DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A A G

The Department of State made a determination on February 1, 1988 that A A G expatriated herself on April 13, 1973 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/ Dr. G appeals.

Since appellant concedes that she obtained naturalization in Canada voluntarily, the sole issue to be decided is whether she intended to relinquish United States nationality when she obtained that of Canada. For the reasons that follow, we conclude that the Department has satisfied its burden of proving that appellant more likely than not intended to divest herself of United States citizenship. Accordingly, the Department's determination that she expatriated herself is affirmed.

I

Appellant, A A G , acquired United States nationality by virtue of her birth at [redacted], Minnesota on [redacted]. In the summer of 1959 she married a Canadian citizen and moved to Canada with him. For the past 30 years she has lived in Vancouver, British Columbia. Three children were born of the marriage in Canada, all prior to appellant's naturalization in 1973.

1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), provides that:

> 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 of relinquishing United States nationality --
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> > (1) obtaining naturalization in a foreign state upon his own application, or upon an application filed by a duly authorized agent, after having obtained the age of eighteen years; or ...

Appellant states (declaration of March 31, 1989) that at the time she moved to Canada she was a school teacher. In 1972 she sought a teaching position in the British Columbia school system. She was allegedly advised by school board officials in Vancouver and several other communities that their policy was to hire Canadian citizens in preference to American citizens, and that "if I wished to secure a teaching position, I would be well advised to become a Canadian citizen." At that time, she also planned a trip abroad with her husband who had told her that friends in the law advised him that it would be difficult for them to travel together on different passports. It was for the foregoing reasons that "I first became interested in obtaining Canadian citizenship."

Before applying for naturalization appellant allegedly sought advice, by telephone, in May and September 1972 from the Immigration and Naturalization Service in Seattle about the consequences of naturalization for her United States citizenship.

On April 13, 1973 appellant was granted a certificate of Canadian citizenship. At that time she subscribed to the following declaration and oath of allegiance:

> I hereby renounce all allegiance and fidelity to any foreign sovereign or state of whom or which I may at this time be a subject or citizen
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> 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.

Appellant obtained a Canadian passport in 1973 and 1980 which she used to make several trips abroad.

Appellant's naturalization came to the attention of United States authorities in 1986 when a daughter, born in Canada in 1965, applied for a passport at the Consulate General in Vancouver. After obtaining confirmation of appellant's naturalization from the Canadian Citizenship Registration Branch, the Consulate General wrote to appellant on November 13, 1986 to inform her that she might have expatriated herself by obtaining naturalization in a foreign state. The Consulate General requested that she complete a questionnaire to

facilitate determination of her citizenship status, and advised her that she might discuss her case with a consular officer. Appellant, who was then a registered psychologist and doctoral candidate at the University of British Columbia, completed the form in February 1987, and supplemented it with a letter in which she spelled out her "compelling reasons" for obtaining naturalization, and asserted that it was not her intention to relinquish her United States nationality.

An officer of the Consulate General executed a certificate of loss of nationality in appellant's name on July 28, 1987, as required by law. 2/ Therein he certified that appellant acquired the nationality of the United States by virtue of birth therein; that she obtained naturalization in Canada upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Consulate General submitted the certificate to the Department under cover of a memorandum in which it recommended that the certificate be approved.

The Department deferred acting on the certificate to instruct the Consulate General to ask appellant to explain in detail the circumstances surrounding her inquiries of the INS about the effect of naturalization upon her United States

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2/ 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.

citizenship. By affidavit dated October 26, 1987, appellant replied to five questions propounded by the Department.

On February 1, 1988 the Department approved the certificate, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review as provided by 22 CFR 7.5(a) and (b). An appeal was entered on February 26, 1989.

II

To prevail, the Department of State must, under the statute, prove that appellant (a) duly performed an expatriative act, (b) voluntarily obtained naturalization in a foreign state and (c) intended to relinquish her United States citizenship. 3/

It is undisputed that appellant duly obtained naturalization in Canada upon her own application. She thus brought herself within the purview of the statute.

With respect to the issue whether appellant performed the expatriative act voluntarily, she concedes that she did so. Therefore the only issue for the Board to determine is whether the Department has proved that she intended to divest herself of United States citizenship when she became a citizen of Canada.

Intent to relinquish citizenship is an issue that the government must prove. Vance v. Terrazas, 444 U.S. 252, 261 (1980). Intent may be proved by a person's words or found as a fair inference from proven conduct. 444 U.S. 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 is more probable than not that appellant intended to forfeit her United States nationality when she acquired Canadian citizenship. 4/ The intent the government must prove

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

4/ 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/ [footnote omitted] Thus the preponderance of evidence becomes the trier's belief in the preponderance of probability.

McCormick on Evidence (3rd ed.), Section 339.

is the party's intent at the time the expatriative act was performed. Terrazas v. Haig, 653 F.2d 285, 288 (7th Cir. 1981).

If a United States citizen voluntarily obtains naturalization in a foreign state, such an act may be highly persuasive evidence of an intent to relinquish United States nationality, although it is not conclusive evidence of such intent. Vance v. Terrazas, 444 U.S. at 261. If a citizen also makes an express declaration of renunciation of all other allegiance, the courts have held that such words constitute very strong evidence of an intent to relinquish citizenship. The rule was clearly stated in Richards v. Secretary of State, 752 F.2d 1413, 1417 (9th Cir. 1985). "[T]he voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." See also Meretsky v. U.S. Department of Justice, et al., No. 86-5184. Memorandum Opinion (D.C. Cir. 1987). There the plaintiff made a declaration of allegiance identical to that made by appellant in the case before us. It was the court's conclusion that: "The oath he took renounced that [United States] citizenship in no uncertain terms." At 5.

Although obtaining foreign naturalization and making a renunciatory oath of allegiance are very strong evidence of an intent to relinquish United States citizenship, the trier of fact must also determine whether the citizen acted knowingly and intelligently, and whether there are any factors that would support a finding that there was a lack of intent to relinquish citizenship. Terrazas v. Haig, supra; Richards v. Secretary of State, supra.

Appellant attempts in two ways to rebut the strong inference of intent to relinquish citizenship to be drawn from the fact that she obtained naturalization in Canada and made an oath of allegiance to Queen Elizabeth the Second which contained a clause renouncing all other allegiance.

First, she points out that the requirement of section 19(1)(b) of the Canadian citizenship Regulations (1968) that an applicant for naturalization renounce all other allegiance was declared ultra vires on April 3, 1973 by the Federal Court of Canada, Trial Division. Ulin v. The Queen, 35 DLR 3rd 738 (1973). As a consequence, according to her understanding, the renunciation clause was ordered to be stricken until new forms could be printed and distributed, and henceforth, applicants for Canadian citizenship were only required to subscribe to the oath of allegiance. She obtained naturalization on April 13, 1973. She contends that "the renunciation change was inadvertently and illegally not stricken from her oath." She also contends that she was not aware that the oath to which she signed her name contained the "illegal renunciation language," although she acknowledges she did in fact sign that oath.

In the record there is a photo copy of the oath of allegiance with a renunciatory clause signed by appellant on April 13, 1973. It is irrelevant to the issue of appellant's intent that the renunciatory clause had been invalidated judicially 10 days previously. By signing the clause of renunciation whether, as a matter of Canadian law, it was or was not valid on April 13, 1973, appellant manifested an unmistakable intent to divest herself of United States nationality. The relevant question therefore is whether appellant knowingly and intelligently subscribed to the renunciatory language.

The Board has been given no grounds to doubt that appellant was aware, or should be deemed to have been aware, that the oath of allegiance to which she subscribed contained a declaration of allegiance renouncing all other allegiance and fidelity, or that she was competent to grasp the import of those words. Mature, well-educated, appellant may not be heard to claim without some supporting evidence that she was not aware "that the document contained the illegal renunciation language." Thus, we have no grounds to doubt that she acted with full awareness of the consequences of her act.

Appellant submits that her lack of intent to relinquish United States citizenship is also shown by the fact that she twice inquired of the United States Immigration and Naturalization Service (INS) in Seattle about the implications of naturalization in Canada for her United States citizenship. She recounted her consultations with the INS in a declaration executed on March 31, 1989:

> On two occasions, in May of 1972 and again in September of 1972, I contacted the Immigration and Naturalization Service in Seattle, Washington, where my parents reside. On both occasions I spoke to, who I believe to be, the same staff in the Immigration & Naturalization District Attorney's office. I explained my situation to the person and attempted to set up an appointment to discuss my concerns. I was then put on hold; the same staff person then came back on the phone and told me that she had consulted with the INS attorney and that he had said that my becoming a Canadian citizen would not jeopardize my United States citizenship because it did not require me to renounce my U.S.

> citizenship and that that was the important issue. In short, I was told that I had nothing to worry about. I was discouraged from setting up a personal appointment and told that it would not be necessary.
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> I called again in September in 1972 just to double check the advice I had received before going forward with my Canadian citizenship application. Again, the same person informed me that she had discussed it with the INS attorney and that I need not worry. I was told that I would not jeopardize my U.S. citizenship by becoming a Canadian citizen under the circumstances I had described. It was only after receiving these assurances on two occasions in 1972 that I applied for Canadian citizenship....

Counsel for appellant cites a case decided by the Board of Immigration Appeals (BIA) in 1977 which he contends is apposite here. Matter of Wayne, 16 I&N Dec. 248. In Matter of Wayne, a United States citizen contemplating naturalization in Canada addressed a letter to the United States Consul General in Calgary, Alberta, Canada, in which he requested information concerning the effect of his prospective Canadian citizenship upon his United States voting rights, his rights as a veteran in the United States Armed Forces, and his rights under the United States Social Security laws. The consular officer's reply stated that as a result of the decision of the United States Supreme Court in Afroyim v. Rusk, 387 U.S. 253 (1967), "a person who holds both U.S. and Canadian citizenship may exercise the voting privilege in Canada without endangering his claim to United States citizenship...." The citizen thereupon applied for Canadian citizenship which was granted to him in 1974. (By that date applicants for naturalization were no longer required to make a renunciatory declaration.) Petitioner in Matter of Wayne testified at a hearing that he believed, on the basis of the letter he had received from the consul, that his Canadian citizenship would not endanger his continued United States citizenship.

In reversing the decision of the immigration judge who held that the respondent was deportable, the BIA stated:

> ...the respondent has offered considerable proof that he did not intend to relinquish his United States citizenship by performing these acts. In his

> letter of June 29, 1973 to the United States Consul General in Calgary, Alberta, Canada, the respondent clearly evidences a desire not to jeopardize his United States voting rights. The inference to be drawn from this letter is that he would not have proceeded with his Canadian naturalization if he had thought that his United States citizenship would be endangered thereby. The letter from the Consul General written in response, while apparently misunderstanding the specific thrust of the respondent's inquiry, nonetheless clearly states, albeit erroneously, that 'a person who holds both United States and Canadian citizenship may exercise the voting privilege in Canada without endangering his claim to United States citizenship ....' The clear import of this letter is that naturalization in Canada would not jeopardize the respondent's United States citizenship....

Matter of Wayne, an important loss of citizenship case, and the case before us are manifestly distinguishable. In contrast to the proof appellant offered in Matter of Wayne, the contention of appellant here that she made prior inquiries of the INS and was assured she could proceed with naturalization without adverse consequences for her citizenship rests on a flimsy evidential foundation. She asserts seventeen years after the event that she made two telephone inquiries, but has adduced no proof that she did so. We cannot therefore accept as evidence of intent to retain citizenship an unsupported latter-day statement that she sought advice from the INS before she completed the Canadian naturalization process.

However, let us assume, arguendo, that although there is now no way of corroborating appellant's claim that she consulted the INS, she did make those two calls in 1972. In the absence of evidence to the contrary, it must be assumed that an INS official, if asked about the effect of Canadian naturalization upon one's United States citizenship, would have provided correct advice and cited the relevant authority. See Boissonnas v. Acheson, 101 F. Supp. 138 (S.D.N.Y. 1951). Presumptively, the official would have made it clear that such an act is expatriative under United States law, and that an applicant for naturalization in Canada would be required to renounce all allegiance and fidelity to the United States.

But perhaps appellant did not clearly understand the advice she was given, or perhaps the official was not entirely precise or did not give a comprehensive answer to her inquiries. Nonetheless, appellant's own submissions attest that she was put on notice that if she made a renunciatory statement, she would jeopardize her American citizenship, for she stated she was cautioned that renunciation was "an important issue." Despite this clear notice that a renunciatory declaration would jeopardize her United States citizenship, she signed a renunciatory declaration when she subscribed to the Canadian oath of allegiance.

Careful examination of the facts of record does not show any factors of sufficient evidential weight to raise doubt about appellant's probable intent in 1973 with respect to her United States citizenship. Appellant's contention that she lacked the requisite intent to relinquish citizenship rests on no firm evidence. On the contrary, the overt evidence of a renunciatory intent at the crucial time is strong and persuasive. Consequently, the Board has no latitude under the statute and the case law to accept appellant's inadequately supported contentions, however sincerely they may be put forward.

We are satisfied that the Department has sustained its burden of proof.

III

Upon consideration of the foregoing, we hereby affirm the determination of the Department that appellant expatriated herself by obtaining naturalization in Canada upon her own application.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Howard Meyers, Member