April 8, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: P[redacted] J[redacted]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, P[redacted] J[redacted], expatriated herself on January 7, 1985 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Kingston, Jamaica, 1/

Since, in our opinion, Mrs. Jo[redacted] voluntarily renounced her United States nationality with the evident intent of relinquishing her United States citizenship, we will affirm the Department's determination that she expatriated herself.

I

Mrs. J[redacted] was born at [redacted] on [redacted]. According to her submissions, she came to the United States when she was about seven years old, and was educated here. She married [redacted] a resident alien, on July 26, 1980. A year later, on June 23, 1981 she was naturalized before the United States District Court for the Eastern District of New York.

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,...

Appellant returned to Jamaica in November 1983, for reasons that are not revealed either by the official record or her own submissions. It appears, however, that she was not accompanied by her husband,

About a month later, Mrs. J[redacted] went to the United States Embassy at Kingston. On December 1, 1983 she made a formal renunciation of her United States nationality before a consular officer and two witnesses. She was then nearly 23 years old. Before making the oath, she executed a statement of understanding in which she attested that she decided voluntarily to exercise her right to renounce her United States citizenship; that the serious consequences of renunciation had been explained to her by a consular officer, and that she fully understood the consequences.

Thereafter, on December 2, 1983, in compliance with the provision of section 358 of the Immigration and Nationality Act, the Embassy executed a certificate of loss of nationality in appellant's name. 2/

2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, provides that:

Section 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 Embassy certified that Mrs. J[redacted] became a United States citizen by naturalization; that she made a formal renunciation of her United States nationality; and thereby expatriated herself under the provisions of section 349(a)(6) of the immigration and Nationality Act.

More than a year later the Department acted on the certificate of loss of nationality. in a communication dated December 10, 1984 the Department informea the Embassy that the certificate was invalid. The Department's memorandum to the Embassy read as follows:

> Attached is the Certificate of Loss of Nationality for Patricia Marine Joseph dated 2 December 1983 prepared by a Conoff previously assigned to Post. The Certificate is being returned as it is invalid.
>
> Section 349(a)(5) of the Immigration and Nationality Act, not Section 349(a)(6) as specified in the CLN, governs renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state. 3/ Also, CLNs with accompanying aocumentation are prepared in triplicate.
>
> As Miss J[redacted] was naturalized in the United States, Post should also request return of her Certificate of Naturalization.
>
> Miss Joseph's cancelled passport No. D2152543 is being retained by the Department.
>
> Please ask Miss J[redacted] to come into the Embassy if she still wishes to renounce her U.S. citizenship and sign the Oath of Renunciation and Statement of Understanding again. if she refuses, then she may retain U.S. citizenship,
>
> We regret the delay in responding, but the CLN was only recently received.

3/ Section 349(a)(6) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(6), provides that:

Sec. 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

..

(6) making in the United States a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the United States shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense:. ..

Mrs. J[redacted] returned to the Embassy on January 7, 1985 and executed a second oath of renunciation of United States nationality. The form of oath of renunciation indicated clearly that she renounced her United States nationality under section 349(a)(5) of the Immigration and Nationality Act, She also executed a second statement of understanding of the consequences of renunciation. On January 7, 1985, the Embassy executed a certificate of loss of nationality and forwarded it to the Department where it was approved on April 19, 1985. Approval is an administrative determination of loss of nationality from which an appeal, timely and properly filed, may be taken to the Board of Appeliate Review. Mrs. J[redacted] entered an appeal by letter to the Board dated May 31, 1985.

II

Under the statute, it is the Department's burden to prove that a valid statutory expatriating act was performed. [4/] The Department contends that the act Mrs. J[redacted] performed was valid; she made a formal renunciation of her United States nationality before a consular officer of the United States in a foreign state in the form prescribed by the Secretary of State. Mrs. [redacted] however, contends that the act should be invalidated because the oath she signed and the certificate of loss of nationality executed in her name show her middle name as "[redacted] whereas her certificate of naturalization shows her middle name as "[redacted]

The Department takes the following position on appellant's contention:

> The name generally used in such cases is the name which best identifies the person for all purposes. In this case, Appellant was born [redacted]e Green. When she married, she became [redacted] error in her naturalization certificate is not relevant in this case. Appellant is the

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4/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. I481(c), reads:

(c) Whenever the loss of United States nationality is put in iss in any action or proceeding commenced on or after the enactment of th subsection under, or by virtue of, the provisions of this or any othe Act, the burden shalf 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 wh 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.

> individual who renounced her citizenship at the U.S. Embassy in Kingston, Jamaica whether she spells her name "Marine" or "Maureen". In fact, her CLN was issued to "Patricia Marine" the name with which Appellant was born. The Certificate of Loss of Nationality is valid.

We agree with the Department that there is no material error. Appellant clearly brought herself within the purview of section 349(a)(5) of the Immigration and Nationality Act.

111

Performance of a statutory expatriating act will not result in expatriation unless the act was done voluntarily and with the intention of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

In law it is presumed that one who does a statutory expatriating act does so voluntarily; the presumption may be rebutted, however, upon a showing by a preponderance of the evidence that the act was involuntary. 5/

Appellant implies that her renunciation was not voluntary. She submits that:

> ...I brought in my passport to the United States of America Embassy, and signed the renunciation papers on December 1. 1983. I did this at a grevious /sic/ time in my life, on the wrongful advise /sic/ of friends who said it would enable me to spend a longer time in Jamaica, as American citizens are only allowed up to one year out here before they have to return to the U.S.A. I have since received my renunciation papers in mid 1985....

5/ Supra, note 4.

In 1983 and again in 1985, she signed statements of understanding in which she declared under oath that she acted voluntarily. Furthermore, the fact that she may have been incorrectly advised does not establish that she acted involuntarily. There is no evidence that she made inquiries of either Jamaican or United States authorities about how she might reside in Jamaica for more than a year and was misinformed. Her reliance on ill-informed friends was not justified and cannot vitiate the evident volition of her formal renunciation of her United States nationality. We therefore find that she has not rebutted the statutory presumption that she acted of her own free will.

IV

Although we have concluded that appellant renounced her United States nationality voluntarily, it remains to be determined whether it was her intention to relinquish that citizenship, ~~Vance~~ v. Terrazas, supra. Under the Court's holding in Terrazas, the Government must prove by a preponderance of the evidence that appellant intended to forfeit her citizenship. 222 U.S. 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 at the time that she renounced her American nationality, namely January 7, 1985. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

Appellant has not explicitly contended that it was not her intention to relinquish her United States citizenship at the time she renounced her American nationality. Rather, she has merely stated that:

> ...As you can recall, I only handed in my American passport and not my naturalized /sic/ certificate with my I.D. on it. It was not clear to me that I was permanently renouncing my U.S. citizenship and losing all rights as an American citizen....

The Department contends that appellant's intent to relinquish her United States citizenship is inherent in the act she performed; the oath of renunciation is clear and unambiguous: "...I desire to make a formal renunciation of my American nationality ... and ... 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 Department further submit: that the record shows that Mrs. [redacted] made the oath knowingly and intelligently.

Although the Board gave Mrs. [redacted] every opportunity to develop her case fully, she did not, unfortunately, do so. She has merely asserted that she renounced her United States nationality because she had been badly advised by a colleague at a critical time in her life. She now rues her mistake. She has introduced no considerations that lead us to doubt that it was her intention in January 1985 to rid herself of her United States nationality. On the contrary, a preponderance of the evidence plainly shows that Mrs. Joseph had the requisite intent to relinquish her United States citizenship. First of all, formal renunciation of United States nationality is, on its face, unequivocal. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1249 (5th Cir. 1971). Furthermore, there can be no doubt that Mrs. [redacted] acted deliberately, fully cognizant of the consequences. She twice made the oath of formal renunciation of United States nationality, and twice executed a statement of understanding, attesting that she had been briefed on its consequences and understood them fully. That she repeated the act of formal renunciation in 1985 after she had been explicitly informed that if she did not choose to do so a second time she would remain a United States citizen, surely removes any question she did not know what she was doing.

On all the evidence, it is therefore our conclusion that Mrs. [redacted] knowingly and intelligently made a formal renunciation of her United States nationality. The Department has thus satisfied its burden of proof that it was her intention to relinquish her United States citizenship,

V

Upon consideration of the foregoing, we hereby affirm the Department's determination that Mrs. [redacted] expatriated herself.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

George Taft, Member