DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: D B Q

This is an appeal from an administrative determi on of the Department of State that appellant, Reverend D B Q, expatriated himself on under the provisions of section 349(a)(1) of I i on and Nationality Act, by obtaining naturalization in Brazil upon his own application. 1/

I

Appellant, Fat Q, was born at K, N Y, on acquiring Unite s c izen- s birth. f ompleting his elementary education in K, he entered the Redemptorist Order and studied for t sthood. He became a member of the Redemptorist Fathers of New York. In 1953, he was sent to Brazil where he has since resided and worked as a C ic missionary priest. During his stay in Brazil, Father Q maintained his registration as a United States citizen at the Consulate General at Sao Paulo and visited the Consulate General periodically for t ser s. His last passport was issued to him on

On December 18, 1978, appellant applied to the Brazilian Minister of Justice for naturalization by executing an application form in which he expressed his desire to acquire Brazilian citizenship and renounce his current citizenship. By decree No. 573 of June 4, 1979, issued by the Minister of Justice, appellant was granted Brazilian citizenship pursuant to Article 145, II,(b) 3 of the Federal Constitution and Article 132 of Decree Law No. 941 of October 13, 1969. 2/

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/ Certificate of Naturalization, Ministry of Justice, Department of Justice, Brazilia, June 20, 1979; English translation, Division of Language Services, Department of State, LS No. 103572, Portuguese, 1982.

A certificate of Brazilian naturalization, signed by the Director-General of the Department of Justice of the Ministry of Justi[redacted] as issued on June 20, 1979, and presented to Father Q[redacted] at a public hearing on July 18, 1979, before an Acting Federal Judge at Curitiba, State of Parana. 3/ The

3/ In a report concerning nationality under the laws of Brazil, which was prepared in 1974 by the Hispanic Law Division, Library of Congress, at the request of the Department of State, the nature and purpose of the appearance of a petitioner for naturalization before a court of law, as prescribed by Article 132 of Decree Law No, 941, was described as follows:

Naturalization was and still is granted in Brazil by decree of the executive branch which, once complied with the requirement of the publication in the "Diario Oficial," is sent to the judge in the jurisdiction of which the petitioner is domiciled. The judge summons the petitioner to appear before the court for a solemn session in which he is notified of the content of the decree and of his rights and duties as a Brazilian national. The session is closed with the issuance of an affidavit signed by the judge and the naturalized petitioner stating that the latter is able to read and write Portuguese as proved by the reading of selected passages of the national constitution, that he had resigned to his nationality of origin, and that he assumes the responsibility of complying with the duties assigned to Brazilian nationals by law. a/ Even though the law **does** not specifically refer to an oath of allegiance, this statement in fact has all the elements thereof since it constitutes a formal promise of compliance before a court of law.

/See letter of Dr. Rubens Medina, Chief, Hispanic Law Division, Library of Congress, prepared February 1974, to Francis G. Rando, Chief, Foreign Operations Division, Passport Office, Department of State, enclosing a report on nationality in Brazil. Attachment A to brief of Department of State, September 9, 1981/.

a/ Article 133 of Decree Law No. 941 provides: "Delivery of the certificate shall be entered in the record of the hearing, which shall be signed by the Judge and by the naturalized citizen..,.

2. The date on which the naturalized person undertook the commitment, and the fact that it was entered in the record, shall be noted on the certificate." English translation, Division of Language Services, Department of State, LS No. 1075819, Portuguese (1982).

Acting Federal Judge certified that Father Q[redacted] --

> swore to fulfill well and faithfully the duties of Brazilian citizenship, demonstrated that he can read and write the Portuguese language by reading and transcribing articles of the Federal Constitution, and declared that he renounced, for all effects and purposes, his previous citizenship. 4/

Upon bec[redacted]g aw[redacted]f Father Q[redacted]'s naturalization by decree on [redacted] 4, [redacted] the Consu[redacted] General at Sao Paulo on June 12, 1979, wrote to him to request information regarding his naturalization. In response, Father Q[redacted] stated in a form sent to him by the Consulate General, which he executed on July 5, 1979, that he obtained naturalization voluntarily and of his own free will. He also stated on the form that he did not intend thereby to relinquish his United States citizenship. The completed form was accompanied by a letter, also dated July 5, 1979, in which he said that the reasons for his naturalization were "mainly religious and personal", which he would la[redacted]xplain in person at the Consulate General. Father Q[redacted] also said in his letter of July 5, 1979, that he had previously consulted a professor of law at Harvard University who had informed him that "the only way" he could lose his United States citizenship would be by making a formal renunciation before a diplomatic or consular officer of the United States. 5/

4/ English translation, Division of Language Services, Department of State, LS No. 103572, Portuguese, 1982.

5/ In a letter dated July 15, 1980, Frederick E. Snyder, Assistant Dean, Graduate Division, Harvard Law School, informed the Department of State about the nature of the citizenship advice he gave Father Q[redacted]. Dean Snyder stated:

> Father Q[redacted] asked some time ago whether a person could be a citizen of two countries at the same time. I indicated that dual nationality is recognized by the government of the United States and other governments, under certain circumstances, as a matter of international law generally. We did not discuss the specific question of the impact of an application for naturalization as a Brazilian citizen upon the nationality of a citizen of the United States.

Father Q[redacted] appeared at the Consulate General on August 24, 1979, to discuss his naturalization. He executed under oath a citizenship questionnaire to assist the Department of State in making a determination of his citizenship status. He also appeared at the Consulate General on October 3, 1979, to obtain a visa in his Brazilian passport. According to t[redacted]nsulate General's report of October 12, 1979, Father Q[redacted] stated to the consular officer that he became a naturalized Brazilian citizen as a result of his own free choice based on certain personal and religious convictions, that naturalization was not forced upon him as a prerequisite for continuing his missionary work in Brazil, and that naturalization did not make any difference with respect to the conduct of his work. The Consulate General also reported that Father Quilty submitted his certificate of naturalization, but declined to sign an "Affidavit of Expatriated Person". The Consulate General further stated that it issued to Father Quilty a limited validity nonimmigrant visa to enter the United States because, as the Consulate General explained later, he did not wish to delay his trip and await the Department of State's adjudication of his United [redacted]es citizenship status. 6/ It appears from Father Q[redacted]'s letter of September 15, 1979, that a factor in his decision to travel on a Brazilian passport to the United States was to obtain an exemption from making a travel deposit with the Brazilian authorities.

6/ Section 224.19(c)(4), Foreign Affairs Manual, Vol. 8; 8 FAM 224.19(c)(4), 1977, provides that, in cases where an applicant acquired United States citizenship but may have lost United States citizenship, and does not wish to have his United States citizenship status clarified, "the applicant will be considered an alien and may proceed with an application for a nonimmigrant visa to enter the United States."

In accordance with section 358 of the Immigration and Nationality Act, the Consulate General executed a certificate of **loss** of nationality on October 12, 1979. 7/ It certified that appellant acquired United States nationality by virtue of his birth in the United States on April 8, 1925; that he acquired the nationality of Brazil by virtue of his naturalization on June 4, 1979; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. After a delay of a year, the Department of State approved the certificate on October 29, 1980.

On May 4, 1981, appellant's counsel gave notice of appeal from the Department's determination of loss of nationality. This Board received the appeal from Father Q[redacted] on July 1, 1981, accompanied by a brief, dated June 26, 1981. Appellant's counsel contended in the brief that appellant did not intend to relinquish his United States citizenship when he obtained naturalization in Brazil. Appellant's counsel argued that, other than the act of Brazilian naturalization itself, "there appears to be no evidence that Father Q[redacted] intended to renounce his United States citizenship, and considerable evidence that he never

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7/ 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.

voluntarily renounced that citizenship." He pointed out that the evid "indicates that (1) prior to the application Father Q believed it was possible to become a citizen of Brazil and remain a citizen of the United States, **(2)** prior to the application Father Q believed himself to be under severe pressure from Brazilian authorities to naturalize as a Brazilian citizen as a condition to the continued exercise of his religious responsibilities toward his parishioners, and **(3)** at no time did Father Q believe that by yielding to these pressures and applying razilian citizenship would he really be placing his United States citizenship in jeopardy."

II

Section 349(a) (I) 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 that appellant applied €or and obtained Brazilian citizenship. The Brazilian authorities also confirmed that appellant acquired Brazilian citizenship in conformity with a naturalization decree of June 4, 1979, issued by the Minister of Justice.

Under section 349(c) of the Immigration and Nationality Act, a person who performs a statutory act of expatriation is presumed to have done so voluntarily. 8/

8/ 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.

Such presumption, however, may be rebutted upon a showing by a preponderance of the evidence that the act was not performed voluntarily. Therefore, the first question to be addressed is whether appellant has offered and proved facts which rebut the presumption that his acquisition of Brazilian citizenship was voluntary.

Appellant explained the circumstances of his naturalization in the Consulate General's citizenship questionnaire, which he executed on August 24, 1979. He stated that, after receiving advice from a professor at Harvard Law School to the effect that he could only lose his citizenship by making a formal renunciation before a diplomatic or consular officer of the United States, he decided to look into acquiring Brazilian citizenship by naturalization in the belief that he could have dual citizenship. He also noted statements in his United States passport indicating the possibility of dual citizenship. Naturalization, he said, did not seem illogical "for personal and religious reasons, while retaining my innate U.S. citizenship." He further stated in the citizenship questionnaire that, in view of the fact that he lived in Brazil as a permanent resident since 1953, intended to spend the rest of his life in that country, and always lived as a good Brazilian, he "saw nothing against naturalization, as an impediment to my innate U.S. citizenship." Although appellant stated in a letter of July 5, 1979, to the Consulate General and in the citizenship questionnaire that the reasons for "putting in for naturalization" were mainly religious and personal, the record before us does not disclose or shed light on the specific religious and personal convictions that purportedly motivated him.

Nevertheless, we have seen that in response to a question on a form of the Consulate General sent to appellant on June 12, 1979, he answered that he obtained naturalization voluntarily and of his own free will. He also told the consular officer on the occasion of his visit to the Consulate General in October of 1979, that he became a naturalized Brazilian citizen as a result of his own free choice and not because of pressures exerted upon him to enable him to continue his missionary work in Brazil. Appellant, according to the Consulate General, again stated in an interview on August 18, 1980, that he had never been compelled to become a Brazilian in order to continue his missionary work.

Notwithstanding appellant's foregoing admissions that his naturalization was a voluntary act, appellant's counsel argued that appellant believed himself to be under **severe** pressure from Brazilian authorities to naturalize as a Brazilian citizen as a condition to the continued exercise of his religious responsibilities toward his parishioners. No evidence, however, was submitted to support that allegation. Indeed appellant appeared to abandon the argument in his reply brief of September 19, 1981, in which he stated that he preferred "to forget the passage /In his brief of June 26, 1982/ about 'severe pressure'". He simply reiterated again in his reply brief that he acquired Brazilian citizenship for personal and religious reasons, and contended that "the only issue at stake" is the question of his intent to relinquish his United States nationality when he obtained naturalization in Brazil. We concur.

Under section 349(c) of the Immigration and Nationality Act appellant bears the burden of rebutting, by a preponderance of the evidence, the presumption that his act of expatriation was performed voluntarily. Appellant has not attempted to negate this statutory presumption, and, in the circumstances, we find that his naturalization in Brazil was a voluntary act.

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Although appellant voluntarily acquired Brazilian citizenship, he maintains that he did not intend thereby to give **up** his United States citizenship. He declared in response to a question regarding intent on the form sent to him by the Consulate General on June 12, 1979, that he did not intend to relinquish his United States citizenship when he obtained naturalization in Brazil. Appellant's counsel argued that at no time did appellant believe that his United States citizenship would be placed in jeopardy as a consequence of his naturalization. Further, in a letter of September 19, 1981, to the Board, appellant said that he had been lead to believe that he could have "two nationalities", and that because of the circumstances at the time the acquisition of Brazilian citizenship "looked good'' to him.

On the issue of intent, the Supreme Court declared in A[redacted] v. [redacted], 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 Court rejected the view that Congress has any general power,

expressed or implied, to take away erican citizen's citizenship without his assent. A made **loss** of citizenship dependent upon evidence of an intent to transfer or abandon allegiance. **A** United States citizen has a constitutional right to remain a citizen unless he voluntarily and intentionally gives up his citizenship.

In V v. T, **444** U.S. 252 **(1980),** the Supreme Court reaffirmed a ified its holding on intent in A. The Court said that in order to establish loss of citizenship the Government must prove an intent to surrender United States citizenship, as well as the performance of an expatriative act under the statute. ***An*** intent to relinquish United States citizenship, the Court stated, 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 also made it clear that it is the Government's burden to establish by a preponderance of the evidence that the expatriating act was accompanied by an intent to terminate United States citizenship.

Thus, the principal issue that we are confronted with in this case is whether or not appellant intended to relinquish his United States citizenship at the time he obtained naturalization in Brazi his own application. Such intent, as mentioned in T, is to be determined as of the time the act of expatriation took place and may be ascertained from his words or as a fair inference from his conduct.

As we have seen, appellant executed on December **19,** 1978, an application for naturalization addressed to the Minister of Justice. In the application, he expressed his desire to acquire Brazilian citizenship and to renounce his current citizenship. He declared in the application that he had legal capacity under Brazilian law; had resided continuously in Brazil for over twenty-five (25) years; had resided abroad only in New York; could read and write Protuguese; was engaged in pastoral activities; that his behavior was good; that he was not being prosecuted or indicted and had never been convicted in Brazil of a malicious crime; was in good health; did not owe income taxes; and did not wish to change **his** name.

Following his naturalization by decree on June **4, 1979,** appellant appeared before an Acting Federal Judge of the First District in Curitiba on July **18,** 1979, to receive his

certificate of naturalization. The Acting Judge certified, as previously noted, that on that date appellant appeared before him and swore to fulfill the duties of a Brazilian citizen, demonstrated that he could read and write the Portuguese language by reading and transcribing articles of the Federal Constitution, and declared that he renounced his previouscitizenship.

It is clear from the record that appellant sought and obtained naturalization in Brazil upon his own application, and in the process specifically expressed his desire to renounce his current citizenship and in fact declared before an Acting Federal Judge that he actually renounced for all effects and purposes his previous citizenship. He also swore to faithfully fulfill his duties as a Brazilian citizen Appellant's expressions of renunciation, which are clearly inconsistent with an intent to retain United States citizenship, manifest his intent to surrender his United States citizenship when he obtained naturalization in Brazil. We note particularly that appellant was required by Article 133 of Decree Law No. 941 to sign with the judge the record of the h[redacted]g in which he and the judge attested that Father Q[redacted] expressly declared that he renounced his previous [redacted]zenship.

We also find relevant appellant's application for a visa to the United States in October 1979. In his letter of September 15, 1979, to the Consulate General, he said he needed a visa on his Brazilian passport to enter the United States and needed a Brazilian passport to obtain an exemption from a travel deposit. He further stated that "if there is no possibility of dual citizenship, then I'll sign whatever is necessary to get my visa from your office for my trip to the U.S." In reporting the issuance of the visa, the Consulate General stated that a consular officer urged appellant in the strongest terms to use his United States passport to enter the United States, but that appellant insisted that he had to travel on a Brazilian passport. The consular officer, reportedly, also pointed out to appellant that his use of a Brazilian passport with a United States visa would likely prejudice the determination of his United States citizenship status. As noted earlier, appellant did not wish to delay his travel plans until his citizenship case was adjudicated, and therefore traveled on his Brazilian passport with a visa to the United States, even though his United States passport was still valid.