September 2, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: N A Mc

This case is before the Board of Appellate Review on appeal from an administrative determination of the Department of State that appellant, N A M , expatriated herself on July 18, 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 nationality before a consular officer of the United States at Rabat, Morocco. 1/

I

Appellant, N A M , a native-born United States citizen, left the United States sometime in the early 1970's, and lived abroad until 1981. When her original passport expired in 1977 she was issued a new one by the Consulate General at Bombay, India.

According to appellant's statements of August 6, 1981, and March 16, 1982, made jointly with her husband, S B E , who is appellant in a separate but related appeal, the two lived in India for five years where, in 1977, their son, , was born. As stated in these submissions to the Board, the couple decided to leave India in 1979, and went to Morocco. "Having no resources", appellant wrote, "we hitchhiked, when we could, and walked, when we couldn't, across Asia." Appellant stated that they arrived in Morocco eight months later, in November 1979.

On December 14, 1979, appellant and Edelhertz presented themselves at the United States Consulate General in Casa-

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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 --
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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: . . .

blanca, Morocco, and asked to renounce their citizenship and that of their son, [redacted] They said they had no claim to any other citizenship, and did not wish to be associated with any government. They indicated that their motives for wanting to renounce United States nationality were religious and philosophical, rather than political. After being counselled at length by both Consul General and Vice Consul regarding the grave effects of their proposed renunciation of citizenship, they deposited their passports with the Consulate General, and departed to await a response to procedural queries posed to the Department by the Consulate General, which commented that both appeared to be in possession of their faculties.

Appellant and Edelhertz returned to the Consulate General on January 18, **1980.** Although they were again advised of the serious consequences of renouncing United States citizenship, including the possibility of arrest by local police for being stateless, both insisted on drawing up their own joint affidavit in which they stated that they renounced citizenship and severed all ties between themselves and the United States. This affidavit was subscribed to before the American consul, but, not being in the form prescribed by the Secretary of State, was not acted upon. The Consulate General advised appellants that, until it had received a reply to its queries from the Department, it could not proceed further with the process the couple had sought to initiate.

Appellant and Edelhertz jointly informed the Consulate General on May 25, **1980,** that the family was staying near Rabat; had visited various places in the country: they were "feeling fine"; and asked if there was any additional information for them. The Department meanwhile, on February 8, **1980,** had replied to the Consulate General's earlier inquiry. It instructed the Consulate General to caution appellant and Edelhertz again, and to advise them to visit appropriate Moroccan authorities to ascertain precisely what would be their status if they renounced United States citizenship. The Department stated that they might not renounce their infant's citizenship on his behalf, and directed that any oaths of renunciation they signed be sent to the Department for review.

Edelhertz wrote the Embassy in Rabat on July 14, **1980,** that an encounter with local police regarding his status had led him and Ms. M[redacted] to wish to complete the process of renunciation of nationality at the Embassy.

Thus, on July 18, 1980, appellant and Edelhertz appeared at the Embassy at Rabat, where each took an oath of renunciation before a consular officer and two witnesses in the form prescribed by the Secretary of State. 2/ Each also executed a statement of understanding of the implications of their act. As instructed, the Vice Consul concerned refused to accept an oath on behalf of the child.

In forwarding appellant's oath and statement of understanding to the Department, the Embassy observed that her actual signing occurred only after long consultations at the Consulate General and the Embassy, including one of over an hour with the Deputy Chief of Mission, who as Consul General at Casablanca, had already advised appellant and Edelhertz at length regarding all the implications of renunciation. The Embassy noted that appellant and Edelhertz had, however, stressed their wish to be free of wordly ties (such as citizenship), so as better to lead a simple, religiously-centered life.

Subsequently, as instructed by the Department and in accordance with the requirements of section 358 of the Act, the Embassy on September 22, 1980, executed a certifi-

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2/ We note, however, that the pre-printed form of the oath executed by appellant and Ms. M[redacted] recited that they had renounced their citizenship under section 349(a)(6) of the Immigration and Nationality Act. a/ Public Law 95-432 of October 10, 1978, redesignated section 349(a)(6) as paragraph (5). Following approval of PL 95-432, the Department on October 12, 1978, instructed all diplomatic and consular posts to amend the pre-printed form accordingly. Embassy Rabat obviously did not make this change on appellant's oath form.

a/ Section 349(a)(6) of the Act, 8 U.S.C. 1481, reads in part:

> 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 --
>
> > (6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General whenever the United States shall be in a state of war....

cate of loss of nationality in the name of appellant. 3/ The Embassy certified that appellant was born at [redacted] nationality of the United States by virtue of her birth therein; that she executed an oath of renunciation on July 18, 1980; and had thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

The Department approved the certificate on October 20, 1980, approval constituting an administrative determination of a loss of nationality from which an appeal may be taken to this Board.

On May 19, 1981, or ten months after the oath of renunciation had been signed, a contract physician of the Consulate General found Edelhertz seriously ill with hemorrhagic rectolitis, severe post-hemorrhage anemia, and malnutrition, and recommended care by an American gastroentologist and continuing clinical care. Appellant, Edelhertz and their son were evacuated to the United States, apparently in June 1981, under the provisions of section 203(a)(4) of the Immigration and Nationality Act, as qualified immigrants who are the married son or married daughter of citizens of the United States.

On August 6, 1981, while resident in New York State, appellant and Edelhertz filed a joint appeal with this Board.

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 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.

II

In order for expatriation to result from appellant's performance of a statutory expatriating act, it must be established that appellant performed the act voluntarily and in conformity with applicable legal principles. Perkins v. Elg, 307 U.S. 325 (1939).

Appellant does not dispute that she signed an oath renouncing her United States citizenship. Nor does she contend that the oath was not executed in conformity with section 349(a)(5) of the Act. And we find that her renunciation was in the form prescribed by the Secretary of State, despite the fact that the pre-printed form of oath she signed had not been amended to show the correct statutory authority under which she renounced. (See note 2 supra.) In the circumstances of this case, we do not consider the failure of the Embassy to re-designate section 349(a)(6) as 349(a)(5) to be material error. Appellant clearly understood that she was renouncing under section 349(a)(5), and has not contended to the contrary.

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

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

4/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481 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.

Thus, to prevail, appellant must prove, by a preponderance of the evidence, that her act of renunciation was involuntary.

She pleads that her decision to renounce her citizenship was induced by duress, namely, her husband's "continuously deteriorating" health, and her fear that the family's tourist visas would not be extended, thus forcing them to leave Morocco and travel again to the detriment of the family's health and well-being.

It is well established that proof of duress or involuntariness avoids the effect of the expatriative act. It is the very essence of expatriation that it be voluntary. Perkins v. Elg, 307 U.S. 325 (1939); Doreau v. Marshall, 170 F. 2d 721 (1948); Nishikawa v. Dulles, 356 U.S. 129 (1958); Afroyim v. Rusk, 387 U.S. 253 (1967); Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971). As the Court of Appeals stated in Jolley, the opportunity to make a decision based upon personal choice is the essence of voluntariness.

In order for the plea of duress to prevail, it must be shown, as stated in Doreau v. Marshall, that there existed "extraordinary circumstances amounting to a true duress" which "forced" a United States citizen to follow a course of action against his fixed will, intent, and efforts to act otherwise. The expression "voluntary act" has been defined as an act proceeding from one's own choice or full consent unimpelled by another's influence. Nakashima v. Acheson, 98 F. Supp. 11 (1951). In cases of formal renunciation of nationality, it has been held that evidence of a higher degree of duress is required to rebut the presumption of voluntariness. Kuwahara v. Acheson, 96 F. Supp. 38, (1951).

In light of these judicial guidelines, the basic question to be decided by the Board is whether appellant was forced against her will to renounce her United States citizenship and whether, in the light of her husband's alleged state of deteriorating health and anxiety lest the family be forced to leave Morocco, she proceeded to renounce her nationality on the basis of her free will, unimpelled by the influence of others or forces beyond her control.

The relevant inquiry is appellant's conduct at or around the time she performed the allegedly expatriating act. Statements made at some remove from the event are relevant only to the extent that they *tend* to show her state of mind at the time she performed the act.

As shown by the extensive and carefully prepared records which the Consulate General at Casablanca and the Embassy at Rabat made of their contacts with appellant and Edelhertz, at no time before she signed the oath of renunciation on

July 18, 1980, did she or Edelhertz allege that poor health of either one of them, or fear of being compelled to leave Morocco motivated their wish to renounce. Reports filed by both posts beginning in December 1979 and continuing through July 1980 make no mention of ill-health or fear of expulsion from Morocco as appellant's stated reasons for wanting to give up her citizenship. Furthermore, on December 28, 1979, and July 22, 1980, the Consulate General and the Embassy, respectively reported that the mental condition of both appellant and Edelhertz seemed within normal limits.

Both the Consulate General and the Embassy informed the Department in September 1981, that none of the officers involved in appellant's case could recall her ever having made such arguments. The only contemporaneous reference by appellant to her or the family's health was on May 25, 1980, when in a letter to a consular officer at Casablanca she (jointly with Edelhertz) wrote "we are feeling fine." While Edelhertz, some ten months after the oath of renunciation, in May 1981, was found to be seriously ill, as attested by a physician in Morocco, there was no such objectively concrete indication of ill-health on the part of Ms. M[redacted]. Indeed, the joint statement of March 16, 1982, said Ms. M[redacted] and their son "improved their health and stabilized their physical and mental temprance (sic) to the geographical-cultural change" in Morocco.

An implicit issue in appellant's pleadings is whether she felt such concern about her husband's health in the spring and summer of 1980 that she renounced her citizenship in order to be able to remain at his side, thus vitiating her expatriating act because of duress. In our view, any contention that marital devotion amounting to duress operated in appellant's case is unsubstantiated. There is no evidence in the record of the period from December 1979 through July 18, 1980, that her husband's life was in any danger, thus requiring appellant to find a way to remain with him and care for him, lest he die. Her situation was hardly like that in Mendelsohn v. Dulles, 207 F. 2d 37 (1952), where plaintiff's wife was so ill that he could not leave her, and thus involuntarily committed an expatriating act. A defense of marital devotion is clearly inapplicable in the case before us.

Embassy Rabat, in its message of September 23, 1981 to the Department, specifically noted that neither its files nor the recollections of the officers concerned indicated that there had been any mention of physical ill-health as a reason given by appellant and Edelhertz for seeking to renounce their citizenship; rather, it was their desire to practice their

religion and follow their lifestyle unencumbered by worldly ties and constraints in Morocco. The Embassy said **Ms.** M[redacted] had expressed these convictions in **the** presence **of** Edelhertz and privately, although it seemed obvious she was strongly influenced by Edelhertz. We find no evidence in the record, however, to suggest that Edelhertz might have coerced his wife into making a formal renunciation; it **was** clearly their mutual wish to do so. She has not alleged the contrary. Consulate General Casablanca, in its message of September **24, 1981** to the Department, essentially agreed with the Embassy's evaluation ***of*** the reasons why **Ms.** M[redacted] and Edelhertz acted as they had, while noting in addition both appellants had not mentioned any fear of being forced out of the country but, indeed, believed their connection with the Moslem faith would prevent immigration problems.

We advert again to the fact that for seven months appellant consistently pressed her request to renounce her citizenship, despite repeated advice from both the Consulate General and the Embassy to reflect carefully before taking a step which would make her and her husband stateless. Her execution of a home-made affidavit of renunciation of citizenship five months before she legally renounced further indicates single-mindedness of purpose and volition. In all her conduct from December 1979 to the date of her renunciation, appellant manifested a state of mind about giving up her citizenship which leaves **us** in no doubt that she performed the act voluntarily, even if influenced to **a** degree by her husband's views, which she clearly shared.

Furthermore, the first point in the statement of understanding executed by appellant on July 18, **1980,** read: "I understand that: 1. **I** have a right to renounce my United States nationality and I have decided voluntarily to exercise that right."

In brief, it is our opinion that appellant was not impelled by the influence of others or external forces to abandon her allegiance to the United States. The circumstances in which she found herself were not "extraordinary", nor could they be considered to constitute such duress as to render her act involuntary. **As** in Jolley, where plaintiff renounced his citizenship because he did not want to violate the Selective Service law, which he opposed because of the Viet Nam war, **Ms.** M[redacted] "Hobson's choice" was of her own creation. She had full knowledge of the grave legal consequences of her act and yet insisted on carrying it to conclusion. Her later contention in the joint statement,

that her husband's ill-health and circumstances influenced their "ill-advised request" to renounce their citizenship, implies rather that she made a voluntary decision which she now regrets.

We conclude, therefore, that appellant, has not sustained the burden of overcoming the statutory presumption of section 349(c) of the Act that she voluntarily made a formal renunciation of her United States citizenship on July 18, 1980.

There remains the question of whether or not appellant had the intention voluntarily to relinquish her United States citizenship.

The Supreme Court held in Afroyim v. Rusk, 387 U.S. 253 (1967) that a United States citizen has a constitutional risht to remain a citizen "unless he voluntarily relinquishes that citizen.ship." In Vance v. Terrazas, 444 U.S. 252 (1980) the Supreme Court affirmed Afroyim's emphasis on the requirement that a citizen assent to relinquishment of his citizenship before he can be deemed to have surrendered it, and that the record support a finding that the expatriating act was accompanied by an intent to relinquish United States nationality.

Formal renunciation of United States citizenship in the manner prescribed by law is the most unequivocal and categorical of all expatriating acts and implicitly demonstrates intent on the part of the renunciant to abandon citizenship.

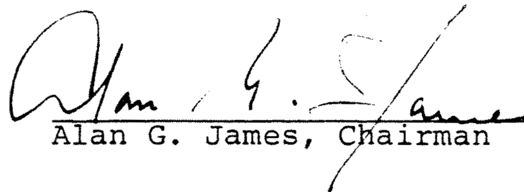
In the instant case, appellant's intention is vividly manifested in the language of the oath she swore on July 18, 1980, wherein she "unequivocally, absolutely and entirely" renounced her United States citizenship, "together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining."

In our opinion, the record fully supports a finding that appellant's expatriating act was performed voluntarily and with intent to relinquish her United States citizenship.

III

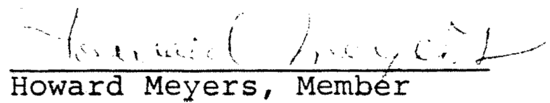
On consideration of the foregoing and on the basis of the record before the Board, we conclude that appellant, N[redacted] A[redacted] M[redacted], expatriated herself on July 18, 1980, by making a formal renunciation of her United States citizenship before a consular officer of the

United States, in the form prescribed by the Secretary of State. Accordingly, we affirm the Department's administrative determination of October 20, 1980, to that effect.



Alan G. James, Chairman

Warren E. Hewitt, Member



Howard Meyers, Member