February 17, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State that appellant, M[redacted] B[redacted] L[redacted], expatriated himself on June 3, 1986 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer of the United States at Stuttgart, Federal Republic of Germany. 1/

On December 30, 1986, the Board of Appellate Review decided that [redacted] voluntarily renounced his United States nationality with the intention of relinquishing that nationality. The Board accordingly affirmed the Department's determination that [redacted] expatriated himself. This opinion sets forth findings of fact and conclusions of law in [redacted] case, as required by federal regulations. 22 CFR 7.8.

I

[redacted] acquired United States nationality by birth to a United States citizen father, an officer in the United States Army, on [redacted]. He grew up and was educated in Germany. It seems he wished to become a teacher. In a statement executed in August 1986 [redacted] described how his career plans led him to make a formal renunciation of his United States nationality:

1/ Prior to November 14, 1986, section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5) 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 --

. . .

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State...

Public Law 99-653, approved November 14, 1986, entitled "Immigration and Nationality Law Amendments of 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".

In school I was never considered anything other than a United States citizen and I accepted that that fact could have cost me dearly, I placed first academically in my high school (gymnasium) and if I had been German I would have been entitled to demand a particular field of study at the university. As an American I could only request and hope for the best.

In Germany one cannot achieve the status of teacher or professor without first taking an examination upon completion of University studies and then undergoing a 2 year internship. The rule has always been (or so I thought) that although you could take the final examination as a foreigner you would not be permitted to participate in the professional internship program if your citizenship was other than German,

I delayed this decision as [redacted] as I could economically afford to do so. I studied chemistry, biology and mathematics for more than 10 years. There is a glut of math and natural science teachers in Germany and I hoped that perhaps I could obtain a teaching job in the United States. In order to do that I had to have a teaching certificate. But, in order to obtain that I had to do an internship which meant that I had to relinquish my United States citizenship.

For that reason I arranged for the trip to the Stuttgart Consulate and the taking of the oath of renunciation. I did not misrepresent my desires at the time I took that oath on June 3, 1986. I did desire to relinquish my U.S. citizenship--but only because I believed at the time that I had to do so in order not to have wasted 10 years of University study,

The record shows that on June 3, 1986 [redacted] appeared at the Consulate General at Stuttgart to renounce his nationality. First, he executed a statement of understanding in the presence of a consular officer and two witnesses. In the statement he declared that he wished to exercise his right to renounce his United States nationality and that he did so voluntarily. He acknowledged that if he did not hold another nationality, renunciation would leave him stateless, Further, he stated that the serious and irrevocable natu of formal renunciation had been explained to him by the Consul and that he fully understood those consequences. Finally, he stated that he did not choose to make a separate statement explaining why h

wanted to renounce his nationality. After [redacted] had executed the statement of understanding, the consular officer administered the oath of renunciation to him. Upon completion of these proceedings, the consular officer executed a certificate of loss of nationality, as required by law. 2/ Therein he certified that [redacted] acquired United States nationality at birth; that he made a formal renunciation of that nationality; and thereby expatriated himself.

Very shortly after renouncing his nationality [redacted] attempted to retract his renunciation. He explained why he attempted to do so in his August 1986 declaration:

> Incredibly, within 48 hours after taking the oath, my mother learned that the German state of Hessen (we live in Baden-Wurttemberg) had removed the restrictions on citizenship and that I could do my internship as an American citizen.
>
> She immediately contacted Mr. [redacted] the Vice Consul in Stuttgart, and asked him on my behalf to stop processing the Certificate of Loss of Nationality because I wished to revoke my renunciation. Mr. Tyler refused to do this saying that he could do nothing.
>
> The next day, June 6, I called and personally spoke to Mr. Tyler and asked whether I could come to Stuttgart to retract my renunciation. He told me that to do so would be pointless because there was no procedure for retracting a renunciation. He told me there was nothing anyone could do.

The Department approved the certificate on June 25, 1986, approval constituting 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] entered the appeal through counsel on August 27, 1986. He bases his case for restoration of his citizenship on the following grounds:

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 provisions 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.

It is the position of M[redacted] L[redacted] that his act of renunciation was not voluntary in the first instance since it was made under the influence of economic duress. His belief in the existence of that economic duress was a mistake of fact. Were it not for his mistaken belief that economic duress compelled him to choose between his citizenship and his ability to earn a living, he would not have taken the oath of renunciation. Therefore, the expression of renunciation, though apparently voluntary was, in fact, an involuntary expression and an inadequate basis upon which to revoke United States citizenship.

That M[redacted] L[redacted] was sincere in his mistake is shown by the fact that he has not acquired German nationality since his loss of U.S. Citizenship. His loyalty to the United States is fundamental and continuing.

When Mr. L[redacted] informed the Consulate of his desire to retract his renunciation that fact should have been communicated to the State Department prior to final approval of the Certificate. When the Department of State approved the Certificate of Loss of Citizenship they did so under the mistaken belief that the Oath of Renunciation and the proposed Certificate accurately reflected the desire of Mr. M[redacted] L[redacted]. Had the proper authorities been informed by Mr. Tyler that both M[redacted] L[redacted] and his mother had been desperately trying to revoke the renunciation almost immediately after it had been made on 5 and 6 June and that at the time of final approval Mr. L[redacted] did not desire to revoke his United States Citizenship, final approval might never and ought never have been given.

II

The statute provides that a national of the United States shall lose his nationality by voluntarily making a formal renunciation of his nationality before a consular officer in a foreign state in the form prescribed by the Secretary of State with the intention of relinquishing that nationality. 3/

3/ Section 349(a)(5) of the Immigration and Nationality Act. Text supra, note 1.

Neither the statute nor the applicable federal regulations (22 CFR 50.50) make provision for a renunciant to recant, As the statement of understanding that [redacted] signed before taking the oath of renunciation specifically stated, renunciation is irrevocable. Although the consular officer concerned might properly have informed the Department of [redacted] change of heart in order to make the record complete, we do not consider his failure to do so was error. He quite correctly told [redacted] that his renunciation was irrevocable, Formal renunciation of United States nationality may only be nullified if (a) it was not performed in accordance with applicable legal principles, i.e., in the manner prescribed by law and in the form prescribed by the Secretary of State; (b) was involuntary; or (c) the renunciant's intent to relinquish citizenship is not proved because the record shows that he did not perform the expatriative act with full awareness of the grave consequences flowing from it. [4]

III

There is no dispute that [redacted] formal renunciation of his United States nationality was accomplished in the manner prescribed by law and in the form prescribed by the Secretary of State.

In law it is presumed that one who performs a 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, 4/

[redacted] has not, in our judgment, rebutted the presumption that he acted voluntarily, That he believed his economic well-being left him no alternative but to surrender his United States citizenship plainly was a mistake of fact. But the mistake lies at [redacted] door; he created the pseudo dilemma - whether to renounce his citizenship or allow ten years of training to go down the drain. He may not be heard to allege that a situation of his own

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4/ 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 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 November 14, 1986, repealed subsection (b) of section 349, but did not redesignate subsection (c).

creation constitutes legal duress. A canvass of the educational authorities of the German states would have armed him with the facts and, as matters turned out, would have apprised him that in Hesse, at least, German citizenship was not a prerequisite to enter the teaching profession. Coercion implies absence of choice. In effect, L[redacted] had a choice: to verify the facts or proceed on the basis of mere supposition and renounce United States citizenship. He chose the latter. Plainly, no external forces beyond L[redacted]'s control drove him to make a formal renunciation of his United States nationality.

Furthermore, at the time he renounced his United States nationality he acknowledged in the statement of understanding that he was acting voluntarily, and declined to make a personal statement about the reasons for his renunciation. On all the evidence, Long's renunciation was an act of his own free will.

IV

Finally, we must determine whether L[redacted]'s formal renunciation of his United States nationality was accompanied by an intention to relinquish that nationality, for as the Supreme Court has held, even if the citizen fails to prove that he performed a statutory expatriating act involuntarily, the question remains whether on all the evidence the Government has satisfied its burden of proving by a preponderance of the evidence that the expatriative act was performed with the necessary intent to relinquish citizenship. Vance v. Terrazas, 444 U.S. 253, 270 (1980). A person's intent may be expressed in words or be found as a fair inference from proven conduct. Id. at 260.

Formal renunciation of United States citizenship in the manner mandated by law and the form prescribed by the Secretary of State is the most unequivocal of all statutory expatriating acts. "A voluntary oath of renunciation is a clear statement of desire to relinquish United States citizenship. Davis v. District Director, Immigration and Naturalization Service, 481 F.Supp. 1178, 1181 (D.D.C. 1979). Intent to abandon citizenship is inherent in the act. The very words of the oath of renunciation proclaim L[redacted]'s specific intent:

> I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

Our sole inquiry therefore is whether L[redacted] knowingly and understandingly executed the oath of renunciation. The record leaves no doubt that he did so. He signed a statement on the day he renounced in which he acknowledged that the serious consequences of renunciation had been explained to him by a consular officer and that he fully understood them. In his submissions to the Board L[redacted] conceded that on June 3, 1986 (the relevant moment to judge intent) he intended to relinquish his United States citizenship.

Aged 32 years in 1986 and a prospective teacher, [redacted] surely knew what he was doing. Nothing of record shows that he acted because of mistake of fact or law. In brief, appellant's voluntary forfeiture of his United States nationality was accomplished in due and proper form with full consciousness of the gravity of the act.

The Department thus has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality when he formally renounced that nationality.

V

Upon consideration of the foregoing, we conclude that appellant expatriated himself on June 3, 1986 by making a formal renunciation of his United States citizenship before a consular officer of the United States at Stuttgart, Germany, in the form prescribed by the Secretary of State. Accordingly, we affirm the Department's administrative determination of June 25, 1986 to that effect.

Alan G. James, Chairman

Mary E. Hoinkes, Member

Frederick Smith, Jr., Member