November 15, 1989

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: K[redacted] S[redacted]

The Department of State made a determination on March 10, 1988 that K[redacted] S[redacted] expatriated herself on January 21, 1988 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/ Dr. [redacted] appeals from that determination.

For the reasons given below, we conclude that appellant voluntarily renounced United States nationality with the intention of relinquishing it. The Department's holding that appellant expatriated herself accordingly is affirmed.

I

Appellant, K[redacted] S[redacted], was born in [redacted] She married a United States citizen in 1971 and went to live in California. In 1975 she obtained naturalization as a United States citizen. The marriage deteriorated. Appellant left her husband in 1978 and returned to Europe. They were later divorced. In Hungary she resumed the study of dentistry which she had abandoned when she married. In 1982 she completed her studies and went to the Federal Republic of Germany. Around that time she married a German citizen.

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

> 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 --
>
> (5) making a formal renunciation of nationality before a consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; ...

Appellant states that she endeavored for about a year to obtain a license to practice dentistry, but as an alien she was unable to qualify. She therefore obtained a position in 1983 as a sales representative for a dental supply company because her husband was still studying to be a teacher and "we needed the money." She held that position until October 1987 when she resigned in order to try again to be licensed as a dentist. She apparently had been given to understand that she might qualify on the grounds of her marriage to a German citizen. However, we infer from appellant's submissions that the competent authorities refused to grant her a license, and that she instituted a legal action to compel issuance of a license, but was unsuccessful. At the time she was unemployed and remained so for a year.

Appellant suggests that after losing in court she realized that the only way she would be able to obtain a license was to acquire German nationality. The Board takes note that under German law a successful applicant for naturalization must prove to the competent authorities, at the latest at the time of the grant of naturalization, that he has relinquished his previous nationality.

Having made, or in contemplation of making, application to be naturalized as a German citizen, appellant on January 21, 1988 went to the United States Consulate General in Munich to renounce her United States nationality. Before making the oath of renunciation, appellant read and in the presence of two witnesses signed a statement of understanding of the consequences of formal renunciation of United States nationality. In the statement appellant declared that she chose to exercise her right to renounce her citizenship and did so voluntarily; that she realized that after renunciation she would be an alien toward the United States; that the extremely serious and irrevocable nature of renunciation had been explained to her by the consular officer concerned and that she fully understood the consequences; and that she wished to make a written statement explaining why she was renouncing her citizenship.

Thereafter, appellant subscribed to the oath of renunciation, the operative part of which reads as follows:

> That I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(5) of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely renounce United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

Appellant's statement of the reasons for her renunciation reads as follows:

> I have to renounce my U.S. citizenship today for the followng reasons: Since 1982 I live in Germany and am married to a German citizen. My husband is a teacher and would not like to leave Germany. I am a dentist and as an alien I'm not allowed to move here in my profession. The renunciation is a step which I didn't want to make but it seems that I do not have any other choice.

As required by law, the consular officer who processed appellant's case executed a certificate of loss of nationality in appellant's name on January 21, 1988. 2/ The certificate recited that appellant acquired the nationality of the United States by naturalization; that she made a formal renunciation of United States nationality; and thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

The Department of State approved the certificate on March 10, 1988; approval being an administrative determination of loss

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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 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.

of nationality from which an appeal may be taken to the Board of Appellate Review. Section 7.3(a), Title 22, Code of Federal Regulations, 22 CFR 7.3(a).

An appeal was entered on January 10, 1989.

II

Section 349(a)(5) provides that a national of the United States shall lose his nationality if he voluntarily makes a formal renunciation of nationality before a consular officer in a foreign state with the intention of relinquishing it.

In the case before the Board, the record establishes that appellant made a formal renunciation of United States nationality before a consular officer of the United States in a foreign state in the manner prescribed by the Secretary of State. She thus brought herself within the purview of section 349(a)(5) of the Immigration and Nationality Act. The first issue to be addressed is whether appellant renounced her United States citizenship voluntarily.

In law, it is presumed that one who performs a statutory act of expatriation 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 she was "under considerable pressure when I was coerced to renounce my U.S. citizenship." She gave up her job with the dental supply company after holding

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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.

it for four and one half years, apparently in anticipation that there might be new grounds on which she could qualify for a dentistry license, but found that the competent authorities would not grant her a license. She therefore instituted legal action to compel them to issue her a license, but, as noted above, the court ruled against her. At this point it seems she decided that she would have to obtain German nationality if she were to be able to practice. The grant of German nationality in turn was contingent upon relinquishment of her United States nationality. She described her situation in the period before she renounced her nationality as follows:

> ...I tried to get another job as a sales rep. but the dental industry doesn't like to hire dentists as they are clearly over-qualified for this job. I stayed unemployed from October 1987 until October 1988 at which time I received the permit to work as a dentist. Also at the time I made the renounciation [sic] I was without work for four month [sic] with little chance to get work again....

Duress connotes absence of choice. The pertinent inquiry here therefore is whether the circumstances in which appellant found herself could be said to have deprived her of freedom of choice.

For a defense of duress to prevail it must be shown that there existed "extraordinary circumstances amounting to a true duress" which "forced" a United States citizen to follow a course of action against his fixed will, intent, and efforts to act otherwise. Doreau v. Marshall, 170 F.2d 721, 724 (3rd Cir. 1948). If a party pleads that economic factors compelled him to perform an expatriative act, the courts have insisted that he show he confronted a situation that threatened his ability to subsist. 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. 233 F.2d at 556. See Also Noburo Kanbara v. Acheson, 103 F. Supp. 565 (S.D. Cal. 1952). Plaintiff acted involuntarily when he took expatriative employment to keep from starving. And Meiji Fujizawa v. Acheson, 85 F.Supp. 674 (S.D. Cal. 1949). Performing an expatriative act in order to get a job and earn a livelihood was held to be involuntary because no employment would otherwise have been open to plainfiff.

The pertinence of the earlier cases on economic duress was affirmed in a recent case where the plaintiff contended that

he renounced his nationality under economic duress. Maldonado-Sanchez v. Shultz, Civil No. 87-1654, memorandum opinion (D.D.C. 1989). There the court said that: "While economic duress may avoid the effect of an expatriating act, the plaintiff's economic plight must be 'dire.' See Stipa v. Dulles...."

We will accept that appellant was unemployed at the time she renounced her citizenship. We are unable to accept, however, that her economic situation, as she describes it, was so dire as to render renunciation of her citizenship involuntary. Appellant's husband was apparently employed. She has not shown why she could not rely on him for support while she sought other employment that would not have required her to relinquish her United States citizenship. Her husband's resources may have been stretched; appellant states that he was supporting his parents and a sister, as well as her own parents in Hungary - before she began practicing dentistry in October 1988. However, appellant has adduced no evidence that her husband could not support both himself and her, as well as meet his other family obligations. Furthermore, in the absence of evidence that she was not so eligible, we may assume that as a permanent resident of Germany appellant would have been able to draw unemployment compensation. The legal test of economic duress is whether the situation of the individual was dire. Nothing in the evidence presented to the Board will support a finding that appellant's circumstances were dire. Economic difficulty is not to be equated to economic duress.

The cases also hold that one who claims to have acted under economic duress must establish that he made a reasonable effort to find employment that would not entail placing his citizenship at risk. See Richards v. Secretary of State, 752 F.2d 1413, 1419 (9th Cir. 1985). Appellant has not established that she could not find employment that would bring in money to help with the financial demands made on her husband. She states merely that she tried to find work again as a sales representative, but that the dental industry was adverse to hiring overqualified people. There is no evidence that she could not, for example, have been rehired by the dental company where she worked previously and where, to judge from the statement a company official made in support of her appeal, her work was appreciated.

It is difficult to escape the conclusion that appellant renounced her United States citizenship principally because she was determined to pursue one career and only one career - dentistry. We appreciate that having been trained in dentistry, a field she obviously found satisfying, appellant would wish to develop her talents in that field and not settle for a less gratifying vocation. Nothing appellant has submitted indicates that only by being a dentist could she meet her essential economic needs. At bottom, it appears to us that appellant made

a choice, albeit one she found painful between forfeiting United States citizenship and practicing dentistry in Germany. As a matter of law, opportunity to make a choice based upon a personal decision 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).

Appellant has not rebutted the presumption that she renounced United States nationality of her own free will.

III

Finally, there is the issue whether appellant intented to relinquish her United States nationality when she formally renounced it. The Government bears the burden of proving by a preponderance of the evidence that such was her intention. Section 349(b) of the Immigration and Nationality Act (note 3 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. Vance v. Terrazas, 444 U.S. at 260.

Formal renunciation of United States citizenship in the manner mandated by law and in the form prescribed by the Secretary of States 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 there unto pertaining.

In short, appellant's oath of renunciation is sufficient evidence to meet the government's burden of proof. Maldonado-Sanchez v. Secretary of State, supra, at 17, citing Richards v. Secretary of State, supra, at 1421.

Our sole inquiry therefore is whether appellant executed the oath of renunciation not only voluntarily but also knowingly and intelligently. 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. Appellant was 39 years old when she made the oath of renunciation, schooled, and fully cognizant of the fact that in order to obtain German citizenship, which plainly she wished to acquire, she would have surrender her United States nationality.

Plainly, appellant knew what she was doing. We perceive no inadvertence or mistake of law on her part.

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

III

Upon consideration of the foregoing, we conclude that appellant duly expatriated herself on January 21, 1988 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 March 10, 1988.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Warren E. Hewitt, Member