March 16, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: K[redacted] M[redacted] M[redacted]

This case is before the Board of Appellate Review on an appeal brought by K[redacted] M[redacted] M[redacted] from an administrati determination of the D tm f te that he expatriated himself on February 19, 1981, under the provisions of sectio 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer of the United States at Ottawa, Canada.

I

Appellant M[redacted] was born at [redacted], on [redacted], thereby acquiring United States citizenship at birth. When he was about twelve years old, he moved with his parents to Canada.

According to copies of official records submitted by appellant, he enlisted in the United States Marine Corps in

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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: . . .

1979 but received an honorable discharge after five weeks of service because of inability to adjust to military life. After spending the academic year 1979-80 at high school in Quebec, M[redacted] enlisted in the United States Navy in October 1980. He was discharged from active duty eight months later in May 1981, for reasons which are not disclosed in the records available to us.

Sometime in February 1981, while still in the Navy, M[redacted] went to the United States Embassy at Ottawa, and told a consular officer that he wanted to renounce his United States citizenship. As the Embassy reported to the Department two months later, M[redacted]r was advised at that time of the consequences of his proposed action and given copies of the relevant documents which he was asked to study before proceeding.

M[redacted] returned to the Embassy on February 19, 1981. There, before the Consul General and two witnesses, he executed an oath of renunciation of United States citizenship and signed a statement attesting that he understood the consequences of his act and that he had surrendered his citizenship of his own free will. Thereupon, as required by section 358 of the Immigration and Nationality Act, the Embassy prepared a certificate of loss of nationality in Moyer's name. 2/

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 Post his United States nationality under any provision of part III of this subchapter, or under any provision of Chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic cr consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

The Embassy certified that Mc[redacted] acquired the nationality of the United States by virtue of his birth at Allentown, Pennsylvania, on March **28, 1962**; that he made a forma renunciation of his U.S. nationality at the American Embassy at Ottawa, Canada, on February **19, 1981**; and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Embassy forwarded the certificate to the Department the same day M[redacted] renounced his citizenship without any comment reg[redacted]ng the circumstances surrounding the renunciation. M[redacted] was eighteen years of age at the time.

M[redacted] evidently had not discussed his intention to renounce his citizenship with his parents, or at least had not told them he intended to renounce on February **19.** However, he apparently did so immediately afterwards, for the record shows that on February **20**, Mrs. E[redacted] M[redacted] appellant's mother, telephoned the Embassy to state that sh disapproved of her son's action. She explained he had done it because he wanted to join the Royal Canadian Mounted Police but had ignored the fact that he was too you to enlist. A consular officer explained to Mrs. M[redacted] the procedures involved in renunciation; noted that her son had been counselled to reflect on the act before performing it; and that nothing more could be done, as M[redacted] renunciation had already taken place. The consular officer informed Mrs. M[redacted] that she might, however, make her views known to the Department of State.

Mrs. M[redacted] immediately wrote to the Department on February 24, **1981**, requesting, in effect, that the certificate of **loss** of nationality not be approved. She pointed c that M[redacted] was a very young man; stated that he had acted on the basis of misleading information about the requiremer for admission to the Royal Canadian Mounted Police ("they told him he would have to give up his U.S. citizenship"); described him as "confused"; and asserted that he did not realize the seriousness of the step he had taken. The Bureau[redacted] Consular Affairs in the Department received Mrs. M[redacted]'s letter on March 10, **1981.**

Although ***Mrs.*** M[redacted] made clear that her son had actual renounced his citizenship, the Department assumed he was merely contemplating doing so. For when the Department ser a copy of Mrs. Moyer's letter to the Consulate General at Quebec (not the Embassy at Ottawa) for action on March **24, 1981**, it stated: "Mrs. M[redacted] is concerned that her son... plans to renounce his United States citizenship." (Emphasi

added.7 The Department instructed the Consulate General to explain to *Mrs.* M[redacted] the process whereby a United States citizen is advised of all the ramifications of renunciation before being permitted to renounce his citizenship, and to tell her that once her son had made his decision to renounce and the consular officer was assured that he understood the consequences of his act, the consular officer had no authority to prevent him from so acting. The Consulate General at Quebec took no action on the Department's memorandum, and instead forwarded it to the Embassy. There is no record that the Embassy called or wrote to Mrs. M[redacted]. On April **28, 1981**, well after M[redacted] renunciation and the Department's approval of the certificate of loss of nationality, the Embassy recounted to the Department some of the circumstances surrounding Moyer's renunciation, and the substance of the telephone conversation between a consular officer and *Mrs.* M[redacted] on February 20, 1981.

Meanwhile, on March 12, **1981**, two days after receipt of Mrs. M[redacted] letter, the Department approved the certificate of los[redacted]ationality that the Embassy issued in her son's case. It does not appear from the record that *Mrs.* Mo[redacted] letter of February **24, 1981**, was given any attention before the certificate was approved or that it and the certificate were ever coordinated within the Department.

Approval of the certificate constitutes an administrative determination of loss of nationality from which an appeal may be taken to this Board. Accordingly, on January **26, 1982**, Mo[redacted] initiated this appeal. He had endeavored to file an appeal by letter dated July 22, 1981, but the Board found that his letter of tkat'date did not constitute a proper appeal and did not accept it.

II

The Department's administrative determination that Moyer 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.

A person who performs a statutory act of expatriation is presumed to have done so voluntarily. 3/ This presumption may, however, be rebutted upon a showing by a preponderance of the evidence that the act was not done voluntarily.

Appellant contends that he renounced his citizenship because he had been told by someone in the Royal Canadian Mounted Police (unidentified) that he would have to do so if he wished to enlist. He argues (by implication) that since he had been misinformed about the conditions of enlistment, his act of renunciation was involuntary.

M[redacted] was, of course, mistaken in his belief, as he could have ascertained had he sought the facts about enlistment from an authorized source. His reliance on erroneous advice was unjustified and does not vitiate the voluntarine of his act.

3/ Section 349(c) of the Immigration and Nationality Act, U.S.C. 1481, 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 sha be upon the person or party claiming that such loss occurre to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (%), any person commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any oth Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a prepondera of the evidence, that the act or acts committed or performe were not done Voluntarily.

Since appellant has submitted no evidence to overcome the statutory presumption, we conclude that appellant's formal renunciation of his United States citizenship on February 19, 1981, was a voluntary act.

III

The pivotal issue in this case is whether appellant intended to terminate his citizenship when he made a formal renunciation of his citizenship on February 19, 1981.

The Supreme Court held in Afroyfm v. Rusk, 387 U.S. 253 (1967), that a United States citizen has a constitutional right to remain a citizen "unless he voluntarily relinquishes that citizenship," and that Congress has no general power to take away an American's citizenship without his assent.

In Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court reaffirmed and clarified its decision in Afroyim by holding that in order to establish loss of citizenship the Government must prove an intent to surrender United States citizenship. An intent to relinquish citizenship, the Court declared, must be shown by the Government, whether "the intent is expressed in words or Is found as a fair inference from proven conduct." In Terrazas, the Supreme Court made clear that it is the Government's burden to establish by a preponderance of the evidence that the expatriating act was performed with the necessary intent to relinquish citizenship. 4/

The Department undertakes to carry its burden of proof by noting that renunciation is an act which reasonably manifests an individual's transfer or abandonment of allegiance, to the consequences of which the Government must give formal recognition. The oath of renunciation itself, the Department points out, provides the clearest evidence of a person's intent.

Specifically, the Department contends that M[redacted] had been duly advised of the consequences and irreversibility of the oath of renunciation; that he was given adequate time to reflect before acting; and that he understood and signed a statement of understanding in which he attested that he realized the consequences of renunciation. The Department

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4/ Note 3, supra.

observes that nowhere in his submissions has M[redacted] stated that he did not intend to relinquish his citizenship. It is the Department's belief that M[redacted] subsequently regretted his action and seeks through this [redacted]eal to undo it.

It has long been established that every American citizen has a natural and inherent right to terminate his citizenship. Provided the citizen acts voluntarily and meaningfully, his exercise of that right may not be denied.

There is no dispute that appellant, statutorily of an age to renounce (although only by some months), made a formal renunciation in due and proper form, and in a separate document attested that he had done so voluntarily and with full comprehension of the significance of his act. However, it does not ineluctably follow that because an eighteen-year old citizen voluntarily subscribed a formal oath of renunciation he had the requisite intent to relinquish his United States citizenship.

The issue is whether M[redacted] subjectively intended to abandon his citizenship. R[redacted]ution of that issue depends not only on the words of his formal renunciation, but upon all the surrounding facts and circumstances. A number of elements in the case before the Board create doubts in our minds that appellant's oath of renunciation was meaningful or taken with full appreciation of the legal consequences.

It has not been established beyond reasonable doubt exactly when M[redacted] paid his first visit, to the Embassy at Ottawa. The Embassy reported to the Department in April 1981 that appellant appeared at the Embassy in the week preceding his actual renunciation; at that time he had been given the relevant documents and urged to study them carefully. But it does not appear that the Embassy recorded the specific date on which Moyer made his first visit. Appellant alleges, however, that he renounced his citizenship the day after his initial visit. This discrepancy between M[redacted]s recollection and the Embassy's raises a material issue whether Mo[redacted] had in fact sufficient time for thoughtful consideration of the consequences of his act before he performed it.

It is axiomatic that a prospective renunciant should have adequate time to think through the implications of renunciation after they have been spelled out for him by a consular officer. What is adequate time depends on the circumstances of each particular case, taking into account, among other things, the age and apparent maturity of the would-be renunciant.

Since the Embassy did not make the precise date of M[redacted] preliminary visit a matter of record, we believe that M[redacted] version is entitled to no less credibility than the Embassy's. It is therefore not inconceivable that M[redacted] had only twenty-four hours for sober reflection. Such a brief interval would not appear to be adequate, bearing in mind that M[redacted] was barely over the statutorily permissible age and, as far as can be ascertained from the record, appeared at the Embassy on both occasions unaccompanied by a parent, friend or adviser.

Formal renunciation is a solemn act with manifold implications, as the Department's guidelines for handling renunciation make clear. Section 225.6 of Chapter 8, Foreign Affairs Manual. It is a watershed in the life of the renunciant. Elementary fairness dictates that it not be a routine procedure.

Yet, the record before us leaves the impression that the Embassy treated M[redacted] termination of his citizenship as a routine event, h[redacted]r closely the prescribed formalities were observed.

In informing all diplomatic and consular posts of the import of the Supreme Court's decision in Terrazas, the Department observed that "the question of intent is very much in issue, and the facts will have to be brought out in considerable detail." With regard to formal renunciation of nationality the Department stated that "the only question that can arise is whether the statement was voluntary and made in full awareness of the consequences." (Emphasis added.) Addressing the indicia of intent to relinquish citizenship, the Department stated:

> ...the age of the individual, the foreign country involved and the degree of a person's understanding of U.S. citizenship law and his own citizenship status may be important. 5/ [Emphasis added]

T[redacted] is no indication that the consular officer who took M[redacted]s renunciation inquired why he wanted to renounce. Granted, the official was under no legal obligation to do so. It strikes us as strange, however, that natural c[redacted]ity, if not empathy, would not have led him to probe M[redacted] motives. It would hardly have been an excess of zeal to have done so. In any event, we think the consular officer

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5/ Department of State, Circular Airgram No. 1767, August 27, 1980.

had ample cause to develop the facts in this particular case and report them fully to the Department. Instead, as we have seen, the certificate of loss of nationality was dispatched to the Department the very day [redacted] renounced, with no accompanying commentary about the circumstances surrounding M[redacted] renunciation.

In our opinion, the Embassy should have informed the Department promptly that appellant's mother telephoned the Embassy the day after his renunciation. (As noted above, the Embassy did not report that fact to the Department until some two months later,) That Mrs. Moyer had immediately registered her strong disapproval of her son's action and had presented what she believed were mitigating circumstances in her son's case was material and relevant to the Department's consideration of the certificate of loss of nationality.

It is regrettable that there was no coordination within the Department of the certificate of loss of nationality and the letter appellant's mother addressed to the Department on February 24, 1981. And it is unfortunate that the Department misinterpreted Mrs. M[redacted] request that the certificate of loss of nationality i in her son's name not be approved. It is, of course, impossible to know with certainty whether the Department would have considered Mrs. M[redacted]s letter sufficiently persuasive evidence that her [redacted] did not understand the consequences of his action. Had the letter at least been read and correctly interpreted before the certificate was approved, our doubts that all of the facts and circumstances surrounding M[redacted] renunciation were carefully evaluated might be less pertinent,

In brief, the facts in this case as presented to the Board would have justified both the Embassy and the Department in examining more closely whether this appellant was indeed fully cognizant of the ramifications of his act. Neither apparently did so. Rather, both disposed of Moyer's case in a fashion which can only be described as strictly routine,

Formal renunciation is indisputably highly persuasive evidence of an intention to relinquish one's citizenship. It is not, however, conclusive evidence of such an intention, as the Department clearly implied in its 1980 Circular Airgram after Terrazas; if the act of renunciation is not performed with "full awareness of the consequences", intent is absent.

Appellant has put in issue his lack of understanding of the oath of renunciation; his mother's submissions purport to support that contention. He has thus introduced an issue which bears squarely on whether he intended to terminate his citizenship on February 19, 1981. Appellant alleges that at no time was the meaning of the oath explained to him. We cannot accept that contention, for we must assume that the consular officer concerned duly set forth to Moyer the implications of the act of renunciation. Nevertheless, we are not entirely convinced that Moyer grasped the finality of the step he was about to take.

The record shows that in the two years preceeding Moyer made two career decisions which have a direct bearing on the question whether he really understood the meaning of the oath of renunciation. His remarkably short tours of duty in the Marines and the Navy bespeak a propensity to leap into situations without thinking through the implications of his decisions. Both enlistments show Moyer long on enthusiasm €or adventure, short on mature judgment. His pursuit of a third career in the Royal Canadian Mounted Police, totally oblivious to the actual requirements of enlistment, is also suggestive of muddled thinking and impetuous action. The pattern of Moyer's decision-making prior to and around the time of his renunciation thus causes us to entertain some doubt whether in February 1981 he absorbed or was conditioned to absorb the cautions of the consular officer.

It is ar[redacted]ble, as the Department speculates in its brief, that M[redacted] changed his mind after he had renounced when he learned that renunciation was not a condition precedent to joining the Mounted Police. It is, however, no less reasonable to argue, on the basis of all the facts in this case, that Moyer did 'not rationally calculate the effect of his future when he swore an oath of renunciation.

Given M[redacted] age, his evident immaturity, and the possibility that he may have had insufficient time to digest the consular officer's explanations of the consequences of renunciation -- matters which neither the Embassy nor the Department appears to have taken into account -- we consider it problematical that Moyer acted "in full awareness of the consequences."

The Supreme Court has held that in an action instituted for the purpose of depriving one of the precious rights of citizenship, the facts and the law should be

construed as far as reasonably possible in favor of the citizen. Nishikawa v. Dulles, 356 U.S. 129 (1958); Schneiderman v. United States, 320 U.S. 118 (1943). Moreover, factual doubts are to be resolved in favor of citizenship, Stipa v. Dulles, 233 F. 2d 551 (1956.)

Not having been persuaded that appellant here fully understood the implications of his renunciation (and thus performed a meaningful act of expatriation), we are constrained to resolve our doubts in favor of retention of his citizenship.

IV

On consideration of the foregoing and on the basis of the record before the Board, we are unable to conclude that appellant expatriated himself on February 19, 1981, when he made a formal renunciation of his United States citizenship before a consular officer of the United States at Ottawa, Canada. Accordingly, we reverse the Department administrative determination of March 12, 1981, to that effect.

Alan G. James, Chairman

J. Peter A, Bernhardt, Member

Howard Meyers, Member