H , III, upon his birth in [redacted], New Jersey on [redacted] became a citizen of the United States. He registered for selective service at age 18. In 1967 he graduated from Rutgers University with a B.Sc. degree in electrical engineering. On May 4, 1968 he married a United States ctizen, and moved with her to Canada, allegedly in protest against U.S. military service. Appellant was granted landed immigrant status in Canada in July 1968. In September 1969 he received an order to report for a United States armed forces physical examination but did not comply. In June 1973 he obtained a United States passport from the Consulate General at Toronto.

1/ In 1975 section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read in pertinent part as follows:

> Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --
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> (1) obtaining naturalization in a foreign state upon his own application,...

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".

In July 1973 while crossing from Canada into the United States appellant was arrested. He was convicted in the U.S. District Court for the District of New Jersey in November 1973 of violating the Selective Service Act and placed on probation for a period of three years. He was, however, granted permission to return to Canada to finish his studies for a master's degree and to travel freely across the border. In early 1974 appellant and his wife were divorced. Later that year he applied to be naturalized in Canada. In December he received a M.Sc. degree from the University of Toronto and began study for a doctorate at McMaster University. Appellant was granted a certificate of Canadian citizenship on January 23, 1975 at which time he made the following oath of allegiance:

> I swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors, according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen, So help me God.

Both before and after he obtained naturalization in Canada appellant allegedly had no difficulty in crossing the border from Canada into the United States. In the summer of 1975, however, he states he was stopped and asked for proof that he was a United States citizen. Unable to produce satisfactory evidence of citizenship, he was denied entry. Appellant states that he later inquired of the Immigration and Naturalization Service (INS) in Buffalo how he might ensure that he would be able to enter the United States. According to appellant, the INS advised him to fill out form I-191, "Application for Advance Permission to Return to Unrelinquished Domicile." Appellant completed and filed the form in August 1976. In it he asked the Attorney General for permission to return to the United States under the authority of section 212(c) of the Immigration and Nationality Act. 2/ In the form, appellant declared

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2/ Section 212(c) of the Immigration and Nationality Act, 8 U.S.C. 1182(c), provides in pertinent part as follows:

> Sec. 212. (a) Except as otherwise provided in this Act, 27/ the following classes of aliens shall be excluded from admission into the United States:
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> . . .
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> (c) Aliens lawfully admitted for permanent residence who temporarily

inter alia that he was a citizen of Canada; was born in the United States where he had lived until 1968 when he went to Canada; and for the past seven years had lived in Canada. Since the form required that the applicant state any reasons he believed he might be inadmissible, appellant appended a statement explaining that he wanted to be able to return to the United States to visit his parents and son; and that he had been convicted of draft evasion and placed on probation, but in November 1975 had been discharged from probation. Appellant concluded by stating that: "I may now be inadmissible, as after becoming a Canadian citizen (Jan. 23, 75)."

Around the time appellant submitted form I-191 to the INS in Buffalo, his attorney at his request wrote to the same INS office:

> We are and have been for a number of years attorneys for the above-named who is now a Canadian citizen after having taken up residence in Canada and satisfactorily completed the terms and conditions of sentence for violation of the Selective Service Act. See copy of Discharge Order dated November 3, 1975, attached.
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> Mr. H has recently encountered difficulties in being able to enter this country to visit his family. We would very much appreciate your providing us with a definitive statement supported by reference to and copies of all pertinent rules and regulations as to his status and his

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2/ (cont'd.)

> proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraph (1) through (25) and paragraphs (3) and (31) of subsection (a).
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> 27/ [Footnote omitted.]

> rights. We would appreciate your doing this in conjunction with your review of an application which you now have pending from him for permission to visit in this country.

By letter dated March 16, 1977, an INS official informed appellant that:

> On January 21, 1977 President Carter granted complete and unconditional pardon to all who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the military Selective Service Act.
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> Your application for consideration under 212(c) of the Immigration and Nationality Act is no longer necessary for readmission to the United States.

The record does not indicate whether the INS responded to appellant's attorney's letter requesting clarification of his clients status.

Appellant continued to live, work and study in Canada. In 1978 he married a citizen of Trinidad and Tobago. Two children were born of that marriage. When his United States passport expired in 1978, appellant allegedly went to the Consulate General at Toronto to renew it. During oral argument, appellant stated that he could not remember the details of his conversation with the person who dealt with him, "but I did mention that I had a Canadian one [it appears he obtained one in 1976] and I was told I could [not] have two passports and I believed them. I wonder why now. But I let the U.S. passport lapse, and from then on I just renewed the Canadian one." 3/

Appellant received a doctorate in geology from McMaster University in 1982. Two years later in 1984 he accepted a temporary appointment at California State College,

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3/ Transcript of hearing in the Matter of F . J H , III. Board of Appellate Review, March 1, 1989 (hereafter referred to as "TR"). TR 48.

Appellant renewed his Canadian passport in 1981 and 1986.

Bakersfield, California. Allegedly for reasons of expediency (he says the INS told him he could enter the United States more quickly on an H-1 visa - temporary worker of distinguished merit and ability - than if he tried to document his U.S. citizenship), he entered the United States in November 1984 on an H-1 visa. HIs wife and children entered on H-4 visas (spouse and children of an alien classified as H-1). Appellant worked at the College until August 1985. In October 1985 he was hired by the Colorado Department of Health, Air Pollution Control Division. Change of employers necessitated further dealings with INS to obtain authorization to remain in the United States. It appears that appellant and the Colorado Department of Health filed forms to request authority for appellant to take up permanent employment, but for reasons that are not entirely clear or pertinent to our disposition of the case, permission was not granted. The INS in Denver informed appellant on April 3, 1986 that his application for an extension of temporary stay in the United States had been denied. He was granted voluntary departure by May 3, 1986. After receiving the foregoing information, appellant visited the INS office. "I said," appellant stated at the hearing, "'Well, all I was trying to do is what you people told me to do, and then I did what you told me to do again. And then, you know, I tried it one more time. What should I actually do?' And they told me: 'Probably the best thing for you to do is to take out - get a green card.'" 4/

Shortly afterwards appellant retained his present counsel who suggested that the best course of action would be to obtain a determination of his citizenship status. Against the possibility of an adverse determination of citizenship, appellant's parents filed a petition for a fourth preference visa for him and his family in July 1986. After the petition was approved, INS forwarded it to the Consulate General at Toronto. The Consulate General then informed appellant, who was then still living in Colorado and working for the Colorado Department of Health, by letter dated September 25, 1986, that: "Before any processing can be initiated on your immigrant visa application, you are required to contact U.S. Immigration Service and have your citizenship adjudicated with them, and have them notify this office of their findings." It does not appear that appellant discussed his citizenship status with the INS. Rather, in September 1987, he applied for a United States passport in Denver. Since appellant's application raised the issue of his citizenship status the passport agency concerned referred his application to the State Department for decision. At the Department's request, appellant completed two

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4/ TR 56.

questionnaires to facilitate determination of his citizenship status and returned them to the Department in early 1988. The Department completed its review of appellant's case in May, and informed the Consulate General in Toronto that it had concluded, on the basis of appellant's proven conduct since his naturalization in Canada, that he intended to expatriate himself when he obtained Canadian citizenship. Accordingly, it instructed the Consulate to execute a certificate of loss of nationality (CLN) in appellant's name and to inform the Department whether the Consulate General agreed with the Department's conclusion. 5/ The Department added that it had informed the Seattle Passport Agency that appellant's passport application was denied.

On June 10, 1988, an officer of the Consulate General at Toronto executed a CLN in appellant's name. Therein the officer certified that appellant acquired United States nationality by virtue of his birth therein; that he obtained naturalization in Canada upon his own application; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Consulate General forwarded the CLN to the Department. Attached to and made part of the CLN was one document: a statement from the Canadian authorities attesting to appellant's naturalization. The consular officer also submittted an opinion agreeing with the Department's conclusion that appellant expatriated himself.

The Department approved the certificate on June 21, 1988, approval being an administrative determination of loss of

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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.

nationality which may be appealed to this Board. 22 CFR 7.3(a). An appeal was entered through counsel in September 1988. Oral argument was heard on March 1, 1989.

II

Section 349(a)(1) of the Immigration and Nationality Act prescribes that a national of the United States shall lose his nationality by voluntarily obtaining naturalization in a foreign state upon his own application with the intention of relinquishing United States nationality. 6/

The record establishes that appellant H duly obtained naturalization in Canada upon his own application, and thus brought himself within the ambit of the relevant provisions of the statute. Furthermore, appellant concedes that he obtained naturalization voluntarily. Thus, the sole issue to be determined is whether he intended to relinquish United States nationality when he acquired Canadian citizenship.

III

Intent to relinquish citizenship is an issue that the government has the burden to prove. Vance v. Terrazas, 444 U.S. 252, 262 (1980). Intent may be proved by a person's words or found as a fair inference from proven conduct. Id. at 260. The standard of proof is a preponderance of the evidence. Id. at 267. Proof by a preponderance means that the government must show that it was more probable than not that appellant intended to forfeit his United States nationality when he acquired Canadian citizenship. 7/ The intent the government must prove is the party's intent at the time the expatriative act was performed. Terrazas v. Haig, 653 F.2d 285, 288 (7th Cir. 1981).

6/ Text note 1 supra.

7/ "The most acceptable meaning to be given to the expression, proof by a preponderance, seems to be proof which leads the jury to find that the existence of the contested fact is more probable than its non-existence. 12/ Thus the preponderance of evidence becomes the trier's belief in the preponderance of probability." McCormick on Evidence (3rd ed.), Section 339.

12/ [Footnote omitted]

The Department concedes in its brief that the contemporary evidence will not support a holding that he intended to relinquish United States nationality, but contends that appellant's words and conduct after naturalization "clearly show an intent to relinquish his U.S. citizenship." Specifically, the brief makes the following argument for a finding that appellant intended to forfeit his citizenship:

> ...Appellant now claims he did not intend to relinquish his citizenship when he became a Canadian. Yet, only a year and a half after that event -- while he still possessed a U.S. passport -- he chose to be regarded as an alien. Identifying himself in an application form as a Canadian citizen -- and without reference to any possible claim to American citizenship -- he sought permission to enter the U.S. as a [sic] alien, pursuant to Section 212(c) of the Immigration and Nationality Act. 8/ Coming so close on the heels of his naturalization, this application, we believe, can fairly be held to reflect on his intent at the time of naturalization. And, Mr. H 's subsequent entries into the U.S. eight and ten years later on non-immigrant visas, where he again had to hold himself out to be an alien 9/, show a continued and sustained intent on his part to repudiate U.S. citizenship. 10/
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> It was not until over ten years after F H became naturalized as a Canadian and during which time he entered the U.S. as an alien, that he expressed interest in a claim to U.S. citizenship. Appellant has not explained why -- if he believed he was a dual national -- he held himself out as an alien for such an extended period of time. In our view, it is significant that when he finally expressed interest in establishing a claim to U.S. citizenship, his circumstancs had changed and he had been offered continued employment in the United States. Then, having been denied a request for extention [sic] of stay as an alien, his only recourse was to seek to stay as a U.S. citizen. In sum, it

is our view that F H had shown a clear intent to abandon his U.S. citizenship and that it was only a change in circumstances some ten years later that prompted him to reverse that decision.

8/ We note in this connection that the Immigration and Naturalization Service has primary authority to determine the citizenship of persons in the U.S., regardless of where they were born, 8 U.S.C. 1103.

9/ A national of the United States may not be issued a visa or other documentation as an alien for entry into the U.S. 22 CFR 41.3.

10/ Appellant suggests that he chose to enter the U.S. on non-immigrant visas because this would be faster then [sic] re-establishing documentation as a U.S. citizen. If indeed this was his reasoning, it does not explain why he did not otherwise attempt to clarify his citizenship status, particularly since he was aware of the INS determination in this regard as early as 1976.

A

Before proceeding, we must consider the contention of appellant's counsel that it would be improper for the Board to receive evidence submitted by the Department that was not attached to or incorporated by reference in the certificate of loss of nationality that was executed and approved in appellant's name.

The Department does not have the right, counsel asserts, to develop and consider evidence concerning the appellant's words and conduct subsequent to the time he obtained naturalization in Canada. "The Department had its opportunity to develop the record and cannot do so at the present time," counsel states, citing 22 CFR 50.41(a) and (b). Continuing, counsel maintains that since the only evidence cited in and attached to the CLN was a statement of the Canadian authorities confirming appellant's naturalization -- evidence that standing alone will not support a holding of loss of nationality -- the Board should sustain the appeal on the grounds that the Department has failed to meet its statutory burden of proof.

We consider counsel's argument to be without merit.

Section 358 of the Immigration and Nationality Act (text note 5 supra) provides in pertinent part that if a consular officer has reason to believe that a national of the United States lost his nationality by performing an expatriative act in a foreign state, he "shall certify the facts upon which such a belief is based to the Department of State...." 22 CFR 50.41(a) is essentially reiterative of the provisions of section 358. 22 CFR 50.41(b) provides that:

> (b) If the diplomatic or consular officer determines that any document containing information relevant to the statements in the certificate of loss of nationality should not be attached to the certificate, he may summarize the pertinent information in the appropriate section of the certificate and send the documents together with the certificate to the Department.

Plainly, the statute does not prescribe how a consular officer shall assemble and transmit the facts upon which he bases his belief that a United States national has lost his nationality. And federal regulations allow the officer discretion to attach relevant documents to the CLN or to summarize them on the CLN. We are not of the view, however, that the regulations mandate that the Board, in effect, throw out a CLN simply because a consular officer cited in and attached to the CLN only one document which alone is insufficient to support a finding of intent to relinquish United States nationality. A common sense reading of the law and the regulations leads one to the conclusion that the intent of the statute and regulations is simply to ensure that a consular officer shall review all the relevant information regarding performance of an expatriative act and submit that information to the Department to adjudicate.

Here the consular officer complied with the prescription of the statute. The record shows that the consular officer had available and presumptively reviewed the entire record (it was sent to Toronto by the Department) before she executed the CLN and drafted the memorandum setting forth why she believed appellant H expatriated himself. So does it matter that the officer cited in and attached to the CLN only one document of many that constitute the record? Appellant has in no way been prejudiced by the format or lack of format the consular officer used to submit the CLN to the Department. Appellant knew of the contents of virtually every item in the record that was before the Department; indeed he himself made many of the submissions that form the record. And plainly the Department complied with the mandate of Vance v. Terrazas, supra to consider all the available evidence in determining whether H intended to

relinquish his United States nationality when he obtained naturalization in Canada. Furthermore, appellant had the right, upon demand, to receive from the Department a copy of the entire record so that he might prepare and argue his appeal.

Appellant's request that the Department's evidence be excluded is denied. We will therefore proceed to evaluate the evidence to determine whether the Department has satisfied its burden of proof.

B

As the Department notes, the contemporary evidence of appellant's state of mind in 1975 is limited. It consists solely of the fact that he made an oath of allegiance to Queen Elizabeth the Second and was granted a certificate of Canadian citizenship. Obtaining naturalization in a foreign state, like the other enumerated statutory expatriating acts, may be persuasive evidence of an intent to relinquish citizenship, but it is no more than that; it is not conclusive on the issue of intent. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (Black, J. concurring.) The direct evidence in this case thus is plainly insufficient to support a finding that appellant intended to relinquish his United States citizenship when he became a Canadian citizen. 8/

As is customary in such cases, we must therefore examine the circumstantial evidence to determine whether it may establish

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8/ Appellant suggests that there is contemporary evidence that he lacked the requisite intent in 1975. At the hearing, he introduced the statement, dated February 24, 1989, of a certain G N , a Canadian citizen and employee of the University of Toronto in the 1970's, who reportedly befriended a number of other draft evaders. N stated that appellant had expressed to him concern about the wording of the Canadian oath of allegiance. "[H]e was assured by me and others that taking the oath would not effect [sic] his status as a US citizen. I believe he confirmed this with the US Consulate in Toronto. He definitely has no intention of relinquishing US citizenship...."

Appellant also contends that his lack of intent to relinquish citizenship is shown by the inquiries he made at the Consulate General in Toronto about the implications of naturalization for his United States citizenship. Unfortunately, he could not, he said, get a definitive answer. As he put it at the hearing:

> What I was hoping for was something definitive, somebody who could say, 'No

the requisite intent. Terrazas v. Haig, supra at 288. In this case, the circumstantial evidence to be examined is appellant's proven conduct after he obtained naturalization in Canada. The question to be answered is whether, as the Department maintains, his conduct, more probably than not, was that of a person who earlier intended to forefeit his United States citizenship at the time he obtained the citizenship of Canada.

The record shows that from 1975 to 1987 appellant continuously held himself out as a citizen of Canada in dealings with both Canadian and United States officials. As we have seen, appellant obtained three Canadian passports; made an ineffectual attempt to renew his United States passport; held himself out to the INS as an alien three times: in 1976 when he completed form I-191 to re-enter the United States; in 1984 when he obtained an H-1 visa and entered the United States on a Canadian passport; and in 1986 when he attempted to renew or extend his H-1 visa in the United States.

Appellant disputes the foregoing evidence but with explanations that lack the benefit of proof and raise as many questions as they answer.

Appellant's first contention is that in 1976 the INS in Buffalo advised him to file a form I-191 application to obviate possible problems in entering the United States. There is no corroboration in the record that appellant sought advice from

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8/ (cont'd)

> problem' or 'Don't do it. You will lose your citizenship' -- or whatever.
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> And on balance it was vague, but on balance nobody could say, 'You will lose it because you'll take this oath.' So I said, 'O.K.' I made a decision and decided: "Well, I'll do this." TR 40.

The foregoing "evidence" is only marginally probative. There is no evidence of record that appellant made inquiries about his citizenship at the Consulate General before he obtained naturalization. N 's statement, which is unsworn and made fourteen years after the event, is too vague to substantiate appellant's claim that he made prior inquiries about the implications of naturalization and merely expresses an opinion on the issue whether appellant intended at the time he obtained naturalization to relinquish U.S. citizenship.

the INS in Buffalo. But if he did so and if he was advised to file a form I-191, it is only reasonable to assume he was given that advice precisely because he held himself out as an alien who had a permanent residence in the United States and who had run afoul of the Selective Service System. For is it likely that the INS would have advised appellant to complete a form used only by aliens, if he had made it clear that he believed he was a United States citizen despite naturalization in Canada? Public officials presumptively perform the duties of their office correctly and faithfully, absent evidence to the contrary. United States v. Chemical Foundation, 272 U.S. 1 (1926); Boissonnas v. Acheson, 101 F. Supp. 138 (S.D.N.Y. 1951).

The basic question that arises in connection with his filing form I-191 is why he perceived a need to do so. He acknowledged at the hearing that he had a vague suspicion that he had been stopped at the U.S./Canadian border in the summer of 1975 because he had in some way (he knew not precisely what) violated the terms of his probation by acquiring Canadian citizenship. He insinuated that he therefore wished to have insurance against repetition of being refused entry. He did not want "to get turned back [again] or arrested for a parole violation or anything else." 9/

We note, however, that he filed form I-191 in August 1976, one year after he had been asked to provide satisfactory identification and was refused entry. In the meantime, nine months earlier, as we have seen and as appellant well knew, the United States District Court for the District of New Jersey had discharged him from probation in November 1975. Surely appellant realized that even if the district court or the parole office to which he was required to report had earlier taken the position (improbable in our view) that appellant had violated the terms of probation by acquiring Canadian citizenship in January 1975, discharge from probation in November 1975 wrote finis to the matter.

So why did appellant perform an apparently superfluous act? Why did he not simply decide to keep his United States passport on his person always whenever he approached the border? Why did he not seek advice from the Consulate General in Toronto instead of the INS? Neither from written submissions nor the hearing comes enlightenment on these questions.

Appellant's explanation of why he obtained Canadian passports and did not renew (was unable to renew) his United States passport which expired in 1978 does nothing to attenuate

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9/ TR 76.

the evidence of intent to relinquish United States citizenship that may fairly be inferred from such conduct.

Appellant obtained a Canadian passport in 1976 because "I was in Canada and I thought it would be reasonable to have a Canadian passport." 10/ When his United States passport expired in 1978, appellant allegedly went to the Consulate General in Toronto to renew it. He could not remember during the hearing the details of the conversation he had with someone about renewing his passport, "but I did mention that I had a Canadian [passport] and I was told that I could [not] have two passports and I believed them." 11/ From that date he "just renewed" the Canadian passport. Once again questions arise. Why did appellant accept without more the apparently oral advice of someone at a counter in the Consulate General whom he could not identify; why did he not press to clarify his situation, since he was after all, and allegedly believed himself still to be, a United States citizen? In short, was his action in 1978 that of one who intended to retain citizenship and was determined to hold himself out as a citizen? He has given us no substantial reason to answer those questions affirmatively. As we have seen, appellant renewed his Canadian passport in 1981. While in the United States on an H-1 visa, he renewed the Canadian passport again in 1986, an act even more blatantly in derogation of United States citizenship.

Th most arresting evidence that appellant intended to relinquish citizenship is the fact that he entered the United States as an alien in 1984 with a Canadian passport and an H-1 visa. The record is not clear about the process of issuance of an H-1 visa to appellant. He suggests that after he received the offer of a job in Bakersville, California, he consulted an INS office (which one he did not say). "What I said was that these people wanted me in this job quickly and what was the best way of doing this - to re-establish, like with documentation, that I was a U.S. citizen or whatever?" 12/ "They told me an H-1 visa would be the quickest. They said it would be pretty complicated to re-establish U.S. citizenship, at least on a passport." 13/ Appellant then allegedly informed California State College of the foregoing, and apparently suggested that

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10/ TR 48.

11/ Id.

12/ TR 84.

13/ Id.

they file an H-1 petition on his behalf. Under questioning at the hearing, appellant asserted flatly that he told the INS official to whom he spoke that he was a United States citizen or believed he was a dual citizen, having a claim to U.S. citizenship. 14/ Of appellant's alleged exchange with an INS official there is no trace in the record. Appellant's efforts between the autumn of 1985 and the spring of 1986 to renew/extend the H-1 visa are evidentially significant in that they show him trying to remain in the United States not as a United States citizen but as an alien.

A final inquiry is in order: whether there are any factors not so far considered that demonstrate that appellant, more probably than not, lacked the requisite intent in 1975 to relinquish his United States nationality?

He submits that there are. Not only has his conduct after naturalization been misunderstood by the Department, he asserts, but he has shown affirmatively a will to retain his United States citizenship. He voted in the 1980 United States general election, or at least believed he did. However, he submits no proof that he had qualified to vote and either did so or tried to do so. He says he entered Mexico in 1984 and departed as a United States citizen, while in California working on an H-1 visa. Again, there is no evidence to support appellant's statements. He believed from the first, he states, that by obtaining naturalization in Canada he had added a citizenship, not given one away. Appellant's claim that he nourished the notion from 1975 that he acquired dual nationality rests exclusively on testimony offered by his mother at the hearing 15/ and the above-noted unsworn statement of G N[illegible]. (note 8 supra.) Both base their testimony on what appellant told them was his feeling, not on palpable acts from which one might reasonably infer appellant's conviction that he was a national of both the United States and Canada. Nor has appellant persuaded us that his conduct after 1975 demonstrates a belief that he held dual citizenship. He might have done some things in Canada that would be consistent with such a belief, but when it came to dealing with United States officials, one would imagine that he would vigorously assert his American citizenship. The record shows that he did nothing of the sort.

Appellant showed a total lack of concern and interest from 1975 in preserving and protecting his United States

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14/ TR 85.

15/ TR 24-33.

nationality. His contentions that there are good and sufficient reasons why he acted as he did are not supported by any credible evidence. We do not consider him a naif who was misled and confused by bureaucracy. He was 32 years old in 1975 and university educated. While he might have been confused, say once, by official information, he so repeatedly and consistently held himself out to be an alien toward the United States that one might properly doubt that he acted out of confusion. And he had repeated opportunities to clarify his United States citizenship status of which he did not avail himself until 1987. Finally, is it likely that INS would not treat appellant as a United States citizen if he disclosed that he was a citizen or had a solid claim to citizenship?

Balancing the probabilities, we come to the conclusion that the Department has carried its burden of proving that it was more likely than not that appellant intended to expatriate himself when he became a citizen of Canada upon his own application.

IV

Upon consideration of the foregoing, we hereby affirm the Department's holding that appellant H expatriated himself.

Alan G. James, Chairman

Gerald A. Rosen, Member

Frederick Smith, Jr., Member