DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M L S

The Department of State determined on April 15, 1986 that M L S expatriated herself on March 13, 1964 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining zation in Canada upon her own application. 1/ Mrs. appeals that decision.

For the reasons stated below, we will affirm the Department's holding of loss of appellant's nationality.

I

Appellant acquired United States nationality by virtue of birth at She received primary and secondary schooling in the United States, and in 1958 enrolled in the University of Toronto. In her third year at university appellant met her future husband, Abner a Canadian citizen. It appears that in the fall of 1961 she took to Connecticut to meet her family. When appellant's widowed mother (in appellant's words, authoritarian, repressive and a strict Catholic) learned

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1/ In 1964 section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read in pertinent part as follows:

> Section 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 --
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> ...
>
> (1) obtaining naturalization in a foreign state upon his own application,....

Pub. L. No. 99-653, 100 Stat. 3655 (1986), 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".

that [redacted] was Jewish, a foreigner and from a working class family, she reportedly became furious that appellant contemplated marrying him, and attempted, unsuccessfully, to prevent her daughter from returning to Canada. Thereafter, in Canada, appellant testified during oral argument, a number of problems arose for her and [redacted] 2/ Her mother arranged that she should be denied access to funds her father had left for her education. "Another harrowing experience" was that private detectives "began following me a good deal of the time." 3/ As she put it in an affidavit, dated April 10, 1987, she noticed that she was being followed by "strange men, who turned out to be private investigators hired by my mother." She believed that she was being harrassed by her mother who thought "she could control and manipulate me, as she had done when I was a child."

Around this time, (late autumn 1961) appellant reportedly was ordered to be deported from Canada because her student visa had been cancelled. While in a Canadian immigration office appellant states that she saw or was shown a Letter on the stationery of the bank in Albany, New York of which her uncle was president; it thus seemed clear to appellant that her uncle was instrumental in persuading the Canadian authorities to cancel her student visa. [redacted] seems to have been able to obtain a stay of appellant's deportation, however, and the couple took out a marriage license, intending to marry at some indefinite date. But after appellant's brother was sent by the family to Canada to dissuade her from marrying [redacted] and after an incident in a store that appellant believed was an attempt to kidnap her, they decided to marry immediately and were married on Christmas Day 1961. Immediately thereafter, appellant applied for landed immigrant status in Canada, which was granted on January 3, 1962.

After appellant and [redacted] were married, appellant allegedly was still harassed and feared being kidnapped. It appears she was especially worried that she might suffer the fate of a cousin, daughter of her banker uncle, who reportedly was institutionalized because she made a marriage of which appellant's uncle disapproved. As a result of those fears, she decided to apply for Canadian citizenship "so that I could receive protection from my mother and uncle by the Canadian authorities." (Affidavit of February 9, 1988.) Appellant

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2/ Transcript of Hearing in the Matter of Mary Louise Steinberg before the Board of Appellate Review, November 7, 1988 (hereafter referred to as "TR"). TR 15-18.

3/ Id.

apparently applied for naturalization in the fall of 1963 and was given a citizenship interview in January 1964. On March 13, 1964, after making the following declaration and oath of allegiance, she was granted a certificate of Canadian 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.
>
> I swear that 1 will be faithful and bear true allegiance to Her Majesty, Queen Elizabeth the Second, her 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.

Twenty years later appellant's naturalization in Canada came to the attention of American authorities in Canada when she inquired at the Consulate General in Toronto in 1985 about her citizenship status. After the Canadian authorities confirmed that appellant had obtained naturalization, the Consulate General informed appellant by letter dated December 27, 1985 that she might have expatriated herself, and asked her to complete a questionnaire to facilitate determination of her citizenship status. If she did not complete and return the form within 30 days, the Consulate General wrote, the Department would make a determination of her citizenship status on the basis of available information. She was invited to discuss her case with a consular officer. After three months had passed without a reply from appellant, a consular officer executed a certificate of loss of nationality in appellant's name on April 4, 1986, in compliance with the provisions of section 358 of the Immigration and Nationality Act. 4/ The certificate recited that appellant acquired

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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 chapter 3 of this title, or under any provision of chapter IV of the

United States nationality by birth at New York City; obtained naturalization in Canada upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Consulate General forwarded the certificate to the Department under cover of a memorandum which read in operative part as follows:

> Mrs. [redacted] failed to reply to the 'Information for Determining United States Citizenship' form dated December 27, 1983. Enclosed is the signed postal receipt returned by the Canadian postal authorities.
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> Mrs. [redacted] intent to relinquish United States citizenship is established as a fair inference from her failure to offer any evidence to the contrary despite having been afforded ample opportunity to do so. 5/

4/ (Cont'd.)

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.

5/ At the hearing, appellant stated that in January 1986 she spoke to an employee of the Consulate General who told her that there was such a backlog of cases that appellant's could not be heard for six months: accordingly, she might wait to complete the citizenship questionnaire until she could receive assistance from a consular officer. It was therefore with shock and confusion that she received the approved certificate of loss of nationality.

> Accordingly, the Consulate General requests that the Certificate of Loss of Nationality be approved.

The Department approved the certificate on April 15, 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. A timely appeal was entered through counsel. Appellant requested oral argument which was heard on November 7, 1988. Appellant appeared pro se.

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality by voluntarily obtaining naturalization in a foreign state upon his own application with the intention of

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5/ (Cont'd.)

Appellant expressed the opinion that the Department's decision of April 1986 was based solely on the inference that her failure to submit a completed citizenship questionnaire within the prescribed time represented an earlier intent to relinquish her United States citizenship. "If this Board upholds that decision," appellant stated, I will be left with the impression that my U.S. citizenship was rescinded because a government office was backlogged and I was overworked...and couldn't submit a form within the 30-day deadline, or didn't.'' (TR 59-60).

Considering the fundamental right at issue, it seems to us that the Consulate General would have been warranted in making more effort to elicit information from appellant before executing a certificate of loss of nationality. Nonetheless, it should be obvious that in affirming the Department's decision, the Board has not rested its decision on insubstantial grounds. The Board heard appellant's case de novo. She was given every opportunity to demonstrate wherein the Department erred in finding that she voluntarily obtained naturalization in Canada with the intention of relinquishing her United States citizenship. Furthermore, she had a full evidentiary hearing, after which the Board gave her additional time to try to gather more evidence.

relinquishing nationality. 6/ That appellant obtained naturalization in Canada upon her own application and thus brought herself within the purview of the statute is not at issue. Therefore the first matter to be addressed is whether appellant became a Canadian citizen voluntarily.

Section 349(c) of the Act provides that one who performs a statutory expatriating act shall be presumed to do so voluntarily: the presumption, may be rebutted, however, upon a showing by a preponderance of the evidence that the act was involuntary. 7/

Appellant argues that she performed the expatriative act under duress. In her reply brief, she explained that fear drove her to seek Canadian citizenship. .

> In this case, the appellant was a sheltered young woman harassed [sic] by her family because of marriage outside her faith,

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6/ Text note 1 supra.

7/ 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 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. No. 99-653, 100 Stat. 3655 (1986), repealed section 349(b) but did not redesignate section 349(c), or amend it to reflect repeal of section 349(b).

> who was cut off from all means to support herself and continue her education. She was threatened with deportation to the U.S. where she most likely would have been institutionalized by her family for marrying her husband against her family's wishes. The appellant lived in constant fear of her mother and uncle, and was terrified of the prospect of institutionalization, The coercion of her fear was the compelling force and sole purpose which caused her to seek Canadian citizenship. Far from being self-generated, her fears were real. She acted under extraordinary circumstances in order to protect herself from her mother and uncle and remain with her devoted husband. Her fear, duress and emotional distress compelled her to take the oath of Canadian citizenship, rendering it an involuntary act.

It is settled that duress voids an expatriative act. It is also settled that one who alleges that such an act was done under duress must show that extraordinary circumstances induced him or her to perform the proscribed act. Doreau v. Marshall, 170 F.2d 721, 724 (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 renouncing his country.

Could the circumstances that led to appellant's naturalization in Canada be considered extraordinary? Since she alleges that they were, we must assess the probative value of the evidence appellant has presented to support her allegations.

Appellant's case is basically flawed in that she has presented virtually no evidence to support her claim that she was forced against her will to obtain Canadian citizenship because of a perceived need to protect herself against abduction or deportation from Canada and institutionalization by'her uncle and mother. Considering the fact that 26 years have passed between the Department's decision and the appeal, it is hardly suprising that appellant is hard put to find credible evidence to support her claims of duress. The principal evidence she has submitted to establish that she acted under duress consists of affidavits of her sister and her husband. Under the circumstances, neither is entitled to more than marginal weight.

Her sister stated in an affidavit executed February 8, 1988 that when she opened their late mother's papers (the mother died in 1983) she found a letter from their uncle (also now deceased) which made clear that he had paid for the detectives to watch appellant while she was in Canada. "Knowing the sorrow which the appellant endured which forced her to marry and remain in Canada," appellant's sister averred, "I destroyed the letter...in hope of putting the unpleasantness of the past behind us."

The foregoing declaration evidences no more than that appellant's mother and uncle meddled in appellant's life. Was their purpose to coerce appellant to give up the idea of marrying [redacted] was it to have appellant abducted: or was it merely to find out how she was living? Who can answer those questions with any degree of assurance merely on the strength of appellant's sister's declaration regarding the letter she read and destroyed?

Appellant's husband's affidavit of April 14, 1987 has little evidential value. He apparently did not witness the alleged attempt to kidnap appellant in December 1961. "She told me," he declared, "that two men attempted to kidnap her while she was shopping.'' His only first hand knowledge that appellant was under stress apparently was his observing "strange men" who followed her and investigated their lives. The value of this affidavit is further reduced by the fact that [redacted] made it 26 years after the events in question.

With the passage of time evidence which might establish appellant's perception that naturalization would protect her from the machinations of her uncle and her mother is no longer available, for example, Canadian records which might establish that an order had issued for her deportation. Appellant sought copies of records from the competent repository but was informed that records covering the period in question had been destroyed.

We are thus left with appellant's allegations made many years after the events in question that she did not act of her own free will when she obtained Canadian citizenship. We have no wish to question appellant's conviction that she is relating the facts to the best of her recollection. But it would be impermissible for the Board to accept without corroboration her allegations made a quarter of a century after her naturalization in Canada that it was the product of duress.

Further, we find no factors of record that would permit us to take administrative notice of circumstances that might have given appellant reason to believe that only by obtaining Canadian citizenship could she ensure that her personal liberty would not be endangered.

In view of the foregoing, it is evident that appellant has not rebutted the statutory presumption that she obtained Canadian naturalization voluntarily.

III

It remains to be determined whether appellant intended to relinquish her United States nationality when she obtained naturalization in Canada.

Intent to relinquish citizenship is an issue that the government must prove. 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. 444 U.S. at 260. The standard of proof is a preponderance of the evidence. Id. at 267. This means that the government must show that it was more probable than not that appellant intended to forefeit her United States nationality when she acquired Canadian citizenship. The intent the government must prove is the party's intent at the time the expatriative act was performed. Terrazas v. Haig, 653 F.2d 285, 288 (7th Cir. 1981).

The Department submits that the facts do not support appellant's contention that she did not intend to relinquish her United States citizenship when she obtained naturalization in Canada. The decisive consideration, the Department asserted in its brief, is that: "The oath of allegiance that she took in 1964 expressly renounced 'all allegiance and fidelity to any foreign sovereign or state' and promised faithful and true allegiance to Elizabeth the Second. Nothing could be more equivalent to the issue of intent.''

The Department's brief continues:

> Mrs. [redacted] naturalization in
> Canada is the initial evidence of her

> intent to abandon her United States citizenship. An overall attitude and course of behavior often reflects an individual's disinterest and lack of concern in his or her U.S. citizenship and permits an inference of an intent to relinquish U.S. citizenship.
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> There is no evidence to refute the fact that appellant fully understood and accepted the meaning of the declaration. Mrs. [redacted] is an educated woman, and the renunciatory declaration and pledge of allegiance to Queen Elizabeth are clear and explicit. Considering the candor of the oath's language, one would expect an average individual to question the repercussions of such a statement.
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> Appellant's intent can be clearly inferred from her behavior which has not been that of a person desirous of maintaining her U.S. citizenship....

As the Department pqints out, if a United States citizen voluntarily obtains naturalization in a foreign state such an act may be persuasive evidence of an intent to relinquish United States nationality, although it is not conclusive evidence of such intent. Vance v. Terrazas, supra, 444 U.S. at 261. But if a citizen also makes an express declaration of renunciation of all other allegiance, the courts have consistently held that such words constitute very compelling evidence of intent to relinquish citizenship. The rule was clearly stated in Richards v. Secretary of State, 752 F.2d 1413, 1417 (9th Cir. 1985). "[T]he 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." See also Meretsky v. U.S. Department of Justice, et al., No. 86-5184. Memorandum Opinion (D.C. Cir. 1987). There the plaintiff made a declaration of allegiance identical to that made by appellant in the case before us. It was the court's conclusion that: "The oath he took renounced that [United States: citizenship in no uncertain terms." At 5.

In short, the case law is abundantly clear as to the adverse legal consequences that ordinarily ensue if one voluntarily makes an express renunciation of United States nationality while performing a statutory expatriating act. But the trier of fact may not conclude from such acts that a

citizenship-claimant intended to relinquish citizenship, unless satisfied that the person not only act voluntarily, but knowingly and intelligently, and that there are no other factors that would warrant a finding of lack of intent to relinquish citizenship. See Terrazas v. Haig, supra: Richards v. Secretary of State, supra.

On the evidence, it is difficult to accept that appellant did not act knowingly and intelligently when she participated in the formalities incident to being granted Canadian citizenship in **1964.** She was nearly **24** years old at the time. Only the year before had she obtained a degree from the University of Toronto: obviously, she was in **1964** an "educated woman." As such, she was presumably capable of understanding the purport of the renunciatory declaration to which she signed her name.

Appellant acknowledged at the hearing that she signed a document with a renunciatory clause on March **13, 1974.** 8/ "But I would also like you to consider the fact that I had no advance knowledge that this would be required that day. In fact, I had been led to believe the opposite." **9/** She pointed out that the booklet, "Guide to Canadian-Citizenship" given her in October **1963** which quoted the Canadian oath of allegiance did not cite such a clause, as the Board was aware, having seen the booklet.

After the hearing, appellant submitted a letter from the Canadian citizenship authorities which made the following points:

-- there was a significant discrepancy between the oath form and the text of the "Guide to Canadian Citizenship:"

-- nothing in the available records explained that discrepancy: but

-- it was possible that one who applied for Canadian naturalization was asked to recite the oath of allegiance during the citizenship ceremony but not recite orally the declaration of allegiance:

-- however, one was required to sign an oath form to certify that he had taken the oath of allegiance:

8/ **TR 21.**

9/ Id.

-- the oath form included a declaration of renunciation of former allegiance.

Even assuming that on March 13, 1964 appellant did not orally renounce United States nationality, she plainly did so, however, when she signed a form after the ceremony which contained both a renunciatory declaration and oath of allegiance.

We are not persuaded that because appellant did not know before the event she would have to renounce her United States citizenship she lacked the requisite intent. The case law holds that such an act manifests the requisite intent. It was appellant's responsibility to exercise the utmost care about what she signed in connection with an event as important as obtaining the citizenship of a foreign state. Barring incapacity, and obviously there is none here, appellant must be held to what she signed on March 13, 1964.

Finally, we must inquire whether there are any factors that would warrant our concluding that appellant did not intend to relinquish her United States nationality.

The Department contends that there are none. Indeed, the Department asserts that appellant's conduct after naturalization buttresses the evidence that at the relevant time appellant intended to relinquish her citizenship. We do not necessarily agree with the Department that because appellant failed to do a number of things for over twenty years to demonstrate that she considered herself to be an American, she probably intended to relinquish citizenship in 1964. But we are of the view that appellant's non-acts hardly offer any basis for us to doubt that her state of mind was renunciatory on March 13, 1964.

Appellant submits that her motives for obtaining citizenship of Canada were worthy: she had no abstract desire to sever her ties to the United States but wished simply to gain the protection of Canadian law against harrassment (or worse) as a consequence of her decision to marry outside her faith. Her naturalization therefore should not be regarded as expressive of an intent to reject United States citizenship. In this sense, she contends that her case is to be distinguished from that of the leading case on loss of nationality as a result of foreign naturalization, Richards v. Secretary of State, supra, where the plaintiff sought Canadian naturalization for career advancement. The Department cited Richards in its brief on the instant appeal to support its contention that appellant's motives are wholly irrelevant to the issue of her specific intent when she obtained Canadian citizenship.

Contrary to appellant's contentions, the holding of the Court in Richards is very much on point here:

> In Terrazas, the Court established that expatriation turns on the 'will' of the citizen. We see nothing in that decision, or in any other cited by Richards, that indicates that renunciation is effective only in the case of citizens whose 'will' to renounce is based on a principled, abstract desire to sever ties to the United States. Instead, the cases make it abundantly clear that a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship.
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> We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly... If a citizen makes that choice and carries it out, the choice must be given effect.

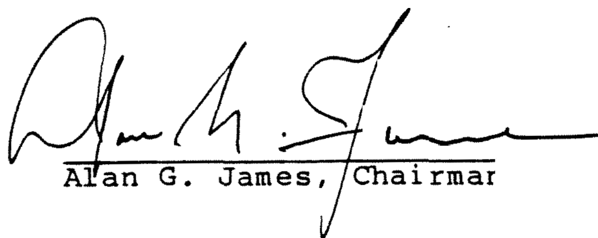
752 F.2d at 1421-22.

Surveying the record in its entirety, we are led to the conclusion that appellant, more probably than not, intended to relinquish United States nationality when she obtained naturalization in Canada. We reach this conclusion with some reluctance, for appellant presented and argued her case with cogency and evident sincerity. Given the facts and the applicable case law, we cannot, however, reach a different conclusion. It is appellant's state of mind in 1964 that must be determined. The only evidence dating from 1964 is the fact that she expressly renounced United States nationality; there is scant evidence after 1964 to contradict that renunciatory declaration. Appellant may not have wanted to relinquish her United States citizenship. But, to paraphrase Blackstone, how can we fathom the heart or the intentions of the mind, otherwise than as they are demonstrated by outward actions?

The Department has carried its burden of proving that appellant intended to relinquish United States nationality when she became a citizen of Canada.

IV

Upon consideration of the foregoing, the Board holds that the Department's determination that appellant expatriated herself should be, and hereby is, affirmed.



Alan G. James, Chairman

Warren E. Hewitt, Member

Howard Meyers, Member