DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

July 23, 1981

CASE OF: J[redacted] F[redacted] L[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, J[redacted] F[redacted] L[redacted], expatriated himself on May 10, 1978, under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of nationality before a consular officer of the United States in a foreign state. 1/ On May 12, 1978, the American Vice Consul at Ottawa, Ontario, Canada executed a Certificate of Loss of United States nationality which was approved by the Department of State on May 23, 1978. This Certificate of Loss of Nationality constitutes the Department's administrative holding which appellant is appealing to the Board of Appellate Review.

Appellant, J[redacted] F[redacted] L[redacted], was born in [redacted], thus acquiring United States citizenship at birth. On May 9, 1978, when L[redacted] appeared at the United States Embassy in Ottawa and announced his desire to renounce his American citizenship, he was advised by the American Vice Consul to defer his action in order to reconsider the consequences which were explained to him. Appellant, however, returned the following day, May 10, and formally

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

renounced his citizenship, stating that it was his desire to do so without further delay. He signed the Oath of Renunciation on the form prescribed by the Secretary of State, and a Statement of Understanding which explains the consequences. By signing the Statement of Understanding, he expressly acknowledged that the serious nature of the act of renunciation had been explained to him and that he fully understood the consequences of his intended action. This executed Statement of Understanding was signed by two witnesses who attested to the fact that the consular officer had explained the meaning of the Statement after it had been read and the consequences of renunciation. The record also includes a statement of reasons for the act of renunciation, written and signed by L[redacted] under date of May 9, 1979. His stated reasons for renouncing United States citizenship were: lack of proper representation of the socialist and communist parties in the United States; unsolved murder of his twin brother; difficulty in finding employment; disagreement with United States foreign policy; refusal to fight in Asian or any future foreign wars; and little respect for the proper use of the English language.

The record shows that L[redacted] called the Department of State on May 22, 1978 from Quebec explaining that he had renounced his United States citizenship on foreign soil in order to become stateless and thereby qualify for a stateless passport in order to immigrate to Finland. He reported that authorities at the Canadian Immigration Center would deport him to the United States unless he could prove that he was no longer a United States citizen. He urged the Department to reach its decision on his loss of nationality as soon as possible. The Department approved his Certificate of Loss of Nationality the following day, May 23, and tried to reach him by phone at the number he gave with notification of its approval but such efforts were without avail. L[redacted] was deported to the United States by the Canadian authorities on June 24, 1978.

On April 1, 1980, L[redacted] applied for a passport before a Deputy Clerk of the Circuit Court in Superior, Wisconsin. In processing the application, the Detroit Passport Agency discovered his status and referred his passport application to the Department for determination. On June 27, 1980, the Department denied his application on the ground that he had renounced his United States citizenship on May 10, 1978, and was no longer a citizen

of the United States. On August 16, 1980, appellant gave notice of appeal to the Board from the Department's administrative determination of loss of nationality made in 1978.

Counsel for appellant contends that the act of renunciation was not made in compliance with the Department's procedures governing the administration of oaths of renunciation, and that he lacked the specific intent to renounce because he was in a state of severe emotional and physical stress and did not knowingly and intelligently execute the required forms for renunciation.

Section 349(a)(5) provides that 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;". 2/

The record shows that appellant made a formal renunciation of his United States nationality before a consular officer on a form prescribed by the Secretary of State. Counsel for appellant argues that the failure of the attending consular officer to comply with the Department's procedural requirements vitiates the effectiveness of appellant's alleged oath. In this connection, counsel for appellant cites the Foreign Affairs Manual of the Department of State 3/ which requires that after the officer verifies that the would-be renunciant is in fact an American citizen,

> he shall have the would-be renunciant read or have read to him, in the language he understands best and in the presence of the consular officer and two witnesses thoroughly conversant in that language, the Statement of Understanding set forth in Exhibit [sic] 225.6k. The consular officer, in the presence of the witnesses should explain in detail all of the consequences flowing from the intended renunciation. This must be done in every case.

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2/ 8 U.S.C. 1481(a)(5). Text quoted in footnote 1.

3/ Section 225.6, Foreign Affairs Manual, Vol. 8, 8 FAM 225.6, (July 14, 1969).

> ...in no case shall an Oath of Renunciation be given before the would-be renunciant reads the Statement of Understanding or has it read to him as stated above.

Appellant testified in his affidavit, signed and notarized August 22, 1980, that as the Vice Consul "began to read to him the Oath of Renunciation he interrupted her and said she did not have to read it to him but that he just wanted to sign it, which he did. Thereafter, she commenced reading the Statement of Understanding. After she read to him the first three paragraphs, he interrupted her and said she did not have to continue reading the remaining paragraphs since he just wanted to sign it, which he did. During this entire period, at no time were there two individuals present with her at the counter in a position to witness and hear her conversation with him....".

Appellant's attorney argues in his brief that "The failure of the required witnesses to be present during appellant's alleged act of renunciation vitiates the effectiveness of their signatures and renders the Statement of Understanding incomplete (and therefore invalid) as a matter of law."

In addition, counsel for appellant, cites other procedural irregularities such as the failure of each attesting witness to initial every phrase deleted from portions of the Statement of Understanding which precede their signature; the absence of witnesses during appellant's alleged act of renunciation.

With regard to these alleged procedural irregularities, Vice Consul, Nancy J. Powell, who handled L[redacted]'s renunciation at Ottawa, has stated in her affidavit, signed February 25, 1981:

> ....Mr. L[redacted]'s was the first and only renunciation of citizenship which I have completed.... I recall reading and rereading the provisions of 8 FAM 225.6 to be sure that Mr. L[redacted]'s rights were being guarded and procedure followed. The written statement of Mr. L[redacted] on May 9 ..., the telegram which was drafted and sent to the Department on May 9 in accordance with 7 FAM 490-493, and the attempts on both days to have Mr. L[redacted] delay his decision are evidence of close adherance [sic]

to these regulations. I remember spending considerably more time with Mr. I[redacted] on both days than he states in his affidavit. He seemed unconcerned about the potential difficulties which he could encounter as a stateless person and had no firm commitment from any nation to accept him. I encouraged him to reconsider his decision. I recall delaying the submission of the certificate and covering letter in hopes that the Department of State would reply to our request for additional background information and provide insight into possible problems with Mr. L[redacted]'s mental and physical health.

I do not recall the placement of the witnesses. In completing notarial services requiring witnesses, the procedure was to use the passport clerk whose desk was within one foot of the citizenship counter and the receptionist who was called from her desk at the other end of the work space -- approximately 30 feet. They were required to examine the document being signed, the identification papers produced, and the signature. We all considered Mr. L[redacted]'s request for renunciation to be a most serious act. I have the utmost regard for the integrity of both witnesses and do not believe that I or either of them would have signed the Statement of Understanding unless it had been read in its entirety. 4/

A presumption of regularity attaches to compliance with procedural requirements by officers of the Government in the conduct of their official responsibilities. Boissonnas v. Acheson, 101 F. Supp. 138 (1951). Apart from the recounting of the procedural defects, mentioned above, in his affidavit of August 22, 1980, appellant offers no evidence that would overcome the legal presumption that consular officers perform correctly and in compliance with statutory and procedural requirements until the contrary appears. Moreover, it is a matter of record that the Statement of Understanding which contains the statement that it has been explained by the consular officer was actually signed by L[redacted] and attested by the two witnesses.

Notwithstanding the presumption of regularity, however, appellant's attorney has raised in issue the materiality of the alleged procedural defects, contending that they render

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4/ Affidavit of Nancy J. Powell, executed on February 25, 1981 at the American Embassy, Kathmandu, Nepal, February 25, 1981.

ineffective the appellant's oath and render the Statement of Understanding incomplete and invalid as a matter of law.

With respect to the issue of the materiality of the alleged procedural defects, the Board regards as dispositive, evidence of the effect that such procedural defects, if actual, may have had on appellant's knowing and intentional execution of his renunciation.

In L[redacted]'s affidavit of August 22, 1980, he declared that he believed, after concluding that he did not have sufficient airfare to fly to Europe, that he could renounce United States citizenship on foreign soil; that such foreign government would then deport him to wherever he wanted to go, and that this was a way of travelling to Europe. Further, his affidavit states: "If he had possessed enough money to fly from Montreal to Europe at that time, he would not have gone to Ottawa for the purpose of renouncing." In addition, in his affidavit, L[redacted] discloses that he had visited both the Swedish and Finnish Embassies and received encouragement from the prospect that Sweden would possibly admit him if he renounced his United States citizenship, and positive advice from an attorney of the Finnish government that he could see no reason why L[redacted] would not be admitted to Finland if he were a stateless person.

It is thus apparent from the record that when L[redacted] executed the oath of renunciation, he had a well-formed scheme in which renunciation, and his consequent status of statelessness, were necessary ingredients. His alleged refusal to have the documents he signed read to him in their entirety cannot now serve to invalidate his signature which at the time manifested a well-documented and well-formed intention to execute the act of renunciation.

Moreover, the record is replete with documentation of his subsequent affirmation of this same intention. As we have seen, when he contacted the Canadian Immigration authorities for the purpose of his deportation to a Scandinavian country and learned that Canada would not provide transportation to another country but would instead seek to deport him to the United States, he urgently sought proof of his loss of United States citizenship by requesting the Department of State to

expedite its issuance of a Certificate of Loss of Nationality. Following his deportation to the United States, L[redacted] wrote numerous letters to various members of the United States Congress, to the United States Mission to the United Nations, as well as to the Governor of South Dakota, and others requesting their assistance in his acquisition of a travel document in order to leave the United States and protesting his return to the United States which he repeatedly professed was against his will. In his letter to the Governor of South Dakota, L[redacted] even compared himself to a citizen of the Soviet Union who "...wishes to leave his country but cannot for reasons his government thinks is humane..." It is manifest from the record that he intentionally sought a status of statelessness.

It is our conclusion that appellant's alleged refusal to have the statements read to him in their entirety so completely comports with his plan for obtaining statelessness that it can only serve to substantiate his intention to renounce and that it cannot now be considered to have rendered ineffective his signatures. It is also our conclusion that the Vice Consul's attempt to read these statements to him, and the record's evidence of compliance with procedural requirements in such other respects as the signatures of two witnesses attesting the fact that the statements L[redacted] signed were fully explained to him, serve to endorse the presumption of regularity. These conclusions are not tantamount to a determination that appellant in any way waived his right to be informed of the content of the statements he allegedly requested the Vice Consul not to read. Rather they represent our considered judgment that in the particular circumstances of this case, a recitation of the contents of the statements in their entirety, which appellant denies was done, would not have influenced his intention to renounce. His refusal to hear the statements cannot now serve to negate so manifest an intention. In light of these conclusions, in the particular circumstances of this case, the Board has determined that the alleged procedural defects did not materially affect appellant's knowing and intentional act of renunciation.

As an additional argument, appellant's counsel contends that L[redacted]'s alleged renunciation was not committed voluntarily. In this connection he refers to the fact that appellant at the time of renunciation was in a state of extreme emotional duress, compounded by his consumption of alcohol and failure to sleep. He concludes that the record amply demonstrates appellant's failure to comprehend either the seriousness of the act of renunciation itself, or the severity of the consequences that would flow therefrom. Further, appellant's counsel argues that appellant's alleged act of renunciation was prompted by an outside compelling force overcoming appellant's own will which he identifies as appellant's inadequate reasoning ability due to the extreme instability and emotional turmoil of his early family environment.

Under section 349(c) of the Immigration and Nationality Act a person who performs a statutory act of expatriation, such as taking an oath of renunciation, is presumed to have done so voluntarily. This presumption is rebuttable by a preponderance of evidence that the act performed was not done voluntarily. 5/

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5/ 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.

In order to sustain the burden of rebutting the presumption of voluntariness on grounds of emotional stress or impaired capacity to reason, evidence would be required that appellant acted irrationally or was not capable of comprehending the meaning of renunciation.

In our view, no such evidence has been adduced in this case. On the contrary, the record substantiates our finding that L[redacted] had conceived, on the basis of information he had intentionally obtained, a rational scheme under which he could be deported to the country to which he wanted to go. This scheme, necessitated, because of his lack of adequate finances, his renunciation of United States citizenship. Furthermore, once he achieved his status of statelessness, which he desired, he determinedly pursued for two years his goal to travel to a Scandinavian country. Never once during those two years following his renunciation of United States citizenship, did he, as far as could be determined from evidence contained in the record, indicate any reconsideration, retraction of, or regret for his act of renunciation. No such evidence can be adduced from the record. Rather, the record uniformly confirms the conclusiveness of his intention and the rational, determined, extended, albeit ill-advised, pursuit of his goal.

According to the record, exactly two months to the day after he renounced, he called the office of a United States Senator and spoke with a Staff Aide. The Staff Aide informed the Department that L[redacted] had stated that he did not understand what he was doing when he renounced his U.S. citizenship but also in the same conversation said that he did not really want to do anything to void his renunciation, that he had no desire to be a United States citizen, and that he only wanted to go to Finland. The very next day, the record shows that he applied for a Permit to Reenter the United States which was rejected on July 14, 1978, by the District Director of the United States Immigration and Naturalization Service. In his letter of July 14, to L[redacted] he wrote that the "record reflects that you desire a Permit to Reenter the United States for the purpose of emigrating to Finland." Everything in the record by way of contemporaneous information or statements attributed to appellant underscores a strong and clear intention not to be a United States citizen.

Bearing directly on the issue of voluntariness, is his confirmation that he did not want to do anything to void his renunciation, that he did not want to be a United States citizen, and the fact that he continued to expend his time, energy and effort in rational pursuit of a determination to find a way to immigrate to Finland.

In Afroyim v. Rusk, 387 U.S. 253 (1967) the Supreme Court recognized 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 reaffirmed Afroyim's emphasis on the individual's assent to relinquish citizenship and placed the burden on the Government to show such an intent to relinquish United States citizenship whether "the intent is expressed in words or is found as a fair inference from proven conduct."

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. This intent to relinquish is implicit in the act of renunciation. We find here that appellant's intent to renounce was well-formed prior to the act of renunciation and amply confirmed long after the renunciation. We also find that appellant's sustained efforts in the rational, determined pursuit of his goal to immigrate to Finland - a goal that motivated his renunciation in the first place - amply substantiates that his ability to make rational decisions had not been so impaired as to render his renunciation involuntary.

Taking into account the complete record before the Board, it is our opinion that appellant expatriated himself by voluntarily and intentionally renouncing his United States nationality before a consular officer of the United States in Ottawa. Accordingly, we affirm the Department's administrative holding on May 23, 1978, to that effect.

Julia W. Willis

Julia W. Willis, Chairman

Edward G. Misey

Edward G. Misey, Member