DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

July 2, 1981

CASE OF: M[redacted] B[redacted] K[redacted]

The appeal in this case is taken from an administrative holding of the Department of State that appellant, M[redacted] B[redacted] K[redacted], expatriated himself on April 18, 1972, under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining naturalization in Canada upon his own application. 1/

Appellant, M[redacted] B[redacted] K[redacted], was born at [redacted], and acquired United States citizenship at birth. He resided in the United States until 1966 when he moved to Canada to accept a teaching position offered by the Ontario Institute for Studies in Toronto. Subsequently, he became a tenured professor at York University. K[redacted] married a Canadian national on August 27, 1970, and resided in Canada until 1978.

In 1972, K[redacted] applied for naturalization in Canada. On April 18, 1972, he took the required oath of allegiance, made a declaration, in prescribed form, of renunciation of his previous nationality, and received his certificate of Canadian citizenship. 2/ In March 1973, he acquired a Canadian passport, which he used for travel to Europe.

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

(1) obtaining naturalization in a foreign state upon his own application, ...

2/ Section 10(1), Canadian Citizenship Act, R.S.C., 1952, c.33 as amended, and section 19(1), Canadian Citizenship Regulations established by P.C. 1968-1703.

Early in 1978, K[redacted] visited the American Consulate General at Toronto to inquire about an immigrant visa to the United States. Upon learning of his acquisition of Canadian citizenship, the Consulate General sought and obtained from the Canadian authorities verification of his naturalization as a Canadian citizen. It does not appear from the record that K[redacted] previously appeared at a consular office of the United States during his residence in Canada from 1966 to 1978.

As required by section 358 of the Immigration and Nationality Act, the Consulate General at Toronto prepared a certificate of loss of United States nationality on April 5, 1978. 3/ The Consulate General certified that appellant acquired United States nationality by virtue of his birth in the United States on April 13, 1939; that he acquired Canadian citizenship by naturalization on April 18, 1972; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department of State approved the certificate of loss of nationality on May 5, 1978. The certificate constitutes the Department's administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

3/ 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 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.

Appellant's counsel gave notice of appeal, accompanied by a legal brief, on June 27, 1980. While appellant admits that he voluntarily obtained naturalization in Canada, he contends that he did not intend to relinquish his United States citizenship. He argues that, in the absence of a record to support a finding that he specifically intended to terminate his United States citizenship, the Department's administrative determination of expatriation is erroneous as a matter of law and must be reversed.

Section 349(a)(1) of the Immigration and Nationality Act provides that a person who is a national of the United States shall lose his nationality by obtaining naturalization in a foreign state upon his own application. There is no dispute here that appellant voluntarily applied for and obtained Canadian citizenship.

In his responses to a citizenship questionnaire of the Consulate General, sworn to on March 16, 1978, appellant explained the reasons for his naturalization as follows:

> My reasons for becoming naturalized in Canada were both personal and professional.
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> The personal reasons stemmed from the facts that I had lived in Canada for several years, married a Canadian, purchased a home, and acquired tenure at a Canadian university. I thought that I would reside in the country for an indefinite period and wanted to be able to vote on matters of municipal, provincial, and federal concern.
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> The professional reasons involved the general climate of opinion regarding nationality within Canadian universities. Sentiment has been strong that tenured immigrants should take out Canadian nationality. Since doing so, I was hired as a tenured full professor by York University to teach Canadian and American history. Though I have no objective evidence to support the claim, my feeling is that I would not have been offered the position had I not been naturalized. I believe as well that my naturalization has facilitated the awarding of research grants to me. I should point out that the citizenship issue was seen as important in my case since I have been conducting research in Canadian history.

> My intent in becoming naturalized was to be able to participate in Canadian political life and to express my commitment to the country in which I worked and of which I was a long term citizen. It was not my intent to relinquish U.S. citizenship, and no part of the naturalization proceedings in Canada required me to do so.

Although it is clear, as appellant admits, that he voluntarily acquired Canadian citizenship for personal reasons and career objectives, he maintains that it was not his intent to give up his United States citizenship and that no part of the naturalization proceedings in Canada required him to do so. He also stated, in response to a question regarding intent on his citizenship questionnaire, that he did not intend to relinquish his United States citizenship when he was naturalized and that the oath required in the Canadian citizenship proceedings did not require the relinquishment of previous nationality.

It is difficult to reconcile appellant's recollection in 1978 of the oath he subscribed to at his naturalization proceedings in Canada with more compelling evidence of the oath which he actually took on April 18, 1972. According to the Canadian authorities, the "exact wording" of the oath which appellant took and underneath which his signature appeared directly, read:

> 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. 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. 4/

The basic issue to be decided in the instant case is whether or not appellant in acquiring Canadian citizenship intended at the same time to abandon or relinquish his United States citizenship. Such intent may be ascertained from his words or may be found as a fair inference from his conduct. Vance v. Terrazas, 444 U.S. 252 (1980).

4/ Letter of Mrs. T. Rennick, Citizenship Registration Officer, Department of the Secretary of State, Ottawa, Canada, dated April 13, 1981, to the Embassy of the United States, Ottawa.

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." The Supreme Court rejected the view that Congress has any general power, expressed or implied, to take away an American's citizenship without his assent. A United States citizen has a constitutional right to remain a citizen unless he voluntarily and intentionally gives it up. Although Afroyim did not elaborate upon what conduct would constitute a voluntary relinquishment of citizenship, it nevertheless made loss of citizenship dependent upon evidence of an intent to relinquish citizenship. In his Statement of Interpretation of Afroyim, the Attorney General pointed out that once the issue of intent is raised in a citizenship case, the burden of proof is on the party asserting that expatriation has occurred and that this burden is not easily satisfied by the Government. 5/

In Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court reaffirmed and clarified its holding in Afroyim to the effect that in establishing loss of citizenship the Government must prove an intent to surrender United States citizenship. The Court referred to Afroyim's emphasis on the individual's assent and 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 in Terrazas that it is the Government's burden to establish by a preponderance of the evidence both that an intent to expatriate was manifested, as well as that an act of expatriation was committed. 6/ The requirement of proving intent adds a constitutional element to loss of citizenship that is not found in the statute.

5/ Attorney General's Statement of Interpretation, 42 Op. Att'y. Gen. 397 (1969).

6/ 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

It appears that appellant first raised the issue of intent in 1978 in his response to the Consulate General's citizenship questionnaire. K[redacted] stated then that it was not his intent to relinquish his United States citizenship when he was naturalized in 1972. There is, however, nothing in the record by way of contemporaneous information or statements made by appellant at the time he sought and acquired Canadian citizenship that would support his allegation that he did not intend to give up his United States citizenship. On the contrary, as we have seen, appellant sought and obtained naturalization in Canada upon his own application, and in the process, according to Canadian authorities, took and subscribed to an oath, which included a declaration of renunciation of "all allegiance and fidelity to any foreign sovereign or state of whom or which I may at this time be a subject or citizen." It is hard to escape the conclusion that such an unequivocal and categorical declaration demonstrates an intent on the part of the renunciant to relinquish his citizenship.

The oath also required appellant to swear that he will be faithful and bear true allegiance to Queen Elizabeth the Second, her Heirs and Successors, and that he will faithfully observe the laws of Canada and fulfill his duties as a Canadian citizen. It has been stated that the taking of an oath of allegiance, while alone insufficient to prove a renunciation of United States citizenship, "provides substantial evidence of intent" to renounce citizenship. King v. Rogers, 463 F. 2d 1188 (1972).

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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 resumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

Moreover, as appellant stated above in explaining his reasons in becoming naturalized, his intent "was to be able to participate in Canadian political life" and to express his commitment to the country "in which I worked and of which I was a long term citizen." In such circumstances, it can scarcely be disputed that his voluntary acquisition of a new allegiance is inconsistent with continued and undivided allegiance to the United States. Perez v. Brownell, 356 U.S. 44, 68 (1958) (Warren, C. J., dissenting).

We also find relevant appellant's appearance at the Consulate General early in 1978 to apply for an immigrant visa to the United States. This action on his part presupposes the absence of United States citizenship and manifests a desire to be documented as an alien for admission to the United States. It is inconsistent with an intent to retain his American citizenship at the time of his naturalization in Canada. In fact, appellant had no contact with the Consulate General at Toronto until 1978 when he sought an immigrant visa for admission to the United States. There is no indication of record that he ever raised the issue of citizenship in the interim six years since acquiring Canadian nationality in 1972.

Appellant endeavors to assure the Board solely on the basis of his own subjective and self-serving statement made in 1978, that he did not intend to relinquish his citizenship by his naturalization in Canada in 1972. In light of Afroyim and Terrazas, it is a person's conduct at the time the expatriating act occurred which is to be looked at in determining his or her intent to relinquish citizenship. The assertion that appellant did not intend to relinquish his United States citizenship is negated by his voluntarily applying for naturalization in Canada, by renouncing all other allegiance at the time, by taking an oath of allegiance to Queen Elizabeth the Second, and by declaring his intent to faithfully observe the laws of Canada and fulfill his duties as a Canadian citizen. Also, appellant's course of conduct during the period from 1966 to 1978 indicated an intention to make Canada his home for an indefinite time and to participate in Canadian political

life. We are persuaded that the record supports a finding that appellant's naturalization was accompanied by an intent to relinquish his United States citizenship.

Taking into account the complete record before the Board, it is our judgment that the Department has satisfied its burden of proof by a preponderance of the evidence that the expatriating act was performed with the intent to relinquish citizenship. Accordingly, we conclude that appellant expatriated himself on April 18, 1972, by obtaining naturalization in Canada upon his own application, and affirm the Department's administrative holding of May 5, 1978, to that effect.

Julia W. Willis

Julia W. Willis, Chairman

Edward G. Misey

Edward G. Misey, Member

Gerald A. Rosen

Gerald A. Rosen, Member