April 20, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: E[redacted] C[redacted] G[redacted]

This case is before the Board of Appellate Review on an appeal brought by E[redacted] C[redacted] G[redacted] from an administrative determination of the Department of State that he expatriated himself on November 22, 1978, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Denmark upon his own application. 1/

The issues on appeal are whether appellant obtained the nationality of Denmark voluntarily and with the intention of relinquishing his United States citizenship. We conclude that appellant's naturalization was a voluntary act and accompanied by an intention to relinquish his United States citizenship. Accordingly, we will affirm the Department's decision of October 8, 1980, to that effect.

I

Appellant G[redacted] was born in [redacted]. His father was a [redacted] citizen; his mother, a citizen of [redacted]

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, . . .

At the age of four G[redacted] was taken by his parents to the United States. While attending Texas A & M University, G[redacted] was naturalized on November 6, 1972, before the United States District Court for the Western District of Texas. He applied for admission to the University's Naval Reserve Officers Training Corps but his application was denied in June 1973 because of color blindness

According to his submissions, G[redacted] decided to interrupt his university studies to return to Denmark to learn more about the country of his birth, improve his proficiency in Danish and pursue a military career. His application for permission to enlist in the Danish armed forces as a United States citizen was approved by the Interior Ministry on August 13, 1973, and G[redacted] departed for Denmark in Septembe travelling on a United States passport which he had obtained in June 1973.

Immediately after arrival in Denmark, G[redacted] registered at the United States Embassy at Copenhagen on September 19, 1973. The consular officer's record of Gjerstad's visit that day states:

> Came to the Embassy and registered, did not know for how long time. Was naturalized in Nov. 1972, lef /sic/ US in Sep. 1973. Wanted to take job in the Danish Air Force, was warned not to take an oath of allegiance in that connection. Gave him the form letter with Sec. 340(d) of the INA /Immigration and Nationality Act/. 2/ Told him that

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2/ Section 340(d) of the Immigration and Nationality Act, 8 U.S.C. 1451, provides in pertinent part:

Sec. 340(d), If a person who shall have been naturalized shall, within five years after such naturalization, return to the country of his nativity, or go to any other foreign country, and take permanent residence therein, it shall be considered prima facie evidence of a lack of intention on the part of such person to reside permanently in the United States at the time of filing his petition for naturalization, and, in the absence of countervailing evidence, it shall be sufficient in the proper proceeding to authorize the revocation and the setting aside of the order admitting such person to citizenship and the cancellation of the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation,....

> in case he was still in Denmark when his ppt /passport/ expires, he should make a formal statement regarding Sec. 340(d).
>
> PRC

G[redacted] was inducted into the Danish Air Force on November 1, 1973, but transferred to the Army about four months later. While on active duty with the Danish Army, G[redacted] telephoned the Embassy on June 27, 1975, to inquire about the effect on his U.S. citizenship status if he were to be commissioned in the Danish Army Reserve. The Embassy's record of that call states:

> In Dan. A.F. Will go into A.F. Reserve which req. oath. Told him that he may be expatriated. He may give up US cit.
>
> PC

G[redacted] version of this conversation is considerably at variance with what the consular officer recorded. G[redacted] asserted in his brief of May 11, 1981, that the consular officer told him there was a very strong possibility that he had expatriated himself by serving in the Danish armed forces and by establishing residence in Denmark within five years of his U.S. naturalization. G[redacted] further alleges that the consular officer told him that a decision about his U.S. citizenship status would have to be made by the Department, but his situation "looked black". In response to his query whether he should apply for Danish citizenship, the consular officer had reportedly said it was a possibility, and that American citizens of Danish origin who move back to Denmark often revert to Danish citizenship.

In an affidavit executed on February 25, 1982, the consular officer who had spoken on the telephone with G[redacted] on June 27, 1975, stated that she could not remember the details of his case, but she believed the Embassy's contemporary record, which she stated she had written, spoke for itself. She disagreed with Gjerstad's statement that she had told him he could possibly re-acquire Danish nationality, and added:

> Had I done that I would have also have had to tell him that by applying for naturalization in a foreign state he would then fall within the purview of Section 349 (a)(1) of the INA and warn him of the consequences of such an act. As this is not noted on his registration card, I do not believe

this subject was discussed when I talked with him on June 27, 1975.

G[redacted] did not, according to his brief, pursue the matter with the Embassy "for fear of becoming a stateless person." The information given him by the consular officer made him "decide to pursue a military career in Denmark, since it offered an academic education under favorable economic conditions."

He applied for admission to the Royal Danish Military Academy in April 1977. He agreed that if admitted he would repay a proportionate share of his accrued pay during his education should his service in the armed forces terminate of his own volition before the end of his duty obligation. In September 1977 he learned that his application had been accepted, and that he would be required to apply immediately for naturalization as a Danish citizen. This he did in October 1977, "believing that I had, for all practical purposes, lost my United States citizenship and in order to qualify for admission to the Danish Military Academy." On applying for naturalization, G[redacted] was required to sign the following statement: "...if Danish citizenship is granted to me, /I/ will not reserve the right to retain my present citizenship." He entered the Military Academy in December 1977.

In March 1978 G[redacted] decided to seek legal advice about his U.S. citizenship status in light of his service in the Danish Armed forces and his having taken up residence in Denmark within five years of his U.S. naturalization. The American attorney whom he consulted advised G[redacted] to return to the United States and renew his passport, "but he did not," G[redacted] stated, "give any precise information about the status of my U.S. citizenship at that time."

Instead of returning to the United States, Gjerstad, on June 2, 1978, went to the Embassy at Copenhagen to apply for a new passport. In this connection he filled out a questionnaire in which he stated that he had applied for Danish citizenship. He also stated that until he became a Danish citizen his allegiance was with the United States. The Embassy issued G[redacted] a new passport, limited in validity to December 1, 1978. On June 20 the Embassy requested the Department's opinion on whether G[redacted] naturalization as a United States citizen was revocable under section 340(d) of the Immigration and Nationality Act.

G[redacted] was commissioned a second lieutenant in the Danish Army Reserve on June 23, 1978, at which time, he states, he learned he would receive Danish citizenship in November.

In August 1978 the Department informed the Embassy that it considered G[redacted] had overcome the presumption of section 340(d) of the Act, but instructed the Embassy to keep the Department advised of his application for Danish citizenship. G[redacted] states that when he was informed by the Embassy that he was still a U.S. citizen, he made "discreet inquiries" about the possibility of resigning from the Military Academy. He also investigated the possibility of receiving a medical discharge and submitted to an examination with that objective in mind. He was, however, found medically fit for duty. He learned from the Danish Officers Union that if he were to resign from the Academy he would probably have to pay a very large indemnity -- "at least in five figures". The avenues of honorable withdrawal from the Academy allegedly being closed to him, G[redacted] decided to go through with his application for naturalization. As he explained in his brief:

> As I see it, any other possible avenues would have entailed conduct unbecoming an officer....Such conduct would have resulted in a dishonorable discharge, which would have hindered me from obtaining meaningful employment. Furthermore, a premature discharge would have been detrimental to my efficiency report, which would have been my only reference when applying for civilian employment.

G[redacted] was granted Danish citizenship on November 22, 1978. On learning of his naturalization from the Danish authorities, the Embassy on December 20, 1978, wrote Gjerstad to advise him that naturalization in a foreign state was highly persuasive evidence of an intention to relinquish U.S. citizenship, and requested that he execute a questionnaire to assist the Department in making a determination of his citizenship status. He replied to the Embassy's letter on February 7, 1979, submitting the completed questionnaire and a supplmental statement in which he dwelt at length on the events leading up to his naturalization, and concluded with this comment:

> On the realistic assumption that I have been expatriated, I hereby request that this statement be made a matter of record, as it is my intention to return to the United States and apply for renaturalization in accordance with the laws of the United States on these

matters upon my completion of my service in the Danish Army.

The Embassy sent G [redacted] another questionnaire dealing with his intent, which he returned on March 13, 1979, again submitting a supplementary statement substantially similar to the statement he had written the previous month.

As required by section 358 of the Immigration and Nationality Act, the Embassy prepared a certificate of loss of nationality in G [redacted] name on July 31, 1979. 3/ The Embassy certified that G [redacted] acquired the nationality of the United States by virtue of naturalization on November 6, 1972; that he acquired the nationality of Denmark by virtue of naturalization; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

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.

The Embassy forwarded the certificate to the Department on July 31, 1979, together with G[redacted] citizenship questionnaires and supplementary statements. In a covering commentary the Embassy observed:

> We regard Mr. G[redacted] statement as selfserving and false. He had had several interviews with consular officers and consular personnel over the past several years at which expatriation was explained to him....In as much as the consequences of voluntarily acquiring Danish citizenship were fully explained to Mr. G[redacted] prior to his obtaining it, we cannot but believe he knew what the consequences of naturalization would be.

On October 8, 1980, the Department approved the certificate, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review. Appellant gave notice of appeal on September 20, 1981, and subsequently requested a hearing which was held on January 11, 1983.

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. It is well settled, however, that no conduct results in expatriation unless the conduct is engaged in voluntarily and in accordance with applicable legal principles. Nishikawa v. Dulles, 356 U.S. 129 (1958); Perkins v. Elg, 307 U.S. 325 (1939).

There is no dispute that appellant applied for and obtained naturalization in Denmark. He concedes the fact, and the Danish authorities so informed the United States Embassy at Copenhagen.

The first question we must address therefore is whether appellant's acquisition of the nationality of Denmark was a voluntary act.

Under section 349(c) of the Act, a person who performs a statutory expatriating act shall be presumed to have done so voluntarily, but the presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act was not done voluntarily. 4/ In the instant case, appellant would rebut the statutory presumption of voluntariness by attempting to show that he became naturalized under circumstances which amounted to legal duress.

That a defense of duress is available to a person who has done a statutory act of expatriation is well established. Perkins v. Elg; Nishikawa v. Dulles; Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971).

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

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.

But, 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, "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 contends that naturalization was forced upon him. He bases this contention largely on one telephone conversation he had on June 20, 1975, with a consular officer of the Embassy at Copenhagen. This conversation, he alleges, led him to conclude that he had probably lost his citizenship by serving in the Danish Army and by contravening section 340(d) of the Immigration and Nationality Act. Fearing that he might become stateless and in order to advance his career goal of obtaining a commission in the Danish Army, G[redacted] states he applied for naturalization. Not until the process of naturalization was well advanced did he receive official confirmation that he remained an American citizen. By that date, late August 1978, he maintains he could not reverse the process, i.e., cancel his naturalization application and withdraw from the Military Academy, except by paying an indemnity to the Danish Government which was far beyond his means.

Appellant's version of his June 20, 1975, conversation with the Embassy officer, written several years later, is so at variance with the Embassy's contemporary record as to raise substantial doubts about the accuracy of appellant's recollection. A fair reading of the Embassy's record indicates that on June 20, 1975, the consular officer did not tell appellant that his current military service could adversely affect his United States citizenship; she addressed only the possibility that if he were to be commissioned, he might have to take an oath of allegiance to Denmark -- an act which she apparently indicated could result in expatriation. It would not appear logical or consistent for this evidently experienced consular officer to contradict the clear implication of the remark she made to appellant in 1973 that his military service in Denmark would not result in expatriation, as long as he did not take an oath of allegiance.

The consular officer recorded nothing about having told appellant on June 20, 1975, that he might have contravened section 340(d) of the Immigration and Nationality Act. We note that in 1973 she had simply called appellant's attention to the provisions of section 340(d), and advised him if he were still in Denmark when his passport expired (1978), he should make a formal statement regarding that provision.

On the strength of what he allegedly believed the consular officer had told him, appellant decided to follow a military career in Denmark. He prepared for the examinations for admission to the Royal Military Academy, applied for admission and was accepted. He then applied for naturalization as a Danish citizen. He took all these steps without making any attempt to obtain an official determination of his actual United States citizenship status. His excuse that if he were to pursue the matter he might provoke an adverse decision, i.e., be found to have expatriated himself and thus become stateless, is an insubstantial justification for failure to ascertain precisely what the consequences of naturalization might be for his United States citizenship.

The record does not bear out appellant's contention that he had been misinformed; he had insubstantial grounds to believe that he had, for all practical purposes, expatriated himself. It is hard to escape the conclusion that his explanation why he proceeded to apply for naturalization is little more than ex post facto rationalization of a course of action which he had been determined from the first to follow. He had the means to obtain clarification of his

citizenship status, but did not avail himself of them. He was not the pawn of events beyond his control. He chose to seek naturalization despite the risk to his United States citizenship. As he conceded at the hearing on January 11, 1983, he could have withdrawn from the military academy at any time up to June 23, 1978, the date of his commissioning, without incurring the obligation to pay an indemnity to the Danish Government. 5/ He chose not to do so.

Appellant's contention that he was unable to withdraw from the Military Academy after he had received his commission because of the great hardship of having to pay a large indemnity does not, in our view, constitute economic duress. Granted, a person in his circumstances might have found it difficult to pay the "five figure" sum he believed he would have to pay. 6/ He has not demonstrated, however, that he took any specific measures to raise the necessary money and failed. He merely estimated that the indemnity was a sum he could probably not earn, could not in good conscience ask his mother for, or borrow from a Danish bank. 7/ He conceded that he did not consider trying to find a job in the United States which might enable him to discharge his obligation. 8/ Even had he made the attempt to raise the money and failed, we would be unable to conclude that he was subject to legal duress. Naturalization was not necessary for his survival.

5/ Transcript of Proceedings In the Matter of Erik Christian G[redacted], January 11, 1983, (hereinafter cited as TR), pp. 15, 42.

6/ In his submissions appellant did not convert the "five figures" into a dollar amount. At the hearing, however, counsel for appellant mentioned $6,500.00 as the amount appellant believed he would have to pay if he were to resign from the Military Academy. TR. p. 25.

7/ TR pp. 22-28.

8/ TR pp. 26-28.

In sum, appellant has not persuaded the Board that the circumstances under which he obtained naturalization in Denmark were in any sense extraordinary. He proceeded on the basis of his own free will, not coercion. He could have informed himself of the true facts in his citizenship case long before he had reached a point in his military career where it would have been difficult for him to withdraw without incurring a financial obligation. Appellant had two options: to become naturalized and proceed with an interesting career at the risk of compromising his citizenship, or to abandon his declared objective in the interest of keeping his American nationality intact. He chose the former. There was no legal duress in his case.

Under the provisions of section 349(c) of the Immigration and Nationality Act appellant bears the burden of rebutting the presumption by a preponderance of the evidence that his naturalization in Denmark was voluntary. In our opinion, his rebuttal testimony fails to negate such presumption. We conclude that his acquisition of Danish nationality upon his own application was a voluntary act of expatriation.

III

It remains to be determined whether appellant's acquisition of Danish 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. 9/

9/ Note 4, supra.

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.

The Department seeks to satisfy its burden of proving that appellant intended to relinquish his citizenship when he became naturalized in Denmark by attempting to demonstrate that "the circumstances surrounding his naturalization and his own words clearly reveal his intent." The Department adduces the following arguments in support of its position,

-- Appellant's voluntary signing of the statement in his naturalization application that he would not reserve the right to retain his present citizenship shows he understood that he would have to give up United States citizenship in order to acquire Danish nationality.

-- His statement in the citizenship questionnaire which he completed on June 2, 1978, that until Danish citizenship was granted to him his allegiance would be with the United States, indicates that he understood he was a United States citizen at that time and that he intended to transfer his allegiance to Denmark when he acquired Danish nationality.

-- Appellant was cautioned about the provisions of section 349(a)(1) of the Immigration and Nationality Act in June 1978, and knew definitively in August 1978 that the Department found that he had not expatriated himself. Despite these facts and the requirements of Danish naturalization laws, appellant did not withdraw his application for naturalization.

-- It is understandable that in 1978 appellant would have been willing to give up his United States citizenship in order to acquire Danish nationality. Becoming a Danish citizen was a prerequisite to obtaining a commission and thus realizing his long planned military career in Denmark.

The Board must determine whether appellant's words and conduct during the relevant period -- between October 1977 when he applied for naturalization and November 1978 when he was granted naturalization -- clearly manifested an intent to relinquish United States citizenship. For there must be more than inference, hypothesis or surmise before a United States citizen may be adjudicated an expatriate. Acheson v. Maenza, 202 F. 2d 453 (1953).

Appellant contends that he did not intend to relinquish his United States citizenship when he obtained naturalization in Denmark. As we understand his argument, he would maintain that he could not have had the requisite intent in 1977 when he applied for naturalization inasmuch as he believed he had lost his United States citizenship two years earlier; thus he could not be held to have intended to relinquish something he was convinced he had already lost. By August 1978 when he was officially informed he was a United States citizen, he was unable to withdraw his application for naturalization because of factors beyond his control; accordingly, he maintains, his acceptance of a certificate of Danish nationality in November 1978 was not accompanied by the necessary intent to relinquish his American nationality.

As indicated in section II above, we do not think appellant had reason to believe that he had lost his United States citizenship, and we are skeptical that he really believed so. The record does not show that he had been told by the Embassy during his telephone conversation with a consu officer in June 1975 that he had lost his citizenship. He conceded at the hearing on January 11, 1983, that at no time prior to his acceptance of Danish citizenship had he been informed officially that he was not a United States citizen. 10/ At no point did appellant attempt to get an official determination of his citizenship status. He proceeded to apply for Danish citizenship apparently without giving any serious thought to the possible consequences for h American nationality. At the very least this suggests an indifference to retention of his current nationality. A person who intended to retain his United States citizenship assuredl would have not proceeded to apply for foreign nationality solely on the basis of what he had learned -- or thought he had learned -- during one telephone call made two years earli to the United States Embassy.

10/ TR p. 43.

When G[redacted] applied for naturalization in October 1977, he completed a form which contained the following statement.

> Acquisition of Danish citizenship will either automatically result in the loss of the present citizenship or be made contingent upon relinquishment of this citizenship. The applicant...is requested to make an explicit declaration that he does not reserve the right to retain his citizenship....

He signed the prescribed declaration which, as we have seen, read as follows:

> ...if Danish citizenship is granted to me, /I/ will not reserve the right to retain my present citizenship.

At the hearing, appellant was asked by counsel for the Department what he understood the declaration to mean. G[redacted] replied:

> That meant that if I regained or gained Danish citizenship that I would not be allowed to make any claims to my former nationality....This is a requirement in order to get Danish citizenship. 11/

When further questioned by Department counsel, he added that he had not protested to the Danish Government about the declaration because:

> ...if I were to gain Danish citizenship on the basis of my fears of becoming stateless, I would, of course, have to sign that. If I had written that I hereby declare that I will retain U.S. citizenship, then they would have probably not approved the application. 12/

11/ TR p. 40.

12/ Id.

Appellant has not contended that he signed the declaration with mental reservations. We must assume therefore that he intended to convey to the Danish authorities that, if granted naturalization, he would abandon his United States citizenship. At the hearing he acknowledged that Danish policy is opposed to dual nationality. 13/ The logical conclusion is that appellant was prepared to accede to that policy and relinquish his United States citizenship. That appellant was not required by the Danish authorities to take any specific steps to divest himself of United States citizenship, or to prove that he would automatically lose it, does not vitiate his evident intent at the time he signed the declaration to relinquish his United States citizenship.

It is also our view that appellant proceeded with his application for Danish nationality in full awareness of the legal consequences that might flow from his acceptance of naturalization in Denmark. It is not unreasonable to assume that as early as March 1978 G[redacted] understood that naturalization in a foreign state is a statutory expatriating act. In a memorandum he wrote on March 16, 1978, which he sent to his mother for presentation to an attorney in the United States for advice about his citizenship status, G[redacted] showed familiarity with the provisions of the Immigration and Nationality Act dealing with expatriation. Since he analyzed with considerable clarity the possible application to his situation of section 349(a)(3) of the Act (serving in the armed forces of a foreign state), it seems unlikely that G[redacted] could have been unaware of the provisions of the preceding subsection, 349(a)(1), which makes naturalization in a foreign state an expatriating act.

In early June 1978 G[redacted] visited the United States Embassy at Copenhagen to apply for a new passport. In the process he completed a questionnaire in which he stated that he had applied for naturalization in Denmark. G[redacted] asserted at the hearing that the Embassy did not inform him at that time that naturalization could pose a problem for him. However, the Embassy latter reported to the Department that he had been informed at that time of the possible consequences of naturalization for his United States citizenship. Although the record does not unequivocally substantiate the Embassy's assertion, it is not unreasonable

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13/ TR p. 47.

to assume that the consular officer concerned would have deemed it his duty to warn G[redacted] of the implications for his citizenship if he went through with naturalization as he had indicated clearly in the questionnaire he intended to do.

In the questionnaire G[redacted] observed that according to Danish law he would have to relinquish United States citizenship upon being granted the nationality of Denmark, and volunteered that: "Until Danish citizenship is granted to me, I consider my national loyalty to lie with the United States."

In his brief appellant observed that he realized the foregoing statement could be construed to mean he intended to renounce allegiance to the United States, but explained:

> ...I believed that I had for all practical purposes lost my U.S. citizenship. The questionnaire required that all questions be answered truthfully, which I did in the belief that I had lost U.S. citizenship.

When asked at the hearing by counsel for the Department did he mean that when he became Danish his allegiance would then be with Denmark, appellant replied: "Well, it would have to be with Denmark upon gaining Danish citizenship. 14/

It is difficult to construe appellant's statement that his allegiance lay only pro tem with the United States as anything but an expression of his intention to transfer his allegiance from the United States to Denmark.

At the hearing G[redacted] acknowledged that he could have withdrawn his application for naturalization anytime prior to June 23, 1978, the date on which he was commissioned, without incurring financial liability. 15/ Despite his

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14/ TR p. 41.

15/ TR pp. 15, 42.

undoubted awareness that naturalization could result in his expatriation, G[redacted] made no effort prior to June 23, 1978, (the date he was commissioned in the Danish Army) to clarify his United States citizenship status. Instead, he proceeded down a road which he knew could lead to loss of his citizenship. On the day he accepted his commission he placed himself in a position from which he could only be extricated by paying what he considered to be an impossibly large indemnity.

Even if we were to accept G[redacted] reasoning that as late as June 23, 1978, he had cause to believe he had lost his United States citizenship by his service in the Danish Army (and thus lacked the requisite intent to relinquish his United States citizenship), we note that he had been told officially in late August 1978 that he was still a United States citizen. He also knew in August that naturalization could be a problem for him; he conceded that fact at the hearing. 16/ By his own admission, he proceeded from late August to the day three months later on which he accepted Danish citizenship in full awareness of the legal consequences of naturalization in Denmark. When asked at the hearing by his counsel whether he could have resigned from the Army in August, G[redacted] replied: "No, I couldn't. All right, I couldn't have done it without paying the indemnity in August." 17/ Counsel posed the following question to G[redacted]:

> That is the point I was trying to make. At no time did you know until it became something that you couldn't voluntarily do? You didn't have the resources. You didn't have any way of getting out of it after you were notified? 18/

Gjerstad replied: "Correct." 19/

16/ TR p. 42.

17/ Id.

18/ TR p. 43.

19/ Id.

Had he not intended to relinquish his United States citizenship, one might ask why did G[redacted] not withdraw his naturalization application while he had time to do so? (He stated in his submissions that he had been informed officially in June 1978 that naturalization would be granted to him in November 1978.) For him to have cancelled his application would obviously have been awkward and financially disadvantageous. He would have had to admit to his military superiors that he had been imprudent in undertaking obligations inconsistent with retention of his United States citizenship. Nothing in the record, however, indicates that there was a legal impediment to his opting out at that point. Appellant's only attempt to find a solution compatible with retention of his American nationality and a graceful departure from the Danish Army was to undergo a medical examination in hope that he might be found medically unfit for service. As we have seen, he found no relief through that route. When he realized that there was no painless way out of his dilemma, G[redacted] let matters take their course. His decision not to interrupt the process of his naturalization, despite the clear realization that it could result in loss of his citizenship, clearly indicates to us that he intended to abandon his United States citizenship rather than incur a financial burden and lose his army commission.

It is thus our view that the Department has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States citizenship.

IV

Upon consideration of the foregoing and the entire record before us, we conclude that appellant voluntarily and with the intention of relinquishing his United States citizenship obtained naturalization in Denmark. Accordingly, we affirm the Department's determination of October 8, 1980, to that effect.

Alan G. James, Chairman

Gerald A. Rosen, Member

James G. Sampas, Member