February 10, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This is an appeal from an administrative determination of the Department of State that appellant, [redacted], expatriated himself on May 7, 1975, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

Appellant's having stated that he voluntarily became a citizen of Canada, the sole issue for decision is whether he obtained naturalization with the intention of relinquishing his United States citizenship. We conclude that appellant lacked the requisite intent to terminate his United States citizenship, Accordingly, we will reverse the Department's holding of loss of his 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 United States citizen by birth at [redacted], on [redacted]. He was educated and worked in Washington State. In 1948 he joined the United States Air Force from which he was honorably discharged in 1952. Thereafter appellant worked variously in Washington and Montana. Around 1960 while working in Montana, appellant states that he became involved in ministry work with the First Community Churches of America. "As the years progressed," he stated, "I became more deeply involved in the Church's ministry." In effect, he became a lay minister.

In pursuit of his ministry, appellant went to British Columbia in 1968. He became a landed immigrant (admitted for permanent residence) and married a Canadian citizen. He apparently worked at a number of jobs wherever his ministry took him. In early 1975 appellant sought full-time employment with the Canadian Postal Service, since, as he alleged, his ministry was performed without compensation and he needed to find gainful employment. After learning that Canadian citizenship was a requisite to such employment, appellant applied for naturalization. He appeared before a judge on May 7, 1975 and took the prescribed oath of allegianc to the British Crown. He was issued a certificate of Canadian citizenship on that date. 2/

2/ Appellant alleges that by the time he obtained Canadian citizenship there were no vacancies in the Postal System, and he had to seek employment elsewhere. He states that he never held any post or employment under the government of any foreig state.

By mid-1981, appellant states, the Church in western Canada where he had been doing his ministerial work had become established, and "the call for my work Beckoned me back to Washington State."

In late 1981 appellant approached the United States Consulate General at Vancouver to ascertain how his wife, a Canadian citizen, might be documented to enter the United States. In the process, appellant's naturalization apparently came to light. As requested by the Consulate General, he completed a questionnaire to assist the Department in determining his citizenship status, After receiving confirmation from the Canadian authorities of appellant's naturalization, the Consulate General asked appellant to complete a second questionnaire which he did in April 1982.

On June 9, 1982, the Consulate General prepared a certificate of loss of nationality in appellant's name, as required by section 358 of the Immigration and Nationality Act. 3/

3/ 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 the nationality of the United States at birth; that he was naturalized as a citizen of Canada upon his own application; and thereby expatriated himself under the provisions of section 349(a) (1) of the Immigration and Nationality Act.

The Department approved the certificate on July 6, 1982, approval being 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 through counsel on June 10, 1983.

Appellant concedes that he acquired Canadian citizenship voluntarily, but contends he lacked the intention of relinquishing his United States citizenship when he performed that act.

II

Inasmuch as appellant has conceded that he voluntarily obtained naturalization in Canada, the sole issue for determination is whether when he became a Canadian citizen he intended to relinquish his 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 fntent 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 done. 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).

There is no evidence of appellant's intent contemporaneous with his performance in 1975 of the act in question. He first raised the issue of intent in the citizenship questionnaire he completed in December 1981. Therein he stated:

> I did not think at any time that this /obtaining naturalization in Canada/ would affect my U.S. citizenship. I would never intend to jeopardize my U.S. citizenship.

In his various submissions appellant contended that he had become a Canadian citizen for a combination of reasons: because his wife **was** a Canadian citizen; in order to qualify for employment in the Canadian Postal System at a time when he needed work since **his** ministry was performed without compensation; and because:

> ...Canadian citizenship would make my travel in Canada easier, as travel was a necessary part of my ministry. Finally, I felt Canadian citizenship would provide me with greater credibility in performing my ministry work, as people would see me as 'one of them' and not a fly-by-night evangelist from the United States seeking nothing more than money.

Appellant was confident, that although he had not sought official advice about the implications of Canadian naturalization for his United States citizenship, he would not lose his United States nationality unless he executed a document "renouncing or affirmatively relinquishing my U.S. citizenship."

The Department contends that appellant's intent is shown by the fact that he was a permanent resident of Canada, was employed there and married to a Canadian citizen. He never visited a U.S. consular establishment to seek official information about the implications of naturalization; only six years after becoming a Canadian citizen did he do so. The Department further argues that he last voted in the United States in 1952; did not file United States income tax returns **when** he **was** in Canada; did not register his children as United States citizens.

When he decided in 1981 to return to the United States "he must have had some doubts about his United States citizenship."

Naturalization in a forefgn state is an act inconsistent with United States citizenship and may suggest an intention to transfer allegiance to that state. Standing alone, however, obtaining foreign citizenship is insufficient to prove intent, King v. Rogers, 463 F. 2d 1188 (1972).

Appellant took a simple oath of allegiance to the British Crown; no declaration of renunciation of previous nationality was required or made, according to the Canadian citizenship authorities, As a U.S. District Court in California recently observed, affirmation of loyalty to the country where citizenship is sought, absent a declaration of renunciation of one's former nationality, leaves "ambiguous the intent of the utterer regarding his present nationality." Richards v. Secretary of State, CV80-4150, D.C. C.D. Cal. (1982).

Appellant married a Canadian citizen and pursued his calling as a lay minister in Canada where he had allegedly been drawn by the needs of the Canadian branch of the First Community Churches of America. These are certainly legitimate reasons for residence, even long residence, abroad within the meaning of the Supreme Court's decision in Schneider v. ~~Rusk~~, 377 U.S. 163 (1964). There the Court stated that: "Living abroad whether the citizen Be naturalized or native born, is no badge of lack of allegiance and in no way evidences a voluntary renunciation of nationality and allegiance. It may be compelled by family, business or other legitimate reasons."

Appellant was incautious not to have sought official advice about the effect of naturalization on his United States citizenship before acting. He may not excuse his lack of prudence by self-serving statements that he had checked with unnamed officials at the U.S.-Canadian border and friends and acquaintances, or that he always assumed that absent explicit renunciation of his United States citizenship, no adverse consequences would flow from his obtaining Canadian citizenship.

Still, an intent to give up his United States citizenship is not the only inference that could reasonably be drawn from such absence of reasonable care on appellant's part.

Surveying the entire record we find no act or statement by appellant that unmistakably manifests an intention to dives

himself of United States citizenship and transfer his exclusive allegiance to Canada. Under even the most adverse interpretation of his course of conduct over the fifteen years he has lived in Canada, his intent regarding relinquishment of his United States citizenship remains ambiguous. It is insufficiently probative of an intention to terminate his American nationality. The Department has failed to sustain Its burden of proving that appellant intended to relinquish his United States citizenship when he obtained naturalization in Canada upon his own application.

III

On consideration of the foregoing and our review of the entire record before us, we conclude that appellant did not expatriate himself. Accordingly, we reverse the Department's determination of loss of nationality.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

James G. Sampas, Member