April 11, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: K A M

This case has been brought to the Board of Appellate Review by K A M who appeals an administrative determination of the Department of State that she expatriated herself on May 10, 1983 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Australia upon her own application. 1/

It being our conclusion that appellant voluntarily became a citizen of Australia with the intention of relinquishing her United States citizenship, we will affirm the Department's determination of her expatriation.

I

Dr. M became a United States citizen by virtue of her birth at , W . She states that she lived in England for the better part of 10 years from 1967 to 1977. In 1972 she obtained a passport from the United States Embassy at London. She renewed her passport in 1973 and later that year travelled to Australia. In 1982 Dr. M obtained a passport from the United States Consulate General at M and was registered as a United States citizen. In he ation she gave her occupation as Tutor in Melbourne University. Shortly afterwards she married an Australian citizen, D W.

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 naturalization, shall lose his nationality by --

(1) obtaining naturalization in a foreign state upon his own application,....

By April 1983 Dr. M[redacted] was working for the Australian Attorney General's Department. Since, according to appellant, permanent employment in the Australian public service is restricted to Australian citizens, she applied for naturalization. Incident to the naturalization process she was interviewed by an official of the Department of Immigration and Ethnic Affairs, and as required by Australian regulations, she surrendered her unexpired United States passport.

On May 3, 1983 a certificate of Australian citizenship was issued in appellant's name. On May 10, 1983 she made the following affirmation of allegiance and became an Australian citizen as of that date:

Affirmation of Allegiance

> I, A.B., renouncing all other allegiance, solemnly and sincerely promise and declare 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 Australia and fulfil my duties as an Australian citizen. 2/

She thereafter obtained an Australian passport.

In early 1984 the Department of Immigration and Ethnic Affairs informed the United States authorities in Australia that Dr. M[redacted] had become an Australian citizen. It appears that the United States Embassy at Canberra, following usual consular practice, informed Dr. [redacted] sometime thereafter by letter that she might have lost her United States citizenship, In June 1984 she visited the Embassy. According to a statement she later made to the Board:

2/ There is no copy in the record of the affirmation of allegiance Dr. M[redacted] made on May 10, 1983. However, the Board notes that the text cited above is the one prescribed by Schedule 2 of the Australian Citizenship Act of 1948, as amended. So it may be presumed that Dr. M[redacted] subscribed to that text, particularly since she did not contest the Department of State's assertion in its opening brief that such was the text of the affirmation of allegiance she made.

> When, in June 1984, I finalized plans to visit my family in the United States in August, 1984, I approached the United States Embassy in Canberra seeking either the immediate return of my American passport or its eventual return and an interim visa for my Australian passport, I was told that they had never received my American passport and that accordingly it was not available, i was also told that unless I was prepared to sign an oath of renunciation it was very unlikely that I would have a visa in time to meet my travelling arrangements and indeed that there might be long term difficulty in obtaining a visa at all. Nevertheless, I declined to sign the document presented to me,...

Dr. [redacted] completed a form for determining United States citizenship on June 28, 1984. On August 18, 1984, the Embassy executed a certificate of loss of nationality in appellant's name. 2/ The Embassy certified that Dr. [redacted] became a United States citizen at birth; that she obtained naturalization in Australia upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Embassy forwarded the certificate to the Department without commentary; the only supporting documentation submitted was the computer print-out sent by Australian Immigration to the United States authorities; a copy of Dr. [redacted] certificate of Australian citizenship; and the citizenship questionnaire she completed.

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

Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

The Department approved the certificate on August 23, 1984, approval being an administrative determination of loss of nationality from which an appeal, timely and properly filed, may be taken to the Board of Appellate Review, Dr. M[redacted] gave notice of appeal on November 8, 1984. She contends that she did not intend to relinquish her United States citizenship when she acquired Australian citizenship.

II

That Dr. M[redacted] performed a valid statutory expatriating act and brought herself within the purview of the statute is not in dispute, Performance of a statutory expatriating act will not, however, result in loss of citizenship unless the act was voluntary and done 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 performs a statutory expatriating act does so voluntarily, although the presumption may be rebutted by the actor upon a showing by a preponderance of the evidence that the act was not voluntary. 4/

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

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 the person or party claiming that such loss occured, to establish such claim by a preponderance of the evidence. Except as otherwise provided. in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

In the form for determining United States citizenship which Dr. M[redacted] completed in June 1984 she stated that her naturalization was not entirely involuntary:

> ...It is very difficult after 12 years of education (B.A., B.A., Ph.D., Dip. Ed.) to face unemployment in the face of suitable and constructive jobs available. To that extent, my taking of Australian citizenship was constrained, And if it follows necessarily from that that I lose my American citizenship then that is the result of a constrained choice made in the absence of suitable alternatives (dual nationality.)

In her submissions to the Board, however, Dr. [redacted] did not undertake to carry the burden of proving that her naturalization was involuntary. The statutory presumption therefore stands unrebutted, and we conclude that appellant's naturalization in Australian was an act of her own will.

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Although appellant's acquisition of Australian citizenship was a voluntary act, the question remains whether she had the specific intent to relinquish her United States nationality when she obtained. naturalization, She contends that she did not intend to relinquish her citizenship. The Department, which takes a contrary position, must prove by a preponderance of the evidence that she had such intent. Vance v. Terrazas, 444 U.S. at 268. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. A party's specific intent rarely will be established by direct evidence, but circumstantial evidence surrounding performance of an expatriative act may establish such intent. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981). The intent that the Government must prove is the person's intent at the time the expatriative act was done. Id.

The Department submits that Dr. [redacted] intent to relinquish her United States citizenship is evidenced by the following facts:

a) her application for and acceptance of Australian citizenship;

b) her pledge of allegiance to Queen Elizabeth the Second in which she renounced all other allegiance;

c) her conduct after naturalization, "which has not been that of a *person* desirous of retaining United States citizenship;"

d) her surrender of her United States passport and failure to attempt to reacquire it.

Maintaining that she did not intend to relinquish her United States citizenship, Dr. [redacted] asserts that her decision to seek Australian citizenship

> ...did not involve any intention to relinquish my American citizenship. In fact I was then, and am still, very desirous of maintaining my American citizenship. This desire has been indicated repeatedly to the American authorities inciuding to your office, on every possible occasion since I first heard that, despite the fact that thousands of Australians are dual citizens of other nations, and that many Americans are also dual citizens of other countries, the State Department wished to strip me of my United States citizenship against my express wishes.
>
> The broad claim on which I wish to base my appeal is therefore that any intent which I have expressed in words, or which can be inferred from my conduct, clearly demonstrates my desire not to lose my American citizenship. I contena in this regard that my seeking of naturalization as an Australian citizen is fully explained by my desire to maintain my job in Canberra and that it therefore cannot be adjudged to be evidence of intent to relinquish citizenship of the United States. On the contrary, my continued correspondence on the matter of my citizenship, including this present letter, is clear evidence of my wish not to relinquish my United States citizenship.

With respect to the form of words of the affirmation of allegiance to which she subscribed, Dr. [redacted] makes the following assertions:

> I would further like to stress that my understanding of the wording of the statement of affirmation of Australian citizenship is that that wording does not in any way include a renunciation of United States citizenship as the concept citizen-

> ship is normally understood. That understanding is neither peculiar nor unusual; it is shared by the government administering the oath, which, as you are no doubt aware, permits dual nationality as a matter of routine.

The Department's claim that her surrender of her United States passport is conclusive evidence of her intent, Dr. [redacted] asserts. "presents another case of an invented inference directly opposed to a clear account of a contrary understanding and intention. She continues:

> ...The reason I submitted my passport to the Australian authorities was because I was asked by them to do so, on the grounds that the passing on of passports was that this was the routine way through which they notified relevant Embassies of the proposed issue of an Australian passporr to individuals who were also the nastionals /sic/ of other states, The reason that I did not attempt immediately to recover my passport was that I assumed it would be returned to me when bureaucratic procedures had been fulfilled and that I did not need the passport until I wished to travel again,

In assessing Dr. M[redacted] probable intent, we begin by noting that she obtained naturalization in Australia upon her own application, and that pesformanae of that act or any one of the expatriating acts enumerated in section 349(a) of the Immigration and Nationality Act may be highly persuasive evidence of an intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. at 261. 5/

5/ "...we are confident that it would be inconsistent with Afroyim to treat the expatriating acts specified in sec. 1481(a) as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen. 'Of course,' any of the specified acts 'may be highly persuasive evidence in the particular case of a purpose to abandon citizenship.' Nishikawa v. Dulles, 356 U.S. 129 139 (1958) (Black, J., concurring)."

There is no evidence of record contemporaneous with Dr. [REDACTED]'s obtaining Australian citizenship that she did not intend to relinquish her United States citizenship, The only contemporary evidence relevant to that issue is found in the words of the affirmation of allegiance she made to Queen Elizabeth the Second which included an express renunciation of all other allegiance, and in her surrender of her United States passport to the Australian immigration authorities, The cases make clear the legal consequences of expressly renouncing all other allegiance. See Richards v. Secretary of State, ?52 F. 2d 1413 (7th Cir. 1985). There plaintiff, a native born United States citizen, became a local resident of Canada. In order to meet the citizenship requirements for employment with the Boy Scouts of Canada, he obtained naturalization, upon swearing an oath of allegiance to Queen Elizabeth the Second and expressly renouncing "all allegiance and fidelity to any foreign sovereign or state." The Ninth Circuit agreed with the district court that plaintiff knew and understood the meaning of the words in the renunciatory declaration, and concluded that: "The voluntary taking of a formal oath of allegiance that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship-" 752 F. 2d at 1421. Similarly Meretsky v. Department of State, et al., Civil Action No. 85-1985, memorandum opinion. (D.C.C. 1985).

> Plaintiff's intent to relinquish his United States citizenship was established by his knowing and voluntary taking of an oath to a foreign sovereign which included an explicit renunciation of his United States citizenship. At 9.

When Dr. [REDACTED] asserts that "my understanding of the wording of the statement of affirmation of Australian citizenship is that that wording does not in any way include a renunciatio of United States ciitizenship /sic/ as the concept citizenship is normally understood," she is mistaken. As the court pointed out in Meretsky, supra: "When plaintiff took the oath he was a citize only of the United States and thus it is clear that he could only have renounced that citizenship." At 9.

Dr. [REDACTED] argues that she had no abstract wish to relinquish her United States citizenship. We cannot, of course, probe her mind at the time she became an Australian citizen; intent can only be gauged by externalization or inner feelings. Here her subscription to an express renunciation of United States citizenship bespeaks specific intent to relinquish that citizenship. Furthermore, nothing in the cases suggests that renunciation is effective only in the case of citizens whose will to renounce is based on a principled,

abstract desire to sever ties to the United States. On the contrary, the cases make it abundantly clear that a person's free choice to renounce United States citizenship is effective whatever the motivation. "Whether it is done in order to make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship." Richards, 752 F.2d at 1421.

In asserting that Australia "permits dual nationality as a matter of routine," she implies that her affirmation of allegiance should not therefore be deemed to connote an intent to relinquish United States citizenship. Australian public policy Goes not, however, countenance dual nationality. We take note that the earliest Australian naturalization laws required that applicants for naturalization should renounce all other allegiance. In 1983 when Dr. Ma[redacted] obtained naturalization, the only persons who were exempt from the requirement to renounce all other allegiance were persons with British subject status.

Surrendering her United States passport has considerable symbolic significance with respect to the issue of appellant's intent to relinquish her United. States citizenship, She should have realized, we think, that the requirement to hand over her United States passport was intended to impress on her that she would be expected to transfer her allegiance from the United States to Australia.

Examination of the record and appellant's submissions leaves no material doubt that Dr. [redacted] acted knowingly and understandingly when she applied for and accepted the grant of Australian citizenship. She was 36 years of age at the time, obviously is a well-educated woman, and had already lived in Australia for about six years. Dr. M[redacted] states that she does not recall being informed during her citizenship interview that at the citizenship ceremony she would be required to make an affirmation of allegiance that included renunciation of all alleqiance. We note, however, that information made available to applicants for naturalization (Booklet entitled "Australian Citizenship," published by the Department of Immiqration and Ethnic Affairs) specifically advises applicants that they will be requirea to renounce allegiance to all other countries. Perhaps Dr. [redacted] was not specifically informed of the nature of the affirmation of allegiance, but that does not absolve her from the responsibility of ascertaining in advance of tne citizenship ceremony preciseiy what undertakings she would be expected to make. In our opinion, it cannot be said that she made the renunciatory statement in the affirmation of allegiance inadvertently.

Finally, we must inquire whether any factors not so far considered might justify a finding that Dr. M[redacted] did not intend to relinquish her United States citizenship. She submits that her intent to retain United States citizenship is evidenced by the fact that in June 1984 she refused to make a formal renunciation of her United States nationality in order to obtain a visa in her Australian passport. We accept that the facts surrounding her application for a visa were as she has stated them. But her actions in 1984 are not relevant to 1983 when she obtained naturalization, and cannot possibly be given the same evidentiary value of her words and conduct a year earlier. Furthermore, her obtaining an Australian passport is on the face inconsistent with an intent to retain United States citizenship. In brief, her conduct discloses no factors that would suggest she did not intend in 1983 to relinquish United States citizenship.

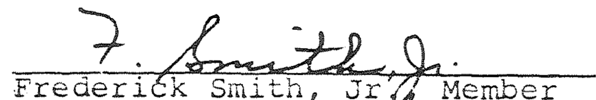
Surveying the record in its entirety, we conclude that the Department has carried its burden of proving by a preponderance of the evidence that Dr. [redacted]t intended to relinquish her United States citizenship when she obtained naturalization in Australia upon her own application.

IV

Upon consideration of the foregoing, the Board hereby affirms the Department of State's administrative determination of appellant's expatriation,

Alan G. James, Chairman

Edward G. Misey, Member



Frederick Smith, Jr., Member