DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State that appellant, R[redacted] D[redacted] C[redacted], expatriated himself on March 3, 1982 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer of the United States at Cuidad Juarez, Mexico. 1/

The Board must decide whether appellant voluntarily renounced his United States nationality, and if he be found to have done so whether his renunciation was accompanied by an intent to relinquish citizenship of this country. We conclude that his act was freely done with a will and purpose to abandon United States citizenship. Accordingly, we affirm the Department's holding of expatriation.

1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), 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 --
>
> . . .
>
> (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;. . .

I

Appellant became a citizen of the United States by birth at [redacted] He also derived Mexican nationality through his Mexican parents. Shortly after his birth, appellant was taken to Mexico by his parents, who subsequently had his birth recorded by the authorities of the State of Chihuahua. Except for the years 1973-1974 and 1976-1980, when he attended college and university in the United States, appellant has resided in Mexico.

The Mexican Consulate General at El Paso, Texas issued appellant a passport on August 28, 1980. According to appellant, the validity of the passport was limited to August 27, 1981, and bore the following notation: "Passport will be extended upon presentation of a certificate of Mexican nationality." Appellant states that he did not then or later apply for or obtain a certificate of Mexican nationality. The record neither confirms nor denies this statement.

According to the report of an official of the Consulate General at Cuidad Juarez, appellant appeared at that office on March 3, 1982, "and expressed his desire to renounce his American citizenship." The report continued: "After the seriousness of his contemplated act was explained to him, he signed the Statement of Understanding and the Oath of Renunciation was administered to him." Appellant also completed a form entitled "Information for Determining U.S. Citizenship" and, for information purposes only, an application for registration as a United States citizen.

When the foregoing formalities had been completed, the consular officer prepared a certificate of loss of nationality in appellant's name. 2/ The consular officer certified that appellant acquired United States nationality by birth in the United States; that he took an oath of renunciation of his United

---

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.

States nationality on March 3, 1982; and thereby expatriated himself under the provisions of section 349(a)(5), of the Immigration and Nationality Act.

The Department's approval of the certificate on March 18, 1982, constitutes an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to this Board.

Appellant gave notice of appeal on March 7, 1983, submittin that he was forced to renounce his United States citizenship by the Mexican Immigration Service. He also contends that: "I never wanted to lose my U.S. citizenship."

II

To be valid, a statutory expatriating act must be performed voluntarily and in accordance with applicable legal principles. Perkins v. Elg, 307 U.S. 325 (1939). There is no doubt that appellant's formal renunciation of his United States nationality was done in the manner prescribed by law and according to the form prescribed by the Secretary of State. The record makes thi clear, and appellant has not challenged the legal validity of hi act. In an affidavit executed March 7, 1983 he contends, howeve that he was forced by Mexican authorities to renounce his United States citizenship. Because in 1982, appellant stated, his plan were to stay in Mexico and because "I was scared by the Mexican officials that I could not continue in Mexico unless I did renounce my U.S. citizenship," he formally renounced that citizenship. In the same affidavit, appellant also stated:

> In studying my case, I think now that the Mexican official did not explain himself, most probably he tried to explain /sic/ me that I should arrange my immigration status as an American citizen residing in Mexico.

It would appear, although the record does not confirm this assumption, that appellant misunderstood the unidentified Mexica immigration official, who presumably explained to appellant that under Mexican law, nationals of both Mexico and a foreign state must after age 18 obtain a certificate of Mexican nationality (CMN) in order to exercise the rights of a Mexican citizen. Sin the procedure for obtaining a CMN requires, inter alia, that the

applicant expressly renounce his or her previous nationality, the Mexican official may have been referring to that aspect of the procedure for obtaining a CMN when he told appellant that he would have to renounce his United States citizenship.

The first question to be answered therefore is whether appellant's allegation of involuntariness is sufficient to rebut the statutory presumption that one who performs a statutory expatriating act has done so voluntarily. 3/ In our opinion appellant has not overcome that presumption.

If he contends that he renounced his United States nationality under a mistake of law, the fault is his alone. He may, arguably, have been confused or misled by the Mexican official, but he had the responsibility to ascertain the true facts before proceeding. He was 27 years old at the time, presumably fluent in Spanish and university educated. As a matter of law, appellant had a free choice: to make a formal renunciation of his United States nationality, or not. He was under no constraints beyond his control to terminate his United States citizenship. As the cases make clear, the opportunity to make a free choice is not duress. Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir., 1971).

It is our conclusion that appellant voluntarily made a formal renunciation of his United States nationality.

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

Sec. 349(c). 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 upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

III

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." In Vance v. Terrazas, 444 U.S. 252 (1980) the Supreme Court reaffirmed Affroyim's emphasis on the individual's assent to relinquish citizenship and the requirement that the record support a finding that the expatriating act was accompanied by an intent to relinquish United States citizenship.

In Terrazas, the Supreme Court said that an individual's intent to relinquish citizenship may be found in his words or as a fair inference from proven conduct.

Here, appellant's own words - the formal oath of renunciation to which he subscribed - manifest his intent:

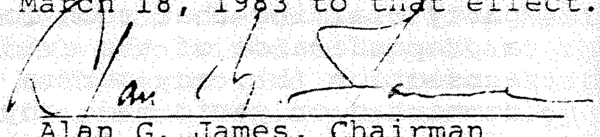
> I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

The record shows that appellant was of age, educated and competent. It may be assumed therefore that he acted with full consciousness of the grave consequences of his act. We need therefore look no further; an American citizen has a natural and inherent right to expatriate himself provided he does so in conformity with the law and the regulations prescribed by the Secretary of State, and with full awareness of the meaning of his

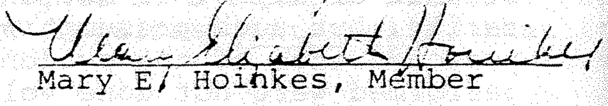
In the Board's judgment, appellant assented to loss of his United States citizenship by his formal renunciation thereof.

IV

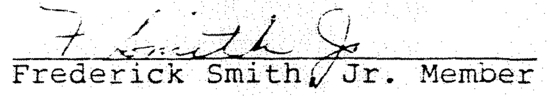
Upon consideration of the foregoing and on the basis of the record before the Board, we conclude that appellant expatriated himself on March 3, 1982, by making a formal renunciation of his United States citizenship before a consular officer of the United States in a foreign state and in the form prescribed by the Secretary of State. Accordingly, we affirm the Department's administrative determination of March 18, 1983 to that effect.



Alan G. James, Chairman



Mary E. Hoinkes, Member



Frederick Smith, Jr. Member