DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This is an appeal from an administrative determination of the Department of State that appellant, Fr[redacted]k [redacted] [redacted], expatriated himself on November 25, 1971, 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 in this appeal is whether appellant's naturalization was accompanied by the requisite intent to relinquish his United States citizenship. We conclude that the act was performed with such intent, and will, accordingly, affirm the Department's determination of loss of nationality.

I

Appellant was born at [redacted], [redacted] on [redacted] and acquired United States citizenship at birth. He was inducted into the U.S. Army on June 14, 1944, served in combat in Europe, and was honorably discharged on May 18, 1946. It appears that appellant served again in the U.S. Army from May 18, 1946, until May 16, 1949.

In June 1956, the El Paso Natural Gas Company, where appellant was employed, transferred him with the company to Calgary, Alberta, Canada. He married a Canadian citizen there in 1957, and had three children who were born in 1957, 1959, and 1961. Appellant registered his children as United States citizens at the Consulate General at Calgary. In 1962, the El Paso Company in Canada was sold and appellant's employment was terminated. He decided to remain in Canada.

On November 25, 1971, appellant became a Canadian citizen by naturalization. He was 45 years of age at the time and had been living in Canada for some fifteen years. He took the required oath of allegiance, which included a declaration renouncing his former citizenship. The oath read:

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, . . .

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.

It was not until Janaury 1980 that the Consulate General learned of appellant's naturalization while processing his daughter's passport application. The Consulate General wrote appellant several letters informing him of the possible loss of his citizenship and inviting him to submit additional information and evidence for the Department's consideration in reaching a decision in his case. The letters went unanswered, excepting appellant's letter, dated May 13, 1980. He informed the Consulate General that he moved to Canada in 1956 because he could not find employment in the United States, that in order to maintain his employment he became "a landed emigrant", and that he had not given up his United States citizenship. On June 24, 1980, the Consulate General invited appellant for a personal interview to discuss his citizenship status. Appellant did not respond.

The Consulate General renewed its efforts to obtain information from appellant in February 1982. Appellant completed at the request of the Consulate General an information form for determining United States citizenship and had an interview with a consular officer in April 1982.

After reviewing the case, the Consulate General believed that appellant lost his United States nationality by obtaining naturalization in Canada, and, in accordance with section 358 of the Immigration and Nationality Act, issued a certificate of loss of nationality. 2/ The Consulate General certified that appellant acquired

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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 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.

United States citizenship by virtue of his birth in the United States; that he acquired the nationality of Canada by naturalization on November 25, 1971; and 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 June 25, 1982.

Appellant took a timely appeal. He argues that he acquired Canadian citizenship to secure permanent employment in Canada. He alleges that Canadian citizenship was a requirement of his then employer, Alberta Oil and Gas Conservation Board, and that he wanted to avoid discrimination in being employed by other Canadian oil companies with similar citizenship requirements. Appellant contends principally, however, that he did not intend to relinquish his United States citizenship when he obtained naturalization in Canada upon his own application.

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a person who is a national of the United States shall lose his nationality by obtaining naturalization in a foreign state upon his own application. There is no dispute that appellant applied for and obtained Canadian citizenship. Appellant admitted that he acquired Canadian citizenship; the Canadian authorities confirmed his naturalization.

Under section 349(c) of the Act, a person who performs a statutory act of expatriation is presumed to have done so voluntarily. 3/ Such presumption, however, may be rebutted upon a showing, by a preponderance of the evidence, that the act of expatriation was not done voluntarily. In contending that he was required to acquire Canadian citizenship to secure permanent employment in that country, appellant is in effect asserting that his act of expatriation was done involuntarily, that is, under some form of economic duress. Although appellant admits that he obtained naturalization in Canada upon his own application, he seeks to rebut the statutory presumption of voluntariness by asserting that his act of expatriation was done under duress.

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

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. 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 [illegible] ing, by a preponderance of the evidence, that the [illegible] act of [illegible] was not done [illegible],

It is recognized that a defense of duress is available to persons who have performed an act of expatriation. Loss of United States citizenship can result only from the citizen's voluntary action. Perkins v. Elg, 307 U.S. 325 (1939); Acheson v. Murakami, 176 F. 2d 953 (1949); Insogna v. Dulles, 116 F. Supp. 473 (1953); Mendelsohn v. Dulles, 207 F. 2d 37 (1953); Nishikawa v. Dulles, 356 U.S. 129 (1958); Afroyim v. Rusk, 387 U.S. 253 (1967); Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971); Vance v. Terrazas, 444 U.S. 252 (1980).

For a defense of duress to prevail, however, it must be shown that there existed "extraordinary circumstances amounting to a true duress" which "forced" a United States citizen to follow a course of action against his fixed will, intent, and efforts to act otherwise. Doreau v. Marshall, 170 F. 2d 721 (1948). In cases involving so-called economic duress, compelling circumstances involving a matter of survival must be shown to support a finding of involuntariness. Insogna v. Dulles, supra; Stipa v. Dulles, 233 F. 2d 551 (1956).

The record here falls short of showing that appellant's acquisition of Canadian citizenship was the result of pressure or coercion so extreme as to have left him no reasonable choice or alternative in the matter. In the citizenship form that appellant executed in March 1982, he said that he became a Canadian citizen "in order to obtain employment. Company would not hire foreigners. According to the Consulate General, appellant stated to a consular officer at an interview in April 1982, "that he became a citizen of Canada because he wanted to vote and that he was told so by a supervisor." And in his letter of appeal, dated March 22, 1983, appellant said that he acquired Canadian citizenship to remain employed by his company and to avoid discrimination in employment by other Canadian oil companies. The explanations given by appellant do not support a finding of duress as a matter of law; essentially, his circumstances do not present an extraordinary situation involving survival.

Appellant doubtless could have found other employment in Canada or the United States without changing his United States citizenship status if that were his intention. He listed his occupation as "Geologist" on his U.S. Individual Income Tax Return for 1983, an incomplete copy of which he submitted to this Board. It also appears he had considerable experience with oil companies in the United States and Canada. In these circumstances, we are not persuaded that his acquisition of Canadian citizenship was involuntary in the legal sense.

From all that appears of record, appellant made a free choice for personal reasons, career objectives, and economic advantage, and cannot be legally found to have acted under the compulsion of an overwhelming extrinsic force in acquiring Canadian citizenship.

There is no evidence that he made any effort to act in a manner otherwise than he chose. The opportunity to make a decision based upon personal choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, supra. Admittedly, appellant was confronted with a choice between difficult alternatives, but in citizenship matters, as in other aspects of life, a person must choose between such alternatives and must accept the consequences of his voluntary choice. Appellant carefully weighed his choices and, having exercised his choice, may not be relieved from the consequences following from it.

Under the provisions of section 349(c) of the Immigration and Nationality Act, appellant bears the burden of rebutting by a preponderance of the evidence the statutory presumption that his naturalization was voluntary. 4/ In our opinion, appellant has not met his burden of proof. We conclude, accordingly, that his acquisition of Canadian citizenship upon his own application was a voluntary act of expatriation.

III

There remains for determination the principal issue whether appellant had the requisite intent to relinquish his United States citizenship when he became a citizen of Canada in 1971.

On the issue of intent, the Supreme Court declared in Afroyim v. Rusk, 387 U.S. 253 (1967), that a United States citizen has a constitutional right to remain a citizen unless he voluntarily relinquishes that citizenship. Although the Court did not define what conduct constitutes a "voluntary relinquishment" of citizenship, it made loss of citizenship dependent upon evidence of a person's intent to transfer or abandon allegiance.

In Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court clarified the Afroyim holding on intent. The Court said that in order to find loss of nationality the government must prove by a preponderance of the evidence an intent to surrender United States citizenship, as well as the voluntary performance of the expatriative act under the statute. It is thus the government's burden to establish that the expatriating act was performed with the necessary intent to relinquish citizenship. Such intent, the Court said, 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 of the performance of the statutory act of expatriation. The person's own words or conduct at the time the expatriating act occurred are to be looked at in determining his or her intent to relinquish citizenship. Terrazas v. Haig, 653 F. 2d 285 (1981).

4/ See note 3, supra.

In this connection, it should be noted, as the U.S. Court of Appeals for the 7th Circuit observed in Terrazas v. Haig, supra, "a party's specific intent to relinquish his citizenship rarely will be established by direct evidence." The Court went on to say, however, that "circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship."

Obtaining naturalization in a foreign state may be viewed as highly persuasive evidence in a particular case of an intent to terminate or abandon United States citizenship, but it is not conclusive evidence of the voluntary assent of the citizen. Vance v. Terrazas, supra, citing Nishikawa v. Dulles, 356 U.S. 129 (1958) (Black, J., concurring). As the Supreme Court pointed out in Vance v. Terrazas, supra, the trier of fact will have to determine on the basis of all the evidence whether the citizen not only voluntarily performed the expatriating act but also intended to relinquish his citizenship.

The record here is barren of any expressions or declarations of appellant at the time he applied for and obtained naturalization in Canada to the effect that he did not intend to relinquish his United States citizenship. The first expression of appellant's intent to retain his citizenship appeared in his letter of May 13, 1980, approximately nine years after his naturalization, to the Consulate General. He informed the Consulate General that he had not given up his citizenship and that he would always be an American. Appellant also stated in the citizenship information form that he executed at the request of the Consulate General in March 1982, that his intention at the time he obtained naturalization was not to relinquish United States citizenship. He said that he served in the U.S. Army during World War II in combat and would not voluntarily give up his citizenship. There is, however, no evidence in the record contemporaneous with appellant's naturalization that would corroborate his statements on intent made several years after he was naturalized.

The record discloses, however, that appellant knowingly and willingly sought and obtained naturalization in Canada and took an oath whereby he declared his renunciation of all allegiance and fidelity to the United States, swore allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors, and swore to faithfully observe the laws of Canada and fulfill his duties as a Canadian citizen. He gave his full assent to accept a foreign nationality and to renounce his allegiance to the United States. It strains credulity to believe that appellant, an educated and experienced man of 45 years of age, would not have understood the meaning or appreciated the consequences of his declaration of renunciation, oath of allegiance to Queen Elizabeth, and pledge to Canada.

As stated above, naturalization in a foreign state may be highly persuasive evidence of an intention to relinquish citizenship. Vance v. Terrazas, supra. In regard to appellant's declaration renouncing his previous nationality, it has been held to constitute a sufficient finding of a declarant's intent to relinquish United States citizenship. Terrazas v. Haig, supra. The taking of an oath of allegiance, standing alone without renunciatory language, has also been held to provide "substantial evidence of intent to renounce citizenship." King v. Rogers, 463 F. 2d 1188 (1972).

Apart from appellant's act of naturalization and his oath, there is no other contemporaneous evidence of his intent. It is clear from the record that appellant expressed no concern about his United States citizenship status until 1980, when the Consulate General learned of his naturalization and informed him regarding the possible loss of United States nationality. He sought no advice from U.S. consular officers in Canada as to the effect his naturalization would have on his United States citizenship. According to the Consulate General, his last registration as a United States citizen occurred in 1962.

In his submissions to the Board, appellant argued that he had no intention to terminate his United States citizenship when naturalized, that he continued to regard himself as a United States citizen, and that he maintained ties with the United States. He claimed that he voted by absentee ballots "in all Congressional and Presidential elections, except 1980," that he "filed" U.S. income tax returns to 1969, and one for the 1983 tax year, that he had "paid up social security benefits" in the United States, and that he owned property in the United States.

As evidence to support his contention that he had no intention to relinquish his United States citizenship and that he maintained ties in the United States, appellant submitted copies of the following enumerated documents:

1. Birth certificate.

2. Discharge from the Army of the United States, dated May 18, 1946, with his service record.

3. Discharge from the Armed Forces of the United States, dated May 16, 1949.

4. Letter of Social Security Administration, Department of Health, Education, and Welfare, dated November 19, 1963, giving an estimate of possible death benefits.

5. Letter of Veterans Administration Center, dated January 10, 1966, explaining protection afforded by National Service Life Insurance, Total Disability and Income Provision.

6. Information statement about his government life insurance, Veterans Administration Center, dated February 13, 1984.

7. Page one of U.S. Individual Income Tax Return for 1983 said to have been filed.

8. Canadian statement of payments made to Canadian tax authorities in 1983.

The above evidence that appellant has offered scarcely constitutes evidence of his intent when he acquired Canadian citizenship in 1971. The intent that we must ascertain is appellant's intent when he committed the voluntary expatriating act and not his intent several years prior to or after the act. There is no probative evidence to support appellant's contention on intent at that time.

We are of the view that appellant's actions at the time he obtained naturalization manifested his voluntary assent to transfer his allegiance to Canada and relinquish his allegiance to the United States. His belated statements made to the Consulate General in 1980 and 1982 and to this Board that he did not intend to give up his United States citizenship are contradicted by his voluntary application for naturalization in Canada, by renouncing all allegiance and fidelity to the United States, of which "foreign state" he was at the time a citizen, by taking an oath of allegiance to Queen Elizabeth the Second, and by declaring his intent to faithfully observe the laws of Canada and fulfill his duties as a Canadian citizen.

Given the facts and circumstances surrounding appellant's naturalization in Canada, and based upon a review of the evidence of record, we are persuaded that the record supports a finding of an intent to transfer allegiance to Canada and to relinquish United States citizenship. In our judgment, the Department has satisfied its burden of proof by a preponderance of the evidence that appellant's naturalization was accompanied by the requisite intent to give up or abandon United States citizenship.

IV

On consideration of the foregoing, we conclude that appellant expatriated himself on November 25, 1971, by obtaining naturalization in Canada upon his own application, and, accordingly, affirm the Department's administrative determination of loss of United States nationality.

Alan G. James, Chairman

Edward G. Misey, Member