May 28, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: H[redacted] L[redacted] H[redacted], [redacted]

H[redacted] L[redacted] H[redacted], [redacted] appeals from an administrative determination of the Department of State that he expatriated himself on August 19, 1982 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Australia upon his own application. 1/

Since appellant concedes he acted voluntarily, we are required to decide only one issue: whether he intended to relinquish his United States citizenship when he became an Australian citizen. It is our conclusion that the objective evidence establishes that appellant intended to transfer his allegiance from the United States to Australia. Accordingly, we affirm the Department's determination to that effect.

I

Appellant was born at [redacted], [redacted] and so acquired United States nationality. According to his submissions, appellant's parents took him to Australia in 1962. His mother died in 1963, and his father married an Australian citizen in 1965. Appellant was raised in Australia where he received his education, studying horticulture and landscape design.

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, . . .

Appellant obtained a United States passport in 1972 which he renewed in 1977. In 1964, 1968 and 1973 he visited family in the United States. After a trip to Southeast Asia in 1979 appellant allegedly enountered difficulty in re-entering Australia with a temporary Australian visa. As he put it in his brief: "Solely to avoid these difficulties in future travels, and at his father's suggestion, appellant applied for resident status in Australia in 1979. He, nevertheless, continued to travel on his United States passport until forced to relinquish it when he applied for Australian citizenship."

His brief gives the following description of the events leading up to appellant's application for Australian citizenship:

> Shortly after his father's death /in 1980/ appellant became engaged to an Australian woman to whom he was married on January 7, 1982. They were separated a year later.
>
> Appellant applied for Australian citizenship shortly after his marriage in 1982. He was interviewed twice by officers of the Ministry for Immigration and Ethnic Affairs. Appellant remembers discussing Australian government and history and the duties of Australian citizens, but does not remember discussing the consequences of his naturalization for his United States citizenship. He was notified on May 10, 1982 that his application had been approved, and he was naturalized three months later on August 19, 1982, when he swore an oath of allegiance to Her Majesty Elizabeth the Second, Queen of Australia. 3/

3/ Appellant made the following oath or affirmation of allegiance:

"I . . .(name) . . . renouncing all other allegiance, swear by Almighty God /or "solemnly and sincerely promise and declare"/ 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 /sic/ my duties as an Australian citizen."

The Department of Immigration and Ethnic Affairs sent the United States Consulate General at Sydney a copy of a computer print-out showing that appellant had acquired Australian citizenship in the 3rd quarter of 1982. The record does not indicate when the print-out was sent to the Consulate General, but on June 15, 1983 the Consulate General wrote to appellant to inform him that by obtaining naturalization in Australia he might have lost United States citizenship. He was asked to complete a citizenship questionnaire, which was enclosed, regarding the facts and circumstances surrounding his naturalization in order to facilitate determination of his citizenship status. If no reply were received within 30 days, the Consulate General informed appellant, they would ask the Department "to make a finding as regards your citizenship on the basis of information already available." He was invited to call to discuss his case with a consular officer.

Appellant did not reply to the Consulate General's letter, although he received it, as shown by his signature on the postal receipt. The Consulate General made no further attempt to communicate with appellant. On July 27, 1983 the Consulate General executed a certificate of loss of nationality in appellant's name in conformity with the provisions of section 358 of the Immigration and Nationality Act. 2/

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

The Consulate General forwarded the certificate to the Department without accompanying commentary. The sole evidence of appellant's expatriation submitted by the Consulate General was the computer print-out showing that appellant had become naturalized; the letter the Consulate sent to appellant on June 15, 1983; and the signed postal receipt. The Department approved the certificate on September 30, 1983, approval being an administrative determination of loss of nationality from which a timely and properly filed appeal lies to this Board. A copy of the approved certificate was sent to the Consulate General to forward to appellant, who has acknowledged receiving it.

The appeal was entered through counsel on September 28, 1984. Appellant concedes that he voluntarily obtained naturalization but maintains that he lacked the requisite intent to relinquish United States nationality.

II

There is no dispute that appellant validly and voluntarily performed an act prescribed by statute as expatriating; he has expressly so conceded.

It is settled, however, that even though an American citizen voluntarily has performed a statutory expatriating act, the Government must prove, by a preponderance of the evidence, that the citizen did so with the intention of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252, 261 (1980). Intent, the Supreme Court said, may be expressed in words or found as a fair inference from proven conduct. 444 U.S. at 260.

The intent to be proved is the individual's intent at the time the expatriating act was committed. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

The Department attempts to prove appellant's intent to relinquish United States citizenship by showing that he voluntarily obtained naturalization in Australia; surrendered his United States passport to the Australian authorities upon making application for Australian citizenship; and expressly renounced "all other allegiance" when he made the prescribed oath or declaration of allegiance to the British Crown.

Obtaining naturalization in a foreign state may be highly persuasive evidence of an intent to relinquish United States citizenship. But, as the Supreme Court said in Vance v. Terrazas, 444 U.S. at 261:

> ...we are confident that it would be inconsistent with Afroyim /387 U.S. 253 (1967)/ 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)....

Something more than performance of a statutory expatriating act must therefore be shown in order to prove intent.

The Board takes administrative notice of the fact that the Australian immigration authorities require applicants for naturalization to surrender their foreign passports upon being called for a citizenship interview. Appellant concedes that he surrendered a still valid United States passport when he was interviewed by an examining official. Surrender of a United States passport to a foreign official has a symbolism that should have been apparent to appellant. He freely and without protest or attempt to replace it gave up documentary evidence of his American citizenship in pursuit of foreign citizenship. At the very least so to hand over a United States passport suggests an intent to transfer allegiance to a foreign state, particularly when no attempt is made to replace it.

The clearest manifestation of appellant's intent to forfeit United States citizenship is his swearing or declaring (the record does not indicate which he did, but the legal effect is the same) that he renounced all other allegiance while pledging fidelity to Queen Elizabeth II, Queen of Australia.

The case law is explicit about the legal consequences of making an express declaration of renunciation of one's allegiance to the United States. 3/

3/ That the United States was not specified in the oath is without legal significance. Appellant had only one "other allegiance" - to the United States - and can have had no doubt which country his declaration concerned.

The knowing and understanding taking of an oath of allegiance to a foreign state and an explicit renunciation of United States citizenship expresses an intent to relinquish United States citizenship. Terrazas v. Haig, 653 F. 2d at 288. See also Richards v. Secretary of State, 752 F. 2d 1413, 1421 (9th Cir. 1985): "...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."

In Richards, the court made clear, however, as did the court in Terrazas v. Haig, that other factors must also be considered to determine whether a different conclusion might be justified. Appellant here submits that other factors do indeed justify a finding of his lack of intent to relinquish United States citizenship.

He contends that the meaning of the oath of allegiance with its renunciatory language is not "crystal clear;" he did not understand that in renouncing "all other allegiance" he was renouncing United States citizenship. But the phrase is not ambiguous. "Allegiance" is not an arcane word or concept. As is well known, it is the obligation of fidelity and obedience one owes to one's country. It is an abstraction that is commonly understood in both the United States and Australia. The nexus between renouncing all allegiance to the United States and renouncing one's citizenship of the United States is so tight that appellant cannot be heard to say that he did not think he was transferring his citizenship from the United States to Australia.

That appellant was not cautioned by the Australian authorities or anyone else that he might forfeit his United States citizenship by obtaining naturalization is an argument that lacks merit. Although the Department cites an official Australian source as having stated that applicants for naturalization are customarily warned that acquisition of Australian citizenship might cause the loss of their present nationality, appellant protests that no one gave him such a warning in the two interviews he had at the Department of Immigration. Whether appellant was or was not warned by the Australians that he might lose United States citizenship is not relevant. The Board notes that the application for naturalization specifically requires that the applicant indicate his readiness to subscribe to an oath or declaration of allegiance. Even if he was not told that the oath entailed a renunciation of all other allegiance, it was incumbent on him to ascertain the nature of

the solemn undertaking he was about to make. He apparently did not take the trouble to do so. He may not shift the onus to others.

Appellant further argues that he believed he was merely formalizing his status as a dual national of the United States and Australia. His half-blood siblings were dual nationals, he stated, and he had lived in Australia for 20 years. Swearing an oath of allegiance to Australia was, he argues, no more inconsistent with United States citizenship than living in Australia for 20 years and marrying an Australian.

We are not persuaded by this line of argument. Appellant knew he was an alien in Australia. That he had made his home there for 20 years and married an Australian did not in any **legal** sense change his alien status. Naturalization would place him in a totally new status, as the interviews he had with the immigration authorities certainly must have made clear to him. He may have wished to become a dual national, but that wish as motive does not call into question the intent he showed when he subscribed to the Australian oath of allegiance.

Finally, appellant submits that his conduct shows an intent to retain United States citizenship. We fail to see that it does. True, he clearly may have considered himself an American citizen up to the time he became an Australian citizen, but the relevant time is when he became an Australian citizen, and afterwards - not before. After naturalization, appellant did nothing of record that would raise doubt about the intent he manifested in 1982. He did not attempt to recover his United States passport which the Australian authorities were obligated to return to the United States authorities. He did not contest the Consulate General's letter informing him that he might have expatriated himself. We are not prepared to say that his failure to consult the Consulate General before applying for naturalization or to respond to the Consulate General's letter are, in an affirmative sense, indicative of an intent to relinquish United States citizenship, but that he did nothing until he entered this appeal offers no basis for us to find that appellant demonstrated he did not intend to lose United States citizenship. Nothing in his conduct, in brief, raises doubts about the intent he showed when he expressly renounced his allegiance to the United States.

Appellant contends that the consul involved did not develop fully the issue of his intent, as required by Departmental guidelines, and cites a previous Board decision (Matter of A.K.S., decided September 25, 1984) where the Department's holding of loss of nationality was reversed, in large measure because of failure to elaborate the issue of appellant's intent. The case before the Board and the previous case are clearly distinguishable. Appellant in Matter of A.K.S. was naturalized in a foreign state which required no oath of allegiance. She responded to the Embassy's request that she submit evidence or information regarding her performance of the expatriating act. The circumstances of her case suggested strongly that the consul should have probed more deeply into appellant's intent, but did not do so. The certificate of loss of nationality was routinely and hastily approved by the Department. In the case now before the Board appellant performed a categoric act of expatriation, made a renunciatory declaration, and did not respond to the Consulate General's request that he submit evidence or information In the absence of any response from appellant, the Consulate General could do no more than report his action to the Department as required by section 358 of the Immigration and Nationality Act, by executing and submitting a certificate of loss of nationality.

When he became an Australian citizen, appellant was 26 years old, educated and obviously competent in the English language. He must, as a matter of law, be considered to have been able to understand the import of the oath to which he freely subscribed. The inescapable conclusion is that he knowingly and understanding renounced his fidelity to the United States and thus manifested an intention to relinquish United States citizenship. We find no elements in the record that would support a different conclusion.

The Department has carried its burden of proof.

III

Upon consideration of the foregoing and after a thorough examination of the entire record, we affirm the Department's determination of September 30, 1983 that appellant expatriated himself when he obtained naturalization in Australia upon his own application.

Alan G. James, Chairman

Mary E. Hoinkes, Member

George Taft, Member