January 22, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: E[redacted] M[redacted] G[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, E[redacted] M[redacted] G[redacted], expatriated herself on February 16, 1973 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining the citizenship of Canada upon her own application. 1/

A single issue is presented: whether appellant intended to relinquish her United States nationality when she became a citizen of Canada. On all the evidence, the Department has, in our view, carried its burden of proving that she had the requisite intent. We therefore affirm the Department's holding of appellant's expatriation.

I

Appellant became a United States citizen by birth at [redacted], of United States citizen parents on [redacted]. She lived in the United States until 1957 when [redacted]s entered Canada as landed immigrants. The

---

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,. . .

family moved to the State of Washington in **1962,** remaining there until 1965 when they returned to Canada. In **1968** appellant obtained a United States passport from the Consulate General at Vancouver.

Appellant states that she attended university in Vancouver, and "had four summer months out of every year to work a summer job. The best jobs were those given by the provincial or federal government and I learned that a requirement for these jobs was Canadian citizenship." She understood, she states, "that the United States Government considered a born American an American citizen for life and recognized dual citizenship. It was on this basis that I decided I could become a Canadian to widen my possibilities for employment and work my way through university and retain my American citizenship." She did not want to return to the United States at that time, she has stated, since her parents were living in Canada and she wanted to be near them.

Appellant accordingly applied for naturalization, and on February 16, 1973 was issued a certificate of Canadian citizenship. Incident to the grant of Canadian citizenship, appellant made the following oath of allegiance:

> I hereby renounce all allegiance and fidelity to any foreign sovereign or state of whom or which I may at this time be a subject or citizen.
>
> 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.

In **1977** appellant returned to the United States to attend graduate school at Talbot Theological Seminary, La Mirada, California. She entered the United States on a student visa, registering at the Seminary as a foreign student. Each January from **1978** through **1980** she reportedly registered as an alien with the Immigration and Naturalization Service. While in the United States she obtained a Canadian passport in **1978** which she used for travel to South America to do missionary work in the summer of **1978.**

It appears that early in 1980 appellant consulted an attorney with respect to her citizenship status, and was advised that she might have a claim to United States citizenship. On the attorney's advice, appellant eventually applied for a United States passport at Los Angeles in November **1981.** Appellant's application, in which she acknowledged that she had been naturalized in Canada, triggered an inquiry into her United States citizenship. At the Department's

request she completed a form for determining United States citizenship in January 1982. Meanwhile, the Canadian authorities confirmed to the Consulate General at Vancouver that she had been naturalized in 1973. In June 1982 the Department informed appellant it had concluded that she had expatriated herself. Her passport application was accordingly disapproved. The Department informed her that "a formal record of this decision of loss of nationality will be sent to you upon completion of documents which must be prepared by the United States Consulate General in Vancouver, B.C., Canada." The Department enclosed a copy of the procedures for taking an appeal to the Board of Appellate Review.

On June 10, 1982, as instructed by the Department, and in compliance with the provisions of section 358 of the Immigration and Nationality Act, the Consulate General executed a certificate of loss of nationality in appellant's name. 2/ The certificate stated that appellant became a United States citizen by birth therein; that she obtained naturalization in Canada upon her own application; and thereby expatriated herself under section 349(a)(1) of the Immigration and Nationality Act.

Nine months later, on March **23, 1983,** the Department approved the certificate. In sending appellant a copy of the approved certificate, a Department official informed appellant that: "I regret the delay in the processing of your case and any inconvenience this may have caused you. The Certificate had been inadvertently misfiled and retained in the Department's mail room where it was not discovered until mid-March."

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 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.

Approval of the certificate is an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. But acting on the basis of the letter she received from the Department in June 1982 advising her that an adverse decision had been made in principle regarding her United States nationality, appellant anticipated approval of the certificate, and on January 16, 198 instituted this appeal. She contends that in obtaining Canadian citizenship she had no intention of relinquishing her United States citizenship.

Since August 1984 appellant has been living in Brazil working for an American missionary group.

II

The statute prescribes that a national of the United States shall lose his nationality by obtaining naturalization upon his own application. 3/ Appellant does not contest that she obtained Canadian citizenship upon her own application. She thus brought herself within the purview of the statute.

Loss of nationality will not result from performance of a statutory expatriating act, however, unless it be proved that the proscribed act was performed voluntarily and with the intention of relinquishing United States nationality. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

3/ Supra, note 1.

Section 349(c) of the Immigration and Nationality Act prescribes that performance of any of the expatriating acts of section 349(a) shall be deemed to have been voluntary, but the presumption *may* be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 4/ Appellant has not attempted to rebut the statutory presumption that she acted voluntarily. Indeed, her submissions indicate that she acted under no extrinsic compulsion.

Accordingly, we conclude that appellant's acquisition of Canadian citizenship was a voluntary act.

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

(c) 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 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.

III

The question remains, however, whether appellant had the specific intent to relinquish her United States nationality when she obtained the nationality of Canada. 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 argues that appellant's intent to abandon United States citizenship is evidenced by the very act of naturalization which may be highly persuasive evidence of a renunciatory intent, citing the Attorney General's Statement of Interpretation, 42 Op. Atty. Gen. 397 (1969). 5/ Further evidence of her intent, the Department submits, is manifested in the renunciatory oath of allegiance to which she subscribed when she obtained naturalization. Additional evidence adduced by the Department includes the following: documenting herself with and travelling on a Canadian passport; not renewing her United States passport: entering the United States as

---

5/ The Attorney General's Statement, interpreting the Supreme Court's decision in Afroyim v. Rusk, 387 U.S. 253 (1967), was noted with general approval by the Supreme Court in Vance v. Terrazas, supra.

a foreign student; lack of any evidence contemporary with her naturalization of an express intent to retain United States citizenship.

We begin by noting that the only evidence of appellant's intent in 1973 - the relevant time with respect to that issue - is the oath of allegiance she made to Queen Elizabeth The Second in which she "renounced all allegiance and fidelity to any foreign state of whom or of which I am now a subject or citizen." The first suggestion that appellant did not intend to relinquish citizenship appears in the form she completed in November **1980** in connection with an application for a preference immigrant visa. 6/ Therein she stated that she did not attempt to avoid taking the oath. "However, I remember being apprehensive about the contents of the oath." she did not believe she "fully understood at **22** years exactly what the oath meant regarding renunciation of U.S. citizenship, If it did so." (Emphasis in original). In November **1981,** in a statement appended to her application for a United States passport, appellant asserted: "...I never intended to give an oath renouncing allegiance to my native country and feel in my heart that I did not." She made substantially the same statement in the form she completed in January **1982** to determine her citizenship status, adding: "In my mind I was not renouncing U.S.A. citizenship, but simply was becoming a Canadian, knowing it is possible to be a citizen of more than one country...."

Throughout her submissions to the Board appellant has consistently maintained that she did not intend to relinquish her United States citizenship.

Appellant argues that the oath of allegiance she swore in **1973** should not be considered evidence of an intent to relinquish United States citizenship.

6/ Appellant was the beneficiary of a first preference immigrant Visa petition filed by her father in June 1980. She began the process of applying for an immigrant visa in November **1980** at the Consulate General at Vancouver, but for reasons unspecified did not pursue the matter.

> I do not co sider the oath I took in February 16. 1973 at the Canadian court of citizenship, a renunciation of allegiance to the United States. In fact the oath was a very general one and not required to be specific, since there were people from many countries in that room. I was not required to specifically say that I revoke allegiance to the United States. Besides, I am aware that my mother country, in this case the United States, must recognized /sic/ the oath as a renunciation before it is considered such. I believe it is on this note of which your board has the power to recognize or disregard the oath, therefore rendering you the power to reinstate me as a United States citizen. If this were not so, we would all be wasting our time with this correspondence and the appeal. I am not denying that I took an oath. but that it is obvious the content of the oath is crucial to whether renunciation of allegiance to the United States actually took place.

The legal consequences of making an oath of allegiance to a foreign state that contains a renunciatory clause were set out in Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985). There, the appellant made an oath of allegiance identical to the one made by appellant in the case before us. Reviewing the district court's conclusion that Richards' intent to relinquish his United States citizenship was manifested in the words of the oath, the Ninth Circuit said:

> The district court found that Richards knew and understood the words in the documents he was signing. The court found that, at the time he signed the documents, 'plaintiff would have preferred to retain American citizenship, and in his mind hoped to do so, but elected to sign the Canadian naturalization documents and accept the legal consequences thereof rather than risk loss of his job or career advancement.' The court concluded that his intent to renounce his United States citizenship was 'established by his knowing and voluntary taking of the oath of allegiance to a foreign sovereign which included an explicit renunciation of his United States citizenship.'

> We agree with the district court that the voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship. We also believe that there are no factors here that would justify a different result. 752 F. 2d at 1421.

See also Terrazas v. Haig, 653 F. 2d at 288; and United States v. Matheson, 400 F. Supp. 1241, 1245 (S.D.N.Y. 1975), aff'd. 532 F. 2d 809 (2nd Cir. 1976).

In the absence of evidence to the contrary, we can only assume that appellant knowingly and intelligently subscribed to a renunciatory oath of allegiance to a foreign sovereign. She was at the time nearly 23 years of age and university educated, and in law may be presumed to have been aware of the consequences of her actions. Although she now asserts in effect that she took the oath with mental reservations, such statements are at variance with the express repudiation of allegiance to the United States she made in 1973.

Even though the making of a renunciatory oath of allegiance to a foreign state is ordinarily sufficient evidence of an intent to relinquish United States citizenship, the cases require that the trier of fact examine all other factors to determine whether a contrary finding might be warranted. See Richards v. Secretary of State, supra, and Terrazas v. Haig, supra. In this respect, Richards is apposite. There, the petitioner, a native born United States citizen, became a legal resident of Canada in 1965. In 1971, in order to meet the citizensnip requirements for employment by the Boy Scouts of Canada, he obtained naturalization. Like appellant in the case now before the Board, Richards swore an oath of allegiance to the British Crown and expressly renounced "all other allegiance and fidelity." He returned to the United States in 1971 on a Canadian passport for graduate study, registering as a foreign student. In 1973 he returned to Canada to teach. He received a new Canadian passport and used it to travel abroad. After his naturalization had come to the attention of the United States authorities, Richards stated in a form he completed to determine his citizenship status that: "I did not want to relinquish my U.S. citizenship but as part of the Canadian citizenship requirement I did so." Richards' conduct, coupled with the renunciatory oath of allegiance he made to the British Crown, led the Ninth Circuit to conclude that he intended to relinquish his United States nationality.

In Ms. G[redacted] case she conducted herself to all outward appearances as a Canadian citizen from the time of her naturalization in **1973** until she applied for a United States passport in 1981. She entered the United States in **1977** on a student visa and throughout her course of study in California held herself out as an alien toward the United States. In **1978** she obtained a Canadian passport and used it to travel to South America.

Appellant contends that the foregoing facts should not be considered evidence of an intent to relinquish her United States citizenship. She states that although she initially believed she had not jeopardized her United States citizenship by becoming naturalized in Canada, she concluded around **1977** that she might not legally be both a Canadian and an American citizen. This belief was apparently based on the way the Seminary in California handled her application for admission. **As** she put it in the form she completed in January **1982** to determine her citizenship status:

> ...We believed that once an American, always an American. Later when I learned of the 1-20 and the necessity of a student visa, I simply abided by the filling out of these documents *so* as to save time and not delay my entrance to school. I was being treated as an alien by the U.S. Government, *so* I abided by the rules, not realizing at that time that I still may in fact be an American as I had originally thought in the first place.

In replying to the Department's brief, appellant submitted "some thoughts I had in 1977 at the moment of filling out the foreign student application forms:"

> ...In my mind, and as I understood the Immigration laws, I could not be both an American and Canadian citizen at the same time. However, at this time, I would have gladly considered myself American, had I thought the U.S. laws permitted this.
>
> Also, if it is true that evidence of my intention to retain citizenship would have been strengthened by entering the U.S. as a U.S. citizen (even though I had Canadian citizenship also) I surely would have saved myself the hassle of paperwork, entering as a foreigner, on a foreign-student visa, and instead entered as a

> U.S. citizen. But the very reason I did not do this action of entering as a U.S. citizen, is because I thought I would be breaking the laws of the U.S. government. I did not want to enter the U.S. illegally. Perhaps this would not have been possible, to enter with only my Birth Certificate, as proof of U.S. citizenship. Perhaps, the customs officers would have asked if I had a Canadian passport, for example, and inquired into the circumstances surrounding my Canadian naturalization, I—do not know. The point I am trying /sic/ make is that their /sic/ seems to be a contradiction in what the Immigration laws state regarding manners in which one can lose U.S. citizenship and the same individual's personal intentions to perhaps attemnt tn retain U.S. citizenshin by being a law unto himself. I view the action of considering oneself a U.S. citizen (while at the same time a Canadian), by entering the U.S., for example, with a Birth Certificate as sole, and I understand, sufficient proof of U. S. citizenshin by reason of birth in the U.S., as one being a law unto himself. Or in other words the Board of Appellate Review seems to give merit to such an action on the part of an individual, as proof of intention to retain rather rather than relinquish U.S. citizenship. Yet, the law states that when an individual pledges allegiance to another state and/or gives an oath renouncing allegiance to their country of birth, that this action automatically results in loss of citizenship of the country of birth. I am presently confused as to why my action of entering the U.S. as a Canadian citizen with the desire to enter legally, is viewed as an intention to relinquish my U.S. citizenship. /Emphasis in original/.

She alleges that she applied for a Canadian passport in 1978 on the same rationale - "because I knew I was a Canadian citizen." Had she thought of herself as an American at the time, "I probably would have applied for an American passport, since I would have seen myself as an American travelling through an American missionary agency."

The established fact is that she did nothing from **1973** until **1981** to assert a claim to United States citizenship. Why she did not in **1977** try to clarify her citizenship status has not been explained. **1977** would have been a logical time for her to have done **so,** although by then four years had passed since she acquired Canadian citizenship. She was obviously mistaken in assuming that foreign naturalization, without more, results in loss of United States citizenship. And she was ill-advised to have enrolled in the Seminary as a foreign student because the authorities there apparently assumed that she was applying in that quality.

We do not say mere knowledge that performance of an expatriative act may result in loss of United States citizenship is sufficient evidence of an intent to relinquish that citizenship. But holding the belief that one is not a United States citizen and doing many things consonant with such a belief, does not manifest an affirmative will and purpose to retain United States citizenship.

The fair inference we draw from appellant's holding herself out as a Canadian citizen for many years therefore is that it confirms the intent she manifested in **1973** when she renounced all allegiance and fidelity to any state foreign to Canada.

Ms. G[redacted] evidently is serious and principled. Arguably she did not wish to forefeit her United States nationality when she elected to become a citizen of Canada. But the Board must deal with proven facts - the palpable manifestation of one's will and purpose; we obviously cannot penetrate the recesses of a citizen's mind. The record shows that she expressly renounced allegiance to the United States and subsequently acted as if she had transferred her allegiance from the United States to Canada. On all the evidence, we conclude that the Department has carried its burden of proving by a preponderance of the evidence that Ms. G[redacted] intended to relinquish her United States nationality in **1973.**

III

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

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

George Taft, Member