March 20, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] J[redacted] C[redacted]

R[redacted] J[redacted] C[redacted] has brought this appeal to the Board of Appellate Review from an administrative determination of the Department of State that he expatriated himself on June 22, 1973 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

Appellant has conceded that he obtained naturalization in Canada voluntarily. Thus, the sole issue for decision is whether appellant's performance of the statutorily expatriating act was accompanied by the requisite intent to relinquish his United States nationality by seeking and obtaining Canadian citizenship. We conclude that appellant's naturalization, admittedly voluntary, was accompanied by the requisite intent to give up or abandon his United States nationality. Accordingly, we will affirm the Department's determination of loss of citizenship.

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

Appellant became a United States citizen by birth at [redacted]. At age 12 his mother took him and his brother to Canada where appellant has since lived. He states that he registered for the United States draft in January 1967 and thereafter sought clearance from his draft Board to make a trip to Europe later in 1967. In March 1967 he was issued a United States passport at the Consulate General in Vancouver, valid apparently until 1972, the only United States passport he has held. He states he has not obtained a Canadian passport, not needing one for his cross-border visits to the U.S. and not travelling abroad elsewhere.

According to appellant, he entered the University of British Columbia in September 1970 to study law. During the hearing requested by appellant on his appeal, he stated that he was made aware, in his second or third year of law school, in an Administrative Law course, that he would have to be a Canadian citizen in order to be admitted to the Bar of British Columbia. He did not apply for Canadian citizenship, however, until completion of the formal law course and entry upon the required year as an "articled" clerk in a law firm, being only provisionally articled until he submitted his application for Canadian citizenship in the Spring of 1973 and obtained naturalization on June 22, 1973 under Section 10-1 of the Canadian Citizenship Act. 2/ He

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2/ Transcript of Hearing in the Matter of Richard John Cameron, Board of Appellate Review, October 12, 1984 (hereinafter referred to as "TR"), pp. 15-16.

was called to the British Columbia Bar as a solicitor on May 15, 1974.

According to appellant, his interest in possibly purchasing real property in the United States, in Oregon and just south of Vancouver in the State of Washington, led him to think about having access to the United States as an American citizen, to facilitate purchase of property and assumption of licenses as a United States national. In 1981, he became aware, through discussions with American real estate brokers, that his action in obtaining Canadian nationality might have had adverse effects on his United States nationality, and decided to make application for a United States passport, in order to begin resolution of this issue. 3/ He approached the U.S. Consulate General in Vancouver and, on July 5, 1982, filled out the standard questionnaire, "Information for Determining U.S. Citizenship" in which he acknowledged that he had been naturalized in Canada and had taken an oath of allegiance to a foreign state. He asserted he did not know that, by becoming a Canadian citizen and swearing the oath of allegiance, he might lose U.S. citizenship. On February 10, 1982, appellant provided a personal affidavit supplementing the questionnaire, and in March 1982 a letter from the British Columbi Law Society confirming that Canadian citizenship is required in order to practice law in that Province; a document from the Registrar of Canadian Citizenship attesting to the June 22, 1973 date of naturalization; and a copy of his birth certificate from the State of Idaho.

3/ TR, pp. 52-56.

In compliance with section 358 of the Immigration and Nationality Act, the Consulate General prepared a certificate of loss of nationality in appellant's name on March 14, 1983. 4/ Therein the Consulate General certified that appellant acquired United States nationality at birth; that he acquired the nationality of Canada upon his own application; and concluded that he thereby expatriated himself under the provisions of section 349 (a)(1) of the Act. In forwarding the certificate to the Department the consular officer concerned expressed the view that appellant probably lacked the intent to expatriate himself by obtaining Canadian citizenship, and recommended that the certificate not be approved.

The Department did not agree with the Consulate General, however, and on March 31, 1983 approved the certificate, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to this Board.

An appeal was entered through counsel on March 20, 1984.

4/ 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.

Appellant has conceded that his naturalization in Canada was voluntary. 5/ His case in chief is that he did not intend to relinquish United States citizenship when he obtained that of Canada.

II

In order to lose United States nationality by obtaining naturalization in a foreign state upon one's own application, appellant must have performed this expatriating act voluntarily 6/ and the Department of State must establish by a preponderance of the evidence that appellant intended to transfer or abandon allegiance to the United States. 7/ Appellant having admitted

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5/ TR, p. 80.

6/ Perkins v. Elg, 307 U.S. 325 (1939); Afroyim v. Rusk, 387 U.S. 253 (1967).

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

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.

that he obtained naturalization in Canada voluntarily, the question remains whether on all the evidence the Department has satisfied its burden of proof with regard to appellant's intent to terminate his United States citizenship. This intent must be determined as of the time the expatriating act took place, or June 22, 1973, and ascertained from appellant's words or inferred from his conduct. Vance v. Terrazas, 444 U.S. 252 (1980). With respect to the issue of interpreting such conduct, the Supreme Court in Vance v. Terrazas cited favorably the Attorney General's interpretation (42 Op. Atty. Gen. 397, 1969), and also noted the Department of State's guideline evidencing a similar position on intent (8 FAM 224.20, now rendered current in CA-1767, August 27, 1980). The Attorney General observed that voluntary relinquishment of citizenship is not confined to a written renunciation but can also be manifested by other actions declared expatriative under the Act, if such actions are in derogation of allegiance to the United States. The Department's guideline states that actions subsequent to the time the expatriating act took place are relevant only to the extent they tend to show what was the citizen's state of mind at the time of committing the act, and that there is no mechanical formula to be applied but there are indicia of intent which may be relevant. Among these indicia are voluntary naturalization, an oath of allegiance to another country, service in an important post in a foreign government. There are also indicia of an intent to retain U.S. citizenship, such as filing U.S. income tax returns, registering for military service, continued use of a U.S. passport, requesting citizenship documentation for children born subsequent to the expatriating act, participating in political activity in the United States or, in contrast, the indications of an intent to relinquish U.S. citizenship given by failure to maintain the obligations of U.S. citizenship.

As the U.S. Court of Appeals for the Seventh Circuit observed in Terrazas v. Haig, 653 F. 2nd 285 (1981), a party's specific intent to relinquish citizenship rarely will be established by direct evidence, and circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish. The court referred to King v. Rogers, 463 F. 2nd 1188 (1972), in which the Secretary of State was permitted to prove intent by acts inconsistent with United States citizenship or affirmatively manifesting a decision to accept foreign nationality.

Appellant's affidavit of February 10, 1982, supplementing his "Information for Determining U.S. Citizenship" questionnaire, stated that he had become a Canadian citizen and sworn an oath of allegiance solely for the purpose of being admitted to the

British Columbia Bar, without intent to give up his U.S. citizenship. He declared in his response to the questionnaire, in his counsel's brief in support of the appeal, and in the hearing th he was not aware that his becoming naturalized as a Canadian citizen could adversely affect his United States nationality. In the hearing, he emphasized that he was aware, in a generalized sense, that people could have dual nationality in Canada, both British/Canadian, and U.S./Canadian, although he did not know any dual nationals personally. He reiterated his "strong emotional ties to the United States", where he spent his childhood and where his parents were born; although he also stated his parents were deceased, his mother's family had been Canadian, and he had no American relatives.

During the hearing on October 12, 1984, appellant repeatedly stated that he had been known to schoolmates, friends and acquaintances in Canada as an American from the time he had first come to Canada, initially by his speech and mode of expression, then by his dress and his preference for vacation resorts in the United States and for American business methods. 8/ He said his American background and preferences were widely known in 1973, the time he decided to become a Canadian citizen in order to practice law in British Columbia, and many knew, including the "principal" in the law firm in which appellant was provisionally articled, that his intent in becoming a Canadian citizen was to enable him to be fully articled and to be admitted to the Bar. Asked if he could produce affidavits to these effects to support his case, he replied affirmatively. 9/ In fact, in his supplemental affidavit of October 31, 1984, appellant largely reiterated the major points in his counsel's brief; sought to distinguish his own situation from another appellant In the Matter of S.B.S., decided by this Board on April 25, 1984; and said he now thought he could not obtain the type of affidavit evidence whic S.B.S. had presented, because he had not been informed of the possibility of loss of U.S. citizenship until nine years after becoming a Canadian citizen.

8/ TR, pp. 10-11, 24-28.

9/ TR, pp. 72-77.

Appellant has also testified that, during his many and regular crossings of the border; part of the United States being forty-minutes drive from Vancouver and the major crossing also relatively close, after 1973 he identified himself as Canadian, as a matter of convenience and to avoid lengthy delays and questioning if he had made a statement regarding American citizenship. 10/

The Department of State's argument is, in brief: appellant evidenced his intent to transfer his allegiance to Canada and abandon U.S. citizenship, when he became a Canadian citizen in 1973, by his failure to make inquiries about the effect of Canadian natualization on U.S. citizenship either before June 22, 1973 or subsequently until 1981, even though he was then a law school graduate and afterwards a practicing lawyer; his failure to file U.S. tax returns, although in contrast he paid Canadian taxes; his failure to vote in elections in the U.S., although he had voted in Canadian elections; his repeated identification of himself as a Canadian citizen when crossing the border, even to American border guards; his ownership of property in Canada but failure to claim any legal residence in the U.S.

Appellant's counsel has stated his argument cogently, both in his brief and in his summation during the hearing. In sum, this is that appellant, although an attorney, does not have a special obligation to be familiar with U.S. nationality law, or to know about the need to file U.S. income tax returns when no income is

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10/ TR, pp. 36-37, 40.

earned in the U.S.; that the act of naturalization as a Canadian is simply strongly presumptive of an intent to give up U.S. citizenship and that the Department must sustain the burden of proof that appellant intended to divest himself of U.S. citizenship. Appellant's counsel argued further that such citations as appellant's lack of family ties in the United States, his lack of a U.S. residence, his failure to be politically or civically involved in life in the States, his failure to vote in American elections all involved activities not requisite to the maintenance of U.S. citizenship. Therefore, counsel believed, on the basis of all the evidence, the Department has not sustained its position that appellant had abandoned his U.S. citizenship by becoming a Canadian national.

Once again, this Board must cope with the practical difficulties involved in reaching a decision when the statutory expatriating act was that of naturalization as a Canadian and the oath of allegiance or the circumstances surrounding that oath did not evidence specific renunciation of pre-existing United States nationality. The Board's ability to reach its decision is complicated, once more, by the fact appellant's assumption of Canadian nationality occurred ten years before the Department issued the Certificate of Loss of Nationality; no concrete evidence has been presented regarding appellant's attitude towards his U.S. nationality at the time he became a Canadian citizen; and the Board is left to evaluate actions taken or not taken by appellant at that time or in the years since the expatriating act, as bearing on his attitude towards his United States nationality at that past time.

We may accept, as appellant's counsel argues, that a well-educated law school graduate, or even a practicing attorney, would not necessarily be familiar with U.S. nationality law, but we may ask whether a prudent law school graduate and provisionally-articled law clerk would not have thought it advisable to seek advice from the U.S. Consulate General located in the same city? The appellant, however, said that it was difficult to talk to the Consulate General, to get into the building or to have a telephone call answered, because of the press of business at that office. 11

11/ TR, pp. 49-50.

He also said he really had not focused attention on the possible adverse effects of Canadian nationalization, being too occupied with other more immediate requirements of his studies and his concern at being only provisionally articled. 12/ Yet, when his interest in possible purchase of American real property led him to seek to resolve the question of his U.S. nationality years later, through the process of requesting a U.S. passport, he seems to have found no particular difficulty in meeting with a consular officer in July 1982, to initiate that process. His interest, then, was focused.

If we look at the record of appellant's life in the intervening period between 1973 and 1982, there is a pattern from which inferences of appellant's intent may properly be drawn. He voted in Canadian elections; he did not vote in elections in the States. He paid Canadian income taxes; he did not file a United States tax form. He held property and had a residence in Canada; he did not in the United States. He took no steps to renew his U.S. passport, which had lapsed in 1972, before or after becoming a Canadian citizen, until the initiation of the current process in 1982. He repeatedly identified himself as a Canadian when crossing the border into the United States, although he says this was only a matter of convenience. He has emphasized the extent to which his ties to the United States, his identification of himself as Amerian, were known widely before, when and after he became a Canadian

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12/ TR, pp 68-70.

citizen, yet he now says he cannot produce statements supporting his contentions, even though at the hearing on October 12, 1984, he specified people presently in Vancouver who could provide affidavits, such as those with whom he had rented a cabin in Point Roberts, those who had been with him in high school, the "principal" in the law firm in which he had been articled.

Parenthetically, in his supplemental affidavit of October 31, 1984, appellant seeks to explain why he cannot now obtain such supportive affidavits by distinguishing his situation from that of In the matter of S.B.S., decided by this Board on April 25, 1984. In that case, S.B.S., a U.S. citizen by birth and the holder of U.S. passports, became a British citizen in order to qualify as a solicitor in Britain. The U.S. Embassy in London advised S.B.S. within three months of becoming a British citizen that that act might have caused expatriation, and the resulting process led to issuance of a Certificate of Loss of Nationality three months later. Three years after that, S.B.S. asked the Department to reconsider her case and, as part of that process, presented evidence in the form of letters to one of the Embassy's consular officers from a member of Parliament and junior minister and two of her law professors that S.B.S. had made clear to them before obtaining British citizenship that she did not wish to lose her U.S. citizenship and was reluctant to take any action jeopardizing that citizenship, and that the possibility of retaining both U.S. and British nationalities had been discussed. The consular officer supported these views through her own conversations with S.B.S., and this evidence was given persuasive weight by this Board in its decision some six years later to reverse the Department's holding. Appellant, in his supplemental affidavit of October 31, 1984, argues that S.B.S. was able to obtain affidavit evidence more readily because she was advised within months after becoming a British citizen of the possible adverse effects on her U.S. citizenship, while he had to seek such affidavits nine years after the event. While it is correct that S.B.S. presented her supporting affidavits roughly three and a half years after the initiation of the Certificate of Loss of Nationality process, as opposed to nine years in appellant's situation, we must read appellant's contention in the light of his statements at the hearing regarding ability to obtain such supporting evidence, and also the fact he has lived in the same city since he was thirteen years of age, has attended high school, university and law school with fellow residents, and has referred to the current availability of "the principal" in his law firm during the time of the decisions leading to the assumption of Canadian nationality.

We would also observe that, In The Matter of A.K.H., decided by this Board on March 1, 1984, the appellant, who had become a

British citizen in Canada in 1965, was able to support her contention that she had no intent to divest herself of her U.S. nationality by this act, through an affidavit executed in November 1983 by a reputable business executive testifying to A.K.H.'s evidenced intention to maintain her U.S. citizenship both in 1965 and later, and that she considered herself a dual national.

We are left, thus, with the balance of the burden of proof: whether, on the preponderance of the evidence, on the basis of the indicia of intent presented in this case, the appellant may rightly be considered to have had the intent to transfer or abandon allegiance to the United States when, on June 22, 1973, he became a Canadian citizen. We believe the record supports such a finding. Appellant has, in all evident respects, behaved completely as a Canadian citizen; repeatedly declared himself to United States officials to be a Canadian citizen; carried out all the obligations of Canadian citizenship and none of the United States, after becoming a Canadian; failed to produce any support save his own allegations about his intent to retain U.S. citizenship, when circumstances would indicate this could well have been produced.

III

Upon consideration of the evidence of record and taking into account the facts and circumstances of appellant's naturalization in Canada and the indications of allegiance to Canada, it is our judgment that appellant, as he acknowledges, obtained naturalization voluntarily and that the Department of State has satisfied its burden of proving by a preponderance of the evidence that appellant's expatriating act was performed with intent to relinquish United States citizenship. Accordingly, we conclude that appellant expatriated himself on June 22, 1973, by obtaining naturalization in Canada upon his own application, and we affirm the Department's administrative determination of loss of nationality made in this case on March 31, 1983.

Howard Meyers

Howard Meyers, Member

Frederick Smith, Jr.

Frederick Smith, Jr., Member

Dissenting Opinion

I am unable to concur in the opinion of my colleagues.

The facts in this case have been fairly set out in the majority opinion and require no reiteration.

Appellant's having conceded that he acted voluntarily, the sole issue for decision is whether appellant intended to relinquish his United States citizenship in 1973 when he applied for and obtained naturalization in Canada, thus expatriating himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. 1/

The Department has the burden of proving by a preponderance of the evidence that appellant's naturalization in Canada was accompanied by an intent to relinquish United States citizenship, an intent that may be found in appellant's words or as a fair inference from his proven conduct. Vance v. Terrazas, 444 U.S. 252 (1980). The intent to be proved is appellant's intent on or about June 22, 1973, the day he swore an oath of allegiance to the British Crown and received the grant of Canadian citizenship. Terrazas v. Haig, 653 F. 2d 285 (7th Cir. 1981).

In Vance v. Terrazas, the Supreme Court noted with approval the Attorney General's Statement of Interpretation of Afroyim v. Rusk, 387 U.S. 253 (1967), 42 Op. Atty. Gen. 397 (1969), issued to guide the administrative authorities in applying Afroyim to specific loss of nationality statutes.

The Attorney General said that "voluntary relinquishment" of citizenship (by which the Attorney General held the Supreme Court in Afroyim meant "intent to relinquish citizenship) "is not confined to formal renunciation of nationality. It can also be manifested by other actions declared expatriative under the Act, if such actions are in derogation of allegiance to this country."

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

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, . . .

Atty. Gen's Op., supra, 400. "Yet even in those cases," he continued, "Afroyim leaves it open to the individual to raise the issue of intent." Id. The Attorney General added: "...some kinds of conduct, though within the proscription of the statute, simply will not be sufficiently probative to support a finding of voluntary relinquishment." Id.

In Terrazas, the Supreme Court observed that under the foregoing advice the relevant agencies of Government had adopted guidelines to require an ultimate finding of intent to relinquish citizenship. 2/

2/ In footnote 6, the Court observed that, in his brief, the Secretary of State had stated that the Department of State and the Immigration and Naturalization Service had adopted guidelines that attempt to ascertain the individual's intent by taking into account the nature of the expatriating act and the individual's statements and actions made in connection with that act.

As to one of the Department's guidelines, the Court commented that it "evidences a position on intent quite similar to that adopted here." The Court then quoted from 8 Foreign Affairs Manual 224.2, p. 2 (1970):

> In the light of the Afroyim decision and the Attorney General's Statement of Interpretation of that decision, the Department now holds that the taking of a meaningful oath of allegiance to a foreign state is highly persuasive evidence of an intent to transfer or abandon allegiance. The taking of an oath that is not meaningful does not result in expatriation. The meaningfulness of the oath must be decided by the Department on the individual merits of each case."

Appellant in Terrazas had expatriated himself under section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. The Supreme Court thus had no reason to cite or pass judgment on the Department's guidelines in their entirety nor did it. After Terrazas, the Department reiterated its administrative guidelines of 1970, which have been summarized by the majority in the case now before the Board, in an instruction to all diplomatic and consular posts. Circular Airgram 1767, August 30, 1980. Except for the one noted above, the Department's guidelines have not yet been the subject of judicial review.

At the end of the litigation in Terrazas, the Court of Appeals for the 7th Circuit observed that a party's intent to relinquish citizenship rarely will be established by direct evidence, but circumstantial evidence surrounding the commission of the expatriating act may establish the requisite intent. Terrazas v. Haig, supra, 288. In support of this proposition, the court cited an earlier 9th Circuit case, King v. Rogers, 463 F. 2d 1188, 1189 (9th Cir. 1972), wherein the court held:

> The Secretary may prove this subjective intent by evidence of an explicit renunciation, Jolly v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir. 1971), acts inconsistent with United States citizenship, Baker v. Rusk, 296 F. Supp. 1244 (C.D., Cal., 1969), or by "affirmative voluntary act/s/ clearly manifesting a decision to accept /foreign/ nationality. . .," In re Balsamo, 306 F. Supp. 1028, 1033 (N.D., Ill. 1969).

Of the foregoing three tests to ascertain intent, only the second - "acts inconsistent with United States citizenship" - is relevant to the case we are now considering. 3/

3/ In re Balsamo involved a naturalized American citizen who automatically re-acquired the Italian nationality of his birth by operation of Italian law. The court concluded that the petitioner had not intended to relinquish United States citizenship because he had performed no act that clearly manifested a decision to accept Italian nationality.

In the case now before the Board, it is only logical to assume that appellant, who concedes that he voluntarily obtained naturalization, intended to acquire Canadian nationality; the issue of his intent to relinquish his United States nationality, however, remains to be determined.

The only evidence of appellant's intent at the relevant time - 1973 - is his obtaining naturalization in Canada and swearing the oath of allegiance incident to the grant of Canadian citizenship. Such an act may be highly persuasive evidence of an intent to relinquish citizenship, but it is not conclusive evidence thereof. Vance v. Terrazas, supra, 261, citing Nishikawa v. Dulles, 365 U.S. 129, 138 (1958), Black, J., concurring.

Here, as in so many cases appealed to this Board involving naturalization in a foreign state that does not require the applicant to forswear previous allegiance or citizenship, we must examine appellant's ancillary conduct to determine what may be inferred from it with respect to his United States citizenship. In this exercise we are guided mainly, in my view, by the general rule in Baker v. Rusk, supra, cited in King v. Rogers, supra, namely, that acts inconsistent with United States citizenship may prove an intent to relinquish that citizenship. The Department's guidelines for ascertaining intent, which are summarized in the majority opinion, are rational and useful, but they do not yet have a judicial imprimatur, and are not binding on the Board. Note 2, supra. As the Department stated in the Circular Airgram to all diplomatic and consular posts, note 2, supra, "...there is no formula that can be applied mechanically to determine a citizen's intent." So, as trier of fact, the Board must, as the Attorney General said in his Statement of Interpretation, supra, 401:

> ...make a judgment, based on all the evidence, whether the individual comes within the terms of an expatriation provision and has in fact voluntarily relinquished his citizenship.

After he became a Canadian citizen, appellant swore the required oath for admission to the British Columbia Bar and entered the practice of law - acts not inconsistent with United States citizenship. Baker v. Rusk, supra. According to his own statement, he did not obtain a Canadian passport; the record does not indicate otherwise. He voted in Canadian elections, but that act has not been inconsistent with United States citizenship since Afroyim v. Rusk, supra.

Appellant did not vote in United States elections or file United States income tax returns. He has no close personal ties to or property interests in the United States. I am not, however, persuaded that these facts are relevant to the issue of whether he intended in 1973 to relinquish United States citizenship.

As to his not voting in American elections, appellant's situation is hardly unique. Regretably, barely half of the American electorate living in the United States do not, because of inertia or other insubstantial reasons, vote in national elections, and it is clear that many Americans who live abroad are also negligent of that civic duty.

Appellant had a duty, of course, to file income tax returns, even though, as he has maintained, he had no income taxable in the United States. Appellant's non-compliance with the law, howev without more, seems to me to be an ambiguous indicator of his specific intent regarding relinquishment of United States citizenship, especially, as this Board knows from experience, many Americans living abroad fail to file income tax returns here.

Appellant's lack of ties to the United States has no bearing, in my opinion, on whether he intended to relinquish United States citizenship in 1973. He was taken to Canada while a child, leaving no material interests or close family behind. The pattern of his life in Canada was to a certain extent determined by his mother, and it seems perfectly understandable that his personal associations and professional interests, aside from American legal business, would center in Canada.

Several other aspects of appellant's conduct are arguably more relevant to the issue of his specific intent; viz: his failure to obtain prior advice about the possible effect of naturalization on his United States citizenship; not asserting a claim to United States citizenship from 1973 to 1982; repeatedly identifying himself as a Canadian citizen when crossing the United States-Canadian border; and not producing affidavits of a lack of intent in 1973 to relinquish United States citizenship when invited to do so at the hearing.

Asked at the hearing why he applied for naturalization without first having sought official or other advice about its effect of naturalization on his United States citizenship, appellant said it was not easy to approach the Consulate General at Vancouver. 4/ He later conceded that on hindsight it would have

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4/ Transcript of Proceedings in the Matter of Richard John Camer Board of Appellate Review, October 12, 1984 (hereafter referred t as "TR") 49, 50.

been prudent for him to have made inquiries, implying that if he had known in 1973 what he had since learned about nationality, he probably would have sought advice before acting, TR 68.

To proceed in such a serious matter without seeking any advice about its possible consequences is at best careless, especially for a prospective lawyer. But thoughtless action is not necessarily equatable with an intent to relinquish citizenship. In the circumstances of this case, it could be argued that appellant acted precipitately not because he intended to abandon United States citizenship but for other reasons, including plain thoughtlessness.

He was equally imprudent not to have clarified his citizenship status until 9 years after his naturalization. But the pertinent question is: how much weight does appellant's inaction add to the evidence of an intent to relinquish citizenship that may be inferred from his commission of the act of naturalization?

Before 1981, when appellant allegedly first began to realize that he might have a problem about his United States citizenship, he said he had reasoned that he had been born in the United States, and that Canada recognizes dual nationality. TR 58. He was busy and the issue simply did not arise. Id. In 1981 when he was negotiating to buy real property in the United States, he began to think that he should clarify his citizenship status so that the rights in any property he might acquire here would be duly protected. TR 53, 63. Furthermore, since he travelled only between the United States and Canada, he had no need for citizenship documentation. TR 54. Appellant asserts that he did not think he had cause to question whether naturalization had jeopardized his United States citizenship until a good many years after he became a Canadian citizen. "I knew there were no adverse effects having to do with the Canadian law and didn't consider that there would be in American law." TR 65.

This contention may be somewhat naive, but I do not think that his delay in clarifying his citizenship status necessarily suggests an intent to abandon United States citizenship. This Board has heard a good many similar appeals where the appellant allegedly believed that he or she could add Canadian nationality to United States nationality without jeopardizing the latter, and therefore did not feel a need to ascertain the true situation until some event raised a doubt about their actual citizenship status. The perception that naturalization in a foreign

state, particularly Canada, is permissible under United States law is not uncommon. It is not an implausible explanation for a considerable delay in verifying one's official citizenship status. Without more than the record here reveals, the link between a putative intent to relinquish citizenship and not clarifying one's status for a number of years strikes me as weak.

That appellant identified himself at the border as a Canadian citizen is, on its face, inconsistent with United States citizenship. He did so, he stated, in order to avoid the frustrating delays he might have encountered had he said he was an American. TR 36-40. Whatever one may think of this explanation, the record does show that appellant volunteered, first to the consular officer who interviewed him in 1982 and later to the Board at the hearing, that he habitually said he was a Canadian. He could, of course, have dissembled, and said he always said he was an American or an American-Canadian. Had he done so, there would be no way anyone could have gainsaid him. Furthermore, the formalities for crossing the United States-Canadian border, as I understand them, are perfunctory, and in the circumstances of this case, I do not think appellant's holding himself out solely as a Canadian citizen reveals very much about his intent with respect to United States citizenship.

At the hearing appellant was asked whether there were people who knew him in 1973 and who could offer testimony that he consid himself to have remained an American after naturalization. Appell replied, with some reservations, that there was not a person who knew him in 1973 who would not say that he became naturalized in order to practice law and that they considered him to be an American. TR 72-73. But, he added: "There weren't any manifesta tions of this further intention....I mean it was a personal thing inside me. I didn't know I had to build a case. I never tried to." TR 73. He thought of several people who could testify in support of his case, but added: "I mean it has been ten years. I don't know how definitely they would state it." TR 76.

Appellant's counsel then intervened to say that it was his responsibility to have obtained affidavits, but he believed that the objective evidence in the case established appellant's lack of intent to relinquish his United States citizenship. TR 77. If the Board felt the question was open, he added, he would ask leave to obtain affidavits. Id.

On October 31, 1984 appellant executed an affidavit which his counsel submitted to the Board. No affidavit was submitted from persons who knew appellant in 1973.

Appellant's affidavit stated in part as follows:

> ...I had lived in Canada, as a permanent resident, without taking Canadian citizenship, for 13 years. It must have been quite clear and in fact I stated it clearly to any person who was interested in my circumstances, that I was taking Canadian citizenship to be allowed to practice law in British Columbia where I lived. My affinity to the United States was known to those who had known me from my highschool days, although I had lost contact with many of those persons during the nine years through university and law school and by the time I was enrolled as an Articled Student. Others who knew of my American citizenship also knew of my affinity to the United States. Back in 1973 I am quite sure that persons who knew that I was American would also have been aware of my affinity to the United States and may have been in a position to provide affidavit evidence of that affinity. It must be remembered, however, that I had lived in Canada for 13 years before taking Canadian citizenship and given that I was taking Canadian citizenship in order to be allowed to practice law in British Columbia, I would have been careful not to offend my Canadian associates or employers by unduly referring to my affinity to the United States and my cherishing of United States citizenship.

What significance should be attached to the fact that appellant submitted no affidavits from people who knew him in 1973? Since we do not know the answers to some pertinent questions, I am reluctant to assign it much probative value. Did he ask the people whom he identified at the hearing to execute affidavits but find that they were reluctant to do so? Did he assume, as he suggested at the hearing, that with the passage of time it

would be difficult for prospective deponents to remember what appellant had said about his American citizenship in 1973, and decided not even to approach them? Or did he on reflection conclude, as his attorney argued at the hearing, that the objective evidence established his lack of intent to relinquish United States citizenship, and therefore that his own affidavit would suffice?

But even if appellant tried and could not obtain affidavits, his failure to do so does not indisputably support the Department's case. It is the Department's burden to prove by a preponderance of the evidence that appellant intended in 1973 to relinquish his United States citizenship - not appellant's to prove lack of such intent. The Department attempts to carry its burden of proof by arguing that appellant's proven conduct after his naturalization adequately confirms such intent. For the reasons stated above, I do not believe that the Department has sustained its burden of proof. Appellant's failure in 1984 to obtain documentary evidence of a lack of intent in 1973 should not, I suggest, be read as a confession that he intended to abandon his United States citizenship, for the inferences to be drawn from it are not akin to those that might be drawn from witholding evidence that one is known to possess.

It is not, of course, the Board's place to rationalize appellant's conduct - gratuitously to place it in a light favorable to him. But we must, it seems to me, examine such conduct objectively to determine whether a will and purpose other than an intent to relinquish United States citizenship might just as fairly and rationally be ascribed to it.

The United States Court of Appeals for the Second Circuit observed in United States v. Matheson, 532 F. 2d 809, 815 (2nd Cir., 1976):

> ...Afroyim's requirement of a subjective intent reflects the growing trend in our constitutional jurisprudence toward the principle that conduct will be construed as a waiver or forfeiture of a constitutional right only if it is knowingly and intelligently intended as such.

The record before the Board leaves me in doubt that appellant knowingly and intelligently intended to forfeit his United States

citizenship. Although his conduct is at best expressive of casualness toward United States citizenship, it is, in my opinion, simply not sufficiently probative to support a finding of intent to relinquish citizenship. Consistently with Nishikawa v. Dulles, supra, and Schneiderman v. United States, 320 U.S. 118 (1943), I would resolve my doubts about the probative value of the evidence presented here in favor of continuation of appellant's citizenship.

In my opinion, the Department's determination of loss of appellant's nationality should be reversed.

Alan G. James, Chairman