July 27, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] P[redacted] B[redacted]

This case is before the Board of Appellate Review on an appeal brought by C[redacted] P[redacted] B[redacted] from an administrative determination of the Department of State that he expatriated himself on July 22, 1972, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Venezuela upon his own application. 1/

The issues presented on appeal are: (1) whether appellant became a citizen of Ve[redacted] voluntarily; and (2) if he did so, whether the expatriating act was accompanied by an intention to relinquish United States nationality.

It is our conclusion that appellant acted of his own free will in obtaining Venezuelan citizenship, but that he lacked the requisite intent to relinquish United States citizenship. The Board will, accordingly, reverse the Department's holding of loss of his United States nationality.

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

See. 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 --

(I) obtaining naturalization in a foreign state upon his own application, . . .

I

Appellant acquired United States nationality under section 1993 of the Revised Statutes of the United States, 48 Stat. 797, by birth to United States citizen parents at [redacted]. His birth was recorded in a Consular Report of Birth issued by the U.S. Consulate there on May 16, 1922.

Appellant was documented as a United States citizen in 1938, and registered as an alien with the Trinidad authorities in 1940. From 1939 to 1944 he was employed by the U.S. Corps of Engineers in Trinidad. He registered for the U.S. draft in 1943 and married a non-U.S. citizen in the same year. In 1944 his employment with the Corps of Engineers was terminated. Thereafter, he was employed by a U.S. engineering firm in construction of the U.S. base at Trinidad. In 1945 appellant was ordered to report for induction into the United States armed forces, but was found medically unfit and classified 4-F. He was issued a United States passport in 1947.

In 1950 appellant sought to register his children as American citizens. He was informed by the Consulate General at Trinidad that they had no claim to United States citizenship because he had not resided in the United States at least ten years prior to the birth of the children, as required by section 201(g) of the Nationality Act of 1940.

The record shows that appellant was invited to renew his registration as a United States citizen in 1954 by the Consulate General at Trinidad. A handwritten note on the copy of the Consulate General's letter to appellant submitted by appellant reads: "Registered 14/2/54 by letter." The notation is apparently appellant's. He has stated that in response to his submission of an application for registration, he received a letter from the Consulate General to the effect that in view of appellant's age, marriage to an alien and residence abroad, renewal of his registration as a United States citizen would serve no purpose. If he wished to return to the United States, the letter allegedly continued, the consulate would issue him a passport for the journey. There is no copy of that letter in the record.

Two years later in July 1956 appellant applied for a United States passport at [redacted]. He indicated that he intended to return to the United States to live permanently at the earliest opportunity. His long residence abroad, he stated, had been due to the lack of sufficient funds to take his family to the United

States. He was issued a passport on November 9, 1956, valid on "for a period sufficient to cover proposed travel," specifically March 8, 1957.

Early in 1957 appellant moved to Venezuela. In a letter to the United States Embassy at Caracas requesting an extension of the validity of his passport, appellant stated that he had taken employement in Venezuela "as it represents a better opportunity towards earning the necessary funds for me to return to the United States as soon as possible," His passport was extended to full validity, namely, November 8, 1958.

It appears that appellant settled in Maracaibo where he still resides. Sometime after his arrival he *was* registered as a U.S. citizen by the Consulate there.

On January 15, 1964, appellant applied to register his youngest child, born in 1960 in Venezuela, as a United *States* citizen at the Consulate in Maracaibo. There is no record of the action taken by the Consulate, but *it* is evident that since appellant has never resided in the United States, his daughter had no claim to United States citizenship; the application would therefore have been denied. In fact, the record shows that appellant% daughter was issued a non-immigrant visa valid for unlimited entries on January 15, 1964, in a Venezuelan passport.

The following year appellant was issued a passport by the Consulate at Maracaibo on November 23, 1965, the last United States passport appellant has held,

Appellant states that he was employed by Productora Mara, a engineering company whish served the oil industry in Venezuela as a contractor, In 1964, in an apparent effort to protect his financial future, appellant states that he purchased Productora Mara from its **president** and owner, **at** whose insistence the sale was made to appellant's non-American wife. Appellant reportedly put up all his accumulated "social benefits" in the company and his savings to effect the sale, According to appellant, all the income from the company belonged **to his** wife **by** Venezuelan law, About two years later appellant completed the purchase of the company by paying the balance due with funds apparently raised through a bank loan.

Appellant states that he attempted to transfer title in Productora Mara from his wife to himself around 1968, but was informed by his counsel that Venezuelan law prohibited such transactions between spouses, His counsel suggested that appellant form his own company which would be able legally to bu

from his wife's company all equipment used by the latter; such equipment might then be leased back to the wife on a monthly basis. Appellant formed the firm B[redacted] H[redacted] e Hijos in **1968** for the stated purpose of doing studies and technical reports for operations in the oil industry; and processing food for animals, breeding and exporting farm animals, and exporting processed food.

It appears that both Productora Mara and B[redacted] H[redacted] operated on bank loans, and according to appellant, were pe[redacted]ing difficulties in conducting their business due to local "anti-gringo" sentiments and other reasons not fully explained. Judging from a report he made to the U.S. Internal Revenue Service in 1975, appellant's annual net earnings as of **1974** were less than **$400.**

According to appellant, in 1969 B[redacted] H[redacted] purchashed "an extension of land in anticipation of adverse legislation affecting nationalization of the petroleum industry." Appellant has indicated that over 700 hectares (about **1,750** acres) were bought with a bank loan; he has not specified the cost of the land or what its estimated value was at the time he became naturalized in 1972.

Around 1970 appellant allegedly became concerned about the future of foreign-owned companies in Venezuela because of the impending adherence of Venezuela to the Cartagena Agreement (Colombia, Bolivia, Peru, Chile, Ecuador) which envisioned the transformation of foreign-owned businesses in the member countries into national enterprises. Appellant states that under these circumstances "my situation became more precarious than ever."

He described the action he took in 1970 to protect his interests as follows:

> I consulted a lawyer once more, and he told me that I should first allow him to get me a "Domicilio" visa which would afford me the benefits as a permanent resident of Venezuela. I accepted his advice, and it was necessary to cede my passport to him. I instructed him to act in any appropriate manner he thought necessary to protect my economic interests, as my solvency at this time was Indeed slender.
>
> Within about a year, my lawyer informed me that he had obtained a "Domicilio" visa for me, and that in view of the contents of

> discussions taking place in Cartagena at the moment between Venezuela and other Latin American countries, he had proceeded to get me and my wife Venezuelan passports.

The Gaceta Oficial of the Republic of Venezuela of July 22, 1972, recorded that appellant was granted Venezuelan citizenship with effect from that date.

It appears that in May 1977 the Consulate at Maracaibo learn (how the record does not make clear) of appellant's naturalizatio In a telex sent to the Department on May 24, 1977, the Consulate stated that it had received confirmation from Venezuelan immigrat that appellant had been naturalized.

On June 6, 1977, the Consulate wrote to appellant to inform him that he might have lost his United States citizenship by obta ing naturalization in Venezuela. He was invited to complete a questionnaire to facilitate the determination of his citizenship status. This he did on June 30, 1977, acknowledging that he had obtained Venezuelan nationality and a Venezuelan passport. Accor ing to the Consulate, appellant travelled to the United States several times on his Venezuelan passport on visas issued by the Consulate. On July 6, 1977, appellant completed before a consula officer an affidavit of expatriated person, but for some reason not explained in the record declined to sign it. Beneath the lin where the consular officer had written a description of the expat ting act appellant wrote:

> I had and still have no intention to relinquish my rights to American nationality, I have never taken any oath of allegiance to any foreign state and have no intention of ever doing so.

In September 1979 the Consulate reported to the Department o appellant's case, requesting its opinion on whether appellant had relinquished his United States citizenship by obtaining naturaliz tion in Venezuela.

There is no indication in the record what answer the Department sent to the Consulate, but the latter on April 2, 1981,

prepared a certificate of loss of nationality in appellant's name, as required by section 358 of the Immigration and Nationality Act. 2/

The Consulate certified that appellant acquired United States citizenship under section 1993 of the Revised Statutes of the United States by birth abroad to United States citizen parents; that he obtained naturalization in Venezuela 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.

The Department approved the certificate on November 4, 1981, approval being an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board. The appeal was entered on January 4, 1982.

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 Secretgry 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.

Appellant contends that he was forced to obtain naturalization in order to protect his business interests, and maintains that he did not intend to relinquish his United States citizenship by obtaining Venezuelan citizenship, 3/

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality "by obtaining naturalization in a foreign state upon his own application, upon an application filed in his behalf by a parent, guardian or duly authorized agent,,,," The Department contends that appellant obtained naturalization in Venezuela upon his own application, Appellant states that he obtained naturalization through the use *of* "extraordinary channels" by his attorney whom he instructed to obtain a domicilio visa and take any other action that might protect his financtial interests in light of the expected implementation by Venezuela of the Cartagena Agreement, Appellant contends that he did not sign an application for naturalization; the only application he signed was one a domicilio **visa,** He points out that the Venezuelan authorities did not send a copy of any application for naturalization he might have filled out when they were requested to do so by the Consulate **at** Maraeaibo in 1977.

The circumstances surrounding appellant's obtaining Venezuelan citizenship are less than clear.

3/ Although all pleadings in the case had been completed **by** the Fall of **1983,** the Board requested that appellant clarify **his** position that he had acted involuntarily in obtaining Venezuelan citizenship. In April **1984** appellant complied with the Board's request **by** submitting the additional clarification.

However, appellant conceded in the citizenship questionnaire he completed in June 1977 that he had become naturalized. In his submissions to the Board he stated that he saw no reason to repudiate the actions of his counsel in obtaining naturalization and a passport on his behalf. Furthermore, we take note that the Venezuelan authorities were evidently satisfied that the procedures of their law had been complied with, for they assented to the grant of citizenship for appellant.

Inasmuch as appellant has not contended that his naturalization was invalid because it was fraudently obtained, and since the authorities concerned presumptively perceived no irregularities; it is our conclusion that appellant brought himself within the purview of section 349(a)(1) of the Act.

The Supreme Court has held, however, that citizenship shall not be lost unless the expatriating act was performed voluntarily. Afroyim v. Rusk, 387 U.S. 253 (1967); Nishikawa v. Dulles, 356 U.S. 129 (1958); Perkins v. Elg, 307 U.S. 325 (1939).

Appellant bears the burden of proving that his naturalization was involuntary, for under section 349(c) of the Immigration and Nationality Act, it is presumed that any one of the expatriating acts enumerated in section 349(a) was done voluntarily. The presumption may, however, be rebutted upon a showing by a Preponderance of the evidence that the act was performed involuntarily. 4/

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

> ...
>
> 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.

The gravamen of appellant's contention that he acquired Venezuelan nationality involuntarily is that it was necessary for him to obtain Venezuelan citizenship to protect himself against projected Venezuelan legialstion that could threaten his economic survival.

A defense of duress to performance of an expatriating act has long been available to petitioners in Loss of nationality cases. Doreau v. Marshall, 170 F. 2d 72% (1948). The criteria applied by the courts, however, to determine whether a citizen was subjected to true duress, have consistently been stringent. As the court *said* in Doreau:

> if by reason of extraordinary circumstance amounting to true duress, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is Packing. There is no authentic abandonment of his own nationality.

In Eater cases where economic duress had been successfully pleaded, the courts found that the citizen had ***no*** alternative to performing an expatriating act, were he or she to cope with a situation that threatened his or her economic survival. The leading cases stating this proposition are Stipa v. Dulles, 233 F. 2d 55% (1956) and Insogna v. **Dulles**, 116 F. Supp. **473** (1953). In those cases the expatriating conduct was compelled literally by the instinct of self-preservation, The circumstances in those cases were such as to justify a finding, in the opinion of the court, that the petitioners accepted proscribed employment in order to subsist; if not survive.

In Jolley v. Immigration and Naturalization Service, 441 **F.** 2d **1241** (1971), the court reviewed with approval a number of earlier cases on the issue of voluntariness, noting that fear of financial burden has been rejected as **a** sufficient ground upon which **to** posit duress. Neither motivation nor the difficulty of the choice makes an action involuntary if the actor is free to choose between alternatives. Prieto v. United States, 298 F. 2d *62* (1961) and Jubran v. United States, 255 F. 2d 81 (1958). Similarly, Jolley: "The opportunity to make a personal choice is the essence of voluntariness." **1250.**

The presence or absence of "economic duress" in a particular case will, of course, depend strictly upon the relevant facts.

Appellant formulates his case for economic duress along the following lines:

> During the years 1969-1972, local press publications expressed strong optimism .that foreign companies operating in Venezuela would be subjected to serious financial burdens if not elimination should Venezuela adhere to the Cartagena Agreement ....Between the years 1968 and 1972, there existed great anxieties among foreigners working and living in Venezuela: particularly those like myself who owned companies. The Petroleum companies were preparing for the nationalization of Major Industries which was expected to occur at any time, and foreign personnel were being replaced with Venezuelan citizens as quickly as possible. Local trade unions were very insistent and impatient that the terms of the Venezuelan labour laws in this respect be enforced....I consider 1972 to have been the critical'time to obtain nationalization /naturalization, presumably7 because it was on Jan. 14, 1972 that Venezuela officially voiced their desire to negotiate terms for their adherance to the "Cartagena Agreement." Added to this, the political climate seemed to be turning towards radical socialism with adverse attitudes directed against foreign participation in Venezuelan commercial affairs.

We do not consider that appellant has made out a case for economic duress.

In 1972, although it was probable that Venezuela would adhere to the Cartagena Agreement and that the provisions of that Agreement regarding nationalization of foreign companies would in due course be implemented by Venezuela, it was by no means certain what the precise terms of Venezuelan implementing legislation would be until negotiations with the other Andean countries had been completed. (It was undoubtedly clear in 1972 that the oil industry in Venezuela would be nationalized, but whether appellant was a Venezuelan citizen or not, his operations in the petroleum industry would face the same risk of nationalization.)

Moreover, we note that Decision 24 of the Cartagena Agreement (the provision of specific concern to appellant), the thrust of which was known in 1972 and which would in all likelihood be implemented by Venezuela after it had accepted the terms of the

Cartagena Agreement, was not confiscatory in nature. The text of Decision 24 as it emerged after negotiations between Venezue and the other Andean countries reads as follows.

COMMON RULE FOR TREATING FOREIGN CAPITALS AND ON BRA PATENTS, PERMITS AND ROYALTIES

(EXCERPT FROM DECISION NO. 24 - CHAPTER I)

> c) That the foreign investor bind himself to place in sale the shares, stocks or rights he may acquire in the company, for their purchase by national investors in the percentage necessary to constitute a national enterprise in a period which should not exceed 15 years (***), and which shall be determined in each case in accordance to the characteristics of the area. The authorization issued by the corresponding [illegible] conditions in which said obligation shall be met, the way in which the value of the shares, stocks or rights shall, be determined at the time of their sale, and, if such be the case, the systems that may reassure transfer of same to national investors. 5/

Appellant would therefore have had to sell or offer to se a part of his agricultural business, possibly at a discount, bu as a matter of law it seems clear he would have been entitled t compensation. Although his agricultural business and the land owned by that business were allegedly heavily mortgaged, there nothing in the record to show that a sale of part of those asse

5/ Translation by Public Translator, Republic of Venezuela, January 31, 1984, at Maracaibo.

to Venezuelan nationals or a state entity would have left appellant substantially worse off than he had been previously, were he not a Venezuelan citizen.

Appellant's financial condition in 1972 was arguably fragile, but he had assets, although they were largely hypothecated, and he had a running business in the agricultural field. He appears to have been servicing his bank loans in 1972. He has not shown that implementation of the Cartagena Agreement would have left him destitute, unable to provide for those dependent on him. In brief, appellant was, by his own account, in difficult but not extraordinary financial circumstances: not circumstances that would have been demonstrably worsened by nationalization of foreign enterprises. He has not persuaded us that his only option was to stave off disaster in 1972 to obtain Venezuelan citizenship. He has therefore failed to rebut the statutory presumption that his performance of the expatriating act was involuntary.

We conclude that appellant became a citizen of Venezuela of his own free will.

III

Even though we have concluded that appellant voluntarily obtained naturalization in Venezuela, it remains to be determined whether on all the evidence he did so with the intention of relinquishing his United States citizenship.

Under the rule enunciated by the Supreme Court in Vance v. Terrazas, it is the Government's burden to prove by a preponderance of the evidence that the expatriating act in question was done with the intention of relinquishing United States citizenship. 6/ Intent, the Supreme Court said, may be ascertained from a person's words or found as a fair inference from proven conduct. 7/ Obtaining naturalization in a foreign state, like performance of the other acts the statute prescribes as expatriating, may be highly persuasive but not conclusive evidence of an intention to give up United States citizenship. 8/ Intent is to be determined as of the time the expatriating act was done. 9/

6/ 444 U.S. 252 (1980).

7/ Id.

8/ Id., citing Nishikawa v. Dulles, 356 U.S. 129 (1958).

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

In this connection, it should be noted, as the U.S. Court of Appeals, Seventh Circuit, observed in Terrazas v. Haig, 653 F. 2d 285 (1981), that "a party's specific intent to relinquish his citizenship rarely will be established by direct evidence." The Court pointed out, however, that "circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship." The Court of Appeals referred to an earlier Ninth Circuit decision in King v. Rogers, 463 F. 2d 1188 (1972), in which it was stated that the Secretary of State may prove intent by acts inconsistent with United States citizenship or by affirmative acts clearly manifesting a decision to accept foreign nationality.

The Department undertakes to prove appellant's intent to relinquish United States citizenship by arguing that:

-- Appellant's ties to the United States have always been tenuous; he did not strengthen them after naturalization.

-- He has always lived outside the United States; married a non-U.S. citizen and immersed himself in Venezuelan society.

-- He paid no U.S. taxes after 1965.

-- He did not consult U.S. authorities before acquiring Venezuelan citizenship; in fact had no contact with U.S. authorities from 1965 to 1977.

-- He took an oath of allegiance to Venezuela when applying for naturalization.

-- He permanently surrendered his United States passport to Venezuelan authorities.

In brief, the Department contends that appellant's conduct confirms the highly persuasive evidence of an ***intent*** to relinquish United States citizenship that appellant manifested when he obtained foreign naturalization.

There is little evidence contemporary with appellant's naturalization that clearly **discloses** his intent,

Under Venezuelan Paw, an applicant for naturalization must complete an application which contains an oath ***of*** allegiance to Venezuela, 10/ The application, when completed, is sworn to

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10/ The oath reads:

> I hereby also swear to obey and respect the National Constitution and other laws of the Republic of Venezuela,

before a notary and then delivered to the appropriate Government department. In appellant's case no application for naturalization has come to light, and he denies having taken any oath of allegiance. According to his account, he asked his attorney to obtain a domicilio visa for him and to take any other steps necessary to protect his business interests. He says that the only form he signed was an application for a domicilio visa. The Consulate at Maracaibo, as we have seen, requested a copy of appellant's application for naturalization be sent to them by the appropriate authorities. The latter sent no document, but simply informed the Consulate that appellant had been naturalized in 1972 as attested by the Gaceta Oficial.

We do not dispute that the Venezuelan authorities considered whatever action was taken on appellant's behalf to have been correct. However, the ambiguous circumstances under which naturalisation was obtained raise a doubt in our minds that appellant's acquisition of Venezuelan citizenship was accompanied by an intention to divest himself of United States citizenship. It is not implausible that the matter was handled as appellant implies: he asked his attorney to get him permanent residence status which the latter did, but the latter went further on the basis of appellant's general instructions and completed the naturalization process on appellant's behalf. The indirectness, and impersonal nature of the whole process suggest that appellant's intention was to get whatever protection he could by improving or changing his status in Venezuela, not necessarily to terminate United States citizenship.

Another ambiguity exists with respect to the disposition of appellant's United States passport. The Department describes appellant's "permanent surrender" of his passport to Venezuelan authorities "as probably the act most devastatingly indicative" of appellant's intent to relinquish United States citizenship. We do not agree. Appellant is entitled to be believed when he states that he gave his passport to his attorney to obtain a domicilio visa. It is probable therefore that the Venezuelan authorities sighted it at that time; and then when the attorney applied on appellant's behalf for naturalization, it was again shown to them. But the passport was apparently not held by the local authorities. According to Venezuelan procedures, foreign passports of naturalization applicants are forwarded to the representatives of the country of the applicant after the naturalization process has been completed. Here, there is no record of the delivery of appellant's passport to U.S. authorities by Venezuelan officials. Appellant contends that the passport was in the possession of his attorney, but cannot be located, his attorney having died in 1977 and his files left in chaos. Such claim is not implausible.

The contemporary evidence of appellant's intent to relinqui United States citizenship being ambiguous, the question arises whether his conduct sustains the Department's theory that he intentionally abandoned such citizenship.

To this question we answer in the negative.

Appellant's having lived his entire life abroad does not as matter of law signify an intention to abandon United States citi zenship. This, the Supreme Court made abundantly clear twenty years ago in Schneider v. Rusk, 377 U.S. 118 (1964), stating:

> A native-born citizen is free to reside abroad indefinitely without suffering loss of citizenship.
>
> 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 indeed be compelled by family, business or other legitimate reasons.

We find appellant's claim that he continued to live abroad because economic circumstances forced him to do so perfectly ra

Given his age, background and economic circumstances it is understandable that appellant had few close ties to the United and that those ties he had would diminish with the passage of t

Of course, he should have filed U.S. income tax returns regularly, but his failure to do so does not set him apart fron other ciizens living abroad. In the absence of evidence to the contrary, we accept that his net income was for many years belo minimum threshold requiring him to pay taxes.

Nor do we see in appellant's failure to consult U.S. author ties from 1965 to 1977 an unequivocal sign of abandonment of hi citizenship. He had tried to register his children as United States citizens in 1950 and. in 1964 only to be informed that th were ineligible for citizenship, Quite possibly he saw no spec need thereafter to seek advice and assistance from U.S. authori Such a rationale is at least as tenable as an implication of a intent to relinquish citizenship,

His use of a Venezuelan passport, especially to visit the United States, admittedly is in itself an act inconsistent with United States citizenship. But it should be pointed out that if he had obtained and used a United States passport he would have forfeited Venezuelan citizenship which he perceived gave or would give him some protection against adverse Venezuelan legislation. Appellant's use of a Venezuelan passport could have been prompted as much by considerations of convenience as by an intention to hold himself out solely as a Venezuelan citizen.

Clearly, after appellant became a Venezuelan citizen in 1972 he did little of record to represent himself as an American citizen. 11/ This passivity toward the exercise of the rights and discharge of the duties of United States citizenship may properly be criticized, but query whether such inaction is sufficient to support an inference that in 1972 he willed loss of citizenship.

Following the Supreme Court's decision in Afroyim, supra, the Attorney General issued an interpretation to guide administrative authorities in loss of nationality proceedings, 12/ The Attorney General ruled that performance of some statutory

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11/ We note, however, that in 1975 he filed an Internal Revenue Service form explaining why he had not paid U.S. taxes in 1974: "self-employed and net earnings less than $400."

And it is relevant that over an extended period of time prior to naturalization appellant conducted himself like a United States citizen. He registered as an alien in Trinidad during World War II and registered for the U.S. draft. He registered as a United States citizen at Port of Spain in 1938 and did so periodically for several years thereafter at Port of Spain, Caracas and Maracaibo. He twice attempted to register his children as United States citizens, and sent two sons to university in the United States.

12/ Attorney General's Statement of Interpretation, 42 Op. Atty. Gen. 397 (1969).

expatriating acts may be highly persuasive evi intent to relinquish citizenship. But even in those cases, he stated, Afroyim leaves it open to the citizen to raise the issue of intent. Once the issue of intent has been raised, the Government bears the burden of proving by a preponderance of the evidence that the actor intended to relinquish citizenship. He concluded by stating:

> In each case the administrative authorities must make a judgment, based on all the evidence, whether the individual comes within the terms of the expatriation provision and has in fact voluntarily relinquished his citizenship.

The Supreme Court in Vance v. Terrazas, supra, noted with approval the Attorney General's administrative guidelines, which it particularized by holding that a person's intent may be proved by his words or found as a fair inference from his proven conduct.

In the case now before the Board, appellant has spoken no recorded words manifesting an intention to renounce United Stat citizenship. We must;, therefore, apply the Supreme Court's "proven conduct" test to determine whether his conduct gives rise to a fair inference of an intent to relinquish citizenship What conduct mainifests an intent to relinquish citizenship? Does non-performance of a range of things associated with civic virtue manifest such an intent? Or must the citizen have done an explicit, or affirmative act or acts clearly derogatory of citizenship? As far as we are aware, the courts have not yet been called upon to answer these complex and subtle questions. The case law, however, suggests that something more than such non-performance must be proved,

See, for example, Terrazas v. Haig, supra; United States v. Matheson, 532 F. 2d 809 (1976); King v. Rogers, 463 F. 2d 1188 (1972): Richards v. Secretary of State, CV 80-4150, slip op. C.D. Cal. (1982).

We must therefore determine, with little precedent to guide us, whether this appellant's essentially non-affirmative actions after his naturalization probably confirm a putative intent in 1972 to relinquish United States citizenship,

We are not persuaded that they do,

To be inattentive to citizenship obligations or to fail SOP several years to assert a claim to United States citizenship is not rare or eccentric behavior on the part s€a citizen living abroad. Prom such conduct either of two plausible inferences may be drawn: (a) the citizen intended to relinquish citizenship, or (b) he intended to retain citizenship but through inertia, lack of prudence or knowledge, or any other human lapse, did not demonstrate or document his will to retain it. One inference is not inherently more logical than the other.

Appellant here performed an act that may be highly persuasive evidence of an intent to relinquish citizenship - obtained naturalization in a foreign state, but under circumstances that are far from clear. Thereafter he did nothing demonstrably inconsistent with an intent to retain United States citizenship, save use a Venezuelan passport. In our judgment, the record in its entirety leaves the issue of appellant's intent in doubt. Loss of a right so fundamental as citizenship should not hinge on facts which may be fairly and reasonably construed as signifying either intent to retain or relinquish citizenship. The Supreme Court has held that where deprivation of citizenship is at issue, the "facts and the law should be construed so far as is reasonably possible in favor of the citizen." Nishikawa v. Dulles, 356 U.S. 129, 134; Schneiderman v. United States, 320 U.S. 118, 122 (1943). Consistently with that mandate, we must resolve our doubts in favor of continuation of appellant's United States citizenship,

In light of Afroyim and Terrazas, and within the scope of the Attorney General's Statement of Interpretation of Afroyim, we find that the Department has not sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States citizenship when he became a citizen of Venezuela.

IV

Upon consideration of the foregoing, the Board concludes that appellant did not expatriate himself. Accordingly, the Department's holding of loss of his United States citizenship is hereby reversed.

Alan G. James, Chairman

Gerald A. Rosen, Member

George Taft, Member