DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: T[redacted] A[redacted] Y[redacted]

This is an appeal by T[redacted] A[redacted] Y[redacted] from an administrative determination of the Department of State, dated September 2, 1988, that she expatriated herself on April 6, 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 key issue *to* be decided is whether appellant intended to relinquish her United States citizenship when she became a Canadian citizen. For the reasons given below, we conclude that the Department has satisfied its burden of proving that appellant's naturalization in Canada was accompanied by the requisite intent. Accordingly, the Department's determination that appellant expatriated herself is affirmed.

I

T[redacted] A[redacted] Y[redacted] acquired United States nationality by birth at [redacted] citizen in 1965 while they were both studying at the University of New Mexico. In 1966 appellant was awarded a B.A. degree and thereafter taught school in Albuquerque. When appellant's husband completed graduate school in 1969, the couple moved to British Columbia. She was employed as a teacher at a private girls school in Vancouver. According to appellant, the headmaster of the school informed her that

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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: ...

"if I wanted to keep my job or if I ever hoped to get another teaching job, I should obtain Canadian citizenship." She left that school in 1971 and worked as a substitute teacher for the West Vancouver School Board from 1971 to 1973. As soon as she had met the residence requirement, appellant applied for naturalization. On April 16, 1973 appellant was granted a certificate of Canadian citizenship under the provisions of section 10(1) of the Canadian Citizenship Act. At that time she made the following declaration of renunciation 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.

After obtaining naturalization appellant followed a teaching career until 1975 when a child was born. Recently she has been doing historical research for the school board of Victoria.

On February 13, 1988 appellant addressed a letter to the Consulate General at Vancouver which read in pertinent part as follows:

2/ Section 19(1)(b) of the Canadian Citizenship Regulations, P.C. 1968-1703, 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).

On April 30, 1973, the Canadian Citizenship Branch, Ottawa sent an administrative notice to all courts having jurisdiction over naturalization, informing them of the decision of the Federal Court and advising them that "[e]ffectively immediately [a qualified] applicant for citizenship...will only subscribe to the oath of allegiance."

> I am writing to you because I am interested to know if it is possible to obtain dual citizenship....I came to a teaching job at York House Vancouver where I was strongly encouraged to take out Canadian citizenship. I took out citizenship in 1973 when I qualified for tne residence requirement. I also wanted to vote as I had been to [sic] [redacted] to vote in the election before we left the U.S. I found it very hard to give up my American citizenship. I have heard, recently, that it is possible to obtain dual citizenship.
>
> I would like to know if it is possible to secure dual American-Canadian citizenship. I would also like to initiate this procedure if it has now become possible. If it is not possible, I would like to [sic] what is involved in having my American citizenship reinstated....

The Consulate General responded in April informing appellant that she might have expatriated herself by obtaining naturalization in Canada. She was asked to complete a form, titled "Information for Determining U.S. Citizenship," and informed she might discuss her case with a consular officer before completing the form. Appellant completed the citizenship questionnaire and a supplementary one. She was also interviewed by an officer of the Consulate General.

On August 8, 1988, in compliance with the provisions of section 358 of the Immigration and Nationality Act, a consular officer executed a certificate of loss of nationality in appellant's name. 3/ The certificate recited that appellant

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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

acquired United States citizenship by birth at Greenville, Ohio, and that she obtained naturalization in Canada upon her own application, thereby expatriating herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on September 2, 1988, an act that constitutes an administrative determination of loss of nationality which may be appealed to the Board of Appellate Review. The appeal was entered in April 1989.

II

Appellant was granted a certificate of Canadian citizenship on April 6, 1973, having herself made application therefor. Since she obtained naturalization in accordance with the laws of Canada, she brought herself within the purview of section 349(a)(1) of the Immigration and Nationality Act. The statute also provides that loss of nationality will result only if the expatriative act was done voluntarily with the intention of relinquishing United States nationality. The first issue to be addressed therefore is whether appellant acquired Canadian citizenship voluntarily.

There is a statutory presumption that one who performs a statutory act of expatariation does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was not done voluntarily. 4/

3/ (Cont'd.)

> 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/ 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

Appellant therefore bears the burden of proving that her naturalization in Canada was, more probably than not, an involuntary act.

She maintains that: "My decision to become a [Canadian] citizen was not completely voluntary in all senses of the word voluntary." In support of that contention, she submitted a letter, dated April 3, 1989, from one Peter Tacon, former headmaster of the private school in Vancouver where appellant taught from 1969 to 1971, who had advised her to become a Canadian citizen. Tacon stated that appellant's taking out Canadian citizenship "was principally at my suggestion." His main concern, he wrote, was that in order to be assured of a profession future in Canada, she ought to have the citizenship of that country. "This was an attempt to secure a sound future for her and her family."

Appellant submits that "I had no choice if I wanted to keep my job." She argues, in effect, that economic circumstances forced her to become a Canadian citizen.

Economic duress may render a statutory expatriative act involuntary. Stipa v. Dulles, 233 F.2d 531 (3rd Cir. 1956), and Insogna v. Dulles, 116 F.Supp. 473 (D.D.C. 1953). TO sustain a plea of economic duress, however, the party must show that his or her economic situation was dire. Maldonado-Sanchez v. Shultz, Civil No. 87-2654, memorandum opinion, (D.D.C. 1989).

In the case before us, appellant has not provided sufficient evidence of economic duress to prevail. She has not shown that her ability to subsist was threatened in any way. Absent evidence to the contrary, it may reasonably be assumed that appellant's husband could provide for them both. We do

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4/ (Cont'd.)

> 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.

not doubt that if appellant wished to continue to teach and advance in that career, she was required to become a Canadian citizen. But since appellant has not shown that dire necessity required her to hold a teaching situation, it is evident that she preferred teaching in Canada to other work which would not entail acquiring Canadian citizenship. To perform an expatriative act in order to be able to do a job one finds more gratifying than any other is not to act under dire necessity. Appellant chose to be a teacher in preference to doing other things at which she might be adept. If one has opportunity to make a personal decision based upon choice, there is no coercion. 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 obtained naturalization in Canada of her own free will.

III

The question remains whether appellant's naturalization was performed with the intention of relinquishing her United States citizenship. It is settled that, even though a citizen voluntarily performs a statutory expatriating act, loss of citizenship will not ensue unless it is proved that the citizen intended to relinquish his United States nationality. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967). The government must prove a party's intent by a preponderance of the evidence. Vance v. Terrazas, at 267. Intent may be proved by a persons words or found as a fair inference from proven conduct. Id., at 260.

The intent to relinquish citizenship that the government must prove is the citizen's intent at the time of the performance of the statutory act of expatriation. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981). It is recognized, however, that a party's specific intent to relinquish citizenship "rarely will be established by direct evidence", but that circumstantial evidence surrounding the performance of a voluntary act of expatriation may establish the requisite intent. Terrazas v. Haig, supra, at 288. In the case before the Board, the intent that the government must prove by a preponderance of the evidence is appellant's intent at the time she voluntarily obtained naturalization in Canada.

Obtaining naturalization in a foreign state may be highly persuasive evidence of an intent to relinquish citizenship. It is not, however, conclusive evidence of the assent of the citizen. The Supreme Court stated in Vance v. Terrazas, supra, at 261:

> ...it would be inconsistent with Afroyim to treat the expatriating

> acts specified in sec. 1481(a) as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen. 'Of course,' any of the specified acts 'may be highly persuasive evidence in the particular case of a purpose to abandon citizenship.' Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (Black, J., concurring). But the trier of fact must in the end conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute, but also intended to relinquish his citizenship.

In cases where, as in the instant one, a United States citizen knowingly, intelligently, and voluntarily obtains naturalization in a foreign state and simultaneously renounces his citizenship, the evidence of intent to relinquish citizenship becomes more compelling. The voluntary performance of the expatriating act in such circumstances demonstrates an intent to relinquish United States nationality, provided there are no other factors that would justify a different result. In Richards v. Secretary of State, 752 F.2d 1413, 1421 (9th Cir. 1985), the court of appeals said that "the voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to relinquish United States citizenship." The court also recognized that the totality of the evidence should be weighed in reaching a conclusion as to the citizen's intent. Similarly, in Meretsky v. U.S. Department of Justice, et al., No. 86-5184, memorandum op. (D.C. Cir. 1987), plaintiff took an oath of allegiance to Canada that explicitly required him to renounce allegiance and fidelity to the United States. The court adopted the reasoning in Richards, supra to the effect that a United States citizen's free choice to renounce his citizenship results in loss of that citizenship. It was the court's conclusion that the oath he took renounced his United States citizenship "in no uncertain terms." 5/

5/ See also United States v. Matheson, 400 Supp. 1241, 1245 (S.D.N.Y. 1975), aff'd, 532 F.2d 809 (2nd Cir., 1975) cert. denied, 429 U.S. 823 (1976). A declaration of allegiance to a foreign state in conjunction with the renunciatory language of United States citizenship "would leave no room for ambiguity as to the intent of the applicant."

As triers of fact we must also determine whether appellant knowingly and intelligently made a declaration of renunciation of United States citizenship when she obtained Canadian citizenship. Terrazas v. Haig, 653 F.2d at 288. In holding that the plaintiff in Terrazas, who expatriated himself by making declaration of allegiance to Mexico, acted knowingly and intelligently, the court took note that at the time he performed the expatriative act he was "22 years old, well-educated and fluent in Spanish." In the case now before the Board, appellant was 29 years old and university-educated when she subscribed to a declaration of renunciation of all other allegiance and fidelity. She submits, however, that:

> It all appears so black and uhite 20 years later and it is easy to say that the wording of the oath was clear, but this disregards circumstances. In the confusion and noise of approximately 100 other applicants I read an oath that I saw for the first and only time at that moment. I was not forewarned about the oath or its contents.

Nonetheless, absent persuasive evidence to the contrary, we are of the view that appellant was capable of understanding, and must be deemed to have understood, the significance and consequences of the declaration of renunciation.

Appellant suggests, however, that her subscription to the declaration of renunciation on April 6, 1973 did not represent her true state of mind on that day. Referring to the memorandum the Consulate General sent to the Department transmitting the certificate of loss of her nationality which she observed was the basis for the Department's adverse determination on her citizenship, appellant stated that:

> In paragraph 2 of the Memorandum the author of the memo states that 'Declaration of renunciation of all allegiance and fidelity to any foreign sovereign or state was not required in the Canadian naturalization process,' because 'this requirement technically ceased on April 3, 1973,' just three days before I was naturalized. The author of this paragraph goes on to state 'and Mrs. [redacted] did make this declaration.' This implies that I had a choice and I chose to renounce allegiance to my country.
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> The assumption that I had a choice completely ignores the facts as

> stated in two letters from the Canadian Secretary of State, letters that were required by the American Consulate in Vancouver as part of the documentation for my citizenship determination. Both of these letters indicate that the above declaration was part of the oath administered to all who were naturalized on April 6, 1973.
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> My husband was present at the Canadian naturalization ceremony and has written a letter to that effect and concurs that there was no choice. There were over 100 people in the citizenship court that day and they all said and did the same thing.

The record shows, and Canadian officials have confirmed, that on April 6, 1973 appellant subscribed to a declaration of renunciation of all other allegiance and fidelity. Although the Federal Court of Canada on April 3, 1973 had declared ultra vires the regulations that prescribed the declaration of renunciation, it appears that on April 6, 1973 the Canadian authorities nonetheless required that appellant and the others present make the declaration. In one sense she is correct; if she wished to be granted a certificate of Canadian citizenship, she had no choice but to make the declaration. But in another sense she was not compelled to make the declaration. Had she been anxious about the effect on her United States citizenship when she read the declaration she could have demurred and not signed it, awkward though it might have been for her to do. Instead, she proceeded, albeit with heavy heart.

The only extant evidence of appellant's state of mind on April 6, 1973 dating from 1973 is her naturalization in Canada, declaration of renunciation of other allegiance and oath of allegiance. While we do not question appellant's sincerity in protesting that she meant to retain her United States citizenship, we would ignore the ordinary controlling principles of evidence if we were to deem appellant's latter-day claims more probative of her probable state of mind in 1973 than the evidence contemporaneous with her performance of the expatriative act.

Finally, the Board must determine whether there are any factors that would require us to conclude that appellant probably did not intend to relinquish her American citizenship when she obtained Canadian citizenship. Richards v. Secretary of State, 752 F.2d at 1421.

Appellant maintains that "there is more evidence that I did not intend to relinquish my American citizenship." It is "evidenced," she states,

> ...by the 25 residents of Greenville, Ohio (where I was born) [appellant submitted a petition to the Board which was signed by residents of Greenville) stating that I did intend to maintain ties with the U.S. and by the numerous letters of support from friends and relatives around the U.S. It should also be noted that I iniated [sic] the whole procedure because I am concerned and extremely interested in my citizenship and in maintaining it.

A careful review of the record discloses no factors sufficiently compelling to raise doubts that appellant intended what she declared on April 6, 1973 she intended. The considerations appellant mentions are interesting and doubtless reflective of a sincerity of purpose, but they are hardly probative of her intent at the relevant time. The judicial precedents that the Board must apply to decide appellant's case do not permit us to accept her latter day allegations as more probative of her state of mind in April 1973 than what she declared at that time.

IV

Upon consideration of the foregoing, we hereby affirm the Department's determination that appellant expatriated herself by obtaining naturalization in Canada upon her own application.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Frederick Smith, Jr., Member