DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: T[redacted] H[redacted] K[redacted], [redacted]

This is an appeal from an administrative determination of the Department of State that appellant, *Thomas* Henry Koonce, Jr., expatriated himself on November 24, 1980 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 Winnepeg, Canada, 1/

Appellant contends that his renunciation was invalid on procedural grounds, that he acted involuntarily and that he lacked the intent to relinquish his United States citizenship. Disagreeing with appellant on all three points, we affirm the Department's determination of his expatriation.

I

Koonce became a United States citizen by birth at [redacted]. He came from a disturbed home and had a troubled childhood. In 1969 appellant enlisted in the United States Army, and thereafter allegedly became heavily involved in alcohol and drugs. He was discharged

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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;. ..

from the Army in 1972 and from then on apparently drifted, working sporadically, and passing bad checks and forging credit cards. He was arrested in 1976 on charges of forgery and passing bad checks and sentenced to six years imprisonment at Lompoc, California. It appears he was released on parole in 1978 but broke parole and was sent to a federal prison in the State of Washington. He apparently broke parole again in 1980 and in the fall went to Canada.

K[redacted] was arrested for fraud at Winnepeg airport on October 1, 1980, [redacted]as visited by an officer of the United States Consulate General at Winnepeg on October 2nd. As the Consulate General later reported to the Department, K[redacted] was then wanted by the United States Marshall in Seattle, W[redacted]gton and by the State of New Mexico €or forgery and fraud. The Consulate General's report to the Department further stated that:

> During c[redacted]s visit [redacted] inquired of his right to renounce U.S. citizenship. He claimed that he thought the United States had given him a 'raw deal', and that he wanted nothin[redacted]do with the country. Conoff told K[redacted] that it was doubtful renunciation w[redacted]be accepted from person /sic/ i[redacted]l, but K[redacted] pressed the issue. K[redacted] was tol[redacted]t the first step would be [redacted]establish his citizenship with birth certificate.

At appellant's request, the North Carolina Bureau of Vital Statistics sent a copy of his birth certificate to the Consulate General. Proof [redacted]appellant's United States citizenship having been produced, K[redacted] apparently insisted that the Consulate General proceed [redacted]the renunciation formalities. The report of the Consulate General continued:

> 2. Because of circumstances surrounding the renunciation of citizenship of Donald Wayne Lawrence in the Winnipeg Remand Centre in May 1980 (see Winnipeg OM of 20 June 80), Conoff did not think that renunciation could be effected in Jail. 2/

2/ Lawrence made a formal renunciation of his United States nationality in 1980 at a remand center in Winnepeg where he was being held pending disposition of certain criminal charges. He appealed from the Department's holding of expatriation. On June 23, 1982, the Board of Appellate Review determined that Lawrence's renunciation was void ab initio because it had been

Prison officials were willing to bring K[redacted] to the Consulate General, but o[redacted]t the request of Consulate General, not at K[redacted]s request. Conoff did not make this request at that ti[redacted]s there, was reason to believe that K[redacted] was using renunciation to avoid [redacted]tation to U.S. to face warrants there. It was considered questionable whether Consulate General was required to facilitate such actions.

3. Roonce thereupon protested that the Consulate General was "stalling" in order to prevent his applying for immigration to a third country. K[redacted] wrote to the local newspaper and ra[redacted]tations, claiming that his rights as a U.S. citizen were being violated. The newspaper did not print a story, but mention of the situation was made on one local radio program. Conoff then checked with the Department to see if there was any objection to having Roonce brought to the Consulate General in order to forestall any undesirable publicity. Agreement was secured that this could be done.

2/ Cont'd.

accomplished contrary to the law and regulations at a place other than an embassy or consulate, and because the witnesses were not in the category of persons authorized to witness formal renunciation; they were prison officials.

> 4. K[redacted] was brought down to the Consu[redacted] General on 24 November 1980 by the Director of the Remand Center in civilian clothes and one guard in uniform. He was brought down in handcuffs, but these were removed so he could sit in the commercial library and fill out the draft copies of the forms. While these were being typed[redacted]e Director of the Remand Centre and [redacted] waited in Conoff's office, K[redacted] was then advised again of his rights a[redacted]de aware of seriousness of act. He signed the forms in Conoff's office with Conoff, Director of Remand Centre, and two FSN's /local employees of the Consulate General/ present. K[redacted] was then handcuffed and brought b[redacted]o Remand Centre,...

Before making the oath of renunciation, appellant executed a sworn statement of understanding in which he averred, inter alia, that he had decided voluntarily to exercise his right to expatriate himself; that he had been afforded the opportunity to make a written explanation of the reasons for renouncing his nationality and chose to do so; and that the "extremely serious" nature of the contemplated act had been explained to him by the consular officer concerned and that he fully understood the consequences of his action.

The following is the text of appellant's sworn supplementary statement:

> I request to renounce my U.S. citizenship because I do not agree with the government laws and acts from-federal to state levels. I am a socialist and a non supporter of capitalist ideas. I see the U.S. government daily disregarding the basic human rights of its citizens from health care to illegal treatments by the U.S. government. I have other reasons which are more important, but shall not state them herein for fear of my physical well being. Presently being an U.S. citizen I claim the 5th Right and hold all reasons thereto.

In compliance with the provisions of section 358 of the Immigration and Nationality Act, the consular officer who administered the oath of renunciation executed a certificate of

loss of nationality in appellant's name on January 8, 1981. 3/ He certified that appellant became a United States citizen by birth in the United States; that he made a formal renunciation of his United States nationality; and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. In a report to the Department, dated January 14, 1981, the consular officer asserted that:

> Conoff feels certain that there was no coercion involved. It was, by any standard, rather the opposite. K[redacted] is now requesting refugee status in Canada and has written to every embassy in Ottawa in order to find a country that would accept him.

The Department approved the certificate on February 18, 1981, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. On March 16, 1981 the Consulate General handed a copy of the approved certificate to K[redacted].

3/ 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.

[redacted] was in prison in Canada in March 1982 when he wrote to the Board stating that he wished to take an appeal from the Department's holding of his expatriation. Although the appeal was about one month over the allowable time limit on appeal (one year after approval of the certificate of loss of nationality, 22 CFR 7.5(b)), the Board deemed it timely in light of the report of the Consulate General that he had discussed an appeal with them in early February 1982. 4/

Appellant, who is represented by counsel, argues that the Department erred in determining that he expatriated himself for the following reasons:

4/ The substantial delay in the disposition of this case was due to the following circumstances. When the exchange of briefs was completed in April 1983, the Board requested that appellant's counsel obtain certain medical records of appellant dating from his time in prison, since counsel had stated that appellant had received therapy counseling in prison over the past ten years. Obtaining the records from the U.S. Prison Service proved very time consuming; they were finally made available to the Board in August 1985.

1. Mr. K[redacted] Did Not Intentionally, and With Full Comprehension and Understanding, Relinquish His United States Citizenship. Therefore, the State Department's Determination That Mr. Koonce Expatriated Himself under section 349 of the Immigration and Nationality Act (8 U.S.C. section 1481) Was Incorrect.

a. The State Department [redacted] the burden of proving that Mr. K[redacted] intended, with full comprehension and understanding, to relinquish his United States citizenship.

b. Mr. K[redacted] did not, and could not, form a reasoned intent to relinquish his United States citizenship.

2. The Consulate Did Not [redacted]low Procedures Adequate to Protect Mr. K[redacted]'s Fundamental Interest in Remaining a United States Citizen. The S[redacted]epartment's Decision to Accept Mr. K[redacted] Attempted Renunciation Was, Therefore, Improper,

As we interpret appellant's arguments, he maintains that his renunciation should be deemed void ab initio because the Consulate General did not follow proper procedures in accomplishing it; that appellant's renunciation was involuntary because he was incapable of making a reasoned divestiture of citizenship; and finally, that in view of his history of alcohol and drug abuse and depression he did not have full awareness of the consequences of renunciation, i.e., lacked the requisite intent to abandon United States nationality.

II

Under the statute, the Department must prove that an expatriating act was performed and performed validly. 5/

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

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

Appellant contends that the consular officer concerned "facilitated" and accepted his renunciation with inadequate protection of his rights, and did not investigate appellant's mental condition.

The procedures for formal renunciation of United States nationality are mandated by law and regulations, section 349(a)(5) of the Immigration and Nationality Act, 6/ and section 50.50 of Title 22, Code of Federal Regulations, 22 CFR 50.50, 7/ respectively, There can be no dispute that appellant made an oath of renunciation before a consular officer of the United States at Winnipeg, Canada and did so in the form prescribed by the Secretary of State. He thus brought himself within the purview of the statute.

5/ Cont'd

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,

6/ Supra, Note 1,

7/ 22 CFR 50.50 reads as follows:

(A) A person desiring to renounce his U.S. nationality under section 349(a)(6) of the Immigration and Nationality Act shall appear before a diplomatic or consular officer of the United States in the manner and form prescribed by the Department. The renunciant must include on the form he signs a statement that he absolutely and entirely renounces his U.S. nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

We must, therefore, inquire whether the consular officer followed established departmental guidelines in taking appellant's renunciation. The guidelines in effect in November 1980, 8 Foreign Affairs Manual 225.6, 8 FAM 225.6, state that renunciation should not be recommended, but that consular officers should bear in mind the injunction of the Act of 1868 that every citizen has an inherent and natural right to renounce his citizenship, 8/ 8 FAM 225.6(c). Consular officers should suggest that a would-be renunciant defer action, allowing time for reflection. "In no case, however, shall a United States citizen be denied the right to take an oath of renunciation." 8 FAM 225.6 (h).

8/ Section 1, chapter 249 of the Act of July 27, 1868, 15 stat. 223, states that:

"Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing all allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic".

If the sanity of the would-be renunciant is in question, action should be deferred. The consular officer should initiate any possible local investigation concerning the person's mental capacity and request assistance from the Department before renunciation takes place. 8 FAM 225.6(i).

We find no evidence in the record that the consular officer did not follow prescribed procedures.

From his first meeting with a consular officer appellant insisted that he be allowed to renounce his United States nationality, contending that he had had a "raw deal" from the United States and wanted nothing to do with the country. The consular officer proceeded deliberately, ensuring that K[redacted] had adequate time to reflect on the consequences of renunciat[redacted] however, repeated[redacted]erted that the Consulate General was stalling. Since [redacted] was in custody deliberate action in appellant's case was fully warranted. The Consulate General was properly concerned that it might be material error to accept [redacted] renunciation in the Remand Center, and therefore that arrangements had to be made that would ensure there was no duress in fact or appearance when he did so. Furthermore, the Consulate General obtained the Department's approval before asking the authorities at the Remand Center that appellant be brought to the Consulate General.

We are satisfied that the consular officer handling [redacted] case carefully spelled out for him the serious consequenc[redacted] of renunciation. Indeed, as the Assistant Superintendant of the Remand Center where [redacted] was being detained[redacted] stated, the consular officer had attempted to discourage [redacted] but he had insisted on proceeding. "I am confident," the Remand Center official stated, "that the consequences of renunciation were fully explained to Tom."

We find unpersuasive appellant's contention that his renunciation was "facilitated" because he had become something of an embarrassment by generating adverse publicity for the Consulate General through a letter writing campaign which, "in his confused state," he thought would prevent him from being deported to the United States and would permit him to emigrate to another country. It must be borne in mind that the Consulate General would have derelict had it, contrary to law and regulations, denied [redacted] the right to expatriate himself after he persistently demanded that he be permitted to do so.

The later observation of the consular officer who administered the oath of renunciation to [redacted] thus strikes us as fair comment:

> I find it quite ironic that Mr. [redacted] ce is now claiming we failed to pr[redacted] his rights by allowing him to renounce his citizenship, as his argument at the time was that we were doing precisely the same thing by not allowing him to renounce.

Nor do we think, as will be more fully discussed below, the consular officer should have deferred taking [redacted] renunciation because his sanity might have been in question; judging from the record, Koonce's behavior did not OR its face indicate mental instability, As the consular officer observed in his 1982 statement: "I found him to be a quiet-spoken, intelligent person, with apparent hard feelings against the United States and a rational goal of not wanting to return to prison there....There was no doubt in my mind, however, that Mr. [redacted] was fully capable of making an intentional renunciation,,, "

In sum, there is nothing of the record to substantiate appellant's contention that the Consulate General did not adequately protect [redacted] interest in retaining his United States citizenship, Conseauentlv. we find that his renunciation was alid as a matter of law. Whether, on all the evidence, [redacted] was competent to perform a voluntary act of expatriation is a separate question which we next address,

III

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary, 9/

Appellant contends that he was unable to perform a rational, voluntary act of expatriation on November 24, 1980. Around the time of his renunciation he was, in his words, "using and abusing drugs and in a great state of mental depression," and "I...was not of sound mind at the time...." He asserts that the supplementary statement he executed on the day of his renunciation reflects "a possible unstable, but at least deeply troubled individual."

9/ Supra, note 5.

Appellant has submitted considerable medical and psychiatric evidence in support of his claim of incapacity.

He was examined by prison doctors in 1976, 1977 and 1979. According to the records of those examinations, [redacted] had been a user of marijuana and LSD, and had drunk alcohol to excess. They further show that in 1975 he had been treated for acute alcoholism in Salt Lake City and had at that time been seen by a psychiatrist. The records also indicate that [redacted] had been subject to periodic severe depression, and at one time was taking lithium.

Dr. Barbara E. Bliss, a psychiatrist of Bremerton, Washington, submitted a psychiatric profile of [redacted] on April 16, 1983. She first met [redacted] in 1976 when he was in prison in Lompoc, California, and met him again in 1979 when he was incarcerated in the State of Washington. Dr. Bliss noted that he had begun early a pattern of feeling rejected and resorting to drinking and impulsive behavior. In both 1976 and 1979, Dr. Bliss found [redacted] to be an outstanding inmate, functioning at a superior She knew him as a bright, articulate man. She did not know of any drug use ("and I believe he would have told me of any"), and he was not "a drinker of pruneau." She stated that: "There has never been any indication of psychosis or organic brain damage." Her statement concluded:

> I am sorry that I do not know the saga of Tom's life since 1979. I strongly suspect that his decision to renounce his citizenship was one more of those impulsive, self-defeating acts which he has later regretted when sober and rational.

Two individuals who saw [redacted] around the time of his renunciation were the Chaplain of the Remand Center where he was held in October and November 1980 and the Assistant Superintendant of that institution. In statements both made in 1982, and an additional one in 1983 by Assistant Superintendant, these officials asserted that [redacted] was under great pressure due to the threat of deportation and greatly feared being returned to the United States. The Assistant Superintendant maintained that Koonce's fear "was so intense that it appeared to prevent any rational thinking on Torn's part."

A second psychiatric profile of [redacted] comes from Dr. O. [redacted] a psychiatrist at the facility in Canada where [redacted]

was held after he was taken from the Remand Center. In a report dated March 3, 1983, Dr. Chaudhry noted that he saw [redacted] for the first time two years after his renunciation, namely, in August 1982. Like Dr. Bliss, Dr. Chaudhry considered [redacted] articulate and bright. When he first saw him, [redacted] had been very angry and confused, with bitter feelings toward the United States. "As he has been able to sort out his feelings and recognize his irrational act," Dr. Chaudhry wrote, "he has realized the fatal mistake he made." Continuing, Dr. Chaudhry stated: "At present he is very repentant and wishes if he could somehow rectify the error." Dr. Chaudhry noted a pattern in [redacted] life of retreating into fantasy, confusing fantasy with reality. "He did not abandon his illusory world till he got involved in psychotherapy and started examining himself," Dr. Chaudhry concluded.

The central issue is [redacted]er the foregoing evidence indicates that on November 24, 1980 [redacted] was more probably than not incompetent to make a rational divestiture of his United States citizenship. In our opinion the evidence does not support such a conclusion.

Appellant states that around the time of his renunciation he was using and abusing drugs, suggesting that his mind was not functioning normally. As we have seen, [redacted] had a history of addiction to drugs and alcohol. The rec[redacted]eveloped in 1976, 1977 and 1979 show that previous to those examinations he had been a heavy user of those stimulants. Ther[redacted]o credible evidence, however, that in the fall of 1980 [redacted] was on drugs or alcohol. Neither the consular officer who interviewed Koonce in the period before his renunciation nor the Remand Center officials who saw [redacted] have reported that he was under the influence of narco[redacted] or spirits or was then in the throes of rejection from them. Further, [redacted] was in custody from October 1 through the date of his renunciation, and there is no evidence he had access during that time to either drugs or alcohol.

Granted, [redacted] was subject to severe depression, tended to fantasize and in the fall of 1980 was fearful of being returned to the United States. Without more, however, we are not able to conclude that these factors rendered him incapable of acting rationally.

In a number of respects [redacted]s behavior shows a lucid mind and coherence of purpose. He [redacted]tently and consistently demanded that he be allowed to renounce his United States nationality, evidently believing that thereby he could avoid deportation to the United States. In furtherance of this goal, he appears

to have reasoned that if he would interest the local media in his case, he could achieve his goal and force the Consulate General's hand.

The foregoing observations are, of course, lay judgments. To make a fair evaluation of [redacted]'s capacity to act rationally on November 24, 1980 we must draw on expert medical/psychiatric evidence. In this case, only the evidence of Drs. Bliss and Chaudhry rise to the level of expert testimony. 10/

There is no competent evidence of record bearing on [redacted]'s mental capacity dating from the time of his renunciation; there is no indication that he underwent psychiatric testing between October 1 and November 24, 1980.

Neither Dr. Bliss nor Dr. Chaudhry saw [redacted] anytime near the time of his renunciation. Their testimony indicates that [redacted] was inclined to act impulsively, regretting ras[redacted]ons But, as we have seen, Dr. Bliss did not think [redacted] was psychotic or had suffered brain damage. And she did not indicate either expressly or inferentially that he could not act with the rationality of an average person.

Dr. Chaudhry did not see [redacted] until [redacted]ears after his renunciation. Although he con[redacted]d that [redacted] confused fantasy with reality, he does not state that in 1980 [redacted] was incapable of making a rational decision.

The psychiatric evidence is thus too thin to substantiate appellant's claim that he was of unsound mind on November 24, 1980.

Under the statute, appellant must show by a preponderance of the evidence that he acted involuntarily. Furthermore, in law it is presumed that one is competent until or unless the contrary be proved. The submissions appellant has made fall short of

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10/ We do not question the professional experience or objectivity of either the Prison Chaplain or the Assistant Superintendant of the Remand Center. The conclusions they draw about [redacted]'s inability to think rationally because of fear of deportation cannot, however, be considered to be expert testimony with respect to his stability or instability on November 24, 1980.

showing by a preponderance of the evidence that he lacked the capacity to act rationally and therefore voluntarily. In particular, the a[redacted] of any medical/psychiatric evidence contemporaneous with [redacted] renunciation makes it a matter of conjecture whether his past history of depression, flight from reality and fear of deportation rendered him incapable in November 1980 of giving up his United States nationality of his own free will.

It is therefore our conclusion that appellant has not rebutted the statutory presumption that he renounced his United states nationality voluntarily.

IV

Although we have concluded that [redacted] renounced his United States nationality voluntarily, it remains to be determined whether it was his intention to relinquish that citizenship, Vance v. Terrazas, 444 U.S. 252 (1980). Under the Court's holding in Terrazas, the Government must prove by a preponderance of the evidence that appellant intended to forfeit his citizenship. 444 U.S. at 267. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The intent to be proved is appellant's intent on November 24, 1980 when he made a formal renunciation of his United States citizenship, Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

The Department contends that in cases of formal renunciation intent is inherent in the act; to say that a person who makes a formal renunciation did not have the requisite intent to relinquish his citizenship would be a contradiction, citing Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245, 1249 (5th Cir. 1971): "...renunciation on its face /is/ unequivocal."

The Department's brief continues:

> Thus, the Department believes that Mr. [redacted] unequivocally expressed his intent to relinquish his U.S. nationality when he voluntarily executed the oath of renunciation, which contained the words:
>
> "...I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(5) of the Immigration and Nationality Act and pursuant thereto 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".

[redacted] not only do the words of the oath of renunciation to which [redacted] voluntarily subscribed evidence his unmistakable intent to forfeit United States citizenship. The other documents he executed of November 24, 1980 amply attest that it was his will and purpose to divest himself of a citizenship he found burdensome and unwelcome. 11/

Appellant, however, contends that he was unable to understand the grave ramifications of renunciation, and therefore lacked the requisite intent to relinquish United States nationality, In our opinion, he understood them well. Having concluded that he was competent to make a rational decision to abandon United States citizenship, we cannot accept that this citizen, who was then nearly 30 years old, was unable to comprehend that renunciation would leave him stateless and an alien under United States law.

On all the evidence, [redacted] knowingly and intelligently, if angrily, made a formal renunciation of his United States nationality, The Department has, in our view, sustained its burden of proving that it was his specific intent to relinquish his United States citizenship.

V

Upon consideration of the foregoing, we hereby affirm the Department's determination that appellant expatriated himself on November 24, 1980.

Alan G. James, Chairman

Howard Meyers, Member

George Taft, Members

11/ See [redacted] statement of understanding and personal statement of merit of [redacted] for renouncing which are discussed in the statement of [redacted] bove,