July 12, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] J[redacted] C[redacted]

This case is before the Board of Appellate Review on an appeal brought by M[redacted] J[redacted] C[redacted] from an administrative determination of the Department of State that she expatriated herself on June 27, 1969, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

Inasmuch as appellant has conceded that she became a Canadian citizen voluntarily, the sole issue to be determined is whether she obtained Canadian citizenship with the intention of relinquishing her United States citizenship.

It is our conclusion that appellant's voluntary performance of the proscribed act was accompanied by an intention to terminate her United States citizenship. Accordingly, we will affirm the Department's holding of loss of her nationality.

I

Appellant became a citizen of the United States by birth at [redacted] In 1952, when appellant was eleven years old, she was taken by her parents to Canada where she has since resided.

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, . . .

In February 1969 appellant married a South African citizen who had been admitted to permanent residence in Canada. Shortly after their marriage appellant and her husband decided to make an extensive trip abroad. Appellant, who was then employed as a nurse/receptionist/bookkeeper in a Doctor's office, states that she applied for a passport at the United States Consulate General at Vancouver in March or April 1969, and was told that she needed "many things."

As she explained at the hearing that was held on February 22, 1984:

> I needed a birth certificate, my father's birth certificate, and proof of entry into Canada in 1952....And I had access to none of these things. My father was travelling in Europe....And they told me it would take some time for me to get all the material I would need gathered together. So when we realized how long it would be, we wouldn't be able to take the trip we planned, they suggested, or I decided, to apply for a Canadian passport because I had lived in Canada so long. 2/

In order to obtain a Canadian passport, appellant was, of course, required to obtain Canadian citizenship. In April 1969 she applied to be naturalized. On June 27, 1969, she became a Canadian citizen after taking the prescribed oath of allegiance to the British Crown and, as required by the Canadian Regulatio

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2/ Transcript of Proceedings In The Matter Of M[redacted] J[redacted] C[redacted], Board of Appellate Review, February 22, 1984, (hereafter referred to as "TR"). 20-21.

then in force, declaring that she renounced allegiance to any foreign state of which she might be a citizen. 3/

After becoming a Canadian citizen appellant obtained a Canadian passport. She has stated that she never held a United States passport.

Twelve years later, in the Fall of 1981, appellant made inquiries at the United States Consulate General at Vancouver to clarify her citizenship status. In response to the

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3/ There is no copy in the record of the text of appellant's oath of allegiance and declaration of renunciation of any other allegiance. Appellant, however, stipulated at the hearing through her counsel (TR 67-69) that she took an oath and made a renunciatory declaration. The Board takes administrative notice that the prescribed declaration and oath required of applicants for naturalization in Canada in 1969 read as follows:

> 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 fulfil my duties as a Canadian citizen, so help me God.

On April 3, 1973, the Federal Court of Canada declared ultra vires section 19(1)(b) of the Canadian Citizenship Regulations which required that an applicant for naturalization make the aforesaid renunciatory declaration.

Consulate General's inquiry, Canadian authorities confirmed that appellant had been naturalized in 1969. Thereupon the Consulate General wrote to appellant, informing her that she might have expatriated herself. As requested by the Consulate General, appellant completed a questionnaire in December 1981 to facilitate the determination of her citizenship status. In the questionnaire appellant explained the circumstances under which she had sought Canadian naturalization as follows:

> I voluntarily appeared before a citizenship court for the sole purpose of obtaining a passport as I was recently married and planned to travel abroad. I had been living in Canada for several years with my parents who advised me that it would be easier to obtain a passport in Vancouver than write to New York for details on my birth certificate and then apply for my US citizenship.

It appears that sometime thereafter appellant was interviewed by a consular officer to whom she explained the circumstances under which she obtained naturalization.

On April 27, 1982, the consular officer prepared a certificate of loss of nationality in appellant's name, in compliance with the provisions of section 358 of the Immigration and Nationality Act. 4/

4/ 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 American nationality by birth in the United States; that she obtained naturalization in Canada upon her own application; and concluded that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Consular officer forwarded the certificate of loss of nationality to the Department under cover of a memorandum that stated in pertinent part as follows:

> She claims in the form "Information for Determining Citizenship" that she had no idea she would lose her U.S. citizenship.
>
> Mrs. C[redacted] has never voted in the U.S. or filed with the IRS. She no longer has any U.S. citizen immediate relatives. She informed the consular officer that she enquired at this post about acquiring a U.S. passport in 1969 because she wanted to travel abroad. She stated that it "would have taken ages to do", because of the need to obtain proper documents, so she went ahead and naturalized as a Canadian as a fast way to get a passport. She stated in contradiction to her written informaton, "I guess I must have been aware" of losing U.S. citizenship. She states she wishes now that she had kept it. She has several times identified herself as a naturalized Canadian upon entry to the U.S.
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> In the opinion of the Consular officer Mrs. C[redacted] has presented no evidence to establish that it was not her intent to relinquish her U.S. citizenship when she naturalized as a Canadian citizen. Mrs. C[redacted] appears to have been aware of the probable effect of her Canadian naturalization on her U.S. citizenship. Her interest in her U.S. citizenship appears to be a relatively recent development. Consular officer recommends that the Certificate of Loss of Citizenship for M[redacted] J[redacted] C[redacted] be approved.

The Department approved the certificate on June 3, 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 through counsel on April 13, 1983, and requested an oral hearing which was held on February 22, 1984.

II

Appellant's having conceded that she voluntarily obtained naturalization in Canada, the dispositive issue in this case is whether she performed the statutory expatriating act with the intention of relinquishing her United States citizenship.

Our determination of that issue is guided by the rule in Vance v. Terrazas. 5/ Therein, the Supreme Court held that even though a party fails to prove that he or she performed an expatriating act involuntarily, the question remains whether on all the evidence the Govenment has satisfied its burden of proof that the act was done with the requisite intent to relinquish citizenship. With respect to the standard of proof required of the Government, the Court said that under section 349(c) of the Immigration and Nationality Act 6/, the Govern-

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5/ 444 U.S. 252 (1980).

6/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481 provides in pertinent part:

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 shall be upon the person or party claiming that such act occurred, to establish such claim by a preponderance of the evidence.

ment must establish intent by a preponderance of the evidence. Intent to surrender citizenship, the Court further said, may be ascertained from a person's words or found as fair inference from proven conduct. Citing its decision in Nishikawa v. Dulles, 7/ the Court noted that obtaining naturalization in a foreign state, like performance of the other enumerated expatriating acts, may be highly persuasive evidence of an intent to relinquish United States citizenship.

It is well settled that intent is to be determined as of the time the act of expatriation was done. 8/ Evidence of intent contemporaneous with the performance of the act is, of course, most probative of the party's intentions regarding United States citizenship. However, a United States Court of Appeals has said that "a party's specific intent to relinquish his citizenship rarely will be established by direct evidence. But circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship." 9/

The Department argues that appellant's intent to relinquish her United States citizenship in 1969 when she obtained Canadian naturalization is demonstrated by the only contemporary statement appellant made, to wit, her oath of allegiance to the British Crown which included a declaration of renunciation of all allegiance and fidelity to any foreign sovereign or government. As the Department stated in its brief:

7/ 356 U.S. 129 (1958).

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

9/ Id., 288.

> Not only the oath itself, but the context in which it was sworn, leaves little room for doubt that the significance of the act of naturalization was to abandon her United States citizenship. There is nothing obscure or esoteric in the words of the oath which could not be understood by a lay-person, and the argument that Mrs. C[redacted] did not understand the legal consequences or her alternatives is difficult to credit.

Because there is no record of appellant's consulting any United States official around the time of her naturalization, there is no record of any contemporary statements of hers that would contradict the meaning of the oath and declaration of renunciation of other allegiance.

Furthermore, the consular officer who interviewed appellant in 1982 reported to the Department that appellant told her that she guessed she must have been aware of losing her citizenship; appellant therefore, the Department argues, performed the expatriating act knowingly and understandingly.

The Department also contends that naturalization in Canada was unlikely to have been a time-saving step for appellant to acquire travel documentation in 1969; obtaining her birth certificate, which would have been required either for issuance of a U.S. passport or to acquire Canadian citizenship, would probably have taken the same length of time. Therefore, the Department asserts, naturalization must have been done for another reason, "and the evidence is convincing that the reason was to transfer her allegiance from the United States to Canada."

Moreover, appellant's intent to relinquish her United Stat citizenship, the Department contends, is demonstrated by the fact that from 1969 to 1981 appellant made no effort to associate herself with United States citizenship. She identified herself as a Canadian when she crossed the border to the United States; she did not undertake any of the duties or rights of a United States citizen. The fair inference to be drawn from such conduct, the Department concludes, is that appellant intended to relinquish her United States citizenship, and was satisfied at having done so.

At the hearing counsel for appellant objected to the inclusion in the record of the memorandum the consular officer wrote the Department in May 1982 about appellant's case, and to the affidavit the same consular officer executed in October 1983. 10/ Appellant's counsel said:

> Mrs. Mackie /the consular officer who handled appellant's case in 1981-82/, we believe, ought to have been subject to cross-examination after the matters. Her statements as to her general practices in the affidavit are certainly subject to question, as indeed are her quotes which could or could not have been taken out of context. 11/

At the conclusion of the hearing the Chairman ruled on counsel's objections, saying in part that:

> We are unable to agree...They /the two documents objected to/ should remain in the record....But to the extent that they purport to state fact, the Board notes that the record and the testimony we have heard here today cover those facts, and the Board has had an opportunity to question the parties on them.
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> To the extent that they express opinions or conclusions of law, the Board notes that it has not had an opportunity to assess the credibility and the recollection of the Consul involved, and we will take that fact into account as we review the record, the transcript....before reaching our decision. 12/

10/ In her affidavit, the consular officer stated that she could not recall appellant's case. She noted, however, that it was her practice to interview all persons who were found to have performed an expatriating act, and she was sure she would have interviewed appellant. She further stated that she would not have quoted appellant's words had she not interviewed appellant.

11/ TR 48.

12/ TR 75-76.

Counsel for appellant declined the Department's offer to put written interrogatories from appellant to the Consul, requesting that the Board reach a decision not hastily but as soon as possible.

We do not agree with the Department that because it was unlikely appellant could have obtained a Canadian passport via naturalization more quickly than she could have obtained an American passport, one can draw a fair inference that she intended to relinquish her United States citizenship. It would not be unreasonable to assume that appellant sincerely if mistakenly perceived the American passport application process to be protracted and complicated and therefore simply took what seemed to her to be the easy way out of her dilemma of how to obtain travel documentation quickly.

Nor are we prepared to assign significant weight to the statement she allegedly made to the Consul in 1982 to the effect that: "I guess I must have been aware" of losing U.S. citizenship. That statement was made thirteen years after appellant obtained Canadian naturalization, and in the circumstances can be no more than marginal evidence of an intent to give up United States citizenship.

The salient, undisputed fact is that appellant obtained naturalization in Canada and as a prerequisite thereto declared that she renounced "all allegiance and fidelity" to any foreign sovereign or state.

The case law is absolutely clear about the legal consequenc of performing an act prescribed by statute as expatriating and simultaneously renouncing United States citizenship - either by name or by clear implication that the United States is the count allegiance to which is forsworn.

The courts have held that such actions by a United States citizen effectively work expatriation, for they show unmistakably an intention to surrender United States citizenship. As the court said in Terrazas v. Haig, supra:

> 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 Plaintiff intended to relinquish his citizenship.

In the recent case of Richards v. Secretary of State, CV80-4150, slip. op. (C.D. Cal. 1982) plaintiff took an oath of allegiance to Canada in 1971 identical to the one appellant here took in 1969. He also declared, as did she, that he "renounced all allegiance and fidelity to any foreign sovereign or state". The court held that by making such declaration, plaintiff intended to relinquish his United States citizenship. As the court said, taking an oath that contains both an express affirmation of loyalty to a country where citizenship is sought and an express renunciation of loyalty to the country where citizenship is maintained, "effectively works renunciation of American citizenship because it evinces an intent by the citizen to so renounce." At 5.

Although appellant concedes that she signed a document containing a declaration of renunciation of previous allegiance and an oath of allegiance to the British Crown, she maintains that she did not understand that making such declaration and swearing an oath could cause the loss of her United States citizenship. 13/ In brief, she contends that she did not knowingly and understandingly perform an act of expatriation with the intention of relinquishing her United States citizenship.

The preponderance of the evidence shows that appellant performed the act in question knowingly and understandingly At the time she obtained naturalization in Canada she was 28 years old. She was employed in a responsible position in a doctor's office. She stated at the hearing that she was accustomed to sign documents in her own right after her marriage, and that she tried to read through papers she signed. 14/ Furthermore, at the hearing she indicated that she had an inkling at the naturalization ceremony that something was wrong, that the words she signed might have significance for her United States citizenship. 15/ At the time she took the oath, "the first sentence worried me that I would be giving it /United States citizenship/ up." 16/

13/ TR 27.

14/ TR 44.

15/ TR 34.

16/ TR 37.

In 1969 appellant obtained naturalization in Canada and obtained a Canadian passport. In 1981 she went to the Consulate General at Vancouver to clarify her United States citizenship status. There is no evidence of record that in the intervening twelve years appellant asserted any claim to United States citizenship or performed any act that showed her undiminished allegiance to the United States. In brief, nothing in the pattern of her conduct after naturalization casts doubt on her intention regarding United States citizenship in 1969 when she declared that she renounced all her allegiance and fidelity to any foreign sovereign or state.

At the hearing, she said that after her naturalization she never informed the United States Government that she no longer considered herself to be a United States citizen; nor did she ever publicly denounce the United States Government. 1

We do not challenge these statements, but we fail to see how not doing certain negative things after the event supports appellant's claim that she lacked the intention in 1969 to relinquish her United States citizenship.

At the hearing she also stated that from 1969 to 1981 she had not attempted to confirm that she still retained United States citizenship because she was never in doubt that she remained a citizen. "I never considered myself not to be an American." 18/

She explained that she had thought about clarifying her status some years earlier but had put the matter off because of other concerns and because "I'm a procrastinator....There were just other things going on....I never thought there would be a problem." 19/ In 1974 she had, she said, been advised by a friend to go to the United States Consulate General and clarify her situation, and there would be no problem. 20/

In 1981 she had gone to the Consulate General at Vancouver to assist her housekeeper to obtain a visa to accompany

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17/ TR 28-29.

18/ TR 35.

19/ TR 42.

20/ TR 43.

appellant and her family to Hawaii, and decided that she might take advantage of that visit to clarify her citizenship status at that time. 21/

We need not speculate whether appellant was so assured for twelve years that she had continued to be a United States citizen that she saw no urgency in clarifying the matter, or whether such dilatory conduct indicates that she intended to surrender her citizenship in 1969 and only years later regretted her action and wished to undo it. The fact remains that for twelve years she did nothing palpable to maintain citizenship of the United States. And her latter day statments that she never ceased to consider herself a United States citizen after obtaining Canadian citizenship are insufficient to vitiate her categoric repudiation of United States citizenship in 1969.

Surveying the entire record and without assigning weight to any disputed evidence before us, we conclude that appellant voluntarily obtained naturalization in Canada, knowing that as a condition precedent to the grant thereof she would have to terminate her United States citizenship; and that by subscribing to a declaration of renunciation of "all allegiance and fidelity to any foreign sovereign or state," she manifested an intention to relinquish United States citizenship. Nothing in appellant's conduct between naturalization and her inquiry about her citizenship status many years later raises any material doubt in our minds about the intention she evidenced in 1969 to relinquish United States citizenship.

21/ TR 35.

III

Upon consideration of the foregoing, it is our judgment that appellant voluntarily performed a valid act of expatriation with an intent to relinquish her United States citizenship. Accordingly, the Department's holding of loss of appellant's nationality is hereby affirmed.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Mary E. Hoinkes, Member