November 22, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE **MATTER** OF: A [redacted] G [redacted] E [redacted]

This case is before the Board of Appellate Review on an appeal brought by A [redacted] G [redacted] E [redacted] from an administrative determinat of rt of State that she expatriated herself on November 17, 1980, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Norway upon her own application. 1/

The issues presented on appeal are whether appellant voluntarily obtained naturalization in Norway, and, if so, whether she thereby intended to relinquish her United States nationality. We find that appellant's naturalization was free and uncoerced but that it was not accompanied by the requisite intent to relinquish her United States nationality, Accordingly, we will reverse the Department's determination of loss of nationality.

I

Appellant acquired Norwegian nationality by birth at [redacted]. She moved to the United States in [redacted] ity through naturalization at [redacted], thereby losing her Norwegian nationality under Norwegian nationality law.

1/ Section 349(a)(1) 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 --

(1) obtaining naturalization in a foreign state upon his own application, . .

According to a certificate submitted by the Norwegian authorities to the United States Embassy at Oslo in **1983,** appellant has resided in Norway since July 12, **1970.** However, in her submissions initiating this appeal, appellant stated that she had returned to Norway in May **1980.** We assume that was an inadvertent error on appellant's part and that she intended to write "1970."

On November 4, **1980,** at age **77,** appellant applied to be naturalized under section 6 of the Norwegian Nationality Act of December 8, 1950, which states in part as follows:

> If the applicant, under the law of his homeland, does not lose his old citizenship unless he is released from it, it is as a rule also required that he provide evidence within a year that he has been released from it.

The County Governor of More and Romsdal issued a certificate of Norwegian nationality to appellant on November 17, **1980,** under the provisions of section 4, not section 6, of the Norwegian Nationality Act. As the Norwegian authorities explained in a letter to the Embassy dated September **28, 1983,** the County Governor has no authority to grant nationality under section 6; only the Crown or an agent of the Crown nay grant nationality under the provisions of section 6.

The same authorities also informed the Embassy that it had been "assumed that she was interested in a quick decision." They had concluded therefore that she could be granted a certificate of nationality under section 4 of the Norwegian Nationality Act which reads as follows:

> If some one who acquired Norwegian citizenship at birth and has lived in this country until the age of 18 has lost his citizenship, he shall reacquire Norwegian citizenship if he submits a written statement to the county prefect indicating that he wishes to be a Norwegian citizen and has then lived in the country the last two years. If he has citizenship in another country, he cannot submit such a statement unless he shows that he will lose his foreign citizenship when he acquires Norwegian citizenship.

On November 17, 1980, the County Governor informed the Embassy that appellant had been naturalized.

The record does not show what action the Embassy took after receiving the County Governor's information. Presumably, following established procedures, the Embassy informed appellant by letter that she might possibly have lost her United States citizenship by obtaining naturalization; requested that she complete a questionnaire to assist in the determination of her citizenship status; and invited her to submit evidence regarding the circumstances of her naturalization.

The record only shows that appellant executed in part and signed a standard form, entitled "Information for Determining U.S. Citizenship", on December 12, 1980. Two weeks later on December 29, 1980, she signed a printed statement appearing in item number 9 of the standard form. The printed statement, under the caption "Statement of Voluntary Relinquishment of U.S. Nationality", read as follows:

> I, _____ (Name), performed the act of expatriation indicated in Item 7 _____ (a,b,c,d, or e) voluntarily and with the intention of relinquishing my U.S. nationality.

Appellant inserted her name and the letter "a" (been naturalized as a citizen of a foreign state) in the statement, and signed it. Appellant did not answer all the questions on the form.

The record is silent as to whether appellant was interviewed by a consular officer in order to develop her case.

On December 30, 1980, the Embassy issued a certificate of loss of nationality in appellant's name in accordance with section 358 of the Immigration and Nationality Act. 2/ The

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2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

> Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is baaed to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report by 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,

Embassy certified that appellant, a naturalized citizen of the United States, expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Norway upon her own application. The only information submitted to the Department in support of the Embassy's certification consisted of the incomplete standard citizenship form that appellant signed on two different dates and the letter to the County Governor of More and Ramsdal of November 17, 1980, informing the Embassy of her acquisition of Norwegian nationality.

The Department approved the certificate of loss of nationality on March PO, 1981. As far as can be ascertained from the record, the Department took its action on the basis of the partially executed standard citizenship form and the County Governor's letter. Approval of the certificate constitutes an administrative determination of loss of nationality from which an appeal may be brought to this Board.

Appellant gave notice of appeal on Play 2, 1982. 3/

On appeal, appellant stated that she had returned to Norway intending to make it her permanent home but found it difficult to adjust there, and wished to return to the United States soon, hopefully as an American citizen. She further stated that she had a long, difficult and stressful time; that she was unsure as to what she wanted to do; that in this frame of mind she regretfully gave up her American citizenship; and that she believed she could be a citizen of two countries. 4/

3/ Although technically the appeal here was required to be filed within one year after approval of the certificate of loss of nationality, that is, no later than March 10, 1982, the Board accepted her notice of appeal, dated May 2, 1982, as timely filed. 22 CFR 7.5.

4/ When the Board of Appellate Review began to consider appellant's case in March 1983, it noted that if appellant had returned to Norway in May 1980, as she had stated in her submissions, she had apparently been granted Norwegian citizenship after only six months residence. The applicable Norwegian law, the Board noted, requires a waiting period of two years. The Board therefore asked the United States Embassy at Oslo to inquire of the Norwegian authorities whether appellant had been granted a waiver of the residence requirements under section 6 of the Norwegian Nationality Act of 1950, or whether the Norwegian authorities might have been mistaken about the length of time appellant had been in Norway. The Embassy reported in October 1983 that according to census records, appellant had resided in Norway since 1970.

The Department contends that appellant voluntarily obtained naturalization in Norway with the intention of relinquishing her United States citizenship.

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality by obtaining naturalization in a foreign state upon his own application. There is no question here that appellant applied for and obtained Norwegian citizenship. Also it is not disputed that appellant acquired such citizenship voluntarily.

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. 5/ Such presumption, however, may be rebutted upon a showing, by a preponderance of the evidence, that the act was not done voluntarily. Appellant admits that her act was performed voluntarily.

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There remains to be determined the question whether appellant's naturalization was accompanied by an intent to relinquish her United States citizenship. For, as the Supreme Court said in Vance v. Terrazas, 444 U.S. 252 (1980), in order to establish loss of citizenship, the Government must, under the statute, prove an intent to surrender or terminate United States citizenship, as well as the performance of an expatriating act.

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 commended 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 lass 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 Supreme Court made clear in Vance v. Terrazas that section 349(c) of the Immigration and Nationality Act 6/ requires that the Government establish by a preponderance of the evidence that the actor intended to divest himself or herself of United States citizenship. Such intent, the Supreme Court declared, may be ascertained from a person's words or found as a fair inference from proven conduct. Intent is to be determined as of the time of performance of the expatriating act. Terrazas v. Haig, 653 F. 2d 285 (1981).

Obtaining naturalization in a foreign state, like the performance of the other acts enumerated in section 349(a) of the Immigration and Nationality Act, may be highly persuasive evidence of an intent to relinquish United States citizenship, but it is not considered conclusive evidence of a person's intent. Vance v. Terrazas, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958).

Thus, naturalization in a foreign state by itself is insufficient evidence to show intent. King ?. Rogers, 463 F. 2d 1188 (1972). Furthermore, as a U.S. District Court in California recently observed, affirmation of loyalty to the country where citizenship is sought, absent a declaration of renunciation of one's former nationality, leaves "ambiguous the intent of the utterer regarding his present nationality." Richards v. Secretary of State, CV80-4150, D.C. C.D. Cal. (1982). In the case before us there is no evidence of record that appellant took an oath of allegiance; her intent is thus even more ambiguous.

The Department in its appeal memorandum contends that "it is evident that she /appellant/ provided the necessary proof that she would lose her United States citizenship to the Norwegian authorities since they naturalized her and that she fully agreed with and intended the expatriation that was required." The Department also maintains that appellant "knew that relinquishment of United States citizenship was a necessity to acquiring Norwegian." We find no support in the record for these assertions.

The record contains no evidence that appellant knew that relinquishment of American nationality was a requirement for obtaining Norwegian nationality, or that she offered proof to the Norwegian authorities she would lose her U.S. citizenship status.

6/ See note 5, supra.

In fact, quite the contrary appears from the record. In a letter to the American Embassy at Oslo dated September 28, 1983, the office of the County Governor of More and Romsdal stated:

> In cases under paragraph 4 /of the Norwegian Nationality Act of December 8, 1950/ I always contact the Norwegian Ministry of Justice in order to ascertain/investigate the relationship to foreign laws and citizenship. Specifically what happened in this case, I am sorry to say I have no notes about it, and unfortunately cannot remember. In other and similar cases I have however made note of the fact that the Ministry of Justice states that American citizens over the age of 21 years of age are automatically released from their American citizenship when Norwegian nationality is being granted. Any further confirmation should therefore not be necessary under paragraph 4.
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> If there should be any misunderstanding based on the above, I would appreciate it if you could contact the Ministry of Justice, In such cases I assume that the Ministry will inform me about eventual further development.

The apparent fundamental misunderstanding of U.S. law on the part of the Norwegian authorities makes it highly dubious that appellant was required to submit proof when she applied for naturalization that she would Pose her American citizenship. If the Norwegian authorities had required appellant to show that she would lose her United States citizenship, such proof would doubtless be of record. In any event, we *do* not know what occurred in November 1980, when appellant sought naturalization.

As for appellant's knowing she would lose her United States citizenship, the probability that the Norwegian authorities did not ask her for proof that she would lose her American nationality, makes it even more doubtful that she knew she was jeopardizing her present nationality. And in her undated letter received by the Board on October 7, 1982, appellant inferentially denied she knew she would lose her United States citizenship by becoming a Norwegian citizen. As noted earlier, she said that she

fully believed one could be a citizen of **two** countries. 7/

Appellant, however, did sign on the Embassy's standard citizenship form the printed statement that she "obtained naturalization in Norway voluntarily and with the intention of relinquishing my U.S. nationality". That statement, signed on December 29, **1980**, a few weeks after her naturalization is, on its face, clear and unambiguous. Appellant has not maintained that she did not sign the printed statement; nor has she asserted that she did not understand it. Only in her undated letter received by the Board on October **7**, **1982**, did she inferentially raise the issue of intent, and, in effect, attempted to minimize the import of what she had signed on December 29, 1980.

The record raises so many questions about the circumstances surrounding appellant's signing the printed statement of intentional relinquishment that we are loath to assign any decisive probative weight to it. We do not find in the record a

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7/ There is no doubt that appellant knew she lost her Norwegian nationality when she became naturalized in the United States in **1939**, but that does not support an inference that she thought she would lose her United States citizenship upon her naturalization in Norway. The automatic loss of Norwegian citizenship in **1939** by appellant pursuant to Norwegian law ***is*** clearly distinguishable from the potential loss of United States citizenship upon acquiring the nationality of a foreign state upon one's own application, which, of course, requires proof of an intent to relinquish citizenship. That appellant wants ***to*** re-acquire United States citizenship is not relevant to her intent in **1980** when she performed the expatriating act; appellant's current attitude may merely reflect a wish based upon the knowledge that the Department had determined that she had lost **her citizenship.**--

memorandum from the consul concerned developing and reporting the case. 8/ We find no explanation why appellant did not completely fill in the form "Information for Determining U.S. Citizenship." We find no indication that appellant visited the Embassy in December 1980. We find no explanation for the fact that that form was signed and dated December 12, 1980, whereas the "Statement of Voluntary Relinquishment of U.S. Nationality" contained therein as item number 9 was signed and dated December 29, 1980. We find no indication that appellant's advanced age was given any consideration as a factor in determining whether or not she in fact intended to relinquish her United States citizenship.

In other respects as well we find the Department's contention that appellant intended to relinquish her United States citizenship unpersuasive.

8/ In processing loss of nationality cases arising from the performance of certain acts of expatriation, including naturalization in a foreign state on one's own application, consular officers are under the following specific instruction:

> Each of these cases must be fully developed in detail, particularly the issue of "intent." [Emphasis in original.]
>
> Section 224.20b, Foreign Affairs Manual, Vol. 8, 8 FAM 224.20b (1977).

As recently as August 27, 1980, the Department, in sending guidance to all diplomatic and consular posts in light of the Supreme Court's decision in Vance v. Terrazas, supra, re-emphasized the requirement to develop fully and in detail the facts and circumstances relating to the issue of intent. The Department stated:

> ...the question of intent is very much in issue, and the facts will have to be brought out in considerable detail.
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> Department of State, Circular Airgram A-1767, August 27, 1980.

The Department states that appellant indicated on the citizenship questionnaire she executed at the Embassy in December 1980 that she owned no property in the United States. Yet, the Department did not seem to give any weight to appellant's not unbelievable later assertion that she owns personal property (bank and savings accounts) in the United States.

The Department asserts that appellant became naturalized as soon as she could, i.e., six months after arrival in Norway. 9/ Of course, as was later ascertained, appellant did not make application for naturalization until she had lived in Norway for ten years.

The Department asserts that there is no evidence in the record that appellant desired the status of a dual national or acted like one, although she stated to the Board she believed she could hold two nationalities. It is unclear to us how the Department thinks a dual national ought to act, but appellant's conduct subsequent to her naturalization has not been shown by the Department to be inconsistent with her retention of United States citizenship.

In the circumstances of this case, including, inter alia, the absence of a renunciatory statement made by appellant as part of the Norwegian naturalization process, the fact that the Norwegian authorities acted under a fundamental misunderstanding of U.S. citizenship law that is material and relevant to this case, and a record that is incomplete and unsatisfactory, we entertain doubts about appellant's true intent, and we question in particular the weight to be given to the statement of voluntary relinquishment of United States citizenship signed by appellant. We therefore are not persuaded by the Department that she intended to relinquish her United States nationality when she became a citizen of Norway.

Consistently with the holding of the Supreme Court in Nishikawa v. Dulles, supra, and Schneiderman v. United States, 320 U.S. 118 (1943), our doubts about appellant's intent must be resolved in favor of retention of her United States citizenship.

We find therefore that the Department of State has not sustained its burden of proving by a preponderance of the evidence that appellant intended to divest herself of American nationality.

9/ The Board too had been led to believe that appellant obtained naturalization after only six months' residence. As indicated above, it was only after the Board's inquiry that the Embassy learned appellant had resided in Norway since 1970.

IV

Upon consideration of the foregoing and our review of the meager record before us, we are unable to conclude that appellant had expatriated herself when she voluntarily obtained naturalization in Norway upon her own application. Accordingly, we reverse the Department's administrative determination of loss of United States nationality made in this case on March 10, 1981.

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member