March 18, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] B[redacted]

This is an appeal from an administrative determination of the Department of State holding that appellant, M[redacted] B[redacted] expatriated herself on September 27, 1968 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

For the reasons set forth below, it is our conclusion that Ms. B[redacted] obtained naturalization in Canada voluntarily with the intention of relinquishing United States nationality. We will, accordingly, affirm the Department's determination to that effect.

I

Ms. B[redacted] was born at [redacted] She was brought to the United States in 1955. On December 18, 1958 she was naturalized before the United States District Court for the Eastern District of New York.

Ms. B[redacted] was educated in the United States. She married H[redacted] S[redacted], a Canadian citizen,in 1967. She states that although they intended to live in the United States, her husband, a masters degree candidate, decided to study at Laval University of Q[redacted], so they moved to Quebec in January 1967.

1/ Prior to November 14, 1986, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read as follows:

> 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, . . .

The Immigration and Nationality Act Amendments of 1986, PL 99-653, approved November 14, 1986, amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

Ms. B[redacted] gives the following account of the events leading up to her naturalization in Canada.

> As soon as we settled in Quebec City, I realized that my career needed as much attention as my husband's. However, the insurmountable stumbling block in my job search was the cut-throat competition among the surplus of qualified teachers, Canadian citizens being given obvious precedence. I applied to every single teaching institution in Quebec City for every possible teaching post: full-time, part-time, temporary, supply, substitute, etc. Through a personal friend I managed to procure 6 hours per week on a temporary basis. It was, in fact, this friend who advised me to apply for Canadian citizenship to gain the necessary edge in the competing market. 2/
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> In 1968 my husband received a scholarship towards a PhD program at the Catholic Institute in Paris. By this point, I had begun the process of applying for Canadian citizenship which was THE 'passport', as it were, for procuring a job in an Ontario post secondary teaching institution where we both aspired to work upon our return from France. I became a Canadian citizen in 1968, spent a year in France, and returned to live in Toronto in 1969.
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> Within a few months, I got my first full-time job in a teaching institution. I resigned after a year to have a family.

The record shows that Ms. B[redacted] was granted Canadian citizenship on September 27, 1968. On that occasion she made the following declaration and swore the following oath of allegiance:

2/ Ms. B[redacted] has stated that the following considerations reinforced her decision to obtain naturalization:

> Not being able to secure a job, I had to rely totally on my ex-husband's income and subsequently accept his decision to live in Europe for a while. This would include traveling to Yugoslavia and risks that he might be conscripted into their army. He saw a pressing need for both of us to hold the same citizenship. However, this was NOT in any way a primary consideration on my part, but simply a catalyst for and a reinforcement of my original resolve to acquire Canadian citizenship and then a job.

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.

Two children were born of the marriage. In 1973 Ms. B[redacted] states that she re-entered the job market and obtained a permanent position at a community college where Canadian citizenship was a prerequisite. She and her husband were divorced in 1983. In August 1984 Ms. B[redacted] communicated with the United States Consulate General (the Consulate) at Toronto because she desired "to clarify my American citizen status" and, if necessary, "reapply for American citizenship." A friend "in a similar situation" had told her that she might have Canadian and American citizenship, but "this must be confirmed through your office [the Consulate]".

After the Canadian authorities had confirmed that Ms. B[redacted] had obtained naturalization, the Consulate asked her to complete a form titled "Information for Determining U.S. Citizenship." It does not appear that she was interviewed by a consular officer, although the record is not clear on that point. Five months later, a consular officer executed a certificate of loss of nationality in Ms. B[redacted]'s name on March 18, 1985. 4/ The official certified

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3/ There is no copy in the record of the declaration and oath of allegiance to which Ms. B[redacted] subscribed. However, in 1968 applicants for naturalization in Canada were required to swear the oath quoted above and to renounce previous allegiance. Section 19(b)(1) of the Canadian Citizenship regulations which prescribed the renunciatory declaration was declared ultra vires, by the Federal Court of Canada on April 3, 1973.

4/ 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.

that she obtained United States nationality through naturalization that she obtained naturalization in Canada upon her own application; and concluded that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The certificate was forwarded to the Department under cover of the following Memorandum recommending approval:

> Ms. B[redacted] initiated the contact with the Consulate General on August 24, 1984 after being informed by a friend with a similar situation. See enclosed preliminary questionnaire form C-25
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> Ms. B[redacted] states that she became a Canadian citizen when 'My ex-husband and I decided to stay in France for a year, he insisted we both be Canadian citizens in case we encountered any difficulties. I then applied for Canadian citizenship'. Ms. B[redacted] failed to inquire prior to nor at the time of her Canadian naturalization what effect it would have on her American nationality.
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> In examining Ms. B[redacted] entire course of conduct during her prolonged residence in Canada it is noted that she failed to register her United States citizenship with any U.S. Embassy/Consulate She maintained no formal ties with respect to the United States. She has not voted nor filed a United States tax return. Ms. B[redacted] chose to exercise voting rights and fulfil her taxation responsibilities solely with respect to Canada. In addition, after her Canadian naturalization, she applied for a Canadian passport. Ms. B[redacted] has also identified herself as a Canadian citizen when crossing the U.S./Canada border using her Canadian passport as identification. The preponderance of the evidence submitted does demonstrate through her voluntary acts a clear decision on the part of Ms. B[redacted] to accept Canadian nationality while at the same time abandoning the privileges and obligations of United States citizenship

The Department approved the certificate on April 5, 1985, an action that 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. Ms. B[redacted] entered the appeal pro se in February 1986.

II

It is not disputed that in 1968 Ms. B[redacted] duly obtained naturalization in Canada upon her own application. She thus brought herself within the purview of section 349(a)(1) of the Immigration and Nationality Act. It is settled, however, that

citizenship shall not be lost as the result of performing a statutory expatriating act unless the act was voluntary and performed with the intention of relinquishing United States citizenship. See section 349(a)(1), as recently amended, supra, note 1; Vance v. Terrazas, 444 U.S. 252 (1980); and Afroyim v. Rusk, 387 U.S. 252 (1967).

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

Ms. B[redacted] contends that she was forced to obtain naturalization in order to secure steady employment. As we have seen, she has stated that when she arrived in Canada she realized that "my career needed as much attention as my husband's. However, the insurmountable stumbling block in my job search was the cut-throat competition among the surplus of qualified teachers, Canadian citizens being given obvious preference." Obtaining Canadian citizenship, she indicates, was essential if she were to obtain full-time employment as a teacher. In effect, she alleges that she became a Canadian citizen because of economic duress.

It is well established that duress voids an expatriative act Doreau v. Marshall, 170 F.2d 721, 724 (2nd Cir. 1948).

> If by reason of extraordinary circumstances, [the Court stated] 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.

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

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 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.

The Immigration and Nationality Act Amendments of 1986, PL 99-653 (approved Nov. 14, 1986) repealed section 349(b) but did not redesignate section 349(c).

Economic circumstances have led 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 situation. Stipa v. Dulles, 223 F.2d 551 (3rd Cir. 1956); Insogna v. Dulles, 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 involuntarily because they had no choice; they were forced to jeopardize United States citizenship in order to subsist.

Appellant here has not shown, as she must do, that she faced a dire situation that forced her to become a Canadian citizen. "Not being able to secure a job," she has stated, "I had to rely totally on my ex-husband's [sic - then-husband's?] income". She found herself, she has also stated, "not only without a job, but also without any professional contacts and without any independent means of support." These are not the words of one who faced a dire economic situation and whose only means of providing for herself was to obtain foreign citizenship and thus place her United States citizenship in danger.

Duress implies absence of choice. Here, Ms. B[redacted] had a choice in 1968, it seems to us. As a matter of law, she could have continued to be her husband's dependent, although it is perfectly understandable that she would wish to realize her own professional potential and not rely on him to support her. Or, as she did so, she could elect to advance her career aspirations by obtaining naturalization, thereby risking her American citizenship. 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. 1971): "But opportunity to make a decision based upon personal choice is the essence of voluntariness."

We conclude therefore that Ms. B[redacted] obtained naturalization in Canada of her own free will.

III

The question remains, however, whether on all the evidence appellant intended to relinquish her United States citizenship when she became a Canadian citizen. As the Supreme Court held in Vance v. Terrazas, 444 U.S. 253, 270 (1980), under the statute, 6/ the Government bears the burden of proving a person's intent and must do so by a preponderance of the evidence, 444 U.S. at 267. Intent may be expressed in words or found as a fair inference from proven

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6/ Section 349(c) of the Immigration and Nationality Act Text supra, note 5.

conduct. Id. at 260. The intent the Government must prove is the person's intent at the time the expatriating act was performed. Terrazas v. Haig, 653 F.2d 285, 298 (7th Cir. 1981). Making a declaration of allegiance to a foreign state although not conclusive evidence of an intent to relinquish United States citizenship, may be highly persuasive evidence of such an intent. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (Black, J. concurring.)

Ms. B[redacted] expressly renounced all other allegiance when she was granted Canadian citizenship.

The cases make it clear that provided no other factors are present warranting a different result, voluntarily, knowingly and intelligently renouncing United States citizenship in the course of performing a statutory expatriating act, evidences an intent to relinquish United States citizenship. Terrazas v. Haig, supra. There, the Court held that plaintiff manifested an intent to relinquish citizenship by voluntarily, knowingly and understandingly applying for a certificate of Mexican nationality that contained an oath of allegiance to Mexico and the renunciation of United States citizenship. See also Richards v. Secretary of State, 752 F.2d 1413, 1421 (9th Cir. 1985). 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." Similarly, Meretsky v. Department of State, et. al., Civil Action 85-1985, memorandum opinion (D.D.C. Dec. 30, 1985).

In both Richards and Meretsky plaintiffs, like Ms. B[redacted], made a renunciatory declaration upon being granted Canadian citizenship. In Meretsky, for example, the court found "plaintiff's intent to relinquish his United States citizenship expressed in the words of the oath he executed upon becoming a citizen of Canada."

Ms. B[redacted] asserts that: "On becoming a Canadian citizen, I did not surrender my American citizenship, either orally or in writing." Perhaps she means that she did not expressly state that she was renouncing allegiance to the United States. But, as the court said in Meretsky, supra at 9.

> When plaintiff took the oath he was a citizen only of the United States and thus it is clear that he could only have renounced that citizenship. Plaintiff does not contend that he did not understand the words of the Canadian Oath of Allegiance. The Court, therefore, concludes that plaintiff's intent to relinquish his United States citizenship was established by his knowing and voluntary taking an oath of allegiance to a foreign sovereign which included an explicit

renunciation of his United States citizenship. See Richards v. Secretary of State, 752 F.2d 1413, 1421 (9th Cir. 1985). 7/

We do not doubt that Ms. B[redacted] knowingly subscribed to the renunciatory declaration and the oath of allegiance. When she obtained naturalization she was 24 years of age and university trained. Nothing of record suggests that she acted unwittingly

As the cases require us to do, we have examined the record closely to ascertain whether there are any factors that would support a finding of lack of intent to relinquish United States citizenship on M[redacted] part. In her reply to the Department's brief Ms. [redacted] eged that "my trips to the U.S.A. have been so frequent that I can hardly be accused of neglect." We will not dispute that she may have come to the United States frequently after naturalization; she states that her elderly paren about whom she is very concerned live here. But the natural wish to keep familial ties warm hardly demonstrates a lack of intent to relinquish United States citizenship. Visits to the United States aside, Ms. B[redacted] has done nothing of record to demonstrate a will to retain United States citizenship.

Ms. B[redacted] insinuates that the Department has discriminated against her. In her reply to the Department's brief she wrote:

> My present experience now points to a system so misdirected that those citizens who have no intention of ever becoming productive are nurtured and protected by indefinite government favors and inexhaustible clemency, while someone who is requesting American citizenship status in order to look after her parents so they will not need to rely on handouts is denied her request.

7, Ms. [redacted] has not expressly contended that since the requirement to make a renunciatory declaration was abolished a few years after she subscribed to it, the declaration should not be the basis of her expatriation. However, we consider it relevant here to note the holding of the court in Meretsky on the point.

> ...While Canada may well have modified its citizenship requirements, the modification is not relevant to the case at bar. The issue before the Court is whether plaintiff relinquished his United States citizenship in 1967. Thus, whether or not plaintiff would have been required to take the same renunciatory oath today has no bearing on the issue of his intent in 1967.

Slip op at 10

We find nothing in the record to suggest that the Department did not consider her case objectively when it determined that she expatriated herself.

Finally, Ms. [redacted] rests her case for restoration of her citizenship on compassionate grounds; she wants to be able to return to the United States to care for her parents. The Board is not indifferent to Ms. B[redacted]'s natural wish to discharge her filial obligations, but such a consideration cannot alter the fact that she manifested an intent to relinquish her United States citizenship when she obtained naturalization in Canada. The Board's duty is to decide the questions of fact and law presented to it and not to pass judgment on the worthiness of an appellant's character or motivations. See Liacakos v. Kennedy, 195 F. Supp. 630 (D.D.C. 1961).

On all the evidence the Department has sustained its burden of proving by a preponderance of the evidence that Ms. [redacted] intended to relinquish her United States citizenship in 1968 when she became a citizen of Canada.

IV

Upon consideration of the foregoing, the Board hereby affirms the Department's administrative determination that Ms. B[redacted] expatriated herself.

Alan G. James, Chairman

Gerald A. Rosen, Member

Frederick Smith, Jr., Member