December 5, 1984 248

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: P[redacted] W[redacted] P[redacted]

This case is before the Board of Appellate Review on an appeal taken by P[redacted] W[redacted] P[redacted] from an administrative determination of the Department of State that he expatriated himself on February 1, 1978 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Australia upon his own application. 1/

The Board must decide two issues: (1) whether appellant voluntarily obtained naturalization in Australia; and (2) if he did so, whether he intended to relinquish his United States citizenship. It is our conclusion that he obtained naturalization of his own volition with an intent to surrender his United States citizenship. Accordingly, we will affirm the Department's determination of loss of his United States nationality.

I

Appellant became a citizen of the United States by birth at [redacted] According to his own statement he married an Australian citizen in 1977. After discussing where to live, they decided to go to Australia where, according to appellant, his wife had been employed by the Australian Government for a number of years. Appellant arrived in Sydney in September 1977, travelling on a United States passport issued in August 1977.

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), provides in relevant part as follows:

> 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, . . .

Appellant states he applied for naturalization in Australia in September 1977. The record is not clear on whether appellant was interviewed by an officer of the Immigration and Ethnic Affairs Department in connection with his application. The Board notes, however, that it is standard procedure for applicants for naturalization to be interviewed by an officer of the Department of Immigration and Ethnic Affairs. 2/ When the interview is arranged, the applicant is asked to bring his passport and surrender it at that time; it is later sent to the local representatives of the country of the applicant's origin. 3/ Appellant has stated that he surrendered his United States passport to the Australian authorities, presumably when he was interviewed.

On November 22, 1977 the responsible minister signed a certificate of Australian citizenship in appellant's name. 4/ The certificate recited in part as follows:

[redacted]

having applied for a Certificate of Australian Citizenship, having stated the particulars set out on the reverse side of this Certificate, and having satisfied the conditions prescribed by the Australian Citizenship Act 1948 for the grant of such a Certificate:

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2/ Letter from R. Jones, Department of Immigration and Ethnic Affairs, Canberra, to United States Consul, Melbourne, July 28, 1978.

3/ Id.

4/ On appeal, appellant challenged the legality of the issuance to him of a certificate of Australian citizenship so soon after his application, contending that according to Government pamphlets and his in-laws a waiting period of three years is required. In response to an inquiry of the Department of State made through the United States Consulate General at Sydney, the Australian Department of Immigration and Ethnic Affairs informed the Consulate General in October 1983 that it was possible for a person to have been naturalized as an Australian in 1977 within two or three months of application. Although the standard time is about nine months, section 14(8) of the Australian Citizenship Act of 1948-1973 provides for concessions to spouses of Australian citizens, and the time factor involved is at the discretion of the Minister. Telegram from the Consulate General at Sydney to the Department of State, number 4241, October 27, 1983.

> I, the Minister of State for Immigration and Ethnic Affairs, hereby grant this Certificate of Australian Citizenship to the abovenamed applicant who shall be an Australian Citizen as from the date upon which the applicant takes an oath of allegiance or makes an affirmation of allegiance in the manner prescribed by the Australian Citizenship Act 1948.

Appellant has stated that in November 1977 he received a "summons" to appear at a naturalization ceremony on February 1, 1978, and was informed that if he did not attend the ceremony he would never again be considered for Australian citizenship. Appellant further states that the Australian authorities asked him "if I would like to sign an oath of allegiance, printed on a card, enclosed within. I did not."

According to the certificate of Australian citizenship issued to appellant, he swore an oath of allegiance before an official in the manner prescribed by the Australian Citizenship Act of 1948 on February 1, 1978 at the Commonwealth Government Centre Sydney, and on that date became an Australian citizen. The oath of allegiance prescribed by Schedule 2 of the Act reads as follows:

> I, A. B. renouncing all other allegiance, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

Appellant's version of the ceremony may be summarized as follows: When appellant entered the hall, his name was checked against a list; no identification was requested. Applicants were seated and then asked to rise and repeat the oath of allegiance in unison after the presiding official. He did not pronounce the oath, although most present did so. A certificate of naturalization was then handed to him and the ceremony was over.

Appellant's specimen signature appears on the certificate below the particulars relating to him. Appellant maintains

that his signature was transferred from his application for naturalization and affixed by some process to the certificate. 5/

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5/ It would appear that it is Australian practice to transfer the signature of an applicant for naturalization from the application and affix it to the certificate of naturalization. An official of the Department of Immigration and Ethnic Affairs at Sydney informed the United States Consulate General that:

> The oath is taken by the grantee, however, no formal signature is required of him on that occasion. The fact of the oath having been taken is testified by the signature of an eligible dignitary before whom the oath is made by the grantee.
>
> I would like to point out that the signature of the applicant for Citizenship on the application form itself, has the legal force binding on the applicant for both the contents of his declaration and the consequences of his action.

Letter from J. Bray to the Consulate General, July 27, 1984.

Appellant obtained an Australian passport on February 14, 1978.

The Department of Immigration and Ethnic Affairs informed the Consulate General at Sydney on March 10, 1978 that appellant had been granted a certificate of natualization. 6/ Three months later, on June 14, 1978 the Consulate General at Sydney wrote to appellant to inform him that by obtaining naturalization in Australia he might have forfeited his United States nationality. As requested, he completed a short form questionnaire in which he asserted that he had neither obtained naturalization voluntarily nor with the intention of relinquishing United States citizenship. He attached a letter detailing his reasons for seeking Australian citizenship. Appellant wrote an additional letter to the Consulate General on July 27, 1978 concerning his naturalization. Around this time he moved into the consular district of the American Consulate in Brisbane to which office his case was transferred. He requested a visa in his Australian passport to enter the United States on a visit early in September. The Consulate did not issue a visa, but returned his United States passport on September 7, limited to three month's validity.

Meanwhile, the Consulate at Brisbane on August 14, 1978 had prepared a certificate of loss of nationality in appellant's name in compliance with the provisions of section 358 of the

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6/ The Department's communication was addressed to the Embassy of the Federal Republic of Germany and stated that "German passport enclosed." This was certainly a clerical error, for appellant was identified as the naturalized person and his United States passport was either enclosed with the Department's communication or later sent to or requested by the Consulate.

Immigration and Nationality Act. 7/ The Consulate General certified that appellant acquired United States nationality at birth; that he obtained naturalization in Australia upon his own application; and concluded that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

Four years passed between submission of the certificate of loss of appellant's nationality and its approval in November 1982. This period need not be reviewed in detail since the reasons for the delay in the Department's making a final decision in appellant's case are not, in the main, relevant to our disposition of the appeal. It should be noted, however, that after receipt of the certificate of loss of nationality, the Department in September 1978 instructed the Consulate in Brisbane to process appellant's case as a contested loss of nationality matter and to ask him to complete the standard forms for determining United States citizenship. The Department also instructed the Consulate to ask the Department of Immigration and Ethnic Affairs whether appellant had been interviewed prior to his application for naturalization, and if so, whether he had been warned that his naturalization might affect his United States nationality. On April 30, 1979 the Department of Immigration and Ethnic Affairs sent the following letter to the Consulate at Brisbane:

> I refer to your letter of 27th November, 1978 concerning Mr. P[redacted] W[redacted] P[redacted] who became an Australian Citizen at Sydney on the 1st February, 1978 and whether he was informed that Australian Citizenship may affect his U.S. Nationality.

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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 part III of this sub-chapter, 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 question of loss of Citizenship is not normally discussed at the interview for Australian Citizenship unless the matter is raised by the applicant. If this occurs he is informed he should contact the nearest Consulate or Embassy of the country of which he is a citizen. 8/

8/ Compare, however, the letter cited in note 2, supra, wherein the Australian official stated in part as follows:

> Loss of Former Citizenship
>
> At the interview applicants are informed that the acquisition of Australian citizenship might cause the loss of their present citizenship. In addition, applicants are also informed that not all persons who acquire Australian citizenship lose their original nationality and the complexities of dual nationality are discussed....
>
> Applicants are not specifically advised to contact the Embassy or Consulate of their present nationality unless they request information in regard to the laws of that country, i.e. would they lose or retain their present nationality upon acquisition of Australian citizenship.
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> Our pamphlet "How to become an Australian Citizen" does state, however, that persons receiving pensions from the Government of another country, should check with the appropriate authority as to whether they would lose it if they become an Australian citizen....
>
> Renunciation of former citizenship
>
> Applicants for Australian citizenship are informed at the time of interview for citizenship that an applicant for the grant of Australian citizenship is required to renounce all other allegiance and take an oath of allegiance or make an affirmation of allegiance to Her Majesty Elizabeth the Second, Queen of Australia at the citizenship ceremony. Mention of this is also included in the pamphlet "How to become an Australian Citizen"....
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> The first Act relating to naturalization in Australia was assented to on 13 October, 1903. All subsequent Acts provide that applicants for citizenship renounce their former allegiance and take an oath or make an affirmation of allegiance.... It has always been the practice to counsel applicants at the citizenship interview in regard to the implications of the form of words of the oath or affirmation of allegiance.

The Consulate General at Sydney (in whose consular district he was then living) wrote to appellant in December 1980 to request that he complete forms that were enclosed to facilitate determination of his United States citizenship. The Consulate General's letter was returned unclaimed. In April 1981 the Consulate General transferred appellant's file to the Department, on the surmise that he might have left Australia and returned to the United States. In fact, it appears that appellant was living in the United States in 1981 and 1982. He corresponded directly with the Department about his case at that time, and in July 1982 applied for a United States passport at Nashville, Tennessee.

On November 19, 1982 the Department wrote to appellant at Nashville to inform him that the Department had determined that he expatriated himself by obtaining naturalization in Australia. A copy of the approved certificate was forwarded to him on that date. On March 11, 1983 appellant, who was then living in South Africa where he presently resides, entered an appeal from the Department's administrative determination of loss of his United States nationality, in conformity with the regulations applicable to appeals to this Board.

Appellant argues that he was coerced by his wife and her family into obtaining naturalization in Australia and that he had no intention in performing that act of relinquishing his United States citizenship.

II

The statute provides that a national of the United States shall lose his nationality by obtaining naturalization in a foreign state upon his own application. Citizenship shall not be so lost, however, unless it be proved that the proscribed act was performed voluntarily and with the intention of relinquishing United States nationality. Vance v. Terrazas, 444 U.S. 252 (1980).

There is no dispute that appellant here applied for and obtained naturalization in Australia. 9/ The first issue to be addressed therefore is whether appellant obtained Australian citizenship of his own free will.

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9/ As stated in note 4, supra, appellant contended that his naturalization was void because he was granted a certificate of Australian citizenship within a much shorter time than what he understood was the required waiting time. His contention has no foundation, as the Australian authorities have made clear. The Board therefore must conclude that naturalization was properly granted to appellant.

Under law, a person who performs a statutory expatriating act is presumed to have done so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was done against the will of the party concerned. 10/

Appellant contends that his naturalization was involuntary on two grounds: (1) that he was pressured into becoming an Australian citizen by his wife, her family and friends who led him to believe that naturalization was a protracted process and that if, in the end, he decided not to accept Australian citizenship, he could opt out; and (2) that employment opportunities for him in Australia were extremely limited because he was a foreigner.

Neither of these grounds constitutes legal duress.

Under the general rule for determining whether a person has been forced into performing an expatriative act, extraordinary circumstances must have existed that compelled one against his will to perform the proscribed act. Doreau v. Marshall, 170 F. 2d 721 (1948). Here, appellant's circumstances bear none of the hallmarks of the extraordinary. Obviously, he went willingly to Australia with his wife to make a life there. That he was pressured by his wife, her family and friends to seek Australian citizenship does not amount to duress, given the facts of this case, e.g., the record does not show that threats, explicit or veiled, were made to induce him to take that step. He was free as a matter of law to accede to the importunings of his in-laws, or not. Such familial pressure does not rise to the level the courts have held must be present before one may be considered to have acted against his will. See Mendelsohn v. Dulles, 207 F. 2d 37 (1953); and Ryckman v. Acheson, 106 F. Supp. 739 (1952).

We do not contest appellant's allegations that for an alien, employment in Australia was difficult to find. But we note that by his own admission he arrived in Australia in September 1977 and in that same month applied for naturalization. How can he contend that he was sure within such a short period of time he would be unable to find work unless he became an Australian

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

citizen? Furthermore, he has submitted no evidence to support his contention that he could not as an alien find suitable work. In the circumstances, the difficulty of finding a job cannot be considered to have been legal duress rendering his performance of the expatriative act involuntary. His situation falls far short of the level of economic desperation that the courts have ruled must exist before duress can be found to have impelled one to do a statutory expatriating act. See Stipa v. Dulles, 233 F. 2d 551 (1956); and Insogna v. Dulles, 116 F. Supp. 473 (1953).

We conclude that appellant has failed to rebut the legal presumption that naturalization in Australia was not forced on him against his fixed will and intent. His action in seeking and obtaining Australian citizenship must therefore have been voluntary.

III

Even though appellant's naturalization in Australia was voluntary, it must still be determined whether it was accompanied by an intent to relinquish his United States nationality. As the Supreme Court held in Vance v. Terrazas, supra, if a person fails to prove that his act of expatriation was involuntary, the question remains whether on all the evidence the Government has satisfied its burden of proof that the expatriating act was performed with the necessary intention to relinquish citizenship.

In Terrazas, the Supreme Court held that under section 349(c) of the Immigration and Nationality Act 11/, the Government must

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11/ Section 349(c) of the Immigration and Nationality Act provides in relevant part as follows:

> (c) 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 loss occurred, to establish such claim by a preponderance of the evidence....

establish by a preponderance of the evidence that the actor intended to divest himself of United States citizenship; intent may be ascertained from a person's words or found as a fair inference from proven conduct. Intent is to be determined as of the time the expatriating act was done. Terrazas v. Haig, 653 F. 2d 285 (1981).

Obtaining naturalization in a foreign state, like performance of the other acts enumerated in section 349(a) of the statute, may be highly persuasive evidence of an intent to surrender United States citizenship, but it is not conclusive evidence of such intent. Vance v. Terrazas, citing Nishikawa v. Dulles, 356 U.S. 129 (1959).

Thus, naturalization in a foreign state standing alone will not supply sufficient evidence of the requisite intent. King v. Rogers, 463 F. 2d 1188 (1972).

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

> Mr. P[redacted] has shown by both his words and his actions that at the time he naturalized, he intended to abandon his U.S. citizenship. First his naturalization in Australia was accompanied by an oath of allegiance which expressly renounced former allegiance. He insisted that at the swearing-in-ceremony, he did not actually pronounce the words of the oath. Even if he did not vocalize them, he was required by Australia to swear or affirm what they said. By his presence at and participation in the ceremony, as well as his complying with all the requirements of Australian naturalization, he showed his agreement to and affirmation of the oath. Furthermore, the Certificate of Australian Citizenship certifies that he swore the oath in a manner which satisfied the Australian law.
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> By his acts as well as his words, Mr. P[redacted] also manifested his intent to relinquish his U.S. citizenship. Immediately upon moving to Australia with his wife, he made his application for citizenship and set about building his life there. He did not at any time contact the Embassy or Consulates there until he received a letter concerning his possible loss of citizenship. He made no attempt to exercise any of his rights of U.S.

> citizenship such as voting or filing tax returns. He acted in all ways as a man who had abandoned one citizenship and acquired another.

Appellant contends that it was not his intention to relinquish his United States citizenship; a combination of factors led him to make a mistake. As he expressed it in September 1984 in a letter to the Board:

> I read and realize on your attached telegram, that it states the application form is in itself binding. 12/ Before reading it, I had not been sure. I am trying to say that I am not attempting to cover-up a misdeed, but rather to explain how it came about. The sometimes careless handling of the whole process by the Australian authorities, bypassing proper procedures, coupled with the pressure I received from my wife's friends and family and the continuous opposition I found to non-Australians while looking for a job, served to confuse and forcefully persuade me to take the wrong step. Like the hunted buffalo, I was driven over a precipice.

The case law is unambiguous about the consequences for an American citizen who, in acquiring foreign nationality or pledging allegiance to a foreign state, expressly renounces his allegiance to the United States, or all other allegiance.

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

> an oath expressly renouncing United States citizenship...would leave no room for ambiguity as to the intent of the applicant.

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12/ Appellant refers to the letter cited in note 5, supra, a copy of which was sent to him by the Board for comment.

The court's holding in Matheson was echoed in Terrazas v. Haig, supra, where plaintiff had expressly renounced his United States citizenship at the time of pledging allegiance to Mexico. There the court stated:

> 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 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 and declared that he "renounced all allegiance and fidelity to any foreign sovereign or state". The court held that, by making such a declaration, plaintiff intended to relinquish his United States citizenship. The Court said that 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.

Under Australian law, applicants for naturalization who are not British subjects are required to renounce all other allegiance and to swear an oath of allegiance to the British Crown. The central question here is whether appellant actually or constructively made the required oath, and, if he did so, whether he acted knowingly and understandingly.

The procedures for naturalization in Australia require that before his application is processed the applicant be interviewed by an officer of the Department of Immigration and Ethnic Affairs. (Note 8, supra). At the interview, the applicant is asked to hand over his foreign passport. There is no evidence of record to lead us to doubt that appellant was interviewed; he himself has said that his passport was demanded from him "on the spot", because, as he put it, the authorities refused to begin processing his application until he had given it to them.

Although Australian procedures specify that applicants for naturalization be informed at the interview that acquisition of Australian nationality might result in loss of their nationality of origin, (note 8 supra), there is some doubt that appellant was in fact so cautioned. (See letter of the Department of Immigration and Ethnic Affairs to the United States Consulate at Brisbane, April 30, 1979, supra). But we may fairly assume that

appellant was counseled at the interview, at least in general terms, as to the meaning and implications of the required oath of allegiance. (Note 8, supra.) In any event, even if he was not at that time so counseled, he was, according to his own statements, put on notice in November 1977 of the text of the oath when he was informed that he should attend a naturalization ceremony on February 1, 1978.

Although apparently with some reluctance, appellant attended the naturalization ceremony on February 1, 1978. He may have remained silent during the mass swearing of the oath of allegiance, but he accepted the grant of Australian citizenship under the terms and conditions prescribed by the Australian Citizenship Act, terms and conditions of which he must, in contemplation of law, be deemed to have been cognizant.

That appellant understood he had taken a momentous step by accepting Australian nationality is borne out by his own statement: "I thought all was lost after February 1, 1978."

We must conclude that appellant knowingly and understandingly actually or at least constructively took an oath of allegiance to the British Crown in which he expressly renounced all other allegiance. Having only one other allegiance, appellant, as a matter of law, forswore allegiance to the United States of America.

Reviewing appellant's conduct beyond his act of applying for and accepting Australian nationality, we find no factors that cast material doubt upon his intent to relinquish United States citizenship when he became an Australian citizen. He obtained an Australian passport in the same month he became a citizen of that country. He made no attempt to communicate with a United States consular post either before applying for naturalization, or afterwards - until the Consulate General at Sydney advised appellant in June 1978 that he might have lost his United States citizenship. 13/

13/ Appellant gave as his reasons for not approaching any consular office, the following:

> ...I made no attempt to contact the U.S. Embassy or Consulates before they contacted me, for two reasons: (1) the stories I had heard from others regarding U.S. consulates in some other countries, all spoke of the aloofness of people in those offices and a seemingly natural bent towards unhelpfulness. I myself cannot now say this of Mr. Dunbar of the Brisbane U.S. Consulate, but before that time I had only hearsay upon the subject, and the general opinion of U.S. Consulates had been a bad one. Hence, it did not occur to me to seek help from that source.
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> The second reason was that I thought all was lost after February 1st, 1978. I was overjoyed when I heard from the U.S. Consulate that it was possible I still retained U.S. citizenship.

The Board finds the fact that appellant neither voted in United States elections nor filed United States income tax returns of minimal relevance to his intent. But we look in vain for affirmative evidence that appellant's renunciation of his allegiance to the United States was vitiated by conduct expressive of an intent to retain United States citizenship. We note that over a number of years after his naturalization in Australia he has presented a consistent case for restoration of his United States citizenship, and his sincerity about regretting having made a mistake is not in question. Whatever appellant's subjective intent in 1977-1978 about his United States citizenship may have been - and we cannot, of course, measure that factor except by his overt acts - he manifested an intent to surrender United States nationality when he expressly renounced all other allegiance preliminary to accepting the grant of Australian nationality.

It is our view that the Department has carried its burden of proving that appellant intended to relinquish his United States citizenship by obtaining naturalization in Australia upon his own application.

IV

Upon consideration of the foregoing, the Board concludes that appellant expatriated himself. Accordingly, we affirm the Department's determination of loss of his United States nationality.

Alan G. James, Chairman

Mary E. Hoinkes, Member

George Taft, Member