July 29, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] A[redacted] P[redacted] C[redacted]

C[redacted] A[redacted] P[redacted] C[redacted] appeals an administrative determination of the Department of State that she expatriated herself on January 8, 1976 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

The principal issue presented is whether appellant intended to relinquish United States citizenship when she became a citizen of Canada. It is *our* conclusion that the Department has not carried its burden of proving that such was appellant's intent. Accordingly, we reverse the Department's determination of expatriation.

I

Appellant became a United States citizen by birth at [redacted]. She received a B.S. degree from Syracuse University, and in 1968 married a Canadian citizen, a permanent resident of the United States. She obtained a masters degree in 1970 and that summer went to Canada with her husband, who had enrolled for a doctorate in

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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, . . .

sports psychology at the University of Alberta. It was not her intention, appellant has stated, to remain in Canada; "we were going to school, and would see what happens after that." 2/ As the wife of a Canadian citizen appellant would have been eligible for naturalization as a Canadian citizen twelve months after her arrival in Canada, but did not at that time, she has stated, contemplate naturalization. 3/

Appellant obtained a United States passport in 1972 at Calgary, but did not renew it after it expired.

It appears that appellant obtained a probationary appointment with the West Quebec Protestant School Board in 1974 to teach high school. When she was in the second and final year of probationary teaching, she was informed by the School Board that if she wished to continue teaching she would have to obtain Canadian citizenship, in accordance with the law of the Province of Quebec. She applied for naturalization, and on

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2/ Transcript of hearing in the Matter of Catherine Anne Payne Orlick, Board of Appellate Review, May 23, 1985, (hereafter. referred to as "TR"), p. 8.

3/ Id.

January 8, 1976, after making the prescribed oath of allegiance to the British Crown, was granted a certificate of Canadian citizenship, 4/

In 1977 appellant obtained a Canadian passport on which she travelled to Spain,

In 1983 appellant visited the United States Embassy at Ottawa to clarify her citizenship status, As requested by a consular officer, she completed a form to facilitate determination of her citizenship status. She also filed an application for registration as a United States citizen, and was interviewed by a consular officer, Thereafter the Embassy referred appellant's case to the Department. In submitting it, the consular officer concerned expressed the opinion that a finding of loss of nationality could not be sustained since appellant's intent to relinquish citizenship could not be established.

4/ The oath of allegiance prescribed by the Canadian Citizenship Act of 1946 read as follows:

> 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.

The Department, however, disagreed with the consular officer, and on May 31, 1983 instructed the Embassy to prepare a certificate of loss of nationality, In compliance with the Department's instructions and the requirements of section 358 of the Immigration and Nationality Act, the consular official executed a certificate of loss of nationality on June 2, 1983. 5/ The consular officer certified that appellant became a United States citizen at birth; that she obtained naturalization in Canada upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

5/ 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.

The Department approved the certificate on June 23, 1983, approval being an administrative determination of loss of nationality from which an appeal timely and properly filed may be taken to this Board, A copy of the certificate was sent to appellant on July 5, 1984. Three weeks later she entered an appeal through the Embassy, Appellant requested an oral hearing which was held on May 23, 1985, 6/ Her principal contentions are that her naturalization was involuntary and that she did not intend to relinquish United States citizenship,

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/ Disposition of the appeal was delayed by a misunderstanding etween appellant and the Board as to whether she intended to ursue the appeal. The misunderstanding was cleared up in uly 1984, but at that time the administrative record, which he Board had returned to the Department in the belief that ppellant had abandoned her appeal, could not be found. It is later sufficiently reconstructed by information from the iles of the Embassy at Ottawa to enable the Board to proceed n a manner it adjudged fair to both parties,

Several days after the hearing of May 23, 1985, the dministrative record was located and forwarded to the Board. ne information contained therein does not materially differ rom the record as reconstructed prior to the hearing,

II

There is no dispute that appellant duly performed the statutory act that resulted in her expatriation, She contends, however, that the act was done involuntarily, It is, of course, settled that involuntary performance of a statutory act of expatriation voids the act. Perkins v. Elg, 307 U.S. 325 (1939). In law it is presumed that one who has committed an expatriative act does so voluntarily, a presumption that may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 7/

Appellant must therefore show that obtaining naturalization in Canada was contrary to her fixed will and intent to act otherwise. She contends, in brief, that: "I did not take it /Canadian citizenship/ voluntarily, It was basically under threat of losing my job /teaching in the Quebec school system/." She presented evidence that under the laws of the Province of Quebec she could not have continued her employment at the high school where she had been employed unless she were to acquire Canadian citizenship.

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

Sec. 349(c)...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.

We accept that in order to retain employment in the Quebec school system appellant was required to obtain Canadian citizenship. That requirement does not, however, as a matter of law, constitute duress. Appellant has not demonstrated that she had no alternative to the particular employment she was occupying, or that she had sought other ways to continue to work in her field without jeopardizing her United States citizenship but failed. Wor has she demonstrated, as she must do, that had she not obtained naturalization, she would have suffered economic hardship. See Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985), which makes clear that at least some degree of economic hardship must be shown to sustain a defense of economic duress to performance of a statutory expatriating act.

Since appellant has not, in our view, rebutted the legal presumption that she acquired Canadian citizenship voluntarily, we conclude that her naturalization was an act of her own free will and not the result of extrinsic forces over which she had no control.

III

The Supreme Court has held that loss of citizenship will not ensue from performance of a statutory expatriating act unless the trier of fact in the end not only concludes that the citizen not only voluntarily committed the expatriating act but also intended to relinquish his citizenship. Vance v. Terrazas, 444 U.S. 252, 261 (1980). It is the Government's burden to prove, by a preponderance of the evidence, that the citizen intended to surrender citizenship. Id, 268. Intent may be proved by a person's words or found as a fair inference from proven conduct. Id. at 260.

The intent the Government must prove is the citizen's intent at the time the expatriative act was performed. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

The Department's case that appellant intended to relinquish United States citizenship when she became naturalized in Canada rests solely on the following contentions:

> The case file contains no evidence of statements made by Mrs. P[redacted]-O[redacted] at the time of her naturalization that relate to her intent with regard to her U.S. citizenship, nor is there any testimony of people who knew her at the time and were aware of her intent. Her recent statements that she did not intend to relinquish can be given the

> appropriate evidentiary weigh /sic/ due to recollections of a state of mind several years ago.
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> The intent, however, can be clearly seen form /sic/ her pattern of conduct since that time. Since her acquisition of Canadian nationality in 1976, she has acted in all things as a Canadian citizen and has not exercised any rights of United States citizenship nor acted in any way to indicate that she retained her allegiance to the United States. She did not vote as an absentee, she did not file tax returns, she did not register at the Embassy or a consulate, she did not renew her U.S. passport. Her entire conduct reflected in the record, including the fact that after naturalization, she obtained and used a Canadian passport to enter and leave the United States, supports the Department's finding that [redacted] abandoned her United States citizenship.

We are not persuaded by the Department's argumentation.

We dismiss as without merit its conclusory statement that appellant "acted in all things as a Canadian citizen." There is no evidence that appellant acted solely as a Canadian citizen beyond living in Canada for over 10 years. She concedes that she did not vote in United States elections or file United States income tax returns. But neither fact in itself is dispositive of the issue of her intent. She did not allegedly vote in Canada either; and she maintained at the hearing that she had no United States earned income. What income she had was derived from Canadian sources.

Arguably, appellant's intent to surrender United States citizenship might, however, be reflected by her use of a Canadian passport and the fact that for a number of years after naturalization she did not take any recorded action to document herself as a United States citizen. In her submissions and particularly at the hearing on May 23, 1985, however, appellant explained convincingly the reasons why she used a Canadian passport and why she did not until 1982 assert a claim to United States citizenship, In 1977 she had an opportunity on short notice to accompany her husband to Spain to a sports psychology sonference. Her United States passport had expired. She needed travel documentation quickly. Since issuance of the passport

she obtained in 1972 had taken a very long time, she applied for a Canadian passport which was issued in 5 days. We are prepared to accept that appellant's use of a Canadian passport was solely for convenience and not expressive of an intent to sever her allegiance to the United States.

At the hearing appellant firmly asserted that after naturalization she considered herself still to be an American. She believed that she had acquired dual citizenship by naturalization. "I was living in Canada and half the population - at least in my school in Quebec - are dual citizens, you see, so the notion of dual citizenship is quite feasible....I mean, it is a very common thought." TR 25, "The real issue," appellant continued, "is that my notion of dual nationality just blinded me to anything." TR 36.

Appellant recounted at the hearing that immediately after a colleague told her in 1983 that, in her opinion, dual citizenship did not exist, she immediately contacted the United States Embassy at Ottawa. TR 11. She stated that when she was told to call at the Embassy she went as soon as she could. TR 22. "...I contacted them and I said, 'Look, this is what I have done, and I want to make sure that my citizenship is intact, because I never intended to do anything that would jeopardize the nationality.'" Id.

It seems to us plausible, in the absence of other evidence, that appellant rested confident for several years after naturalization that she had not jeopardized her United States citizenship, and thus perceived (mistakenly, of course,) no urgent need to clarify her nationality status. On its face, such inaction, even over a number of years, does not unambiguously indicate a resolve to surrender United States nationality.

Broadening our examination of the record, we find in appellant's statements further grounds for believing that she did not intend to relinquish United States citizenship. We take note that she has close family connections with the United States, and regularly visits the United States. When she travelled to the United States after receiving a Canadian passport, she stated that on crossing the border she said she had been born in the United States and resided in Canada. She had never been stopped or "examined" about those statements. TR 17. "So, in a sense," she explained, "that confirmed my notion that I was an American citizen. I am a Canadian citizen. There was never a question that I wasn't both, or that I had done any kind of expatriating act by taking out Canadian citizenship." Id.

The Department asserts that appellant's statements made years after her naturalization to the effect that she lacked the requisite intent to relinquish United States citizenship should be given the evidentiary weight due recollections of the events of years past. Given that the Department has presented a slender case for intentional abandonment of United States citizenship, appellant's statements in her submissions and at the hearing are entitled to greater weight than the Department contends. The Board has heard appellant and had an opportunity through close examination to assess her credibility. The picture one receives from first-hand observation is that of a sincere person who believed that she had acquired a second nationality and not forfeited American citizenship. Aside from her use of a Canadian passport, which we find of marginal relevance to the issue of intent, appellant has done nothing that expressed a will and purpose to surrender United States citizenship. The Department has not carried its burden of proving the contrary.

IV

Upon consideration of the foregoing, we hereby reverse the Department's holding that appellant expatriated herself when she obtained naturalization in Canada upon her own application.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Marylee Elizabeth Hoinkes, Member