

July 14, 1983

## DEPARTMENT OF STATE

## BOARD OF APPELLATE REVIEW

IN THE MATTER OF: G ■ E ■ ■ ■ ■ ■ - S ■ ■ ■ ■ ■

This case is before the Board of Appellate Review on an appeal brought by G ■ E ■ ■ ■ ■ ■ from an administrative determination of the Department of State that he expatriated himself on February 5, 1981, under the provisions of section 349(a) (5) of the Immigration and Nationality Act by making a formal renunciation of his United States citizenship before a consular officer of the United States at Geneva, Switzerland. 1/

On June 16, 1983, the Board decided that it was unable to conclude that appellant had the requisite capacity on February 5, 1981, to perform an act of formal renunciation of his United States citizenship with comprehension of its nature, scope and consequences, and accordingly, reversed the Department's administrative determination of April 6, 1981, 2/ of loss of appellant's nationality. This opinion, setting forth the Board's findings of fact and conclusions of law, is in support of the decision of June 16, 1983.

## I

Appellant was born on ■ ■ ■ ■ ■, ■ ■ ■ ■ ■. He acquired at birth ■ ■ ■ ■ ■, ■ ■ ■ ■ ■, United Kingdom through his British father and of the United States through his United States citizen mother.

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

Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

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(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; . . .

2/ Page 2 of the Decision of the Board of June 16, 1983, incorrectly refers to April 5, 1981.

Appellant's affidavit of May 7, 1982, gives a detailed account of his life prior to the date on which he renounced his citizenship,

E [REDACTED] was educated at school in England and at univer [REDACTED] rland. He states that he found it difficult to study at university because of incipient alcoholism. In 197 [REDACTED] he visited the United States where he worked briefly in a hotel. At that time too, he alleges, he drank [REDACTED] August 1976 his mother committed suicide, and E [REDACTED] returned to London. His brother was then under [REDACTED] for schizophrenia. Bracewell-Smith's father died in 1978. On the latter's death, [REDACTED] was faced, as he put it, "with many problems of financial matters concerning the hotels we owned, which I was not qualified to tackle." He became very suspicious of his relatives who were running the family properties, and he found himself exposed "to the world of tricksters." He therefore decided to return to Switzerland in 1978 and study law, At that time he decided, in part for tax reasons, to emigrate legally from the United Kingdom, and became a resident of Andorra. Sometime in 1978 he attempted suicide. He also continued to drink heavily and gave up his law course. He continued to live in Andorra where he led what he has called a very lonely life.

On January 14, 1980, on referral of his personal physician, Bracewell-Smith was examined by a London psychiatrist, Dr. Jonathan Gould, who has been practicing in the field of psychiatric medicine for 42 years. 3/ Writing to Bracewell-Smith's physician, Br. Gould informed the latter that E [REDACTED] [REDACTED] was convinced that he stank and found his fu [REDACTED] ak Dr. Gould confirmed that Bracewell-Smith had been an excessive and imprudent drinker. Dr. Gould found him nervous, self-conscious, a worrier, readily depressed. Dr. Gould also observed that the Bracewell-Smith family history "is not a good one." Dr. Gould stated that Bracewell-Smith's brother was at that time under steady treatment for schizophrenia. Dr. Gould noted, however, that Bracewell-Smith has a "streak of shrewd reality", that he was dabbling in commodities and trying to negotiate a rearrangement of the family business. Dr. Gould's letter concluded by stating that he proposed to write a colleague in Spain to arrange for Bracewell-Smith to see a competent psychiatrist and enter a clinic. "The prognosis is very doubtful", he observed,

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3/ Dr. Gould is a Fellow of the Royal College of Psychiatrist and a Member of the Royal College of Physicians.

Dr. G [redacted] wrote a colleague in Spain on January 28, 1980, to obtain [redacted] names of reliable colleagues who could treat a psychotic delusion and arrange for in-patient treatment of E [redacted].

On January 30, 1980, E [redacted] telephoned Dr. G [redacted] from Madrid where he wanted [redacted] because of suicidal impulses and a traffic accident. He was very drunk and depressed. Dr. Gould thereupon arranged for E [redacted] to be treated in a clinic in Madrid, but "this [redacted] unsuccessful," Dr. Gould later stated.

According to appellant's affidavit, sometime in 1980 his accountant d [redacted] he was also a United States citizen, and advised [redacted] to renounce his United States citizenship [redacted] ability. A Swiss lawyer apparently urged him to do the same. Appellant also stated that in January 1981 he travelled in Central America. "I tried to get into El Salvador in order to be killed in the shooting. However, the two flights I was booked on were cancelled and I did not go."

E [redacted] consulted Dr. Gould again on January 29, 1981, [redacted] he made a formal renunciation of his United States [redacted] citizenship. Regarding that occasion, Dr. Gould wrote to E [redacted] physician, "he had deteriorated, had been [redacted] y, . . . /and/ does regard himself now as more and more in need of help on account of his gene [redacted] ious- [redacted] and withdrawal." Dr. Gould reported that [redacted] had agreed to enter a clinic and apparent [redacted] for about six weeks; however, appellant wished to defer entering the clinic for about ten days. The Medical Director of [redacted] informed Dr. Gould on February 5, 1981, that E [redacted] had telephoned to say he would delay his admission date for about ten days,

A week after seeing Dr. Gould, Braceweff-Smith appeared at the Branch Office of the United States Embassy at Geneva, Switzerland on February 5, 1981, accompanied by his Swiss l [redacted] There before a consular officer and two witnesses, E [redacted] renounced his United States citizenship. He a [redacted] a statement attesting that he had performed the act voluntarily and with full appreciation of the consequences. As required by section 358 of the Immigration

and Nationality Act, the consular officer then prepared a certificate of loss of nationality in the name of [REDACTED]

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The consular officer [REDACTED] was born at [REDACTED] that he acquired [REDACTED] virtue of his birth to an American mother; that he acquired the nationality of the United Kingdom by virtue of his birth; that he voluntarily and formally renounced his United States citizenship and thereby expatriated himself under the provisions of section 349(a) (5) of the **Immigration** and Nationality Act.

The next day, February 6, [REDACTED] who alleges that on the night of the 5th he [REDACTED] much out of remorse for my lost nationality", returned to the Embassy Branch office. He asked the consular officer whether she could destroy his oath of renunciation and the statement of

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4/ Section 358 of the Immigration and Nationality Act, 8 U.S. 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.

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understanding he had executed the day before. As the consular officer reported to the Department later in February and in an affidavit of August 11, 1982, E [REDACTED] told her that he had doubts about renouncing the nationality of his mother. The consular officer said that she could not take the action E [REDACTED] requested, but invited him to submit his request to the Department's consideration. E [REDACTED] promised to prepare a full explanation of his reasons for renouncing and his present doubts about his actions. However, "in the ensuing days I was far too drunk to write such a letter", E [REDACTED] stated in his May 7, 1982, affidavit. The consular officer reported to the Department that no statement had been received from E [REDACTED] by February 26, 1981. Accordingly, on that date she forwarded the certificate of loss of nationality she had prepared in E [REDACTED]'s name to the Department.

The Department approved the certificate on April 6, 1981.

The Department's approval of the certificate of loss of nationality constitutes an administrative determination of loss of nationality from which an appeal *may* be taken to this Board. Appellant initiated this appeal through counsel on March 30, 1982, and subsequently requested a hearing which was held on January 28, 1983.

## II

The Department's administrative determination that E [REDACTED] expatriated himself by making a formal renunciation of his United States citizenship *may* be sustained only if it is proved that appellant made a formal renunciation of nationality in the form prescribed by the Secretary of State; that the act was voluntary; and that it was accompanied by an intent to relinquish United States citizenship. Perkins v. Elg, 307 U.S. 325 (1939); Afroyim v. Rusk, 387 U.S. 253 (1967); Vance v. Terrazas, 444 U.S. 252 (1980).

There is no dispute that appellant made a formal renunciation of his United States citizenship in accordance with the provisions of section 349(a) (5) of the Act and in the form prescribed by the Secretary of State.

Appellant contends, however, that he did not have the mental competence essential to validly renounce his United States citizenship on February 5, 1981; that citizenship is not relinquished where the person has insufficient mental capacity to understand in a reasonable manner, the nature and consequences of his act; and that his incompetency precluded the knowing commission of a voluntary act.

The first question to be resolved therefore is not that of voluntariness but whether appellant had the mental capacity or competence to expatriate himself by making a formal renunciation of his United States citizenship.

The evidence before us regarding appellant's mental condition consists essentially, but not exclusively, of a number of letters and an affidavit from Dr. Gould, an eminent psychiatrist in the United Kingdom, who examined appellant on January 14, 1980, January 29, 1981, January 27, 1982, February 17, 1982, February 7, 1983 and February 12, 1983, and conversed with him by telephone as well. Thus, Dr. Gould has seen appellant at intervals during a three-year period, starting approximately one year before the act of renunciation was performed. Indeed, as noted above, one such conversation occurred but one week prior to such act. Dr. Gould states in a letter to appellant's solicitor dated February 16, 1982, that appellant had been mentally unstable and unwell throughout the preceding two years. In a letter written by Dr. Gould, on February 3, 1981, just two days before the act, to Dr. G. Tennent, St. Andrews Hospital, where appellant was to be admitted for treatment, it is stated that "he is pretty paranoid, and also has a problem in that periodically, he drinks too much." Dr. Gould in his letter, dated January 23, 1980, to Dr. John Cardwell, appellant's physician, who made the initial referral, states that "the prognosis is very doubtful." In a letter from Dr. Gould to Dr. Cardwell, of February 3, 1981, appellant is said to have deteriorated. In a letter to Dr. Cardwell dated February 11, 1982, Dr. Gould stated that appellant's "essential symptoms remain uncharged and his paranoid schizoid outlook does not remit." Dr. Gould also recommended from time to time that appellant become an inpatient for treatment. Appellant rejected this advice, in part. 5/ In his letter to appellant's solicitor on February 16, 1982, Dr. Gould states:

Re has a family history of mental disorder, a brother is schizophrenic and his mother took her own life. At the time he renounced his United States citizenship, he was drinking imprudently and was suffering, as he continues to do, from a paranoid state of mind, probably on its way to a fully developed paranoid schizophrenia.

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5/ Transcript of the Hearing in the Matter of: Guy Bracewell Smith, Department of State, Board of Appellate Review, January 28, 1983 (hereinafter referred to as "TR"), p. 36,

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The medical evidence is not disputed, nor are the qualifications of Dr. Gould in issue. The inferences which may or may not be drawn from the evidence regarding appellant's condition on February 5, 1981, are, however, in dispute.

Appellant maintains that his case is analogous to the decision of the Board of Immigration Appeals, Matter of Sinclitico, Interim Decision 2389 (June 2, 1975), wherein it was concluded that:

The whole pattern of the respondent's life, including his poor judgment, strange behavior and medical diagnosis of schizophrenia from childhood, shows mental incompetence to make an intelligent decision regarding voluntarily surrendering his United States citizenship. We are satisfied that the respondent has successfully rebutted any presumption that he voluntarily expatriated himself as a result of Canadian naturalization....

Appellant maintains, inter alia, that his mental condition and history as related by Dr. Gould, including his immediate family's history of serious mental illness, his excessive drinking, as well as his desire to be "killed in the shooting" in El Salvador, taken as a whole demonstrate that he did not have the mental capacity to appreciate the serious consequences of the act of renunciation.

The Department maintains that the law presumes that a person is competent until it is otherwise shown or adjudged that he is not competent, and that appellant has not shown that he was incompetent under the law. The Department maintains that the submissions of appellant's doctors do not show that he was ever diagnosed as being incompetent or as being schizophrenic. The Department maintains that appellant has had a great deal of experience and success in making difficult decisions, including choosing the course and university where he was to pursue his studies; hiring and firing counselors; placing reliance on business, tax and legal advisers; taking decisions regarding residency outside Britain with a view to tax avoidance; and taking personal control of his health care. They would thus conclude that the pattern of appellant's life would not lead one to conclude that he was incompetent. They would distinguish Sinclitico on three grounds: first, expatriating acts are not comparable in their mental implications to renunciation, which is direct and clear in its nature and consequences; second in Sinclitico, the

appellant was continually under a doctor's care from youth and had been reported all through his life as doing bizarre and irrational acts in response to incorrect perceptions of reality, while appellant in the instant case **has** not been found incapable of rational and adequate functioning, and has not been found to be suffering from schizophrenia, although Dr. Gould opines he may develop that malady; and third, the evidence supports the conclusion that appellant has trouble accepting all the consequences of difficult decisions, not that he lacks judgment and rational ability.

Furthermore, the Department maintains that at the time of signing the oath of renunciation, appellant **read**, had explained to him, and signed a statement of understanding, which sets out at length the consequences which flow from the act of renouncing. This, they maintain, **is** a safeguard against the possibility that a person might renounce lacking a full understanding of the significance of the understanding. Appellant also had received advice from his tax accountant and lawyer telling him to renounce a year before the act. The consular officer **who** took the oath, in forwarding, by memorandum dated February 26, 1981, the certificate of loss of nationality and supporting documents to the **Department**, stated that appellant appeared at her office on February 5, 1981, with his attorney, and stated that he had discussed the matter of his renunciation on the telephone **with the** consular officer some three months before **and had received by mail the** documents to be completed for renunciation; that he had been considering **the matter** of renunciation for the last three months; and that he understood the irrevocability of his actions.

In an affidavit executed by the consul on August 11, 1982, she stated that appellant's lawyer had obtained from her office **all the required forms and information at** appellant's request and that the lawyer **confirmed that she** had discussed all pertinent matters with her client. The consul asked both appellant and his attorney to complete the necessary forms **and** that they could, if they wished, make another appointment.

The record is less than clear as to whether appellant discussed the matter of his renunciation on the telephone with the consular officer three months before the **act** and received the pertinent documents. It is alleged by appellant that his lawyer obtained the documents from the Embassy and discussed the matter of renunciation without asking **or** telling him, **But** after appellant and his lawyer had discussed renunciation, **6/ The** consul maintains that appellant said he was in contact with the Embassy to discuss the matter of his renunciation and to obtain the necessary forms, some

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6/ TR pp. 21, 22, 25.



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three months before the act. 7/

Appellant further maintained that:

For some time lawyers, accountants, had been pressuring me into renouncing my nationality. But I didn't, until I got to the stage that I became so fed up with people telling me to do it or else face dire consequences that I woke up that morning and something just went berserk, I telephoned my lawyer and she said she would come to the Embassy and help me renounce my nationality... 8/

At the hearing he stated that he first **saw** the documents on the day of his renunciation. 9/

We do not doubt the accuracy of the consul's memorandum to the Department of February 26, 1981. The consul apparently acted properly and in accordance with the regulations governing the execution of her duties,

The consul in her affidavit of August 11, 1982, described appellant as "a very quiet and timid individual." His lawyer did most of the talking but the consul explained to both of them that she was required to ask him and have him confirm personally that he fully understood the gravity of renunciation and confirm personally that he had given the matter serious and lengthy consideration prior to taking the action. "He stated that he had considered the matter thoroughly and did wish to go through with the renunciation."

Appellant's affidavit of **May** 7, 1982, only briefly addresses the events at the Embassy on February 5, 1981, and stresses that the "entire operation was over in five minutes."

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7/ Memorandum of the Consular Branch Office, Geneva, Switzerland to the Department of State (OCS/CCS/EUR) dated February 26, 1981.

8/ TR p. 25.

9/ TR p. 23.

As it is not alleged that appellant was insane, his alleged disturbed state of mind would not necessarily be apparent to the consul, particularly as she had not been put on notice that he was under the care of a psychiatrist.

The portrayals of appellant's attempt on February 6, 1981, to revoke his renunciation are not in dispute. The consul noted in her affidavit of August 11, 1982, that appellant's emotional state was not as calm as it was on February 5; he arrived in a "rather flustered state." We was not accompanied by his lawyer and apparently answered consul's questions in a lucid manner; he seemed to be in full control of his faculties. Furthermore, she stated that on February 6, "he indicated that he was unsure of himself and not confident about his decision." She said that she would keep his case pending for several days in order to give him time to complete a statement which could be sent to the Department along with the papers he had already signed. Appellant states he was too drunk in the ensuing days to do so.

There can be little doubt that appellant was unwise to act in the manner he did. But the critical question is whether he had the requisite mental capacity to perform an act of renunciation with full comprehension of its nature, scope and consequences. That was the issue which was pursued by all sides and the Board at a hearing held on January 28, 1983. Subsequent to the hearing, the Board asked counsel for appellant to submit expert medical testimony on the following matters:

1. The degree of probability that on February 5, 1981, appellant possessed or lacked the requisite mental capacity to perform an act of renunciation of his citizenship with full comprehension of its nature, scope and consequences.

2. The degree of probability that appellant might have lacked the mental capacity to perform a meaningful act of renunciation on February 5, 1981, but could have regained the capacity on the next day, February 6, 1981, to understand the full implications of his act.

Appellant's counsel, by letter dated May 24, 1983, sent affidavits, executed before a United States consular officer at the Embassy at London, by Dr. Gould on May 11, 1983 and Dr. John Cardwell on May 18, 1983.

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Dr. Gould, in his affidavit, reviewed E [REDACTED] case history, noted his observations of appe February 7 and February 12, 1983, recounted certain recent incidents in appellant's life, including attempted suicide on March 12/13, 1983, and stated that appellant tends "to engage in irrational acts which he later regrets and is able to consider rationally. From time to time he is overtaken by an urge to do things on impulse and without rational thought which episodes are short lived." Dr. Gould stated that:

In my opinion the purported re-nunciation of his citizenship of the United States of America falls into this pattern and in response to the points on which the Appellate Review Board of the Department of State have sought my evidence I would state:-

(a) that G [REDACTED] E [REDACTED] lacked the requisite "en to perform an act of renunciation of his citizenship of the United States of America with full comprehension of its nature, the gravity of its meaning and its dire consequences in Geneva on 5th February 1981 and

(b) it is [REDACTED] er [REDACTED] on 6th February 1981 [REDACTED] B [REDACTED] realized and compr [REDACTED] nd of the act of purported renunciation he had performed on the preceding day and only then began to understand for the first time its full implications and dire consequences.

Dr. Cardwell, in his affidavit, stated:

5. Over the ye s [REDACTED] have been treating G [REDACTED] E [REDACTED] I have noticed that [REDACTED] h [REDACTED] to engage in acts impulsively and irrationally without giving due consideration to the same, the nature of which he only begins to appreciate shortly afterwards. I am aware of his purported renunciation of American citizenship on 5th February 1981 and it is my considered view that it is likely that when he purported to renounce his American citizenship he did not fully

realize what he was doing and was unable to appreciate the implications and consequences of the act, and that it was only on the following day that he realized what he had done.

c c .

7. . Whilst I am not a psychiatrist I do have some knowledge of the state of mind of Guy Bracewell-Smith as a result of my treating him for a lengthy period and my exchanges with his psychiatrist, Dr. Jonathan Gould, and I would be grateful if the Department of State of the United States of America would believe to be the case, that [REDACTED] did not have the necessary mental capacity to perform a meaningful act of renunciation of his American citizenship on 5th February 1981.

The Department commented on the appellant's psychiatrist\* and physician's affidavits by memorandum dated June 14, 1983, which reads, in pertinent part, as follows:

It is well established that the law presumes sanity rather than insanity, and competency rather than incompetency. 1/ The fact that appellant suffers from "short-lived" episodes during which he takes imprudent or impetuous actions that he subsequently regrets is insufficient to overcome that presumption. 2/ For those reason, /sic/ the Department would submit that the affidavits should be given little evidentiary weight with respect to the issue of appellant's mental competency on February 5, 1981, the date on which he renounce /sic/ his United States nationality.

In his affidavit of May 18, 1983, Dr. Cardwell concedes that he is not a psychiatrist, but nevertheless opines that appellant may not have fully realized the full implications or consequences of his renunciatory act. It is

1/ See, generally: 71 ALR 2d 1247.

2/ See, generally: 41 AMJur 2d 129, 130.

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the Department's view that Dr. Cardwell's opinion and speculation concerning appellant's state of mind are insufficient to overcome the presumption that appellant was able to manage his **own** affairs and understand the consequences of his actions.

For similar reasons, the Department submits that Dr. Gould's affidavit of May 11, 1983 is as significant for what it does not say as for what it does say. On the basis of his initial contact with appellant on January 14, 1980, Dr. Gould formed the opinion that appellant was suffering from a "paranoid schizophrenia-like illness, complicated by recurrent excessive drinking of alcohol." The Department notes that nowhere in that affidavit does Dr. Gould assert that appellant has suffered from such a diminished mental capacity as to render him legally incompetent to manage his **own** affairs or make decisions in his **own** behalf. It is even more significant that on January 29, 1981, seven days before he renounced his citizenship, appellant was seen by Dr. Gould. Although Dr. Gould, in paragraph 7 of his affidavit, states that the meeting confirmed his prior diagnosis, he does state that appellant's condition at that time was such that he was incompetent.

In brief, the Department would assert, as it has in its previous submissions to the Board, that appellant's act of renunciation was voluntary. The possibility that appellant may have regretted his actions shortly after they were taken, or that he acted rashly or impotuously, ~~/sic/~~ in no way affects their character. ~~This~~ is especially true where, as in his case, he was afforded ample opportunity subsequently to avoid those consequence ~~/sic/~~ of which he now complains.

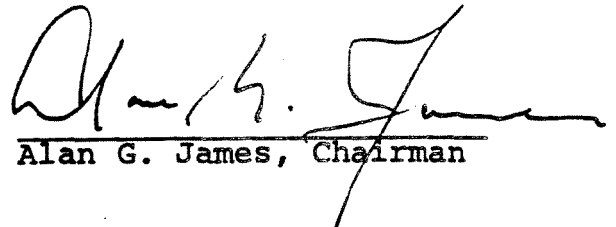
We believe that **we** must consider the totality of **the** circumstances surrounding the act of renunciation. Appellant's psychiatrist's evaluations are highly persuasive, particularly his unequivocal conclusion in his affidavit of May 11, 1983. Dr. Cardwell, although not a psychiatrist, is a medical professional, who has had the opportunity to observe and examine appellant over a period of four years. His affidavit

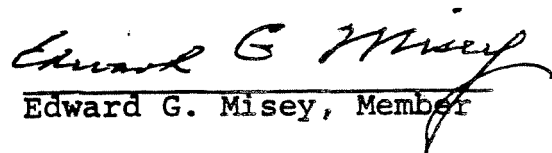
is supportive of Dr. Gould's. At the same time, we are cognizant of the fact that the precise wording of the form of renunciation of United States nationality and the statement of understanding make unmistakably clear the purpose and the results which follow upon their execution. We do not view appellant's act lightly, however, the circumstances described in this case, including the fact that appellant was apparently drinking heavily and taking prescribed medication on or about the date of renunciation, are indeed extraordinary

The Board notes that the law presumes competency rather than incompetency; it is presumed that every man is fully competent until satisfactory proof to the contrary is presented. The evidence of Dr. Gould is not evasive, equivocal, confused or otherwise uncertain.

The Department has not rebutted Dr. Gould's conclusion regarding appellant's incompetency. Rather they stress that it is not alleged that appellant was incompetent to manage his own affairs or make decisions in his own behalf. We are of the view that the ability to conduct day to day affairs, with or without the assistance of advisers, is distinguishable from the ability to take a meaningful act of renunciation of the most precious right of citizenship. The Department has not met this point directly nor has it adequately explained it away. The evidence submitted by appellant amply supports his proposition that he was incompetent.

In light of all of the circumstances, we are unable to conclude that appellant possessed the requisite mental capacity to perform a voluntary act of renunciation of his citizenship with full comprehension of its nature, scope and consequences. Having so concluded, the Board has reversed the Department's holding of loss of nationality.

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
George Taft, Member