DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: L[redacted] E[redacted] B[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, L[redacted] E[redacted] B[redacted], expatriated herself on April 5, 1948 under the Provisions of section 401(a) of the Nationality Act of 1940 by obtaining naturalization in Canada upon her own application. 1/

The issues presented for decision are whether appellant acquired Canadian citizenship voluntarily and, if it be so found, whether it was her intention to relinquish her United States citizensnip. For the reasons that follow, it is our conclusion that appellant became a Canadian citizen of her own free will, and intended to transfer her allegiance from the United States to Canada. Accordingly, we affirm the Department's determination that appellant expatriated herself.

I

Appellant (nee L[redacted]) acquired United States nationality by virtue of her birth at [redacted] shortly after her birth and that her father gave her into the care of her paternal qrandparents who took her to Canada four years later. Appellant further states that she joined the Royal Canadian Air Force in 1942 and served as a telephone operator. She was discharged in 1945, and a year later secured a civil service position, also as a telephone operator. In an affidavit executed Auqust 27, 1986, she stated that early in 1948 she was informed by the Civil Service that in order to retain her employment she would have to become a Canadian citizen. Appellant applied for naturalization and on April 5, 1948 was granted a certificate of Canadian citizenship,

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1/ Section 401(a) of Chapter IV of the Nationality Act of 1940, 8 U.S.C. 801, provided as follows:

> Sec. 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtainiriq naturalization in a foreign state, either upon his own application or through the naturalization of a parent having legal custody of such person:... .

pursuant to the provisions of section 10(1) of the Canadian Citizenship Act of 1946. The Board takes notice that in 1948 applicants for naturalization under section 10(1) of the Act (other than certain Commonwealth citizens) were required by section 19(1) of the Canadian Citizenship Regulations to make the following oath at the time of the grant of citizenship:

> I hereby renounce all allegiance and fidelity to any foreign sovereign or state of whom or which I may at this time be a Subject or Citizen and I swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, his Heirs and Successors, according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen, so help me God.

Thirty-eight years later appellant's naturalization came to the notice of United States consular authorities in Canada. While the record does not disclose how that came about, it does show that the Consulate General at Vancouver wrote to appellant on March 5, 1986 to inform her that by obtaining Canadian citizenship she might have expatriated herself. She was asked to complete a form titled "Information for Determining United States citizenship," and informed that she might discuss her case with a consular officer. She completed the form and returned it to the Consulate General. It does not appear from the record that she had an interview with a consular officer. On June 16, 1986, a consular officer executed a certificate of loss of nationality in the name of L[redacted] E[redacted] B[redacted], as required by law. 2/ Therein the consular officer certified

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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 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

that appellant acquired United States nationality by virtue of her birth in the United States; obtained naturalization in Canada on April 5, 1948 upon her own application; and thereby expatriated herself under the provisions of section 401(a) of the Nationality Act of 1940. The Consulate General forwarded the Certificate and supporting papers to the Department under cover of a memorandum recommending that the certificate be approved.

> According to her submissions, Mrs. B[redacted] applied for and accepted Canadian naturalization as a condition of employment with the Canadian Federal Government. Initially she denied recollection of the mandatory statement of renunciation of U.S. citizenship required by Canadian law at the time of her naturalization. However after receiving our explanation about the renunciation requirements in effect in 1948, she agreed that indeed she must have signed the statement and agreed to the conditions. Mrs. B[redacted] offers no other explanation than that she needed the employment at the time and didn't think she would really lose her U.S. citizenship.
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> It is the Consul's opinion that L[redacted] B[redacted] was an adult person over the age of 21 years with full mental capacity to understand the statement of renunciation she signed, and the consequences thereof. There is no evidence that either the oath of allegiance nor the statement of renunciation were taken other than voluntarily.

The Department approved the certificate on July 2, 1986, 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 filed this appeal through counsel in June 1987.

2/ Cont'd.

> 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.

II

Section 401(a) of the Nationality Act of 1940 prescribed that a national of the United States would lose his nationality by obtaining naturalization in a foreign state upon his own application. 3/ There is no dispute that appellant obtained Canadian citizenship upon her own application, and thereby brought herself within the purview of the statute.

Nationality shall not be lost as a result of performing a statutory expatriating act, however, unless the act was performed voluntarily with the intention of relinquishing United States nationality. Section 349(a)(1) of the Immigration and Nationality Act. 4/ We therefore must determine whether appellant became a citizen of Canada voluntarily.

There is a legal presumption that one who performs a statutory expatriating act does so voluntarily, but the actor may rebut the presumption upon a showing by a preponderance of the evidence that the act was not voluntary. 5/

3/ Text supra note 1.

4/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481, reads 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 voluntarily performing any of the following acts with the intention of relinquishing United States nationality.
>
> (1) obtaining naturalization in a foreign state upon his own application,...

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

Appellant contends that she was forced by economic circumstances to obtain Canadian citizenship. She alleges that in 1948 she had to choose between obtaining naturalization or losing her job. Opportunities for women at that time were "significantly limited," she submits, this being particularly true in the town where she lived in "remote" northeastern British Columbia. Since she had lived most of her life in Canada, "it is difficult to understand what alternatives were she had " she asserted in her reply brief, adding that she had no family or social group to which she could return in the United States.

The courts have established rigorous standards for proof of duress. The general rule was stated in 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. On the other hand it is just as certain that the forsaking of American citizenship, even in a difficult situation, as a matter of expedience, with attempted excuse of such conduct later when crass material consideration suggest that course, is not duress.

170 F.2d at 724.

Economic duress has long been recognized as a valid defense to performance of a statutory expatriating act. The leading cases hold, however, that one who pleads economic duress must show that the prevailing economic conditions constituted a

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5/ Cont'd.

> 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 1386, PL 99-653, 100 Stat. 3655 (1986), repealed section 349(b) but did not redesignate section 349(c), or amend it to take account of repeal of section 349(b).

threat to that person's ability to subsist and that only by doing the expatriative act could dire economic circumstances be escaped. See Stipa v. Dulles, 233 F.2d 551 (3rd Cir. 1956) and Insogna v. Dulles, 116 F.Supp. 473 (D.D.C. 1953). In Insogna v. Dulles, the expatriating act was performed to obtain money necessary "in order to live." 116 F.Supp. at 475. In Stipa v. Dulles, the alleged expatriate faced "dire economic plight and inability to obtain employment." 283 F.2d at 556. A correlative requirement of proof of economic duress is a showing that the person made a bona fide attempt to find an alternative way to relieve his or her economic distress that would not endanger citizenship but to no avail. See Richards v. Secretary of State, 752 F.2d 1413, 1419, (9th Cir. 1985), where the court stated that: "Moreover, it does not appear that, upon becoming aware that he would have to renounce his United States citizenship in order to acquire Canadian citizenship, Richards made any attempt to obtain employment that would not require him to renounce his United States citizenship."

Appellant has not persuaded us that she was forced by economic factors over which she had no control to acquire Canadian citizenship. Her case is fundamentally flawed because it rests solely on undocumented, conclusory claims of economic duress.

She has submitted no evidence that she was informed in 1948 that she would have to become a Canadian citizen or face dismissal. Nor has she shown that if she had been discharged from the Civil Service, she would have been destitute. Even if we were to accept her claim that she was told she would lose her job unless she became a Canadian citizen, and so suffer economic hardship, we note that she has not demonstrated that she made any effort to find employment that would not require her to hold Canadian citizenship. Arguably, it might have been difficult for appellant to find alternate employment in 1948, but she has neither elaborated why she believed this to be so, nor documented her claim. She may not have had realistic alternatives in the United States (although on this point as well she is short on proof), but she has not shown that there were no jobs in the non-public sector in Canada for which she could qualify. So, while we will grant that appellant may have faced some degree of economic difficulty in 1948, we are not convinced that the only feasible way she could remain gainfully employed was through performance of a statutory expatriating act. We thus come to the conclusion that appellant has failed to rebut the presumption that she acted voluntarily when she applied for and obtained Canadian citizenship.

III

The statute 6/ provides, and the cases hold, that even

6/ Text supra note 1

though a citizen voluntarily performs a statutory expatriating act, loss of citizenship will not ensue unless it be proved that the citizen intended to relinquish his United States nationality. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967). It is the government's burden to prove a party's intent, and it is to do so by a preponderance of the evidence. . Vance v. Terrazas, supra, at 267. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The intent the government must prove is the party's intent when the expatriating act was done, in appellant's case, her intent when she voluntarily obtained naturalization in Canada. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

The only evidence of record that is contemporaneous with appellant's naturalization is the act of naturalization and her oath of allegiance to King George the Sixth which included renunciation of all other allegiance. Obtaining naturalization in a foreign state may be highly persuasive evidence of an intent to relinquish United States citizenship, as the Supreme Court said in Vance v. Terrazas, supra, at 261:

> ...we are confident that it would be inconsistent with Afroyim [387 U.S. 253 (1967)] to treat the expatriating acts specified in sec. 1481(a) [U.S.C.] 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 (1958) (Black, J., concurring)....

Expressly renouncing all other allegiance adds substantial weight to the evidence of performance of an expatriative act, and the case law is explicit about the legal consequences of making an express declaration of renunciation of one's allegiance to the United States. 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 factors of sufficient weight to mandate a different result. Terrazas v. Haig, supra; Richards v. Secretary of State, supra; Meretsky v. Department of Justice, et al., memorandum opinion, No. 86-5184 (D.C. Cir. 1987).

The plaintiff in Terrazas v. Haig, supra, made a formal declaration of allegiance to Mexico and simultaneously renounced United States citizenship. The Court of Appeals held that there was "abundant evidence" that the plaintiff knowingly and

intelligently performed the proscribed act with the intention of relinquishing United States nationality. He was 22 years old, well-educated and fluent in Spanish when he applied for a certificate of Mexican nationality that contained an oath of allegiance to Mexico and a renunciation of United States citizenship. His subsequent conduct also cast doubt on his contention that he lacked the requisite intent to relinquish citizenship.

Richards v. Secretary of State, supra, involved the naturalization in Canada of a United States citizen who swore an oath of allegiance to Queen Elizabeth the Second and, as did the appellant in the case before us, made a concomitant declaration renouncing allegiance to any other state. The Court of Appeals for the Ninth Circuit agreed with the district court that "the voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." 753 F.2d at 1421. The Court of Appeals accepted that the plaintiff wished to become a Canadian citizen and would have liked also to remain a United States citizen, but because Canada required relinquishment of his other citizenship, he chose to renounce United States citizenship in order to obtain Canadian citizenship. Appellant argued that he lacked the requisite intent because he never desired to surrender his United States citizenship. Since he had no wish to become a Canadian citizen independent of a perceived need to advance his career, the necessary intent was lacking, he asserted. The Court of Appeals disagreed, saying that if a citizen freely and knowingly chooses to renounce his citizenship and carries out that decision, his choice must be given effect. In brief, a citizen's specific intent to renounce his citizenship does not turn on motivation.

Meretsky v. Department of Justice, supra, parallels Richards. The plaintiff in Meretsky also made an oath of allegiance to Canada and renounced allegiance and fidelity to the United States. He argued that he should not be found to have had the requisite intent to renounce his United States citizenship because he only became a Canadian citizen so that he might be admitted to the practice of law in Canada. Finding that plaintiff failed to produce evidence that he took the Canadian oath under duress, the court adopted the reasoning of the 9th Circuit in Richards, supra, to the effect that "a United States citizen's free choice to renounce his citizenship results in loss of that citizenship." The oath plaintiff took, the Meretsky court declared, renounced his United States citizenship "in no uncertain terms." 7/ Memo. op. at 5.

7/ At the end of its opinion the Court of Appeals added the following footnote (number 3):

Although a preponderance of the evidence shows that appellant in the case before us intended to relinquish her United States nationality, we must still determine whether she acted knowingly and intelligently when she obtained naturalization in Canada and made an oath of allegiance that included express renunciation of her United States citizenship.

Appellant was 33 years old when she obtained Canadian citizenship. Nothing of record indicates that she was unable to understand what she was doing. Indeed, she concedes she fully understood that in order to retain her position in the Canadian Civil Service she would have to become a Canadian, and deliberately set out to do so. She suggests, however that she was not aware in 1948 that she niqht expatriate herself. When her case was processed in 1986, she stated in the citizenship questionnaire she completed at the request of the Consulate General that she did not know she might lose her United States citizenship by obtaining Canadian citizenship; she had hoped to have dual citizenship. In a subsequent letter to the Consulate General she conceded, however, that she might have siqned the renunciatory statement in the oath, but "did not appreciate that this would ultimately affect my rights as an American citizen." Despite her disclaimer, we are not convinced that she was unable to understand the meaning and possible legal consequences of the renunciatory statement she made. We must therefore conclude that appellant acted deliberately and wittingly when she obtained naturalization in Canada.

Finally, we must examine the record to determine whether there are any factors that would cast such doubt on appellant's specific intent as to warrant our concluding that she more

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1/ Cont'd.

C.F. United States v. Matheson, 502 F.2d 809 12d Cir.) (finding that an oath that did not explicitly renounce other citizenships did not demonstrate the specific intent required by section 1481(a)), cert. denied, 429 U.S. 823 (1976). In that case, the court also found a 'wealth . . . of evidence' indicating that despite the oath, the subject 'continually believed and represented that she was a citizen of the United States.' Id. at 812. The Second Circuit held that the language of that oath was consistent with the concept of dual nationality. The oath taken by Meretsky, on the other hand, explicitly renounced fidelity to any other governments.

likely than not did not intend to relinquish her United States nationality. Careful scrutiny of the evidence before us reveals none. At no time after her naturalization did appellant say or do anything of record to represent herself as a United States citizen. Not until thirty-eight years had passed did she, for a reason or reasons not disclosed to us, even discuss her United States citizenship status with United States officials. Appellant's ostensible indifference to U.S. citizenship for so many years after she performed an expatriative act can most reasonably be construed as confirmatory of the intent to relinquish citizenship she manifested when she made the Canadian oath of allegiance.

On all the evidence, the Department has carried its burden of proving that appellant intended to relinquish her United States nationality when she obtained naturalization in Canada upon her own application.

IV

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

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Howard Meyers, Member