November 9, 1989

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: G[redacted] V[redacted] [redacted]

The Department of State determined on February 2, 1988 that G[redacted] V[redacted] B[redacted] expatriated himself on February 27, 1974 under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining naturalization in Canada upon his own application. 1/ [redacted] filed notice of appeal from the Department's determination in March 1988.

The central issue presented is whether appellant intended to relinquish his United States citizenship when he acquired Canadian citizenship. For the reasons given below, it is our conclusion that the Department has not carried its burden of proving that appellant intended to relinquish his American citizenship. Accordingly, we reverse the Department's determination.

I

Appellant, G[redacted] V[redacted] B[redacted], became a United States citizen by virtue of his birth in [redacted] on [redacted]. In September 1963, as a seminarian studying for the priesthood, he was sent by his bishop to study at Resurrection College in Ontario. After graduating in 1967, appellant entered college in Pennsylvania, but three months later decided not to pursue his studies for the priesthood. He left the United States in December 1967 and moved to Canada. Shortly afterwards he was granted landed immigrant

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), provides that:

> Sec. 349. (a) 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 --
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> (1) obtaining naturalization in a foreign state upon his own application, or upon an application filed by a duly authorized agent, after having obtained the age of eighteen years; or ...

status. Having decided to pursue a career in teaching, appellant attended teachers college from which he graduated in 1969. He was then hired by the Waterloo County Roman Catholic Separate School Board. In 1969 he married a Canadian citizen. They have three children, all born in Canada.

"In or about September 1973," appellant states

> I was informed by my employers that I had to take immediate steps to become a Canadian Citizen as this was now a requirement for all teachers in Ontario. I was informed by my superiors that a new regulation made at that time under the Regulations made pursuant to The Ministry of Education Act of Ontario made it a mandatory qualification for an Ontario Teacher to be either a Canadian Citizen or a British Citizen. I was informed by them, and verily believe, that my Teacher's Certificate and contract would be revoked if I did not become a Canadian Citizen immediately.

Appellant was granted a certificate of Canadian citizenship on February 27, 1974. On that occasion he subscribed to the following oath of allegiance, as prescribed by the Canadian Citizenship Act.

> I, ..., swear that I 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.

Shortly after he acquired Canadian citizenship, appellant entered a graduate program in religious education, and received a masters degree in the subject. In 1975 he was promoted to the position of religious consultant on the School Board, a position he still holds.

In the summer of 1987, appellant inquired about his citizenship status at the United States Consulate General at Toronto. He completed a questionnaire giving basic information about himself and his family, and acknowledged that he had obtained naturalization in Canada. After the Consulate General obtained confirmation of his naturalization from the Canadian authorities, an officer of the Consulate wrote to appellant to inform him that he might have expatriated himself. He was asked to complete another form

titled "Information for Determining U.S. Citizenship" and offered an opportunity to discuss his case with a consular officer. Appellant completed the citizenship questionnaire in September 1987. A few days later he responded to a request from the consular officer to clarify certain answers he gave in the citizenship questionnaire. It is not apparent from the record whether appellant was interviewed by a consular officer.

On November 27, 1987, a consular officer executed a certificate of loss of nationality in appellant's name, in compliance with the provisions of section 358 of the Immigration and Nationality Act. 2/ The certificate recited that appellant acquired United States citizenship by birth therein; that he obtained naturalization in Canada upon his own application; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The State Department approved the certificate on February 2, 1988, an action that constitutes an administrative determination of loss of nationality which may be appealed to the Board of Appellate Review under 22 CFR 7.2(a). A notice of appeal was filed on March 18, 1988.

II

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

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 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 record establishes that appellant duly obtained naturalization in Canada, and thus brought himself within the purview of the statute. We thus address first the issue whether he obtained naturalization voluntarily. In law, it is presumed that one who performs a statutory expatriative act does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was not voluntary. 3/

Appellant contends that he did not voluntarily obtain Canadian citizenship "in the sense of freely and with full intent to become a citizen of another country at the expense of the loss of my U.S. citizenship." He complied with the Province of Ontario regulation that teachers hold Canadian citizenship only because he feared his contract would be revoked if he did not. He believed it imperative to keep the job that he had (presumably he means so he could support his family) and that he had no choice but to accept Canadian citizenship. In effect, appellant pleads that economic necessity forced him to obtain Canadian citizenship.

Economic pressures, if proved, may render performance of a statutory expatriative act involuntary. On the facts presented here, however, we are unable to consider that appellant's acquisition of Canadian citizenship was involuntary. As Stipa v. Dulles, 233 F.2d 551 (3rd Cir. 1956) and Insogna v. Dulles, 116 F.Supp. 473 (D.D.C. 1953) make clear, a plea of economic duress will succeed only if the circumstances in which the citizen found him or herself were extraordinary, that is, the person's economic plight was so

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

> (b) 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. 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.

dire as to leave no viable way to alleviate it except by performing an expatriative act. "While economic duress may avoid the effect of an expatriating act, the plaintiff's economic plight must be 'dire', the court said in Maldonado-Sanchez v. Shultz, Civil Action 87-2654, memorandum opinion (D.D.C. 1989). On the evidence appellant has presented his economic position in 1974 when he opted for Canadian citizenship could not be called dire. Furthermore, he has not shown, as he must do, that he seriously explored career alternatives that would not have entailed obtaining foreign naturalization. See Richards v. Secretary of State, 752 F.2d 1413, 1419 (9th Cir. 1985).

In short, we conclude that appellant has not rebutted the presumption that he became a Canadian citizen of his own free will.

III

It remains to be determined whether appellant's acquisition of Canadian citizenship was accompanied by an intent to relinquish United States nationality.

Whether a citizenship-claimant intended to relinquish United States citizenship is an issue that the government must prove by a preponderance of the evidence. Vance v. Terrazas, 444 U.S. 263, 267 (1980). 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 at the time he or she performed the expatriative act. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981. Under the "preponderance of the evidence" rule, the government must prove that a party intended, more probably than not, to relinquish United States nationality. 4/

In the case before the Board, the only contemporary evidence bearing on appellant's intent is the fact that he obtained naturalization in Canada and made an oath of allegiance to a foreign sovereign. These facts may constitute evidence of such intent. They are not, however, conclusive. Vance v. Terrazas, supra, at 261; King v. Rogers, 463 F.2d 1188, 1189 (9th Cir. 1972). This being the case, appellant's words or conduct after he obtained naturalization are a proper subject of inquiry to determine whether, as the Department argues, circumstantial evidence will establish the requisite intent. Terrazas v. Haig, supra, at 288.

4/ McCormick on Evidence, section 339, 3rd Ed.

The Department submits that appellant's contention that he lacked the requisite intent to relinquish United States nationality is undermined by inconsistencies in his testimony. Specifically, the Department asserts that:

> ...Although [the contention that he did not intend to relinquish citizenship] is stated in Mr. [redacted] appeal of January 27, 1989, in his letter to the Consul, Patsy G. Stephens, written on September 25, 1987, some sixteen months earlier, he attests to an entirely different understanding of the implication of his naturalization.
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> In response to the question: 'Did you inquire prior to or at the time of your Canadian naturalization as to what the effect it would have on your American nationality?' Mr. [redacted] stated, 'I did not inquire because I presumed incorrectly that I '"lost"' my United States citizenship.'
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> When asked, 'Why did you wait until now, some thirteen years after becoming a naturalized Canadian citizen, to verify your claim to U.S. citizenship, check on your possible dual nationality or obtain any other identification as a U.S. citizen living abroad?' he said, 'I was under the incorrect assumption that I automatically '"lost"' my citizenship.'

From the foregoing, the Department concludes that:

> Given that the prior statements are inconsistent with his more recent statements, the latter statements can only be considered self-serving and therefore are not entitled to great weight in determining appellant's intent at the time of his naturalization.

First of all, the Board notes that in his reply to the Department's brief appellant stated categorically that "I thought I lost my United States citizenship" by becoming a Canadian citizen. His latest statement on the matter thus is consistent with what he wrote to the consular officer in September 1987.

We consider it unnecessary to address the Department's contention that the statements appellant made when his case was processed in 1987 are entitled to greater evidential value than his later disclaimer of lack of intent to relinquish his citizenship. We do, however, take issue with the Department's contention in its brief that: "when a person believes that he will automatically lose his citizenship, yet proceeds with the naturalization process without making formal inquiries, that person has demonstrated an intent to relinquish U.S. citizenship."

We take it as given that appellant believed in 1974 and afterwards that he had lost United States citizenship. Does the fact that he had such knowledge support a conclusion that he intended that he should lose his United States nationality? It is our opinion, which we have expressed in a number of previous cases, that mere knowledge that an act is expatriative is insufficient to establish a party's intent at the relevant time. The deduction that to know the consequences of an act is to will those consequences is too facile to be a fair and reasonable guide in determining whether one intended to relinquish a right so valuable as United States citizenship. Appellant's knowledge is not at issue. His state of mind in 1974 is at issue. Knowledge and intent are separate and distinct concepts. The method of proving intent is a problem distinct from proving knowledge, even where the latter is also available. Wigmore on Evidence, section 300, 3rd edition. Mere knowledge that an act is expatriative is not enough to establish a person's specific intent with respect to United States citizenship. Something more than knowledge must be shown. Richards v. Secretary of State, 752 F.2d 1413, 1420 (9th Cir. 1985). A United States citizen effectively renounces his citizenship by performing a statutory expatriative act only if he means the act to constitute a renunciation of that citizenship. Id. The Richards court found that the plaintiff meant his act of obtaining naturalization in Canada to constitute renunciation of his American citizenship because he expressly declared that he renounced all allegiance and fidelity to the United States.

In the case before the Board, appellant performed an expatriative act but did nothing at the relevant time to show that he meant that that act should constitute a renunciation of United States citizenship. In short, a perception that he might lose his American citizenship does not inevitably illustrate a renunciatory state of mind.

The Department further submits that appellant's "overall attitude and course of behavior" reflect such disinterest and lack of concern about United States citizenship that it is reasonable to draw the inference that he intended in 1974 to relinquish U.S. citizenship. Specifically, the Department points out that: he failed to maintain registration, both before and after naturalization, as a United States citizen; never acted or represented himself as a United States citizen; never registered his children as United States citizens; did not vote or file tax returns in the United States. The Department thus concludes that:

> Now Mr. [redacted] knows that times have changed. He points out that it is no longer required that teachers be Canadian citizens and contends that under present law he would not be required to do anything. The change in the law has no reflection on what was in existence and what Mr. [redacted] state of mind was in 1974. It was important to him to be a Canadian citizen, and the fact remains that he became a Canadian citizen believing that by naturalizing he would automatically lose his U.S. nationality.

Granted, appellant did not do things that a wholly responsible citizen is expected to do, or that a prescient person, anxious to make a record that he did not want to lose his citizenship, would have done. The essential question, however, is whether the acts of omission that the Department cites may reasonably be considered to reflect his probable state of mind in 1974. We are not persuaded that they do.

Is it commonplace that people fail to do things they ought to do for a wide variety of reasons or for no particular reason, without necessarily intending that their failure to act should be interpreted as having some particular significance. Thus, appellant here may have failed to avail himself of the rights of citizenship or discharge its duties for reasons disconnected from an intent to relinquish citizenship. While conceding that he did not do things that would affirmatively show a will to retain citizenship, appellant asserts that he feels a close bond to the United States, visited his parents regularly, indeed supported them until they died. Should one attach greater

importance to things left undone than to appellant's professed continuing attachment to this country?

At bottom, appellant's conduct after naturalization has few hallmarks of a diligent citizen, but an intent to relinquish U.S. nationality is not the only fair, nor is it the most probable, inference to be drawn from it, particularly since he did nothing that is derogatory of United States citizenship, bar obtaining foreign citizenship.

From this analysis, we reach the conclusion that the Department has not carried its burden of proving that appellant intended to relinquish his United States nationality when he obtained naturalization in Canada upon his own application.

IV

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

Alan G. James, Chairman

Howard Meyers, Member

Frederick Smith, Jr., Member