July 31, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State that appellant, J[redacted] E[redacted] G[redacted], expatriated himself on March 17, 1976 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 conclude that G[redacted] voluntarily obtained Filipino citizenship with the intention of relinquishing his United States citizenship. Accordingly, we affirm the Department's decision that he expatriated himself.

I

G[redacted] became a United States citizen by birth at Kiowa, Kansas on November 19, 1927. In 1944 he volunteered for the merchant marine, and, according to his statement, served on an ammunition ship, After the war he worked in Texas. In 1950 he enlisted in the United States Air Force, and was honorably discharged in 1954 after serving nearly three years overseas.

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, . . .

It appears that after his discharge G went to the Philippines where he was employed by Benguet Consolidated, Inc. In a sworn statement dated February **27, 1985,** said that in the latter part of **1974,** "just after the Philippinization of Benguet," he was informed that his contract would not be renewed "because of a new policy of the company to replace all foreign nationals with Filipinos." He continued: "I was advised, however, by the company president that I could be retained if I became a citizen of the Philippines." He decided that "after *so* many years with the company that I had no choice but to go along with the demands of the company president and take out Philippine citizenship." Accordingly, he applied for naturalization. On March **17, 1976** a certificate of naturalization as a citizen of the Philippines was granted after he made an oath of allegiance. The oath was written in English and Filipino. signed both versions. The English version of the oath read as follows:

> I, solemnly swear (or affirm) 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 which at this time I am a subject or citizen; that I will support and defend the Constitution of the Philippines and obey the laws, legal orders, and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; and I hereby declare 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.
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> SO HELP ME GOD.

employment with Benguet was terminated in December **1977** when, as he has stated, he was "forced" to retire. Three years later in **1980** obtained a Filipino passport and certificate of identity. He traveled on that passport to the United States in 1980.

In the latter part of **1983** visited the United States Embassy at Manila to inquire about his citizenship status, and to request that he be issued an emergency passport to travel to Honolulu for medical treatment. In reporting visit to the Department, a consular officer stated that the Embassy no longer had citizenship record, but that he had exhibited his old U.S. passports, the latest of which had been issued in Manila on February 14, **1973.** completed a form for

determining United States citizenship - citizenship questionnaire. In it he stated, the Embassy noted to the Department, that he had obtained naturalization primarily for economic reasons; since he had three children to support he felt that he had to continue his job with Benquet at any cost. There is no copy of the questionnaire in the record.

On October 18, 1983 the consular officer who interviewed [redacted] executed a certificate of loss of nationality in the latter's name. 2/ The officer certified that [redacted] became a United States citizen at birth; that he obtained naturalization in the Philippines upon his own application; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. In forwarding the certificate to the Department, the Embassy attached copies of [redacted] certificates of naturalization and identity.

With the Department's approval, the Embassy issued [redacted] a limited validity passport which he used to travel to Honolulu for an operation, returning to the Philippines in December 1983. In February 1984 [redacted] executed an affidavit responding to certain questions about his naturalization that the Department had put to

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

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.

him. There is no copy of the affidavit in the record. However, the Passport and Nationality Card maintained by the Embassy to record its dealings with [redacted] bears the following entry for February 15, 1984:

> Memo to Dept enclosing affidavit of Subject who reiterated that he was given an oral oath in Philipino /sic/; that he will agree that the oath probably did state something about renouncing other citizenship; that he applied for a U.S. ppt in **1983** because he was advised to do so by Emb personnel as any further travel on a Phil ppt might jeopardize his chances to retain or regain U.S. citizenship; that in **1980** he was still fighting his case against the mining company to be reinstated to his former position to which he would have to be a Philcit for qualification. [Emphasis in original.]

As directed by the Department, the Embassy obtained from the Philippine authorities a copy of the oath of allegiance to which Gessner swore (text supra) and submitted it to the Department. Shortly afterwards on May 15, **1984** the Department approved the certificate of loss of nationality that the Embassy had executed in [redacted] name.

In informing the Embassy that it had approved the certificate, the Department gave the following rationale for its determination:

> Naturalization in **a** foreign state is, by itself, probative evidence of an intent to relinquish citizenship.
>
> Mr. [redacted] as part of the naturalization ceremony, voluntarily took an oath renouncing all other allegiance. Mr. [redacted] has claimed that the oath was administered orally in Pilipino /sic/, which he did not understand. The Philippine authorities have, however, provided the Embassy a copy of the oath of allegiance subscribed and sworn to by Mr. [redacted] The oath was written in English and in Phili[redacted] **[sic]** The Department does not accept *Mr.* [redacted] allegation that he did not understand what he was swearing.
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> *Mr.* [redacted] did not seek documentation as a U.S. citizen from **1973** until **1983.** He did,

however, obtain documentation as a Philippine citizen, and travelled to the U.S. on a Philippine passport in 1980.

There is no evidence to support Mr. [redacted] assertion that he sought the advice of the Embassy in Manila prior to applying for Philippine citizenship. We note that he stated in the information for determining U.S. citizenship questionnaire that at the time he applied for Philippine nationality he thought he might lose his U.S. citizenship.

Department considers that Mr. [redacted] having filed U.S. income tax returns after his Philippine naturalization is of little importance. Mr. [redacted] was three years delinquent in fil s 1980 return, and it appears that the 1981 and 1982 returns were only filed on 10/14/83 with the IRS rep at post.

Shortly after he received the certificate of loss of nationality, [redacted] visited the Embassy in September 1984 to discuss his case. On September 24th the Embassy wrote to [redacted] to inform him of the considerations that led the Department to conclude he had expatriated himself.

Approval of the certificate constitutes an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review, [redacted] initiated the appeal on May 14, 1985.

II

The statute prescribes that a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state. 3/ Nationality will not be lost, however, unless the citizen did the proscribed act validly and voluntarily, and intended to relinquish United States citizenship. 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).

3/ Supra, note 1.

It is not disputed that [redacted] duly obtained naturalization in the Philippines and thus brought himself within the purview of the statute.

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted by the actor upon a showing by a preponderance of the evidence that the act was not voluntary. 4/

G[redacted] contends that his naturalization was involuntary because economic pressures - the necessity to retain his employment - forced him to obtain Philippine citizenship. He has introduced an affidavit of a former associate, Alan P. Ploesser, in support of his contention that he acted involuntarily. Ploesser's affidavit, dated February 19, 1985, reads in part as follows:

> 1) ... Mr. [redacted] E. [redacted] whom I have personally known for more than thirty (30) years, has asked me for a character reference and statement of what I recall about the circumstances at the time that he became a Philippine citizen in 1976;
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> 2) That I know for a fact that it was Company (Benguet Consolidated Inc. where I was Executive Vice-president for Operations 1974-1977) Policy to terminate virtually all foreign staff, according to their individual 3-year contracts or even

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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 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.

> sooner, as each case was decided by the new Filipino President of the Company, Mr. Jaime Ongpin. Mr. [redacted] was to have been let go about the e[redacted] 1976;
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> 3) That Mr. [redacted] informed me at the time that Mr. Ongpin had agr[redacted] to give him a permanent contract if he became a citizen of the Philippines, and that this was causing him considerable [redacted] still had 3 children in school - one daughter in medical college - and he had not saved much money since he thougnt that he would be retained for at least another 10-15 years. Also, due to his age he felt it would be difficult to acquire a compara[redacted]ob in the U.S. Subsequently, Mr. [redacted] decided that he had no recourse but to become a Philippine citizen;...

Given the inestimable worth of United States citizenship, the courts have established very stringent standards to establish duress. See Doreau v. Marshall, 170 F. 2d 721, 724 (3rd Cir. 1948[illegible] 948

> 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 circumstances have forced many United States citizens to perform a statutory expatriating act. But where economic duress has been pleaded, the courts have demanded that the petitioner show he or she was faced with a dire economic si[illegible] Stipa v. Dulles, 223 F. 2d 551 (3rd Cir. 1956); Insogna v. [illegible] 116 F. Supp. 437 (D.D.C. 1953). Plaintiffs in those cases performed an expatriating act during and after World War II respectively. The courts found that plaintiffs had acted involun-

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tarily because they had no choice: the were forced to jeopardize United States citizenship in order to subsist.

Thirty years after Stipa and Insogna, the Ninth Circuit had occasion to consider what circumstances might amount to economic duress in the case of Richards v. Secretary of State, 752 F. 2d **1413** (9th Cir. **1985).** Regarding Stipa and Insogna, the court said:

> **...**Conditions of economic duress, however, have been found under circumstances far different from those prevailing here. 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.** Although we do not decide that economic duress exists only under such extreme circumstances, we do think that, at the least, some degree of hardship must be shown. **752** F. 2d at **1419.**

In Richards the Court of Appeals was required to determine only whether the district court had erred in finding that Richards had been subjected to no economic pressures of any kind when he obtained naturalization as a Canadian citizen in order to preserve his employment. It was not called upon to decide the standard of proof of duress. The Ninth Circuit concluded that the district court had not erred, asserting that Richards had failed to prove he had been subjected to any economic duress. 752 F. 2d at **1419.** Further, the theory that merely some degree of economic hardship need be shown is totally inconsistent with the proposition, which we consider sound, that only the most exigent circumstances may excuse doing an act that places the priceless right of citizenship in jeopardy.

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." 5/

5/ In finding that petitioner in Jolley, who made a formal renunciation of his United States citizenship because he disapproved of United States draft laws and did not wish to trangress them, acted voluntarily, the Fifth Circuit said:

We will not deny that G[redacted] faced a difficult economic problem in 1974-1975, but, on the facts presented, we are unable to consider his circumstances were "extraordinary." The Board takes note that around a good many American citizens worked for companies that were "Philippinized," and were presented with the dilemma of whether to become Philippine citizens or to try to find another but arguably less congenial or comfortable way to provide for themselves and their families that would not cause them to jeopardize their United States citizenship. How many found work that did not require them to obtain naturalization in the Philippines we do not venture to say; undoubtedly many did.

5/ Cont'd.

> This conclusion is even more manifest in light of analogous decisions which have considered claims of duress by aliens barred from citizenship because they sought exemption from military service. See 50 U.S.C.A. App. sec. 454(a); 8 U.S.C.A. sec. 1426. Pressures beyond moral considerations, such as fear of retaliation or financial burden, have been rejected as sufficient grounds upon which to posit duress. E.G., Prieto v. United States, 5 Cir. 1961, 289 F. 2d 12; Jubran v. United States, 5 Cir. 1958, 255 F. 2d 81; Petition of Skender, 2 Cir. 1957, 248 F. 2d 92, cert. denied, 355 U.S. 931, 78 S.Ct. 411, 2 L.Ed.2d 413; Savoretti v. Small, 5 Cir. 1957, 244 F. 2d 292. In each case
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> > 'it was concluded that the alien had a free choice, that he chose to forego military service and must endure the consequences, and that there was no coercion in contemplation of law. The mere difficulty of this choice is not deemed to constitute duress. If the alient made a free and deliberate choice to accept benefits, he will be bound by his election' Gordon & Rosenfield, Immigration Law & Procedure, sec. 2.49d at 2-239 (1970). 441 F. 2d at 1250 (n. 10).

Not only could [redacted] circumstances not be described as extraordinary, but also he has not shown that he made a serious effort to find employment either in the Philippines or the United States that would not have risked his United States citizenship, but failed in his efforts. Even had he tried to find alternative employment and failed, he has not demonstrated that he and his family could not have subsisted.

As a matter of law, it seems to us that [redacted] had the opportunity to make a personal choice: to take the path of least resistance and become naturalized, or take the initiative to find out how he could meet his economic needs without, as he seems to have recognized, endangering his United States citizenship. He was not powerless in the face of forces over which he could exert no control.

On the facts before us, it is our opinion that [redacted] has not rebutted the statutory presumption that he acted voluntarily when he obtained Philippine citizenship upon his own application.

111

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 the necessary intent to relinquish citizenship." Vance v. Terrazas, 444 U.S. at 270. Under the statute, 6/ 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).

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

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6/ Section 349(c) of the Immigration and Nationality Act. Text supra, note 4.

previous nationality. Applying the pertinent case law to G[redacted]'s case, it seems plain he evidenced an intent to relinquish his United States nationality. We must, however, take our analysis of G[redacted]'s intent farther, inquiring whether he knowingly and intelligently pledged allegiance to the Philippines and repudiated his allegiance to the United States. And we must also scrutinize the record to determine whether there are any variables in the case that would warrant our concluding that despite the express language to which he subscribed, G[redacted] probably did not intend to relinquish his United States citizenship.

G[redacted] maintains that he took the oath of allegiance to the Philippines with its language renunciatory of United States citizenship in Tagalog "which I do not understand." He continues:

> ...I am not a liar and I resent the implication that I am. My wife was even laughing when she heard me try to pronounce some of the Tagalog words. (I do understand some Ilokano). I don't remember signing anything written in English, however, I may have in the confusion at the time.

As the record shows, G[redacted] signed the prescribed oath of allegiance in both English and Filipino. He was 48 years old at the time he obtained naturalization, and, as his submissions show, a person of evident competence and experience. It is impossible to escape the conclusion that he knew what he was doing when he subscribed to the renunciatory oath. There is nothing of record, therefore, to lead us to doubt that G[redacted] acted knowingly and intelligently when he obtained naturalization in the Philippines and expressly repudiated his United States citizenship.

How weigh other elements in his case? Our scrutiny of the evidence presented to us leads us to conclude that nothing in G[redacted]'s other proven conduct raises material doubt that he intended to relinquish United States citizenship by obtaining that of the Philippines.

G[redacted] cites an alleged visit to the Embassy in 1975 to discuss possible naturalization in the Philippines as indicating a lack of intent to relinquish United States citizenship.

> I went to the U.S. Embassy in Manila to discuss the matter on April 8, 1975 (I keep a diary) but the Vice Consul refused to see me. He instead sent out a paper concerning the renouncing of

> my U.S. citizenship. The Filipino in charge, Mr. Manuel, whom I had known for many years seemed very embarassed and of course I was extremely irritated. I should have gone straight to Ambassador William Sullivan but waited until the following year to talk to him at the Embassy party here in Baguio. I failed to get the name of the young consul. I had heard that unless you renounce your citizenship in the Embassy itself that you could not lose your citizenship.

Referring to the statement in the Embassy's letter of September 24, 1984 that naturalization in a foreign state may be probative evidence of an intent to relinquish citizenship, [redacted] stated "this was precisely why I went to the Embassy on April 8, 1975 and refused to sign the paper sent out by the Vice-consul renouncing my U.S. citizenship." Although there is no official record of [redacted] visit to the Embassy, we will accept that he did go there at the time, 7/ Without more, however, we are unable to consider that visit probative of a lack of intent to relinquish United States citizenship one year later. For one thing, the visit to the Embassy is too far removed from the crucial event to be relevant to the issue of intent. For another, [redacted] obviously did not persist in the alleged effort to have his putative lack of prospective intent documented officially. If he were really concerned about the issue, surely he would have been more forceful in dealing with the Embassy, despite an arguably uncooperative attitude on the part of an unnamed consular officer. Although [redacted] allegedly spoke to the Ambassador about his case, it was not until nine months after he had, without evident hesitation, completed the naturalization process and acquired Philippine citizenship.

7/ [redacted] asserts that Manuel could prove his allegations, and complains that neither the Board nor the Department has made any effort to locate him.

> Again I am not a liar and cannot understand why you could not locate Mr. Manuel who had worked for many years there and whom I had known personally for more than 20 years. At the time he appeared very embarassed at the rudeness of your Vice-Consul and explained that he remembered my three (3) children whose papers were always kept up-to-date and that I should not encounter any trouble.

Other factors also evidence G[redacted]'s intention to relinquish United States citizenship. He obtained a Philippine passport and had it visaed by the United States Embassy, using it to travel to the United States. After his U.S. passport expired in 1978 he took no action to document himself as a United States citizen. In 1980 he expressly documented himself as a Philippine citizen by obtaining a certificate of identity.

G[redacted] insists that he never wanted to give up his United States citizenship. 8/ However, the Board can measure a person's intent only by overt criteria - his words and proven conduct. Here the objective facts amply support the Department's determination that he intended to relinquish his United States citizenship. On all the evidence, it is our view that the Department has sustained its burden of proving by a preponderance of the evidence that G[redacted] intended to relinquish his United States nationality when he obtained naturalization in the Philippines upon his own application.

7/ Cont'd.

We need simply point out that it is G[redacted]'s responsibility to locate Manuel - not the Board's or the Department's. He is G[redacted]'s potential witness not the Department's.

8/ G[redacted] points with understandable pride to his service in World War II and the Korean War, and submits that such service "should have some bearing on a reversal of loss of nationality." While not insensible to G[redacted]'s honorable service, we must point out that in adjudicating loss of nationality appeals the Board's sole duty is to decide the issues of law and fact that are presented, and not pass judgment on an appellant's life or accomplishments, however admirable.

IV

Upon consideration of the foregoing, the Board hereby affirms the Department's administrative determination that [redacted] expatriated himself on March 17, 1976, by obtaining naturalization in the Philippines upon his own application.

Alan G. James, Chairman

Edward G. Misey, Member

Frederick Smith, Jr., Member