June 30, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] A[redacted] I[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, M[redacted] A[redacted] I[redacted], expatriated himself on July 17, 1986 unde[redacted] p[redacted] ons f 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 at Tel Aviv, Israel. 1/

In this case the Department failed to comply with the regulations regarding submission of the case record and its brief within the time prescribed, 22 CFR 7.5(c) and (d), and as further enlarged by the Board, 22 CFR 7.11. 2/ Thus,

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

The Immigration and Nationality Act Amendments of 1986, 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".

2/ 22 CFK 7.5(c) provides that upon written request of the Board the Department shall transmit to the Board within 45 days the record on which the Department's decision in the case was based.

constructively, the Department has not carried its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States citizenship. Accordingly, we reverse the Department's holding that appellant expatriated himself.

I

An officer of the United States Embassy at Tel Aviv executed a certificate of loss of nationality in appellant's name on July 17, 1986, in compliance with the provisions of section 358 of the Immigration and Nationality Act. 3/ Therein the officer certified that appellant acquired the nationality of the United States by virtue of his birth at Chicago, Illinois on November 2, 1964; that he lived in the United States until 1971; that he made a formal renunciation of his United States nationality on July 17, 1986; and thereby

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2/ Cont'd.

22 CFR 7.5(d) provides that the Department shall file a brief within 60 days after receipt of a copy of appellant's brief,

22 CFR 7.11 provides that the Board may for good cause shown enlarge the time prescribed by 22 CFR, Part 7 for the taking of any action.

3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads as follows:

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

expatriated himself. The Department approved the certificate on January 14, **1987**, approval constituting an administrative determination of loss Of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. Appellant initiated the appeal pro se on November 16, **1987.**

II

Appellant states that his mother took him to Israel when he was six years old. In Israel, mother and son became members of the Hebrew Israelite Community (Black Hebrews).

While growing up in the Community, appellant wrote to the Board, "[a]ll my rights and benefits as an American was [sic] hidden from me. Even to the point that I was not allowed to read material of my own country." Such knowledge as he had "was based on the teachings and indoctrinations I had received since my childhood." Continuing, he stated that:

> Around the time of my Renunciation members of the Community were asked if they were ready to give up their American citizenship. Even though it was openly stated that no one was making anyone give up their citizenship. Those who did not renounce were ostracized and ridiculed and made to feel socially unacceptable to the Hierachy [sic]. Therefore those who wanted to remain in good standing renounced their citizenship.

Appellant states that he renounced on his first visit to the Embassy. He went there with "a group from the Community who also renounced the same day." A "leader" from the Community was reportedly present and "remained with us during the entire procedure. He gave me instructions and told me what to answer to every question." Appellant continues:

> Yes I had an interview with the consular officer along with the rest of the group. Yes he did warn me orally about the serious consequences of renunciation. Again, I state I did not fully understand what the full ramifications were because I've never exspirience [sic] living learning and growing up [sic] U.S. of America.

III

The Board forwarded appellant's submissions to the representatives of the Department of State on January 6, **1988**,

requesting that, in accordance with the applicable federal regulations (22 CFR 7.5(c) and (d)), the Department file its brief and the record upon which it made its decision that appellant expatriated himself within 60 days, or by March 9, 1988. On March 4, 1988, the Department requested an extension of time to make its filing. Before filing its brief, the Department stated, it had "found it necessary to cable Tel Aviv to ask additional questions pertaining to the renunciation of Mr. [redacted] Therefore, we would appreciate an extension of the filing date until such time as a response is received."

The Board replied to the foregoing memorandum on March 7th as follows:

> For the cause stated, the Board will grant an extension of time to file the Department's brief on the appeal to three weeks after receipt of information requested of the Embassy at Tel Aviv about Mr. [redacted] renunciation. [22 CFR 7.111 Please send to the Board a copy of the Department's telegram to the Embassy at Tel Aviv. The Board assumes that the Department will follow-up that telegram with a request that the Embassy report without delay, should an answer not be received by, say, March 15th.

On March 22nd and April 26th, the Board asked the Department whether a response had been received from the Embassy at Tel Aviv. The Department not having responded to the foregoing two memoranda, the Board on May 13, 1988 informed the Department as follows:

> No sufficient cause having been shown why the Board should not proceed in this matter, the Board requests that the Department submit its brief and the case record by close of business Nay 31, 1988.

Before it had received the Board's May 13th memorandum, the Department sent the following memorandum to the Board under date of May 19th, referring to the Board's March 22nd and April 26th memoranda:

> The Department has received a response from Tel Aviv on the above-named case. The case raises some issues heretofore not considered concerning the voluntariness of the expatriating act. For that reason, we have asked the office responsible for approving the CLN to state their views

> since they may have a direct bearing on whether or not expatriation occurred.

On May 26th the Department replied to the Board's May 13th memorandum as follows:

> This case raises some issues heretofore not considered concerning the voluntariness of the expatriating act. For that reason, we have asked the office responsible for approving the CLN to state their views since they may have a direct bearing on whether expatriation occurred. Therefore, the Department requests the indulgence of the Board in granting the Department additional time for filing its brief.

The Board granted a final extension of time to the Department by memorandum dated May 27, 1988 which stated that:

> For the cause shown, the Board will once again extend the time for filing the Department's brief on this .appeal.
>
> Inasmuch as the brief was originally due March 22, 1988 [sic - actually March 91, the Board will be unable to extend the time for filing beyond June 15, 1988. The Board, therefore, expects that [the office representing the Department on the appeal] will impress on the other office concerned the need to handle this case as a priority matter so that the Department may make its filing on June 15th.

There can be no doubt that it was clearly understood by both the representatives of the Department and the Board that the Department's brief on the appeal was due on June 15, 1988. As of the close of business June 29,1988, the Department had neither filed its brief nor shown good cause why the Board should further enlarge the time for such filing.

We are, accordingly, of the view that the Department has had more than sufficient time to clarify any legal or factual matters it deems essential, and that to countenance any further delay, especially in the absence of any showing of good cause, would be unfair to appellant and detrimental to the integrity of the appellate process. Accordingly, exercising

the discretion given the Board by 22 CFR 7.2(a), we will, without more, decide the appeal. 4/

IV

There is no dispute that appellant duly made a formal renunciation of his United States nationality and so brought himself within the purview of the statute. 5/ He implies, however, that he did not act voluntarily.

Under section 349(c) of the statute there is a rebuttable legal presumption that one who performs a statutory expatriating act does so voluntarily. 6/

4/Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part that:

> ...The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.

5/ See note 1 supra.

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

> (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 (approved Nov. 14, 1986), 100 Stat. 3655, repealed section 349(b) but did not redesignate section 349(c) or amend it to reflect repeal of section 349(b).

Appellant has not rebutted the presumption that he acted voluntarily in renouncing his United States nationality. He suggests that the leadership of the Community pressured him to renounce, but adduces no evidence to substantiate such claim. His statements to the Board intimating that he was forced to renounce stand in contrast to the mandatory statement of understanding he presumably signed on the day he renounced to the effect that he was acting of his own free will.

We therefore conclude that appellant's renunciation was a voluntary act.

V

There remains to be determined the issue whether appellant intended to relinquish his United States nationality when he made a formal renunciation of that nationality.

The Supreme Court held in Afroyim v. Rusk, 387 U.S. 253 (1967) that a United States citizen has a constitutional right to remain a citizen "unless he voluntarily relinquishes that right", and that Congress has no general power to take away an American's citizenship without his assent.

In Vance v. Terrazas, 444 U.S. 252 (1980), the Court affirmed Afroyim, holding that to establish loss of citizenship, the government must prove an intent to relinquish citizenship. Intent may be proved by a person's words or found as a fair inference from proven conduct. In Terrazas, the Court made clear that under section 349(c) of the Immigration and Nationality Act it is the government's burden to establish by a preponderance of the evidence that the expatriative act was performed with the intention of relinquishing citizenship.7/ Thus, the Department must show by a preponderance of the evidence that the appellant here intended to relinquish his United States nationality. There is no presumption of such intent.

The Department obviously has not carried its burden of proof in this case. We deem the Department's failure to submit the case record and brief within the time prescribed by the regulations and as enlarged by the Board a tacit election not to

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7/ See note 6 supra.

assume its statutory burden of proving that appellant intended to relinquish his United States nationality. His allegation that he did not act knowingly and intelligently when he performed the expatriative act, and therefore lacked the requisite intent, stands unrefuted. It therefore follows that the Department has not carried its burden of proof.

VI

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

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member