August 17, 1989

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: T R S

The Department of State made a determination on June 17, 1987 that T R S expatriated himself on March 27, 1987 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer at the United States Consulate General in Frankfurt am Main, Federal Republic of Germany. 1/ S entered a timely appeal from that determination.

For the reasons given below, the Board concludes that appellant voluntarily renounced his United States nationality with the intention of relinquishing it. Accordingly, the Department's determination that he expatriated himself is affirmed.

I

Appellant, T R S , became a citizen of the United States by birth at [redacted] In written submissions and oral testimony at a hearing on Feburary 17, 1989, appellant gave the following account of the circumstances that led up to his formal renunciation of United States nationality.

1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), reads as follows:

> Sec. 349. (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention on relinquishing United States nationality --
>
> . . .
>
> (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; . . .

He was educated in the United States and graduated from St. Johns University, Queens, New York. He planned a career in medicine, but could not gain acceptance to any American medical school. He therefore decided to go to The Federal Republic of Germany to study. After completing medical school in Germany in 1984, he obtained a residency at Bridgeport, Connecticut. He had barely started the residency when his wife was seriously injured in an automobile accident. He therefore resigned the residency and returned to Germany to care for his wife. From Germany he applied to a number of American hospitals for a residency but received no offers. In the spring of 1985 he returned to the United States and visited several hospitals on the eastern seaboard and in Texas and wrote to a number more. That effort too was unsuccessful. 2/ "After six months of searching for placement I was in financial trouble," appellant asserted in the statement he filed upon entering the appeal, "and was forced to apply to West German hospitals." He found a residency in his specialty at the university clinic in Bochum and began his duties there in August 1986.

In his statement of appeal, appellant asserted that:

> ...Since practically all German hospitals are government funded, they require their employees to possess German citizenship. German citizenship is also a prerequisite for obtaining medical licensure. So in order to obtain a work permit and medical license I was forced to apply for German citizenship which required me to pledge that I would take an oath of renunciation of my American citizenship. 3/

2/ Appellant alleges that he continued to apply by mail for a residency in the United States through 1986.

3/ To be licensed to practice medicine in the Federal Republic of Germany, one must, in addition to being professionally qualified, hold German citizenship, be a citizen of a European Community country or a stateless foreigner within the meaning of the applicable FRG law. Letter from the Bavarian Ministry of the Interior to appellant, dated April 17, 1989. English translation, Division of Language Services, Department of State, LS No. 129235, 1989 (German).

Appellant states that in the autumn of 1986 he applied for naturalization in Germany. Sometime in the ensuing months, appellant was informed by the German authorities (allegedly to his surprise and dismay) that before citizenship could be granted to him, he would have to renounce his United States nationality.

Appellant called the Consulate General in Frankfurt on March 24, 1987 to state that he proposed to renounce his citizenship. 4/ That office sent him a copy of the prescribed statement of understanding of the implications and consequences of renunciation, and asked him to study it carefully before coming in to renounce his citizenship.

On March 27, 1987 appellant visited the Consulate General and indicated that he wished to proceed with renunciation. Before administering the oath of renunciation, a consular officer asked appellant if he understood the seriousness of what he proposed to do, and told him that the act was irrevocable. 5/ Appellant then read the statement of understanding and swore in the presence of the consular officer and two witnesses that he had read it and fully understood its contents. The statement of understanding set forth in part that appellant wished to exercise his right to renounce his United States citizenship and did so voluntarily; that he realized renunciation would make him an alien toward the United States; that the extremely serious nature of the act had been explained to him by the consular officer and that he understood its consequences. Appellant indicated in the statement that he did not choose to exercise his right to explain in writing the reasons for his renunciation. The consular officer then administered the oath of renunciation.

3/ (cont'd.)

The administrative regulations to implement the Law on German Citizenship and Nationality (nationality guidelines), B VIII-1, 5.3.1, provide that naturalization shall not take effect until the competent authority has been informed, at the latest at the time of naturalization, that the applicant has relinquished his previous nationality.

4/ Affidavit, dated March 21, 1989, of Consul J R. A who administered the oath of renunciation to appellant.

5/ Id.

As required by law, the consular officer executed a certificate of loss of nationality in appellant's name on March 27, 1987. 6/ Therein the officer certified that appellant became a United States citizen by virtue of his birth therein; that he made a formal renunciation of his United States nationality; and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Department approved the certificate on June 17, 1987, approval being an administrative determination of loss of nationality which may be appealed to the Board of Appellate Review pursuant to section 7.3(a) of Title 22, Code of Federal Regulations, 22 CFR 7.3(a) (1988).

A timely appeal was entered. Oral argument was heard on February 17, 1989, appellant appearing pro se.

II

The statute prescribes that a national or the United States shall lose his nationality by voluntarily making a formal renunciation of nationality before a consular officer of the United States in a foreign state in the manner prescribed by the Secretary of State with the intention of relinquishing nationality. 7/

6/ 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.

7/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5). Note 1 supra.

The record shows that appellant's formal renunciation of nationality was carried out in the manner prescribed by law and in the form prescribed by the Secretary of State. Thus, the two issues to be determined are whether appellant acted voluntarily and whether he intended to relinquish United States citizenship. We turn first to the issue of voluntariness.

In law it is presumed that one who performs an expatriative act does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was not done voluntarily. 8/

Appellant contends that he was coerced by economic factors to renounce his citizenship; the only reason he did so was to be able to support his wife and son, born in Germany in 1986.

He alleges that he made a good faith but unsuccessful effort to find a residency in the United States or in another country of the European Community that does not require one to hold its citizenship to practice medicine and that he was unable to find employment in Germany in fields outside his specialty. He also contends that he could not depend upon his wife's salary after her training period as a teacher was over (presumably in 1986). In short, he allegedly had no choice but to accept the position he was offered at Bochum and thus

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8/ Section 349(b) of the Immigration and Nationality Act, 8 U.S.C. 1481(b), provides that:

> (b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after enactment of this subsection under, or by virtue of, the provisions of this chapter 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. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter 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.

to acquire German nationality, a process that led to his unwilling surrender of United States citizenship.

If proved, duress will, of course, rebut the presumption that an expatriative act was performed freely. The need to alleviate economic hardship by improving one's condition through performance of an expatriative act may constitute economic duress. See Stipa v. Dulles, 233 F.2d 551 (3rd Cir. 1956); Richards v. Secretary of State, 752 F.2d 114 (9th Cir. 1985); Maldonado-Sanchez v. Shultz, Civil No. 87-2654, memorandum opinion (D.D.C. 1989).

To establish that one performed an expatriative act because of economic pressures, one must show that one's circumstances were "dire." Stipa, Maldonado-Sanchez, Insogna. One must also show that an attempt was made to solve the economic difficulties by means that would not entail putting United States citizenship at risk. See Richards, 752 F.2d at 1419.

Here appellant has not provided sufficient evidence to demonstrate that his financial circumstances were dire. For example, he has not shown that he and his wife and child could not have turned to appellant's wife's father for support while he looked for work that would not entail his renouncing United States citizenship. Appellant indicated at the hearing that his father-in-law was politically active in Germany and favorably disposed toward him. Absent evidence to the contrary, it would be reasonable to presume that appellant's wife's family could have helped.

More important, appellant has not convinced us that he had no realistic alternative to working in a German hospital, a decision that in the end required him to forfeit United States citizenship. Simply put, appellant has not shown that he could not have returned to the United States (with or without his family) to look for a residency, being supported in the meanwhile by his own family; or at least to look for work, related to his training or not, that would have provided for him and his family.

No one forced appellant to remain in Germany, although it is true that he had put down roots there by marrying a German citizen and starting a family. But from the perspective of the law, his doing so reflected a personal choice. He evidently wanted to stay in Germany, at least until he found a satisfactory residency in the United States, the while gaining knowledge and competence. Admirable aspirations those, but as a matter of law, insufficient to excuse him from performing an expatriative act that was plainly done to advance his career. He had an opportunity to make a personal decision, at least he has not shown that he

lacked such opportunity. As the case law makes clear, opportunity to make a decision based upon personal choice is the essence of volunariness. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971), cert. denied, 404 U.S. 946 (1971).

Appellant has not rebutted the presumption that he renounced United States nationality of his own free will.

III

Finally, there is the issue whether appellant intended to relinquish his United States nationality when he formally renounced it. The government bears the burden of proving by a preponderance of the evidence that such was his intention. Section 349(b) of the Immigration and Nationality Act (note 8 supra) and Vance v. Terrazas, 444 U.S. 252 (1980). Intent may be proved by a person's words or found as a fair inference from proven conduct. Vance v. Terrazas, 444 U.S. at 260.

Formal renunciation of United States citizenship in the manner mandated by law and in the form prescribed by the Secretary of State is, on its face, unequivocal and final. "A voluntary oath of renunciation is a clear statement of desire to relinquish United States citizenship." Davis v. District Director, Immigration and Naturalization Service, 481 F.Supp. 1178, 1181 (D.D.C. 1979). Intent to abandon citizenship is inherent in the act. The words of the oath of renunciation fairly proclaim appellant's specific intent:

> I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

Our sole inquiry therefore is whether appellant executed the oath of renunciation not only voluntarily but also knowingly and intelligently. The record leaves no doubt that he did so. He signed a statement of understanding in which he acknowledged that the serious consequences of renunciation has been explained to him by a consular officer and that he fully understood them. Appellant was 31 years old when he made the oath of renunciation, schooled and fully cognizant that in order to obtain German citizenship, which plainly he wished to acquire, he would have to surrender his United States nationality.

Appellant suggested at the hearing, however, that he had been led by the officer who administered the oath of renunciation to believe that he could without great difficulty

undo renunciation. The following exchange took place between appellant and the attorney for the State Department:

> Q....Was the significance of your renunciation explained to you by the Consul?
>
> A Yes, but he at the same time said that if you appeal within one year, there are no problems of regaining your American citizenship. But if you do it after that time, I would have to go through the normal route -- which every foreigner has to go through in order to obtain his American citizenship. I would be no different than a foreigner, within one year I would be able to get back my American citizenship without too many problems.
>
> And that was actually the crux. That's why I said -- that's why I even gave the oath of renunciation. Otherwise I would have never considered it.
>
> Q You mean did the Consul say that you would be able to appeal within one year?
>
> A Yes, appeal within one year -- and also told me that it wouldn't be too much of a problem to regain it during that one year --
>
> Q She [sic] said this?
>
> A -- by appeal, if I appealed during that one year.
>
> Q She said both this?
>
> A She said both, I think.
>
> Q So you fully understood the significance of your renunciation --
>
> A No, I didn't.
>
> Q -- that you understood that it was irrevocable.

A No.

Q You did not understand that.

A I did not. I said I thought it would be repealable within one year -- after that, irrevocable -- but that's why I appealed in that alloted time, in that one year. See, that was my trick.

Q Let me make this clear. One does have the right to appeal within a year, but you had considered the Consul went one step farther so that the prospects of successfully undoing the act were --

A That was not mentioned to me. I was not clearly informed of that.

Q Let me read you the renunciation that you signed.

[Counsel quoted the oath of renunciation.]

A The words are very clear. But if you have the chance to appeal it and repeal -- to undo, to renounce the renunciation within one year; those words -- the oath as such, so to speak, until that one year is over, becomes meaningless.

Q You also signed the Statement of Understanding.

A Yes.

[Counsel quoted relevant parts of the statement of understanding signed by appellant.]

Q This is a statement that you signed.

A I did sign that. But, again, the argumentation was such that I thought I could appeal that within the one year that I was allotted.

> It's true, I was not fully aware that I would even have these kind of problems. I thought it was just a matter of form, a formal matter. 9/

We cannot accept that the consular officer misled appellant, and that appellant therefore did not knowingly and intelligently perform the expatriative act.

The consular officer is categoric about what he told appellant on March 27, 1987. In an affidavit executed March 21, 1989, the consul declared

> I must take issue with Dr. S on his recollection of my statement that 'if you appeal within one year, there are no problems of regaining your American citizenship'. I deny that I made any such statement.
>
> In every case of loss of nationality, particularly in cases of voluntary renunciation, I and those on the staff of the Consulate General in Frankfurt take pains to impart to the person involved the gravity of his or her actions. In all cases of voluntary renunciation, for whatever reasons, we imposed a delay between the initial inquiry and the actual administration of the oath so that an applicant have an opportunity to ponder the decision.
>
> In Dr. S 's case, he contacted the Consulate General on the 24th of March of 1987 indicating that he wished to renounce his U.S. citizenship. The office then forwarded him a copy of the Statement of Understanding and asked him to read it carefully before appearing at the consulate. The only unusual aspect of Dr. S 's case that I recall is that he presented himself at the consulate within only three days time.

9/ Transcript of Hearing in the Matter of T R S , Board of Appellate Review, February 17, 1989, pp. 28-31.

> On March 27, 1989 I administered the oath to Dr. S for his Statement of Understanding and for his Renunciation of Citizenship. Before doing so, I asked him if he understood the seriousness of the matter at hand and told him that what he was about to do was irrevocable. In his statement before the Board of Appellate Review he paraphrased one aspect of my admonishment to him when he said that he 'would have to go through the normal route -- which every foreigner has to go through in order to obtain his American citizenship. I would be no different than a foreigner.' I make it a point in every case of renunciation of citizenship to admonish the applicant that the action results in a loss of any claim to U.S. citizenship and that the only manner to reacquire such is through immigration and subsequent naturalization.

We have no reason to doubt that the consul processed appellant's renunciation in accordance with the law and the Department's regulations, making it clear to appellant that renunciation was an irrevocable act. We can only speculate whether appellant misunderstood at that time what the consul endeavored to make clear to him. Appellant has submitted no evidence to call into question either the consul's sworn statement or to rebut the legal presumption that public officials execute their official duties faithfully and correctly, 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).

Plainly, appellant knew what he was doing. We perceive no inadvertence or mistake of law on his part.

In brief, on all the evidence, appellant's voluntary forfeiture of United States nationality was accomplished in due and proper form with full consciousness of the gravity of the act.

IV

Upon consideration of the foregoing, we conclude that appellant duly expatriated himself on March 27, 1987 by making a formal renunciation of his United States citizenship before a consular officer of the United States in the form prescribed by the Secretary of State.

Accordingly, we affirm the Department's administrative determination of June 17, 1987 to that effect.

Alan G. James, Chairman

Edward G. Misey, Member

Gerald A. Rosen, Member