August 25, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: E M v d H

This is an appeal from an administrative determination of the Department of State that appellant, E M v d H, expatriated herself on August 13, 1980, under the provisions of section 349(a)(5) of the Immigration and Nationality Act (hereinafter "the Act:"), by making a formal renunciation of her United States nationality before a consular officer of the United States at Stuttgart, Federal Republic of Germany. 1/

I

Appellant, E v d H, n M, and her husband, , both native born United S many in 1979. A letter to the Board, written on July 21, 1981, by appellant and signed by her and Ve explains why they had gone to Germany.

> He (V) had for a long time felt personally compelled to pursue his future in Germany, be the outcome happy or not. His overwhelming desire to stay in Germany stemmed from a deathbed promise he made to his grandfather who was his primary caretaker to return to the land of his grandfather's birth. He chose to relocate to Germany partially to seek out more information about his grandfather's family.

1/ 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 --
>
> . . .
>
> (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; . . .

There is no evidence in the record before us to corroborate appellant's alleged words or conduct between the date of her arrival in Germany and August 13, 1980, the day on which she renounced her United States citizenship. We have, therefore, only the unsupported joint submission of appellant and her husband, written eleven months after the event, from which to attempt to reconstruct what transpired in the period leading up to appellant's renunciation.

As set forth in the joint letter, appellant supported her husband while he was attending the University of Freiburg by taking full-time employment, the nature of which has not been disclosed. It appears that some time in the spring of 1980 appellant's husband was facing an examination to determine whether he could continue at the University, and that about at that same time the German authorities were tightening the regulations governing residence in Germany of foreign nationals.

The joint letter describes the couple's concerns about this development.

> Because we were expecting a child and I /Elizabeth/, the wage earner, would after a while be unable or nearly unable to be employed full-time, and because my husband was not allowed to work himself, the administration in charge of issuing visas to foreign nationals in Germany told us that we would be forced to leave Germany before my husband could finish his studies.....So even if he were to have successfully completed the examination on the first try -- which he later did -- he was nevertheless still threatened with being forced to give up what he had, with great effort and much labor, started.

In casting about for a way to remain in Germany, appellant's husband, on whom appellant apparently relied to resolve the issue, sought no authoritative advice. He appears to have consulted a personal friend who advised him to seek the status of a stateless person; the friend had purportedly done so and had been able to remain in Germany. A tax consultant also allegedly told appellant's husband that he would have no great problem were he to become a stateless person.

At no time as far as we can ascertain from the record did the appellant or her husband seek advice from the United States Consulate General at Stuttgart, not far from Freiburg. However, appellant alleges that her husband did approach the Ministry of the Interior of Baden Wuerttemberg regarding the possibility of his becoming a naturalized German citizen. These is no indication in the record when such an approach was made; nor are there copies of any correspondence on the subject between appellant's husband and the Ministry. The joint letter of July 21, 1981, simply asserts that through a misunderstanding in an exchange of letters, appellant's husband mistakenly believed that because the Ministry permitted him to submit an application for naturalization that it would be accepted and acted on immediately and that "any tampering on his own part with the citizenship of his birth would have only slight consequence, if any at all." Evidently, appellant's husband sought to avoid being forced to leave Germany by becoming naturalized there. However, his application was apparently turned down or not acted upon; and we may assume he thought he was left with no alternative to renouncing his United States' citizenship to achieve that objective.

rom that point on l for appellant observes, V prevailed upon E to renou citizenship w im. As counsel h put it, E feared the loss of her ability to support the family, and believed that following the advice her husband had obtained might prevent them from being unable to support themselves in Germany.

Thus, in the apparent expectation that they would thereby be permitted to remain in Germany, V and E on August 13, 1980, appeared at the Consulate General at Stuttgart and requested that they be permitted to renounce their citizenship. There, before a consular officer and two witnesses, both took an oath of renunciation. They also signed a statement attesting to their understanding of the implications of their act, and surrendered their passports.

As required by section 358 of the Act, the Consulate General on August 13, 1980, executed a certificate of loss of nationality in the name of appellant, as well as one in the

name of her husband. 2/ The Consulate General certified that appellant was born at [redacted], [redacted] that she acquired the nationality the United States by virtue of birth in the United States; that she made a formal renunciation of United States nationality before a consular officer on August 13, 1980; and that she thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act of 1952.

The Department approved appellant's certificate on September 29, 1980, an administrative determination of loss of nationality from which an appeal may be taken to this Board.

On March 7, 1981, appellant writing on behalf of herself and her daughter, who was born in Germany in January 1981, informed the Consulate General that the German authorities at Freiburg had advised her that she and her husband must appeal for return of her citizenship. "I am willing to appeal for the return of American citizenship for myself and baby daughter."

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

> 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 subchapter, 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.

She inquired how to take an appeal, and was informed of the proper procedure by the Consulate General, which observed, however, that the appeal procedure was "intended primarily for individuals who have lost their citizenship, rather than renounced it."

On May 7, 1981, the Landratsamt of Breisgau-Hochschwarzwald wrote to the Consulate General to state that the German authorities were "not willing to take care of" appellant, and posed several questions. To these the Consulate General replied on May 13, 1981, stating that appellant had lost her United States citizenship: that she could not revoke her oath of renunciation; that the United States government was not obliged to reassume charge of appellant; and that while she could appeal the determination of loss of nationality, "we do not recall any successful appeals in cases of persons who had renounced their American nationality unless they renounced under duress."

Appellant (and her husband, appellant in a separate but related case) subsequently took an appeal from the Department's determination of loss of her U.S. citizenship by the previously cited joint letter of July 21, 1981. This letter together with a submission by counsel for appellant which is in the nature of both a brief and reply brief, constitutes appellant's pleading. Appellant's husband appended an unsworn "personal declaration" to the joint letter of July 21, 1981, in which he asked the Board to consider his wife's appeal separately from his own, as he had forced her against her will into renouncing her U.S. citizenship.

II

The Department's administrative determination of appellant's loss of nationality may be sustained only if it is found that she performed the statutory expatriating act in conformity with the relevant legal requirements and did so voluntarily. Perkins v. Elg 307 U.S. 325 (1939). Afroyim v. Rusk, 387 U.S. 253 (1967) and Vance v. Terrazas, 444 U.S. 252 (1980) further require that before expatriation can result; the expatriative act must have been performed with an intent to relinquish United States citizenship.

Appellant has not alleged that she did not perform a statutory expatriating act, or that the manner in which

she performed it did not conform to the requirements of section 349(a)(5) of the Act. And it is our view that the act was performed in strict accordance with the mandate of section 349(a)(5) of the Act.

The hinge issue in this case is whether or not appellant Voluntarily made a formal renunciation of her United States citizenship.

Section 349(c) of the Act provides that a person who performs a statutory act of expatriation is presumed to have done *so* voluntarily, but the presumption may be rebutted by a preponderance of the evidence. 3/ As the Supreme Court held in Vance v. Terrazas, id. "We also hold that when one of the statutory expatriating acts is proved, it is constitutional to presume it to have been a voluntary act until and unless proved otherwise by the actor. If he succeeds, there can be no expatriation."

3/ 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 pkesumed 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.

Appellant alleges that she renounced her citizenship against her will as a result of "intolerable pressure" exerted by her husband. Because she was under stress and constantly fatigued by her pregnancy and long hours at work, appellant trusted that her husband had obtained valid information and therefore allowed him to push her into signing the oath of renunciation.

Appellant's husband stated in his personal declaration appended to the couple's joint letter of July 21, 1981, that he pushed her very forcefully into making a decision she did not want to make and that he confronted her with the choice of going along with him or seriously considering separation.

Counsel submits that appellant's allegedly expatriating act does not meet the objective standard for "overt voluntariness". She argues:

> It is sufficient that petitioner feared deportation from Germany, loss of her ability to work in Germany, separation from her husband and ill consequences for her unborn child, for her purported renunciation to be held involuntary.

It is well settled that proof of duress or involuntariness avoids the effect of the expatriating act, for there can be no loss of citizenship if the act was performed against the will of the actor -- impelled by the actions of others. Stipa v. Dulles, 233 F. 2d 551 (1956). As the Court stated in Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971), the opportunity to make a decision based upon personal choice is the essence of voluntariness.

In order for the defense of duress to prevail, it must be shown that there existed "extraordinary circumstances amounting to true duress" which "forced" a United States citizen to follow a course of action against his fixed will, intent, and efforts to act otherwise. Doreau v. Marshall, 170 F. 2d 271 (1948). In case of formal renunciation of nationality, it has been held that a higher degree of

evidence of duress is required to rebut the presumption of voluntariness. Kuwahara v. Acheson, 96 F. Supp, 38, - (1951). In Kuwahara, the court amplified its holding by stating that "greater compulsion is ordinarily required to influence one to perform an act which he knows is wrong or which he knows will result in grave consequences."

In light of these judicial principles, the basic question the Board must decide is whether appellant was forced against her will to renounce her citizenship and whether in a state of alleged emotional stress and fatigue she proceeded of her full volition -- unimpelled, in the final analysis, by her husband's influence.

At the outset, it should be stated that we consider the only valid issue to be whether or not appellant's husband so pressured her that her oath of renunciation was in fact coerced and therefore involuntary. We do not consider that appellant's purported fear of losing the privilege of working in Germany constituted economic duress sufficient to induce appellant into a course of action against her will. Appellant and her husband had clear alternatives to earning a living in Germany. Economic duress, if there be any, was minimal and wholly subordinate, in our view, to the core issue.

To prevail, appellant must therefore prove by a preponderance of the evidence that she did not renounce her nationality voluntarily but rather was subjected to such duress or coercion by her husband as to render her act invalid as a matter of law. The burden of proof is squarely on her, and we must determine whether appellant has offered and proved facts which by their certainty rebut the presumption that her act was voluntary.

In this case, as we have noted, documentation is meager. Chronologically, the first evidence we find of record consists of appellant's oath of renunciation and statement of understanding executed on August 13, 1980. There is nothing else in the record contemporaneous with the event of August 13 which would reveal whether or not her act was involuntary; for the relevant inquiry is appellant's words and conduct in the period immediately surrounding the expatriating act, not some time later. Terrazas v. Muskie, 494 F. Supp. 1018 (1980). Absent other contemporaneous evidence, we have only the oath and the statement of under-

standing from which to gauge the degree of volition with which appellant performed the act. Uncorroborated statements such as those appellant made in the joint letter of July 21, 1981, at a considerable remove from the event in question, have limited probative value in enabling us to determine whether the act was performed freely or not. They only tend to show appellant's frame of mind at the time of the act.

Beyond the two documents cited, there is no contemporaneous evidence before us of what transpired on August 13 when appellant was interviewed by the vice consul who witnessed her oath. Counsel for appellant asserts that the consul did not make any attempt to ascertain whether appellant's signing was of her own choice or was in some way coerced by her husband; nor did he inquire about her physical and emotional state in light of her pregnancy. Counsel further states that the consul did not indicate the full range of implications of becoming stateless when appellant questioned him, or mention that her child would be born stateless. 4/ There is no report from the consul giving his version of this encounter.

The operative language of the oath is stark and clear, comprehensible by any reasonably literate person.

4/ See, however, the joint letter of July 21 wherein appellant stated: "Because of what he had been told by his friends and acquaintances, my husband simply could not believe that we could or would encounter the difficulties that were predicted for us by the consular officials."

> ....I desire to make a formal renunciation of my American nationality, as provided by section 349(a) (5) 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.

The statement of understanding which appellant swore she had read before signing the oath is longer but also written in plain English. It lists some ten elements of the implications of renunciation and reads in pertinent part:

> I understand that:
>
> 1. I have a right to renounce my United States citizenship and I have decided to exercise that right;. ...
>
> The extremely serious nature of my contemplated act of renunciation has been fully explained to me by Vice Consul R. A. Garrison.... and I fully understand the consequences of my intended action. I swear that I have read the contents of the Statement in the English language and fully understand its contents.

We can only speculate why the consul did not prepare a record for August 13. It is, however, as reasonable to assume he saw no need to do so -- given the categoric character of the oath and statement of understanding, appellant's absolute right to renounce and his evident judgment that she seemed competent to perform the act -- as it is to assume that he did not make a full disclosure to appellant of the seriousness'of the step she was about to take, or that he was delinquent in not probing her state of mind and physical condition.

The consul's duty was to ensure that appellant understood what she was doing and was, or seemed to be, competent to perform it; legally he had no right to stand in her way if she insisted on renouncing. On its face, appellant's renunciation was one of her own free will, for we assume it to be factually correct that she was a mature person; legally competent: articulate (as shown by her correspondence in the record); and presumptively capable of understanding the meaning of the words to which she subscribed.

Further, on March 17, **1981**, an official of the Consulate General, replying to appellant's inquiry about how to take an appeal, informed her:

> I have been informed by those who witnessed your renunciation that it was an act performed voluntarily by you with full awareness of its gravity and irreversibility.

Finally, we note that although appellant acknowledged in the Statement of Understanding that she had an opportunity to make a separate written explanation of her reasons for renouncing, she explicitly chose not to do **so**.

After August 13, **1980**, the record is silent for the next six months, except for recording that the certificate of loss of nationality had been approved and that appellant received a copy. On March 7, **1981**, appellant wrote to the Consulate General to inquire how she might appeal the Department's determination of loss of her citizenship, explaining:

> Now the Auslaenderamt in Freiburg tell us that we must appeal for return of our citizenship. I am willing to appeal for the return of American citizenship for myself and our baby daughter.

Sequentially, the next material evidence of record is a letter appellant wrote to her parents in California. According to counsel for appellant, the letter was received on or about June 3, 1981. The portion of that letter which counsel has submitted to the Board reads as follows:

> Another reason is that we've had nothing but problems with the bureaucracy and with our papers. They're tightening up quite suddenly here on foreigners, and sending many away. Vernon got desperate, because they were going to send us home and gave up his U.S. citizenship. And he persuaded me to do the same. Don't worry - they've arranged it so we can get it back if we want to, of course not without some comments about the stupidity of the whole thing. The thing is that although I want to go ahead and do that, primarily for Maria's sake, because our future is so uncertain, Vernon doesn't want to do that. He says, and he may be right, that....

The final purportedly evidentiary document in the record is the letter appellant wrote to this Board on July 21, 1981, jointly signed by appellant and her husband; and her husband's personal declaration designed to corroborate appellant's allegations that he coerced her into renouncing her citizenship. Again, as in her March 7 letter, appellant states that she appeals because the German authorities asked her and her husband to do so.

Although appellant has adduced not a scintilla of evidence to support her allegations of her husband's coercion, we nevertheless believe that we must examine the essential arguments appellant has made in her attempt to bear her burden of proving that she was forced into a course against her will.

In seeking to determine whether her renunciation was involuntary, we must examine appellant's assertions of coercion for any evidence showing that her will to act differently met the minimum standards of firmness required by law, but was overcome by a force beyond her control.

Appellant refers to only one effort (at the eleventh hour) to dissuade her husband from persisting in his decision that they should both renounce their citizenship.

> During the hour or two that it took for the papers to be drawn up /at the Consulate General on August 137, I tried to argue my husband out of signing them....Ultimately I was too tired and demoralized to argue with him any more....

She does not indicate that she made any coherent or consistent effort prior to August 13 to reason with him. We are offered no insights into the actual state of the husband/wife relationship to assist us in evaluating whether appellant was the kind of person who would submit docilely to the dictates of a forceful husband. There is no fair basis to judge whether appellant, a mature woman, who apparently was sufficiently purposeful and energetic to take full-time employement to help the family exhibited the minimum standard of firmness but was overcome by a stronger force.

She contends that fatigue, stress, concern about keeping the family together and her weakened physical condition reduced her capacity to resist her husband's importuning.

There is no corroboration of her allegedly weakened physical condition from a physician or nurse who presumably attended her during her pregnancy. Nor is there from her employers any proof of the long, tiring hours she worked. Allegations of her husband's persistent and forceful pressures are not supported by the evidence of friends or a family counselor.

Her husband's personal declaration alleging that he confronted her with a difficult and unpalatable choice is of limited evidentiary value, since he is by any definition an interested party.

That appellant did not urge her husband to consult the United States Consulate General at Stuttgart before acting precipitately, or do so herself, does not, in our view, suggest that she acted like a reasonably prudent person, even in the circumstances she posits.

Counsel for appellant argues that factors similar to those operating on appellant -- fear of deportation from Germany, loss of her ability to work in Germany, separation

from her husband and ill-consequences for her unborn child -- have rendered purported expatriation ineffective in a number of leading cases: Insogna v. Dulles, 116 F. Supp. 473 (1953): Mendelsohn v. Dulles 207 F. 2d 37 (1953); Nishikawa v. Dulles, 356 U.S. 129 (1958); Peter v. Secretary of State, 347 F. Supp. 1035 (1972); Ryckman v. Dulles, 106 F. Supp. 739(1952); Stipa v. Dulles, 233 F. 2d 551 (1956); Takahara v. Dulles, 205 F. 2d 560 (1953) and Kenji Kamada v. Dulles, 145 F. Supp. 457 (1956).

In all of the above-cited cases the circumstances in which the citizen found himself or herself were, within the meaning of Doreau v. Marshall, "extraordinary" and "forced him to follow a course of action against his fixed will, intent and efforts to act otherwise." These and other landmark cases on duress involved a high degree of external compulsion which induced the citizen to perform an expatriating act out of concern for his personal survival or that of a close family member.

Although the courts have held that the means of exercising duress is not limited to guns, clubs, or physical threats, the circumstances of the citizen must be "extraordinary" before his performance of an expatriating act will be considered to have been involuntary. Appellant acknowledges that she and her husband "experienced a number of quite commonly encountered difficulties all simultaneously and under such conditions that the problems of coping with every day life clouded our judgment and made us act in an irrational manner". (Emphasis added.) Such comments do not support a conclusion that appellant was confronted by extraordinary circumstances.

The cases which counsel cites are generally inapposite to this appeal because in none did the citizen perform a formal act of renunciation of citizenship, And, as we have pointed out, the courts require proof of a greater degree of compulsion in cases where there has been a formal renunciation of allegiance.

In the leading cases on duress, the citizens' pleadings were either adequately substantiated by appropriate evidence, or, where the record was sketchy, the court was able to take judicial notice of Circumstances which operated to force the citizen against his will to protect himself or those close to him. For example, in Insogna and Stipa; Pandolfo v. Acheson, 202 F. 2d 38 (1953); and Kenji Kamada,

the court found plaintiffs' pleadings to have been substantiated by "common knowledge" of the dire economic situation in a foreign country (Italy) or foreign laws (Japan) which forced the citizen to perform an expatriating act.

In the instant case there is nothing of which the Board can take judicial or administrative notice. The central issue is whether appellant's husband coerced her to such a degree as to force her to act against her fixed will. We have not been made privy in any meaningful way to the real relationship between appellant and her husband, and therefore are unable to take notice that it was or was not of such a character as to indicate that her allegations of pressure are probably true.

Counsel for appellant observes that in Jolley v. Immigration and Naturalization Service, 441 F. 2d 124 (1971) and Davis v. Immigration and Naturalization Service, 481 F. Supp. 1178 (1979) the court sustained a finding of loss of citizenship only after examining independent statements of plaintiffs, indicating the clear, unambiguous and voluntary nature of the renunciations in those cases. We note, however, that in both the Jolley and Davis cases, plaintiffs had made statements contemporaneous with their renunciation which were a matter of record and showed clearly that renunciation was voluntary. Counsel would have us look behind appellant's oath to determine whether it was or was not voluntary. But if we go behind the oath, we see no contemporaneous statements, only appellant's sworn statement, executed at the time she renounced her citizenship, which records that she understood she had a right to renounce her citizenship and was exercising that right voluntarily. Nothing else appears in the record to contradict the voluntariness of her act until her submission of July 21, 1981, in which she endeavors to explain why her actions were involunary.

The Courts require that factual doubts must, as far as reasonably possible, be resolved in the favor of citizenship. Stipa v. Dulles. We have therefore endeavored to determine whether appellant's pleadings raise sufficient doubts in the face of a formal renunciation of citizenship as to warrant our concluding that she probably acted involuntarily. The many doubts that arise in this case, however, cannot, reasonably be resolved in favor of retention of citizenship.

Appellant wrote in her letters of March 7 and July 21, 1981, that she was moved to appeal because the German authorities had asked her to do so. This statement at least raises the question whether, if the Germans had not made such a request, she would have appealed of her own volition. It also leads us to wonder whether it is possible that up to the point when official pressure brought her to act she might have been content to remain a stateless person.

Her letter to her parents informing them that "Vernon got desperate, because they were going to send us home, and gave up his USA citizenship. And he persuaded me to do the same", does not suggest that he coerced her but rather that he had reasoned with her and convinced her that renunciation was the right course for them both to take.

In the joint letter of July 21, 1981, appellant wrote "we made a dangerous mistake which we now regret". This suggests that she later changed her mind and now rues her decision.

Appellant's alleged attempt to persuade her husband not to sign the oath of renunciation, belated though it was, permits the inference that appellant was aware renunciation was fraught with grave consequences; the fact that she still proceeded permits of some doubt whether the compulsion she felt was as strong as she alleges.

The most serious question which arises in our minds is whether appellant's husband's alleged coercion met the judicial standard of "extraordinary circumstances." Had appellant felt deeply about keeping her citizenship and had she, as she later alleges, felt genuine concern at the time she renounced that her child would be born stateless, she surely could have taken some step to avoid going ahead with the act -- separate briefly and return to the United States, or flatly refuse, at least for the sake of the child, to join her husband in giving up her citizenship. Absent more compelling evidence than we have been shown, we find it difficult to accept the contention that a serious, evidently competent woman such as appellant appears to be, sincerely believed she had no alternative to acquiescing in a patently irresponsible, capricious scheme to remain in Germany at all costs.

In our opinion appellant has not satisfied her heavy burden of proof by a preponderance of the evidence that her formal renunciation of United States citizenship on August 13, 1980, was caused by forces which compelled her to act against her fixed will and intent. Accordingly, we conclude that she performed the expatriating act voluntarily.

Finally, we consider whether appellant intended to abandon her citizenship when she made a formal renunciation. The Supreme Court held in Vance v. Terrazas that if the actor fails to prove his act was involuntary, the question remains whether on all the evidence, the Government has satisfied its burden of proof that the expatriating act was performed with the necessary intent to relinquish citizenship.

Formal renunciation of United States citizenship in the manner prescribed by law is the most unequivocal of all expatriating acts. The intent to abandon citizenship is inherent in the performance of the act. The language of the oath appellant subscribed leaves no doubt of her intent:

> 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.

The issue of whether appellant renounced her citizenship voluntarily having been resolved in the affirmative, the Government need only prove that the act was performed in compliance with the requirements of the Act. Jolley v. Immigration and Naturalization Service. This it has done.

We therefore find that the Department has sustained its burden of proof that appellant performed the expatriating act with the intent of abandoning her birthright citizenship.

The Board has the greatest sympathy for appellant's plight, particularly'since her actions have resulted in her baby daughter coming into this world stateless. But the decision she made on August 13, 1980, was of her own volition, and under the law she cannot escape its harsh consequences. Section 349(a)(5) of the Act does not require the acquisition of another nationality by one who renounces United States citizenship. As the court said in Davis:

The imposition of statelessness upon plaintiff cannot deter this court from the requirements of the Federal nationality law.

III

On consideration of the foregoing and on the basis of the record before the Board we conclude that appellant expatriated herself on August 13, 1980, by making a formal renunciation of her United States' citizenship before a consular officer of the United States in the form prescribed by the Secretary of State. Accordingly, we affirm the Department's administrative determination of September 29, 1980.

G. James, Chairman

J. Peter A. Bernhardt, Member

James G. Sampas, Member