DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This case is before the Board of Appellate Review on the appeal of [redacted] from an administrative determination of the Department of State, dated May 5, 1986, that she expatriated herself on March 1, 1973, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

The central issue presented is whether appellant intended to relinquish her United States nationality when she obtained naturalization in Canada. For the reasons given below, we conclude that the Department has carried its burden of proving that she so intended. Accordingly, we affirm the Department's holding of loss of appellant's nationality.

I

Appellant, [redacted] acquired the nationality of the United States by birth at [redacted] 1967 with her husband when he took up appointment at the University of Waterloo. In March 1973 appellant became a Canadian citizen in order, as she put it, to be able to attend teacher's college in Ontario. "I had been a teacher in Philadelphia during the early years of my marriage and I felt it was the

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1/ In 1973, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), read 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 --
>
> (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".

only thing I could do to help my family financially and, hopefully, bolster a failing marriage."

The record shows that appellant was granted a certificate of Canadian citizenship on March 1, 1973 pursuant to section 10(1) of the Canadian Citizenship Act of 1946. According to the Canadian authorities, on that occasion she subscribed to the following declaration and oath of allegiance:

> 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. 2/
>
> 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.

Thirteen years after she became a Canadian citizen, the United States Consulate General at Toronto learned of her naturalization when in the spring of 1986 appellant applied for a United States passport in contemplation of moving back to the United States. At the request of the Consulate General, the Canadian authorities confirmed that appellant had obtained naturalization. She then completed a form titled "Information for Determining U.S. Citizenship," and was interviewed by a consular officer. On April 28, 1986, an officer of the Consulate General executed a certificate of loss of nationality in appellant's name, as required by law. 3/ The officer certified that appellant acquired United

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2/ **Section 19(1)** of the Canadian Citizenship Regulations, which **prescribed** the making of the renunciatory declaration, was **declared** ultra vires, by the Federal Court of Canada on April 3, 1973. Ulin v. The Queen, 35 D.L.R. 738 (1973).

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

States nationality by virtue of her birth therein; that she 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, recommending that it be approved.

On May 5, 1986 the Department approved the certificate, approval constituting an administrative determination of loss of nationality which may be appealed to the Board of Appellate Review. Appellant entered the appeal pro se on April 6, 1987. 4/

II

The parties agree that appellant duly obtained naturalization in Canada upon her own application and thus brought herself within the purview of section 349(a)(1) of the Immigration and Nationality Act. The Act provides, however, that citizenship shall not be lost unless the person who performed the act did so voluntarily with the intention of relinquishing United States nationality. (Note 1 supra). The first issue to be addressed therefore is whether appellant obtained naturalization in Canada voluntarily.

3/ (cont'd.)

> 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.

4/ The delay in the disposition of this case is attributable to two facts. First: After the Department filed its brief in September 1987 appellant retained counsel who requested repeated extensions of time to file appellant's reply brief. In September 1988, appellant informed the Board that her attorney would not file a reply brief and that she was no longer represented by counsel.

In law it is presumed that one who performs a statutory expatriating 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. 5/ In order to prevail on the issue of voluntariness, appellant must show that she did not become a citizen of Canada voluntarily.

Appellant took Canadian citizenship, she stated, "solely in order to be able to practice my profession, teaching in Ontario, to be of economic service to my family [she has three children] and to bolster a foundering marriage.." She submitted that:

> Under the prevailing law my actions can not be considered 'voluntary'. Economic pressures and family

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4/ (cont'd.) Second: In the fall of 1988 the Board requested that the Department obtain from the Canadian authorities a copy of the statement appellant purportedly signed on March 1, 1973. In March 1989, the Consulate General at Toronto informed the Department that the Canadian authorities would not send it a copy of the document appellant signed but had verified that appellant signed a declaration of renunciation; the Canadians suggested that she write directly to obtain a copy. The Board decided, and appellant did not demur, that there was sufficient proof that appellant signed a renunciatory declaration and that it would unnecessarily delay disposition of the appeal to ask her to obtain a copy of the paper she signed.

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

> (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.

> obligations have been found to negate the voluntary nature of what could otherwise be considered an expatriotic [sic] act. See, for example, Stipa v. Dullas [sic], 233 F.2d 551 (3rd Cir. 1956) and Mendelsohn v. Dullas, 207 F.2d 37 D.C. Cir. 1953). Furthermore, oaths of allegiance have been found to have no expatriotic effect when taken in order to be able to practice one's profession as in Baker v. Rusk, 296 F.Supp. 1246 (Calif., 1969).

As appellant points out, the courts have held that economic pressures and family obligations may render an expatriative act involuntary. However, on the facts in this case and the meager evidence appellant has submitted (she has merely established that in 1973 Canadian citizenship was a requisite to obtaining a permanent teaching certificate in the Ontario provincial school system), we do not consider appellant's acquisition of Canadian citizenship to have been 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 dire as to leave no viable alternative 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', as the court said in Maldonado-Sanchez v. Shultz, Civil Action 87-2654, memorandum opinion (D.D.C. 1989). On the evidence appellant has presented, her economic position in 1973 when she opted for Canadian citizenship could not be called dire. Furthermore, she has not, as she must do, shown that she seriously explored career alternatives that would not have entailed naturalization. Richards v. Secretary of State, 752 F.2d 1413, 1419 (9th Cir. 1985).

Where the courts have held that family obligations negated the voluntariness of the expatriative act the plaintiffs were required to meet a stringent standard of proof. One must show that the life or health of someone to whom one owes a moral duty of care would have been jeopardized if the expatriative act had not been performed. Mendelsohn v. Dulles, 207 F.2d 37 (D.C. Cir. 1953); Ryckman v. Dulles, 106 F.Supp. 739 (S.D. Tex. 1952).

In the case before the Board, appellant alleges that her marriage was foundering, but she has not shown that the life or health of anyone in her family was menaced. How could

appellant's naturalization restore health to the failing marriage? Appellant has not shown any nexus between naturalization and restoration of a matrimonial harmony.

In short, appellant has not established that she was forced into naturalization. Accordingly, it is obvious that she has not rebutted the presumption that she became a Canadian citizen voluntarily.

III

Even though appellant has not met her burden of proof that she became a Canadian citizen involuntarily, it remains to be determined whether she intended to relinquish her United States citizenship 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. 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. Proof by a preponderance means that the government must show that it was more probable than not that appellant intended to forfeit her United States nationality when she acquired Canadian citizenship. 6/ 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 appellant's oath of allegiance to Canada and declaration renouncing all other allegiance speak for themselves. Ordinarily such statements should be accepted as a manifestation of the citizen's intent to relinquish United States nationality, argues the Department, noting that appellant's words at the critical time are the only contemporaneous evidence of intent. As to the affidavits executed by various persons in support of the appeal, the Department discounts their evidential weight by

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6/ "The most acceptable meaning to be given to the expression, proof by a preponderance, seems to be proof which leads the jury to find that the existence of the contested fact is more probable than its non-existence. 12/ [footnote omitted] Thus the preponderance of evidence becomes the trier's belief in the preponderance of probability."

McCormick on Evidence (3rd ed.), Section 339.

stating that as they were executed so many years after the event they are not entitled to anything like the probative value of the oath of allegiance and declaration of renunciation of all other allegiance to which she subscribed in 1973.

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. And if a citizen also makes an express declaration of renunciation of all other allegiance, the courts have held that such words constitute very strong evidence of an 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 clear that adverse legal consequences usually will ensue if one voluntarily makes an express renunciation of United States nationality while performing a statutory expatriating act. Nonetheless, the trier of fact may not conclude from such acts that a citizenship-claimant intended to relinquish citizenship, unless satisfied that the person acted not only voluntarily but also knowingly and intelligently, and that there are no other factors that would warrant a finding that there was a lack of intent to relinquish citizenship. Terrazas v. Haig, supra; Richards v. Secretary of State, supra.

Appellant argues, in effect, that she did not knowingly and intelligently relinquish her United States nationality. In a letter to the Board dated June 10, 1987, appellant stated that:

> I do not recall an oath being administered at the time of my becoming a Canadian citizen or whether there was a written one. I would have resisted swearing my allegiance to the Queen as it is not consistent with my beliefs. I would certainly never knowingly renounce my allegiance to the U.S.

> and believe that I did not do so. My intention has always been to retain U.S. citizenship.

The Canadian citizenship authorities, however, on November 16, 1988 confirmed to the Consulate General at Toronto that appellant "was administered an oath of allegiance on March 1, 1973," adding "oath of renunciation taken." See note 4 supra.

The Board understands that as a general rule, applicants for naturalization in Canada prior to April 3, 1973 (see note 2 supra) were required to recite the oath of allegiance orally at the naturalization ceremony, but not the declaration of renunciation of all other allegiance. After the ceremony and before they received their certificates of Canadian citizenship, applicants were required to sign a statement which consisted of renunciatory declaration and oath of allegiance. Absent evidence to the contrary, we have no reason to doubt that this is what occurred in appellant's case.

When appellant signed the renunciatory declaration and the Canadian oath of allegiance she was 35 years old and an educated woman. Although she contends that she had no idea naturalization in Canada would jeopardize her United States citizenship, there are no grounds to believe that appellant did not act wittingly. For example, there is no evidence that she was misled by an American official to believe that naturalization might not adversely affect her United States citizenship; indeed, she acknowledges that she did not consult any American official about the consequences of her act before applying for and obtaining Canadian citizenship. In short, the Board has no evidential basis to find that appellant did not knowingly and intelligently pledge allegiance to Queen Elizabeth, the Second and renounce her allegiance to the United States.

Finally, it must be determined whether there are any factors other than the ones so far evaluated which would warrant our concluding that appellant probably did not intend to relinquish her United States nationality.

Appellant contends that she never intended to relinquish her United States nationality and would not have obtained Canadian citizenship had she realized that she might jeopardize her American citizenship. She states that she never obtained a Canadian passport. Applying for a United States passport in 1986 which brought to light her naturalization in Canada was "the only decision I have made since holding Canadian citizenship which required an election of primary allegiance." (Letter of June 10, 1987.) Since living in Canada she states, she has returned to the United States at least once a year to see family and friends. Upon

crossing into the United States from Canada, appellant states that she consistently identified herself as a United States citizen. In support of her claim that she did not intend in 1973 to relinquish United States citizenship appellant offers in evidence statements prepared in 1987 by six friends and relations.

A professor at Waterloo University stated that appellant believed she would retain her American citizenship when she acquired that of Canada. In his opinion, she had always represented herself as an American citizen. An alderman of the City of Waterloo stated that appellant assumed she would become a dual national when she became a Canadian citizen; that she always maintained that she is an American, and that it would be out of character for her to give up her American citizenship. A former teacher of appellant's wrote that she believed appellant understood she was allowed to have dual citizenship and was not giving up her American citizenship; "my understanding," the former teacher wrote "has always been that she remained an American. Certainly all her loyalties and ties are here." An attorney, who apparently did not know appellant in 1973, but who has counseled her informally, wrote that he was impressed by "her extraordinary commitment" to American citizenship. The statement of appellant's brother echoes those of the others with respect to appellant's attachment to her United States citizenship. Appellant's mother simply underscored appellant's family's pride in its nationality and the United States.

Obtaining naturalization in a foreign state and making an oath of allegiance that includes renunciation of all other allegiance are highly persuasive evidence of an intent to abandon United States nationality. To overcome or negate the probative value of such strong evidence, there must be other factors, no less concrete and compelling, that manifest a will or purpose not to relinquish United States citizenship. How concrete and compelling is the evidence that appellant asks us to weigh against the evidence of March 1, 1973 when she obtained Canadian citizenship?

The declarations of friends and relations which appellant offers in evidence attest that she feels and has felt strong attachment to the United States, has close ties here, and visits the United States frequently. Standing alone, the foregoing evidence sheds little light on appellant's state of mind in March 1973. That she has positive sentiments about the United States and nurtures her ties to this country is praise-worthy, but wherein do those feelings distinguish appellant from a great many non-United States citizens who share her sentiments and do the things appellant says she does regularly? At the most, the evidence submitted by appellant's family and friends proves that she

surrendered her United States citizenship reluctantly, not necessarily that she probably lacked the intent to do so.

The submissions purporting to prove that appellant believed she had acquired a second nationality when she became a Canadian citizen without forfeiting United States nationality, are not persuasive, for they lack probative weight. As a matter of law, appellant did not become a dual national; she performed an act declared expatriative by United States law that could and did result in loss of her nationality. Furthermore, from the perspective of Canadian law, appellant subscribed to language which made it clear that she was surrendering United States nationality. From the latter fact it would be fair to infer that she intended to relinquish her United States citizenship. Furthermore, those who assert that appellant believed she became a dual national base their declarations on what appellant told them, not, it would appear, on their independent observations of specific acts of appellant which could be considered to manifest a belief that she acquired and was entitled under the laws of both Canada and the United States to hold two nationalities.

Although we do not question appellant's veracity, we simply note that without some corroboration, it would not be appropriate for us to assign significant probative weight to her contention that she consistently identified herself as a United States citizen when she crossed the United States/Canadian border.

Finally, does her assertion that applying for a United States passport in 1986 (the only decision she allegedly made after naturalization requiring election of a primary allegiance) substantiate her claim that in 1973 she lacked the requisite intent to relinquish American citizenship? The answer to that question must be in the negative. Standing alone, her passport application lacks evidential significance because the record shows that for thirteen years appellant performed no act, made no statements to attest that she considered herself to be a United States citizen, despite naturalization in Canada.

In brief, appellant's contention that she lacked the specific intent in 1973 to relinquish her United States nationality rests on infirm ground. The evidence of a renunciatory intent at the relevant time is strong and persuasive; the evidence of lack of intent is no more than marginal. There simply is not sufficient qualitative evidence to cast doubt on appellant's probable intent in March 1973. As a consequence, the Board has no latitude under the law and applicable court decisions to accept her contentions, however sincerely they have been put forward.

It follows from the foregoing analysis that the Department has carried its burden of proof.

IV

For the reasons stated above, the Board concludes that the Department's determination that appellant expatriated herself by obtaining naturalization in Canada upon her own application should be and hereby is affirmed.

Alan G. James, Chairman

Warren E. Hewitt, Member

George Taft, Member