January 29, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: M[redacted] F[redacted]

This is an appeal from an administrative holding of the Department of State that appellant, M[redacted] F[redacted], expatriated herself under the provisions of Section 349 (a)(4)(A) of the Immigration and Nationality Act 1/ by serving in the Parliament of Israel, the Knesset, from January 21, 1974 to June 13, 1977.

Appellant was born on [redacted], at [redacted], thus acquiring United States citizenship by birth in the United States. Mrs. F[redacted] was educated in a United States public high school, attended one American college and two American universities, and in 1961, married an American citizen. Their daughter was born in [redacted]. After having lived briefly in Israel twice, once in the summer of 1959 on a scholarship and again during the academic year of 1965 when she and her daughter accompanied her husband who was a visiting lecturer that year at Haifa University, the F[redacted]

1/ Section 349(a)(4)(A) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(4)(A), reads:

> 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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> (4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; ...

returned to Israel in 1969 to live. Israeli nationality was conferred on appellant on December 14, 1972, by virtue of her failure to decline Israeli nationality on that date, pursuant to Section (2)(b)(4) of the Israeli Nationality Law of 1952. From 1969 through 1973, Mrs. F[redacted] taught in the Philosophy Department of Haifa University. While there, she taught an extra-curricular course on women's liberation which was in popular demand and attended with widespread publicity. As a consequence appellant became well-known as a feminist leader and was sought out for interviews, lectures, and ultimately to organize a movement to advance the status of women in Israel. In September 1973, a woman politician, [redacted], a former member of the Israeli labor party, decided to run for the Israeli Parliament on an independent ticket, the Civil Rights party, and turned to the women's movement for support. Appellant was offered third place on this party's list in exchange for her endorsement of candidate [redacted]. Appellant testified at her hearing on December 30, 1981, that she had twenty-four hours to decide, tried without avail to interest other Israeli women in the opportunity, and finally consented, believing that her endorsement of this candidacy would benefit women in general. 2/ In this December 1973, election, the Civil Rights party unexpectedly won three seats in the Israeli Parliament, the third of which was accorded to the appellant. Upon entering the Knesset, on January 21, 1974, appellant took an oath of allegiance which stated: "I undertake to be loyal to the State of Israel and to fulfill faithfully the obligation of office in the Knesset." Mrs. F[redacted]'s single term expired June 13, 1977, after three and a half years.

In the fall of 1974, Mrs. F[redacted], as a member of the Knesset, returned to the United States for liaison purposes involving women's groups and Jewish organizations in the United States. She travelled on an Israeli passport with an American visa which she obtained, according to her testimony, with no difficulty from the American Embassy. 3/

2/ Transcript of Proceedings In the Matter of M[redacted] F[redacted], December 30, 1981 (hereinafter cited as TR), pp. 29-31, 36.

3/ TR. pp. 40-41.

At the time she applied for an Israeli passport, which for a member of the Knesset had to be obtained from the Israeli Ministry of Foreign Affairs rather than the Ministry of the Interior, she acceded to a request that she deposit with them her American passport and travel only on her Israeli Service Passport. At her hearing, she explained that as a member of the Knesset, she honored this request believing that it was made from a strong sense of national insecurity and sensitivity to the fact that Israel is not recognized as a nation by all states.

Appellant testified that in the fall of 1976, she again applied for an American visa to be stamped in her Israeli passport in order to conduct the same type of liaison work and lecture in the United States. Appellant further testified to having been given on that occasion a copy of the Immigration and Nationality Act and referred to the part specifying the taking of an oath of allegiance as an expatriating act; and also to having been requested to sign a statement admitting to her voluntary relinquishment of her United States citizenship as a condition for receiving a visa. 4/ Although the Embassy has no record of either her 1974 or 1976 visits or of any conversations with appellant, she testified to having refused to sign the statement and to having nevertheless received the visa.

Her next visit to the American Embassy, on March 17, 1978, following the expiration of her term as a member of the Knesset, was for the purpose of renewing her United States passport. On that occasion, Mrs. F[redacted] signed an affidavit, attesting to her service in the Knesset but crossed out and initialed the phrase contained therein that her service in the Knesset "was done with the intention of relinquishing my United States citizenship". During the same visit, appellant also filled out a questionnaire explaining that when taking the oath of office for her seat in the Knesset, "I had no intention of relinquishing my citizenship to the United States and was under the impression that such a consequence was not forthcoming." Mrs. F[redacted] subscribed and swore to the truth of her explanations and answers on the questionnaire.

The Embassy renewed Mrs. F[redacted]'s passport on August 30, 1978, on a temporary basis. Subsequently, on September 22, 1979, appellant applied to the Embassy for a passport with a normal expiration period and received a letter of November 20 inviting her to submit within sixty days information or evidence to show that she had not

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4/ TR. pp. 45-46.

relinquished her citizenship. Mrs. F[redacted] responded by letter of January 10, 1980, denying that she ever intended or ever intends to voluntarily relinquish her United States citizenship. This letter was supplemented by a letter of January 16, 1980, in which appellant submitted as further evidence supporting her claim that she should not be deprived of her United States nationality, her work during her years in Israel with American Zionist and women's organizations.

On May 4, 1978, the American Embassy at Tel Aviv prepared a Certificate of Loss of Nationality in the name of M[redacted] P[redacted] F[redacted], as required by Section 358 of the Immigration and Nationality Act. 5/ The Embassy certified that appellant acquired United States nationality by virtue of her birth in the United States; that she acquired Israeli nationality on December 14, 1972 by virtue of her failure to decline Israeli nationality on that date; that she served as a member of the Knesset (Israeli Parliament) from January 21, 1974 until June 13, 1977; and that she thereby expatriated herself on January 21, 1974, under the provisions of Section 349 (a)(4)(A) of the Immigration and Nationality Act of 1952. The Department of State approved the Certificate of Loss of Nationality on March 4, 1980. Appellant, under grant of an extension of the deadline for a filing of this appeal, formally filed her appeal on March 25, 1981, with the Board of Appellate Review.

Section 349(a)(4)(A) of the Immigration and Nationality Act provides that a person who is a national of the United

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5/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

> 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

States whether by birth or naturalization shall lose his nationality by accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state.

There is no dispute that appellant voluntarily committed the statutorily expatriating act of serving in the Israeli Parliament. She accepted a place on the ticket of the Civil Rights party, campaigned for election, and when elected took the oath of allegiance upon serving in the Knesset for a term of three and a half years. In her Affidavit of Expatriated Person, executed on March 17, 1978, appellant swore that serving in the Israeli Parliament "...was my free and voluntary act and that no influence, compulsion, force or duress was extended upon me by another person...". Appellant contends, however, that in serving in the Israeli Parliament, she never intended to relinquish her United States citizenship.

In Afroyim v. Rusk, 387 U.S. 253 (1967), the Supreme Court declared that a United States citizen has a constitutional right to remain a citizen "unless he voluntarily relinquishes that citizenship." In Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court, affirming the Afroyim decision, stated that the intent to relinquish citizenship may be expressed by words and by a fair inference from proven conduct. The Court further stated that "Afroyim requires that the record support a finding that the expatriating act was accompanied by an intent to terminate United States citizenship." Ibid., 263. Thus most relevant to determining the intent of the appellant are statements or conduct contemporaneous with the expatriating act. Although the Supreme Court did not explicitly elaborate upon what conduct may be considered a voluntary relinquishment of citizenship, it recognized that an act which did not reasonably manifest an individual's transfer or abandonment of allegiance to the United States could not be accorded an expatriating effect.

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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 Attorney General in his Statement of Interpretation of Afroyim, concluded that voluntary relinquishment can be manifested by actions declared expatriative under the law, if such actions are in derogation of allegiance to the United States. 6/ The Attorney General in these same administrative guidelines, stated that the voluntary performance of some acts within the prescription of the law can be highly persuasive evidence in the particular case of a purpose to abandon citizenship. In this connection, the Department of State and the Immigration and Naturalization Service of the Department of Justice agreed on certain interpretive guidelines to be applied to statutory expatriative acts. These guidelines specify that service in an "important political post" in the government of a foreign state constitutes highly persuasive evidence of an intention to relinquish citizenship and results in expatriation in the absence of countervailing evidence of an intent not to transfer or abandon allegiance to the United States. In his Statement of Interpretation, the Attorney General also pointed out that in each case "the administrative authorities must make a judgment, based on all the evidence, whether the individual comes within the terms of an expatriation provision and has in fact voluntarily relinquished his citizenship." It was acknowledged in this interpretive statement that the Government's burden of proof on the issue of intent is not easily satisfied. 7/ The Supreme Court also noted in Vance v. Terrazas that a given expatriating act could not be taken as conclusive of a person's intent but that the expatriating act and all the surrounding facts and circumstances must be examined in deciding whether there was a voluntary relinquishment.

6/ Attorney General's Statement of Interpretation, 34 Fed. Reg. 1079, January 23, 1969.

7/ Ibid.

Applying these judicial and administrative interpretive guidelines to the facts in this appeal, it must be stated at the outset that the Board is fully agreed that serving in the Israeli Parliament is service in an "important political post." The basic issue that must be determined by the Board in this appeal is whether "the highly persuasive evidence of an intention to relinquish citizenship," that such service constitutes, is outweighed by any countervailing evidence of an intent not to transfer or abandon allegiance to the United States. In the Board's view, the circumstances of this particular appeal present an extremely thin edge on which we pause to consider what weight should be given to certain evidence of appellant's intent not to transfer or abandon her allegiance to the United States.

The record shows that Israeli citizenship was conferred on Mrs. F[redacted] by automatic operation of Israeli law. In this connection, counsel for appellant points out in appellant's brief that "Ms. F[redacted] chose not to affirmatively seek Israeli citizenship because she believed that such an action could place her American citizenship in jeopardy." Testifying at her hearing concerning her understanding as to whether the grant of Israeli citizenship adversely affected her United States citizenship, Mrs. F[redacted] explained: "...I understood at the time the United States Government now allowed for dual citizenship, but it was advisable, and I never really found out exactly why,...not to request citizenship, but to let it be automatically conferred upon me." 8/ The Board finds that the failure of appellant to take an affirmative act in applying for Israeli citizenship and, instead, accepting it once conferred upon her with the understanding that dual citizenship was allowable, suggests that appellant in 1972 wanted to retain her United States citizenship.

Although mindful of the ordinarily adverse implications with respect to assessing intention to retain United States citizenship for one who stands and campaigns for a foreign election, and as a consequence, serves in a foreign legislative body, the Board recognizes that the unusual circumstances of appellant's election and participation in the Knesset require a more probing analysis than is usual. In this connection, appellant's brother who was in Israel in 1972-1973 testified at her hearing that appellant had not

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8/ TR. p. 24.

participated in any significant degree in Israeli political community. 9/ Additionally, appellant explained that consent to stand and campaign for election was in Israeli politics symbolic as a form of endorsement of a given candidate. 10/

The record shows that the number of seats won by the Civil Rights party was unexpected; that appellant's participation in the Knesset centered mainly on women's rights issues; that her appearances in the Knesset were rare; and that she was not involved in political issues. The Board attaches significance to the request the Department made to the Embassy, dated August 17, 1978, to verify whether appellant participated fully in the legislative process of the Knesset, and to submit as much information as possible regarding such factors as committee assignments, position and voting record on non-feminist issues, especially in the area of foreign relations. Equally significant, in the Board's view, is the information provided by the Political Section of the Embassy. In its reply memorandum of February 9, 1979, the Embassy reported that the fact that the Civil Rights Members obtained three Knesset seats can be considered highly surprising, and it can, therefore, be said that M[redacted] F[redacted] did not really expect to become a Knesset Member. It was further verified that appellant's activities centered mainly on women's interests; that she was active in social affairs and education and fought against religious coercion; that her interests and participation in politics were almost non-existent; and that her Knesset appearances were extremely rare.

The Board accepts that Mrs. F[redacted] service in the Israeli Parliament is highly persuasive of a manifest intent to relinquish her United States citizenship and that very unusual circumstances would be required to overcome the presumption of intent to abandon her allegiance to the United States. We find, however, that such circumstances are marginally present here. As noted above, there was no significant participation in the political community prior to the election period; and there was nothing in her concentration on women's rights issues while in the Knesset that signified a conflict with or abandonment of allegiance to the United States. On the contrary, the record shows a thorough-going, outspoken identification as an American within the Israeli academic and social community as well as within the Knesset, even at the cost of political unpopularity.

9/ TR. pp. 16-17.

10/ TR. p. 31.

Appellant's testimony at her hearing underscored the extent of her identification as an American while she and her husband were living in Israel. This identification began to take form early in appellant's life in Israel through her growing fame as a feminist leader. The issue of women's rights was, according to her testimony, known as an American import. Adverting to this fact, appellant said at her hearing "I was very clearly labeled as an American." 11/ Further, with respect to this American identification, appellant explained at the hearing, that she grew up in the United States, was educated here, was proud of this country, its constitution and its political system. With reference to this explanation, Mrs. F[redacted] testified: "I was always accused of having been very American because of all those things...those were the kinds of issues I would talk about..". 12/

Appellant was asked at her hearing whether in connection with her service in the Knesset, she ever reflected about the possibility of a potential conflict between the policies and interests of Israel and those of the United States. Indicating that she had not reflected on this sort of conflict, she answered more fully - "...it was always an ironic interest to me that as a member of what was called the Peace Camp in Israel, I was in fact supporting the official policies of the United States Government against the policies of the Israeli Government,...these initiatives...were very unpopular with the Israeli Government, and with most Israeli citizens as well. So in that sense, it was not that I was going to have a conflict with the United States Government. It was as an American who was trained to think in American terms, in some sense, I am going to have a conflict with the Israeli Government. I felt it was my role as an opposition member." 13/

Both her testimony and the brief submitted by her counsel, advert to publicity in the Knesset concerning her American citizenship. Commenting on this, appellant recalled at her hearing that such publicity was enormous, that there was resentment over the fact of her American citizenship as well as over the fact that she was not a professional politician, not a political figure, had only been in Israel three and a half years, spoke with an Anglo-Saxon accent and represented American ideas that were not popular in Israel. 14/ In this same connection, appellant

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11/ TR. pp. 27-28.

12/ TR. pp. 26-27.

13/ TR. p. 56.

14/ TR. p. 36.

recounted at her hearing an incident in 1976 when it was rumored that an opposition member of Parliament, who belonged to an extremist conservative group was going to introduce a bill into the Knesset which would bar members of the Knesset from holding dual citizenship and that the bill would be known as the M[redacted] F[redacted] bill. She further testified that her reaction was to defend her right to dual citizenship if the bill were ever introduced. 15/ Counsel for appellant in her brief also mentioned the incident and made a point of the fact that appellant was at that time prepared to defend her right to dual citizenship.

The unexpected nature of her election, the absence of political responsibilities in the Knesset, her low profile as a participant in the legislative process of the Israeli Parliament, her consistent pattern of identification as an American both within and without the Knesset constitute the unusual and peculiar circumstances that in our judgment narrowly overcome the presumption of intent to abandon allegiance to the United States by serving in an important political post of a foreign government as a citizen of that foreign state.

Apart from these considerations, the Board notes that several other actions on the part of the appellant are present in this case from which the Board would ordinarily infer an intent to relinquish citizenship. First, there is her willingness to deposit her United States passport with the Israeli Foreign Ministry, and travel on an Israeli Service Passport, that was not technically required even of members of the Knesset. Mrs. F[redacted]'s explanation, as noted above, of her understanding of Israeli sensitivity that Israel's sovereignty be affirmed especially by Members of the Knesset, appears sufficiently feasible to the Board as to annul the inference, usually drawn from such an act, of a voluntary relinquishment or abandonment of United States citizenship. Secondly, there is her attested disregard of the warning she received at the Embassy in 1976, that the taking of an oath could be considered as a statutorily expatriative act. Appellant's explanation at her hearing that, having known that American citizens took such oaths when serving in the Israeli military and still maintained their American citizenship, she ascribed this warning to misinformation and to possibly a momentary personality conflict and dismissed it as insignificant, is, under the circumstances, a credible explanation

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15/ TR. p. 55.

precluding a too facile inference of intended relinquishment of citizenship. Thirdly, there is her pattern of disregard of such warnings or suggestions with respect to jeopardizing her citizenship whether from her brother when she was informed of her election, 16/ or when her husband was guided by the Embassy to make a statement denying any intent to relinquish his citizenship when he entered Israeli military service and took an oath of allegiance, or by the Embassy in 1976 as just noted. 17/ While this pattern could suggest a disregard for or disinterest in her American citizenship, the Board is persuaded that in the particular circumstances of this case, it is equally suggestive of nothing more than a willful reliance on her own understanding that such acts could not deprive her of her citizenship unless she had consented to its loss, and that she felt secure in her knowledge that she had never consented to a relinquishment of her United States citizenship.

More fundamentally, appellant's failure to investigate the possible effect of her activities on the status of her citizenship by inquiring of the Embassy, the only official source for such information in Israel - and her reliance instead on what was simply common knowledge among the American Jewish community in Israel, indicates a willfully careless and casual attitude for which the Board has no sympathy. At the same time, however, the Board cannot conclude that this attitude especially in the light of all the circumstances, was tantamount to an intent to relinquish or abandon her citizenship.

Throughout the record, as the foregoing discussion illustrates, one consistent thread may be seen to have emerged. It is simply that in none of appellant's acts of commission or omission - did she appear to have knowingly and intelligently intended to lose her United States citizenship. The significance of this observation lies in the dictum of the United States Court of Appeals (2nd Cir.) in Matheson v. United States, 532 F. 2d. 809 (1976), that Afroyim's requirement of an intent to relinquish United States citizenship "reflects the growing trend in our constitutional jurisprudence toward the principle that conduct will be construed as a waiver or forfeiture of a constitutional right only if it is knowingly and intelligently intended as such."

16/ TR. p. 12.

17/ TR. pp. 76-77.

After careful consideration of all of the surrounding facts and circumstances attending appellant's service for one term of three and a half years duration in the Knesset, the Board finds that this case turns on very thin edges of highly unusual circumstances and very narrow margins of judgmental weight accorded those circumstances. We conclude, therefore, that the record in its entirety leaves the issue of appellant's intent to a voluntary relinquishment of her United States citizenship to some extent in doubt. In such circumstances, it is incumbent upon the Board to resolve any and all doubts in favor of retention of citizenship. The Supreme Court has emphasized that, where deprivation of "the precious right of citizenship" is involved, "the facts and the law should be construed so far as is reasonably possible in favor of the citizen." Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); Schneiderman v. United States, 320 U.S. 118, 122 (1943).

On consideration of the foregoing, we conclude that in light of Afroyim and Terrazas, and within the scope of the Attorney General's Statement of Interpretation, the Department has not satisfied its burden of proof by a preponderance of the evidence that appellant's expatriative act of service in the Knesset was performed with the intent to relinquish her United States citizenship. Accordingly, we reverse the Department's administrative holding of May 4, 1980.

Julia W. Willis

Julia W, Willis, Chairman

Gerald A. Rosen

Gerald A. Rosen, Member

Dissenting Opinion

I dissent from the decision reached in the above majority opinion reversing an administrative determination made by the Department of State that appellant, M[redacted] P[redacted] F[redacted], expatriated herself under the provisions of section 349(a)(4)(A) of the Immigration and Nationality Act by serving in the Knesset of the State of Israel from January 21, 1974, to June 13, 1977. 1/ In my judgment, the record supports a finding that appellant's service in the Knesset for a period of three and a half years was accompanied by the requisite intent to relinquish her United States citizenship. Accordingly, I affirm the Department's determination of expatriation.

I

Appellant, who acquired United States citizenship at birth, immigrated to Israel in 1969 with her husband and minor daughter. In a citizenship questionnaire of the American Embassy at Tel Aviv, which she executed on March 17, 1978, she said that she took up residence in Israel "to start a new life in a new place" that was more susceptible to change than the United States, and because of "a sense of religious identification with the Jewish people." Appellant and her husband taught at Haifa University. She was an instructor of philosophy; her husband, a professor of English. On December 14, 1972,

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1/ Section 349(a)(4)(A) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(4)(A), reads:

> 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 --
>
> (4)(A) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; ...

appellant was registered at Haifa as an immigrant permanent resident of Israel and acquired automatically Israeli nationality by operation of law. According to a certificate of the Ministry of Interior confirming her Israeli nationality, she became an Israeli citizen under the provisions of paragraph 2(b)(4) of the Israeli Nationality Law of 1952. She had the option under that law to decline Israeli nationality, but chose not to take such action. 2/

While teaching at Haifa University, appellant became active in an ongoing reform movement in Israel to advance the status of women. According to her testimony, she traveled extensively throughout Israel in support of women's rights, lectured, gave speeches, met women's groups, and assisted in organizing women's activities. As a consequence, she said, she became well-known as a feminist leader, and in September 1973, allowed her name to be placed third on the list of candidates of the Civil Rights party for the Knesset. At the election held in December 1973, the Civil Rights party obtained three Knesset seats, and appellant became a member of the Knesset. 3/

2/ Under the Israeli Nationality Law of 1952, a Jew who immigrates to Israel to become a permanent resident acquires Israeli nationality unless he is a foreign national and declares that he does not wish to become an Israeli national. In the absence of such an opting-out declaration, the Jewish immigrant automatically acquires Israeli citizenship.

3/ The Knesset, an elected unicameral parliament, is the highest political power in Israel. The Government is subordinate to the Knesset, and the Courts enforce the Acts of the Knesset regarding them as the supreme law of the land. The Government remains in power as long as it has the support of or controls a majority in the Knesset. Legislative power is vested in the Knesset. Its 120 members are elected by direct secret ballot. All voting is for party lists rather than for individual candidates. Successful Knesset candidates are drawn from the lists in order of party assigned rank. Aliens are disqualified from membership. See generally Eliahu S. Likhovski, ISRAEL'S PARLIAMENT THE LAW OF THE KNESSET (1971).

Upon opening of the new Knesset on January 21, 1974, appellant made a declaration of allegiance to the State of Israel. Each member-elect of the Knesset is required to make a declaration of allegiance in the following form:

> I pledge to bear allegiance to the State of Israel and faithfully to discharge any obligations in the Knesset. 4/

The declaration is made by the member-elect reciting the statutory affirmative reply, "I pledge myself", as the Clerk of the Knesset or his Deputy reads the names in alphabetical order. 5/ Appellant testified that she repeated the words, "I swear", when her name was called. 6/

Shortly after her election, appellant sought and obtained an Israeli passport. As a member of the Knesset, she was given an official Israeli Service passport. Appellant also readily agreed to a request of the Ministry of Foreign Affairs to surrender her unexpired United States passport and to travel only on her official Israeli passport. She said that she acquiesced because of her understanding of Israeli sensitivity on the matter of nationality and because "it didn't seem to me at that time to be a major issue." 7/

In September of 1974, appellant applied at the American Embassy at Tel Aviv for a visa to the United States. She testified that she was recognised by the consular staff as a member of the Knesset, was treated as a VIP, and was issued a visa without any difficulty. Appellant, however, experienced some difficulty in October of 1976, when she applied again for a visa to the United States. She testified that on this occasion she was questioned by a consular officer about her United States citizenship status, was given to read a statement setting forth certain provisions of the Immigration and Nationality Act relating to loss of citizenship, and later was handed a statement to sign allegedly to the effect that she voluntarily relinquished her United States

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4/ Id. at 36.

5/ Id. at 37.

6/ Transcript of Proceedings In the Matter of M[redacted] F[redacted], Department of State, Board of Appellate Review, December 10, 1981 (hereinafter cited as TR), at 35.

7/ TR. at 39-40.

citizenship. Appellant said she refused to sign the statement, "raised" her voice, "got rather angry, which worked", and received a visa. 8/ Apart from appellant's testimony, there is no Embassy record of such discussions with her in 1974 and 1976.

Appellant completed her term of office in June of 1977. In early 1978, she visited the Embassy to apply for a United States passport. At the request of the Embassy, she completed a citizenship questionnaire for use by the Department in determining her citizenship status. She also signed an affidavit dated March 17, 1978, attesting to her service in the Knesset, to her taking an oath of allegiance to Israel, and to her voluntary performance of these acts. She crossed out, however, from the affidavit the following language: "...and that it was done with the intention of relinquishing my United States citizenship." This appears to be the first objective manifestation of her intent "not to relinquish" her citizenship. She testified at the hearing that she was pleased to have that opportunity to have some record that she did not intend to relinquish her citizenship. 9/

On May 4, 1978, the Embassy prepared a certificate of loss of United States nationality in appellant's case, pursuant to section 358 of the Immigration and Nationality Act, and referred the case to the Department for final determination and approval of the certificate. Pending the Department's review of the matter, the Embassy issued appellant on August 30, 1978, a passport valid only for three months. The Department approved the certificate of loss of nationality on March 4, 1980.

II

As the majority opinion points out, the principal issue that we are confronted with here is whether or not appellant's service in the Knesset was accompanied by an intent to give up her United States citizenship. Such intent is to be determined as of the time the act of expatriation took place, and may be ascertained from appellant's statements or as a fair inference from her conduct at that time.

8/ TR. at 46.

9/ TR. at 59.

In Afroyim v. Rusk, 387 U.S. 253 (1967), the Supreme Court stated that a United States citizen has a constitutional right to remain a citizen unless he or she voluntarily relinquishes that citizenship. It made loss of citizenship dependent upon evidence of an intent to relinquish citizenship. The Supreme Court reaffirmed and clarified this holding on intent in Vance v. Terrazas, 444 U.S. 252 (1980). The Court said that the Government must prove an intent to surrender United States citizenship, as well as the performance of the expatriative act under the statute. The Court stated that an intent to relinquish United States citizenship must be shown by the Government, whether "the intent is expressed in words or is found as a fair inference from proven conduct." The Court made it clear that it is the Government's burden to establish by a preponderance of the evidence that the expatriating act was accompanied by an intent to terminate United States citizenship.

In Vance v. Terrazas, the Supreme Court spoke favorably of the administrative guidelines which the Attorney General set forth in his statement of interpretation of Afroyim. 10/ The Attorney General said that "voluntary relinquishment" of citizenship is not confined to a written renunciation but can also be manifested by other actions declared expatriative under the statute if such actions are in derogation of allegiance to this country. The Attorney General further stated that in each case the administrative authorities must make a judgment based on all the evidence in deciding whether the person comes within the terms of the expatriation provision and has in fact voluntarily relinquished his or her citizenship. The Supreme Court in Vance v. Terrazas agreed that in each case the expatriating act and all the surrounding facts and circumstances must be examined in deciding whether there was a relinquishment of citizenship.

In this connection, it should be noted, as the U.S. Court of Appeals, Seventh Circuit, observed in Terrazas v. Haig, 653 F. 2d 285 (1981), that "a party's specific intent to relinquish his citizenship rarely will be established by direct evidence." The Court pointed out, however, that "circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship." The Court of Appeals

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10/ Attorney General's Statement of Interpretation, 42 Op. Atty. Gen. 397 (1969).

referred to an earlier Ninth Circuit decision in King v. Rogers, 463 F. 2d 1188 (1972), in which it was stated that the Secretary of State may prove intent by acts inconsistent with United States citizenship or by affirmative acts clearly manifesting a decision to accept foreign nationality. Such proof need be only by a preponderance of the evidence. 11/

The record shows that appellant first raised the issue of her intent in March 1978 in her response to the Embassy's citizenship questionnaire. This occurred after she had completed her service of three and a half years in the Knesset. There is nothing in the record by way of statements made by appellant with respect to her intent contemporaneous with her acceptance of membership in the Knesset or during her term of service.

We have, however, in the record undisputed evidence of appellant's conduct during that period, which, has, in my view, a significant bearing on the question of her intent. Appellant voluntarily chose to accept a place on the list of

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11/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), reads:

> (c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

Civil Rights party candidates for the Knesset, to stand and campaign for office, and upon election, to serve as a member from January 1974 to June 1977. She also, as a member-elect of the Knesset, pledged her allegiance to the State of Israel and to faithfully discharge her obligations in the Knesset. It has been stated that the taking of an oath of allegiance, while alone insufficient to prove a renunciation of citizenship, "provides substantial evidence of intent to renounce citizenship." King v. Rogers, 463 F. 2d 1188 (1972).

I also find relevant as bearing on the question of her intent to transfer allegiance to Israel, her failure throughout this period to seek competent advice from the Embassy regarding her acceptance of membership and service in the Knesset. This would suggest, at least, an indifference as to the effect such conduct would have on her United States citizenship status. Moreover, she sought, and accepted, and traveled on an official Israeli Service passport, and, at the request of the Israeli authorities, deposited with the Ministry of Foreign Affairs her United States passport. Also, in 1974 and 1976, appellant applied for an received visas to the United States. Such actions presuppose the absence of United States citizenship.

It is clear from the record that, prior to appellant's election to the Knesset and during her three and a half years term of office, she sought no advice from the Embassy as to whether her acts would have any adverse consequences with respect to her United States citizenship status. She chose not to inquire when she gave her consent to her candidacy on the Civil Rights party list, or when she was elected to the Knesset, or when she acquired and traveled on an official Israeli Service passport, or when she applied for visas at the Embassy. Appellant testified at the hearing that she relied on her own understanding of the law, which, she said, was derived principally from the then prevailing beliefs and views of the public community in Israel concerning dual nationality and the 1967 Afroyim decision of the Supreme Court. In her citizenship questionnaire of March 17, 1978, she stated that she gave no thought to the possibility that her service in the Knesset would endanger her American citizenship because she "understood that the Supreme Court had ruled several years earlier that for native-born Americans citizenship is a birthright that cannot, therefore, be revoked." Further, in a letter to the Embassy of January 15, 1980, she expressed her understanding

that as a citizen of the United States and of Israel she had the right under the Constitution of the United States "to full and active citizenship in the State of Israel and to the exercise of the rights that that citizenship confers upon me."

Appellant, of course, could have easily obtained an official view from the Embassy or from the Department during her trips to the United States concerning the legal effect of her accepting to serve in the Knesset. She preferred instead to rely on her own understanding of the law. Although a United States citizen who automatically acquires Israeli nationality by operation of Israeli nationality law does not lose his or her American citizenship through failure to decline Israeli nationality, it does not follow that a United States citizen who acquires Israeli nationality in that manner is thereby entitled to accept or serve in an important political post under the Government of Israel without adversely affecting his or her citizenship. In any event, appellant here must be held to have proceeded at her own risk in serving in the Knesset. A person is not excused from his or her expatriating conduct on account of ignorance of the law or of his or her mistake of the law.

The majority finds in appellant's conduct "one consistent thread" of lack of intent to lose citizenship. The majority states that "in none of appellant's acts of commission or omission - did she appear to have knowingly and intentionally intended to lose her United States citizenship". I am unable to agree. In the first place, there is no contemporary concrete evidence in the record to support the majority's view of her lack of intent to give up her citizenship during the period from 1973 through 1978. On the contrary, her conduct during her service in the Knesset manifested, in my opinion, not only an intent to transfer her allegiance to Israel, but also prevented her from giving continued and undivided allegiance to the United States. Secondly, appellant's acts and surrounding circumstances prior to and during her term of office are to be considered in their entirety, and not as individually distinct acts of commission or omission, as the majority does and then proceeds to speculate as to her intent with respect to each individual act. The majority members give undue weight to appellant's self-serving statements made after her term of office expired and to a 1979 inconclusive memorandum of the

Embassy with respect to appellant's activities in the Knesset. 12/ The majority members even find some support in appellant's testimony at the hearing about an alleged "rumor" in 1976 that a member of an extremist conservative group in the Knesset intended to introduce a bill that would bar members from holding dual citizenship, and that "if" the bill were ever introduced, appellant would undertake to defend her right to dual citizenship. 13/

In light of the Supreme Court decisions in Afroyim and Terrazas, it is a person's conduct at the time the expatriating act occurred that is to be looked at in determining his or her intent to relinquish citizenship. The crucial time for ascertaining whether the appellant harbored an intent to abandon or retain her American citizenship is the time of the expatriating conduct. Appellant's subsequent statements made

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12/ Memorandum of American Embassy, Tel Aviv to the Department of State, February 9, 1979, which was prepared in the Embassy's consular section, read in part as follows:

The Political Section at the Embassy informed us of the following concerning Mrs. F[redacted]:

1) She was third on the Civil Rights Members Knesset List in the December 1973 general elections. The fact that the Civil Rights Members obtained three Knesset seats can be considered as highly surprising, and it can, therefore, be said that M[redacted] F[redacted] did not really expect to become a Knesset Member.

2) Her activities in the Knesset centered mainly upon women's interests (equality in the eyes of the law; equal rights, etc.). Together with her other Civil Rights Members colleagues she was active in social affairs and education, and fought against religious coercion.

3) Her interests and participation in politics were almost non-existent, and her Knesset appearances were extremely rare.

13/ See at p. 10 above.

in 1978 and at the hearing to the effect that she had no intention to relinquish her United States citizenship are contravened by her voluntary acceptance of service in the Knesset, by pledging her allegiance to the State of Israel, by declaring to faithfully discharge her obligations in the Knesset, by serving in the Knesset for a period of three and a half years, and by her other conduct at the time she was a member of the Knesset. I am persuaded that the record supports a finding that appellant's acts manifested an intent to transfer her allegiance to Israel and abandon her allegiance to the United States.

Taking into account the facts and circumstances surrounding appellant's service in the Knesset, I am of the view that appellant's own words and conduct at the time established the requisite intent to give up citizenship. Her expatriative conduct was clearly in derogation of her allegiance to the United States, and reasonably manifested an abandonment of that allegiance. In my judgment, the Department has satisfied its burden of proof that appellant's expatriating act was performed with the intent to relinquish United States citizenship.

I would affirm the Department's administrative determination of loss of nationality made in this case on March 4, 1980.

Edward G. Misey

Edward G. Misey, Member