April 9, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] A[redacted] M[redacted]

This case is before the Board of Appellate Review on an appeal taken by M[redacted] A[redacted] M[redacted] from an administrative determination of the Department of State that he expatriated himself on January 23, 1967 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

The principal issue presented on appeal is whether appellant intended to relinquish his United States citizenship when he was granted Canadian citizenship. It is our conclusion that such was his intent. Accordingly, we affirm the Department's determination of appellant's loss of nationality.

I

Appellant became an American citizen by birth at [redacted]. He received a doctorate of chiropractic in 1954, married a [redacted] citizen, and in 1956 moved to [redacted] Appellant and his wife have three children (one born in the United States, two in [redacted] whom he registered as United States citizens in 1964 when he obtained a United States passport. He did not renew his passport after its expiry.

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

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 1965 appellant was employed by a vocational training center in Alberta. He has stated that when his probationary period ended a year later, he was informed by the authorities of the center that he would have 5 years (later shortened to 6 months) to decide whether to become a Canadian citizen or "terminate my employment." Allegedly because of an injury, he did not know whether he would be able to continue to practice chiropractic; he therefore decided to become a Canadian citizen in order to retain his employment with the center.

Appellant applied for naturalization, and on January 23, 1967, after subscribing to the following declaration and oath, was granted a certificate of Canadian citizenship:

> "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."

Appellant states that he remained with the vocational center until 1970 when he resumed chiropractic.

In 1982 appellant visited the Consulate General at Halifax to inquire about documentation so that he might cross the border regularly in furtherance of his practice in the United States. 2/

2/ In his submissions, appellant stated:

> My reason for approaching the consulate, in the first place was to see how I could go back and forth across and serve the people, down there that require my service, as a quadruped spinal manipulator. As I have mentioned, I am an authority in the field, and am a pioneer in the field. I was trying to see if there was some way I could get a permit to cross, myself, without each individual requiring my services getting a permit for me. I had made enquiry, a few years ago about crossing and was told, by the Halifax office, that I did not need a permit. In /sic/ was on that directive that I attempted to cross when I was refused entry.

His naturalization then came to the attention of American consular authorities. At the request of the Consulate General he completed an information form for determining United States citizenship; an affidavit; and, for information purposes only, an application for registration as a United States citizen. It appears that he was also interviewed by a consular officer.

Eight months later on March 21, 1983 (the record does not disclose the reason for the delay), the Consulate General prepared a certificate of loss of nationality in appellant's name. 3/ The certificate recited that appellant acquired United States nationality at birth; that he obtained naturalization in Canada upon his own application; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on April 1, 1983, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to this Board. The appeal was entered March 14, 1984. He alleges that he was forced by poor health and economic reasons to choose Canadian citizenship, and that he did not intend to relinquish United States citizenship by becoming a citizen of Canada.

II

Appellant does not dispute that he performed an act prescribed by statute as expatriating, namely, obtained naturalization in a foreign state upon his own application.

3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C., 1501, provides:

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 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 first issue to be decided therefore is whether appellant acted voluntarily.

By 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 involuntary. 4/ Accordingly, it is appellant's burde to come forward with evidence that he obtained Canadian citizenshi against his fixed will and intent to act otherwise.

Appellant contends that his naturalization was the product o economic duress. As he stated in the form for determining United States citizenship that he completed in July 1982:

> Prior to this act, I had injured both of my elbows and thought that I might have to give up chiropractic. I went to university and obtained a teacher's permit and started teaching, while carrying on an evening practice. I was also ill, at the time with a chronic gall bladder condition and was contemplating giving up chiropractic. The teaching position offered security that I could not obtain as a self-employed person. I have recoevered /sic/ from both of the above conditions and have chosen chiropractic as my profession.

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

(c)...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.

A defense of duress is, of course, always available to a party in loss of nationality proceedings. Doreau v. Marshall, 170 F. 2d 721 (3rd Cir. 1948). Under the test laid down in Doreau, there must be a showing that "extraordinsry circumstances" forced a person to perform a statutory expatriating act that, in absence of such circumstances, he would not have done.

Stipa v. Dulles, 233 F. 2d 551 (3rd Cir. 1956) and Insogna v. Dulles, 116 F. Supp. 473 (D.C.C. 1953) stand for the proposition that an expatriating act performed in the face of dire economic circumstances is not voluntary. The economic distress of plaintiffs in those cases was arguably more extreme than that alleged by appellant here. But Stipa and Insogna are leading cases, and, as we understand them, establish that more than ordinary economic difficulty must be proved before a defense of duress will suffice to rebut the statutory presumption of voluntariness. 5/

Arguably, appellant faced a difficult economic situation because the only ready employment he had was his job with the vocational center. He has, however, produced no evidence that he was unable to find alternate employment. By his own admission he had taken further training at university level and obtained a teaching certificate. He has not contended that he

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5/ Cf. Richards v. Secretary of State, 752 F. 2d 1413, 1419 (9th Cir. 1985): "Although we do not decide that economic duress exists only under such extreme circumstances /as in Stipa and Insogna/, we do think that, at least, some degree of hardship must be shown."

was forced to continue to live in Canada and could not have returned to the United States to make his living. It does not appear, in a word, that appellant attempted to obtain employment that would not have required him to jeopardize his United States citizenship. As we view appellant's situation, he had a choice, as a matter of law, to become a Canadian citizen, and thus continue in a position he found at least comfortable or secure, or to look for other ways to protect his economic position and thereby ensure that his American nationality would remain in tact. He chose the former. As the case law makes clear, the opportunity to make a personal choice is not duress. See Jolley v. Immigration and Nationality Service, 441 F. 2d 1245, 1250 (5th Cir. 1971).

We conclude that appellant has not rebutted the legal presumption that his naturalization was a voluntary act. His acquisition of Canadian citizenship was an act of his own free will.

III

The core issue in this case is whether appellant intended to relinquish his United States citizenship when he obtained Canadian citizenship. As the Supreme Court said in Vance v. Terrazas, 444 U.S. 252, 261 (1980):

> ...the trier of fact must in the end conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute, but also intended to relinquish his citizenship.

The intent to be proved is appellant's intent at the time he performed the expatriating act. Terrazas v. Haig, 653 F. 2d 285 (7th Cir. 1981).

The Court further held that the Government bears the burden of proving a party's intent by a preponderance of the evidence, making clear that intent "may be expressed in words or as a fair inference from proven conduct." 444 U.S. at 260.

As we have seen, at the time appellant was granted Canadian citizenship he declared that he renounced "all allegiance and fidelity to any foreign sovereign or state of whom or of which "I may at this time be a subject of citizenship."

Plaintiff in Richards v. Secretary of State, see note 4, supra, made a similar declaration upon being granted Canadian citizenship. Therein the 9th Circuit said at 15:

> The district court found that Richards knew and understood the words in the documents he was signing. The court found that, at the time he signed the documents, "plaintiff would have preferred to retain American citizenship, and in his mind hoped to do so, but elected to sign the Canadian naturalization documents and accept the legal consequences thereof rather than risk loss of his job or career advancement." The court concluded that his intent to renounce his United States citizenship was "established by his knowing and voluntary taking of the oath of allegiance to a foreign sovereign which included an explicit renunciation of his United States citizenship."
>
> We agree with the district court that the voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship. We also believe that there are no factors here that would justify a different result. 6/

6/ Similarly, Terrazas v. Haig, 653 F. 2d at 288:

> ...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 appeal now before the Board, appellant has stated that he does not remember if the renunciatory declaration to which he subscribed was included in the oath of allegiance.

The words to which appellant put his signature on January 23, 1967, however, plainly express an intent to divest himself of United States citizenship. He has not alleged that he did not understand the meaning of words of renunciation. He was 41 years of age at the time and a professional man. Absent factors which the record does not disclose, it is clear that appellant knowingly and intelligently signified that he intended to relinquish United States citizenship.

Nor do we find in appellant's conduct after naturalization any acts or statements that would belie the intent he expressed when he was granted Canadian citizenship. It is, of course, possible, as he implies, that he did not wish to terminate his United States citizenship, but if he refers to his subjective intent in 1967, who can possibly probe unarticulated thoughts of 17 years ago?

The Supreme Court has stated that expatriation depends on the will of the citizen as ascertained from his words and conduct. Vance v. Terrazas, 444 U.S. at 263. Here appellant assented to termination of his United States citizenship as shown by his forswearing all allegiance and fidelity to the United States. The Department has, in our view, carried its burden of proving by a preponderance of the evidence that appellant's acquisition of Canadian citizenship was accompanied by the requisite intent to abandon United States citizenship.

IV

Upon consideration of the foregoing and our review of the entire record, the Board concludes that appellant not only voluntarily committed a statutory expatriating act but also intended to relinquish his citizenship.

The Department's determination to that effect is hereby affirmed.

Alan G. James, Chairman

Howard Meyers, Member

Frederick Smith, Jr. Member