

September 25, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A [REDACTED] K [REDACTED] S [REDACTED]

This case comes to the Board of Appellate Review on an appeal taken by A [REDACTED] K [REDACTED] S [REDACTED] from an administrative determination of the Department of State that she expatriated herself on July 7, 1983 under the provisions of section 349(a) (1) of the Immigration and Nationality Act by obtaining naturalization in Norway upon her own application. 1/

Appellant has conceded that she applied for naturalization voluntarily. The sole issue for consideration and determination therefore is whether she became a Norwegian citizen with the intention of relinquishing her United States citizenship. It is our conclusion that the Department has failed to carry its burden of proving that appellant intended to terminate her United States nationality. Accordingly, the Department's holding of loss of appellant's citizenship will be reversed..

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1/ Section 349(a) (1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a) (1), 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, . . .

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## I

Appellant was born at [REDACTED] and so became a United States citizen from birth. She lived in the United States until age two when she was taken to Norway.

Appellant married a Norwegian citizen in 1982. On June 11, 1982 the Embassy at Oslo issued appellant a passport.

On September 8, 1982 appellant applied to be naturalized under section 6 of the Norwegian Nationality Act of December 8, 1950. 2/ On her application appellant stated the following reasons for wishing to become a Norwegian citizen:

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2/ The Norwegian Nationality Act of December 8, 1950, as enacted, required applicants for naturalization to take an oath of allegiance to the Constitution. That requirement was abolished in 1976.

When I was only two years old I came to Norway and have lived here since then. My father was originally a Norwegian citizen (now American); my mother is a Norwegian citizen (both are residents of Norway).

Then, I have married a Norwegian citizen. And I see no reason for leaving Norway. 3/

Appellant was granted Norwegian citizenship on July 7, 1983. On the same day the Ministry of Justice informed the United States Embassy at Oslo that appellant had acquired Norwegian citizenship. Appellant states that immediately after she learned that she had been granted Norwegian citizenship, the Embassy wrote to her. She added: "I had to send in my American passport to the Embassy."

Presumably in accordance with standard procedure, the Embassy wrote to appellant to inform her that she might have expatriated herself, and enclosed a questionnaire for her to complete entitled "Information for Determining U.S. Citizenship." There is, however, no copy of a letter to appellant from the Embassy in the record. Appellant completed the form on August 1st and mailed it to the Embassy.

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3/ English translation, Division of Language Services, Department of State, LS no. 112012, Norwegian (1984).

In a letter to the Board of December 14, 1983 appellant gave the following additional reasons for **applying** for Norwegian citizenship:

When we were on vacation last summer we traveled through Sweden and Germany. When we were to enter into Germany it looked as if the border guard inspected my passport very carefully. Whilst he only looked briefly at the passports of my family on my husband's side, all of which are Norwegian. So I started to believe that there was something wrong with my passport, and that I would not get into Germany. And I started to be afraid that the vacation might be ruined. When we were on our way back to Norway it was in Sweden that they stopped me. Then there was no end to the questions directed to me because I was an American citizen....

So when I came to Norway again after the vacation I applied for Norwegian citizenship, without giving much thought to the consequences, **And** it was on account of all the questions about my passport and citizenship at the borders, which made me think that I just as well could apply for Norwegian citizenship.

English translation, Division of Language Services, Department of State, LS no. 111909, Norwegian (1984).

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In compliance with the provision of section 358, the Embassy prepared a certificate of loss of nationality in appellant's name on August 29, 1983. 4/ The Embassy certified that appellant acquired United States nationality at birth; that she obtained naturalization in Norway 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.

In forwarding the certificate to the Department, the Embassy submitted no comment on appellant's naturalization; it merely attached to the certificate the citizenship questionnaire she had executed on August 1, 1983 and the statement from the Norwegian Ministry of Justice informing the Embassy of appellant's naturalization.

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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.

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The Department approved the certificate on September 19, 1983 approval being an administrative holding of loss of nationality from which a properly and timely filed appeal may be taken to this Board. Appellant entered the appeal by letter to the Board dated October 26, 1983. While conceding that she acted voluntarily in seeking Norwegian citizenship, appellant stated:

The reason why I am sending this appeal-is all my feelings loosing /sic/ my American citizenship. When I stood with the certificate in my hands, stating I have been a norwegian /sic/ citizen, I understood how important the American citizenship was to me. Now when I maybe are /sic/ going to loos /sic/ it I understand how important it is to keep my born citizenship.

So now I am sending an appeal trying to get my American citizenship back again, because I feel that something very, very important is being taken away from me. After all I still want to be an American citizen. 5/

## II

Although section 349(a)(1) of the Immigration and Nationality Act prescribes that one shall lose United States nationality by obtaining naturalization in a foreign state, the Supreme Court has held that nationality shall not be so lost unless the expatriative act was done voluntarily and with the intention of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980).

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5/ Appellant wrote this letter in English, explaining: "This appeal is difficult for me to write, because I only write and read norwegian /sic/."

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There is no dispute that appellant obtained naturalization in Norway upon her own application and thus brought herself within the purview of the Act. And she concedes that she acted voluntarily. The single issue to be determined therefore is whether appellant's naturalization was accompanied by an intent to surrender United States citizenship.

Under the rule in Terrazas, the Government must prove an intent to relinquish citizenship by a preponderance of the evidence. Intent may be proved, the Supreme Court held, by a person's words or found as a fair inference from proven conduct. And it is settled that the intent to be proved is a person's intent at the time the expatriative act was done. Terrazas v. Haig, 653 F. 2d 285 (1982).

Obtaining naturalization in a foreign state may be highly persuasive evidence of an intent to relinquish citizenship, but is is not conclusive evidence of such an intent. 6/

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6/ In Terrazas, the Court said:

...it would be inconsistent with Afroyim to treat the expatriating acts specified in sec. 1481 (a) as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen. "Of course," any of the specified acts "may be highly persuasive evidence in the particular case of a purpose to abandon citizenship." Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (Black, J., concurring), At 261.

When we look beyond appellant's act of applying for and obtaining Norwegian citizenship we note that there is no contemporary evidence of her intent to relinquish citizenship: as stated above (note 2), she took no oath of allegiance to Norway. On the other hand, there is some affirmative evidence of intent to retain her citizenship: three months before applying for Norwegian citizenship appellant obtained a United States passport from the Embassy at Oslo. Further, she initiated the appeal three weeks after she received notice of the Department's holding of loss of her citizenship.

The Department submits the following arguments in support of its contention that appellant intended to relinquish her United States citizenship.

When it was discovered that Mrs. S [REDACTED] had naturalized in Norway, the Embassy sent her a questionnaire for determining her citizenship which she completed on August 1, 1983. Her replies indicated that when she naturalized, her frame of mind was intent upon relinquishing her United States citizenship. Although she does not write in English, it is evident that she either understands it or had the questions explained to her. In question 9, which includes the Statement of Voluntary Relinquishment of U.S. Nationality, she signed the statement indicating that she naturalized in Norway, took an oath of allegiance and renounced before a consul at the Embassy (by which last she presumably means her reply by questionnaire) voluntarily and with the intention of relinquishing her nationality.

In later questions, in the same questionnaire, she indicates that she always knew she had United States citizenship, that she naturalized voluntarily and she sic knew she was giving up her United States citizenship when she naturalized. She states that she has lived her whole life in Norway, that all her ties are there and her whole family is in Norway. There is no indication that she had any other feeling about U.S. citizenship than her intent to relinquish it. Even in her letter of appeal, she indicated regret and sorrow at the change of status, but she does not state that she did not at the time of naturalizing intend to maintain her United States citizenship. It is clear

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that her present state of mind represents a change of heart from that which she had when she naturalized.

For the reasons set out below, the Board is not persuaded by the Department's reasoning.

Close examination of the questionnaire suggests that appellant may have found it confusing and did not fully understand its import.

She answered the questions in Norwegian, explaining at the end of the form that she had been assisted in preparing it "because my English is not too good."

To one item appellant responded as follows:

- 7. Have you performed any of the following acts?** Please circle Yes or No
- a. Been naturalized as a citizen of a foreign state? ☒ Yes ☐ No
  - b. Taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state? ☒ Yes ☐ No
  - c. Served in the armed forces of a foreign state? ☐ Yes ☒ No
  - d. Accepted, served in, or performed the duties of any office, post or employment under the government of a foreign state? ☐ Yes ☒ No
  - e. Renounced U.S. nationality at a U.S. Consulate or Embassy? ☒ Yes ☐ NO

She had not taken an oath of allegiance to Norway, nor had she formally renounced U.S. nationality. Perhaps in light of the statement she signed in item 9 (see below) appellant believed she **had** renounced United States nationality, but the reference in item 7 is to formal renunciation under section 349(a) (5) of the Act.



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Appellant addressed item 9 as follows:

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9. You should be aware that under United States law, a citizen who has performed any of the acts specified in item 7 with the intention of relinquishing United States citizenship, may have thereby lost United States citizenship. If you voluntarily performed an act specified in item 7 with the intention of relinquishing United States citizenship, you may sign the statement below and return this form to us, and we will prepare the necessary forms to document your loss of U.S. citizenship. If you believe that expatriation has not occurred, either because the act you performed was not voluntary or because you did not intend to relinquish U.S. citizenship, you should skip to item 10, and complete the remainder of this form.

STATEMENT OF VOLUNTARY RELINQUISHMENT OF U.S. NATIONALITY

"I, [REDACTED] performed the act of expatriation indicated in item 7 (a, b, c, d, e,) voluntarily and with the intention of relinquishing my U.S. nationality;"

Signature A [REDACTED] S [REDACTED] Date 1/8-83

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She did not sign her name in the correct place but merely printed it. It also appears that she wrote A,D,E with reference to the acts she circled in item 7. If she inserted the letter "D" instead of "B," doing so would be a sign of confusion.

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Appellant's evident lack of understanding of the questionnaire is further illustrated by her unresponsive answer to item 12.

12. a. Describe as specifically as you can the act or acts you performed as indicated in item 7 above. For example, by what means or in what sort of proceeding were you naturalized as a citizen of a foreign state? What was the nature of the oath you took? In what foreign army did you serve? What rank did you hold? What employment did you have and what were your responsibilities? Indicate precisely when and where the act was performed. HAD BORN IN NORGE SIDEA - G VAF  
IN 1911 (IN 1911) - MED - NORGE MAN

(HAVE LIVED IN NORWAY SINCE I WAS  
2 YEARS. NOW MARRIED TO A NORWEGIAN MAN)

Appellant answered all the questions in blue ink. Someone translated her answers into English, writing in red ink or pencil. The record does not enlighten us on the identity of that person - a friend of appellant, an Embassy official or employee.

Our doubts about appellant's comprehension of the questionnaire are compounded by the fact that there is no copy of the letter the Embassy may be presumed to have sent to appellant enclosing the questionnaire. Did the letter spell out the purpose of the questionnaire, stressing the issues for decision to determine her citizenship status, i.e., the voluntariness or her act and her intent with respect to relinquishment of United States citizenship? Or, the other hand, was it perfunctory, giving appellant little insight into the critical issue of intent? Was it written in English or Norwegian?

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The Board considers it not unreasonable to ask why the Embassy did not pursue the issue of appellant's intent more thoroughly after receiving an obviously less than precisely executed questionnaire. At that time appellant was 22 years of age; her English clearly shaky. To have presumed that she might not have fully grasped either the significance of the questionnaire or the importance of addressing the issue of intent would hardly have been unwarranted. Instead, the Embassy forwarded the certificate of loss of nationality to the Department supported only by appellant's questionnaire and a statement from the Norwegian authorities that appellant had obtained Norwegian citizenship.

The certificate arrived in the Department on September 16, 1983. It was approved three days later on September 19th. There is nothing of record to show that the Department made a deliberate evaluation of the scant evidence presented. The Board is of the view that the Department should have deferred acting on the certificate until it had obtained more information about her intent from appellant.

Superficially, it would appear that appellant voluntarily obtained naturalization in Norway and intended to relinquish United States citizenship. That is the conclusion both the Embassy and the Department summarily reached. More reflection, however, might have persuaded both offices to probe more deeply. The obligation of both the Embassy and the Department to do so is mandated by the Department's own guidelines.

The Foreign Affairs Manual prescribes the following procedures for processing cases involving possible loss of nationality by foreign naturalization,

b. Processing Types of Cases in  
Relation to the Act of  
Expatriation Performed

(1) In the Attorney General's Statement of Interpretation (1969) /42 Op. Atty. Gen. 397 (1969)/ in the Afroyim case /Afroyim v. Rusk, 387 U.S. 253 (1967)/, and the guidelines agreed to between the Departments of State and Justice, it was stated that the following statutory acts of expatriation constitute "highly persuasive evidence of intent to relinquish United States citizenship:"

(a) Naturalization on one's own application ~~on or~~ after age 21; \*

{\*) Revision.

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(b) Taking a "meaningful" oath of allegiance to a foreign state, or a political subdivision thereof;

(c) Voluntary enlistment in the armed forces of a government engaged in hostilities against the U.S.; or

(d) Service in an "important political post" in the government of a foreign state.

Each of these cases ~~must be~~ fully developed in detail, particularly the issue of "intent" (see section 224.20 <sup>(c)</sup>, Procedures).

8 FAM 224.20 (b) (1) TL: CP 40, 3/21/77.

Following the Supreme Court's decision in Terrazas, the Department sent a circular instruction to all diplomatic ~~and consular~~ posts that stated in part **as** follows:

The Terrazas opinion does not require a major change in the Department's handling of loss of nationality cases. Indeed, the Supreme Court cited the Foreign Affairs Manual **as** evidence of "a position on intent quite similar to that adopted" by the Court. We continue to believe that 8 FAM 224.20, Procedures, provides an appropriate and efficient method **of** processing loss of nationality cases. With respect to the cases described in 8 FAM 224.20 (b)(2), Procedures, it remains true, as stated there, that "the ability of the U.S. Government to sustain its burden to prove intent to relinquish U.S. citizenship by a preponderance of the evidence is most unlikely in all but the most clear-cut cases."...

With respect to the cases described in 8 FAM **224.20** (b) (1), Procedures, the question of intent is very much in issue, and the facts will have to be brought out in considerable detail. These cases should continue to be processed as provided in 8 FAM 224.20 (c) (1), Procedures.

We have concluded, however, that a revision of 8 FAM 220 is warranted to streamline its

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provisions, to emphasize the importance of the citizens's intent, and to take account of statutory changes since the last revision. Pending the revision, we offer the following guidelines in adjudicating the issue of intent in loss of nationality cases...Circular Airgram 1767, August 27, 1980.

The Embassy neither "fully" developed appellant's case nor did it do so "in detail;" and the Department routinely approved the Embassy's action.

Where such a vital right is at stake the Board is not prepared, as the Department would have us do here, to accept a scanty evidentiary record as a sufficient basis to confirm the holding of **loss** of appellant's nationality. Reaching a fair and objective decision on the issue of an appellant's intent is often difficult enough when the record has been fully developed and ample evidence has been presented to the Board to enable it to make a reasoned judgment about a person's intent. That is not the situation here. For these reasons we are not persuaded that the Department has discharged its responsibility to prove by a preponderance of the evidence that **this** appellant intended to surrender her United States citizenship when she applied for an obtained the citizenship of Norway.

### III

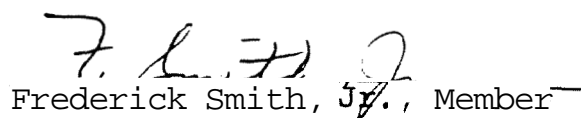
Upon consideration of the foregoing, the Board concludes that appellant did not expatriate herself. The determination of the Department that she did so is accordingly hereby reversed.



Alan G. James, Chairman



James G. James, Member



Frederick Smith, Jr., Member