DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

June 17, 1981

CASE OF: H[redacted] H[redacted] E[redacted]

This is an appeal from an administrative holding of the Department of State that appellant, H[redacted] H[redacted] E[redacted], also known as H[redacted] E[redacted], Jr., expatriated himself on January 21, 1976, under the provisions of section 349 (a)(6), now section 349 (a)(5), of the Immigration and Nationality Act by making a formal renunciation of his United States nationality at the American Embassy at San Salvador. 1/

Appellant E[redacted] was born at [redacted] on [redacted]. His father, [redacted], was a United States citizen; he was born in [redacted]. His mother was born in San Salvador and acquired United States citizenship as a result of her marriage to [redacted] on May 27, 1922. Appellant resided in the United States at intermittent periods between 1936 and 1974. He enlisted in the United States Air Force on January 30, 1946 and received an honorable discharge on December 2, 1948, at Howard Air Force Base in the Panama Canal Zone. On March 11, 1951, he married Carmen Sisniega, a citizen of El Salvador. In 1959, Estep moved with his wife and three young children to the United States and took up residence in the Chicago area. He later became a partner in an electrical contracting firm in Chicago. In July of 1974,

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1/ Section 349 (a)(6), now section 349 (a)(5), of the Immigration and Nationality Act, 8 U.S.C. 1481, 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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> > (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; . . .

Public Law 95-432, approved October 10, 1978, 92 Stat. 1046, repealed paragraph (5) of section 349(a) of the Immigration and Nationality Act, and redesignated paragraph (6) of section 349(a) as paragraph (5).

he returned to El Salvador. He stated in a brief which he submitted to the Board of Appellate Review that his mother had prevailed on him to return to El Salvador and take over management of the family corporation and finances.

Following his return to El Salvador, E[redacted] obtained in 1975 a Salvadoran passport allegedly for the purpose of substantiating his being registered as a Salvadoran citizen a few years earlier in connection with the family corporation in El Salvador. It appears that in 1970 El Salvador reformed its Commercial Code and enacted certain legislation which required a high degree of capitalization from foreign owners of business in that country. To avoid compliance with the capitalization requirement, E[redacted] was registered as a Salvadoran citizen, rather than as a United States citizen, when the family corporation was modified in 1971 following enactment of the Salvadoran law.

In January 1976, the American Embassy at San Salvador learned that appellant had obtained a Salvadoran passport and sought an explanation from him. E[redacted] stated in his brief that, on the advice of his lawyer, he chose not to explain the reason for acquiring the passport. He also stated that he informed the American consul at the same time that his daughter "was soon to be married in Chicago," and that he "needed to go there right away." Appellant further stated in his brief that the American consul told him either to return the Salvadoran passport or to renounce his United States citizenship. After consulting with his attorney, appellant returned to the Embassy on January 21, 1976, and made a formal renunciation of his United States citizenship.

On January 22, 1976 the Embassy prepared a certificate of loss of United States nationality, as required by section 358 of the Immigration and Nationality Act. 2/

2/ 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

The Embassy certified that Harrison Estep, Jr. acquired the nationality of the United States by virtue of the citizenship of his father; that he renounced his United States citizenship on January 21, 1976; and that he therefore expatriated himself under section 349(a)(6) of the Immigration and Nationality Act. The Department of State approved the certificate on February 25, 1976. The certificate constitutes the Department's administrative holding of loss of nationality from which an appeal lies to the Board of Appellate Review. By letter dated June 13, 1980, appellant, through the Embassy at San Salvador, gave notice of appeal. He contends that his renunciation was involuntary, and that it was forced on him "unwillingly by circumstance, albeit with...full knowledge and participation."

Section 349 (a)(6), now section 349 (a)(5), of the Immigration and Nationality Act provides that a person who is a national of the United States shall lose his nationality by 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. 3/ There is no dispute here that appellant made a formal renunciation of United States nationality on January 21, 1976, before a consular officer of the United States in El Salvador. The oath, which he subscribed and swore to, read in part as follows:

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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.

3/ See note 1 supra.

> ...I desire to make a formal renunciation of my American nationality as provided by section 349(a)(6) 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.

Appellant also signed under oath before two witnesses a Statement of Understanding acknowledging among other matters that the extremely serious nature of his contemplated act of renunciation had been fully explained to him by the consular officer and that he fully understood the consequences of his intended action. He also acknowledged that he "decided voluntarily" to exercise his right to renounce his citizenship.

Under section 349 (c) of the Immigration and Nationality Act, a person who performs a satutory act of expatriation is presumed to have done so voluntarily. 4/ Such presumption, however, may be rebutted upon a showing, by a preponderance of the evidence, that the act of expatriation was not done voluntarily.

4/ 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 theprovisions 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.

It is recognized that proof of involuntariness is a valid defense to expatriation even in the exercise of a person's right to renounce his United States citizenship. Loss of citizenship can result only from the citizen's voluntary action. Afroyim v. Rusk, 387 U.S. 253 (1967); Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971); Mendelsohn v. Dulles, 207 F. 2d 37 (1953); Insogna v. Dulles, 116 F. Supp. 473 (1953); Acheson v. Murakami, 176 F. 2d 953 (1949). It has also been held that the making of a formal renunciation of nationality requires a higher degree of pressure to justify a finding that the renunciation was made involuntarily. Kuwahara v. Acheson, 96 F. Supp. 38, 42 (1951).

Although appellant admits that he renounced his United States citizenship, he contends, as stated, that his renunciation was involuntary. Specifically, he alleges that he renounced his citizenship because he was pressured by the United States consular officer to decide whether to return his Salvadoran passport or consider as an alternative the renunciation of his United States citizenship, because he wanted to return to the United States for his daughter's wedding, and because of difficulties he would encounter with the Salvadoran authorities if he were to return his Salvadoran passport. Appellant explained the circumstances surrounding his renunciation as follows:

9. In January 1976, the American Consul in El Salvador, Mr. Richard B. Andrews, learned that I had taken out a Salvadorean passport. He called me in and asked me to explain the reason for this action. On the advice of Counsel, I chose not to reveal to him the reason for doing so. He then informed me that I must immediately return the Salvadorean passport, or "voluntarily" renounce my American nationality. I asked for a day's grace to consult the matter.

10. At the same time, I told Mr. Andrews my daughter was soon to be married in Chicago, and that I needed to go there right away. He told me that if I complied with either of the alternatives he had laid down, that it was likely that I could go, but if not, there was no way he would let me go.

11. On consulting with the lawyer, he came to the conclusion that if I returned the Salvadorean passport, the repercussions of that action would most likely bring about the very sanctions he had been trying to avoid. Since it was imperative that I get to the States for my daughter's wedding, I went back to Mr. Andrews and agreed to sign a "voluntary" act of expatriation.

Appellant further explained in a subsequent submission of March 11, 1981, that, after he refused to disclose to the American consul the reasons why he acquired a Salvadoran passport, the American consul mentioned renunciation as an alternative to his returning the Salvadoran passport. The American consul reportedly also told him that renunciation "was dangerous" because if El Salvador revoked his passport he would become a stateless person. Appellant reiterated that he discussed the situation with his attorney, who, it is said, was certain that the return of the Salvadoran passport would entail ruinous financial consequences, and "would trigger reprisal" by the Salvadoran authorities. Accordingly, in the circumstance and "goaded" by the necessity of returning to the United States for his daughter's wedding, appellant said that he decided to renounce his United States citizenship rather than give up his Salvadoran passport. He remarked that in his frame of mind at the time "he would have signed anything" in order to avoid reprisals from the Salvadoran authorities and to return to the United States for his daughter's wedding.

There is little basis in the record that would support appellant's assertion that he was pressured by the American consul to decide whether to return the Salvadoran passport or to renounce his United States citizenship. On the contrary, appellant averred that Mr. Andrews, the American consul, did not advise him to renounce his United States citizenship. It should be noted in this relation that consular officers are under instructions not to recommend or urge renunciation for any reason whatsoever. 5/ Consular officers may, of course, advise a citizen of his right to renounce, and inform him of the provisions of the law. A presumption of regularity has long attached to acts and procedures of the Government and agencies thereof in the daily conduct of public affairs. Boissonnas v. Acheson, 101 F. Supp. 138 (1951). Appellant has not offered any evidence

5/ Section 225.6(c), Foreign Affairs Manual, Vol 8, 8 FAM 225.6.

that would overcome this legal presumption, that is, that consular officers act correctly in accordance with the law and its instructions until the contrary appears.

Furthermore, appellant does not contend that he was coerced to renounce his United States citizenship. He stated in his brief that he chose with "full knowledge and participation" to give up his United States citizenship rather than return the Salvadoran passport. The United States Court of Appeals pointed out in Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245, 1250 (1971) that "the opportunity to make a decision based on personal choice is the essence of voluntariness."

While it may be conceded that appellant may have believed that he was compelled by personal circumstances to renounce his United States citizenship, we are unable to conclude that appellant's renunciation was made under circumstances that made this action involuntary as a matter of law. The predicament he faced at the time of his renunciation in 1976 stemmed from his acquiescence from being listed as a Salvadoran national in 1971 when the family corporation "was modified". According to the affidavit of German Atilio Anya, an attorney and notary of San Salvador, it appears that shortly after the reform of the Salvadoran Commercial Code was promulgated by Legislative Decree No. 671 of May 8, 1970, which entered into force on January 1, 1971, the family corporation was modified. The name of the corporation was changed from "[redacted], [redacted]" to "[redacted]", and appellant was registered as a Salvadoran national "partner". Although appellant was not personally present in El Salvador at that time, he stated that he was represented at the modification proceedings by a "trusted relative", who had his power of attorney, and that he was informed of the modification.

In addition, upon his return to El Salvador in July of 1974, appellant took steps to acquire a Salvadoran passport in order "to back up the legal device used in the modification of the corporation", that is, to support his registration as a Salvadoran owner. He explained the situation in a sworn statement of June 13, 1980, as follows:

> After arriving in Salvador, the lawyer informed me of these details and, since we did not have the money to come up with the additional capitalization, to take out a Salvadorean passport to back up the legal device. The alternative was to risk confiscatory taxes and/or fines, which really meant financial ruin for my mother and my sister, as well as jeopardy of my own means of livelihood, after having severed my ties in Chicago. Faced with this situation, I sent to the Salvadorean Immigration for a passport. I did not have to go personally, and at no time did I have to swear allegiance to El Salvador.

Appellant admittedly was faced in January 1976 with a choice of either returning the Salvadoran passport and subjecting himself and his family corporation thereby to certain unspecified penalties and taxes or retaining the Salvadoran passport and placing his United States citizenship in jeopardy. He chose to retain his Salvadoran passport. Thus, when refused a visa to travel on his Salvadoran passport to attend his daughter's wedding in the United States, and confronted with the alternative of giving up the Salvadoran passport or renouncing his United States citizenship, appellant, following consultation with his attorney, decided to relinquish his United States citizenship. It is clear from appellant's submissions to the Board that the principal purpose of his act of renunciation was to avoid the consequences of Salvadoran law for actions taken earlier by him and the family corporation. As we have seen, Salvadoran law required a high capitalization from foreign owners of businesses, and that in order for appellant's family corporation to gain the benefits of more favorable capitalization requirements, appellant was registered as a Salvadoran.

We are of the view that appellant's concern about the possible consequences he or the family corporation would suffer if he returned his Salvadoran passport and his desire to return to the United States to attend his daughter's wedding are not equatable with coercion sufficient to render his renunciation involuntary as a matter of law. Appellant did not renounce his United States citizenship because of fear, intimidation or coercion depriving him of the free exercise of his will. He

renounced out of a personal choice and exercised his own will. The form of renunciation stated in clear and unequivocal language that he desired to make a formal renunciation of his American nationality. He also stated under oath in the Statement of Understanding, which was executed at the same time, that he fully understood the consequences of his intended renunciation and that he voluntarily decided to renounce his United States citizenship.

The evidence of record convinces us that appellant, possibly with reluctance, but nevertheless, voluntarily to serve his own purposes, formally renounced his United States citizenship. From all that appears, appellant made, after consultation with his lawyer, a free choice for personal reasons and economic advantage, and cannot be legally found to have acted under the compulsion of an overwhelming extrinsic force. The Salvadoran law affecting foreign ownership interests in corporations in that country had not materially changed following his return to El Salvador in 1974. Neither does it appear that there was any arbitrary Government decree or law of El Salvador contrary to his knowledge at the time appellant left Chicago in 1974. There is no evidence that he made any effort to act in a manner otherwise than he chose in the circumstances. Arguably, appellant was confronted with a choice between difficult alternatives, but in citizenship matters, as in other aspects of life, a person must choose between such alternatives and accept the consequences of his voluntary choice. Appellant carefully calculated his alternatives and, having made an election, is bound by whatever the legal consequences of his choice.

Appellant also asserted as one of the elements of his claim of involuntariness his strong sense of obligation to take care of his mother and look after the family finances. No doubt the devotion he felt and manifested for his mother constituted a degree of coercion. However, in light of all the circumstances, we do not believe it was sufficient to render his expatriating conduct involuntary. It is recognized that family obligations may be so compelling as to negate freedom of choice. Mendelsohn v. Dulles, 207 F. 2d 37 (1953); Ryckman v. Acheson, 106 F. Supp. 739 (1952). However, neither the motivation nor the difficulty of the choice confronting the person make his action involuntary if he was free to choose between alternatives facing him.

It does not appear to the Board that the duress of filial affection and devotion present in this case was so compelling as to negate a free choice between available options. The evidence of record fails to show that appellant's mother was so incapacitated by reason of health and age and in such a dire financial situation that she would have been helplessly and totally abandoned if appellant had not renounced his United States citizenship, or that she was without any alternatives, such as, for example, institutional care in El Salvador, or being removed to the United States where she would be under appellant's care in Chicago. Unquestionably, appellant's presence in El Salvador was a great comfort to his mother and the concern he manifested for her welfare was praiseworthy. In the circumstances, the decision he made to disavow his American citizenship was understandably difficult. However, as a matter of law, it was not an involuntary decision.

Under the provisions of section 349 (c) of the Immigration and Nationality Act, appellant bears the burden of rebutting by a preponderance of the evidence the statutory presumption that his naturalization was voluntary. 6/ In our opinion, reading the record in its entirety, appellant has failed to meet this burden.

As to the question of whether or not appellant had the intention to voluntarily relinquish his United States citizenship, we are of the opinion that appellant voluntarily renounced his United States nationality with the intention of giving up his United States citizenship. The form of renunciation stated in clear, unequivocal language that he desired to make a formal renunciation of his American nationality, that he absolutely and entirely renounced such citizenship, and that he abjured all allegiance and fidelity to the United States. Appellant, we believe, assented to the loss of his United States citizenship by his expatriating conduct.

The Supreme Court declared in Afroyim v. Rusk, 387 U.S. 253 (1967) 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

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6/ See note 4 supra.

reaffirmed Afroyim's emphasis on the individual's assent to relinquish citizenship and the requirement that the record support a finding that the expatriating act was accompanied by an intent to terminate United States citizenship. Formal renunciation of United States citizenship, in the manner provided by law, is considered the most unequivocal and categorical of all expatriating acts, and demonstrates an intent on the part of the renunciant to relinquish his citizenship. In cases of this character, the intent to relinquish is implicit in the act of renunciation. We find here that appellant assented to the loss of his United States citizenship by his formal renunciation.

On consideration of the foregoing and on the basis of the record before the Board, we conclude that appellant expatriated himself on January 21, 1976, by making a formal renunciation of his United States citizenship before a consular officer in the United States, and, accordingly, affirm the Department's administrative holding of February 25, 1976, to that effect.

Julia W. Willis, Chairman

Edward G. Misey, Member

Alan G. James, Member