December 30, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: F[redacted] B[redacted]

This case comes before the Board of Appellate Review on an appeal taken by F[redacted] B[redacted] from an administrative determination of the Department of State that he expatriated himself on September 26, 1974, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

I

Appellant B[redacted] was born on [redacted], at [redacted], and so acquired United States nationality at birth. He received his primary and secondary education in New York State. A few days after his eighteenth birthday B[redacted] registered for the draft and was granted a student deferment by his local board, valid through his graduation from Boston College in 1968.

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

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, . . .

In September 1968 B[redacted] local board classified him 1A. The appeal he took from this classification was denied in February 1969. Meanwhile, he had travelled to M[redacted], [redacted], in September 1968, in order, as he put it, to be near his fiancee, [redacted] a Canadian citizen; and to take a masters degree at McGill University. Sometime in early 1969, under the sponsorship of his fiancee, B[redacted] applied for landed immigrant status in Canada (admission to permanent residence). He was accorded that status on June 25, 1969. He and Ms. G[redacted] were married in that same month.

B[redacted] obtained a passport in New York City on July 24, 1969. As instructed by his local draft board, he took a pre-induction physical examination at Fort Hamilton, Brooklyn, New York on July 28, and was found fit for military service, subsequently returning to Montreal. When ordered to report for induction, B[redacted] refused to do so, and was found delinquent by his local draft board as from September 15, 1969. 2/ On December 21, 1971, a Grand Jury returned an indictment against B[redacted] in the United States District Court for the Eastern District of New York for violation of 50 U.S.C. App. section 462(a).

The record shows that after receiving a master's degree from M[redacted], B[redacted] was employed as a secondary-level teacher by the Montreal Catholic School Commission in 1971. Appellant states that after teaching for two years in the English language sector, he was transferred to the French sector because there was no job available for him in the English sector. At the end of the 1973-74 school year, the Commission placed him in a pool of teachers available on a substitute or part-time basis. He left the employ of the School Commission in 1974, having located a position at College Ville Marie, a private secondary school partially funded by the Provincial Government of Quebec, where he still teaches. For the academic years 1971/72 through 1974/75, B[redacted] was granted provisional teaching authorizations by the Ministry of Education of the Quebec Government.

2/ It appears that except for a brief trip he reportedly made in 1970 to do research for his masters degree at Harvard, B[redacted] did not visit the United States again until 1977.

Copies of these teaching authorizations submitted by appellant indicate that to be granted a permanent teaching diploma he was required to fulfill certain conditions, inter alia, obtaining Canadian citizenship. In the Spring of 1974, B[redacted] applied for Canadian citizenship. In a sworn questionnaire completed on October 15, 1980, at the Consulate General at Montreal, he explained his reasons for seeking naturalization in Canada as follows:

> I did not avoid becoming a Canadian citizen because I wished to preserve my teaching position in the Quebec school system. I had completed all the requirements of the Ministry of Education in pursuit of my professional career except for naturalization as a Canadian citizen which was a pre-requisite to obtaining a permanent teaching certificate. With a wife and two children depending on me, I felt that attaining permanent status as a teacher was a necessary action at the time. I did not have the possibility of finding a teaching position in the United States in view of the pending indictment.

On September 26, 1974, after taking the prescribed oath of allegiance to Queen Elizabeth II, B[redacted] became a Canadian citizen under section 10(1) of the Canadian Citizenship Act of 1946, as amended.

On February 11, 1977, in accordance with President Carter's Proclamation and Executive Order of January 21, 1977, pardoning draft evaders and military deserters, the indictment against B[redacted] was dismissed by the Federal District Court for the Eastern District of New York. He has stated that the day after the indictment was dismissed he made his first trip in seven years to the United States, and thereafter reportedly made frequent and regular visits to the United States.

In March 1977 appellant started a student exchange sponsored by the American Field Service. This program, in which he is still involved, promotes periodic visits by students of College Ville Marie and a high school in Massachusetts to each others' schools and homes.

In June 1980 appellant wrote a letter of support on behalf of a friend and fellow teacher who was involved in certain official proceedings before the American Consulate General at Montreal. In the letter appellant stated: "I myself am an American and became a Canadian citizen for the same reason." 3/ It appears that when this letter came to its attention, the Consulate General at Montreal asked the Canadian authorities for confirmation of appellant's naturalization. After receiving confirmation, the Consulate General wrote to appellant on August 11, 1980, advising him that he might have lost his citizenship and inviting him to submit information about his naturalization. In response, appellant visited the Consulate General on August 27 to clarify his citizenship status. He returned to the Consulate General on September 24 to register his children, in the meantime having consulted legal counsel. Subsequently, on October 15 and November 21, respectively, he executed two questionnaires to assist the Department in making a determination of his citizenship status.

3/ Appellant explained at the hearing held on November 22, 1982, that he had been asked by a friend to testify on his behalf in a case involving alleged misrepresentation on a passport application. Addressing his letter "to whom it may concern", appellant wrote that his friend had become a Canadian "just like I did", to obtain a teaching certification. Appellant commented at the hearing that he had thus unwittingly revealed to the Consulate General that he had been an American citizen, or was an American citizen. Transcript of Proceedings in the Matter of Francis J. B[redacted] November 22, 1982, (hereinafter cited as TR). TR p. 50.

As required by section 358 of the Immigration and Nationality Act, the Consulate General on December 29, 1980, prepared a certificate of loss of nationality in appellant's name. 4/ The Consulate General certified that appellant was born at Manhattan, New York on April 6, 1947; that he acquired the nationality of the United States by virtue of his birth therein; that he acquired the nationality of Canada by virtue of naturalization upon his own application on September 26, 1974, and had thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on February 3, 1981, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review. Through his counsel, B[redacted] gave notice of appeal to this Board on February 3, 1982. He requested a hearing before the Board, which was held on November 22, 1982. Appellant appeared in person, represented by counsel.

Appellant contends that his naturalization was not a result of his own free volition; that he found himself in an economic and legal situation which virtually dictated his choice. Appellant further contends that his naturalization was not accompanied by an intention to relinquish his United States citizenship.

4/ 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

Section 349(a)(1) 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 for and obtained naturalization in Canada; the Canadian authorities confirmed that appellant had been naturalized in Canada on September 26, 1974.

Under section 349(c) of the Act, a person who performs a statutory act of expatriation shall be presumed to have done so voluntarily. 5/

This presumption may, however, be rebutted upon a showing, by a preponderance of the evidence, that the act of expatriation was not performed voluntarily. Although appellant admits that he obtained naturalization in Canada upon his own application, he would rebut the statutory presumption of voluntariness by seeking to prove that his act of expatriation was done under duress.

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

> 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.

The first issue presented to the Board therefore is whether appellant performed the allegedly expatriating act voluntarily, for citizenship continues unless the actor is deprived of it by his voluntary action in accordance with applicable legal principles. Perkins v. Elg, 307 U.S. 325 (1939); Afroyim v. Rusk, 387 U.S. 253 (1967).

It is well established that a defense of duress is available to persons who have performed an act of expatriation. Perkins v. Elg; Nishikawa v. Dulles, 356 U.S. 129 (1958); Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971).

The duress or coercion under which appellant contends he acted was principally economic. He was faced, he avers, with the dilemma of acquiring Canadian citizenship or losing his employment. The specific constraints influencing his decision to become a Canadian citizen may be summarized as follows:

> -- He was the sole support of himself, his wife and two small children. He was aware that certification and teaching jobs in the United States were difficult to obtain. He was also aware that the Quebec Department of Education would not issue permanent teaching diplomas to non-Canadians and, as a general administrative practice, will not issue renewals of provisional authorizations to non-Canadians for more than one or two years following their eligibility for naturalization.
>
> His concern over possible loss of his job -- were he not to become a Canadian -- was heightened by his experience at the Montreal Catholic School Commission where, as a provisional teacher, at the end of the academic year 1973-74 he could no longer be assured of steady employment.
>
> -- Socially, appellant's wife was strongly opposed to uprooting the family and moving to the United States.
>
> -- Appellant was under indictment from 1971 for draft evasion and believed he could not return to the United States and that his future would have to be in Canada.

At the hearing held on November 22, 1982, appellant testified it was understood in 1974 by his employer, the College Ville Marie, that he would obtain Canadian citizenship. Replying to his counsel's question: "Why did you apply for Canadian citizenship?" appellant answered:

> For economic reasons. It was a means to an end to preserve my employment at this private school, at a time when I had just bought a new house, my wife was having a second child, and I had no permanent teaching post in the Public School Commission. 6/

Asked by counsel whether he had considered alternatives in a field other than teaching, appellant replied:

> No, I didn't. Since I had spent four years of college, two years of graduate school, another year of teacher certification, I did not at all consider alternative employment when I had spent seven years studying to be a teacher. 7/

On the issue of alternate employment counsel argued at the hearing:

> Clearly there must have been some jobs, although the economic conditions in the province of Quebec being very cyclical, it is not certain what types of jobs there may have been.
>
> The appellant has indicated that he studied and obtained two professional degrees and wanted to exercise his profession in the same way that any individual who goes to those

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6/ TR. pp. 30, 31.

7/ TR. p. 31.

> lengths to acquire professional status would certainly prefer to practice that profession, do what he has been trained to do. 8/

For a defense of duress to prevail, it must be shown 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. Doreau v. Marshall, 170 F. 2d 721 (1948). In later leading cases where duress was successfully pleaded it was demonstrated that a high degree of external compulsion induced the citizen to perform an expatriating act out of concern for his personal survival or that of a close family member. See, for example, Ryckman v. Dulles, 106 F. Supp. 739 (1952); Insogna v. Dulles, 116 F. Supp. 473 (1953); Mendelsohn v. Dulles, 207 F. 2d 37 (1953); Stipa v. Dulles, 233 F. 2d 551 (1956); Nishikawa v. Dulles, 356 U.S. 129 (1958).

Although the courts have held that the means of exercising duress is not limited to physical coercion, the circumstances operating on the citizen must be "extraordinary" in order to constitute legal duress. Further, as the U.S. Court of Appeals (3rd Cir.) said in Doreau v. Marshall, "the forsaking of American citizenship even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress." Where one has the opportunity to make a decision based upon personal choice, duress has been held to be absent. Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971).

Appellant in the case before us argues that he performed a statutory expatriating act principally to preserve a teaching position which would ensure his and his family's livelihood. He conceded at the hearing, however, that he had made no attempt to avoid performing the expatriating act by seeking alternate employment. We note that as a landed immigrant, appellant was legally entitled to reside and work in Canada without becoming a Canadian citizen. And it is reasonable to assume that as a well educated, articulate and evidently energetic person, appellant could have found other employment reasonably commensurate with his capacities, and thus have avoided placing his United States citizenship in jeopardy. He made no effort to do so.

8/ TR pp. 83, 84.

Appellant made a clear personal choice when he obtained naturalization in order to preserve his employment. He has shown no extraordinary circumstances which forced him against his will to become naturalized. Any compulsion he may have felt to obtain naturalization was manifestly self-generated; it was not compelled by law or any force external to himself.

As to the alleged duress of marital devotion, we are not persuaded by appellant's arguments. Appellant was not faced with the choice of becoming naturalized or jeopardizing his marriage; his wife confronted him with no such unpalatable choice. At the hearing, Mrs. B[redacted] testified merely that she was unwilling to go to the United States; 9/ she said nothing about pressing appellant to become naturalized in Canada, although it appears she supported his decision to do so. Her refusal to go to the United States may have reinforced appellant's unwillingness to consider seeking employment here; it cannot be said to constitute a legal duress which forced him to become naturalized.

We do not consider the alleged duress of the outstanding indictment against Bonkowski to be an external constraint over which he had no control. Accepting, arguendo, that appellant was deterred from returning to the United States to seek employment because he feared the legal consequences, his decision to remain in Canada and not answer the charges against him was a personal choice. If, because of his moral principles, appellant did not wish to face the consequences of his draft evasion, he can hardly argue that his avoidance of one of the onerous duties of citizenship had been forced on him by the will of another.

We believe appellant weighed his choices in obtaining naturalization in Canada and, having exercised his options, may not be relieved of the consequences flowing from them.

Under the provisions of section 349(c) of the Act, appellant bears the burden of rebutting by a preponderance of the evidence the statutory presumption that his

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9/ TR. pp. 18-21.

naturalization was voluntary. 10/ In our opinion, reading the entire record, his rebuttal testimony falls short of negating such statutory presumption. We conclude that his acquisition of Canadian citizenship upon his own application was a voluntary act of expatriation.

III

It remains to be determined whether appellant's acquisition of Canadian citizenship was accompanied by the necessary intent to relinquish his United States citizenship.

The Supreme Court held in Afroyim v. Rusk, 387 U.S. 253 (1967), that a United States citizen has a constitutional right to remain a citizen "unless he voluntarily relinquishes that citizenship," and that Congress has no general power to take away an American's citizenship without his assent.

In Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court reaffirmed and clarified its decision in Afroyim by holding that to establish loss of citizenship the Government must prove an intent to surrender United States citizenship. An intent to relinquish citizenship, the Court declared, must be shown by the Government, whether "the intent is expressed in words or is found as a fair inference from proven conduct." In Terrazas, the Supreme Court made clear that it is the Government's burden to establish by a preponderance of the evidence that the expatriating act was performed with the necessary intent to relinquish citizenship. 11/

10/ Note 5 supra.

11/ Id. The burden is a heavy one. As the Department has acknowledged in the Foreign Affairs Manual, 8 FAM 224.20(b)(2), "the ability of the U.S. Government to sustain its burden to prove intent to relinquish U.S. citizenship by a preponderance of the evidence is most unlikely in all but the most clear cut cases...".

It is a person's intent at the time he performed the expatriating act which must be established. Terrazas v. Haig, 653 F. 2d 285 (1981). Although a party's intent will rarely be established by direct evidence, circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent. Id.

There is no evidence of record which would illuminate appellant's intent at the time he became a Canadian citizen, save the bare act of naturalization. The gravamen of the Department's case therefore is that "Mr. B[redacted] whole course of conduct since he moved to Canada has been to sever his citizenship ties with the United States and strengthen them with Canada." Specifically, the Department contends that:

-- Appellant became naturalized as soon as he was eligible

-- He knew the possible consequences for his United States citizenship by obtaining naturalization, yet proceeded with naturalization without consulting U.S. officials

-- Between 1968 when he arrived in Canada until 1980 when the Consulate General at Montreal informed him that he might have lost his citizenship, he did not consult the Consulate General about his citizenship status or seek the official services to which a U.S. citizen is entitled

-- He did not avail himself of the clemency offered to draft evaders by President Ford in 1974

-- He did not exercise the rights and duties of U.S. citizenship, e.g., report for induction; pay taxes; vote; obtain a new passport; register his children until several years after their birth

-- He did not own property or maintain a residence in the United States

-- He acted throughout solely as a Canadian citizen.

Although evidence of a person's words and conduct contemporaneous with the performance of an expatriating act is most probative of his intent, subsequent acts and

expressions have evidentiary value, for they may reveal circumstantially the actor's intent at the relevant time. However, in cases involving naturalization in a foreign state where there is little or no contemporary evidence of a person's intent, the Courts have required that the actor's conduct subsequent to the performance of the expatriating act explicitly demonstrate an intention to divest himself of United States citizenship. Baker v. Rusk, 294 F. Supp. 1244 (1969) and King v. Rogers, 463 F. 2d 1188 (1972).

Appellant here maintains that if he appeared to act principally as a Canadian citizen from 1974 (the date of his naturalization) until 1980 (when he first realized he might still be an American citizen), it was because he was laboring under the impression that he had lost his citizenship by operation of law -- not because he had any intention of abandoning it.

At the hearing appellant testified that he did not consult U.S. officials before becoming naturalized, or anytime from 1974 to 1977 because he feared that if he were to enter the United States Consulate General at Montreal he might expose himself to arrest for failure to answer the indictment against him. (TR pp. 32, 48.) He also testified that he did not at the time give any consideration to the possible consequences naturalization might have for his United States citizenship. (TR p. 32.)

Only sometime later did he begin to realize that he might have jeopardized his American citizenship. (TR p. 31.) He had read in his passport that one might lose one's citizenship by obtaining naturalization in a foreign state, but he could not remember precisely when he had read and grasped the import of that warning. (TR pp. 35, 43, 54, 55.) As in his brief, appellant alleged that when he consulted an attorney of the American Civil Liberties Union in early 1975 about possible dismissal of the indictment, he had been informed that he might have lost his citizenship by becoming a Canadian citizen. (TR p. 33.) He testified that another attorney, Ms. Randall Westreich, also had told him he might have lost his American citizenship when he consulted her about the indictment in early 1976. 12/

12/ Ms. Westreich testified at the hearing that she represented appellant in 1976 and 1977 to obtain dismissal of the indictment against him. She did not, however, testify on what advice she had given appellant about his citizenship status.

On the basis of the legal views he had received from the attorney of the American Civil Liberties Union and Ms. Westreich as well as his own reading of the warning in his passport, appellant had been convinced from 1975 onwards that he had lost his United States citizenship. (TR pp. 33, 34, 35.) Statements of President Carter's Press Secretary in connection with the Presidential Pardon of draft evaders reinforced appellant's mistaken belief that he was no longer a United States citizen. (TR p. 36.) He did not consult the Consulate General at Montreal after the indictment against him had been dismissed because he was never aware of the services the Consulate General could provide and because he was by then convinced that he had lost his citizenship and could do nothing about it. (TR p. 48.) He had not realized that his children (born before the date of his naturalization) were United States citizens and therefore did not register them at the Consulate General. (TR p. 40.) Not until he had received the Consulate General's letter of August 11, 1980, requesting information regarding his possible loss of United States nationality did he realize that he might have retained his American citizenship. (TR pp. 37, 39, 40.)

He immediately consulted legal counsel who confirmed that he had not necessarily lost his citizenship. (TR p. 40.) At the hearing a friend, Ms. Rosalie Jean Banko, corroborated appellant's belief that he was not a United States citizen until he learned otherwise in August 1980. Ms. Banko testified that appellant telephoned her in August or September 1980 to say that:

> he had found out that he might still possibly retain his American citizenship which he previously thought he had lost, so he was very excited about this, and told me he was going to register his children at the U.S. Consulate and take steps to document himself. (TR p. 13.)

As we have seen, appellant subsequently registered his children as American citizens at the Consulate General and applied for registration himself.

The Government has the burden of proving by a preponderance of the evidence that appellant's expatriating act was performed with the requisite intent to relinquish his United States citizenship. In our opinion, the Department has not borne that burden.

Appellant asserts that he held himself out as a Canadian after he became naturalized only because he believed he had lost his United States citizenship by

operation of law -- not of his own volition. The Department has not demonstrated wherein appellant's conduct, based on an allegedly genuine if mistaken misconception, was so inconsistent with a will to retain his American nationality as to indicate an unambiguous intent to foreswear it.

Appellant's failure to pay income taxes or vote in the United States is not probative of his intentions in 1974. Why, like many Americans living abroad, appellant did not perform these civic responsibilities may as readily as not be ascribed to reasons which have little if any bearing on whether he intended to give up his citizenship. Nor does his evasion of the draft shed light on his real intent in 1974. As a landed immigrant he could have remained safely in Canada without seeking naturalization.

Although obtaining naturalization in a foreign state and taking an oath to an alien power are highly persuasive evidence of an intention to transfer one's allegiance, they are insufficient, standing alone, to establish an intention to relinquish United States citizenship. Baker v. Rusk and King v. Rogers (op. cit.) The oath appellant took to the British Crown did not require him to renounce his original citizenship; nor did it impose exclusive obligations toward Canada which would bar him from performing the duties of United States citizenship. And it is relevant that appellant did not obtain a Canadian passport. Furthermore, in the absence of convincing evidence to the contrary, appellant is entitled to be believed when he avers that the sole reason he became naturalized was in order to protect his status as a teacher in Quebec. We do not consider such a motive to be inherently inconsistent with an intent to preserve his American citizenship.

Nevertheless, we have some doubt about appellant's real state of mind when he became a Canadian citizen. In particular, we find it difficult to reconcile his contention that he never intended to relinquish his United States citizenship with the fact that at no time from 1974 to 1980 did he seek competent legal advice about the consequences of his naturalization for his American nationality. This is especially baffling since the issue had been brought to his attention in 1975 and 1976 by the attorney for the American Civil Liberties Union and Ms. Westreich, respectively. He may have believed it would be dangerous for him to approach American officials in Canada while the indictment against him was still outstanding. Why he did not, however, seek an authoritative opinion elsewhere has not been satisfactorily

explained. The record shows that his consultations with the Civil Liberties Union attorney and Ms. Westreich about his citizenship status were cursory and tangential to his principal objective of achieving dismissal of the indictment. Prudence and concern about his United States citizenship status should, surely, have moved him to solicit the advice of a specialist in the complex field of nationality law. His explanation that in the period after dismissal of the indictment he was so convinced he had lost his United States citizenship that he saw little point in seeking an authoritative opinion about his status, strikes us as disingenuous. He was free to travel in the United States after 1977 and did so frequently; he could readily have obtained clarification of his citizenship status from any official quarter.

In brief, we consider it implausible that if he intended to preserve his United States citizenship, he would not have shown greater vigilance about safeguarding that invaluable right. Mindful, however, of the Supreme Court's injunction that ambiguities in the record must, to the extent reasonably possible, be resolved in favor of citizenship, 13/ we do not consider our doubts, although relevant, to be dispositive when evaluated against the totality of the record.

In sum, the record here sheds no light on appellant's real state of mind at the relevant moment -- 1974 when he acquired Canadian citizenship. His subsequent words and acts might be probative of his intent at that date if, but only if, they evince an unmistakable intention to abandon his allegiance to the United States. A fair reading of the record shows that they do not. We cannot therefore endorse the Department's contention that appellant's whole course of conduct showed that it was his intention to sever his ties to the United States. Inferences drawn largely from a series of acts of omission are too conjectural to support a finding of loss of citizenship. In our opinion, the Department has failed to sustain its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States citizenship.

13/ Nishikawa v. Dulles, 356 U.S. 129 (1959).

IV

Upon consideration of the foregoing and the complete record before us, we conclude that appellant did not expatriate himself by obtaining naturalization in Canada upon his own application. Accordingly, we reverse the Department's administrative determination of February 8, 1981, to that effect.

Alan G. James, Chairman

Warren E. Hewitt, Member

George Taft, Member