BOARD OF APPELLATE REVIEW

Decision No. 92-3

IN THE MATTER OF: G S W

This case is before the Board of Appellate Review on the appeal of G S W from a determination of the Department of State that she expatriated herself on January 3, 1989 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Madras, India. 1

For the reasons set forth below, we conclude that appellant voluntarily renounced her United States citizenship with the intention of relinquishing the same. Accordingly, we affirm the Department of State's determination of Ms. W 's expatriation.

I

Appellant was born B L W at [redacted], Minnesota on [redacted], and thereby acquired United States citizenship under the first clause of the Fourteenth Amendment. According to various passport applications, she was twice married and twice divorced. In 1979 she obtained a United States passport under the name of B L N (her second husband's name) and visited India for six months. She returned to India in 1980 where she has since lived continuously. In 1983 she obtained another United States passport, also under the name of B L N , but subsequently, by a process not disclosed in the record, changed her name to G S W .

Appellant visited the United States Consulate General at Madras on January 3, 1989, expressing, as the Consulate General

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

> 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 --
>
> . . .
>
> (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; . . .

later reported to the Department of State, "a desire to renounce her United States citizenship." Before making the oath of renunciation, appellant executed the customary statement of understanding, in which she acknowledged in principal part that:

> I have a right to renounce my United States citizenship.
>
> I am exercising my right of renunciation freely and voluntarily without any force, compulsion, or undue influence placed upon me by any person.
>
> Upon renouncing my citizenship I will become an alien with respect to the United States....
>
> The extremely serious and irrevocable nature of the act of renunciation has been explained to me by Consul Gilbert J. Sperling at the American Consulate General at Madras, and I fully understand its consequences.
>
> I choose to make a separate written explanation of my reasons for renouncing my United States citizenship.

The statement of understanding was witnessed by two employees of the Consulate Genral and attested by Consul Sperling.

Appellant also executed a sworn statement explaining her reasons for renouncing United States citizenship which reads in pertinent part as follows:

> According to my Hindu Religion - I believe, and have confirmation - that - in returning to India - I have thus returned to my homeland of many previous births - to resume and to complete my spiritual Sadhana with my Indian Sad Guru of numerous previous births.
>
> I - of clear mind and intension [sic], do therefore wish to renounce my American citizenship - and spend the last few remaining years of my life in my adopted homeland of India.
>
> I have discussed the implications of this decision - and am voluntarily taking this action. (I have discussed these matters

> with the American Counselate /sic/ General concerned).
>
> I have carefully thought-out this decision for the past 10 years, and have sacrificed to acheive /sic/ this goal.

She then made the oath of renunciation prescribed by the Secretary of State:

> I desire to make a formal renunciation of my American Nationality, as provided by Section 349(a)(5) of the Immigration and Nationality Act and pursuant thereto 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.

As prescribed by law, the Consul executed a certificate of loss of nationality (CLN) in the name of "G S W aka B L W N ." [2] Therein he certified that appellant acquired the nationality of the United States by virtue of her birth therein and that she made a formal renunciation of her United States nationality on January 3, 1989, thereby expatriating herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

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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.

The Consulate General referred appellant's case to the Department for adjudication under cover of a brief memorandum which forwarded the documents appellant had executed. The Consulate General did not comment on appellant's demeanor, apparent capacity, whether she had been counseled to pause and reflect on the seriousness of her contemplated act, or on any other substantive matter about which one would presume the Department would wish to be informed.

The Department approved the CLN on February 15, 1990. Such action constitutes an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

One year to the day after approval of the CLN, appellant appeared at the Consulate General in Madras to state that she wished to appeal from the Department's determination of loss of her citizenship. She submitted to the Consulate General a letter, dated January 27, 1991, setting forth grounds which she believed justified an appeal to the Board from the Department's holding of loss of her citizenship. At the Board's request, appellant amplified the grounds of her appeal. The Department then briefed the issues presented, and submitted a brief in which it maintained that appellant acted voluntarily and with the intention of relinquishing her United States citizenship. Although the Board granted appellant a generous extension of time to file a reply to the Department's brief, she did not submit one by the deadline set by the Board.

II

It is evident from the record that appellant made a formal renunciation of her United States citizenship in due and proper form. It remains to be determined, however, whether, as the statute requires, she acted voluntarily and with the requisite intent to relinquish her American nationality.

In law, it is presumed that consciously performed acts are voluntary. The statute prescribes:

> (b) 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. 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.

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

Appellant thus bears the burden of showing that she did not renounce her United States nationality freely and voluntarily.

Appellant has not directly addressed the issue whether she acted voluntarily, but she suggests she was forced to renounce her citizenship because of circumstances beyond her control. According to her submissions, the Superintendant of Police of the district where she lived "drummed up false charges" against her in an effort to force her and other foreigners out of his district. The official reportedly was successful to the point where appellant was served with an order to quit India. The notice was, however, cancelled eventually.

Nonetheless, appellant submits:

> ..., the strain, the agony, the harrassment, the hysteria, the expense, financial loss I underwent during that full two-year struggle to reverse that Muslim Supt. Police's attempt to create suspicion that I was a spy - took it's severe toll on my Peace of Mind, my health, etc.
>
> To make matters worse, my Indian Citizenship Application was also adversely affected...and, in '87, '88, and '89, my apprehension tripled, when I then, a 64-year-old foreign Spinster - was offered my Indian Citizenship...1st for Rs20,000, then for Rs50,000, then for one Lac...and finally, for 3 Lacs...(by various bureaucrats in Dehli /sic/ government..who tried to use my 'adverse' file...as a Black-Mail Instrument...)
>
> So, in utter despair & hysteria, & ignorance, I determined to become stateless...hoping that without anywhere to 'deport' me to, - they would have to keep me in India...in my Guru's Ashram, and in continuation of my Spiritual Studies.

The circumstances which appellant says led up to her renunciation of United States citizenship do not constitute legal duress.

Her evident wish was to be able to remain in India and continue her spiritual life there. For a number of reasons, she wished to acquire Indian nationality: to ensure that she would not be deported, and (just as likely) because, as she put it in the statement of understanding she signed when she renounced her citizenship, India is "my homeland of many births." But she evidently encountered difficulties in obtaining approval of her application for naturalization; so as a last resort, decided to become stateless in order that she would not (in her view) be deportable,should her visa not be renewed periodically.

We will not challenge the facts appellant has presented. But even if they were documented by the record (which they are not), we perceive no duress. Duress connotes absence of choice, lack of alternatives. If one has the opportunity to make a personal choice, there is no coercion. Jolley v. I.N.S., 441 F.2d 1245 (5th Cir. 1971), Cert. denied, 404 U.S. 946 (1971). It is our opinion that appellant had a perfectly reasonable alternative to renunciation of her United States nationality. The decision to reside in India, to sit at the feet of a Guru with whom she pursued spiritual studies was, on the facts, wholly her personal preference. She could, of course, have returned to the United States (although we acknowledge that to do so might have been a wrench for her), if it had been more important to her to remain a citizen of the Untied States than being assured of living the spiritual life she wanted to have in India. In the circumstances, we must assume (but make no moral judgments in doing so) that appellant decided that it was more important to her to remain in a state of grace in India than hold on to her United States citizenship. If ever there was an example of opportunity to make a decision based on personal choice here surely is one.

Not only has appellant not rebutted the presumption that she renounced her United States citizenship voluntarily, there is no evidence of record that there was any duress involved. Indeed, as we have seen, she signed a statement attesting that she was acting freely and voluntarily, without undue influence placed upon her by any person.

Appellant's renunciation of her citizenship was a voluntary act.

III

The other issue to be determined is whether appellant intended to terminate her United States citizenship when she formally renounced it at Madras on January 3, 1989. Unlike the issue of voluntariness, there is no presumption that one who does an expatriative act does so with an intent to relinquish citizenship. The government must prove intent to relinquish citizenship and do so by a preponderance of the

evidence. Vance v. Terrazas, 444 U.S. 252, 270 (1980). Intent to relinquish citizenship may be "expressed in words" or "found as a fair inference from proven conduct." Vance v. Terrazas, 444 U.S. at 260.

The Department of State, in a comprehensive, closely reasoned brief, submits that formal renunciation of one's citizenship is an unambiguous act which in se is inconsistent with an intention to retain citizenship, and must result in its loss. The Department further contends that the preponderance of the evidence shows that appellant acted knowingly and intelligently when she voluntarily renounced her citizenship.

We begin by noting that the cases are quite explicit that a voluntary, knowing and intelligent renunciation of United States citizenship, executed as prescribed by law and in the form prescribed by the Secretary of State, constitutes unequivocal and intentional divestiture of United States citizenship. Formal renunciation is an act so inconsistent with citizenship that loss of citizenship must result from it. Jolley v. INS, 441 F.2d at 1249. See also Davis v. District Director, 481 F. Supp. 1178, 1181 (D.D.C. 1979): "A voluntary oath of renunciation is clear statement of desire to relinquish United States citizenship."

Appellant argues that she did not perform the expatriative act with the intent to relinquish her United States citizenship. She explains: "My intention was merely to help facilitate compliance with Indian Citizenship Naturalization Laws - in order to safely continue my Spiritual Studies under the Divine Guidance of my Vedic Spiritual Guru, in the protection of his Ashram."

Appellant confuses motive with intent. Her position is not dissimilar to that of the appellant in Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985). There the plaintiff made an oath renouncing United States citizenship upon obtaining Canadian naturalization. He maintained that he did not intend to renounce his United States citizenship because he did not have a "principled, abstract desire" to terminate it. The Ninth Circuit categorically rejected plaintiff's argument.

> We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly. Whenever a citizen has freely and knowingly chosen to renounce his United States citizenship, his

> desire to retain his citizenship has been outweighed by his reasons for performing an act inconsistent with that citizenship. If a citizen makes that choice and carried it out, the choice must be given effect.

752 F.2d at 421-22.

Appellant here also contends that: "The possibility of dual citizenship...was not offered - or explained to me in Madras Consolate at the time of the Act of Expt...nor was I even aware of its possibility."

We agree with the Department that appellant's allegation is not germane. The consular officer had no duty to explain the position of the United States or India on dual citizenship; namely, that the United States, while opposed in principle, recognizes it under certain circumstances; and that India insists that those who obtain naturalization divest themselves of their other nationality. Even if appellant did not know about the position of the United States on dual nationality, she understood that under Indian law dual citizenship is not tolerated. For she submitted with her appeal an excerpt of the application form for naturalization in India which sets forth clearly the requirement that persons being naturalized must relinquish previous nationality.

Appellant further alleges: "Nor was the difference between voluntarily performing the expatriating act vs intention to relinquish U.S. citizenship - explained to me (Vance vs Terrazas) at the time of the act. I had no awareness or knowledge that there was an option, or a difference in this regard." The relevance of the foregoing allegation escapes us. Appellant cannot have been unaware that for her renunciation to be effective it would have to be clear to the American authorities that she acted freely and that she really wanted (intended) to give up United States citizenship. She was asked to and did complete a statement of understanding in which she acknowledged that she was acting voluntarily. She attested that she understood the meaning of the statement of understanding and the consequences of renunciation. In her personal explanatory note, she stated that she "wished" to renounce. And in the oath itself she averred that "I desire to make a formal renunciation...."

That appellant acted knowingly and intelligently is proved by her own words. In her letter of appeal to the Board, dated January 27, 1991, she wrote that she had "most gratefully" received the CLN "as a long sought after step in final acquisition of my 11-year prayed for Indian citizenship." However, circumstances had changed since she received the CLN, so she wanted to appeal. She noted that in

1991 her chances of getting Indian citizenship had become dim. Furthermore, as she stated in the May 1991 supplement to her appeal, the Indian Government was now giving 5-year visas. "In light of this new opportunity", she wrote, "...I too may be able to obtain the 5-year Indian visa and keep my American citizenship as well."

We are satisfied that at the relevant time, appellant intended to relinquish her United States citizenship. She has produced no evidence to cast any doubt on her evident rationality at the time of her renunciation or on the presumption, derived from the formal documents she signed, that she knew what she was doing and fully understood the gravity of her act.

The Department has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish her United States nationality when she formally renounced that nationality.

IV

On consideration of the foregoing, we conclude that appellant expatriated herself on January 3, 1989 by making a formal renunciation of her 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 February 15, 1990 to that effect.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

George Taft, Member