April 3, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This case comes before the Board of Appellate Review on appeal by [redacted] from an administrative determination of the Department of State that he expatriated himself on November 5, 1963, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Israel upon his own application. 1/

The issues presented by the appeal are whether appellant performed this statutory expatriating act voluntarily, and if so, whether he intended to relinquish his United States citizenship.

It is our conclusion that appellant voluntarily became a citizen of Israel, and that his acquisition thereof was accompanied by an intention to terminate his allegiance to the United States. The Department's holding of loss of appellant's nationality accordingly is affirmed.

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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 acquired United States nationality by birth at [redacted], Illinois, on [redacted] 2/ He served honorably in the United States Coast Guard from 1942 to 1946. In 1948 he went to Israel, travelling on a passport issued in that year. He was issued a renewed passport by the American Consulate at Haifa in 1953. Appellant performed compulsory service in the Israel Defense Forces from September 1948 to May 1949, and briefly in 1960 as a reservi

On March 26, 1962, appellant applied to be naturalized as a citizen of Israel. In a letter to the Board dated September 1, 1982, appellant explained his reasons for seeki: Israeli citizenship as follows:

> At that time, married with a family, I strongly desired to take part in elections, also about this time I became affiliated with the Israel Ports Authority, a job which then and now require /sic/ Israeli citizenship. 3/

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2/ Appellant was born [redacted] but informed the Boa: that he had been known as [redacted] "from as far as I can remember." He changed his name legally in Israel to [redacted] in 1962. His Israeli identity booklet, issued October 1975, shows that at that date his name was [redacted]

3/ Appellant states that in October 1962 he found employmen with the Israel Ports Authority. The Legal Adviser of the Ports Authority stated in a letter to appellant dated Januar; 1983, that employment with the Authority required Israeli citizenship.

Appellant subscribed the following declaration of loyalty to Israel on November 5, 1963:

> I, the undersigned [redacted], declare that I shall be a loyal citizen of the State of Israel. 4/

Appellant also renounced his former nationality. 5/

A certificate of naturalization was issued to appellant by the Minister of the Interior on April 30, 1964, with effect from November 5, 1963.

Eighteen years later on February 25, 1981, appellant called at the United States Embassy at Tel Aviv to apply for a passport, stating that at the time he obtained naturalization in Israel he had surrendered to Israeli authorities the U.S. passport issued to him in 1953. 6/ At the request of the Embassy, he filled out a questionnaire to facilitate the determination of his citizenship status, and was interviewed by a consular officer. On March 15, 1981, the Ministry of

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4/ Letter from the Israeli Ministry of Interior to the United States Embassy, Tel Aviv, March 15, 1981.

5/ Id.

6/ Appellant informed the Board that he made two extended trips to the United States in 1949 and 1955 on his U.S. passport. In 1981 he made another trip to the United States, travelling on an Israeli passport in view of the refusal of the Embassy to issue him a U.S. passport.

the Interior informed the Embassy, in reply to its inquiry, that appellant had applied for and obtained Israeli citizenship. In compliance with the provisions of section 358 of t Immigration and Nationality Act, the Embassy prepared a certificate of loss of nationality in the name of Ahron Kano on April 3, 1981. 7/

The Embassy certified that appellant acquired United States nationality at birth; that he acquired the nationality of Israel upon his own application; and concluded that he hac thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Embassy forwarded the certificate to the Department for approval under cover of a carefully prepared, well documentec report on appellant's case.

The Department approved the certificate on February 26, 1982, approval constituting an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board.

Appellant gave notice of appeal by letter dated September 1, 1982. He maintains that he did not intend to relinquish his United States citizenship when he acquired the citizenship of Israel.

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7/ 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 prescribes 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 applied for and duly obtained naturalization in Israel, thus bringing himself within the purview of section 349(a)(1) of the Act.

It has, however, long been established that expatriation shall not result unless the allegedly expatriating act was performed voluntarily. 8/ Under law, it is presumed that where a citizen does a statutory expatriating act, he did it voluntarily, but the presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act was involuntary. 9/

A defense of duress is, of course, available to a party contesting a determination of loss of nationality. 10/ Here appellant makes only the most tentative allegation of duress. In his letter to the Board of November 6, 1983, he stated as follows:

> As for duress, no one held a gun to my head, when notifying me that in order to continue working /as an employee of the Israel Ports Authority/, I would have to acquire Israeli citizenship. At that time /1962-63/ good jobs, with a future were not easy to find.

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8/ Nishikawa v. Dulles, 356 U.S. 129 (1958), citing Perkins v. Elg, 307 U.S. 325 (1939).

9/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481 provides in relevant part as follows:

...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.

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

He has adduced no evidence, however, to sustain a claim of involuntariness. He has not shown that he tried but was unable to find any employment that did not require the incumbent to hold Israeli citizenship, or that he would have suffered severe economic or other hardship had he not become naturalized. Indeed, in the questionnaire he executed in March 1981 at the Embassy he stated:

> I performed all the acts above [naturalized in a foreign state: took an oath of allegiance to a foreign state; served in the armed forces of a foreign state] voluntarily on my own free will.

Appellant has not rebutted the statutory presumption that he obtained naturalization in Israel voluntarily. We therefore conclude that that act was free and uncoerced.

III

Even though we have concluded that appellant voluntarily obtained naturalization in Israel, it remains to be determined whether on all the evidence he did so with the intention of relinquishing his United States citizenship.

Under the rule enunciated by the Supreme Court in Vance v. Terrazas, it is the Government's burden to prove by a preponderance of the evidence that the expatriating act in question was done with the intention of relinquishing United States citizenship. 11/ Intent, the Supreme Court said, may be ascertained from a person's words or found as a fair inference from proven conduct. 12/ Obtaining naturalization in a foreign state, like performance of the other acts the statute prescribes as expatriating, may be highly persuasive evidence but not conclusive of an intention to give up United States citizenship. 13/ Intent is to be determined as of the time the expatriating act was done. 14/

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11/ 444 U.S. 252 (1980).

12/ Id.

13/ Id., citing Nishikawa v. Dulles, note 6, supra.

14/ Terrazas v. Haig, 653 F. 2d 285 (1981).

Appellant has offered no evidence probative of his intent in 1963 with respect to his United States citizenship. In the citizenship questionnaire he executed in 1981 and in his subsequent submissions to the Board appellant merely makes flat assertions that he did not have the intent in 1963 to surrender his United States citizenship. Evidence pertinent to appellant's intent at the critical time, however, is found in the letter the Ministry of Interior sent to the Embassy in March 1981, confirming appellant's naturalization. The Ministry stated that in his application for naturalization, appellant "did not request to be exempted from the obligation of cancelling his former nationality and he acquired Israel nationality according to paragraph 5 of tne law by renouncing his former nationality." 15/

Appellant concedes that his application for naturalization bears a notation that he did not request to be exempted from the obligation of renouncing his prior nationality. But he observes that:

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15/ Section 5(a)(6) of the Nationality Law of 1952 stipulates that one of the conditions an applicant for naturalization must fulfill is that he renounce his prior nationality or prove that he will cease to be a foreign national upon becoming an Israel national. Section 6(d) of the Law provides that the Minister of Interior may exempt an applicant from the requirement of section 5 (a)(6) "if, in his opinion, there exists a special reason justifying such exemption."

> On this point I cannot remember if I was ever made knowledgeable of this opportunity, and on such an important act there is no signed certificate, or declaration by me, under oath.

Appellant's unsupported contentions that he did not intend to relinquish his United States citizenship and that he does not recall renouncing that citizenship carry no weight in the face of the attestation of the competent Israel authorities that appellant renounced his former (United State: citizenship. Absent evidence to the contrary, it must, as a matter of law, be presumed that the provisions of the Israeli Law of Nationality were correctly applied in appellant's case. 16/

Since there is nothing in the record or in appellant's submissions to indicate the contrary, we may also assume that he was competent *to* understand the conditions of Israeli naturalization, and in fact complied with them.

The case law leaves no doubt that a declaration of renunciation of one's United States citizenship in conjunctior with foreign naturalization or declaring one's allegiance to a foreign state is unambiguous evidence of an intent to terminate that citizenship. United States v. Matheson, 400 F. Supp. 1241, 1245 (1975) ; aff'd. 532 F. 2d 809 (1976), where

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16/ Boissonnas v. Acheson, 101 F. Supp. 130 (1951). There, the court noted that the legal presumption that public officia. properly execute their official duties applies to the official acts of officers of foreign governments as well as to American officials, evidence to the contrary being absent.

the court said: "...an oath expressly renouncing United States citizenship...would leave no room for ambiguity as to the intent of the applicant." Similarly, Terrazas v. Haig, note 12 supra, at 288, "Plaintiff's knowing and understanding taking of an oath of allegiance to Mexico and an explicit renunciation of his United States citizenship is a sufficient finding that appellant intended to relinquish his citizenship." In a case analogous to that of the appellant here, Richards v. Secretary of State, No. CV80-4150, slip. op. at 12 (C.D. Cal., August 14, 1982), where plaintiff had made a declaration of renunciation of his former citizenship upon obtaining naturalization in Canada, the court concluded; "Plaintiff's intent to renounce his United States citizenship is established by his knowing and voluntary taking of an oath of allegiance to a foreign sovereign which included explicit renunciation of his United States citizenship."

In the case before the Board there is abundant contemporary evidence that appellant intended to relinquish his United States citizenship. He obtained naturalization in Israel upon his own application; made a declaration of loyalty to Israel; and expressly renounced his former (United States) nationality.

Nothing in appellant's conduct in the eighteen years between his naturalization and his application for a United States passport in 1981 belies the intent he revealed by his actions in 1963. He was employed by an agency of the Israel Government for twenty years. He married an Israeli citizen. He did not document himself as a United States citizen after the passport he was issued in 1953 had expired. He surrendered his United States passport to the Israeli authorities when he sought naturalization. In sum, there is no evidence that appellant held himself out as a United States citizen from 1963 to 1981.

The record clearly supports the Department's contention that in 1963 appellant intended to relinquish his United States citizenship when he applied for an obtained Israeli citizenship.

IV

In light of the foregoing analysis and upon a review of the entire record before the Board, it is our conclusion that

appellant's voluntary acquisition of Israeli citizenship in 1963 was accompanied by an intention to transfer his allegiance from the United States to Israel. Accordingly, w affirm the Department's holding of loss of appellant's United States citizenship.

Alan G. James, Chairman

Howard Meyers, Member

George Taft, Member