DEPARTMENT **OF** STATF

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: N[redacted] P[redacted] I[redacted]

This is an appeal to the Board of Appellate Review from an administrative determ on t Department of dtate that appellant, N[redacted] P[redacted] I[redacted], expatriated himself on September 28, 1966 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

The sole issue we are required to decide is whether the Department has carried its burden of proving that appellant intended to relinquish his United States nationality when he became a Canadian citizen. For the reasons that follow, we conclude that the Department has met its burden of proof. Accordingly, we affirm the Department's determination that appellant expatriated himself.

I

[redacted] became a United States citizen by birth at [redacted] He grew up, went to school in the United States and served in the United States Army. In 1958 he married a Canadian citizen and moved to flew York City where, [redacted] states, he did graduate work in education. A daughter was **born** in 1960. In 1961, "duo to

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1/ Prior to November **14,** 1986, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read in pertinent part 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,...

Public Law 99-653, approved November **14,** 1986, 100 Stat. 3655, amended subsection (a) of section 349 bv inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

family problems," (not elaborated) appellant and his fa moved to Winnipeg, Canada. Appellant states that he se employment as a high school teacher in Winnipeg, workinq u the authority of a temporary teaching certificate. In 1966 [redacted] was vice principal of a high school in Winnipeg, "it made clear to me," he stated, "that the only way I could qua for a permanent teaching certificate was to become a Can citizen."

On a date not shown in the record [redacted] applied t naturalized. He was granted a certificate of Can citizenship on September 28, 1966 after making the foll declaration and oath of allegiance:

> I hereby renounce all allegiance and fidelit any foreign sovereign or state of whom or whi may at this time be a subject or citizen.
>
> I swear that I will be faithful and bear allegiance to her Majesty Queen Elizabeth Second, her heirs and successors according t and that I will faithfully observe the law Canada and fulfil my duties as a Canadian cit so help me God. 2/

In the summer of 1985 Isler asked the United S Consulate General at Winnipeg (the "Consulate") to clarif citizenship status. At the request of the Consulate, he f out a form entitled "Information for Determining United S Citizenship," and authorized the Consulate to ask the Can citizenship authorities to search their records to confir naturalization. The record does not indicate whether Isle interviewed by a consular officer. After the Can authorities confirmed that [redacted] had been granted Car citizenship, a consular officer, as required by law, execute

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2/ There is no copy in the record of the text of declaration and oath to which appellant subscribed. The takes administrative notice, however, that applicants naturalization in 1966 (other than Commonwealth citizens) required to make the aforesaid declaration and Furthermore, in his reply to the brief of the Depar appellant did not dispute that he made both the fore declaration and oath.

On April 3, 1973, the Federal Court of Canada dec ultra vires section 19(1)(b) of the Canadian Citize Regulations which required that an applicant for naturali make the aforesaid renunciatory declaration. Ulin v. The Qu 35 D.L.R. (3d) 738 (1973).

a certificate of loss of nationality in [redacted]'s name on October 30, 1985. 3/ The official certified that [redacted] acquired United States nationality by birth therein: that he obtained naturalization in Canada upon his own application: and concluded that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationalitiy Act.

The Department approved the certificate on November 20, 1985, 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. Isler entered the appeal pro se on November 10, 1986.

II

It is not disputed that [redacted] obtained naturalization in Canada upon his own application and so brought himself within the purview of section 349(a)(1) of the Immigration and Nationalitiy Act. Under the statute and court decisions, nationality shall not be lost by performance of a statutory expatriating act, however, unless the act was done voluntarily with the intention of relinquishing United States citizenship. Vance v. Terrazas, **444** U.S. 252 (1980); Afroyim v. Rusk, 387 **U.S.** 253 (1967). The first issue we address therefore is whether [redacted] acquired Canadian nationality voluntarily.

3/ 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.

The statute provides that a person who perfor statutory expatriating act shall be presumed to do *so* voluntarily, but the presumption may be rebutted upon a sh by a preponderance of the evidence that the act involuntary. 4/

In his initial submissions [redacted] argued, in effect, he was forced to become a Canadian citizen. "I applie citizenship in Canada," [redacted] informed the Board, " only be I could not obtain a permanent teaching certificate i Province of Manitoba unless I was a Canadian citizen. teaching was my chosen career, I had no other option b apply for citizenship in Canada." In his replv tc Department's brief, however, [redacted] conceded that he had voluntarily in obtaining Canadian citizenship.

> In regard to the first issue, the Department s that in order for the act to be non-volunta would have had to have taken place under dure against my will endangering my life, healt safety. I believe the definition of volunta non-voluntary as used here is exceedingly n However, I can see the Department's position am not prepared to argue against it.

Accordingly, the sole issue we are required to determine is whether [redacted] intended to relinquish United nationality when he acquired that of Canada.

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

> Whenever the loss of United States nationality is issue in any action or proceeding commenced on or afte enactment of this subsection under, or by virtue of provisions of this or any other Act, the burden shall b the person or party claiming that such loss occurre establish such claim by a preponderance of the evidence. as otherwise provided in subsection (b), any person who c or performs, or who has committed or performed, any a expatriation under the provisions of this or any other Act be presumed to have done so voluntarily, but such presu may be rebutted upon a showing, by a preponderance c evidence, that the act or acts committed or performed we done voluntarily.

The Immigration and Nationality Act Amendments of PL 99-653, approved Nov. 14, 1986, 100 Stat. 3655, re subsection (b) but did not redesiqnate subsection (c).

III

It is the Government's burden to prove by a preponderance of the evidence that appellant intended to relinquish his United States nationality. Vance v. Terrazas. 444 U.S at 270. Intent may be proved by a person's words or found as a fair inference from proven conduct. Id. at 260. The intent the Government must prove is the party's intent at the time the statutory expatriating act was performed. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

Naturalization, like the other enumerated statutory expatriating acts, may be highly persuasive evidence of an intent to relinquish United States citizenship, but it is not conclusive evidence of such intent. Vance v. Terrazas, supra, at 361, citing Nishikawa v. Dulles, 365 U.S. 129, 139 (1958) (Black, J. concurring.)

When [redacted] was granted Canadian citizenship he expressly renounced allegiance and loyalty to any state foreign to Canada. The cases hold 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 certificate of Mexican nationality that contained an oath of allegiance to Mexico and renunciation of United States citizenship, and by his conduct subsequent to performance of the expatriating act. See also Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985). Plaintiff in Richards obtained naturalization in Canada in 1971 and, as appellant did in the case before us, made a declaration renouncing all allegiance as well as an oath of allegiance to Queen Elizabeth, the second. In affirming the judgment of the district court, the Ninth Circuit said:

> The district court correctly found that Richards was not a citizen of the United States. He lost his United States citizenship when he voluntarily became a citizen of Canada and took an oath of allegiance to Canada containing an explicit renunciation of his allegiance to the United States. Specific intent to relinquish his United States citizenship was clearly established by that renunciation, even though Richards' motivation was to retain a particular employment position.

752 F.2d at 1423.

Similarly, Meretsky v. U.S. Department of Justice, et al., memorandum opinion, C.A. No. 85-01895 (D.C.C. May 1, 1987). Plaintiff in Meretsky obtained naturalization in Canada

in 1967 in order to be admitted to the Bar. As had I Meretsky declared that he renounced all other allegiance. court concluded that: "The oath he [Meretsky] took reno [his United States] citizenship in no uncertain terms." Accordingly, the court affirmed the decision of the dis court that Meretsky intended to relinquish his United S nationality.

The evidence leaves little doubt that Tsler knowingly and intelligently in obtaining Can naturalization. He was 32 years of age at the time apparently well educated. Ye knew he would have to ac Canadian citizenship in order to qualify for teaching te Plainly, he did not act inadvertently.

[redacted] strenously protests, however, that he intended to give up his United States citizenship. As he pi in his reply to the Department's brief:

> In regard to the second issue however, that whether or not I intended to relinquish my citizenship, I believe the Department has proved its point.
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> ...
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> The argument put forward about the oath of Can citizenship beinq renunciatory, and that provir intention to relinquish, is absurd. One nor does not have a choice as to the oath he or sh going to take under these circumstances. Ha submitted that my intention to naturalize in Ca was voluntary . . ., taking the oath is a na consequence of the Act and not an indicatio intention to relinquish my U.S. citizenship.

Obviously, if [redacted] wished to become a Canadian cit he had no alternative **but to subscribe** to the then-requ renunciatory declaration. But he begs the question. Ye free to apply for Canadian citizenship or not. Having chose obtain naturalization, [redacted] expressly renounced United St citizenship, as requi[redacted] by Canadian law. The consequences of making such a declaration are clearly state the cases cited above. 5/

5/ [redacted] has not expressly argued that since the require that [redacted] for naturalization in Canada renounce all a allegiance was invalidated in 1973 (supra, note 2), his ac renouncing his allegiance to the United States should be d no effect. It is pertinent, however, to note what the cour

By his own words and conduct, I[redacted] manifested an intention to transfer his allegiance from the United States to Canada. For nearly twenty years after he became a Canadian citizen, I[redacted] apparently did not represent himself to be a United States citizen or otherwise affirm his American nationalitiy. While we do not necessarily infer intent to relinquish United States nationalitv simply from passivitv, such conduct hardly evidences a determination to retain United States nationality. In brief, nothing of record warrants our reaching a different conclusion.

On all the evidence, we believe that the Department has satisfied its burden of proof that appellant intended to relinquish his United States citizenship when he made a formal declaration of allegiance to Canada and expressly renounced his United States citizenship.

5/ Cont'd.

appeals said in response to such an argument made by plaintiff in Meretsky, supra:

> In 1967, Canadian law required Meretsky to renounce his U.S. citizenshin in order to become a Canadian citizen. Meretsky did so, knowinq what he was doing, and with the requisite frame of mind. The mere fact that if he had not become a Canadian citizen in 1967 but instead tried to become one today, he would not have to renounce 'alleaiance and fidelity' to the United States, does not undo his prior action. What natters for purposes of deciding whether he has lost his citizenship is whether he performed an expatriating act with the intent to renounce U.S. citizenshin. The oath he took renounced that citizenship in no uncertain terms. 3/
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> 3/ Cf. United States v. Matheson, 502 F.2d 80º (2d Cir.) (finding that an oath that did not explicitly renounce other citizenships did not demonstrate the specific intent required by sec. 1481(a)), cert. denied, 42º U.S.823 (1976). In that case, the court also found a "wealth . . . of evidence" indicating that despite the oath, the subject "continually believed and represented that she was a citizen of the United States." Id. at 812. The Second Circuit held that the language of that oath was consistent with the concept 9f dual nationality. The oath taken by Meretsky, on the other hand, explicitly renounced fidelity to any other governments.

Memorandum opinion at 4-5.

IV

Upon consideration of the foregoing, we hereby affirm determination of the Department of State that appel expatriated himself when he obtained naturalization in Ca upon his own application.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Howard Meyers, Member