April 9, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, [redacted], expatriated herself on November 22, 1972, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her awn application. 1/

Inasmuch as appellant has conceded that she obtained naturalization in Canada voluntarily, the sole issue for decision is whether she became a citizen of Canada with the intention of relinquishing her United States citizenship.

We hold that appellant performed the statutory expatriating act with the intention of terminating her allegiance to the United States. Accordingly, we will affirm the Department of State's determination of loss of appellant's citizenship.

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], Massachusetts, on [redacted]. According to her submissions, she received two degrees from the University of Connecticut, and later attended Syracuse University.

Appellant married a United States citizen in 1953 and in 1966 moved with her husband and two children to Canada. Six years later in 1972 she applied for Canadian citizenship. In her brief she explained her decision to seek Canadian citizenship as follows:

> In 1972, while a citizen of the United States of America, the Appellant and her husband...planned an extended trip throughout Europe and England, during [redacted] professional sabbatical year in 1973. At the urging of [redacted] the Appellant and her two children applied for Canadian citizenship in 1972 in order to facilitate crossing borders in Europe. The Appellant believed the process of applying for an American passport was very long and involved. The Appellant's husband led her to believe that the process would be considerably quicker by acquiring Canadian passports and citizenships, and that it would not affect the status of her United States citizenship.

A certificate of Canadian citizenship was granted to appellant on November 22, 1972.

Appellant and her husband were divorced in 1978. Intending to attend graduate school in the United States, appellant applied in 1979 for permanent residence status in the United States, sponsored by her brother. In 1980 she was issued a student visa; when these proceedings were commenced, appellant was attending the University of Iowa.

Apparently because of information she had provided in connection with a visa application in March 1980, the Consulate General at Toronto requested confirmation from the Canadian authorities of appellant's naturalization. After

receiving such confirmation, the Consulate General informed appellant on March 19, 1980, that she might have lost her United States citizenship by obtaining naturalization in Canada. She was asked to complete a short questionnaire. She did so on March 25, indicating that she had become naturalized voluntarily but without an intention of relinquishing her United States citizenship. Appellant subsequently visited the Consulate General on April 15 where she completed another citizenship questionnaire, including a statement explaining the circumstances of her naturalization, which was sworn to before a consular official.

As required by section 358 of the Immigration and Nationality Act, the Consulate General prepared a certificate of loss of nationality in appellant's name on April 23, 1980. 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 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.

The Consulate General certified that appellant acquired United States citizenship at birth; that she obtained naturalization in Canada upon her own application: and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department of State decided that before acting on the certificate of loss of nationality it required more informatio about appellant's naturalization. The Department therefore asked the Consulate General at Toronto to pose several questions to appellant. In reply to the letter the Consulate General sent her on October 6, 1980, appellant stated in substance as follows by letter dated January 28, 1981.

She had believed that she needed a Canadian passport because her husband had told her that foreign travel would be easier if the entire family carried passports issued by the sa government. The oath of allegiance she took to Canada did not require her to renounce her United States nationality: as evidence thereof she enclosed a copy of the relevant section of the Canadian Citizenship Act, pointing out that it was silent on any requirement that an applicant renounce his previous nationality. She further informed the Consulate General that she had asked the Canadian authorities to send th Consulate General a copy of the exact oath she had taken.

On March 9, 1981, the Canadian citizenship authorities sent the Consulate General the text of the oath appellant had subscribed. It read as follows:

Declaration of Renunciation and Oath of Allegiance

> 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.
>
> 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 fulfill my duties as a Canadian citizen, so help me God. 3/

3/ Appellant was correct in stating that the Canadian Citizenship Act of 1952 contains no provision requiring an applicant for naturalization to renounce his or her previous nationality it contains only the text of the prescribed oath of allegiance to the British Crown. The requirement for renunciation of one previous nationality was found in paragraph 19(1)(b) of the Canadian Citizenship Regulations in effect in 1972. On April . 1973, the Federal Court of Canada - Trial Division declared section 19(1)(b) of the Regulations to be ultra vires.

After receiving a copy of the oath and statement appellant made in 1972, the Department instructed the Consulate General to ask appellant to reconcile her statement that she did not foreswear allegiance to the United States with the requirement of the Canadian Citizenship Regulations that one do so in 1972.

Appellant did not reply to the letter the Consulate General sent her on April 16, 1981, requesting clarification. She did, however, sign a postal receipt on August 1, 1981, indicating that she had received a copy of the Consulate General's letter of April 16, sent to her in a second communication dated July 28, 1981.

The Consulate General informed the Department on December 2, 1981, that appellant had not replied to its letter of April 16, 1981, and recommended that the certificate of loss of nationality that it had prepared in appellant's name in April 1980 be approved.

The Department approved the certificate on May 20, 1982, approval constituting an administrative determination of loss of nationality from which an appeal may be brought to this Board.

Appellant gave notice of appeal through counsel on April 19, 1983. She concedes that she obtained naturalization in Canada voluntarily but maintains that in performing the allegedly expatriating act she did not intend to relinquish her United States citizenship.

II

Appellant has conceded that she voluntarily obtained naturalization in Canada. The sole issue for determination therefore is whether when she became a Canadian citizen she intended to relinquish her United States citizenship.

The Supreme Court held in Vance v. Terrazas, 444 U.S. 252 (1980) that in order to find loss of nationality, the trier of fact must in the end conclude on all the evidence that the citizen not only voluntarily committed an expatriating act prescribed by the statute but also intended to relinquish citizenship. It is the Government's burden, the Court stated, to establish such intent by a preponderance of the evidence. Under the Court's holding, intent may be ascertained from a person's words or be found as a fair inference from proven conduct.

Intent is to be determined as of the time the allegedly expatriating act was performed. Terrazas v. Haig, 653 F. 2d 285 (1981).

Obtaining naturalization in a foreign state, like performance of the other acts prescribed by the statute may be highly persuasive evidence of an intent to relinquish citizenship, but it is not conclusive evidence of such intent. Vance v. Terrazas, citing Nishikawa v. Dulles, 356 U.S. 129 (1958).

Standing alone, however, making a formal declaration of allegiance to a foreign state is insufficient evidence to show intent. King v. Rogers, 463 F. 2d 1188 (1972); Baker v. Rusk, 296 F. Supp. 1244 (1969).

In the case before the Board, appellant on November 22, 1972, declared her renunciation of allegiance to the United States, took an oath of allegiance to the British Crown and was issued a certificate of Canadian Citizenship. The declaration of renunciation and the oath of allegiance were contained on the same sheet of paper.

Only the oath of allegiance was orally subscribed to: the declaration of renunciation was printed on the form that appellant was required to sign, according to a Canadian official, who also stated that:

> /I/t is highly probable that circumstances surrounding court procedures for a presentation ceremony were not conducive to reading fine print on a form.

Counsel for appellant argues that in light of these facts, "it is reasonable to assume that the Appellant did not know that the form she signed in 1972 contained such a clause." He continues: "Given the fact that the oral oath contained no such renunciation and the Appellant's continued assertion that she did not intentionally sign such a claim" the Department has failed to meet its burden of proof.

Appellant further maintains that she did not foreswear allegiance to the United States and only took the oath of allegiance. She stated:

> At that time /November 22, 1972/, I knew that naturalization as a Canadian might jeopardize my United States citizenship if I appeared in person at the United

> States Consulate and foreswore all loyalty to my native land. There is no way then and there is no way now that I can or will take such an oath because it would be false.

Appellant is unquestionably an educated woman. And the renunciatory declaration and pledge of allegiance to Canada are clear and explicit. It is difficult to believe that appellant did not understand the import of the document to which she appended her signature.

In Terrazas v. Haig, supra, the plaintiff made an analogous declaration of allegiance to Mexico and made an explicit renunciation of his United States nationality. There the court concluded:

> 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.

In an earlier case, Matheson v. United States, 400 F. Supp. 1241 (1975), Aff'd. 532 F. 2d 809 (1976), the court stated:

> an oath expressly renouncing United States citizenship as is required by the 1949 amendment /to the Mexican Law of Nationality and Naturalization/ would leave no room for ambiguity as to the intent of the applicant.

As a United States District Court in California recently held, the taking of an oath which contains both an express affirmation of loyalty to the country where citizenship is sought and an express renunciation of loyalty to the country where citizenship has been maintained "effectively works renunciation of American citizenship because it evinces an intent by the citizen to so renounce." Richards v. Secretary of State, CV80-4150, D.C.C.D. Cal. (1982).

In various questionnaires filled out by appellant in response to requests by the Consulate General, she has maintained consistently her lack of intent to relinquish her United States citizenship.

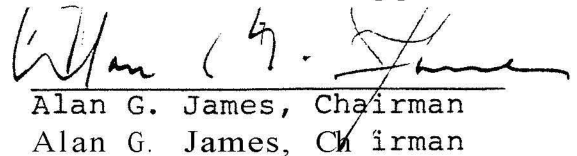
However, when she applied to various graduate schools in 1979 at universities in the United States, she was classified as a "foreign student". She was instructed to apply and be classified as a permanent resident or visa student; she applie for "permanent resident status." Appellant assumes that the reason for "the universities considering me a foreign student was the fact I had applied from a Canadian address." She does not explain why she did not apprise the schools that she was an American citizen or at least a dual national, particularly since when she applied under the foreign student category, she stated that it "then struck me as strange."

Nothing of record indicates that appellant performed any subsequent act that would cast doubt on the meaning of the declaration of allegiance she made to Canada. She accepted the certificate and apparently enjoyed the benefits it would confer on her. According to her own statement, she obtained a Canadian passport. In short, appellant's words and conduct manifest an intention to transfer her allegiance from the United States to Canada. Her oath of allegiance to Canada and declaration of renunciation of United States citizenship placed her in a position where she was no longer able legally to enjoy or perform the rights and duties of a United States citizen.

On all the evidence, we believe that the Department has shown that appellant intended to relinquish her United States citizenship when she made a formal declaration of allegiance to Canada and expressly renounced her United States citizenshi

III

Upon consideration of the foregoing and our review of the entire record, we conclude that appellant expatriated herself on November 22, 1972. Accordingly, we affirm the Department of State's determination of loss of appellant's nationality.



Alan G. James, Chairman

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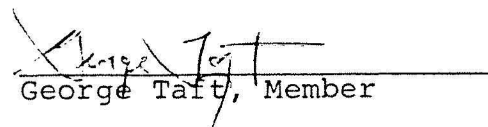
Howard Meyers, Member



George Taft, Member