July 29, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: T[redacted] A[redacted] C[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, T[redacted] A[redacted] C[redacted], expatriated himself on March 5, 1976, under the provisions of section 349(a)(1) of the Immigration and Nationality Act (hereinafter referred to as "the Act") by obtaining naturalization in the United Kingdom upon his own application. 1/

I

Appellant, T[redacted] A[redacted] C[redacted], was born at [redacted], thus acquiring United States citizenship at birth. He resided continuously in the United States from birth until June 1970, when he went to England to evade or avoid the draft. There he has since resided. Following his marriage to a British citizen on August 1, 1970, Climo enrolled as a full-time student at the University of London in the fall of 1970, a status he retained until 1972, when he became a university lecturer.

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

[redacted] failed to report for induction into the United States Army at Los Angeles, California, on August 11, 1970, and was indicted by a Grand Jury at Los Angeles on February 28, 1973, for violation of the Selective Service and Training Act. A bench warrant was issued for his arrest on February 28, 1973. 2/

On June 13, 1975, [redacted] applied for a certificate of naturalization as a citizen of the United Kingdom and Colonies pursuant to the British Nationality Act of 1948. A certificate of naturalization was issued to him on March 5, 1976, and, upon taking the required oath of allegiance on March 12, 1976, he became a citizen of the United Kingdom and Colonies as from the date of issuance of the certificate of naturalization. Shortly thereafter the British authorities informed the American Embassy of [redacted] naturalization.

[redacted] obtained a United States visa on his British passport in July 1976 from the American Embassy at Dublin. He alleges that he had gone to Ireland because he could fly to the United States from there less expensively than he could from England. On his visa application he listed his nationality as "British" and indicated that the purpose of his trip was to visit friends for a few days.

In October 1976, appellant called at the American Embassy at London to obtain documentation reportedly in order to visit his ailing mother in the United States. The Embassy advised him that he would have to present his British naturalization certificate and that his case would be submitted to the Department for determination of his citizenship status. [redacted] returned to the Embassy on November 30, 1976, with the certificate. On the same day he executed a questionnaire concerning his intent in applying for naturalization. He also executed an affidavit in which he stated, inter alia, that he did not intend to relinquish his United States citizenship by applying for naturalization in the United Kingdom.

2/ It appears from the record that the indictment against [redacted] for violation of the Selective Service Act was dismissed on January 31, 1977.

As required by section 358 of the Act, the Embassy, on November 30, 1976, executed a certificate of loss of nationality in appellant's name. 3/ The Embassy certified that T[redacted] A[redacted] C[redacted] acquired United States citizenship by virtue of his birth in the United States on January 5, 1948; that he obtained naturalization on March 5, 1976, as a citizen of the United Kingdom and Colonies upon his own application; and that he had thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. After a protracted delay, the Department of State approved the certificate on August 15, 1980. An appeal was taken from the Department's determination of loss of nationality to the Board on April 10, 1981.

II

Section 349(a)(1) of the 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 that appellant applied for and subsequently obtained United Kingdom citizenship on March 5, 1976. There is also no doubt that appellant, as he admits, voluntarily sought such citizenship. Appellant contends, however, that he did not intend to give up his United States citizenship when he obtained naturalization in the United Kingdom.

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 part III 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 explained the circumstances surrounding his naturalization in the affidavit he executed at the Embassy at London on November 30, 1976. Therein he stated that he applied for United Kingdom citizenship in order to obtain a British passport; that he was under the impression that he would not be able to renew his United States passport because of the outstanding warrant for his arrest; and that he believed he "could hold dual nationality." With respect to his intention when he sought United Kingdom naturalization, he declared:

> I would like to be still considered as a United States citizen, because I still feel that I am an American. I had no intention of revoking my American citizenship; it was just that my American passport had expired, and needing to travel on the Continent for research and leisure I decided to obtain a British passport. If I had to choose my citizenship I would naturally choose my country of birth.

The Supreme Court in Vance v. Terrazas, 444 U.S. 252 (1980) held that in establishing loss of United States citizenship, the Government must prove intent as well as the voluntary commission of an expatriating act; intent to relinquish must be shown by the Government by a preponderance of the evidence, whether it is expressed in words or is found as a fair inference from proven conduct. Once the issue of intent has been raised, the Government bears the burden of proving by a preponderance of the evidence that the appellant intended to relinquish his citizenship. 4/ This

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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 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.

burden is not easily satisfied. As the Department observed in the circular airgram sent to all diplomatic and consular posts in 1980 on the subject of expatriation in the light of Vance v. Terrazas, where there has been no explicit renunciatory act, the burden of proof is especially difficult. 5/ In this regard, we note that the oath of allegiance taken by appellant to "Queen Elizabeth the Second, Her Heirs and Successors, according to law" did not include renunciation of appellant's allegiance to the United States.

As evidence of appellant's intent to relinquish his United States citizenship, the Department has adduced the following considerations: that appellant departed the United States to evade the military draft, an obligation of citizenship; married a British citizen; enrolled in a British university and worked as a university lecturer in England; established a permanent residence in England; never registered as a U.S. citizen and had no contact with the Embassy until 1976 when he sought a visa to the United States; had no interest in having a United States passport, which would identify him as a United States citizen; made no inquiries at the Embassy about the possible consequences of naturalization in the United Kingdom; and that appellant's intent to relinquish United States nationality was manifest in his action of applying for a U.S. visa on his British passport. These considerations, the Department argues, show appellant's alienation from the United States and his attachment to the United Kingdom.

That appellant departed the United States to evade the military draft, while not to be condoned, does not in itself set him apart from many Americans who left the United States to evade or avoid the draft because of their opposition to the Viet Nam war; nor is it highly persuasive evidence of an intention to sever permanent ties to the United States. Similarly, enrolling in a foreign university, working abroad, marrying a foreign national, not registering at the United States Embassy, not inquiring about the consequences of naturalization in a foreign state do not set appellant apart from countless other Americans, or support a conclusive presumption of an intent to disavow allegiance to the United States. A citizen is free to reside outside the United States indefinitely without suffering loss of citizenship. "Living abroad....is no badge of allegiance and in no way evidences a voluntary renunciation of nationality or allegiance.

5/ Department of State Circular Airgram No. 1767, August 27, 1980.

it may be compelled by family, business or other legitimate reasons". Schneider v. Rusk 377 U.S. 163 (1963). In the circumstances of this case we do not consider appellant's apparent lack of interest in keeping his United States passport current to be relevant to the issue of his intent.

Nor, in our view, is the fact that appellant applied for a visa at the Embassy at Dublin inconsistent with his belief that he enjoyed dual nationality -- even though he only listed his nationality as British. Whatever his motives for not also reporting his United States nationality -- because, as he alleges, he was in great haste to catch a flight to the United States or gave no thought to the matter -- that ommission is not unambiguously probative of an intent to give up his United States citizenship. He did, however, state in the visitor visa application that he had been born in the United States. The consular officer who issued the visa thus had an opening to query appellant about his citizenship status, had he been disposed to pursue the matter. Viewing appellant's action in context, we do not believe that his application for a visitor visa leads to the inevitable conclusion that he considered himself an alien vis-a-vis the United States. His explanation is plausible, and any doubt about the inferences to be drawn from his act of applying for a visa must be resolved in appellant's favor.

In the instant case, we are not persuaded that the record supports a finding that appellant intended to relinquish his United States citizenship. There is nothing before the Board by way of information or statements made by appellant contemporaneous with his application for naturalization in the United Kingdom which would shed light on whether or not he had an intent to give up his native citizenship. However, as noted above, barely nine months after appellant had become naturalized in the United Kingdom and four years before the Department approved appellant's certificate of loss of nationality he deposed at Embassy London that he had no intention of renouncing his United States citizenship.

The dispositive issue is whether or not appellant, in acquiring United Kingdom citizenship, intended to abandon his allegiance to the United States. We find that the record leaves in doubt the issue of his true state of mind

on or about the time he applied for United Kingdom citizenship. Accordingly, we are compelled to resolve any and all doubts, as far as reascnably possible, in favor of retention of citizenship. Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); Schneiderman v. United States, 320 U.S. 118, 122 (1943).

Taking into account the entire record before the Board, it is our judgment that the Government has not satisfied its burden of proving by a preponderance of the evidence that appellant's act of naturalization in the United Kingdom was performed with the requisite intent to relinquish United States citizenship.

III

In view of the foregoing and on the basis of the record before the Board, we are unable to conclude that appellant expatriated himself on March 5, 1976, by obtaining naturalization in the United Kingdom and Colonies upon his own application. Accordingly, we reverse the Department's administrative determination of loss of nationality of August 15, 1980.

Alan G. James, Chairman

James G. Sampas, Member

George Taft, Member