October 29, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J[redacted] L[redacted] C[redacted]

This is an appeal from an administrative determination of the Department of State, dated June 16, 1986, holding that appellant, J[redacted] L[redacted] C[redacted], expatriated himself on June 4, 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 in Bremen, Federal Republic of Germany. 1/

For the reasons that follow, we conclude that appellant performed the expatriative act voluntarily with the clear intention of relinquishing his United States nationality. Accordingly, we affirm the Department's determination of loss of his citizenship.

1/ When appellant made a formal renunciation of his United States nationality, section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481, 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; . . .

Pub. L. 99-653, 100 Stat. 3655 (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".

I

Appellant acquired United State nationality by virtue his birth in [redacted]. states that he was raised and educated in California and wa member of the United States Naval Reserve in which he saw act service.

He went to Germany in 1973 to study comparat literature under an exchange program between the University Southern California, Santa Barbara and the University Goettingen. After the one-year program ended, he decided stay on at Goettingen "to intensify my studies." To finance stay he worked at the university hospital, and became interes in medicine. He was admitted to medical school in 1976 completed the program in 1982, allegedly having incurred indebtedness of DM 50,000. He received a temporary license 1982 and a clinical position at the hospital where he had d his internship. In his fourth year of clinical practice, 19 he "became unemployed." "My attempts to practice my profess were futile," appellant told the Board. He stated that applications for a clinical position were turned down and he denied a license because under Federal Regulations only Ger citizens may be licensed as doctors.

Sometime in 1985 appellant applied to the regio government of Lueneberg to be naturalized as a German citiz In October 1985 he applied to the same authority for permiss to practice medicine temporarily in his own community. October 7, 1985 the Lueneberg authorities issued a certific stating that appellant was assured of being granted Ger citizenship, provided that within the following two years submitted proof that he had effectively renounced his Uni States nationality. On April 1, 1986 an official of Lueneberg regional government informed counsel for appell that his application for permission to practice temporarily been denied.

Appellant visited the United States Consulate in Bre on June 4, 1986. According to a report submitted to t Department by the consular officer who administered the oath renunciation to appellant:

> Mr. C[redacted] came to the Consulate on Wednesday, Ju 4, 1986 to renounce his United States citizenshi He declared that he was not taking this st lightly, but that he had to in order to practi medicine in the Federal Republic. He apparent was not able to do so as a foreign national at th time.
>
> I explained to Mr. [redacted] the consequences of h decision, informing him that once his renounciati [sic] had been approved by the Department of State

he would be treated as any other Foreign national should he wish to return to the U.S. in the future, for whatever reason. Mf. C[redacted] repeated that he felt he had no alternative since he did wish to practice medicine in the FRG. He then carefully read and signed all the required documents.

Before making the oath of renunciation, appellant signed a sworn statement of understanding. In it he stated in part that he wished to exercise his right to renounce his United States nationality and did so of his own free will; acknowledged that as a result of renunciation he would become an alien toward the United States; had been afforded an opportunity to make a statement explaining the reasons for his renunciation; that the serious consequences of renunciation had been explained to him by the consular officer; and that he fully understood those consequences. The document was attested by the consular officer and two witnesses. The statement appellant executed to explain why he renounced his citizenship reads as follows:

> I take this step in renouncing my United States citizenship most reluctantly inorder [sic] to secure my economical and professional existence for my wife, daughter and myself. I completed all of my medical studies, examinations and clinical training in West Germany. I am not eligible at this time to practice medicine in the United States; and, therefore, my family and myself are dependented [sic] upon my practicing my profession as a General Practioner [sic] in West Germany. However, to do this I will have to fullfill [sic] the requirements for medical licensure as set by the West German Government:
>
> As a foreign national to Germany it is required either to have practiced medicine for six (6) years in West Germany and to have reached the age of fortythree [sic] (43), or to become a German citizen.
>
> Since I have only four (4) years of medical practice and am thirtynine [sic] (39) years old (an appeal on the German Government was not granted to make an exception in my case, nor was it permitted to obtain double citizenship), I am left no other alternative than to take this step in renouncing my United States citizenship.

The consular officer then administered the oath renunciation to appellant in the presence of two witnesses. T operative language of the oath of renunciation to whi appellant subscribed reads as follows:

> I desire to make a formal renunciation of American nationality, as provided by secti 349(a)(5) of the Immigration and Nationality A and pursuant thereto I hereby absolutely a entirely renounce my United States nationali together with all rights and privileges and a duties of allegiance and fidelity thereun pertaining.

The formalities completed, the consular officer execut on the same day a certificate of loss of nationality appellant's name. 2/ He certified that appellant acquir United States nationality by virtue of his birth in Californi made a formal renunciation of that nationality; and there expatriated himself under the provisions of section 349(a)(5) the Immigration and Nationality Act. The consular offic forwarded the certificate and supporting documents to t Department under cover of the above-quoted memorandum. Department approved the certificate on June 16, 1986, approv constituting an administrative determination of loss nationality from which a timely and properly filed appeal may taken to the Board of Appellate Review. An appeal was enter on June 1, 1987.

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

> Sec. 358. Whenever a diplomatic or consular officer the United States has reason to believe that a person while in foreign state has lost his United States nationality under a provision of chapter 3 of this title, or under any provision chapter IV of the Nationality Act of 1940, as amended, he sha certify the facts upon which such belief is based to t Department of State, in writing, under the regulatio prescribed by the Secretary of State. If the report of t diplomatic or consular officer is approved by the Secretary State, a copy of the certificate shall be forwarded to t Attorney General, for his information, and the diplomatic consular office in which the report was made shall be direct to forward a copy of the certificate to the person to whom relates.

II

Under section 349(a)(5) of the Immigration and Nationality Act (text supra, note 1) a United States citizen shall lose his citizenship if he voluntarily and with the intention of relinquishing citizenship makes a formal renunciation of citizenship before a consular officer of the United States in a foreign state, in the form prescribed by the Secretary of State. There is no dispute that appellant's formal renunciation of nationality was accomplished in the manner and form prescribed by law and regulation. He thus brought himself within the purview of the relevant section of the Act. The crucial issue for the Board to determine is whether, as appellant contends, economic circumstances he was powerless to control forced him against his will to divest himself of United States citizenship.

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 not voluntary. 3/ Thus, to prevail, appellant must come forward with evidence sufficient to show that he acted against his fixed will and intent to do otherwise.

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

(c) 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.

Pub. L. 99-653, 100 Stat. 3655 (1986) repealed subsection (b) of section 349, but did not redesignate subsection (c) or amend it to delete reference to subsection (b).

There follows a summary of appellant's arguments that did not voluntarily renounce his United States citizenship: was unemployed from the end of September 1985, but unemploym benefits did not begin until December 1985 and were "allott for only six months, that is, until the end of June 1986. ' benefits came to only half of his "normal" monthly income. "exacerbating fact of indebtness" was his student loan. E with unemployment benefits his outgoings exceeded income by 1,200. After unemployment benefits ended he could expect to out of pocket DM 3,400 per month. The German medical professi was crowded; nearly 5,000 doctors were unemployed in 1986. As foreigner, appellant might only be employed if it appeared th there were no German doctors available for the position. "did everything" in his power to "thwart the crushi situation." With respect to alternatives to performing t expatriative act, return to the United States was out of t question, both financially and professionally. No employme outside the field of medicine was available in Germany "wi enough earning potential to enable me to save up enough mon to move back to America." To have taken a different kind of j "would have jeopardized my professional existence," A lo absence from medicine would have "created an insurmountab hurdle to overcome to reintegrate myself later into the medic profession." He invested 10 years and DM 100,000 in the medic profession and could not change "my identity, I am a medic doctor, to I am???"

In short, the coercion appellant felt to do t expatriative act was fear of loss of his livelihood ar professional gratification.

Duress connotes absence of choice. To prove duress, on must show that extraordinary circumstances he neither create nor could control forced him to do an expatriative act agains his fixed will. The rule was formulated this way in Doreau v Marshall, 170 F.2d 721 (3rd Cir. 1948):

> If by reason of extraordinary circumstance amounting to true duress an American national i forced into the formalities of citizenship o another country, the sine qua non of expatriatio is lacking. There is no authentic abandonment o his own nationality. His act, if it can be calle his act, is involuntary. He cannot be truly sai to be manifesting an intention of relinquishing hi country. [Emphasis added]

170 F. 2d at 724.

In Doreau V. Marshall, the plaintiff obtained naturalization in France during the German occupation, lest, as an American citizen, she be imprisoned and her life and that of

her unborn child placed in peril. The court held that in such circumstances the expatriative act she performed was involuntary. Similarly, Schioler v. United States, 75 F.Supp. 353 (N.D. Ill. 1948).

A naturalized United States citizen who returned to and remained in her birthplace to care for a bed-ridden mother, did not forfeit her citizenship under the statute that was then applicable to naturalized citizens, because the reason that forced her to stay in Canada - filial duty - was, in the court's view, equatable to duress. Rycknan v. Acheson, 106 F.Supp. 739 (S.D. Tex. 1952).

In Mendelsohn v. Dulles, 207 F.2d 37 (D.C. Cir. 1953), the plaintiff, a naturalized citizen, remained abroad, in excess of the time then allowed naturalized citizens, to care for his wife whose illness was so disabling to prevent travel. The court held that he acted "under the coercion of marital devotion, which was just as compelling as physical restraint." 207 F.2d at 39.

The Supreme Court held in Nishikawa v. Dulles, 356 U.S. 119 (1958), that the conscription of a dual citizen of the United States and Japan into the Japanese Army in World War II did not automatically result in expatriation despite the explicit language of the statute, because the threat of penal sanctions for failure to serve forced petitioner to serve against his will.

Economic pressures have forced American citizens to perform an expatriative act. Stipa v. Dulles, 233 F.2d 551 (3rd Cir. 1956); Insogna v. Dulles, 116 F.Supp. 473 (D.D.C. 1953). In Stipa v Dulles, petitioner performed a statutory expatriating act (served in the police force of Italy) because he could find no work whatsoever and after World War II there was nothing for him to do in Italy. The court found that Stipa's testimony of his dire economic plight and inability to find employment was "amply buttressed by common knowledge of the economic chaos that engulfed Italy in the post war years." 233 F.2d at 556. In Insogna v. Dulles, the court concluded that the plaintiff performed an expatriative act involuntarily because of her need to subsist. "Self preservation has long been recognized as the first law of nature," the court stated, adding that "...common knowledge of the economic conditions and fears prevailing in a

country at war [Italy] lends credence to the plaintif testimony." 116 F.Supp. at 475. 4/

Formal renunciation of United States nationality Americans of Japanese descent during World War II at a detent center for "disloyal" Japanese, where conditions were worse t a penetentiary, were void because they were the of men fear, intimidation and coercion? depriving the renunciants the exercise of free will. Acheson v. Murakami et al., F.2d 953 (9th Cir. 1949).

Where a United States citizen could have obeyed Selective Service System, an alternative he found impossi because of his own moral code, his formal renunciation of Uni States nationality was voluntary. The duress the petitio felt was of his own making; he had the alternative to obey Selective Service law, but chose to renounce his citizensh Since such action was the product of personal choice, it voluntary. Jolley v. Immigration and Naturalization Servi 441 F.2d 1245 (5th Cir. 1971).

In the case before us, appellant argues that not o were the circumstances in which he found himself a threat to livelihood, but also he had no alternative to performing proscribed act.

4/ Cf. Richards v. Secretary of State, 752 F.2d 1413 (9th C 1985). There, the appellant allegedly became a Canadian citi under economic duress - the need to find employment. The co agreed with appellant that an expatriating act performed un economic duress is not voluntary, citing Stipa and Insogna. issue before the Ninth Circuit, however, was whether district court had erred in holding that the appellant was un no economic duress when he became naturalized. The Ni Circuit distinguished Stipa and Insogna from the appellan case, noting that conditions of economic duress had been "fo under circumstances far different from those prevailing here The court found it unnecessary? however, to decide whet economic duress "exists only under such extreme circumstances It simply ruled that some economic hardship must be proved support a plea of involuntariness, and found that the distr court had not erred in finding that the appellant was under economic duress. 752 F.2d at 1419. In our view, Stipa Dulles and Insogna v. Dulles, although decided thirty years a remain valid for the proposition that extreme economic hardsh must be proved in order to excuse performance of an act th puts one's United States citizenship at risk.

We will not dispute that appellant's economic circumstances from September 1985 appear to have been exiguous and that he might relatively shortly have gone heavily in debt. We simply note that he has not convinced us that he and his family actually faced so grave a threat to their economic survival as to excuse his performance of an expatriative act. But the more pertinent inquiry is whether appellant had an alternative to forfeiture of his United States citizenship.

Appellant maintains, in effect, that the practice of medicine in Germany was the only metier that would enable him to provide adequately for himself and his family, and, we might observe, gratify his professional aspirations. There is, however, no evidence that he explored possible alternatives, that is, inquired whether there might be employment, either short or long term, roughly consonant with his training and experience, that would enable him to satisfy his economic needs without sacrificing his American citizenship. Quite the contrary, as we have seen, he has made quite plain that he had no intention of trying to find work of any kind outside his chosen field.

We are not indifferent to appellant's protestations that having dedicated many years and invested much money in medical training, he did not want to strike out into a new field. His reluctance to do so is perfectly natural, but does not alter the fact that he has not carried the burden of showing he tried to find alternatives to doing the expatriative act.

In the premises, it would not be unfair to assume that appellant deliberately chose not to seek an alternative to the practice of medicine and thus decided that renunciation of his United States nationality was worthwhile because it would enable him with relative ease to make his livelihood and gratify his professional ambitions. Since appellant has not shown that he could not have acted otherwise, the conclusion is unescapable that he made a personal choice when he decided to renounce his United States citizenship. As the court declared in Jolley v. Immigration and Naturalization Service, supra, "But opportunity to make a decision based upon personal choice is the essence of voluntariness." **441** F.2d at 1250.

Mot only are we satisfied that appellant made a personal choice in 1986 to divest himself of his United States citizenship, but we are also of the view that he made an earlier, even more clear-cut personal choice when he decided in 1976 to enter medical school in Germany, intending, we are entitled to assume, to practice medicine there. Thus, he and he alone created the circumstances which confronted him in 1986 with the necessity for choice. He committed himself to a medical career in Germany without evidently first ascertaining

the requirements he, as a foreigner, would have to fulfill. may not escape the consequences of his lack of foresight pleading that he was forced, by circumstances he created, forfeit United States citizenship. As in Jolley v. Immigrat and Naturalization Service, supra, 441 F.2d at 1250, appellar choice was, at base, self-generated. In such circumstar there is no duress.

Since appellant has failed to rebut the statut presumption that he renounced United States national voluntarily, we conclude that his act was done of his own f will.

III

Finally, we must determine whether it was proba appellant's real intention to relinquish United Sta nationality when he formally renounced that nationality. Wh a citizen fails to prove that he performed a statut expatriating act involuntarily, the question remains whether, all the evidence, the Government has satisfied its burden proving by a preponderance of the evidence that the expatriat act was performed with the necessary intent to relinqu citizenship . Vance v. Terrazas, supra, 444 U.S. at 270. person's intent may be expressed in words or found as a f inference from proven conduct. Id. at 260.

Formal renunciation of United States citizenship in manner mandated by law and in the form prescribed by Secretary of State is, on its face, unequivocal and final. voluntary oath of renunciation is a clear statement of desire relinquish United States citizenship." Davis v. Distr Director, Immigration and Naturalization Service, 481 F.Su 1178, 1181 (D.D.C. 1979). Intent to abandon citizenship inherent in the act. The words of the oath of renunciat 'fairly proclaim appellant's specific intent:

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

Our sole inquiry therefore is whether appellant execu the oath of renunciation knowingly and intelligently. record leaves no doubt that he did so. He signed a statement understanding in which he acknowledged that the seri consequences of renunciation had been explained to him by consular officer and that he fully understood them. personal statement he made on the day he renounced nationality also substantiates the view that he ac deliberately. He knew that in order to obtain Ger citizenship German law required that he unequivocally div himself of United States citizenship. Since he obviou proposed to acquire German citizenship, there can be lit

doubt that on the day he renounced United States nationality he carried out a pre-conceived plan. A mature, evidently experienced man, appellant surely knew what he was doing. We perceive no inadvertence or mistake of law or fact on his part.

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 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.

IV

On consideration of the foregoing, we conclude that appellant expatriated himself on June 4, 1986 by making a formal renunciation of his United States citizenship before a consular officer of the United States in the form prescribed by the Secretary of State. Accordingly, we affirm the Department's administrative determination of June 16, 1986 to that effect.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Warren E. Hewitt, Member