March 3, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: R[redacted] P[redacted]

This case is before the Board of Appellate Review on an appeal taken by Rosalind K. Par s from an administrative determination of the Department of State that she expatriated herself on November 17, 1970, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

I

Appellant, R[redacted] P[redacted], n[redacted] X[redacted], acquired United States nationality by virtue of h birth at[redacted] She attended the University of [redacted] to 1960, and married an American citizen in [redacted] It appears that in 1960 she entered [redacted] University, Montreal, Canada, to study nursing.

From 1965 to 1967 Mrs. P[redacted] served as a Peace Corps volunteer in India. In July 1967 she and her husband, who according to her submissions, refused to be inducted into t Armed Forces of the United States, travelled to Montreal, Sometime later that year she acquired landed immigrant stat (admission to permanent residence in Canada), and entered the nursing profession.

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

Appellant applied for naturalization in Canada on July 24, 1970. In a letter to this Board dated March 25, 1982, she explained why she had sought naturalization.

> The compelling pressure for me to become a Canadian citizen **was** taken in regard to what **I** knew to be upcoming changes in the nursing act. I felt threatened by the intention I had heard that non-Canadian nurses in Quebec would have to prove bilinguality, something I could not do, and although **I** was already licensed as a nurse **I** felt concerned by what I saw as the potential to remove my license to practice **my** profession. (Emphasis in original).

On November 17, 1970, Mrs. P[redacted] received a certificate of naturalization in accorda[redacted] with section 10-1 of the Canadian Citizenship Act of 1947. On that occasion she declared:

> I hereby renounce all allegiance and fidelity to any foreign sovereign or state of whom or which **I** may at this time be a subject or citizen. 2/

She also subscribed the following oath:

> I swear that **I** will be faithful and bear true allegiance to her Majesty Queen Elizabeth the Second, her heirs and successors according to law and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen, **so** help me God.

2/ On April 3, 1973, the Federal Court of Canada declared ultra vires section 19(1)(b) of the Canadian Citizenship Regulations which required that an applicant for naturalization make a declaration of renunciation of his previous nationality.

The "upcoming changes in the nursing act" to which appellant referred in her letter to the Board of March 25, 1982, are amendments to the Professional Matriculation Act of 1964 of the Province of Quebec. 3/ This Act regulates professional corporations in Quebec, including the Association of Nurses of the Province of Quebec of which appellant states she was a member at the time of her naturalization on November 17, 1970.

Section 4 of the amending act provides that in order to be admitted to membership in a professional corporation, a person who is not a Canadian citizen must apply for Canadian citizenship as soon as he or she is eligible to do so. The same section stipulates that a corporation shall not admit a person to membership who does not have a working knowledge of the French language. Section 5 authorizes the concerned professional body to suspend the membership of a person who is not a Canadian citizen or fails to apply for Canadian citizenship as soon as eligible to do so.

Section 21, entitled "Acquired Rights", provides in pertinent part:

> No person who has already been admitted to membership in any corporation before section 4 of the Professional Matriculation Act (Revised Statutes, 1964, chapter 246) as amended becomes applicable to the corporation....shall have his membership in such corporation or his right to practice such profession suspended under section 5 of the said act.

These amendments entered into effect on December 19, 1 one month after appellant acquired Canadian citizenship.

3/ The amendments to the Professional Matriculation Act of 1964 are cited as Chapter 57 of the Statutes of Quebec of 1970.

In December 1970 appellant obtained a Canadian passport, which she renewed in February 1977. 4/ She documented her two children, born in Canada in 1968 and 1971, on both passports. The record shows that Mrs. P[redacted] made at least one trip abroad using a Canadian passport.

Nearly nine years after she became a Canadian citizen appellant visited the American Consulate General at Montreal on June 28, 1979. She stated in her submissions that she went to the Consulate.General because the attorney for her father's estate had asked her to clarify her citizenship status in light of her inheritance of shares in a United States corporation whose tax status is based on a requirement that all shareholders be United States citizens. She then sought to register her children and herself.

Upon learning from appellant that she had acquired Canadian citizenship, the Consulate General requested and received from the Canadian authorities confirmation of her naturalization. For approximately one year counsel for appellant and the Consulate General were in correspondence to clarify the facts and circumstances surrounding appellant's naturalization. After counsel had made several submissions on appellant's behalf, including an affidavit which she executed on July 24, 1980, the Consulate General, in compliance with the provisions of section 358 of the

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4/ Her United States passport, issued in 1965, expired in 1968. She did not apply to renew it.

Immigration and Nationality Act, on July 29, 1980, prep ce fi of loss of nationality in the name of R K P [redacted] 5/

The Consulate General certified that appellant acquired the nationality of Canada by virtue of naturalizatio: and thereby expatriated herself uhder the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department approved the certificate on March 30, 1981, action constituting an administrative determination of loss of nationality from which an appeal may be taken to this Bo

Appellant brought this appeal pro se by letter to the Board, dated March 25, 1982. She contends that her naturalization was involuntary in that it was forced on her by uncertainty about the future of English-speaking nurses in Quebec. She also asserts that she did not intend to relinquish her United States citizenship by seeking and obtaining Canadian citizenship.

5/ 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 based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a person who is a national of the United States shall lose his nationality by obtaining naturalization in a foreign state upon his own application. It is not contested that Mrs. P[redacted] applied for and obtained naturalization in Canada. But citizenship must be deemed to continue unless a person has been deprived of it through his voluntary action in conformity with applicable legal principles. Perkins v. Elg, 307 U.S. 325 (1939); Afroyim v. Rusk, 387 U.S. 253 (1967).

Thus, the first issue we face is whether appellant, of her own volition, acquired the nationality of Canada.

Section 349(c) of the Immigration and Nationality Act provides that a person who performs a statutory expatriating act shall be presumed to have done so voluntarily; the presumption may, however, be rebutted by a showing, upon a preponderance of the evidence, that the act was not performed voluntarily. 6/

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

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

Appellant maintains that her sole purpose in obtaining naturalization in Canada was to preserve her right to practice her profession as a nurse in the Province of Quebec. In effect, she contends that her naturalization was performed under duress and therefore involuntary.

It has been long established that a defense of duress is available to persons who have performed a statutory act of expatriation. Doreau v. Marshall, 170 F. 2d 721 (1948); Perkins v. Elg, op. cit.; Nishikawa v. Dulles, 356 U.S. 129 (1958); Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971).

For a defense of duress to prevail, however, it must be proved 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. In later leading cases in which 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 own survival or that of a close family member. 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.

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 "unusual" in order to constitute legal duress. Further, as the U.S. Court of Appeals (3rd Cir.) said in Doreau, "the forsaking American citizenship even in a difficult situation, as a matter of expediency, with attempted excuse of suck conduct later when crass material considerations suggest that course, is not duress." The opportunity to make a decision based upon personal choice is the essence of voluntariness. Jolley.

Appellant argues that the impending changes in the Professional Matriculation Act of Quebec posed a threat in 1970 to nurses like herself, who were not Canadian citizens and who were not, or were not likely to become, proficient in the French language. She saw naturalization as "some protection" against a future loss of her nursing license. Her work, she asserts, was essential to the support of her family at a time of major medical expenses when her husband's salary as a post-graduate student and medical resident was insufficient.

In her letter to the Board of March 25, 1982, appellant elaborated on her concerns as follows:

> ....the Quebec of 1970 was becoming more militant about the use of the French language, and the Quebec Order of Nurses were strongly stating their determination to become a French speaking organization. In fact, the Order of Nurses refused to provide any documentation that I sought arguing "it shows that you should have become bilingual", a difficult enough task as a working mother.

Appellant alleges that she was not alone among non-Canadian, anglophone nurses in feeling that the Canadian citizenship clause might offer "some protection against future loss of my nursing license." She seeks to corroborate her allegation by submitting in evidence a letter dated June 5, 1982, addressed to the Board from a friend, also a registered nurse in Quebec, Susanna Jack. Ms. Jack wrote in part:

> There was a lot of uncertainty about the future for anglophone nurses, especially as the francophone nurses of the province were becoming more militant about language regulation. A number of nurses with whom I was in contact at the time expressed uncertainty at their future in Quebec if they could not speak French, and there was uncertainty as well about the future legislation which might affect aspects of licensure of nurses in Quebec.

In a letter to the Board dated October 20, 1982, Mrs. [redacted] conceded that "I was not under an actual loss of license as a nurse in Quebec had I chosen to retain my U.S. citizenship." She insists, however, that "there was a clear 'potential threat' during that time."

She added:

> I maintain this position even though I could not find any written documentation for these beliefs when I went back to the records. In my view, however, the Quebec Order of Nurses....by refusing me any

> documentation....unwittingly provided evidence of their attitude toward those who could not speak French proficiently.

Appellant seems to shift the grounds of her argument that she was forced against her will to become naturalized. When she brought this appeal she maintained that in 1970 she saw the impending changes in the Professional Matriculation Act as a potential threat to her right to practice nursing. As has been shown, however, Article 21 of the amending legislation offered appellant absolute legal protection agai revocation of her license on the grounds that she was not a Canadian citizen and was not proficient in French. She does not acknowledge the protection she was offered by Artic 21. Nor does she explain why she did not seek competent advice about the possible effect of the impending amendments to the Professional Matriculation Act before proceeding to apply for naturalization.

In her later submissions, appellant stresses her appare concern that the Professional Matriculation Act might be implemented in such a way as to prejudice her actual (but nc legal) position as a nurse. Yet, beyond the single letter from Ms. [redacted], Mrs. P[redacted] has adduced no evidence tc show that [redacted]s about [redacted] future had any foundation,

The record shows that on October 30, 1979, while the Consulate General was seeking to clarify the circumstances c Mrs. Pa[redacted] naturalization, the Consulate General invited the attorney who was then representing Mrs. P[redacted] to submit evidence relevant to her concerns about the potential threat to her status as a nurse. Specifically, the Consulat General asked counsel what evidence there was that prior to July 1970 (when Mrs. P[redacted] applied for naturalization) she had been informed by t[redacted]urses Association that she would b suspended unless she became naturalized. The Consulate General also asked counsel whether any nurses had in fact be suspended under the 1970 amendments. On July 29, 1980, the Consulate General again asked counsel to produce evidence relevant to *Mrs.* P[redacted]' concerns in 1970 -- in particular, why she felt constrained to become naturalized when her rights were protected by a specific provision of the amend- ing legislation. Counsel did not reply to either of these two inquiries of the Consulate General: nor has appellant addressed them with any degree of specificity.

In the opinion of the Board, appellant had a choice either to ascertain the true facts about the impending changes in the Matriculation Act or proceed to seek naturalization on the basis of speculative conclusions based on reports circulating among the community of anglophone nurses in Quebec. She chose the latter, Appellant has not shown that she encountered such extraordinary circumstances that she was confronted with the stark choice of becoming naturalized in Canada or facing dire economic privation. It is clear that Mrs. P[redacted] believed that her career, hence her livelihood and the we[redacted]eing of her family, might be jeopardized if she did not acquire Canadian citizenship. This concern, amounting only to a potential hardship, does not constitute duress rendering her action involuntary.

Under the provisions of section 349(c) of the Immigration and Nationality Act appellant bears the burden of rebutting, by a preponderance of the evidence, the presumption that her naturalization in Canada was voluntary. On the basis of the entire record, it is the Board's opinion that her rebuttal testimony falls short of overcoming this statutory presumption. The Board therefore concludes that Mrs. Pa[redacted] acquisition of Canadian citizenship, upon her own application, was a voluntary act of expatriation.

III

Although we find that appellant has failed to overcome the statutory presumption that she voluntarily obtained naturalization in Canada, we must still determine whether that act was accompanied by the requisite intent to relinquish her United States citizenship.

A United States citizen has a constitutional right to remain a citizen unless he voluntarily assents to relinquish his citizenship. Afroyim v. Rusk, 387 U.S. 253 (1967). In affirming and clarifying its decision in Afroyim, the Supreme Court held in Vance v. Terrazas, 444 U.S. 252 (1980) that "assent" can mean nothing less than an intent to relinquish 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." Id. Under section 349(c) of the Immigration and Nationality Act, the Government bears the burden of proving by a preponderance of the evidence that the expatriating act was performed with the necessary intent to abandon citizenship. Id.

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

Intent may be proved by evidence of explicit renunciation; acts inconsistent with United States citizenship: or affirmative voluntary acts clearly manifesting a decision to accept foreign nationality, Ring v. Rogers, 463 F. 2d 1188 (1972).

The record contains no evidence of appellant's state of mind at the time she became a Canadian citizen. It does show, however, that appellant applied for and obtained naturalization. In the process she took and subscribed to an oath which included a declaration of renunciation of "all allegiance and fidelity to any foreign sovereign or state of whom or which I may at this time be a subject or citizen." Simultaneously she swore allegiance to the British Crown.

Although taking an oath of allegiance to a foreign sovereign or state is substantial evidence of an intention to relinquish United States citizenship, it is insufficient standing alone to establish a person's intent to surrender United States citizenship. Baker v. Rusk, 296 F. Supp. 1244 (1969). Read in conjunction with an explicit declaration of renunciation of one's former nationality, however, it takes on compelling evidentiary weight.

As appellant noted in her letter of June 1, 1982, the Board, the requirement that applicants for Canadian naturalization renounce their former nationality was declared ultra vires in 1973. (Note 2 supra.) It is also true that a declaration of renunciation of United States nationality before a foreign official is insufficient in and of itself under the laws of the United States to result in expatriation. However, a declaration of renunciation made in the course of obtaining foreign naturalization constitutes an unambiguous indication of one's intent at the time the expatriating act was performed.

Appellant seeks to minimize the gravity of her declaration of renunciation by contending in the affidavit dated June 24, 1980, she submitted to the Consulate General, that:

> At the time of my application for Canadian citizenship I was not aware that I would be required to renounce allegiance to the United States; I did not orally renounce such allegiance at the time of my naturalization as a Canadian citizen on November 17, 1970, and I was not aware that I had effectively signed such a renunciation of allegiance until I consulted my attorney...in June 1979.. ..

The Board is unable to accept appellant's contention. We note that in order to complete the process of naturalization in Canada an applicant must sign his or her name directly below the declaration and oath: the text of both are printed on the form in bold face. The form also requires that the applicant's signature be attested, a procedure which can leave little doubt that an applicant is, or should be held to be, aware of what he or she is signing. Appellant in this case is evidently educated and articulate. For her to allege that she was unaware she had signed a declaration of renunciation strains credulity.

Appellant's course of conduct after she became a Canadian citizen is also inconsistent with an intention to maintain United States citizenship. She obtained a Canadian passport immediately after her naturalization, and made no effort to renew her United States passport. Her only explanation is that she and her husband "found it easier to apply together for Canadian passports".

It is also relevant to note that on August 29, 1980, the Consulate General reported to the Department:

> Although the Canadian Passport Office will not provide copies of Mrs. Pa[redacted]' two passport applications, we beli that she answered "no" twice to the question of whether or not she possessed any other nationality at the time of her application.

On March 30, 1981, a Department official, after speaking on the telephone to the Consular officer at Montreal who had handled Mrs. P[redacted] case, made the following marginal note on the foregoing report: "The word 'believe' underlined above is misleading (not her word). She /the consular officer7 has oral but official confirmation that-the two answers were "no."

Nine years passed after Mrs. P[redacted] naturalization (twelve after she acquired landed immigrant status in Canada) before she visited a United States consular office to ascertain her citizenship status and to register her children. By her own admission, she only did so because the attorney for her father's estate asked her to clarify her citizenship status in light of her inheritance of shares in a U.S. corporation whose tax status was based on all shareholders being U.S. citizens.

Appellant made no attempt to register her children until **1979,** eleven and eight years respectively after their births. Instead, she documented them as Canadian citizens on her Canadian passports issued in **1970** and 1977.

Appellant maintains that her state of mind, from the time of her arrival in Canada in 1967 with her husband, who left the United States to avoid military service, until her naturalization in **1970**, was one of heightened stress. She was fearful of consulting any official U.S. agency because, as she puts it, she felt like the wife of an outlaw. She maintains that she had been firmly of the view that she could not lose her United States citizenship, since she had been advised by her husband "who had discussed this matter with some of his colleagues" that she could not Pose her nationality unless the United States Government were to take it away by some proper action.

Appellant has not justified her failure earlier to seek authoritative advice about her citizenship status. Her casual attitude toward her United States nationality, viewed in the light of her explicit declaration of renunciation of United States citizenship, belies the argument she advances that she believed she had not Post her United States citizenship.

Appellant professes continuing loyalty to the United States; has produced evidence that she paid income taxes to the United States every year after she became a Canadian citizen; notes that she has strong family and financial ties to the United States; and avows that she never stopped feeling like a citizen of the United States as well as Canada. We do not gainsay the earnestness of appellant's representations. Appellant's explicit acts at and around the time she became naturalized in Canada are, however, more eloquent of her state of mind in 1970 than Patter day protestations that she never intended to relinquish her

United States citizenship. It is axiomatic that proven conduct close to the time the expatriating act was performed is entitled to greater weight than ~~ex post~~ facto explanations of one's actual intentions. 7/

We are persuaded that the record supports a finding that appellant's naturalization was accompanied by an intent to relinquish her United States citizenship. The Government has in our view satisfied its burden of proving by a preponderance of the evidence that appellant performed the expatriating act with the intention of abandoning her United States nationality.

IV

On consideration of the foregoing and taking into account the complete record before the Board, we conclude that appellant expatriated herself on November 17, 1970, by obtaining naturalization in Canada upon her own application, and affirm the Department's administrative determination cf March **30, 1981,** to that effect.

Alan **G.** James, Chairman

Mary E. Hoinkes, Member

George Taft, Member

7/ But even in **1982** appellant herself recognized that she had a choice and intentionally relinquished her citizenship. For in her letter to the Board of October **20, 1982,** she stated: "The Department of State points out, correctly, that I was not under an actual **loss** of license as a nurse in Quebec had I chosen to retain my U.S. citizenship..." /Emphasis added/.