December 1, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] L[redacted] Z[redacted]

This case is before the Board of Appellate Review on appeal of R[redacted] L[redacted] Z[redacted] from an administrat determination of the Department of State, dated January 1986, that he expatriated himself on June 1, 1984 under provisions of section 349(a)(1) of the Immigration Nationality Act by obtaining naturalization in Brazil upon own application. 1/

For the reasons that follow, we conclude that appellan naturalization was voluntary and obtained with the intention relinquishing his United States nationality. Accordingly, affirm the Department's holding of loss of his citizenship.

I

Appellant acquired United States nationality by virtue his birth in [redacted] He went high school in South Dakota and attended the South Dakota Sch of Mines and Technology. Thereafter, he studied, did resea and taught at a number of prominent institutions and resea establishments in the United States until 1961 when he went Brazil. In Brazil, he states, he "was a United Nations visit expert, a USAID professor, a Fulbright scholar, a F Foundation consultant....". Beginning in 1967 he held temporary appointment as "Collaborating Professor" at the

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1/ When appellant obtained naturalization in Brazil, sect 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 14 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,...

Pub. L. 99-653, 100 Stat. 3655 (1986), amended subsect (a) of section 349 by inserting "voluntarily performing any the following acts with the intention of relinquishing Uni States nationality:" after "shall lose his nationality by".

University of Sao Paulo. Appellant married a Brazilian citizen in 1977. It appears that while living in Brazil appellant periodically renewed his United States passport and registered as an American citizen. He obtained a full validity passport from the Consulate General in Sao Paulo in 1979 and was most recently registered as a citizen in 1982.

On January 4, 1984 appellant petitioned the Brazilian Ministry of Justice for naturalization. In the petition he stated, inter alia, that he intended to renounce his current nationality; had been living in Brazil for over twenty years; and read and wrote Portuguese.

He visited the United States Consulate General in Sao Paulo in May 1984, apparently to apply for a passport since the one issued to him in 1979 was about to expire. There, on May 25, 1984, he completed a form titled "Information to Determine U.S. Citizenship". In it he acknowledged that he had applied to be naturalized as a Brazilian citizen in order to advance his university career; and had served in a post of a foreign government ("tenure-track professor in the University of Sao Paulo (Sao Carlos), a state institution, since September 1971"). He apparently discussed his case at that time with a consular officer, for some months later in a letter to the Consulate appellant stated that the previous May a consular officer "made it clear that my American citizenship was at risk and in general terms what chance 1 had both to satisfy the University requirement of Brazilian citizenship and to retain my American citizenship." The Consulate issued him a passport on May 25th, limited in validity to one year.

By Ministry of Justice ordinance No. 0235 of May 21, 1984, appellant was granted Brazilian citizenship pursuant to Article 145, II(b)(3) of the Federal Constitution, and in accordance with Article III of Law No. 6,815, of August 19, 1980, as amended by Law No. 6,964 of December 9, 1981. 2/

Appellant wrote to the Consulate again on June 26, 1984 to report that he had been notified by the Brazilian Federal Justice Department that a certificate of naturalization had been issued in his name on June 1 and that it had been sent to a federal judge "who will call me for a ceremonial presentation.

2/ Certificate of Naturalization, Ministry of Justice, Federal Department of Justice, Brasilia, June 1, 1984. English Translation, Division of Language Services, Department of State, LS No. 123140-A, Portuguese 1987.

Presumably, I will be asked to declare allegiance to t Brazilian Government at that time." He added: "I realize th such action can jeopardize my American citizenship." He had opportunity to advance to tenured, full professorship at t University of Sao Paulo, he continued, noting that Brazili citizenship is one requirement. A competition would be held the end of June for promotion to full professor, and he intend to participate in it. He concluded by stating that: "If I lo the competition, I will decline Brazilian naturalization. If win the competition, I respectfully ask your help in protecti my American citizenship without sacrificing my career at USP."

Appellant communicated with the Consulate next on Augu 22nd. He had successfully completed the examinations f promotion to full professor of physics, he wrote. The Direct of the Faculty of Philosophy, Science and Letters of t Ribeirao Preto campus of the University of Sao Paulo ha however, "respon[ded] negatively" to his request for a waiver the requirement that he hold Brazilian citizenship. 3/ Sin the promotion "brings me the once-in-a-career opportunity.. feel forced to submit to naturalization...." He had be notified, he stated, to appear before a federal judge on Augu 27, 1984, to receive his certificate of naturalization. "Fr that date," appellant concluded, "my American citizenship wi be at risk, and I appeal to you to help me from losing i Appellant appeared before a federal judge on August 27. The proceedings of that day are recorded on the reverse of t certificate of naturalization that was delivered to appellant:

> In a formal document drawn up this day, the individual to whom this certificate refers swore to faithfully fulfill the duties of

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3/ The letter, which is dated July 13, 1984, reads as follows.

> In response to your inquiry we wish to inform you that, under Federal Law No. 7,192/74, only native-born or naturalized Brazilians may bold government jobs.
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> Under the above legislation and the general regulations of the University of Sao Paulo, it would be impossible for you to be installed as a full professor in this department unless you become naturalized.

English translation, Division of Language Service Department of State, LS No. 123140-D, Portuguese, 1987.

> Brazilian citizenship, demonstrated--by reading and copying articles from the Federal Constitution--that he knows how to read and write the Portuguese language, and declared that he renounces, for all intents and purposes, his previous nationality.
>
> Sao Carlos, August 27, 1984.
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> [illegible signature] 4/

One year passed. On September 1, 1985 appellant addressed a further communication about his case to the Consulate, enclosing a copy of his naturalization certificate and application therefor. He observed that although it was stated on the reverse of the certificate that "I renounced previous nationalities, I made no such statement, verbally or written." He reiterated why he had applied for and accepted Brazilian citizenship; that he realized he might lose his United States citizenship thereby, but asserted that "[d]efending my American citizenship continues to be my first priority." He had tried unsuccessfully to get a waiver of the citizenship requirement (see note 3, supra), but could not pass up the professional and retirement benefits that would flow from occupying a tenured position.

There is no record that the Consulate replied to appellant's letter or that he was interviewed at that time. On September 16, 1985, in compliance with the requirements of section 358 of the Immigration and Nationality Act, a consular officer executed a certificate of loss of nationality in

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4/ English translation, Division of Language Services, Department of State, LS No. 123140-A, Portuguese, 1987.

Article 128(1) of Law No. 6,815 of August 19, 1980, as amended by Law No.6,964 of December 9, 1981, prescribes that at the naturalization ceremony the naturalized citizen must:

> I. Demonstrate that he can read and write Portuguese, according to his circumstances, by reading passages from the Federal Constitution;
>
> 11. Declare expressly that he renounces his previous citizenship;
>
> III. Undertake a commitment duly to fulfill the duties of a Brazilian citizen.

appellant's name. 5/ The officer certified that appel acquired United States nationality by virtue of his birth in United States; acquired the nationality of Brazil upon his application; and thereby expatriated himself under provisions of section 349(a)(1) of the Immigration and Nationality Act. In forwarding the certificate of loss nationality and supporting documents, including appellan correspondence, to the Department, the Consulate offered opinion on his case; it merely stated that the post wo appreciate being informed of the Department's decision. Department approved the certificate on January 17, 1986, later informed the Consulate that in its opinion appellant failed to rebut the presumption that he obtained naturalizat in Brazil voluntarily. Further, his intent to relinquish Uni States nationality was manifest in the various renunciat statements he signed in the proceedings leading to a culminating in his naturalization in Brazil.

Approval of the certificate of loss of nationali constitutes an administrative determination of loss nationality from which a timely and properly filed appeal may taken *to* the Board of Appellate Review. Appellant entered appeal pro se on November 14, 1986.

II

Section 349(a)(1) of the Immigration and Nationality A prescribes that a United States citizen shall lose h citizenship by voluntarily obtaining naturalization in a foreig

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5/ 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.

state with the intention of relinquishing his nationality. 6/ Appellant does not dispute that he obtained naturalization in Brazil upon his own application. He thus brought himself within the purview of the Act. Section 349(c) of the Act prescribes a legal presumption that one who performs a statutory expatriating act does so voluntarily, although the actor may rebut the presumption upon a showing by a preponderance of the evidence that he acted involuntarily. 7/

Appellant submits that he acquired Brazilian citizenship solely in order to obtain a full professorship, which, in his words, was "[a]n undreamed of professional opportunity." He performed the expatriative act only after he had verified that he might not hold the position unless he were a Brazilian citizen.

When his case was processed at the Consulate in the autumn of 1985, appellant took the position in a letter to a consular officer that "my actions to naturalize Brazilian were made under duress." "[P]erhaps you may imagine the pressures placed on a 55-year old physics professor given the once-only chance to gain tenure on the professionally most important

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6/ Text supra, note 1.

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

> (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.

The Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653, 100 Stat. 3655 (1986), repealed section 349(b) but did not redesignate section 349(c), or amend it to reflect repeal of section 349(b).

campus of his university." Had he renounced the promo offered, he doubted that "my next temporary contract would been renewed. That strong feeling of no other choice may described as duress."

We accept that in order to gain the academic standing professional gratification to which he aspired, appellant required to obtain naturalization in Brazil. The pressures allegedly felt to become a Brazilian citizen do not in view, however, rise to the level of legal duress.

Duress implies absence of choice. It assumes that was faced with circumstances not of his own making that left no alternative but to perform a proscribed act in order to a a more adverse situation. The rule was formulated this way Doreau v. Marshall, 170 F.2d 721 (3rd Cir. 1948):

> If by reason of extraordinary circumstances amounting to true duress 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 relinquishing his country. [Emphasis added]

170 F. 2d at 724.

Appellant made free choices from the outset. He chose make his professional life in Brazil, so creating circumstances that ultimately required him to elect betv obtaining naturalization and taking a course of action t would not require him to jeopardize his United Sta citizenship. Furthermore, as a matter of law, he had alternative to placing his United States citizenship in per he could have passed up the position that required him to h Brazilian citizenship. We understand appellant's perfec natural desire to attain professional pre-eminence, but he not be heard to argue that with his education, experience apparent skills he would not have been able to proc adequately, for himself and his family had he not chosen elect Brazilian citizenship. The compulsion appellant felt perform a statutory expatriating act thus was of his making. "[The] opportunity to make a decision based u personal choice is the essence of voluntariness." Jolley Immigration and Naturalization Service, 441 F.2d 1245, 1250 (Cir. 1971).

In our opinion, appellant has failed to rebut the le presumption that he obtained naturalization in Brazil of his free will.

III

The question remains whether appellant performed the expatriative act with the intention of relinquishing his United States citizenship. Under the Supreme Court's holding in Vance v. Terrazas, 444 U.S. 252 (1980), the government bears the burden of proving by a preponderance of the evidence that the citizen intended to relinquish citizenship when he performed the proscribed act. 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. A person's intent is determined as of the time of the performance of the statutory act of expatriation; the person's own words or conduct at the time the expatriating act occurred are to be looked at in determining his or her intent to relinquish citizenship. Terrazas v. Haig, 653 F.2d 285 (7th Cir. 1981). In the case before the Board the intent that the government must prove is [redacted] intent when he obtained Brazilian citizenship.

Obtaining naturalization in a foreign state may be highly persuasive evidence of an intent to relinquish United States citizenship, although it is not the equivalent of, or conclusive, evidence "of the voluntary assent of the citizen." As the Supreme Court expressed the principle in Vance v. Terrazas, supra,

> ..., we are confident that it would be inconsistent with Afroyim to treat the expatriating acts specified in section 1481(a) as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen. 'Of course', any of the specified acts 'may be highly persuasive evidence in the particular case of a purpose to abandon citizenship.' Nishikawa v. Dulles, 356 U.S. 129, 139 (1959) (Black, J., concurring). But the trier of fact must in the end conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute, but also intended to relinquish his citizenship.

444 U.S. at 261.

The cases hold that a United States citizen who knowingly, intelligently and voluntarily performs a statutory expatriating act and simultaneously renounces United States citizenship demonstrates an intent to relinquish United States citizenship, provided there are no offsetting factors that would mandate a different result.

The plaintiff in Terrazas v. Haig, 653 F.2d 285 (7th C 1981), made a formal declaration of allegiance to Mexico simultaneously renounced United States citizenship. The Cc of Appeals held that there was "abundant evidence" that plaintiff knowingly and intelligently performed the proscri act with the intention of relinquishing United Sta nationality. He was 22 years old, well-educated and fluent Spanish when he applied for a certificate of Mexican national that contained an oath of allegiance to Mexico and renunciation of United States citizenship. His subsequ conduct also cast doubt on his intent.

Richards v. Secretary of State, 752 F.2d 1413 (9th C 1985), involved the naturalization in Canada of a United Sta citizen who swore an oath of allegiance and made a concomit declaration renouncing all other allegiance. The Court Appeals for the Ninth Circuit agreed with the district co that "the voluntary taking of a formal oath that includes explicit renunciation of United States citizenship is ordinar sufficient to establish a specific intent to renounce Uni States citizenship." 753 F.2d at 1421. "We also believe tl there are no factors here that would justify a differ result." Id. The court of appeals agreed with the distr court that the plaintiff wished to become a Canadian citizen would have liked also to remain a United States citizen, b because Canada required relinquishment of his other citizensh: he chose to renounce United States citizenship in order obtain Canadian citizenship. Appellant argued that he lacl the requisite intent because he never desired to surrender h United States citizenship. Since he had no wish to become Canadian citizen independent of a perceived need to advance h career, the necessary intent was lacking, he asserted. T court disagreed, saying that if a citizen freely and knowing chooses to renounce his citizenship and carries out th decision, his choice must be given effect. In brief, citizen's specific intent to renounce his citizenship does n turn on motivation.

A "remarkably similar case" to Richards is Meretsky Department of Justice, et al., memorandum opinion, No. 86-51 (D.C. Cir. 1987). In Meretsky, plaintiff took an oath allegiance to Canada that explicitly required him to renoun allegiance and fidelity to the United States. He argued that should not be found to have had the requisite intent to renoun his United States citizenship because he only became a Canadi citizen so that he might be admitted to the practice of law Canada. Finding that plaintiff failed to produce evidence th he took the Canadian oath under duress, the court adopted tl reasoning of the 9th Circuit in Richards, supra, to the effe that "a United States citizen's free choice to renounce h. citizenship results in loss of that citizenship." The oat plaintiff took, the Meretsky court declared, renounced hi United States citizenship "in no uncertain terms." Memo. op. a 5.

In contrast to the foregoing cases, is the case of Parness v. Shultz, memorandum opinion, Civil Action No. 86-1456 memorandum opinion (D.D.C. July 1987). There plaintiff applied for naturalization as an Israeli citizen. He testified that after waiting in a long line at a government office, he stood at a clerk's counter to give oral answers to the clerk's questions as the latter filled out his application form. He stated that he responded to what he was asked and did no more, that he was never told he would have to renounce his U.S. citizenship, that he did not knowingly or intentionally renounce his citizenship, and that he did not read the naturalization application, which stated in preprinted text that he renounced his citizenship. Plaintiff further testified that he did not cross out a section of the application in which he could have exercised his right to an exemption, nor did he know who did. He acknowledged that he should have read the document but contended that his obvious carelessness did not result from indifference to the possibility, or knowledge, that he might lose his U.S. citizenship. The unusually casual way in which plaintiff applied for Israeli citizenship closely paralleled the manner in which the form was completed by the Israeli clerk. The application was clearly incomplete, inaccurate and was not signed by any Israeli authority. After his application had been accepted, plaintiff swore an oath of allegiance to Israel. The oath made no mention of renunciation of other citizenship.

On the foregoing facts, the district court concluded that plaintiff lacked the requisite intent to relinquish citizenship. Plaintiff's testimony was highly credible and most persuasive, the court said. The circumstances of his application for Israeli citizenship were unique, and the testimony and much documentation supported the plaintiff's contention that, despite his gross negligence, he never intended to relinquish his United States citizenship.

In the case we are considering, appellant obtained naturalization in Brazil and made an oath of allegiance to Brazil and simultaneously renounced his present nationality. Such conduct is highly probative of an intent to relinquish United States citizenship. Appellant, however, strenuously denies that he renounced his United States citizenship. As he put it in a letter to the Board dated August 26, 1987:

> Neither verbally nor in writing did I renounce my United States citizenship. A statement that I did so, signed by a Brazilian clerk on the back of my Certificate, may be convenient, even required, but it is untrue. Present were witnesses who may describe the nature of the cerimony [sic], and its date, 27 August 1984...

Brazilian law provides that after the Federal Departme of Justice has issued a certificate of naturalization, it sha send the certificate to the federal judge of the city where t applicant has his domicile, for delivery at a "solemn publ ceremony, either individual or collective, at which t Magistrate shall discuss the significance of the instrument a the duties and rights derived therefrom." 8/

As we have previously noted, on August 27, 1984, a judg magistrate or other official of the Federal Court at Sao Carl signed a statement on the reverse of appellant's certificate naturalization recording that in a "formal document drawn this day," appellant swore an oath of allegiance, and renounce "for all intents and purposes, his previous nationality." 9/

The "formal document" referred to above is the record the naturalization ceremony. Under Brazilian law, delivery the certificate shall be entered in the record of the hearin "which shall be signed by the judge and the naturaliz person." 10/ The date on which the naturalized pers undertook the commitment to fulfill the duties of Brazili citizenship and the fact that it was entered in the record sha. be noted on the certificate. 11/

On the evidence, we must accept as a fact that on Augu! 27, 1984 appellant made a declaration expressly renouncing "hi previous nationality." Appellant has submitted no evidence t call into question the declaration of the judicial official tha he did so. Appellant's unsupported allegation is insufficier to permit us to conclude that tns "solemn ceremony" was not a described in the statement on the reverse of his certificate c naturalization. It has been long settled that the presumptic of regularity that attaches to the public acts of United State officials also extends to the public acts of foreign officials See United States v. King, 3 How. 773, (1845).

8/ Article 128(1) of Law No. 6,815, August 21, 1980, as amende by Law No. 6,964, December 9, 1981. English translation Division of Language Services, Department of State, LS No 123327, Portuguese, 1987.

9/ See note 4, supra.

10/ Article 129 of Law No. 6,815, August 21, 1980, as amended by Law No. 6,964, December 9, 1981.

11/ Id, article 129(2).

> It is inconsistent with the comity due to the officers of a foreign government to impute to them fraud where their **conduct** has not been questioned by the authority under which they were acting and to which they were responsible...and as regards the interests of others, the acts of the officer in line of his duty will prima facie be considered as performed honestly and in good faith.

3 How. at 786.

Although the evidence is compelling that it was appellant's intent to relinquish United States nationality, we must be satisfied that appellant knowingly and intelligently, as well as voluntarily, obtained naturalization in Brazil and swore an oath of allegiance that included renunciation of his United States citizenship. From the evidence of record, it is apparent that he acted with full awareness of the legal consequences of his act. He was 55 years old when he applied for and obtained naturalization, well-educated, fluent in Portugese, and evidently understood precisely what he would have to do to obtain Brazilian citizenship. By his own admissions he knew he would put his United States citizenship at risk if he obtained naturalization.

In the petition for naturalization he executed January 4, 1984, he declared .that he "intend[ed] to acquire Brazilian citizenship and to renounce his present nationality...:" In the letter he addressed to the Secretary of Public Security of Sao Paulo, requesting that that official forward his petition **to** the appropriate authorities, he reiterated that he intended to renounce his present nationality. We find unconvincing his assertion (see his reply to the Department's brief) that he read neither of those very short, simple forms. Furthermore, he concedes that in May 1984 a consular officer made clear to him that naturalization would place his United States citizenship at risk. And in letters to the Consulate General written in June and August 1984, he acknowledged that naturalization could jeopardize his American citizenship.

Finally, we must ascertain whether there are any factors of sufficient evidential weight that would countervail the foregoing evidence that appellant intended to relinquish his United States citizenship.

In addition to denying that he renounced his United States citizenship (a claim we are unable to accept for the reasons stated above), appellant adduces other factors which he contends show lack of the requisite intent. He travelled abroad from Brazil on a United States passport shortly before and a few months after naturalization; has filed income tax returns in the

United States allegedly since 1954 (he submitted only copies partial and incomplete returns for 1983, 1984 and 1985); close family ties in the United States; and maintain: residence in Philip, South Dakota "for voting and ot purposes." "Most compelling," appellant wrote to the Board January 1987, "I have no conceivable motive for relinquishing American citizenship."

The record further shows that on three occasions prior obtaining a certificate of Brazilian naturalization, appell indicated that even if he went through with naturalization, wished to retain his United States citizenship. In citizenship questionnaire he completed in May 1984 he sta that: "My intent in applying for Brazilian citizenship was meet....the university requirements....I do not intend jeopardize my United States citizenship...." In June 1984 wrote to the Consulate to explain why he was proceeding w naturalization, and concluded by stating that: "If I win competition [for full professorship] I respectfully ask y help in protecting my American citizenship without sacrific my career at USP." Finally, only five days before the ceremo at which he received his certificate of naturalization, he aga wrote to the Consulate and appealed to that office "to help from losing it."

Expressly renouncing United States citizenship before foreign official in the course of performing a statutc expatriating act plainly is an act in "derogation of allegiar to this country." 42 Op. Atty. Gen., 397, 400 (1969). leaves "no room for ambiguity" as to the intent of the citize United States v. Matheson, 400 F.Supp. 1241, 1245 (S.D.N. 1975); aff'd 502 F.2d 809 (2nd Cir. 1976); cert. denied 429 U. 823 (1976). But, we must now ask, do appellant's words befo naturalization disclaiming intent to relinquish citizenship a the pattern of his conduct showing ties to and with the Unit States outweigh evidentially the renunciatory oath of allegian to which he subscribed?

We do not doubt that appellant wanted to retain h United States citizenship and that his motive in obtaini Brazilian citizenship was to promote his academic career. Θ to put it differently, because appellant had no wish to become Brazilian citizen independent of his wish to realize care ambitions, he allegedly lacked the requisite intent. The moti with which an act is done is for the most part immaterial. expatriating act is not excused because it is done with the be of motives. The petitioner in Richards v. Secretary of State supra, made essentially the same argument as appellant here The Ninth Circuit held it to be without legal merit.

> ...a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to

> make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship.
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> We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly. Whenever a citizen has freely and knowingly chosen to renounce his United States citizenship, his desire to retain his citizenship has been outweighed by his reasons for performing an act inconsistent with that citizenship. If a citizen makes that choice and carries it out, the choice must be given effect.

752 F.2d at 1421, 1422.

Notwithstanding appellant's statements and contentions relative to his lack of intent to relinquish United States citizenship, the critical issue to be determined, is appellant's intent at the time he sought and obtained naturalization in Brazil. As we have seen, appellant, on January 4, 1984, petitioned the Minister of Justice for naturalization and stated that he intended to acquire Brazilian citizenship and to renounce his present citizenship; and, on August 27, 1984, at a formal ceremony and in a formal document, in connection with the delivery to him of his naturalization certificate, appellant swore to fulfill faithfully the duties of Brazilian citizenship and declared that he renounced his previous nationality. We are persuaded that these actions contravene appellant's assertions of lack of intent to transfer allegiance to Brazil and relinquish United States citizenship, In our judgment, the Department has satisfied its burden of proof that appellant's expatriating act was performed with the requisite intent to relinquish citizenship.

IV

Upon consideration of the foregoing, we hereby affirm t Department's determination that appellant expatriated himse when he obtained naturalization in Brazil upon his c application.

Alan G. James, Chairman

Howard Meyers, Member

Gerald A. Rosen, Member