DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State, dated December 18, 1986, that appellant expatriated herself on July 3, 1986 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Munich, Federal Republic of Germany. 1/

The two questions presented are whether appellant relinquished her United States nationality of her own free will and whether it was her intention to relinquish that nationality. For the reasons that follow, we conclude that both questions should be answered in the affirmative. Accordingly, we affirm the Department's decision that appellant duly expatriated herself.

I

Appellant was born in [redacted] [redacted]. She went to the United States in 1962 and became a citizen on June 4, 1968 by virtue of naturalization before the

---

1/ In July 1986, section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), read:

> 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:. . .

Pub. L. 99-653 (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".

U.S. District Court for the Northern District of California. Under German law, she thereby automatically lost her German nationality. She returned to Germany in 1970 where she has lived since. In 1976 she married Petru M[redacted], a widower of Romanian nationality with two small children, who had been granted political asylum in Germany two years earlier.

According to appellant, her husband applied for German naturalization in 1984 or 1986 (appellant was not precise) for himself and his children because he considered his position and theirs as refugees insecure. The German authorities reportedly informed M[redacted] that he and the children might not be granted German citizenship unless appellant too applied for and obtained naturalization. Under German law, applicants for naturalization (except alien women married to German citizens) are required to relinquish their previous nationality at the latest at the time of their naturalization. Allegedly loath to relinquish her United States nationality, appellant long resisted her husband's pressure to join him and the children in applying for naturalization. By the spring of 1986, however, it appears appellant decided to renounce her United States nationality so that the family could become German citizens. According to an officer of the Consulate General at Munich, appellant visited that office on May 30, 1986 and asked to renounce her citizenship. Appellant's version of her visit to the Consulate General is as follows:

> Under enormous pressure, I went then to the American Embassy and asked for their help. First, they did not believe me that I kind of was forced to my step of renunciation and they confirmed me that they could not let me renounce citizenship just like that. Then they requested from the authorities here in Germany the already mentioned letter [see below] and they told me that this could be my chance that I might be able to keep the American citizenship. But then end of February/beginning of March 1987 I received unfortunately your confirmation of renunciation.

The officer to whom appellant spoke evidently refused to accept her renunciation, as he explained in a letter to the County Executive of Lower Franconia at Karlstadt dated May 30, 1986:

> Mrs. Mi[redacted] came to the Consulate General on May 30, 1986 and asked to renounce her U.S. citizenship. Upon reviewing her application I found that under U.S. law I could not accept her renunciation without further documentation. Although the initial papers for renunciation are completed by a Consulate, the final decision rests with the Department of State. It is my position that the Department will not accept the renunciation without a statement from German authorities that (1) under German law Mrs. [redacted] must renounce U.S. citizenship in order to obtain German citizenship and (2) that she must obtain German citizenship if her husband is also to be granted German citizenship.
>
> A statement from your office to this effect will allow the Consulate to prepare renunciation papers in a manner that will be accepted by the Department of State and we respectfully request such a statement.

On June 3, 1986 the County Executive executed a certificate for presentation to the Consulate General which read as follows:

> Certification
>
> The general administrative regulations for the Law on German Citizenship and Nationality [Reichs- und Staatsangehoerigkeitsgesetz] (naturalization guidelines) include a number of elements which are prerequisite if a person is to be naturalized as a citizen of the Federal Republic of Germany.
>
> For Mrs. Milinkovics, the following points are of particular note:
>
> 1. As a rule, a naturalization is performed only if

> documentary evidence has been provided that the applicant for naturalization relinquishes his previous nationality at latest with the naturalization (avoidance of multiple nationality).
>
> 2. As a rule, a family with minor children is naturalized only if all members of the family request the naturalization (uniform nationality within the family). 2/

On July 3, 1986 appellant formally renounced her United States nationality at the Consulate General in Munich. Before making the oath of renunciation, she executed a statement of understanding in which, inter alia, she acknowledged that she was renouncing her United States nationality voluntarily; that she would thereby become an alien toward the United States: that the serious nature of her act had been explained to her by the consular officer and she fully understood its consequences: that she wished to make a statement to explain why she was renouncing; and finally, that she had read the statement of understanding in English and fully understood its contents. The oath of renunciation was then administered to her. Thereafter, in compliance with the provisions of section 358 of the Immigration and Nationaliaty Act, the consular officer concerned executed a certificate of loss of nationality in appellant's name. 3/ Therein he certified that appellant

---

2/ English translation, Division of Language Services, Department of State, LS No. 125571, 1988 (German).

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

acquired United States nationality by virtue of naturalization; that she made a formal renunciation of her United States nationality; and thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. Two months after her renunciation appellant executed an affidavit on September 5, 1986 in which she explained why she had renounced her United States nationality. "I was practically forced by the circumstances to take this step." She requested that the Department not accept her renunciation and allow her to have a United States passport, "if the laws would permit this in any way."

The Department approved the certificate on December 19, 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 an appeal within the allowable time.

Pursuant to the regulations, 22 CFR 7.5(d), the Board set May 19, 1988 as the date for the Department to file its brief on this appeal. At the Department's request, the Board twice exercised its discretionary authority under 22 CFR 7.11 to enlarge the time to file its brief by granting the Department's requests for extensions of time. The brief was finally due on June 15th. The Department did not file, however, until July 7th, and gave the following reasons for tardy filing:

> The Department regrets that it is submitting its brief beyond the due date. The responsible office has worked for some time under a staffing handicap and has recently experienced a number of inflexible deadlines and scheduling conflicts which prevented timely submission of this brief.

3/ Cont'd.

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 Board deplores the Department's failure to file its brief within the time prescribed, and would have refused to entertain the brief but for the fact that on June 27th the Board, noting that the brief still had not been filed, requested that it be filed without further delay. Since the Board's memorandum was open to the construction that the Board sua sponte granted the Department a further extension of time to file, it would be unreasonable to penalize the Department.

II

Section 349(a)(5) of the Immigration and Nationality Act prescribes that a United States citizen shall expatriate himself by voluntarily making a formal renunciation of nationality before a consular officer of the United States in a foreign state in the form prescribed by the Secretary of State with the intention of relinquishing United States nationality. 4/

There is no dispute that appellant made a formal renunciation in the manner and form prescribed by the statute and regulations issued by the Secretary of State. The first issue we address therefore is whether she performed the expatriative act voluntarily.

By law, a person who performs a statutory expatriating act is presumed to do so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 5/

4/ See note 1 supra.

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

> (c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of

Appellant contends that her renunciation was involuntary in that she was placed in a situation where she had "almost no choice" but to surrender her United States nationality. Her husband decided (for reasons not completely clear to us) that it was important for him and his minor children to acquire German citizenship. Under German law they might not be naturalized unless all family members were naturalized. Applicants for naturalization in Germany must relinquish their previous nationality. Therefore, although appellant did not wish to relinquish her United States nationality, she had no choice in the circumstances.

In essence, appellant pleads that she renounced her United States nationality under the duress of marital and family devotion.

Duress implies absence of choice. Opportunity to make a decision based on a personal choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971), cert. denied, 404 U.S. 946 (1971).

"To avoid having to apply for German nationality citizenship," appellant wrote to the Board, "there would have been only the possiblity of divorce." Divorce, however, was foreclosed, since she and her husband had jointly bought a house and placed a mortgage on it. In her reply to the Department's brief, appellant further maintained that it would have been impossible for the family to move to the United States. The change would have been "catastrophic" for her "complicated" step-daughters, disrupting their schooling, friendships, and entailing other complications.

We will agree that appellant found herself in a difficult situation, and that while she valued her United States citizenship, she wished to do what her husband apparently persuaded her was best for the family. The question presented here, however, is whether as a matter

---

5/ Cont'd.

> 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.

of law appellant was forced to act against her fixed will and intent to do otherwise.

Under certain circumstances family obligations may be so compelling as to negate freedom of choice. See Prieto v. United States, 289 F.2d 12 (5th Cir. 1961): Takehara v. Dulles, 205 F.2d 560 (9th Cir. 1961): Jubran v. Dulles, 255 F.2f 81 (5th Cir. 1958); Mendelsohn v. Dulles, 207 F.2d 37(D.C.Cir. 1953); Ryckman v. Acheson, 106 F.Supp. 739 (S.D. Tex. 1952).

Generally, the circumstances which led one to perform an act in derogation of United States citizensihp must be unusual and exigent before the courts will consider that the actor was deprived of freedom of choice. Performing an act to gratify a spouse or parent, however, clearly is insufficient to persuade a court that a person acted involuntarily. In Prieto v. United States, supra, the petitioner, an alien, obtained an exemption from military service "against my better judgment, because my mother wanted me to sign it [a form to request relief from military service]". She associated the illness and death of appellant's older brother with the army and wished her younger son to have nothing to do with the military. Some years later appellant Prieto applied for naturalization as a United States citizen but his petition was denied on the grounds that he was barred under law from becoming a United States citizen by virtue of having obtained an exemption from military service. He contended that his mother's pressure to sign the request for exemption amounted to legal duress, The court held that he acted voluntarily. "It seems probable," the court stated, "that the appellant's primary motive in signing the form was to satisfy his mother." The court continued:"

> Though we may sympathize with the plight in which the appellant found himself, yet the filial duty of the son does not afford any escape from the effect of the statute. The appellant was not misled in any respect. He was fully aware of the consequence of taking the exemption. He made an election and the making of

---

5/ Cont'd.

PL 99-653, (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).

> it was deliberate and after seeking advice. He made his voluntary election against his better judgment but having made it and having had the benefit of it he must be held to the result that Congress has imposed. Jubran v. United States, 5 Cir., 1958, 255 F.2d 81; Kahook v. Johnson, 5 Cir., 1960, 273 F.2d 413.

We appreciate that appellant here wanted to preserve the integrity of her family and do what she (under the persuasion of her husband) considered best for the four of them. She may not escape the expatriating provisions of the statute, however, by asserting that she had no choice but to acquiesce in the importuning of her husband. She owed him a number of duties (as did he her), but the marital obligation did not extend to acquiescing in an action that she allegedly was loath to take. Furthermore, appellant has not shown that the status of her husband and her step-daughters was so precarious in Germany that deferral of naturalization for a few years until her step-daughters were of legal age would have been an unreasonable course to take. According to appellant her step-daughters were then 18 and 16 years old.

On the facts presented, appellant had a choice: to take a strong stand with her husband against relinquishing her United States citizenship or give in. She chose the latter. It must follow that her renunciation of United States nationality was a voluntary act.

III

Finally, there is the question whether appellant intended to relinquish her United States nationality when she made a formal renunciation. The government bears the burden of proving by a preponderance of the evidence that such was her intention. Section 349(c) of the Immigration and Nationality Act (note 5 supra) and Vance v. Terrazas, 444 U.S. 252 (1980). Intent may be proved by a Person's words or found as a fair inference from proven conduct. Id. at 260.

Formal renunciation of United States citizenship in the manner mandated by law and in the form prescribed by the Secretary of State is, on its face, unequivocal and final. "A voluntary oath of renunciation is a clear statement of desire to relinquish United States citizenship." Davis v. District Director, Immigration and Naturalization Service, 481 F.Supp. 1178, 1181 (D.D.C. 1979). Intent to abandon citizenship is inherent in the act. The words of the oath of renunciation fairly proclaim appellant's specific intent:

> I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

Our sole inquiry therefore is whether appellant executed the oath of renunciation knowingly and intelligently, as well as voluntarily. The record leaves no doubt that she did so. She signed a statement of understanding in which she acknowledged that the serious consequences of renunciation had been explained to her by a consular officer and that she fully understood them. The personal statement she made two months after her renunciation also substantiates the view that she acted deliberately, if reluctantly. She knew that in order to obtain German citizenship she was required under German law to divest herself unequivocally of United States citizenship. Since she obviously proposed to acquire German citizenship, there can be little doubt that she carried out a pre-conceived plan. A mature, evidently experienced person, appellant surely knew what she was doing. We perceive no inadvertence or mistake of law or fact on her part.

In brief, appellant's voluntary forfeiture of her United States nationality was accomplished in due and proper form with full consciousness of the gravity of the act.

IV

Upon consideration of the foregoing, we conclude that appellant expatriated herself on July 3, 1986 by making a formal renunciation of her United States citizenship before a consular officer of the United States in the form prescribed by the Secretary of State.

Accordingly, we affirm the Department's administrative determination of December 19, 1986 to that effect.

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member