January 19, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

[redacted] has brought an appeal to the Board of Appellate Review from the Department of State's administrative determination that he expatriated himself on July 10, 1980, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Brazil upon his own application. 1/

The issues presented on appeal are whether appellant voluntarily became a citizen of Brazil, and, if so, whether he intended thereby to relinquish his United States citizenship. We conclude that appellant's act of naturalization was freely performed and that it was accompanied by an intention to termina his United States nationality. Accordingly, we will affirm the Department's determination of loss of his United States nationality.

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, . . .

I

Appellant became a citizen of the United States by irth at [redacted] on [redacted]. In 1960, at age ix, he went with his parents to Brazil. From 1961 appellant eld a United States passport which he successively renewed, he latest renewal having been in 1977.

After completing his studies at New York University, where e received a degree in business administration, appellant eturned to Brazil, with permanent residence status. There he orked and married a Brazilian citizen.

On September 25, 1979, appellant applied to become a aturalized citizen of Brazil. A certificate of naturali- ation was issued in appellant's name on May 21, 1980, by the inistry of Justice. On July 10, 1980, appellant appeared efore a Federal Judge of the First Jurisdiction, at Rio de aniero. He completed the prescribed naturalization formalities n the presence of the judge and became a Brazilian citizen as rom that date.

Upon learning of appellant's naturalization, the United tates Consulate General at Sao Paulo informed appellant that e might thereby have expatriated himself. He was invited to iscuss his case at the Consulate General, and did so in ugust 1980. He surrendered his U.S. passport which the onsulate General cancelled and returned to him, and executed an ffidavit of expatriated person on August 11, 1980, attesting hat he had obtained Brazilian citizenship voluntarily and with ne intention of relinquishing his United States citizenship. s required by section 358 of the Immigration and Nationality ct, the Consulate General prepared a certificate of loss of ationality on August 11, 1980. 2/

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

Section 358. Whenever a diplomatic or consular officer E the United States has reason to believe that a person ile in a foreign state has lost his United States nation- Lity under any provision of chapter 3 of this title, or der any provision of chapter IV of the Nationality Act of 340, as amended, he shall certify the facts upon which such elief is based to the Department of State, in writing, der regulations prescribed by the Secretary of State. If e report of the diplomatic or consular officer is approved the Secretary of State, a copy of the certificate shall e forwarded to the Attorney General, for his information, d the diplomatic or consular office in which the report s made shall be directed to forward a copy of the certi- icate to the person to whom it relates.

The Consulate General certified that appellant acquired the nationality of the United States at birth: that he obtained naturalization in Brazil upon his own application: and thereby expatriated himself under the provisions of section 349(a) (1) of the Immigration and Nationality Act.

The record shows that appellant entered the United States on August 12, 1980, travelling on a Brazilian passport bearing a visa issued by the Consulate General at Sao Paulo.

In February 1981 appellant went to Israel, allegedly to study at a rabbinical college, residing there pursuant to a temporary residence permit that had been issued by the Israeli authorities at Sao Paulo and entered in his Brazilian passport.

The Department deferred acting on the certificate of loss of nationality that had been prepared by the Consulate General at Sao Paulo until additional information relevant to appellant': intent to relinquish his United States citizenship could be obtained from him by the U.S. authorities in Israel.

In June 1981 appellant submitted an affidavit to the Embassy at Tel Aviv in which he explained the circumstances under which he had obtained Brazilian naturalization. In November 1981 he completed a questionnaire to assist the Department to determine his citizenship status. He was interviewed by the Consulate General at Jerusalem in March 1982, completed another questionnai and submitted another statement regarding his intent.

After reviewing appellant's submissions.and the record of his interviews with the United States authorities in Israel, the Department on April 16, 1982, approved the certificate of loss of nationality prepared in appellant's name. Such approval constitutes an administrative determination of loss of nationality from which a proper and timely filed appeal may be brought to this Board.

Appellant initiated this appeal on May 13, 1982.

He contends that inasmuch as he obtained Brazilian citizenship under circumstances that amounted to duress, his act was not voluntary. He also maintains that he did not intend to relinquis his 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 dispute that appellant obtained naturalization n Brazil upon his own application.

It is settled that a United States citizen shall not, owever, lose his nationality unless he has performed a statutory xpatriating act voluntarily. Nishikawa v. Dulles, *356* U.S. 29 (1958), Perkins v. Elg, 307 U.S. 325 (1939).

Under law, a person who does an act described by statute s expatriating shall be presumed to have performed it volun- arily, but the presumption may be rebutted upon a showing by a reponderance of the evidence, that the act was done involun- arily. 4/

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

(c) Whenever the loss of United States nationality is it in issue in any action or proceeding commenced on or lter the enactment of this subsection under, or by virtue 1, the provisions of this or any other Act, the burden shall e upon the person or party claiming that such loss occurred,) establish such claim by a preponderance of the evidence. :cept as otherwise provided in subsection (b), any person io commits or performs, or who has committed or performed, ıy act of expatriation under the provisions of this or any :her Act shall be presumed to have done so voluntarily, but ıch presumption may be rebutted upon a showing, by a pre-)nderance of the evidence, that the act or acts committed or :rformed were not done voluntarily.

Appellant contends that he acted under extraordinary circumstances amounting to duress. Of course, duress has long been recognized as a valid defense to the statute in question. 5

Appellant rests his defense of duress on the following contentions.

-- In 1979 the Brazilian Government enacted a law restricting immigration into Brazil. The law, which went into effect in 1980, provided that the granting of new permanent visas to foreigners, except those who could qualify under provisions applicable to certain professions, would be severely restricted. The law also provided that the holder of a permanent visa of current validity would be subject to revocation of such visa if he were to absent himself from the country for more than two years.

-- In 1979 appellant was the holder of a permanent visa. He planned to study abroad for a period exceeding two years, after which he intended to return to Brazil to reside and work. Under the law, he would have been denied this right had he not applied for Brazilian citizenship. This, he states, "would create severe hardships for myself and my family."

In Doreau v. Marshall 6/, the court laid down the generally accepted rule for gauging duress.

5/ Doreau v. Marshall, 170 F. 2d 721 (1948).

6/ Note 5, supra.

> If by reason of extraordinary circumstances amounting to true duress, an American national is forced into the formalities of citizenship of another country, the ~~sine~~ ~~qua~~ non of expatriation is lacking. There is notauthentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. He cannot be truly said to be manifesting an intention of renouncing his country.

We do not consider that appellant here acted under "extra-rdinary" circumstances or that he was "forced" into the ormalities of obtaining citizenship in Brazil. We will assume, ithout attempting to verify the applicability of the Brazilian mmigration law to appellant, that after completing his foreign tudy he would have been unable to return to Brazil to work here because he could not qualify professionally for permanent esidence status. The alleged "severity" of the Brazilian law oes not, however, constitute extraordinary circumstances. If ppellant wished to reside and work in Brazil, it is obvious hat he would have had to comply with the laws of that country. claim of duress may not rest on an allegation, even if proved, hat the presumptively valid laws of a foreign country created r might have created a hardship for an American citizen who lects to live in that country.

Appellant states that he planned to study abroad for more han two years, a period in excess of that allowed by the razilian law for the holder of a permanent visa to be absent ithout suffering revocation of his permanent residence status, xcept under conditions appellant alleges he could not fulfil.

He is saying to us that he made a personal decision to tudy abroad for a period longer than permitted by Brazilian law. nd he seems to ask us to decide that because the Brazilian law ould have had adverse consequences for him, he acted under uress.

In cases involving loss of nationality because of irformance of an expatriating act, the courts have consis-ently ruled that if one had the opportunity to make a ersonal choice - to perform an expatriating act or to avoid oing one - the person could not be deemed to have acted ?voluntarily. As the court said in Jolley v. Immigration nd Naturalization Service, 441 F. 2d 1245 (1971), "the pportunity to make a personal choice is the essence of oluntariness."

We do not gainsay that appellant wanted to study outside of Brazil for more than two years and that he had an absolute right to do so. But he may not come before us and argue that because he would thereby have subjected himself to harsh consequences imposed by the law of Brazil, he was forced into naturalization against his will. Manifestly, he made a conscious choice to become a Brazilian citizen and he may not describe that choice as one that was "forced" upon him.

We conclude therefore that appellant obtained naturalization in Brazil upon his own application freely and voluntarily.

III

Although appellant's naturalization in Brazil was voluntary it must still be determined whether that act was accompanied by an intent to relinquish his United States nationality. For, as the Supreme Court held in Vance v. Terrazas, 444 U.S. 252 (1980), if a person fails to prove that his act of expatriation was involuntary, the question remains whether on all the evidence the Government has satisfied its burden of proof that the expatriating act was performed with the necessary intention to relinquish citizenship.

In Terrazas, the Supreme Court held that under section 349(c) of the Immigration and Nationality Act 7/, the Government must establish by a preponderance of the evidence that the actor intended to divest himself of United States citizenship; intent 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 the expatriating act was done. Terrazas v. Haig, 653 F. 2d 285 (1981).

Obtaining naturalization in a foreign state, like performance of the other acts enumerated in section 349(a) of the statute, may be highly persuasive evidence of an intent to surrender United States citizenship, but it is not conclusive evidence of such intent, Vance v. Terrazas, citing Nishikawa v. Dulles, supra.

7/ Note 4, supra.

Thus, naturalization in a foreign state standing alone 11 not supply evidence of the requisite intent. King v. gers, 463 F. 2d 1188 (1972). The Government may prove tent, the Court stated in King, by acts inconsistent with ited States citizenship or acts clearly manifesting an tent to transfer allegiance from the United States to a reign state.

Appellant has maintained from the outset of these pro- edings in 1980 that he did not intend to relinquish his ited States citizenship when he became natualized in Brazil. a citizenship questionnaire completed in November 1981, conceded that he had not consulted any U.S. authority fore applying for naturalization since he was unaware that turalization would jeopardize his American nationality; had known, he stated, that it would have had adverse consequences, would have reconsidered.

In support of his contention of non-intent, appellant bmits that he has many relatives in the United States and lds a bank account there.

Appellant's protests that he lacked intent must be weighed ainst his words and conduct when he applied for naturali- tion and completed the requisite formalities for the grant ereof.

On September 25, 1979, an application for naturali- tion in the name of [redacted] was presented to e Brazilian Ministry of Justice. The application states pertinent part:

> [redacted], of New York, born February 11, 1954, son of...and of..., of American nationality, commercial manager, residing at..., intending to acquire Brazilian nationality and to renounce his current one, declares to His Excellency:..8/

A copy of the application was sent to the United States bassy at Brasilia on March 15, 1983, by the Naturalization vision of the Federal Ministry of Justice, at the former's grest. The application was informally translated by the bassy before submission to the Department on March 17, 1983.

There follows personal information about the applicant, to wit that: he has legal capacity; has lived in Brazil for more than twenty years; his only residence outside Brazil was his native country; he can read and write Protuguese; his behavior is good; he has not been prosecuted or indicted and has never been convicted of a malicious crime; does not owe taxes; and does not wish to change his name.

Appellant contends that he did not sign the application and thus had been unaware at the time he applied that Brazilian law requires an applicant for naturalization to renounce his previous nationality. He explained that he retained a specialist in such matters (a "despachante") to arrange for the processing of his application. He recalled signing some forms in connection therewith, copies of which he submitted to the Board; none of those forms mentioned any requirement to renounce his American citizenship. The first time he saw the actual application was when the Board sent him a copy in October 1983.

Appellant correctly points out that the copy of the application in the record does not appear to bear a signature. He thus maintains that either another signed his name to the form, if it was signed; or that his agent submitted it without signature. In these circumstances, appellant argues, the submission of the.-application by another shows lack of intent on his part to relinquish his United States nationality.

Even were we to accept appellant's statement about how his application for naturalization was handled, the fact remains that, under the law of agency, a principal is accountable for, and on notice of, any legitimate act performed by his agent wit the scope of his agency. Thus, appellant must be presumed to have been on notice that renunciation of his previous nationali was a prerequisite to obtaining Brazilian nationality. He may not plead total ignorance of the requirements of Brazilian law simply because he placed his affairs in the hands of another. Prudence should have dictated that he make careful inquiries, a least of the "despachante", about all the requirements of a process to which Brazil obviously attaches considerable solemni

But appellant's application for naturalization is not the vital link in the chain of intent. What occurred on July 10, 1980, when appellant appeared before a court in Rio de Janiero to receive his certificate of naturalization, however, is.

Brazilian law provides that once the naturalization decree has been published in the Diario Oficial, the certificate of naturalization is sent to the Federal Judge of the State in which the party concerned is domiciled. 9/

In appellant's case, a certificate of naturalization signed by the Director General of the Department of Justice, Ministry of Justice, was issued on May 21, 1980. We may assume that shortly afterwards, the decree granting appellant naturalization was published in the Diario Oficial, and that the certificate was then sent to the Federal Judge of the First Jurisdiction at Rio de Janiero where appellant lived. On July 10, 1980, appellant was summoned to appear before that court. The law provides that the certificate shall be "solemnly" presented to petitioners at a public hearing, at which the magistrate explains the significance of the decree and advises petitioners of the rights and responsibilities thereunto appertaining. 10/

Under law, delivery of the certificate shall be entered in the record of the hearing, which must be signed by the Judge and by the naturalized person, who must:

I. Demonstrate that he can read and write Portuguese, by reading passages from the Federal Constitution;

II. Declare expressly that he renounces his previous citizenship;

111. Undertake a commitment to fulfill the duties of a Brazilian citizen. 11/

9/ Article 132 (1) of Decree Law 941 of October 13, 1969.

10/ Id.

11/ Article 133 of Decree Law 941.

In appellant's case the Federal Judge certified on the reverse of appellant's certificate of naturalization, that appellant:

> ...took an oath to perform faithfully the duties of a Brazilian citizen, demonstrated that he knows how to read and write Portuguese by reading and transcribing articles of the Federal Constitution, and renounced for all effects his former nationality. 12/

Appellant gives the following account of the judicial ceremony on July 10, 1980.

> On the back of this certificate [of naturalization] is a paragraph which state [sic] I relinquish my previous nationality.
>
> This certificate was handed to me after attending the swear-in ceremony. I received it at the final stage of all formalities and could not know previously what it said until I actually took possession of it.
>
> ---
>
> I attended a courthouse with dozens of other people waiting to finalize their naturalization process together with mine. We were individually attended by a clerk who asked us to read a text in Portuguese. After all the individuals completed this process on a one to one basis, we then gathered together to repeat an oath in unison to the effect of being faithful citizens. I inquired if an alternative oath could be administered due to religious reasons, and upon the answer in the negative, I remained totally silent while the other congregants repeated in unison after the clerk. After this

---

12/ Certificate of Naturalization, Ministry of Justice, May 21, 1980, Certification on reverse by Costa Fontour, Federal Judge of the First Jurisdiction, Rio de Janiero, July 10, 1980. English translation, Division of Language Services, Department of State, LS-108337, Portuguese (1983).

> was completed he called out each individual's name to come and sign the register and receive his certificate.
>
> I do not recall if in the swear in ceremony there was mention of relinquishing any former nationality. In any case I was totally silent during this phase. At no point did I orally indicate I would give up my previous nationality, and neither is my signature appended to any such statement in the application form or on the certificate itself which is signed only by the authorities. Certainly, this cannot be construed as intent.

Despite appellant's contentions, it is clear to us that :he Federal Judge was satisfied that appellant had expressly :enounced his "former nationality", for he issued the certificate)f naturalization and certified thereon that appellant had re- ıounced his previous citizenship. There is a presumption of 'egularity of the official acts of public officers, absent :vidence to the contrary. This presumption applies to the acts)f foreign officials as well as American. 13/

That a declaration of renunciation of one's previous (United :tates) nationality is eloquent evidence of an intent to 'elinquish United States nationality was enunciated by the ppeals court in Terrazas v. Haig, 653 F. 2d 285 (1981). There- n it was held that:

> Plaintiff's knowing and understanding taking an oath of allegiance to Mexico and an explicit renunciation of his United States citizenship is a sufficient finding that plaintiff intended to relinquish his citizenship.

And in United States v. Matheson, 400 F. Supp. 1281 (1975), ff'd 532 F. 2d 809 (1976), the court said "an oath expressly enouncing United States citizenship...would leave no room for mbiguity as to the intent of the applicant.

3/ Boissonas v. Acheson, 101 F. Supp. 130 (1951).

Nothing in appellant's conduct after his naturalization raises doubts about his intent. As noted, one month after he became a Brazilian citizen, appellant signed an affidavit of an expatriated person attesting that he acquired Brazilian nationality voluntarily and with the intention of relinquishing his United States citizenship. And one month after his naturalization, he travelled to the United States on a Brazilian passport visaed by the United States Consulate General at Sao Paulo. He went to Israel on a Brazilian passport in which was stamped a temporary residence permit issued by the Israeli authorities in Brazil.

Appellant does not explain why he signed the affidavit. He states simply that when he called at the Consulate General a Sao Paulo in August 1980, as requested, he surrendered his passport, on demand. "After it was surrendered and a fait accompli, I was asked to sign the form and received my passport back." He continues, "I was not explained that this was only a first stage, nor that I had a right of appeal."

His use of a foreign passport to travel to the United State and Israel is clearly inconsistent with United States citizensh

On all the evidence, it is our view that appellant manifest an intention to transfer his allegiance from the United States t Brazil.

IV

Upon consideration of the foregoing and our review of the entire record, we conclude that appellant obtained naturalizatic in Brazil voluntarily and with the intention of relinquishing hi United States citizenship. Accordingly, we affirm the Department's determination of April 16, 1982, to that effect.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Warren E. Hewitt, Member