May 31, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: W [redacted] B [redacted]

This is an appeal from an administrative determination of the Department of State, dated December 28, 1984, holding that appellant, W [redacted] W [redacted] B [redacted], expatriated himself on January 26, 1973 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Australia upon his own application. 1/

The principal issue for decision is whether appellant intended to relinquish his United States nationality when he obtained Australian citizenship. For the reasons that follow, we conclude that the Department has not carried its burden of proving by a preponderance of the evidence that appellant intended to divest himself of his United States citizenship. Accordingly, we reverse the Department's holding of appellant's expatriation.

I

Appellant was born in the [redacted] on [redacted] He immigrated to the United States in 1949 and married a United States citizen in 1953. Five children were born to appellant and his wife in the United States. In 1960 he was naturalized as a United States citizen before the United States District Court for the Southern District of California.

1/ When appellant obtained naturalization in Australia, 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, ...

Pub. L. 99-653 (approved Nov. 14, 1986), 100 Stat. 3655, 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".

Appellant states that he went to Australia with his and children in 1964. The Department's record upon which determination of loss of appellant's nationality was b however, shows that he went there three years later. 2/ In application for a United States passport at Los Angeles February 1967, appellant stated that he had never held a Un States passport and that he intended to depart for the So West Pacific, including Australia, on March 3, 1967. He issued a passport on February 24, 1967, valid for three yea Therefore we may assume that appellant went to Austra sometime thereafter.

In his reply to the Department's brief, appellant gi the following account of the circumstances that led hin obtain naturalization in Australia

> Mr Bonderov states that he renewed his United States passport at least once and possibly twice in Australia. He would mail the passport to the U.S. Consulate [not identified] which would sent (sic) him back a renewed one. On the final occasion [no date given], however, he received no reply after sending his passport to the U.S. Consulate. He sent at least two letters to the Consulate to inquire into why his passport was being held up and had not been renewed. He never received a response. He visited the Consulate but no one could tell him why his passport was being held, or when he would get it back.
>
> Thus, Mr. Bonderov thought that he would never get his passport back. He felt that he had lost his United States citizenship. He believed that the United States had revoked his citizenship because the Consulate would not return his passport. Indeed, being a native of Russia, he feared that he would be deported from Australia to the Soviet Union. Mr. [redacted] did not want to give up his United States citizenship, but he felt

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2/ A number of years later (in April 1974) in an applicatio for a new United States passport, appellant stated that he ha lived in the United States from 1949 until 1967.

tnat it had already been taken away by the United States government. He did not understand anything about the law or his legal rights. Accordingly, in order to acquire some nationality, he applied for Australian citizenship.

The Australian Department of Immigration informed the United States Embassy by letter dated February 6, 1973 that a certificate of Australian citizenship had been granted to appellant on January 26, 1973. (There is no copy of the oath of allsgiance appellant swore upon being granted Australian citizenship, but the Board takes notice tnat applicants for Australian Citizenship in 1973 were required to make an oath (or affirmation) of allegiance to Queen Elizabeth tne Second that included renunciation of "all other allegiance.") The Department of Immigration further informed the Embassy that appellant's United States passport had not been collected; and that four of appellant's minor children were included in his certificate of citizenship.

In 1973 or 1974 appellant's wife and children left Australia and returned to the United States. Appellant remained in Australia until 1984 when he returned to the United States.

On July 17, 1973 the United States Consulate General at Melbourne ("the Consulate") wrote to appellant, stating that it had learned that he and four of his minor children had Seen naturalized. The Consulate pointed out that naturalization of nis minor children would not result in their expatriation unless they "willfully" failed to take up permanent residence in the United States before their respective 25th birthdays. He was asked to send their passports to the Consuiate so that they might be appropriately limited. No reply to its letter having been received, the Consulate again wrote to appellant on January 18, 1974, reiterating its request that he send his children's passports to the Consulate. The Consulate also asked appellant whether he was a United States citizen when he obtained naturalization. There was no response to that letter.

On April 1, 1974 appellant applied for a United States passport **at** the Consular Agency in Adelaide. In his application appellant stated that his last passport had been issued on February **24**, 1967 at Los Angeles; a consular officer indicated on the application that that passport was seen and cancelled on May 10, 1974. (It would appear that prior to his naturalization in Australia appellant did not apply for an extension of his 1967 passport when it expired in 1970, and that after 1970 he did not hold a valid United States passport.

Appellant's passport application was referred to the Consulate at Melbourne for appropriate action. On May 13, 1974 the Consulate at Melbourne wrote to appellant to request that

he complete the questions on the passport application relati to his naturalization in the United States. "Upon receipt the fully completed application form," the Consulate state "the new U.S. passport as well as your expired passport will returned...."

Meanwhile, an official of the Consulate realized that t required uniform loss of nationality letter nad not been sent appellant. 3/ An internal memorandum of uncertain date, apparently written by a consular official to a subordinat instructed the latter to send appellant a uniform loss nationality letter and to retain appellant's new and expir passports "until we get a decision on nis loss of citizenship."

On June 14, 1974 tne Consulate wrote two letters appellant. In one, the Consulate reiterated that his min children would not lose United States citizenship if th returned to the United States before their 25th birthdays. was asked to send their passports to the Consulate so they cou be appropriately limited. In the second letter, the Consula formally advised appellant that he might have lost his Unit States citizenship by obtaining naturalization in Australia. was invited to submit any evidence he might wish to t Department to consider in making a determination of h citizenship status. Finally, he was asked to complete a sho form and to indicate whetner he' performed the expatriative a voluntarily with tne intention of relinquishing citizenshi wnether he would submit evidence; and whetner he wished to ha an interview. Appellant did not respond to either of the abo two letters.

Three years passed. On February 13, 1378 tne Consula executed a certificate of loss of nationality in appellant's name. 4/ Therein a consular officer certified that appeilant

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3/ A uniform loss of nationality letter informs citizens wi have performed a statutory expatriating act that they may hav lost their United States nationality; advises them of the rigi to submit evidence for the Department to consider in determini their citizenship status; requests that they complete a form t determine citizenship; and offers to arrange an interview with consular officer.

4/ 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

acquired United States citizenship by virtue of naturalization; that he obtained naturalization in Australia upon his own application; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The certificate was forwarded to the Department under cover of a memorandum which recounted the events in [redacted] file in [redacted] name reveals no indication why his case lay dormant since June 14, 1974." The Consulate observed that: "Our The Consulate requested instructions in the event the Department wished the case to be further developed.

The Department replied to the Consulate on June 23, 1978. Since it was not clear, the Department stated, whether appellant had received the Consulate's June 14, 1978 uniform loss of nationality letter, the Consulate should try to ascertain appellant's current address and send him another such letter by registered mail. If appellant could not be located, the Department should so be advised. Action on the certificate of loss of nationality would be held in abeyance, since appellant had not had an opportunity to submit evidence in his own behalf.

On July 5, 1978, the Consulate sent another uniform loss of nationality letter to appellant which the latter received. On July 12, 1978 he completed and returned to the Consulate the short forms enclosed in the Consulate's letter. On one side, appellant signed a pre-printed statement which stated that: "I performed the act of expatriation set forth in paragraph 3 of the enclosure to the Loss of Nationality Letter voluntarily with the intention of relinquishing U.S. nationality." On the other side of the form he indicated that he obtained Australian naturalization voluntarily but did not intend to relinquish his United States nationality.

4/ Cont'd.

> 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 Consulate forwarded the completed questionnaire the Department under cover of a memorandum which reads pertinent part as follows:

> ...
>
> 2. Mr. Bonderov completed the ULN [Uniform Loss of Nationality] questionnaire on July 12, 1977 [sic-1978] that he had no desire to retain U.S. nationality on the reverse of that questionnaire. He states tnat his naturalization in Australia was performed voluntarily 'to acquire some citizenship as I had none when my U.S. passport was held'. He states further that he did not intend to relinquish U.S. citizenship when he naturalized in Australia. Under the remarks section, Mr. [redacted] states that he 'handed my U.S. passport to the U.S. Consul at Adelaide to have it renewed. It was never returned, therefore, I had to apply for Australian citizenship.'
>
> 3. As the Department will recall the material already in the possession the Department reflects that Mr. [redacted] obtained naturalization in Au on January 26th, 19 July 17th, 1973, we wrote to Mr. [redacted] about nis naturalization in Australia. On April lst, 1974, some 15 months after nis naturalization in Australia, he made an application for passport through the consular agent at Adelaide. In other words, Mr. [redacted] naturalization in Australia proceded [sic] by a rather substantial period of time is [sic] 1974 application for passport.

For the next five years appellant's case lay dorna while the Department endeavored to locate its file on his cas Finally, on March 9, 1984 it sent the following telegram to t Consulate:

> 1. Dept apologizes for delay in final decision on this case. Dept efforts to locate complete passport records of [redacted] [redacted] have been unsuccessful.
>
> 2. Evidence available to Dept at this time appears to support a finding of loss.

> Please attempt to contact Mr. [redacted] and advise him that Dept plans to make a determination regarding his loss of U.S. citizenship in the near future. Invite him to submit evidence for Dept's use in making decision.

In August 1984 the Consulate informed the Department that it had reached appellant's father, [redacted] A. [redacted] then living in South Australia, "who advis that subj now in Los Angeles and that subject has six [sic] children living in the U.S.". The Consulate added that the father had difficulty in understanding English and was not explicit as to whetner his son had gone to reside in the United States or only to visit. He stated that his son had left Australia in 1984. In a declaration made on August 17, 1986, appellant stated that *he* applied for an Australian passport and received one around November 11, 1983. He received a B-2 visa (temporary visitor for pleasure) from "the United States Consulate," (not identified) and about three months later returned to the United States.

The Department's case record' does not indicate whether the Consulate made any further effort to communicate with appellant. On December 28, 1984 the Department approved the certificate of loss of nationality that the Consulate in Melbourne executed in appellant's name in 1978. A copy of the approved certificate was sent to the Consulate in Melbourne which sent it on February 21, 1985 to what presumabaly was his father's address. "[redacted] A. [redacted] acknowledged receipt of tne Consulate's co ation ebruary 25, 1985 and apparently forwarded it to his son in tne United States.

Approval of a Certificate of loss of nationality constitutes an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. Appellant entered an appeal pro se in August 1985. He was eventually represented by counsel and requested oral argument by telephone which was heard on November 18, 1987. 5/

5/ The substantial delay in processing this case was due in part to appellant's inability for nearly a year to state a cause of action; only after he obtained pro bono counsel did he make a proper appeal. Further delays were encountered while appellant's counsel sought his medical records from a hospital in Adelaide, Australia.

II

The statute prescribes that a national of the Unit States shall lose his nationality by voluntarily obtain· naturalization in a foreign state with the intention relinquishing United States nationality. 6/

There 1s no dispute that appellant obtai naturalization in Australia upon his own application, and t brougnt himself within the purview of the applicable provisi of the statute. The issues for decision therefore are whet he acted voluntarily and whether he intended to relinquish i United States nationality. We address first the issue voluntariness.

Section 349(c) of the Act prescribes a legal presumpt. tnat one who performs a statutory expatriating act does voluntarily, although the actor may rebut the presumption upo showing by a preponderance of the evidence that he did not voluntarily. 7/

Appellant contends that he was forced against his will obtain Australian naturalization on the following grounds: He believed that he had lost his United States citizenship beca he never received his passport from the United States

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6/ Section 349(a)(1) of the Immigration and Nationality A text note 1, supra.

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

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

Pub. L. 99-653 (approved Nov. 14, 1986), 100 Stat. 36 repealed section 349(b) but did not redesignate section 349 or amend it to reflect repeal of section 349(b).

authorities after he sent it to them (on a date he could not recall) to be renewed. Believing therefore that he had become stateless, he feared he night oe deported to the Soviet Union; naturalization in Australia was the one way he believed ne could protect himself against such a calamity. Appellant further asserts that he was not mentally competent in 1972/73 to appiy for and obtain naturalization in a foreign state and thus perform a voluntary act of expatriation.

The fundamental weakness in appellant's contention that he became an Australian citizen involuntarily is that he has adduced no evidence to support his conclusory allegations. There is no proof that prior to the date of his naturalization he sent his 1967 passport to the United States authorities to be renewed. On the contrary, the first recorded tine he applied for a passport in Australia was April 1974. As we have seen, the Consulate acknowledged receipt of his 1967 passport, cancelled it and returned it to appellant. By applying for a United States passport in 1974 appellant actually indicated that he still considered himself to be a United States citizen. Appellant's contention that he was unaware in 1972/1973 that he was a United States citizen is no more than an unsubstantiated allegation.

Nor are we persuaded that as a matter of law he was mentally incompetent in 1972/1973 to make a voluntary act of expatriation. He has submitted no medical evidence to prove legai incompetence, and we may not speculate solely on tne basis of his present very confused recollection of what transpired fifteen years ago that he was not then competent to perform an act of free will.

We conclude tnerefore that appellant has not rebutted tne statutory presumption that he acted voluntarily wnen he applied for and obtained Australian citizenship.

III

It remains to be determined whether appellant intended to relinquish his United States nationality when he obtained naturalization in Australia upon his own application. Under the holding **of** the Supreme Court in Vance v. Terrazas, 444 **U.S.** 252, 263 (1980), the government (here the Department of State) bears the burden of proving that the party concerned performed the statutory expatriating act with the intent of relinquishing his United States citizenship. Intent is to be proved by a preponderance of the evidence. Id. at 267. Intent, the Court declared, may be expressed in words or found as a fair inference from the party's proven conduct. Id. at 260. It is the individual's intent at the time the expatriating act was performed that the government is required to prove. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

The Department formulates its case that appell intended to relinquish his United States nationality as follow.

> In this case, Appellant has demonstrated his intent to relinquish his U.S. citizenship in several ways. First, tne voluntary performance of certain acts can be highly persuasive evidence in a particular case of an intent to abandon citizenship. Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (Black, J., concurring). One of the most 'obvious and effective forms of expatriation ... [is] naturalization under the laws of another nation'. Savorgnan v. United States, 338 U.S. 491, 498 (1950). In fact, voluntary naturalization in a foreign country has been recognized by nearly all sovereignties as indicative of an intent to abandon former citizenship. Attorney General, supra, at 399.
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> In addition, the oath taken by appellant at the time of naturalization was clearly renunciatory. It contained both an express affirmation of loyalty to Australia and an express renunciation of loyalty to all previous nationalities. Whenever a citizen has freely and knowingly chosen to renounce his citizenship, his desire to retain his citizenship is outweighed by his reasons for performing an act inconsistent with that citizenship. Richards v. Secretary of State, 752 F.2d 1413, 1421 (9th Cir. 1985). The intent he express by his action is manifest and cannot later be disputed or denied. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

Obtaining naturalization in a foreign state may be highl persuasive but not conclusive evidence of an intent t relinquish United States Citizenship. Vance v. Terrazas, 44 U.S. at 261. Making a renunciatory oath of allegiance to foreign sovereign or state, however, is usually considere sufficient evidence of an intent to relinquish United State citizenship, provided the party acts voluntarily with ful knowledge and awareness of consequences of his act. Terrazas v Haig, supra; Richards v. Secretary of State, 752 F.2d 1413 (9t Cir. 1985).

In the case before the Board, there is evidence of a intent on appellant's part to relinquish his United State citizenship when he obtained naturalization in Austalia. For w must assume, absent contrary evidence, tnat he made a renun-

ciatory oath of allegiance upon oeing granteu Australran citizenship, Such evidence, however strong, is not sufficient to support a finding that appellant intended to forfeit his United States nationality. We must therefore pursue our examination of the evidence farther, as the court admonisned in United States v. Matheson, 532 F.2d 809, 814 (2nd Cir. 1976), cert. denied, 425 U.S. 823 (1976).

> Afroyim's [Afroyim v. Rusk, 387 U.S. 253 (1967)) requirement of a subjective intent reflects the growing trend in our constitutional juriprudence toward the principle that conduct will be construed as a waiver or forefeiture of a consitutional right only if it is knowingly and intelligently intended as such. Surely the Fourteenth Amendment right of citizenship cannot be characterized as a trivial matter justifying departure from this rule. Accordingly, there must be proof of a specific intent to relinquish United States citizenship before an act of foreign naturalization or oath of loyalty to another sovereign can result in the expatriation of an American citizen.,..

The dispositive issue in the case before the Board therefore plainly is whether appellant made a knowing and intelligent forfeiture of his United States citizenship when he obtained Australian citizenship. A number of considerations cause us to doubt that he had a sufficient awareness of the consequences of naturalization for his United States nationality.

Since the Australian authorities admitted appellant to citizenship, he obviously met at least their minimum physical and mental standards for naturalization. It does not necessarily follow, however, that appellant could be said to have had an adequate awareness of the implications of naturalization for his United States citizenship, that is, that he knowingly and intelligently forfeited that citizenship. The Department implies that appellant understood what he was doing in 1972/1973, but it is part of the Department's burden to prove that he acted knowingly and intelligently. The Department has not presented sufficiently persuasive evidence to overcome our doubts as to appellant's then-awareness of the consequences of naturalization tnat are raised by his testimony at the nearing and by post-hearing submissions made on his behalf.

At the hearing appellant showed himself to be a person of extremely modest intellectual endowment. He stated that his entire schooling consisted of a third grade education (in Iran after his family left the Soviet Union) and a three-nonth night school course in English (in the United States sometime after

nis arrival in 1949). 8/ In reply to a question from Board, appellant stated that when he lived and worked California (that is, before he went to Australia) someone fil out nis applications (e.g., for a driver's license) and income tax returns. "I asked someone to do, I couldn't do myself." 9/ "I can read but I cannot write," he stated. 10/ He had difficulty in understanding many questions put to him the Board and counsel for the Department, showing limit competency in English. He professed not to know the meaning the words "renouncing all other allegiance," the crucial phra in the oath of allegiance he purportedly swore upon becoming Australian citizen. 11/ He frequently lapsed into illucidit and spoke of visions he had seen in the United States before went to Australia and in Australia. He took his family Australia, he said, because he saw a vision, "and three wee before riot started he says, you know, tne vision told me, says go and tell people there will be a riot and bloodshed America." 12/ He described the vision this way:

> ...I saw a vision, such a giant man on a four-wheel--on a railroad track, rolling down [inaudible], such a giant [inaudible] in a cloud, and he asks me, ne says: why you so neglected for your children, your kids. And I asked this giant man, I said why shouldn't I [inaudible] his daughter, we had three houses, two cars, everything; I said within three years everything is demolished she [inaudible] with her parents and brothers and sisters. And I told her [inaudible], I said listen, dear, let's go to Australia, just not because we don't like this government or country, just because of [inaudible], think of the child-

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8/ Transcript of Hearing in the Matter of [redacted] before the Board of Appellate Review, November 18, 198 (hereafter referred to as "TR"). TR 25, 26.

9/ TR 66, 67.

10/ Id.

11/ TR 27, 28.

12/ TR 11.

> ren. When it quiet down we are going to come back again to America. 13/

The following exchange then took place between appellant and his counsel:

> Q. So, to sum up, you saw a vision that warned you about tne Watts riot?
>
> A. That's right.
>
> Q. And it warned you to take your family into safety?
>
> A. That's right.
>
> Q. And is that the reason that you moved to Australia?
>
> A. That's all.
>
> Q. At the time you moved to Australia, did you intend to return to the United States?
>
> A. Certainly, certainly, just like God told Joseph: take Mary and Jesus, brought to tne country of Egypt so the Pharaoh won't kill the Jesus Christ. And he listened; he took Mary and Jesus, said [inaudible] Egypt--and Jesus survived. And not because I'm a politician, I'm a Christ follower; if I wouldn't be a Christ follower, the Lord Jesus Christ wouldn't show me seven visions. But I'm glad I listened to the vision and I'm glad that I haven't done a wrong to this government. Instead of being Army or Navy or Air Force, because I had no support, they didn't [inaudible]; I say I am going to help tnis government, tnis country of ours. All one hundred employees, we put in four years of our time.
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> Q. Have you had other visions?
>
> A. Seven visions. 14/

13/ TR 12, 13.

14/ TR 13, 14.

After the hearing, the Department pointed out in memorandum to the Board that appellant did not apply for passport until 1967 and that the Watts riots took place in Ma 1966. "Therefore, Mr. [redacted] contention that he had vision and had to leave for Australia is not a logi conclusion."

That appellant's contention may not be logical is really relevant to the issue of whether he knowingly intelligently made a forfeiture of his United Sta citizenship. The point is that he now thinks he saw a vis that warned him to go to Australia and that he acted in respo to that warning. Tnis testimony suggests that it is j possible he was hallucinatory in the late 1960's or ea 1970's. Since he testified at "the nearing that he also visions in Australia, the possibility that he may hi experienced hallucinations around tne time of his naturalizat cannot be rejected out of hand. 15/

Beatrice H. Comini, a state-licensed psychologist Church Outreach, St. Matthais Espicopal Church, Whittie California wnere appellant now' lives, drew a gener psychological profile of appellant in November 1978. Whi noting that she had not done the formal testing and diagnos required for specific analysis, she states that sne has talk with appellant at the Church individually and in group sessio many times over the past two years. Her profile reads pertinent part as follows:

> Mr. [redacted] I believe, interprets the world at an infantile self-focusing level. In groups he is not able to acknowledge the feelings of others, but immediately turns to his own problems and experiences. His interpretations of his past dealings with others tend to be somewhat resentfully paranoid: his parents for depriving him of an education; his wife for stealing all his material gains; the U.S. government for trying to revoke the citizenship of someone wno had worked *so* hard.
>
> Reality is diffused through his own subjective interpretation. As I have listened to his discussion of what happened to his passport in Australia, I am convinced that he believed that without nis U.S. passport in his hands he was in immediate danger of being deported back to Russia.

15/ TR 29, 31.

> I doubt if any logical discussion of alternatives would have had any effect upon him.
>
> The several people who have at one time or another counseled Mr. [redacted] have not been able to help him understand the procedures facing him now.
>
> It is interesting that the employer he sought for verification of his social security status remembered him not from records but because of his eccentric behavior.
>
> He is well liked by the community here at the Church though he tends to keep to himself.

We are not competent to judge whether appellant was as unsophisticated and confused in 1972/1973 as he now appears to be. The way he responded in 1978 to the short questionnaire sent him by the Consulate in Melbourne, however, suggests that he was as muddled then about why he obtained naturalization as he is now. On one side of the form he signed a pre-printed statement that he had obtained naturalization voluntarily with the intention of relinquishing United States nationality. On the other, he stated (actually he contended that someone else had written everything on the form except his signature 16/) that he had acted voluntarily, "To acquire some citizenship since I had none when my passport was withheld." He answered "No" to a question whether he intended to relinquish his United States citizenship, explaining that: "I handed my U.S. passport to the U.S. Consulate at Adelaide to have it renewed. It was never returned. Therefore I had to apply for Australian naturalization."

The inconsistent statements he made regarding the issue of intent to relinquish United States citizenship and his twisting the order of events hardly make one feel confident that appellant earlier made a knowing and intelligent forfeiture of his United States nationality.

One of appellant's son's has offered evidence of his father's condition around the time of his naturalization. In a declaration dated March 1, 1988, [redacted] W. [redacted] stated that when the family went to Australia in early 1967 he was then 12 years old. He recalled that his father was then suffering from alcohol dependency and that in approximately 1968 his father was involved in two automobile accidents. The declaration continues:

16/ TR 71.

> I remember that in at least one of tnem he seriously injured his head and was hospitalized. I believe that after one of these incidents my father was placed in a mental institution. He was not placed tnere voluntarily and was not free to leave. He was tnere about 11 montns. Altnough my father was having obvious emotional problems, I believe that he was basically normal up to the point that he was involved in automobile accidents. However, after my father's accidents and subsequent institutionalization, I noticed a drastic change in him. He withdrew socially, became extremely unstable and began to show signs of senility. He became increasingly irrational....
>
> 4. My mother kept hoping that my father's situation would improve. However, he only continued to get worse. In about 1971 or 1972 my father's condition became so bad that my mother moved away with the entire family except for myself and and [sic] my brother William. We lived with my father for about another year or year and a half. Finally, we also decided to leave and went and lived with my mother and siblings. The entire family (except for my father) lived in Australia for about another year.
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> ...At the time I returned to tne United States I believe that my fatner had deteriorated to the point that he was essentially like a child.

[redacted] [redacted] declaration cannot be considere disinterested evidence, and some of his statements do not fir substantiation in the record. Nonetheless, it is significar that the records of the Royal Adelaide Hospital support hi assertion that his father was suffering from alcohol abus around the time the latter applied for and obtaine naturalization in Australia. Beginning in March 1972 ar continuing into 1980, appellant was admitted by the Royc Adelaide Hospital as an in-patient six times, all but or admission having been associated with "excessive alcohc intake." In March 1972 appellant was knocked off his bicycle b a motor vehicle and suffered a concussion followed by a shor period of amnesia. At another time in March 1972 he was care for by the accident and emergency section of the hospital fc hysteria. On subsequent occasions - in September 1973 and i September 1978 - he was hit on tne head and suffered fro amnesia. In June 1980 he was again admitted as an in-patient

and diagnosed as having alcohol hallucinosis, "thought to be due to cessation of drinking and withdrawal effects."

The Department asserts that the three post-hearing submissions made on appellant's behalf do not support his attorney's position that he lacked the intent and capacity to renounce his United States nationality. Ms. Comini cannot attest to appellant's state of mind in 1973, the Department points out. The summary of appellant's medical history at the Royal Adelaide Hospital does not, in the Department's judgment, demonstrate mental incapacity. Appellant's son's declaration contains what the Department regards as vague and unsubstantiated statements. In [redacted] t is the Department's contention that: "Although Mr. [redacted] could be described as somewhat eccentric and perhaps at times an alcoholic (this also has not been proven)", there is nothing in the file from an attending medical doctor to prove that he was incapable of making his own decisions at tne time of nis expatriation."

We find the Department's objections unpersuasive and insensitive. Granted, the documents in question, standing alone, are hardly conclusive evidence that appellant lacked the mental capacity in 1973 to make a meaningful forfeiture of his United States nationality. That, however, is not the point. The point simply is that the information in the three submissions lends fair weight to legitimate questions that arise as we review the entire record, particularly his remarkable testimony at the oral hearing, whether appellant understood beyond reasonable doubt what he was doing when he applied for and accepted Australian naturalization.

When the strands of evidence are drawn together, the picture tnat emerges of appellant in 1972/1973 is one of an ill-educated, semi-literate, accident-prone, probably alcohol-dependent, just possibly hallucinatory individual. In the circumstances and considering the fact that the evidence surrounding appellant's acquisition of Australian citizenship is scant (at the hearing appellant, could remember virtually nothing about the application process and the naturalization ceremony and the only objective contemporary evidence is the letter of the Department of Immigration attesting to his naturalization), it would seem only natural one might be skeptical that appellant was capable of knowingly and intelligently waiving or forfeiting nis United States nationality.

Since the record is so infused with uncertainties as to whether appellant acted with full awareness of tne implications of his Australian naturalization, we must resolve our doubts in favor of continuation of appellant's United States nationality. "Ambiguities in the evidence are to be resolved in favor of citizenship." Nishikawa v. Dulles, 356 U.S. 129, 136 (1958). "Courts must strain to construe both facts and applicable law 'as far as is reasonably possible in favor of the citizen.'" United States v. Matheson, supra at 818, citing Schneiderman v. United States, 320 U.S. 118, 122 (1943).

We thus conclude that the Department of State has not carried its burden of proving that appellant intended to relinquish his United States nationality when he obtained naturalization in Australia upon his own application,

IV

Upon consideration of the foregoing, we hereby reverse the Department's determination that appellant expatriated himself.

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Member