July 7, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal to the Board of Appellate Review an administrative determination of the Department of State appellant, C[redacted] M[redacted] C[redacted], expatriated himself on Feb 5, 1982 under the provisions of section 349(a)(1) of Immigration and Naturalization Act by obtaining naturaliz in France upon his own application. 1/

The sole issue for the Board to decide is wh appellant intended to relinquish his United States nation when he acquired French nationality. For the reasons follow, we conclude that the Department has carried its b of proving that [redacted] intended to transfer his allegiance the United States to France. We will therefore affirm Department's holding of loss of his nationality.

I

[redacted] acquired United States nationality by virtu his birth at [redacted]. The r reveals little of his background, but he states that he resi

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

> Sec. 349. (a) From and after the effective date of Act a person who is a national of the United S whether by birth or naturalization, shall lose nationality by --
>
> (1) obtaining naturalization in a foreign upon his own application,...

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

briefly in Martinique in 1973; was employed by the Environmental Protection Agency from 1976 to 1979: and went to France in April 1979 where he resided for a year and a half. The record shows that he was issued a United States passport at Trieste, Italy in October 1979 which he did not renew when it expired. Tt appears that [redacted] returned to the United States in the autumn of 1980 and here married a French citizen. Early in 1981 the couple moved to France where appellant has since lived. A son was born in France in the autumn of 1981. On February 5, 1982 [redacted] appeared before a Juge du Tribunal d'Instance of the 14th Arrondissementof Paris and declared that having married a French citizen, he wished to apply for French nationality, pursuant to the applicable provisions of the French Nationality Code. [redacted] became a French citizen as from February 5, 1982. A second child, a daughter, was born in 1984.

In the spring of 1985 [redacted] naturalization came to the attention of United States authorities. According to the records of the Embassy at Paris, [redacted] was referred to the citizenship section by the visa section for a determination of his citizenship status "because he had applied for U.S. visas for himself, his French wife and their two children horn **in** France.. **..**" [redacted] completed a form titled "Information for Determining U.S. Citizenship," and, since he had immediate plans to travel to the United States, an application for a passport. A passport of limited validity was issued to [redacted] at the end of March. At the suggestion of an Embassy officer, [redacted] executed a report of birth of his son horn in **1981** who was then issued a United States passport. His daughter, whose citizenship status depended on the outcome of the determination of [redacted] citizenship, was issued a temporary passport.

Subsequently, on May ***23***, 1985, as required by law, the consular officer who processed appellant's case executed a certificate of loss of nationality. 2/ The consular officer

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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 anv 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 requlations prescriber! 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.

certified that [redacted] acquired United States nationalit virtue of his birth in the United States; that he acquire nationality of France upon his own application; an? conc that he thereby expatriated himself under the provision section 349(a)(1) of the Immigration and Nationality Act. consular officer forwarded the certificate to the Depar under cover of a detailed, carefully reasoned memorandu which she recommended that the Department approve certificate. The Department did so on September 10, approval constituting an administrative determination of lo nationality from which a timely and properly filed appeal m taken to the Board of Appellate Review. [redacted] filed the a pro se a year later.

IT

It is not disputed that [redacted] obtained naturalizati France upon his own application, thereby bringing himself w the purview of section 349(a)(1) of the Immigration Nationality Act. However, under the statute (supra, note 1 the cases, nationality shall not be lost unless the ci performed the expatriating act voluntarily with the intenti relinquishing United States nationality. Vance v. Terrazas U.S. 252 (1980), and Afroyim v. Rusk, 387 U.S. 252 (1 [redacted] expressly concedes that he sought and obtained F nationality of his own free will. The single issue we called upon to decide therefore is whether [redacted] intend relinquish United States nationality when he acquired F citizenship.

Although appellant voluntarily obtained naturalizati France, the question remains whether on all the evidenc Department "has satisfied its burden of proof that expatriating act was performed with the necessary inte relinquish citizenship." Vance v. Terrazas, supra, at Under the Statute, 3/ the government must prove a person's intent by a preponderance of the evidence. Id. at 267. may be expressed in words or found as a fair inference from

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3/ Section 349(c) of the Immigration and Nationality A U.S.C. 1481(c) provides in relevant part that:

Whenever the loss of United States nationality is r 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 be the person or party claiming that such loss occurre establish such claim by a preponderance of the evidence...

proven conduct. Id. at 260. The intent that the government must prove is the party's intent when the expatriating act was done, in appellant's case 1982 when he obtained French nationality. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

Performing any of the statutory expatriating acts may be highly persuasive evidence of an intent to reliniquish United States nationality, although it is not conclusive evidence of such an intent. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958), (Black, J. concurring.) We note that when he was accorded French citizenship [redacted] was not required to make an oath of allegiance or statement renouncing previous alleqiance. On these facts the probative weight of naturalization arquably is somewhat reduced. Nonetheless, obtaining a foreign citizenship suggests that one's purpose is to abandon United States citizenship. The pertinent inquiry is whether other evidence corroborates the evidence of an intent to relinquish citizenship manifested by performance of the statutorily proscribed act.

Here there is almost no direct evidence of appellant's intent to relinquish or retain citizenship. This is not unusual, however, as the court observed in Terrazas v. Haig, supra, at 288: "Of course, a party's specific intent to relinquish his citizenship rarely will be established by direct evidence. But, circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship." 4/ [Footnote omitted.]

In [redacted] case, circumstantial evidence strongly suggests that he intended to relinquish United States nationality when he acquired French nationality. His proven conduct around the time of his naturalization and afterwards is inconsistent with United States citizenship, and, objectively considered, contradicts his professed lack of intent to abandon United States citizenship.

First of all, he knew that acquiring French nationality was an expatriative act, for he had been expressly warned bv the notarial section of the Embassy late in 198] that obtaining naturalization in France could result in loss of his United States citizenship. See his reply to question **I?** of the citizenship questionnaire he completed in March 1985:

> 13. Did you know that by performing the act described in item 7 above you might lose your citizenship? Explain your answer.

> Yes. At the U.S. consulate in Paris when I had to get a form signed at the notary section in connection with getting french nationality after marriage.

See also the report the consular officer who proce his case sent to the Department in May 1985:

> In the attached "Information for Determining Citizenship" form, Mr. [redacted] acknowledged that was aware he might lose his U.S. citizenship requesting French nationality. He said he came the Embassy's Notarial Unit in order to obtain document required by the French authorities connection with his application for Fr nationality, at which time, he said, he informed that he might lose his U.S. citizenshi the result of his French naturalization.

Appellant suggests that the fact he was aware tha could jeopardize his United States citizenship by obtai naturalization in France has little probative value. "I ass that possible loss of U.S. citizenship due to taking Fr citizenship would not apply to me," he stated to the Bc "because I used to work for the United States Amer government." (As noted above, he purportedly worked for Enviromental Protection Agency in the 1970's.) The relevanc appellant's prior employment with the United States goverr to his naturalization in a foreign state escapes us. Surel does not really believe that former employees of the Ur States government are somehow different from other citizens may without risk to their United States nationality perfc statutory expatriating act.

Arguably, mere knowledge or belief that performance expatriating act could result in expatriation might not su to prove intent to relinquish citizenship for it is arg whether knowledge is equatable to intent. But here appe was, by his own admission, warned officially that obta French citizenship could cost him his citizenship: *ye* proceeded in the face of that caution. Such conduct str suggests an indifference to retention of United S citizenship, and the fair and logical inference to be drawn it is that [redacted] intended to transfer his allegiance fro United States to France. The record does not indicate wh the notarial personnel suggested to C[redacted] that he clarif position with the citizenship section before proceeding naturalization, but it would not be unreasonable to assume the suggestion was made. In any event, given the war [redacted] must be assumed to have deliberately passed up a cr opportunity to clarify what his legal position would be

respect to his United States citizenship if he obtained naturalization.

The inference of an intent to relinquish United States citizenship we draw from appellant's acquisition of French nationality despite an express warning that it could have adverse consequences for his United States citizenship, is reinforced by the fact that in March 1985 appellant applied for United States visas for himself and his two children to travel to the United States and did not renew his United States passport when it expired in 1984 hut rather chose to obtain a French passport.

C[redacted] asserts that he did not obtain a new United States passport when the one issued to him in 1979 expired because he had no intention of travelling. However, when his mother telephoned him in March 1985 to say that she proposed to buy tickets in two weeks for appellant and his family to visit the United States, "I quickly obtained a French passport; ...I consider this a perfectly normal thing for a newly naturalized citizen to do. I then applied for visas for the whole family which are free, rather than passports (U.S.) which cost money." And he states firmly that: "I most certainly did believe myself to be a U.S. citizen when I asked for a visa to enter the United States." In this connection, we note that the consular officer who processed C[redacted]'s case observed in her report to the Department that "buying a French passport is more expensive than an American one."

Appellant's actions are inconsistent with United States citizenship and belie his protestations that he never intended to relinquish United States citizenship. Between 1981 (when he arrived in France) and 1985 (when he applied for a United States visa) he had only one transaction with the Embassy - in 1981 when he requested notarial services. Is it unreasonable therefore to infer that when he asked for United States visas in French passports he was for all intents and purposes holdinq himself out to United States authorities as an alien? His contention that using a French passport and obtainina United States visas were simply matters of convenience and economy is not convincing. We are not persuade? that he was forced to leave France so quickly that he could not arrange his affairs prudently; certainly, had he wanted to travel as a United States citizen he would have explained to his mother that in order to travel to the United States he and his children would first have to obtain United States passports, and asked her not to commit the family to specific travel dates until he had time to document himself and his two children as United States citizens.

So, appellant's case is weakened by the fact tha applied for United States visas in foreign passports rather first seeking documentation as a United States citizen. Meretsky v. Department of State, et al., memorandum opi Civil Action 85-1985 (D.D.C 1985); affirmed, Meretsky v. Department of Justice, et al., memorandum opinion, CA 85-((D.C.C. May 1, 1987). In Meretsky plaintiff obt naturalization in Canada. A number of years later he comp a citizenship questionnaire in which he admitted that he mi visa inquiry to gain entry into the United States, rather first seeking documentation as a United States citizen. In action the court found additional evidence of plaintiff's i to relinquish United States nationality at the time he bec Canadian citizen.

In sum, disregarding an official caveat that he before acting, [redacted] obtained naturalization in a fo state, an act that evidences an intent to relinquish U States citizenship. 4/ In addition, [redacted] performed other

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4/ [redacted] rejects the proposition laid down by the Su Court that voluntary performance of a statutory expatriatin may be highly persuasive evidence and intent to relin citizenship. "I do not think voluntary naturalization in F is highly persuasive evidence of my intent to relinquish citizenship," he wrote in reply to the Department's h "since it was done for social security benefits which in free medical care, a/ allows me to find work more easi needed, and allows me to live in France without having t visas."

In this regard, the holding of the United States Cou Appeals for the Ninth Circuit in Richards v. Secretary of S 752 F.2d 1413 (1985) is relevant: whatever the motivati citizen's free choice to relinquish citizenship results in of that citizenship. In [redacted] case, his choice to relin citizenship is reflected in acts inconsistent with United S citizenship; his motivation in performing the stat expatriating act is thus irrelevant.

a/ According to the consular officer who processe case, Cobert is misinformed. As the official observed i report "Although Mr. [redacted] states that he applied for nationality in order to obtain French Social Security Embassy must take notice of French law which automat extends coverage to the spouse of anyone working in regardless of nationality.

acts from which one might fairly infer an intent in 1982 to relinquish his United States nationality. Nothing of record, save appellant's unsubstantiated assertions that he lacked the requisite intent, countervails the evidence of his renunciatory intent. Over a four-year period, he made no effort to hold himself or his children out as United States citizens or to document himself or them as such. 5/ In a word, one looks in vain for evidence of any positive act by [redacted] after 1982 suggestive of a will and purpose to retain his United States nationality.

In determining whether a citizen who performed a statutory expatriating act intended to relinquish citizenship, the trier of fact must base his conclusion upon hard facts not unsupported disclaimers of the citizen that he lacked the requisite intent. Subjective intent is only knowable to the extent it is externalized by words and proven conduct. Here the objective evidence demonstrates that more probably than not appellant intended to forfeit United States citizenship when he obtained French citizenship upon his own application.

On all the evidence, the Department has sustained its burden of proving by a preponderance of the evidence that [redacted] intended to relinquish United States nationality when he acquired the nationality of France upon his own application.

5/ With respect to the fact that he did not register the births of his children at the Embassy, [redacted] stated to the Board in his reply to the Department's brief that:

> ...I did not register my children at the consulate because I did not know that children were supposed to be registered. My wife is opposed to my children's registration as U.S. citizens because 'I don't want you to be able to suddenly take the children off to the U.S. without my being able to do anything about it'. She stated this when the children were being reqistered, and I put it in my questionaire [sic] which was filled out shortly after the children were reqistered...

III

Upon consideration of the foregoing, we hereby affir Department's determination that [redacted] expatriated himself.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Howard Meyers, Member