DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: H H L

H H L appeals an administrative determinati t ep t of State that he expatriated himself on November 30, 1977 under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act by making a formal renunciation of United States nationality before a consular officer of the United States at Jidda, Saudi Arabia. 1/

I

Appellant acquired the nationality of both the United States y birth at

When he was three months old, appellant's mother took him to Saudi Arabia. She obtained a United States passport for appellant in November 1961 at Cairo, and thereafter returned with him to the United States where he remained for two years while his father completed his university studies,

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1/ Section 349(a)(6), now 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 --
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> * * *
>
> (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; . . .

Public Law 95-432, approved October 10, 1978, 92 Stat. 1046, repealed paragraph (5) of section 349(a) of the Immigration and Nationality Act, and redesignated paragraph (6) of section 349(a) as paragraph (5).

In 1963 appellant's parents took him to Saudi Arabia. For the next fifteen years he lived there and in England and France.

When appellant was in the last year of his secondary education (1977-1978), his parents reportedly decided that he should attend university in the United States, According to their declarations, they wished him to travel on a Saudi passport with a United States student visa, but the consular officer at the Embassy in Jidda, to whom appellant's father spoke about travel documentation for his son, pointed out that as a United States citizen appellant was ineligible to receive a U.S. visa. The consular officer subsequently informed appellant's father (and, he has stated, appellant) that appellant had two choices: to renew his United States passport and travel on it, or to renounce his United States nationality and travel on a Saudi passport with a United States visa,

On November 30, 1977 appellant and his father appeared at the Embassy, On that day appellant made a formal renunciation of United States nationality. He was then sixteen years and eight months old,

Before making the oath of renunciation, appellant executed a statement of understanding in which he acknowledged that he wished to exercise his right to renounce United States nationality, and that he did so voluntarily and with full awareness of the gravity and consequences of his action, which had been explained to him by the consular officer. He executed the statement of understanding in English and Arabic. 2/

2/ On March 20, 1984 the Department's Language Services Division informed Passport Services that the English and Arabic texts of the Statement of Understanding "have been compared by a responsible language officer of this Division and have been found to have the same meaning in all substantive respects."

In compliance with the provisions of section **358** of the Immigration and Nationality Act, 3/ the consular officer executed a certificate of loss of nationality on December 7, 1977 in the name of Hesam Hamad Lingawi. 4/ The consular officer certified that appellant acquired the-nationality of both the United States and Saudi Arabia at birth; that he made a formal renunciation of United States nationality on November **30**, 1977; and thereby expatriated himself under the provisions of section 349(a) (6), now section 349(a) (5), of the Immigration and Nationality Act.

In forwarding the certificate to the Department, the consular officer observed that: "Although the renunciant is a minor, he appeared competent to execute the oath of renunciation and did so freely."

3/ Section 358 of the Immigration and Nationality Act, **8** U.S.C. I501, 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.

4/ Appellant's name was also spelled this way on his Illinois birth certificate and the United States passport issued to him in 1961,

The Department approved the certificate on December 22, 1977, 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. In sending a copy of the approved certificate of loss of nationality to the Embassy to forward to appellant, the Department stated:

> The Department in approving the Certificate has noted and given considerable weight to the consular officer's observations concerning Mr. Lingawi's competence.
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> Mr. Lingawi should however be advised of and given a copy of Section 351(b) INA. 5/

5/ Section 351(b) of the Immigration and Nationality Act, 8 U.S.C. 1483 (b), provides:

> Sec. 351.
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> . * .
>
> (b) A national who within six months after attaining the age of eighteen years asserts his claim to United States nationality, in such manner as the Secretary of State shall by regulations prescribe, shall not be deemed to have expatriated himself by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraphs (2), (4), (5), and (6) of section 349(a) of this title,

In 1978, paragraph (5) of section 349(a) (voting in a foreign political election), was repealed and paragraph (6) was renumbered as paragraph 5. See note 1, supra,

There is no indication in the record that a copy of section 351 (b) was sent to appellant, or if sent, received by him. The consular officer concerned stated in 1984 that he could not recall whether he had given appellant a copy, Appellant states that he was never apprised of section 351(b). He has further stated that he did not receive a copy of the approved certificate of loss of nationality.

Appellant states that in the fall of 1978 he attended an intensive course in English in Vermont, and entered the University of California, Santa Barbara in the fall of 1979.

The appeal was entered through counsel on March 23, 1983. Appellant requested an oral hearing which was held on May 16, 1985. He contends that his renunciation of United States nationality was invalid because it was made under family, religious and economic pressures. He further asserts that it was not his intention to relinquish United States citizenship.

II

Appellant's delay of five years in taking an appeal raises a jurisdicfional issue that must be resolved at the outset. The Board may assert jurisdiction only if it concludes that the appeal was filed within the limitation prescribed by the applicable regulations. If the appeal be found untimely, it will be barred and subject to dismissal.

The regulations presently governing the Board, which were promulgated on November 30, 1979, prescribe that an appeal from a determination of loss of nationality shall be taken within one year after approval of the certificate. Section 7.5(b) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b). In 1977 when the Department approved the certificate of loss of nationality in appellant's case, the applicable regulations provided that an appeal might be taken "within a reasonable time" after the affected party received notice of the Department's holding of loss of nationality, 22 CFR 50.60 (1967-1979).

The standard of "reasonable time" will govern in this case, for we consider it would be unfair to apply the present limitation on appeal, given the generally accepted principle that an amendment to regulations shortening the time for appeal is intended to apply prospectively not retroactively.

What constitutes "reasonable time" depends on the facts in the particular case. Chesapeake and Ohio Railroad v. Martin 283 U.S. 209 (1931). It is such time as the adversely affected party may fairly require to prepare a case showing wherein the Department erred in making the determination of expatriation. It has also been held to mean as soon as circumstances and with such promptitude as the situation of the parties will permit. The rule does not contemplate that a person will be allowed to choose a time for appeal convenient to himself. In re Roney, 139 F. 2d 175 (7th Cir. 1943). The court in Ashford v. Steuart, 657 F. 2d 1053, 1055 (9th Cir. 1981) succinctly summed up the rule:

> What constitutes "reasonable time" depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties. See Lairsey v. Advance Abrasives Co., 542 F. 2d 928, 930-31 (5th Cir. 1976); Security Mutual Casualty Co., v. Century Casualty Co., 621 F. 2d 1062, 1067-68 (10th Cir. 1980).

Appellant argues that his delay in taking the appeal was reasonable in the circumstances of his case. The burden of his argument is that his authoritarian father, a devout Muslin, refused for five years after his son's renunciation to allow him to try to recover his lost United States citizenship. Totally dependent on his father for his university tuition and maintenance, and morally bound by the teachings of the Koran to obey his father without cavil, appellant asserts, he had no alternative but to do precisely what his father ordered him to do until his father had a change of heart and permitted him to initiate this appeal. As appellant expressed it in his reply brief:

> The same coercive factors which caused the petitioner's initial renunciation remained in effect until only a few months prior to the filing of the current appeal. /Emphasis in original/

It is our view that the issues of the timeliness of the appeal and the voluntariness of appellant's renunciation are inextricably joined; it would be difficult fairly to determine whether the appeal was timely without simultaneously addressing the principal substantive issue presented - whether appellant renounced United States nationality of his own free will, Novel though that approach may be, we think that the particular circumstances of this case justify our so proceeding. And our authority to do so seems clear. See 22 CFR 7.2(a): "The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it."

A defense of duress is always available to one who has performed a statutory expatriating act. Doreau v. Marshall, 170 F. 2d 721 (3rd Cir. 1948). But in law, one who performs such an act is presumed to have done so voluntarily, the presumption being

rebuttable upon a showing by a preponderance of the evidence that the act was not done voluntarily. 6/ Appellant therefore must establish that his renunciation was involuntary and that he was constrained by forces beyond his control from taking an earlier appeal,

Duress is not limited to physical force or threat of force; it may exist in more subtle guises. Kasumi Nakashima v. Acheson, 98 F. Supp. 11 (S.D. Cal. 1951). "The trier of fact must examine all relevant facts and circumstances which might cause the actor to depart from the exercise of free choice and respond to the compulsion of others." Id. at 12. A claim of duress must be "sympathetically scrutinized...because of the extreme gravity of being denationalized and because of the subtle, psychologic factors that bear on duress." Nishikawa v. Dulles, 356 U.S. 129, 140 (1958), Frankfurter, J. concurring.

Where one claims to have acted under parental influence and not under his own free will, he "brings his status under the principle that where acts of a child are done under the domination of the parent which dominates the mind of the minor by unfair persuasion, it is regarded as induced by unfair persuasion and influence of the minor and is voidable." Yuichi Inouye v. Clark, 73 F. Supp. 1000, 1003 (S.D. Cal. 1947). One who has been inculcated from birth to obey the orders of his elders without resistance may not act voluntarily if he performs an expatriating act in obedience to the dictates and pressure of his elders. Takehara v. Dulles, 205 F. 2d 560, 562 (9th Cir. 1953): "...the very upbringing of appellant rendered it inevitable that he would obey the orders of his elders in the matter of voting, from which it would *seem* to follow that the voting was not representative of a voluntary choice on appellant's part."

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

> Sec. 349.
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> (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.

Parental pressure by alien parents on citizen children to renounce United States nationality may constitute duress Tadayasu Abo v. Clark, and Furuya v. Clark, 77 F. Supp. 806 (N.D. Cal. 1948).

III

At the hearing on May 16, 1985, appellant explained that the matter of the documentation for his travel to the United States to attend university triggered the issue of his renunciation; once it was clear that he was ineligible to receive a United States visa in his Saudi passport he had no choice but to renounce his United States nationality.

He stated that his father and mother insisted that he not travel as a dual national of the United States and Saudi Arabia, fearing that if he needed assistance, neither would aid him because each would consider him the responsibility of the other, Appellant's father therefore concluded, appellant has said, that he should renounce his American citizenship, and so informed appellant. According to appellant, his parents told him that if he did not comply with their wishes, he might not go to college in the United States. The parents' affidavits are supportive of this assertion.

At the hearing appellant described how his father reacted to his unwillingness to give up his American citizenship:

> ...Well, when the whole issue came, and I actually asked a question of my father about his motive for me to renounce my citizenship, he was amazed that I actually was contemplating disobeying him, and he brought the issue to the knowledge of other members of the family, older members of the family, and all of them were getting together, actually I could say, against me and made me feel like I was like the black sheep of the family, and that no matter what my father decides, I just have to obey what he says, and that is the best for me, and that is how they did with their parents and their grandparents and they wished to continue. 7/

Three uncles of appellant submitted affidavits in support of his position. The views expressed in the affidavit of one of them, Zohair Khujeh (apparently a maternal uncle) are representative of the statements of the other family members:

7/ Transcript of Hearing in the Matter of H[redacted] H[redacted] I[redacted], Board of Appellate Review, May 16, 1985 (hereafter referred to as "TR"). pp. 17, 18.

> Many members of the l[redacted] L[redacted] family were unaware of Hussam's dual nationality. When the news was spread amongst the greater family as to Hussam's choices, some family members expressed their belief that Hussam should renounce his U.S. citizenship and be satisfied with being a Saudi citizen,
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> ...
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> Hussam came to visit me. Before I raised the subject, he told me. that his father was insisting that he relinquish his U.S. citizenship and that he did not want to. According to Hussam his father had made the renouncement of his American citizenship a condition to his going to school in America. He then asked me to talk to his father and see if I could convince him not to make this requirement,
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> 8. I am a devout Muslim and a student of the Koran. I have attempted to live my life according to the dictates of the Prophet as set forth in the Koran. The Koran teaches that it is a son's duty to abide by the wishes of his father, (Please see the excerpts from the Koran attached to my statement), Consequently, I told Hussam that he should abide by his father's will.

pellant has stated that his "grand" uncle, [redacted]-[redacted] L[redacted] a high Government official, spoke "harshly m numerous occasions about his holding United States citizenship.

> ...he always felt this issue could actually jeopardize the family's relations, our family's relations with the Saudi Government, and he wanted something done about it. ...Abdul-Latif was the most influential person in the family and he had a great deal of influence on my father, TR 18, 19,

After the issue had been aired in the greater family, appellant states that he ceased to resist, and on November 30, 1977 went to the Embassy with his father to give up his citizenship.

As we have seen, the consular officer who administered the oath of renunciation to appellant reported to the Department that on November 30, 1977 appellant "appeared competent" to renounce

his nationality. He did not expand on that statement. In a sworn statement executed on May 15, 1984, the consular officer stated:

> ...On November 30, 1977, after I had assured myself that Hussam understood the implications of renouncing his U.S. citizenship and was doing so of his free will, I had him read and sign the Statement of Understanding in English and Arabic, and /he?/ executed the Oath of Renunciation.
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> Hussam completed the Oath of Renunciation in his own handwriting and without copying from any printed sheet....
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> Throughout all of my dealings with Hu[redacted] L[redacted], I was careful to insure that he understood what I was saying and the consequences of renouncing his citizenship. Because of the gravity of such a step, I was also careful to make sure Hussam truly wanted to give up his U.S. citizenship.

At the hearing appellant said his father made the initial approach to the Embassy to inquire about his travel documentation. The father returned to the Embassy on an unspecified date, accompanied by appellant, who stated at the hearing that his father did not tell him at that time what had transpired in his conversation with a consular officer or other employee.

Appellant's second visit to the Embassy (the father's third) was made on November 30, 1977 when he renounced his citizenship.

Appellant dwelt at length in his testimony on the dominant role he said his father played in the proceedings on November 30, 1977. His father had arranged for the renunciation papers to be prepared in advance of their visit. The senior [redacted] and the consular officer conversed in English, the father translating the conversation into Arabic from time to time for his son. TR 10. 'My father, every once in a while, would turn to me and talk to me and he would tell me to say 'yes' or 'no'. Id.

Appellant further stated that his father dictated what he should write in the blank spaces on the oath of renunciation. ...he actually even spelled some of the words which I couldn't

In a report to the Department on December 7, 1977 the consular officer stated that appellant told him that 'his reason for renouncing U.S. nationality was that he would be attending an American college next fall and expected difficulties obtaining the necessary visa to enter the United States using his Saudi passport. If he attempted to travel on an American passport, he would be Enable tc procure scholarship aid given by SAG /the Saudi Arabian Government/ to a Saudi citizen.

In a declaration executed on September 4, 1984, appellant's father, however, stated categorically that appellant had never applied for a Saudi scholarship before or after he renounced his citizenship. "All of Hussam's schooling has been paid by me without the aid of any scholarship," appellant's father declared, In support of the foregoing statement, appellant's father submitted a statement dated July 5, 1984 from the Office of the Registrar of the University of California, Santa Barbara, addressed to the Board of Appellate Review , which reads as follows:

> This letter is to verify that Hu[redacted] H[redacted] has attended the University of California, Santa Barbara, during the period of September 1979 through June 1984 as an International undergraduate student. The University of California requires all foreign students to verify their source of financial support prior to arrival in the United States. The disclosed information must be documented with a letter (in the case of private family support) or the government agency supporting the student (in the case of scholarships): this information must also be verified by the U.S. Embassy in the student's country before being granted entrance visa.
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> According to the University records, H[redacted] financial support has been provided by his father, H[redacted] for the period of his education at UCSB. This information w[redacted] lso [redacted] i[redacted] the U.S. embassy at J[redacted], S[redacted] prior to Hussam's arrival in the United States.

On October 16, 1984 the consular officer informed appellant's counsel, who had asked the officer to consider withdrawing his statements about the scholarship in light of the father's statement and the letter of the university registrar, that his statement about appellant's wishing to have Saudi scholarship aid "represents my best recollection of the facts surrounding Mr. [redacted] renunciation of U.S. citizenship,"

Appellant asserts that after he went to the United States in 1978 his father kept him on a tight rein, calling him every Sunday to keep track of his studies and where he spent his weekends. TR pp. 23, 24. He felt morally inhibited from taking any action to recover his United States citizenship, since his father h[redacted]bidden him to discuss the matter with anyone outside of the L[redacted] family.

In his brief and reply brief and at the hearing appellant maintained that after renunciation he repeatedly raised with his father the issue of recovering his citizenship. His father reportedly said that he should not worry about the matter but concentrate on his studies; perhaps when they were completed, the matter could be looked into. According to their affidavits, both appellant's mother and his older brother Abdullah whom appellant asked to intercede urged him not to provoke his father.

In the Autumn of 1982 the question of appellant's citizenship status came up while appellant, his father and brother dined with the attorney who represents appellant in these proceedings. The father's affidavit of July 20, 1983 describes what occurred at that meeting and his reaction:

> My business requires the occasional assistance of attorneys in the United States. My attorney in California is E.O.C. Ord. I visited California last fall /1982/ and was the guest of Mr. Ord at a restaurant in San Francisco. My son /sic/ Hussam and Abdullah were also present: The subject of Hussam's citizenship came up during the course of the meal. I told Mr. Ord that I wished that I had known him and could have asked his advice when I made my decision concerning Hussam's citizenship. I expressed my remorse that I was responsible for Hussam's relinquishment of something of considerable value against his own wishes. I explained to Mr. Ord the reasons why I had made my initial decision. Mr. Ord was surprised by my earlier decision concerning Hussam's U.S. citizenship and explained that dual nationality was permissible in the United States. He also said that dual nationality would not have affected Hussam's access to the assistance of the U.S. Embassy when abroad. At Hussam's insistence I asked if there was any possibility of having Hussam's U.S. citizenship restored.

> Mr. Ord promised to look into the subject and make a report back to the family. Mr. Ord's report has led to the current appeal,
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> I personally am still not totally concerned /convinced?/ that it is a good idea for Hussam to have dual citizenship. I believe that many people in my country may look at this with disapproval. Nevertheless, I believe that Hussam is now old and mature enough to make his own decision on this matter.
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> Having recently been made aware of the value of an American citizenship, I suffer great remorse for having forced my son to relinquish his birthright. I can only hope that the State Department will not make Hussam suffer for his father's actions,

IV

On its face, appellant's formal renunciation of United States nationality appears to have been duly accomplished, Appellant's allegations that he acted involuntarily, however, require that we examine all the surrounding circumstances with particular care, in effect, looking behind the apparently conclusive statement of understanding he executed,

The signal, objective fact in this case is that appellant was sixteen and one half years old when he renounced his United States nationality. There is, of course, no dispute that a minor may effectively renounce United States nationality. See Section 351(b) of the Immigration and Nationality Act (note 5, supra). But sixteen is a vulnerable, impressionable age, and elementary fairness demands that the renunciation of one so young be carried out with the greatest care and sensitivity.

Appellant's uncontested testimony and the declarations of his father and mother establish that he was totally dependent on them financially and in every other respect. Leaving aside momentarily the question of whether his parents insisted that he renounce United States nationality, it is reasonable to assume that appellant would not have been allowed, nor could he have afforded, to attend university in the United States unless it was his parents' wish that he do so,

The Board takes note that in 1977 appellant lived in a traditional Muslim state which has enshrined in its domestic law the moral code of the Koran - the Sharia.

The duties the Koran places on Muslim children has been elaborated by Professor William M. Brinner of the University of California who executed a declaration in support of appellant's case on December 2, 1984, Professor Brinner, whose stated credentials mark him as a scholar of Middle Eastern religion, politics and culture, stated in part as follows:

> 1 have reviewed the opening and reply briefs a pp ing rations on behalf of H H L in his petition to have h it ta itizenship returned. A review of the factual statements con therein strongly suggests that Mr. L decision to renounce his American citizenship was not voluntary, but instead was direct product of parental, cultural and religious pressure. The weight and effect of such pressures in the Islamic world on a child of sixteen should not be underestimated by this tribunal...In the case of the role of parents -- especially fathers -- in influencing their sons' actions, the response is that in modern Muslim society both religious and social sanction exert extremely powerful influence.
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> ...kindness to parents and obedience to their commands, except when they contravene the beliefs and practices of Islam, are basic teachings of the Qur'an and of the prophetic tradition in Islam. If H L i would have refused to abide by at orders, he would have violated an important tenet of his religion,

According to the testimony of appellant, his parents, three uncles, and a family friend, appellant had been indoctrinated from his early years in the prescriptions of the Koran. In the circumstances, we accept that he believed himself morally bound by the code of ethics expounded therein, A child reared in such a religious tradition, living in a state where the words of the Koran are law, is unlikely to have had much room, let alone disposition, to assert his own will against that of an evidently forceful father,

The Department, however, contends that the Brinner declaration is only partly relevant to this appeal, In a memorandum submitted on June 6, 1985, the Department states:

> ,.,there is no evidence to substantiate the devoutness of Mr. H[redacted] L[redacted] and his family except their own statements,
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> Mr. L[redacted], on the one hand, has stated that, due to the tenets of his religion, he is totally subjected to the whims of his father and that his father's omnipotence dictates his actions and thoughts.
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> Yet, Mr. L[redacted], on the other hand, has testified that he is defying his father, He has concealed from his father that he is attending the University of Southern California and has further concealed that since his freshman year of college, he has planned to remain in the United States. Both of these acts defy a basic law of his religion, which requires strict obedience to one's father.
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> An inference can be drawn that when it serves his purpose, Mr. L[redacted] argues the teaching of his religion, Yet, in actual practice his behavior does not support his assertions.

In a statement filed on May 30, 1985, appellant acknowledged that he had in effect defied his father by keeping from him the fact that he is presently attending the University of Southern California, "I felt bad about not telling him, but at the same time felt that the U.S.C. degree was best for my education." Appellant continued:

> Ever since I started at U.S.C., I have been very concerned about my father finding out about my second degree. I never would have thought about keeping anything from him or defying him at an earlier age. If he would have forbidden me to go to U.S.C., I don't know what I would have done. Once I have obtained my degree from U.C. Santa Barbara, I intend to tell my father about my second degree, Having obtained the degree he wanted me to acquire, I hope he will understand,

In response to the Department's memorandum, counsel for appellant contended that the Department had misstated the facts.

> First, it must be noted that at no time did Petitioner's father forbid Petitioner to attend school at the University of Southern California. Furthermore, Respondent has failed to mention that Petitioner is also obtaining the graduate degree from U.C. Santa Barbara which his father selected. (See Declaration of H[redacted] L[redacted] submitted after oral arg[redacted]) d, Respondent's statement that Hussam has concealed his intention to remain in the United States and thereby defied the basic law of his religion which requires strict obedience to one's father, is clearly unfounded. There is nothing in the record to suggest that Petitioner's father has forbid /sic/ H[redacted] from remaining in the United States.
>
> It is also interesting to note that Respondent is attempting to impeach the duress surrounding Petitioner's renunciation by drawing attention to events which have occurred almost seven years after the event in question. This is unfair. Petitioner was a sixteen year old boy at the time of his renunciation and living in Saudi Arabia under the strict guidance of his parents. Petitioner is now a maturing young man who has lived in the United States for six years away from Saudi Arabia and his parent's household. During the period after his renunciation Petitioner has become much more attune /sic/ to other cultures and ways of living.

Appellant's testimony and the declarations of appellant's parents are entitled to greater weight, in our view, than the Department would give them, No evidence has been submitted to contradict the statements they made under oath. Granted, appellant may now be exhibiting slightly more independence of his parents; after all he has been living in the United States for over six years. We do not, however, consider that the fact that in 1984 he decided to attend a university his father regarded unfavorably is in itself sufficient to cast doubt on appellant's contention that in 1977 he was totally under his father's domination. In brief, we find it credible that on November 30, 1977 appellant dutifully, but contrary to his own will, complied with his father's wish that he renounce United States nationality.

Our reservations about the voluntariness of appellant's renunciation are reinforced by other considerations.

Although the consular officer who administered the oath of renunciation to appellant declared in 1977 and in an affidavit in 1984 that appellant's wish to qualify for a Saudi Government scholarship was the reason for his renunciation, we wonder whether the consular officer correctly understood what he had been told. Appellant's father stated emphatically in a declaration executed September 4, 1984 that he had borne all the costs of appellant's education, and the statement of the Registrar of the University of California, Santa Barbara confirms this assertion.

We do not question the consular officer's conviction that he handled the proceedings on November 30, 1977 conscientiously, and that he was concerned to make sure that appellant wanted to renounce and understood the consequences. None the less, it is relevant to ask how the consular officer satisfied himself that appellant genuinely wished to surrender United States nationality.

In uncontradicted testimony, appellant stated at the hearing that he spoke and understood very little English in 1977, His statement, also uncontradicted, that before he could enter university in the United States he had to take an intensive, nine-month course in English, bears him out, After the May 16th hearing, the Department informed the Board, in response to its request, that the consular officer involved did not speak Arabic in 1977. That appellant and the consular officer had any effective direct communication in November 30, 1977 may be open to question. There is no indication in the record that the consular officer spoke to appellant through an interpreter, It is therefore not unreasonable to assume that any discussion between appellant and the consular officer was conducted through appellant's father, as appellant has alleged, In the circumstances, the consular officers's conclusory statement in his report to the Department of December 1977 that appellant "appeared to be competent" is not entirely reassuring. And since the renunciant was a minor it would have been appropriate, indeed most desirable, that the consular officer report the proceedings on November 30, 1977 fully and in detail; one might harbor fewer questions about the voluntariness of appellant's renunciation had this been done.

At the hearing appellant asserted that the second witness to his renunciation, an Embassy employee, (his father was the other) did not see him sign the oath or the statement of understanding, since the employee was engaged with another Embassy visitor at some distance from where appellant was signing the documents,

Appellant's assertion made many years after the event is unsupported by anything in the record that would lead us to question the propriety of the witnessing of his act. It must be presumed therefore that this part of the formalities was carried out with the required regularity, 9/

Balancing all the variables elucidated by the administrative record, appellant's testimony, and the declarations filed in support of appellant's case, it is our conclusion that appellant did not renounce his United States nationality of his own free will, but was forced to do so by a combination of parental pressure, religious conviction and economic considerations.

We also conclude that appellant has shown that the moral suasion exerted on him by his father to renounce his nationality continued unabated throughout the period 1977-1982. Although as appellant grew older he understandably developed a sense of greater independence from his parents, the evidence on balance suggests that he remained totally dependent on them for guidance and subsidy. Ail through that period, he stated, he dutifully joined his family

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9/ There was, of course, nothing irregular in appellant's father's being a witness. 8 Foreign Affairs Manual, 225.6(g), 1969, provides that witnesses may be companions of the renunciant. One might simply observe that on hindsight it might have been more seemly had both witnesses been Embassy employees.

We dismiss as without merit appellant's contention that he never received a copy of the certificate of loss of nationality. A copy was sent by the Department to the Embassy for forwarding to appellant. It must be presumed, in the absence of evidence to the contrary, that the Embassy duly performed this function. It is, of course, possible that appellant's father received the certificate and did not show it to him,

for summer vacations. The statement he submitted after the hearing, acknowledging that in a sense he was going against his father's wishes, was a candid admission of an uneasy conscience, and does not impeach his contention that he was constrained from initiating an earlier appeal. 10/

Viewing the duress exerted on appellant as a continuum from 1977 to 1982, we conclude that, in the rather unique circumstances of this case, the appeal was taken within a reasonable time.

In reaching our decision that the appeal was timely, we are not indifferent to the argument made by the Department in its memorandum to the Board of June 6, 1985 that:

> Mr. H[redacted] L[redacted] has not appeared at the U.S. Embassy in Jidda, Saudi Arabia since the day he renounced his U.S. citizenship on November 30, 1977. The 8 FAM at Section 287.41(a) and (b) states that when a file is inactive for more than five years, the consular officer can destroy the record. Due to the security concerns at all of the Mid-East posts, this is generally the procedure, Jidda has followed this procedure, and there is no FS-558 Card /the Post's record of passport and nationality dealings with a citizen/ on record for H[redacted] L[redacted] in Jidda.

10/ Although appellant's contention that he considered himself morally bound not to initiate an appeal until his father relented has, in our judgment, been borne out, we consider it not irrelevant to note that appellant maintains that he was never apprised of his right after age eighteen to invalidate his renunciation. He stated, as noted above (note 5, supra) that he was never informed of his rights under section 351(b) of the Immigration and Nationality Act. The consular officer concerned could not recall in 1984 whether, as instructed by the Department, he had given appellant a copy of that section, and there is no record that a copy was sent to appellant. There is at least some ground for doubting that appellant knew he could undo his renunciation after he became eighteen in March 1979, had he believed himself morally free to do so.

> The Department reiterates its position that the unreasonable lapse of time has prejudiced this case. Evidence which might have been available at the time of the renunciatiop is lost or obscured by the passage of time. If the appellant had acted within a reasonable time, records would be available to prove when and where the Certificate of Loss of Nationality was mailed,

In a supplemental memorandum of June 25, 1985 counsel for appellant submitted the following comments on the foregoing contentions of the Department:

> As to Respondent's comment regarding the destruction of Embassy files and timeliness of the appeal, Petitioner informs me that November 30, 1977 was not the last time he appeared at the U.S. Embassy in Jidda, Saudi Arabia, Mr, L[redacted] reports that he went back after his renunciation on or around May of 1978 to get his student visa before departing to the Unit[redacted]tes, In the summer of 1980, Mr. L[redacted] once again returned to the Embassy in Jidda to get his student visa renewed. The five year in-active file statute did not run before Petitioner filed his notice of appeal in March, 1983, Consequently, Respondent's efforts to justify the Department's loss of record and assert prejudice are flawed and must be rejected,
>
> The question also has to be asked, what would be contained in a FS-558 card which would assist in the resolution of this appeal, Respondent has not made any show-ing as to the relevance such a document might have. Furthermore, even if Petitioner had not returned to the Embassy after November, 1977, his notice of appeal was filed only of /sic/ five years and three and one half months after the renunciation. Respondent has failed to establish that the destruction of the FS-558 card occurred during that three and one half month overlap, It should also be noted that if the FS-558 card did contain germane evidence, it may have been helpful and not harmful to the Petitioner's case. Consequently, Respondent's claim of prejudice is speculative at best.

Prejudice to the opposing party is, of course, an element that must be carefully considered in determining whether a delay in taking an appeal is reasonable: it is not, however, the only consideration or the dominant one (see Ashford v. Steuart, 657 F. 2d 1053 (9th Cir. 1981) that the trier of fact must weigh, The circumstances of the case determine what weight should be given to the various elements involved in determining reasonable time. Although some records in the case have been destroyed, key documents are extant, and, as we argue, permit certain supportable inferences to be drawn therefrom. Furthermore, the consular officer concerned seems to have remembered appellant's case, although we have expressed some doubts about some of his recollections.

On balance, we do not consider that the Department has made a convincing case of prejudice.

V

Upon consideration of the foregoing, the Board hereby reverses the Department's determination that appellant expatriated himself when he made a formal renunciation of United States nationality on November 30, 1977.

Alan G. James, Chairman

Mary E. Hoinkes, Member

James G. Sampas, Member