DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] A[redacted]r J[redacted]n

R[redacted] A[redacted] J[redacted] appeals an administrative determination of the Department State holding that he expatriated himself on June 20, 1974 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in the Philippines upon his own application. 1/

For the reasons set forth below, we have concluded that the Department's determination of appellant's expatriation should be affirmed.

I

[redacted] was born at Z[redacted] [redacted] ted States cit[redacted]h mother. He thus acquired United States citizenship under the provisions of section 201(g) of the Nationality Act of 1940. 2/ Whether he also became a Philippine citizen at birth, as he claims

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), reads as follows:

Section 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, . . .

2/ Section 201(g) of the Nationality Act of 1940, 8 U.S.C. 601(g), read in pertinent part as follows:

Sec. 201. The following shall be nationals and citizens of the United States at birth:

. . . .

(g) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence in the United States or one of its outlying possessions, at least five of which were after atttaining the age of sixteen years, the other being an alien: Provided, That in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if

in his submissions, is not a matter the Board is competent to determine, as we explain below.

Until he was 14 years old, appellant's father registered him with the Philippine authorities as an alien. In 1965 he handled the registration himself.

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2/ Cont'd.

the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years, his American citizenship shall thereupon cease.

When the immigration and Nationality Act (INA) entered into force on December 24, 1952, appellant became subject to its requirements for retention of his United States citizenship. Section 301(b) of the INA, 8 U.S.C. 1401(b), provided that a person born abroad of a United States citizen parent and an alien parent would lose his nationality unless he came to the United States prior to attaining the age of 23 and immediately following such coming was physically present in the United States for 5 years. In 1972 section 301(b) was amended to provide for a 2-year residency requirement. P.L. 92-584, Oct. 27, 1972 (86 Stat. 1289). The amendment had retroactive effect. Thus, appellant had until age 26, August 16, 1977, to come to the United States to retain his United States citizenship. Section 301(b) was repealed by Public Law 95-432, Oct. 10, 1978 (92 Stat. 1046). Repeal, however, was prospective not retrospective in effect. From the record before the Board, it is apparent that appellant did not come to the United States by August 16, 1977.

On November 29, 1973 [redacted] filed a petition at [redacted] City to elect [redacted] citizenship in accordance with the provisions of "Article 111, section 1, paragraph 3 of the New Constitution of the Philippines and Commonwealth Act No. 625." 3/ He was then 22 years old. In the petition [redacted] stated, inter alia, that his father was an American citizen, and his mother a [redacted] citizen; that he had graduated from San Carlos University (B.Sc. commerce) and was then training for his first job; that he had resided in the Philippines since birth; and that he was single. In both the petition and a separate document [redacted] subscribed to the following oath of allegiance:

> I, [redacted] solemnly swear that I renounce absolutely and forever all allegiance and fidelity to any foreign prince potentate, state, or sovereignty, and particularly to the United States of America, of which my father is a subject; that I will support and defend the Constitution of the [redacted] that 1 will obey all the laws; legal orders, and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; and that I recognize and accept the supreme authority of the Republic of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily, without mental reservation or purpose of evasion.
>
> SO HELP ME GOD.

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3/ Presumably the reference is to the 1973 Constitution article III, section 1, paragraph 3 of which provides that those persons whose mothers are Philippine citizens and who upon reaching the age of 21 elect Philippine citizenship shall be citizens of the Philippines.

Commonwealth Act No. 625 of 1941 prescribes the procedures one shall follow to elect Philippine citizenship under the Constitution of 1935.

On June 20, 1974 the Commissioner of Immigration and Deportation signed an order stating it had been established that [redacted] elected Philippine citizenship on November 29, 1973 at Zamboanga City and that his election papers had been registered with the Local Civil Registrar of that place. The order further stated that [redacted] "thereby validly acquired Philippine citizenship pursuant to Para. 3, Sec. 1, Art. III of the New Constitution and Commonwealth Act No. 625."

The order concluded:

> WHEREFORE, the herein petition to cancel his alien registry is granted. Henceforth, petitioner shall be shown in the records of this Office as a citizen of the Philippines, and the issuance to him of an appropriate identification certificate showing his correct status is hereby authorized.

An identification certificate was issued to appellant on December 4, 1974.

Five years later in May 1979 [redacted] addressed a letter to the Department through the Embassy at Manila requesting "my reinstatement" as a United States citizen. Only because of love for his mother had he acquiesced in her pressure to become a Philippine citizen. As the enclosed affidavit of his mother attested, he observed, she had now recognized that she had erred in forcing him to become naturalized, and supported his plea for reinstatement of his citizenship. In her affidavit, [redacted] mother declared in part as follows:

> ...Prior to his 21st birthday, I have asked my son [redacted] to elect [redacted] citizenship inasmuch as he is the only one among my children who is very close to me. Because of this, I told him that if everybody leaves for the United States, I would be the only one left and, if he is a Filipino citizen, then he could look after me and be with me with his family. My son was adamant in staying as a citizen of the United States but I won him out when I told him that I would disinherit him after taking him off from the extensive [redacted] businesses. After a few months, without work he came to me and assented to my wishes. He finally elected Philippine citizenship which I know was against his wishes.

acquired United States nationality by birth abroad to a United States citizen father; that he acquired the nationality of the Philippines by naturalization; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

Also, as instructed by the Department, the Embassy wrote to [redacted] on November 14, 1979 to advise him that he might have expatriated himself, and to invite him to submit any evidence he might wish the Department to consider. On January 5, 1980 counsel for [redacted] wrote to the Embassy to request an extension of time to submit evidence. In February 1980 appellant and his mother executed affidavits which counsel submitted to the Embassy.

[redacted] averred that he never wished to relinquish his United States nationality, but had been prevailed upon to do so by his mother who was

> ..,insistent that he elect Philippine citizenship because the [redacted] family has extensive business interests, mainly in nationalized industries like logging and owns very valuable real property in the City of Zamboanga and Zamboanga del Sur. She had in mind the termination of parity rights on July 3, 1974 as decided by the Supreme Court of the Philippines in the celebrated case of 'Republic of the Philippines v. William H. Quasha, L-30,299, 8/17/72' as a result of which Americans were compelled to divest themselves of their rights over real property in the Philippines. In support of this allegation, appended herewith as Annex "A" is the affidavit of Petitioner's mother dated February 11, 1980.

The mother's affidavit read in pertinent part as follows:

> My husband's family has extensive business interests and owns considerable real

4/ Cont'd.

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.

estate in Zamboanga City and Zamboanga del Sur. One of the companies of the [redacted] family dealing in real estate is the Jos. S. [redacted] and Sons, Inc., 64.64% of the capital stock of which—is owned by Filipinos and 15.36% /sic.-35.36%?/ by **Americans,** one of whom is Roderick Arthur [redacted] who owns 140 shares therein. Another [redacted] company which is the [redacted] Silupa Estate, Inc., is owned by Filipinos and Americans, the latter owning 36.19% and the Filipinos owning 63.81%. In another company, the [redacted] Lumber Company with a capitalization of P700,000.00, the herein affiant owns a total of 1,565 shares with a par value of P156,500.00 and [redacted] A. [redacted] owns 1,057 shares with a par value of P105,700.00. The undersigned owns real property in the City of [redacted] appraised at P494,800.00 while her husband, the aforesaid Louis A. [redacted] owns property in Zamboanga City assessed at P171,628,00.

On April 19, 1974 my husband being American, donated to our son [redacted] Arthur S. [redacted] 1,057 shares in the [redacted] Lumber Co., 123 shares in the Jos. S. [redacted] & Sons, Inc. and 80 shares in the [redacted] Silupa Estate, all with a par value of P100.00 per share.

In view of the foregoing circumstances and having in mind the decision of the Supreme Court of the Philippines in the much publicized case of "Republic of the Philippines vs. William H. Quasha, L-30,299 promulgated on August 17, 1972 I prevailed upon my son Roderick A. [redacted] to elect Filipino citizenship. At first, he refused to heed my advice but when I threatened to disinherit him, he relented and about two years after he attained the age of twenty-one he elected Filipino citizenship although I knew that it was much against his wish.

> I have knowledge of the extent of holdings of the [redacted] family because I am the secretary-treasurer of all the [redacted] corporations.

It was more than a year later, however, before the Embassy submitted the certificate of loss of nationality and appellant's documents to the Department. In its report to the Department the Embassy stated:

> The enclosed petition executed by Mr. [redacted] A. [redacted] in Zamboanga City, Philippines on February 11, **1980**, along with the attached affidavit from his mother also dated February 11, 1980, as well as the letter from Atty. Monico E. Luna dated January 5, **1980**, were inadvertently filed without action and were discovered only recently.
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> The enclosed petition was submitted by Mr. [redacted] in response to our preliminary finding of loss letter dated November 14, **1979.**
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> The arguments presented by Mr. [redacted] in his petition are believed to be substantially the same as those contained in his previous affidavit of May 21, **1979** which was sent to the Department with his registration application of May 25, **1979.**
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> We are also enclosing the Certificate of Loss of Nationality which the Embassy prepared in the case of Mr. [redacted] on November **7, 1979,** pursuant to the referenced Department's telegram, which, unfortunately, was also filed without action.

After the Department had located appellant's file, obtained from the Embassy a copy of the oath of allegiance made by appellant, and reviewed the evidence, it approved the certificate of loss of nationality on March 22, **1982.** In informing the Embassy of its approval of the certificate, the Department stated that:

> **...**The evidence reflects that subject voluntarily acquired Filippino /sic/ citizenship by naturalization on June 20, **1974.** In connection with this naturalization, he subscribed to an oath before the Philippine authorities specifically

> renouncing his U.S. citizenship. Accordingly, his intention to relinquish U.S. citizenship has been clearly established. A copy of the CLN is being air-pouched to you for transmittal to Mr. [redacted]
>
> The reverse side of the certificate of loss of nationality has been amended by the Department to reflect the new appeal procedure noted in airgram A-0155 dated Jan. 18, 1980. If Mr. [redacted] wishes to appeal the Department's decision to the Board of Appellate Review, he must do so within one year from the date of approval of the CLN. Post is requested to assist Mr. J[redacted] /sic/ in this regard if he asks for such assistance....

The Department sent the certificate to the Embassy on March 23, 1982, with instructions to send it to appellant by registered or certified mail, and forward the postal receipt to the Department for inclusion in appellant's file. According to Embassy records, the certificate was mailed to [redacted] on April 12, 1982 by registered mail, return receipt requested. There is, however, no postal receipt in the record presented to us, or any indication in Embassy records whether one was ever returned to the Embassy.

Approval of a certificate of loss of nationality constitutes an administrative determination of loss of nationality from which an appeal, timely and properly filed, may be taken to the Board of Appellate Review. [redacted] entered an appeal through counsel on April 16, 1985.

II

Before proceeding, we must determine whether the Board may assert jurisdiction over this appeal. Since timely filing is mandatory and jurisdictional (United States v. Robinson, 361 U.S. 220 (1960)), the Board's authority to hear and decide the appeal depends on whether we find that it was filed within the applicable limitation.

The time limit on appeal is one year after approval of the certificate of loss of nationality. Section 7.5(b)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1). 5/ If an

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5/ 22 CFR 7.5(b)(1) reads as follows:

> A person who contends that the Department's administrative determination of loss of nationality or expatriation under

appeal is filed after the prescribed time, it shall be denied "unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time." 22 CFR 7.5(a).

The Department approved the certificate of loss of nationality that the Embassy issued in this case on March 22, 1982. The appeal was filed three years later on April 16, 1985, that is, two years over the allowable time. As the above-cited regulations make clear, the Board may only assert jurisdiction over the appeal if it determines that [redacted] has shown good cause why he could not have filed the appeal within the prescribed limit.

Good cause means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th Ed. (1979). Good cause depends on the circumstances of each particular case, and the finding of its existence lies largely within the discretion of the judicial or administrative body before which the cause is brought. Wilson v. Morris, 369 S.W. 2d 402, 407 (Mo. 1963). Generally, to meet the standard of good cause, a litigant must show that failure to file an appeal or brief in timely fashion was the result of some event beyond his immediate control and which was to some extent unforseeable. Manges v. First State Bank, 572 S.W. 2d 104 (Civ. App. Tex. 1978); and Continental Oil Co. v. Dobie, 552 S.W. 2d 193 (Civ. App. Tex. 1977). Good cause for failing to make a timely filing requires a valid excuse as well as a meritorious cause. Appeal of Syby, 66 N.J. Supp. 460, 167 A. 2d 479 (1961). See also Wray v. Folsom, 166 F. Supp. 390 (D.C. Ark. 1958).

[redacted] submits that his delay should be excused because he never received the certificate of loss of nationality with its accompanying information about the right to appeal within one year of approval of the certificate. He asserts (reply brief):

> ...the Petitioner had moved from the residence to which the Certificate is presumed to have been addressed. When petitioner moved his residence, he failed to leave a forwarding address. He recalls that at the entrance to his former residence an old lady had a little store; mailmen customarily left mail with her.

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5/ Cont'd.

> subpart C of Part 50 of this Chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval by the Department of the certificate of loss of nationality or a certificate of expatriation.

This lady had no way of transmitting any mail she may have received for petitioner which may have been left with her. Even granting that this lady did in fact receive the letter containing the Certificate, she could not have given it to petitioner, nor was receipt by her considered binding on petitioner. Consequently, there was neither actual nor constructive delivery of the Certificate to the petitioner.

The Petitioner learned of the existence of the Certificate comparatively recently, before which time he had never seen the Certificate or a copy thereof.

Statutes sometimes provide for extension of time to take or perfect appeals by reason of fraud, mistake, inadvertence suprise or excusable neglect (Bauer v. Harman, 161 Md 131, 155 A312.; Madden v. Madden, 279 Mass 417, 181, NE 771; Klotz v. Lenawee Circuit Judqe, 159 Mich 639, 124 NW 551).

The failure of petitioner to leave any forwarding address can be considered as inadvertence or excusable negligence. Furthermore, as the matter involved in these proceedings concerns a birthright which is inalienable except by voluntary action, the technicalities of service should not be strictly construed against the person who desires to retain his nationality.

[redacted] claim that he did not receive the certificate of loss of nationality is credible. As we have seen, the Embassy sent the certificate to appellant by registered mail, requesting that a signed receipt be returned. There is no record that a postal receipt signed by [redacted] or anyone else, was ever received by the Embassy. The Embassy's last en[redacted]he passport and nationality card it maintained on [redacted] states merely that the certificate was mailed to appellant by registered mail on April 12, 1982. On the facts, it is therefore reasonable to assume that appellant did not receive actual notice that the Department had made a determination of loss of

his nationality and that he might take an appeal to this Board within one year from the date of the Department's action.

The Department argues, however, that [redacted] knew he had performed a statutory expatriating act and should have made an effort to inform himself of developments in his case; if he had genuinely cared about his United States citizenship, he would have pursued the matter regardless of whether he received the certificate or not.

[redacted] would, of course, have been prudent to take the initiative to obtain information about his case from the Embassy. He may not have known that the Department had made a final determination that he had expatriated himself, but, as we have seen, in 1979 he approached the Embassy to ask for "reinstatement" of his United States citizenship. Yet it was not until three years after the Department's approval of the certificate of loss of nationality that he asserted a claim to United States citizenship under circumstances that are not clear in the record. The question arises, however, whether he had a legal duty to inform himself about developments in his case, and, if he did, whether his failure to take timely action on the basis of facts in his possession vitiates the likelihood that he did not actually receive the certificate of loss of nationality.

In our judgment, the Embassy was the party with the legal duty. The statute (section 358 of the Immigration and Nationality Act, note 4, supra) requires simply that the diplomatic or consular office that prepared the certificate shall be instructed to forward it to the person to whom it relates. Federal regulations, however, mandate that the affected person be informed of the right of appeal to this Board at the time the certificate is sent to him. 22 CFR 50.52. 6/

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6/ Section 50.52 Notice of right to appeal.

> When an approved certificate of loss of nationality certificate of expatriation is forwarded to the person to whom it relates or his or her representative, such person or representative shall be informed of the right to appeal the Department's determination to the Board of Appellate Review (Part 7 of this chapter) within one year after approval of the certificate of loss of nationality or the certificate of expatriation.

In our opinion, the Embassy should have taken some further action if, after the elapse of a reasonable period of time, no postal receipt had been received from [redacted] It evidently let the matter drop after making the initial mailing. Under the statute and federal regulations the legal duty rests on United States authorities not appellant.

In the circumstances, we conclude that appellant showed good cause why he could not have appealed sooner. In reaching this conclusion, we are not unmindful that there will be no evident prejudice to the Department if we allow the appeal. The record is well-documented, and the Department is not called upon to prove facts which the passage of time might make it unfair to require it to do.

III

The statute prescribes that a national of the United States shall lose his nationality by obtaining naturalization in a foreign state upon his own application. 7/ Through counsel, appellant contends that at birth he was [redacted] citizen as well as a United States citizen, having [redacted] Philippine citizenship from his father, who he asserts, was a [redacted] citizen. Since he was a Philippine citizen from birth, appellant argues that he was not required to obtain [redacted] citizenship to protect his property interests; his "futile" act of election was a redundancy and of no effect - a nullity.

The Department moved to dismiss the appeal or to limit and clarify the issues, arguing that the issue of whether [redacted] had or had not derived Philippine citizenship through his father was not an issue the Board was competent to decide; only the relevant Philippine authorities could determine that issue.

After the Board invited appellant to comment on the Department's motion, his counsel sought an advisory opinion from the Philippine Ministry of Justice. The Ministry declined to render an advisory opinion: citing Philippine case law, it merely set forth legal considerations that it stated one should assess in determining whether one derived Philippine citizenship at birth.

For reasons that are not essential to the disposition of the appeal, the Board denied the Department's motion and requested that it brief all the issues presented by the appeal.

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7/ Text supra, note 1.

It is generally recognized that only the relevant authorities of the country concerned are competent to determine who are nationals of that county. Nationality is regulated by domestic law. Since in this case the Philippine Ministry of Justice declined to rule on the issue, the Board obviously lacks competence to pronounce on it. Furthermore, we note that at no time until he filed the appeal did appellant contend he had Philippine citizenship. The Philippine authorities considered him a United States citizen - an alien - from birth until he was granted Philippine citizenship.

So, in electing Philippine citizenship J[redacted] plainly performed a meaningful act of expatriation. 8/ It follows that he thus brought himself within the purview of section 349(a)(1) of the Immigration and Nationality Act.

IV

Even though one has performed a statutory expatriating act, citizenship shall not be lost unless it is proved that the act was voluntary and accompanied by an intent to relinquish United States nationality. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 252 (1967); Nishikawa v. Dulles, 356 U.S. 129 (1958); Perkins v. Elg, 307 U.S. 325 (1939).

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, but the actor may rebut the presumption upon a showing by a preponderance of the evidence that the act was not voluntary. 9/

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8/ Section 101(a)(23) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(23), defines "naturalization" as "the conferring of nationality of a state upon a person after birth by any means whatsoever."

9/ 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 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 expatiation 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.

[redacted] asserts that his naturalization was involuntary because "overwhelming" circumstances forced him to obtain Philippine citizenship. Specifically, he was pressured by his mother to obtain naturalization in order to protect family business interests in the Philippines. The prospective termination in July 1974 of an amendment to the Philippine Constitution, which permitted United States citizens to enjoy the same rights as Filipinos in the exploitation of natural resources and in the allocation of public utility franchises, led his mother to try to find a way to preserve the [redacted] family's property interests in the Philippines. Appellant was the only [redacted] child residing in the Philippines, and "his mother viewed him," appellant's reply brief asserts, "as the sole hope of retaining ownership of the family's property." His mother's concern about the fate of the family corporations drove her to demand that appellant acquire Philippine citizenship on pain of being disinherited.

If Proved, duress is, of course, a defense to a statutory expatriating act. Doreau v. Marshall, 170 F.2d 721 (3rd Cir. 1948). But to prove duress the circumstances under which one performs an expatriating act must be "extraordinary," as the court said in Doreau,

> If by reason of extraordinary circumstances, an American national is forced into the formalities of citizenship of another country, the ~~sine qua non~~ of expatriation is lacking. There is no authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. He cannot be truly said to be manifesting an intention of renouncing his country. On the other hand it is just as certain that the forsaking of American citizenship, even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress.

Economic duress has forced United States citizens to perform a statutory expatriating act. Where economic duress has been pleaded the courts have demanded that the petitioner show he or she faced nothing less than a dire economic situation. Stipa v. Dulles, 223 F.2d 551 (3rd Cir. 1956); Insogna v. Dulles, 116 F. Supp. 437 (D.D.C. 1953). In Insogna v. Dulles, for instance, the expatriating act was performed to obtain money necessary "in order to live." 116 F. Supp. at 475. In Stipa v. Dulles,

the alleged expatriate faced "dire economic plight and inability to obtain employment." 233 F.2d at 556.

Inherent in the requirement that one prove extraordinary circumstances or dire economic straits is the correlative requirement that the citizen show he explored but found no viable alternatives to doing an act that might cost him his citizenship. Duress implies absence of choice. The case law makes it abundantly clear that if one has a viable alternative, there is no duress. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1961): "But opportunity to make a decision based upon personal choice is the essence of voluntariness."

[redacted] has not, in our opinion, rebutted the legal presumption that he became a Philippine citizen voluntarily. His submissions are long on conclusory statements to the effect that he and his family would have suffered grave economic losses (if not confiscation) had he not obtained naturalization. They are, however, short on concrete evidence to support such assertions.

He has not shown that the impending end of the Philippine Constitutional Amendment granting American citizens rights on a par with Filipinos to acquire and retain ownership of land and other natural resources created circumstances so "extraordinary" as to justify his performance of an expatriative act. As is well-known, the prospective termination of parity rights confronted many other Americans with the necessity to make difficult choices. Although we do not know how many Americans situated similarly to the [redacted] were able to protect or successfully limit the damage to their interests without obtaining Philippine citizenship, it would not be unreasonable to assume that many did so.

[redacted] case is further weakened by his failure to demonstrate that he and his family seriously but unavailingly explored alternative means to protect their property interests that would not have entailed jeopardizing appellant's United States citizenship.[10/] In this respect, [redacted]'s submissions raise many questions but offer no answers. We will not speculate on whether the family might have transferred to appellant's mother the American-owned shares in [redacted] enterprises or sold them advantageously so as to avoid damaging divestment. But since appellant has not even alleged thece were no feasible alternatives to his naturalization, we cannot accept that his family would have faced financial ruin or at least severe losses if he had not obtained naturalization. Furthermore, judging

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10/ The recent case of Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985) makes it absolutely clear that one who pleads economic duress must show that he made a genuine attempt to meet his economic needs that would not require renunciation of citizenship. 752 F.2d at 1419.

from appellant's mother's affidavit of 1980, even if the family had been forced to sell the American-owned shares below prevailing market prices, they would still have disposed of enough assets to enable them to live.

Appellant has also failed to demonstrate that he would have faced grave economic privation had he not obtained naturalization. In 1973 when he petitioned to be allowed to elect Philippine citizenship, [redacted] had graduated from university, where he had studied commerce, and was in training for his first job. It is difficult for us to see how the impending end of parity rights posed any threat to the subsistence of such a well-equipped young man.

As appellant has presented his case, it is difficult to escape the conclusion that he and his mother were more concerned about appellant's having a stake in the [redacted] companies and ensuring that there would be no dilution of [redacted] family control of those enterprises due to divestment than they were about preserving his United States citizenship. We make no judgment about where appellant placed his priorities; he was, of course, free to decide whether to put property interests ahead of his United States citizenship. But having done so without demonstrating that forces over which he had no control forced him to act against his fixed will and intent, he may not be heard to say that he was coerced into becoming a Philippine citizen.

[redacted] has not rebutted the legal presumption that he obtained naturalization voluntarily.

V

Even though we have concluded that appellant voluntarily obtained naturalization in the Philippines, "the question remains whether on all the evidence the Government has satisfied its burden of proof that the expatriating act was performed with necessary intent to relinquish citizenship." Vance v. Terrazas, 444 U.S. at 270. Under the statute, 11/ the government must prove a person's intent by a preponderance of the evidence, Id. at 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 the person's intent at the time the expatriating act was performed. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

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11/ Section 349(c) of the Immigration and Nationality Act. Text supra, note 10.

In applying the Supreme Court's rule in Vance v. Terrazas to loss of nationality proceedings, the courts have held that knowingly and intelligently making an oath to a foreign state that includes renunciation of United States citizenship is ordinarily sufficient to prove the citizen's intent to relinquish his United States citizenship. Terrazas v. Haig, supra; Richards v. Secretary of State, supra; and Meretsky v. Department of State, et al., Civil Action 85-1985, memorandum opinion (D.D.C. 1985). Richards and Meretsky are particular apposite here, for in each case the plaintiff obtained naturalization in a foreign state (Canada) after making an oath of allegiance and expressly renouncing all former allegiance. In [redacted] case, he expressly renounced his United States citizenship and allegiance to the United States. By his own words he manifested an intention to relinquish his United States citizenship, The question arises, however, whether [redacted] knowingly and intelligently declared allegiance to a foreign state and at the same time declared that he severed allegiance to the United States. We believe he did so willingly. He was 23 years old when he obtained naturalization and university euucated. Absent evidence to the contrary, it is therefore reasonable to assume that he knew precisely what he was doing, particularly since he knew that in order to enjoy his interest in the [redacted] family companies he would have to be able to prove that [redacted] was no longer a United States citizen.

[redacted] proven conduct also confirms that he intended to relinquish his United States citizenship. He acquired Philippine citizenship in 1974. From then until 1979, when he approached the United States Embassy seeking "reinstatement" of his citizenship, he did nothing of record to indicate that he did not consider himself to be only a Philippine citizen.

On all the evidence, [redacted] manifested an unmistakable intention in 1974 to rid himself of his United States citizenship The Department has sustained its burden of proof that such was his intention.

VI

Upon consideration of the foregoing, the Board hereby affirms the Department's determination that appellant expatriated himself.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member