

July 14, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D [REDACTED] F [REDACTED]

This is an appeal from an administrative determination of the Department of State that appellant, D [REDACTED] F [REDACTED] expatriated himself on January 20, 1982 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of nationality before a consular officer of the United States at the American Embassy in Georgetown Guyana. 1/

We affirm the Department's determination.

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Appella F [REDACTED], was born at [REDACTED] on [REDACTED] as naturalized [REDACTED] on January 16, [REDACTED] in the U.S. District Court in Brooklyn, New York. F [REDACTED] entered the U.S. Army on March 3, 1971, and served until [REDACTED] s honorably discharged on July 31, 1981, as a conscientious objector.

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 --

...

(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, . . .

In August 1981, P [redacted] returned to G [redacted] on a Gu [redacted] Emergency Certificate issued by the Guyanese consulate in New York. He appeared at the American Embassy at Georgetown on December 3, 1981, and expressed an intention to renounce his United States citizenship. Following that visit, the American consular officer initiated a routine check on Prashad with the local authorities to ascertain if he had any record. There apparently was none. The Embassy at the same time also informed the Department of State of his determination to renounce his citizenship, and requested confirmation of his United States citizenship status.

P [redacted] returned to the Embassy again on December 12, 1981 to renounce his citizenship. He was dissuaded by the consul, who informed him that, before proceeding with the renunciation the Embassy had to establish his United States citizenship status. The consul also told Prashad that the delay would give him time to fully consider the consequences of his intended renunciation.

P [redacted] would have none of this delay and continued to press the Embassy to administer his oath of renunciation. In the meantime, the Department verified P [redacted] naturalization as a United States citizen and his separation from the U.S. Army on July 31, 1981, but was unable to submit any other information on his background. Finally, on January 20, 1982, he made a formal renunciation of his United States nationality before a consular officer of the Embassy. Prior thereto, he executed a Statement of Understanding declaring that the consular officer fully explained the extremely serious nature of his intended act of renunciation and that he fully understood the consequences of his intended action. The oath of renunciation, which he subscribed and swore to, read in part as follows:

...I desire to make a formal renunciation of my American nationality, as provided by Section 349(a) (6) <sup>2/</sup> ~~sic~~ of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining. 2/

2/ Public Law 95-432, approved October 10, 1978. 92 Stat. 104 redesignated paragraph (6) of section 349(a) of the Immigration and Nationality Act as paragraph (5).

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The Embassy thereafter prepared a certificate of loss of nationality in accordance with section 358 of the Immigration and Nationality Act, and forwarded it to the Department for approval. 3/ The Embassy certified that E [REDACTED] renounced his United States nationality on January 20, 1982, and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Department

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3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. I501, 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 wder 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, wder 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,

approved the certificate of loss of nationality on March 5, 1982, a copy of which the Embassy subsequently gave to P [REDACTED]. The certificate is deemed to constitute the Department's administrative determination of loss of United States nationality from which an appeal may be taken to the Board of Appellate Review.

On May 26, 1982, P [REDACTED] through the Embassy, gave notice of appeal. He contended initially that at the time he renounced his citizenship he "was in a totally different reality and frame of mind; truly some measure of insanity." However, in a subsequent letter to the Board, dated October 28, 1982, he maintained that he was "of sound mind, body and that I had been indeed that way when I renounced my United States citizenship." Appellant nonetheless urges the Board to reverse the Department's determination of loss of nationality so that he may regain his United States citizenship and return to his family in the United States.

## II

In a letter to the Board, dated July 23, 1982, appellant explained the reasons why he renounced his citizenship. He stated:

...It all began with my acknowledgement of God in my life made manifest by accepting, encouraging and performing all of my daily transactions in nothing short of total truth no matter how inconvenient to myself or others it may have turned out....

I saw mankind's power as fragile and in most cases depraved. Resultantly I aligned myself with no earthly power whether that power was personal, national or even international. At the time I renounced my U.S. citizenship I was aligned only with the power of God. At that time God was my only security and on Him I totally depended.,. .

The renouncement of my United States citizenship was but a very minute quantity of the total learned security from which I severed myself during that experience. Others included but was not limited to dissolving bank accounts, cancelling personal life insurance, breaking through the emotional bonds existing among family members, becoming

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independent of any type of transportation except than by foot and restricting my diet progressively until I totally abstained from all food including water for a prolonged period. Simultaneous with the denials I endured the mental torture of those who accused me of insanity, of overt avoidance and of many forms of verbal ridicule.

The things I have done were all done in the name of God and particularly for my own **redemption....**

Appellant also stated in his letter of July 23, 1982, that he was "in the process of rebuilding my life on the principles of God which I discovered," and was attempting to return to his wife and children in the United States. The immediate obstacle in his way, he wrote, was "the regaining of my United States citizenship."

Section 349(a) (5) of the Immigration and Nationality Act provides that a person who is a national of the United States shall lose his nationality by 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. There is no dispute that on January 20, 1982, appellant formally renounced his United States citizenship before a consular officer at the American Embassy at Georgetown, Guyana in the manner prescribed by the Secretary of State.

Although appellant readily admits that he made a formal renunciation of citizenship, a question is raised as to whether appellant had sufficient mental capacity to understand and appreciate the nature of the act and its consequences. This is a fundamental issue. As noted above, appellant in his notice of appeal of May 26, 1982, alleged that at the time of the renunciation he was in a different reality and frame of mind, which he described as "some measure of insanity." The consular officer, who administered appellant's renunciation at the Embassy reported to the Department that from the beginning of [redacted] visits to the Embassy she had some doubt about his stability. She ascribed her doubts to appellant's constant referral to God and religion and to what God told him to do, to his desire to bring his wife and minor children to start a farm in Guyana without any financial backing or experience, and to the fact that appellant destroyed his U.S. passport and certificate of naturalization prior to his leaving the United States.

Appellant, even though requested by the Board, did not submit any medical evidence with respect to the state of his mental and physical health at the time he renounced his United States citizenship. He informed the Board, however, on October 18, 1982, that he was "of sound mind and body" when he renounced his citizenship and stated that he saw no need for a medical or psychiatric evaluation. In this connection, the record discloses a Department of the Army report, dated April 4, 1981, of a psychiatric evaluation of ██████████ in conjunction with his application for a conscientious objector discharge. The diagnostic report of the consultant psychiatrist at the Irwin Army Community Hospital Psychiatry Service, Fort Riley, Kansas, concluded that there "were no indications of any psychiatric condition warranting disposition through medic channels," or "of personality disorder."

In light of the foregoing, we are unable to find that appellant's reasoning ability at the time of his renunciation was impaired to the extent that he could not comprehend the nature and scope of his act of renunciation and its consequences. As we have seen, appellant returned to Guyana to settle there permanently and, as a consequence of his religious convictions to renounce his United States citizenship and change his style of life. Prior to his renunciation, he pressed the Embassy on several occasions to administer the act. On December 14, 1981 he reminded the American consul that he had considered his proposed renunciation "for many months" and that his intention to renounce "came out of sober mind and thoughts." He also executed a Statement of Understanding prior to his renunciation in which he declared under oath and in the presence of the American consular officer and two witnesses that he decided voluntarily to exercise his right to renounce his citizenship, that the consular officer explained to him the extremely serious nature of the act of renunciation, and that he fully understood the consequences of his intended act of renunciation.

Appellant's reasons or motives for his renunciation are not essential ingredients of the act of renunciation. The essential element, we believe, is whether appellant possessed sufficient mental capacity to understand the nature and consequences of the act at the time he renounced his citizenship. In our judgment, there was no deprivation here of reason or an absence of understanding in a reasonable manner of the nature and effect of the act he was doing. Appellant admitted, and the record before us confirms, that he understood what renunciation meant, that he wanted to renounce his citizenship, that he in fact renounced his citizenship, and that he knew that he thereby gave up his United States citizenship status. We find that appellant had the requisite mental capacity to make a voluntary renunciation of nationality.

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## III

Under Section 349(c) of the Immigration and Nationality Act, a person who performs a statutory act of expatriation is presumed to have done so voluntarily. <sup>4/</sup> Such presumption, however, may be rebutted upon a showing, by a preponderance of the evidence, that the act of expatriation was not voluntarily done. Appellant **has** the Burden of proving that his action was involuntary.

Appellant does not contend that he was coerced to renounce his United States citizenship. Even if it were conceded that appellant may have believed that he was driven by his personal, and religious beliefs to renounce his citizenship, his renunciation, nevertheless, was self-generated and of his design, From all that appears of record, appellant

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

(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who **has** committed or performed, any act of expatriation under the provisions of **this** or any other Act shall be presumed to have done so voluntarily, but **such** presumption may be rebutted upon a **showing**, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

made a free choice, and knowingly and voluntarily renounced his nationality for personal reasons sufficiently satisfactory and acceptable to himself. There is no evidence that he made any effort to act in a manner otherwise than he chose in the circumstances. The opportunity to make a decision based on personal choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971). Having exercised his choice, appellant may not be relieved of the consequences flowing from it. The fact that he later had misgivings or doubts about his renunciation does not render the act void. In our view, there is no question that appellant voluntarily renounced his United States nationality to serve his own purposes.

IV

The Supreme Court declared in AFROYIM v. KUSA, 387 U.S. 253 (1967), that a United States citizen has a constitutional right to remain a citizen "unless he voluntarily relinquishes that citizenship." In Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court reaffirmed AFROYIM's emphasis on the individual's assent to relinquish citizenship and the requirement that the record support a finding that the expatriating act was accompanied by an intent to terminate United States citizenship. The Court said that the Government must prove an intent to surrender United States citizenship, as well as the voluntary performance of an expatriating act under the statute.

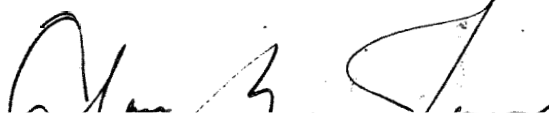
Here we have little difficulty in concluding that appellant had the intention to terminate his United States citizenship at the time of his renunciation. The form of renunciation of United States nationality that he executed stated in clear and unequivocal language that he desired to make a formal renunciation of his American nationality and that he absolutely and entirely renounced such citizenship together with all rights and privileges and all duties of allegiance and fidelity to the United States. The precise wording of the form makes unmistakably clear its purpose and the results which follow upon its execution.

It can hardly be disputed that a formal renunciation of United States citizenship, in the manner provided by law, is the most unequivocal and categorical of all expatriating acts, and demonstrates an intent on the part of the renunciant to relinquish his citizenship. In cases of this character, the intent to relinquish is implicit in the act of renunciation. We find here that appellant assented to the loss of his United States citizenship by his formal renunciation,



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On consideration of the foregoing and on the basis of the entire record before the Board, we conclude that appellant expatriated himself on January 20, 1982, by making a formal renunciation of his United States citizenship before a consular officer of the United States, and accordingly affirm the Department's administrative determination of March 5, 1982, to that effect.



Alan G. James, Chairman



Edward G. Misey, Member



Warren E. Hewitt, Member