

April 3, 1990

## DEPARTMENT OF STATE

## BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C ■ - S ■ S ■

C ■ - S ■ S ■ appeals from an administrative determination of the Department of State that he expatriated himself on July 8, 1987 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of United States nationality before a consular officer of the United States at Hong Kong. 1/

For the reasons given below, we conclude that appellant's renunciation of citizenship was not voluntary in that he probably had diminished mental capacity on the day he performed the expatriative act. Accordingly, the Department's holding of loss of his nationality is reversed.

## I

Appellant S ■ was born on ■ in the  
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He came to the United States as an immigrant in 1978 and moved into the ■ home of his older brother, ■  
 Appellant attended Cleveland State University (CSU) from which he obtained a bachelor's degree in electrical engineering in 1982. He began a postgraduate course at CSU, but shortly thereafter transferred to the University of Missouri.

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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 diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; . . .

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On March 13, 1984 appellant was naturalized as a United States citizen before the United States District Court for the Northern District of Ohio.

It appears that appellant had academic difficulties at the University of Missouri, and was unable to find employment (apparently to help finance his studies). Around the autumn of 1984 he returned to Cleveland and briefly resumed postgraduate study at CSU. Suddenly, without telling his brother, he went to California. He was unable to find any work there except of a menial nature. About this time he allegedly began to have hallucinations. Feeling very unsafe, as he put it, he decided to leave California, and returned to Hong Kong in January 1985. He moved into his parents' apartment and found a job as an electronics repairman. In May and June his hallucinations apparently became acute. After an incident in which appellant displayed blatant anti-social behavior, his mother took him to a general practitioner, one Dr. H.W. Kam, who recommended that appellant enter a psychiatric clinic. Appellant, however, refused to accept Kam's recommendation and shunned treatment for his condition which Kam diagnosed as schizophrenia.

Over the next two years, appellant allegedly continued to hear voices; had the illusion that he was being subjected to electromagnetic radiation; and imagined the upstairs tenants were trying to gas him. One day in the spring of 1987 he claims he was awakened by voices which so frightened him that he decided to leave Hong Kong and return to the United States. He obtained a United States passport from the Consulate General in April 1987 and arrived in Cleveland in May. Once again he moved into his brother's home. Appellant remained in the United States barely one month. Allegedly having been warned by voices and visions that he was not welcome in the United States, he suddenly left and returned to Hong Kong in mid-June.

Shortly after arriving in Hong Kong he visited the United States Consulate General with the object of renouncing his United States nationality. The record shows that appellant discussed renunciation with a consular officer on July 6, 7 and 8, 1987. According to a report the Consulate General later sent to the State Department, "Conoff carefully explained the ramifications of renunciation, and gave him copies of the relevant documents to read and study. On each occasion, he was firm in his resolve to renounce his citizenship...."

The report continued:

Conoff repeatedly encouraged [redacted] to wait a few weeks before reaching his final decision. He insisted he had been considering renunciation for some

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weeks and Reeded no further deli-beration. He would not leave on July 8, 1987 until the renunciation was completed.

On July 8, 1987, in the presence of two witnesses and the consular officer, appellant read and executed a statement of understanding in which he declared, inter alia, that he exercised voluntarily his right to expatriate himself; realized he would thereby become an alien toward the United States; acknowledged that the extremely serious and irrevocable nature of renunciation had been explained to him by the consular officer and that he fully understood the consequences. Thereafter, appellant made the prescribed oath of renunciation:

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 there-to I hereby absolutely and entirely, renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

Appellant, also executed an affidavit in which he stated the reasons he renounced his nationality. It reads in relevant part as follows:

(i) I had lived in Hong Kong for 18 years (6/1962-5/1978; 1/1985-5/1987). On 4th January 1985, I came back from U.S.A. and worked in Hong Kong for 2 years. Afterwards, on 11th May 1987, I returned U.S.A. and I found difficult to accustom myself in the new environment.

(ii) Because of nostalgia, I returned to Hong Kong on 19th June 1987.

(iii) My parents are living in Hong Kong and both of them are over 65 years old.

(iv) I like to live in Hong Kong forever.

In compliance with section 358 of the Immigration and Nationality Act, the consular officer executed a certificate of

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loss of rationality in appellant's case. 2/ In it he certified that appellant acquired the nationality of the United States by virtue of naturalization; that he made a formal recunciation of his nationality; and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

In its report forwarding the certificate to the Department, the Consulate General observed that: "Although [redacted] acted nervous, we have no reason to believe he is not of sound mind, and he appears to have reached his decision on his own volition."

The Department approved the certificate on July 29, 1987, approval being an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

In January 1988, appellant wrote to the Board, stating that:

I apologize that I relinquished my U.S.A. citizenship. After the relinquishment, I find out the main reason of my returning Hong Kong from U.S.A. twice. Therefore, I want to apply U.S.A. citizenship again.

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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.

Office of the Legal Attaché

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As for the first time of my returning Hong Kong, the reasons are homesickness, and the misfortunate occurrence in my brother's family. (Kin Sang Seto's family).

As for the second time of my returning Hong Kong are due to my imprudence and impulsiveness.

I realized that I relinquished U.S.A. citizenship without deep consideration of the aftermath.

In a letter to the Board, dated February 23, 1988, appellant further stated:

On June 16th, 1988 [sic] I came back from Cleveland, Ohio. I felt very dejected and did not know what I should do next. Later, I conceived an idea of staying in Hong Kong, and therefore I relinquished my U.S. citizenship in U.S. Embassy in Hong Kong.

Afterwards, I still felt very dejected and perplexed with my future. In addition, I was frustrated with failure in seeking for employment.

When I think over the reason of my relinquishment of U.S. citizenship, this is because of my imprudence and impulsiveness which are the result of my not being awakened up.

Furthermore, because of the hostility towards me and through a year-long suffering in Hong Kong, I have a cool feeling towards others and therefore, it is difficult for me to be reduced to the state of homesickness.

I hope that I can be forgiven and regain my U.S. citizenship through this appeal.

In response, the Board informed appellant on March 7, 1988, that he had not stated a cause of action. He should explain wherein he believed the State Department had erred in fact or law when it decided that he expatriated himself; he had merely alleged that he was imprudent and impulsive. Unless he was able to state precisely why he was appealing, the Board could take no action in his case. If it was not clear what the

Board required him to do, he might consider consulting competent legal counsel.

In March 1988 appellant reportedly menaced neighbors with a knife. The police were called and took him to Castle Peak Hospital where he was treated and rehabilitated with occupational therapy. He was discharged from Castle Peak in May 1988 and thereafter attended a psychiatric centre regularly for follow-up.

In June 1988, an attorney representing appellant filed notice of appeal on his behalf from the Department's holding of loss of his citizenship. Oral argument was heard on October 23, 1989. Appellant was not present but was represented by counsel.

## II

Section 349(a)(5) of the Immigration and Nationality Act prescribes that a national of the United States shall lose his nationality by voluntarily making a formal renunciation of nationality before a consular officer of the United States in a foreign state in the manner prescribed by the Secretary of State with the intention of relinquishing nationality.

The record shows that appellant's formal renunciation of nationality was carried out in the manner prescribed by law and in the form prescribed by the Secretary of State. Thus, the two issues to be determined are whether appellant acted voluntarily and whether he intended to relinquish United States citizenship. We turn first to the issue of voluntariness.

In law it is presumed that one who performs an 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 done voluntarily. 3/

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

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Appellant contends that because of mental illness he lacked the capacity to renounce his United States nationality voluntarily on July 8, 1987.

In his sworn statement of December 30, 1988 he attempts to show

...how my mental state was during the period between October 1984 and March 1988, and to demonstrate that, under the influence of my mental illness, my mental state was really unstable at the time that I relinquished my U.S. Citizenship on July 8th 1987, and to describe how my mental illness dominated over my daily life. Besides, during the period between October 1984 and March 1988, my mental illness made me believe that all the illusions were real.

The mental illness which appellant alleges rendered him incompetent to make a rational renunciation of his United States citizenship is schizophrenia.

'Schizophrenia' is defined as 'Bleuler's term for dementia praecox. A psychosis characterized by lack of effect, inappropriate mood, unpredictable behavior, and disintegration. Frequently terminates in mental regression, total withdrawal from reality into phantasies and paranoid formulations.' Blackistone - New Gould Medical Dictionary. p. 910.

Becker v. Becker, 138 N.Y.S. 2d 391, 399 (1954).

See also In re Meyers, 189 A. 2d 852, 858, 410 Pa. 455 (1963) there the court took note that schizophrenia has been defined as "'disintegration of the individual's mind and personality characterized by disturbances of thinking, ...hallucinations and similar manifestations.'" Am. Jur. Proof of Facts, Medical Glossary p. 215."

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3/ (Cont'd).

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.

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There follows a summary of appellant's account of the progression of his mental illness.

In 1984 when he went to California, he heard a voice telling him that he was only allowed to move three times in Los Angeles. While riding to and from his job, appellant! heard someone talking to him in Chinese saying that he knew where he was. "This," he wrote,

gave me strong impression that I was being observed day by dsy. Besides, about a week before I left ios Angles, [sic] the voice of the Chairman of Electrical Engineering Department in Cleveland State University asked me why I did not keep on studying in Cleveland State University. Under these circumstances, I felt very unsafe. A few days later, at LOS Angles [sic] Airport, I phoned my parents in Hong Kong and asked them to buy a [sic] air-ticket for me to return Hong Kong.

After he returned to Hong Kong in January 1985, "the voices kept bothering me day by day." In addition, he smelled gases in his parent's apartment house, although they did not. One day a voice told him to "scissor" books he brought from the United States. Although he did as instructed, "the voice did not stop bothering me."

In May 1985,

...While I was sleeping, I was aroused by a person in my brain. Besides, the person in my brain knew what I thought and what I was doing. Owing to not knowing how to get rid of this devil in my brain, suddenly, I wanted to commit suicide by jumping out of the roof in order to kill the devil in my brain. Before I committed suicide, I thought that it was better to ask my uncle to take care of my parents. Then I took the bus to my uncle's working place and asked him to take care of my parents. Then I left. On my way home, I thought that it was worthless to commit suicide and it was Setter to follow what the voices said if their ideas did not hurt others. After I had arrived home, the voices ex-



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plained to me that their way of communicating with me was similar to the way that I could hear the broadcast from radio station and television station. At that time, I believed that those persons with their voices bothering me should have some authorities behind them and because of their knowing what I thought and what I was doing I was really afraid of them.

A month later, appellant again smelled gas which he thought was being injected into his room by the tenants upstairs. "...Suddenly, I could not control myself and I rushed to the upper floor. Then I knocked at the door heavily and warned those tenants living there of not injecting any gases into my house on the 8th. floor. Later, my mother took me to Dr. H.W. Kam's Clinic...." He refused to go to a psychiatric clinic as Kam recommended, because the voices told him this was "their plan to trap me in the clinic forever."

Thereafter appellant was aroused by the voices every morning at five or six o'clock. He also felt that he was being subjected to electromagnetic radiation. The voices told him he was not allowed to eat more than two bowls of rice per day, "Then I was getting thin." He continued to smell gas and believed the tenants upstairs were conspiring against him.

Around March 1987, appellant was aroused "from sleep by my colleagues' voices, and they let me hear all the sounds that I made in the daytime. This really scared me to death. Afterwards, I decided to go back [sic] Ohio, U.S.A."

After moving into his brother's house, appellant heard a voice ordering him out of the house because he was a cook. He heard his sister's and sister-in-law's voices one day when they were not in the house, shouting in anger that they did not want him to live there. Further,

...The President of U.S.A. and the Secretary of Defense Department also gestured that I was not welcomed to come **back** to United States of America. These phenomena made me very dejected and desperate. At night, my classmate's voice and the Hong Kong soccer commentator's voice waked me up. They asked me why I still stayed in U.S.A. and did not return Hong Kong. Besides, they said that their voices were transmitted to me through satellite.

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As ordered by the voices of former colleagues in Hong Kong, appellant destroyed books he had stored in Cleveland. Since he could not "tolerate the sufferings from the above phenomena" while he was living in his brother's house, he decided to return to Hong Kong. "...While I was in the aeroplane, in my illusion, I saw a group of persons pointed [sic] their guns at me in order to prevent me from going back to U.S.A."

Back in Hong Kong, early in July 1987, appellant continued to be bothered by voices which "ever told me to change my citizenship."

...At that time, I had some questions in my mind. Why did the President of U.S.A. and the Secretary of Defense Department dislike me in my illusion? Why were those persons with their voices bothering me in Hong Kong and in United States of America allowed to do so without any authorities to stop them? Why were they allowed to radiate me with electromagnetic radiator, without anyone to stop them? Was not I welcomed to become U.S. citizen? The combination of these questions and the sufferings from my mental illness made me relinquish [sic] my U.S. Citizenship on July 8th 1987.

Three Hong Kong residents who state they have known appellant for many years have attested to his unusual, anti-social behavior. Representative is the sworn statement of Mr. Kwan Kwan who described Szeto's unusual behavior as follows:

- (i) Always talking to himself and self-giggling.
- (ii) Drinking salted tea, eating plenty of garlic, ginger and shallot.
- (iii) In June 1985, Mr. Chi-Shun Szeto rushed to the 9/F and knocked the door heavily and warned those tenants living on the 9/F of not injecting any gases into his room or the 8/F because he smelled some gases in his house but I (Kwan, Kwan) did not smell any gases at all.
- (iv) Mr. Chi-Shun Szeto told me that he always heard some voices bothering him by

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singing and talking to him day by day. Also, he told me that those persons who used their voices bothering him, always knew what he thought; what he was doing and he did not know where the voices came from.

(v) . . . In August 1985, he (Mr. Chi-Shun [REDACTED]) scissored many books into pieces.

(vi) On 17th March 1988, Mr. Chi-Shun Szeto grabbed a knife threatening the neighbours living upstairs because he always felt of being radiated by electromagnetic waves and he thought that the electromagnetic waves were from upstairs.

At the hearing on October 23, 1989, appellant's older brother, Ming Kuen Seto, known as Mike Seto, testified about appellant's behavior in Cleveland during the periods 1978-1984 and May-June 1987. 4/ From 1978 to around the time appellant went to the University of Missouri appellant got on well with his older brother and his family. When he returned to Cleveland from Missouri, however, he seemed nervous, alleged that he thought someone was following him and that he was hearing voices. Mike Seto said he was worried about his brother's condition, but was unable to induce him to see a doctor. Mike Seto continued that appellant would lock himself in his room for days on end; did not want to eat with the family; told his brother not to speak English but Chinese because someone might be listening to their conversation.

After appellant returned to Hong Kong in January 1985, their parents told Mike Seto that appellant would not eat regularly, locked himself in his room, drank tea with salt in it and said that someone was following him. When Mike Seto spoke to his brother the latter seemed "very, very afraid," complaining that people were trying to gas him.

In May 1987 after appellant returned to Cleveland, he locked himself in his basement room, fearing that people were following him. Mike Seto described his brother in May-June 1987 as "very skinny, his eye very red, you know, wild eye.

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4/ Transcript of Hearing in the Matter of Chi-Shun Szeto, Board of Appellate Review, October 23, 1989 (hereafter referred to as "TR"). 49-65.

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Almost stood out. Very skinny." 5/ When Mike Ssto recommended that appellant see a doctor, appellant observed that Mike was crazy. Appellant's decision to return to Hong Kong was unexpected and sudden. He changed his mind repeatedly about going to the airport before finally leaving. Mike Seto did not speak to his brother on the telephone after the latter returned to Hong Kong, but he did speak to their parents who said that appellant was getting worse, shaking, seemed scared of everybody, and complained that a lot of people were talking to him.

█ █ appellant's younger sister, at the hearing corroborated Mike Seto's testimony, noting that in 1982 when she went to Cleveland to live with her elder brother, appellant seemed quite normal. She began to notice a change in his behavior in the autumn of 1984. In May 1987 appellant seemed to her to be a different person. He had lost weight, did not get along with Mike Seto and his family, stayed in his room and talked to himself.

We now turn to the medical evidence which appellant has presented in support of his claim that he was mentally incompetent to perform a voluntary act of expatriation on July 8, 1987.

Dr. H.W. Kam, a general practitioner of Kowloon, reports that he diagnosed appellant as schizophrenic in the summer of 1985. 6/

The above named came to my clinic on 14th June 1985. I was given the history that he was irritable and alleged being poisoned by next door neighbour and at one stage he took a knife to threaten the other party in order to settle it. His family failed to calm and reason with him.

During the period of 14th June 1985 and 20th July 1985, he was personally attended by me and gave me the impression that he was under stress of illusion that he was being hurt. He was diagnosed as Schizophrenia and was

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5/ TR 60.

6/ Dr. Kam's declaration is dated December 5, 1988.

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referred [sic] to Psychiatric Center for specialised treatment. He was found to be uncooperative and even threw away the refer letter."

After noting that appellant returned to his clinic on December 4, 1988, Dr. Kam continued:

I was made aware that the United States Department of State opposed to the withdrawal of Mr. [REDACTED] renunciation of American Citizenship. Since I had personally attended Mr. [REDACTED] I am in a position to make a judgment concerning his mental state at that period when he renounced his citizenship. Based on the diagnosis and analysis of his mental state I was convinced he did not actually desire to relinquish his United States citizenship and his abnormal action was caused by his mental illness. I think it is most unfortunate he made such important decision during his illness.

After appellant saw Dr. Kam, he was not under treatment again until eight months after he renounced his citizenship. On March 17, 1988 he was admitted to Castle Peak Hospital, a Hong Kong government institution. Dr. C. Y. Lee who attended appellant made the following report on his condition. 7/

The above-named was admitted on 17/3/88 because of abnormal behaviour at home. His illness commenced when he was studying in US for his Master Degree. He did not finish his study and returned to Hong Kong in December, 1985. His symptoms which included auditory hallucination, insomnia, self-giggling, refusal of food and social withdrawal aggravated since. Abnormal behaviours included drinking of salted tea as well as eating planty [sic] of garlic, ginger and shallot. He twice had the feeling of being hurt by electric wave from

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7/ Dr. Lee's Declaration is dated June 30, 1988.

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neighbours living upstairs and actually grabbed a knife, in order to stop them. No true violence or damage resulted from these episodes. In view of his inappropriate behaviour, his parent reported to the Police and the patient was sent to Accident and Emergency Department of Caritas Medical Centre. He was referred to our hospital because of the psychotic symptoms.

After admission, the patient's mental state became quite stable. All symptoms subsided spontaneously. He explained his grabbing of knife as only a threatening gesture and he had no intention to chop others. During interviews, his speech was coherent and relevant. No disorder in his thought was noticed. His mood was neutral and stable. No suicidal idea was expressed. A diagnosis of schizophrenia was made. His mental illness was probably precipitated by his heavy academic work load and unsatisfactory result in University [sic] of Missouri. He was treated with neuroleptics and rehabilitated with occupational therapy. In view of his prompt responsiveness to treatment and having supportive relatives, he was discharged on 3/5/88 with Stelazine 5 mg bd and Artane 2 mg bd. 8/ Outpatient follow up was arranged to supervise his improvement. ...After having examined this case carefully, I consider it is possible that the mental state of the patient was unstable at that time. His abnormal behaviour was probably caused by the mental illness and not under his control.

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8/ Stelazine, a neuroleptic drug, is used to treat serious psychotic mental disorders, the most common of which is schizophrenia. See Public Citizen Health Research Group, Worst Pills Best Pills, (1988).

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Dr. Lee supplemented the foregoing evaluation with the following opinion: 9/

According to the information obtained from the parents and uncle of the above-named, the onset of his illness started in 1985. His symptomatology as described in my first report pointed to a diagnosis of schizophrenia. He was not under treatment for 3 years until 3/1988 when he was admitted to the Castle Peak Hospital under my care for the very first time. I am aware that the patient's renunciation [sic] of his United States nationality was on 8/7/87, a time after his onset of illness and before he received any treatment.

In conclusion, judging from the chronological sequence of the events, I am of the opinion that the patient's renunciation of his U.S. nationality was at that time under the influence of his abnormal mental state.

After release from Castle Peak Hospital, appellant began treatment at the Yaumatei Psychiatric Clinic, also a Hong Kong government institution, Dr. W. H. Tsang of the Centre has given the following diagnosis of appellant's condition: 10/:

According to the history from the patient, his uncle & his attending general practitioner, the onset of his illness started in June, 1985 & symptomatology, including auditory hallucination, paranoid delusion, insomnia, self-giggling, fool [sic] refusal, social withdrawal and abnormal behaviour, supported a diagnosis of schizophrenia. He was not under treatment until March, 1988 & his psychotic symptoms were unlikely to remit without treatment. His renunciation of his United States Nationality was on 8/7/87, after onset of his mental illness & before he receiving any treatment. Hence, it was very likely that patient's

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9/ This opinion is dated November 17, 1988.

10/ Statement of May 12, 1989.

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renunciation of his U.S. Nationality was under the influence of his abnormal mental state.

. . .

In conclusion, Mr. [REDACTED] was considered to be suffering from active schizophrenia from June, 1985 to May, 1988. & his renunciation of his U.S. Nationality was made at that time under the influence of his abnormal mental state.

The final medical opinion in the case is khat of Thomas W. Hall, Ph.D., a clinical psychologist of Shaker Heights, Ohio. "I was asked by appellant's attorneys to review the case," Dr. Hall stated, 11/

in order to see if I could provide an opinion as to the likelihood that Mr. [REDACTED] renunciation could indeed have been directly related to mental illness. My task, as I understand it, is to provide the Board of Appellate Review with an opinion from a clinical psychologist about whether the accounts of Mr. [REDACTED] and others are consistent or not with a picture of mental illness. There was no opportunity for a face-to-face examination, and this report must be viewed in that light.

Dr. Hall had available the entire record in appellant's case. After staking background information about appellant which we have already set forth, Dr. Hall traced the course of appellant's illness. Noting that appellant indicated that the persecutory and threatening voices continued after he went to the United States in May 1987, Dr. Hall observed that appellant allegedly

Also began to imagine family voices telling him he was not welcome in their home. He became convinced that other powers would harm his family if he did not leave, and near the end of June, 1987, he returned to Hong Kong.

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11/ Dr. Hall's undated report was received by the Board on January 2, 1990.



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At the beginning of July, 1987, he tried to figure out why very important: U.S. leaders were allowed to persecute him and 'radiate me with elechromagnetic radiation.' He concluded that it was because he was not welcomed as a U.S. citizen and that if he renounced his citizenship, the voices would let him alone and he would be safe. He was in a very fearful hurry when he approached the Embassy, but told no one of his 'real' reasons, the voices. No one knew of his hallucinations because, as he said, 'I used my brain to respond to the voices and did not use my voice.'

Sure that he had finally found the solution to his problem of the voices, Mr. [REDACTED] was very puzzled and upset when they continued. He increasingly heard voices and saw signs all about him that he was unwanted, worthless, and in danger. He finally 'realized' that he had been 'fooled' and 'tricked' by the voices and that it had been 'worthless' to give up citizenship. At the end of 1987 and early in 1988, he wrote letters asking to be reinstated. In March, 1988, he threatened his neighbors with a knife because he thought they were 'radiating' him, the police were called, and he was taken to a psychiatric hospital. He responded quickly to treatment and was relieved to learn that his state of terror resulted from mental illness and was not real.

The foregoing represents, in Dr. Hall's opinion,

a convincing description of the onset and course of paranoid schizophrenia, a serious mental disorder characterized by reality-distorting hallucinations and delusional thoughts. In Mr. [REDACTED] case, it appears that his psychosis centered around ideas that he was worthless, unwanted by others, and in danger of being punished for his failures. The pattern that runs throughout his account is of desperate, irrational attiempts to feel safe and to remove the hallucinatory voices that were persecuting him. Such motivation,

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while irrational, was real to Mr. [REDACTED] and would account for his impulsive, pressured trips back and forth between the U.S. and Hong Kong. It is reasonable to conclude that his renunciation of citizenship also followed psychotic logic and was an attempt on his part to remove himself from the terrorized state he was in at the time.

Appellant bears the burden under the statute to prove by a preponderance of the evidence that he did not act voluntarily when he formally renounced his United States citizenship. He has undertaken to meet that burden by (1) setting forth a detailed account of his thoughts and conduct over an extended period of time; (2) presenting sworn evidence that he behaved abnormally from 1985 to the spring of 1988; and (3) introducing several medical opinions.

The evidence appellant has put forward is, in our opinion, sufficiently precise and symptomatic of a disturbed mental state in July 1987 that a reasonable man could draw from the inference that appellant acted with diminished capacity on July 8, 1987. There is, therefore, a shifting to the adversary - here the Department of State - of the duty of going forward with evidence to show that appellant had a lucid interval on July 8, 1987, or experienced restoration of mental competency on that day. McCormick on Evidence, 3rd Ed. section 338. See also In re Meyers, supra, at: 859. 12/

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12/ See Matter of Sinclitico, 15 I&N Dec. 2389, 320, 323 (BIA 1975).

...The whole pattern of the respondent's life, including his poor judgment, strange behavior and medical diagnosis of schizophrenia from childhood, shows mental incompetence to make an intelligent decision regarding voluntarily surrendering his United States citizenship. We are satisfied that: the respondent has successfully rebutted any presumption that he voluntarily expatriated himself as a result of Canadian naturalization in 1961. Under these circumstances, the burden was on the Government to show that at the time of his naturalization as a citizen of Canada, the respondent was experiencing a lucid interval when he had sufficient capacity to understand in a reasonable manner the nature and effect of the act which he was doing. We

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Acknowledging the burden of going forward with evidence, the Department undertakes to show that appellant probably was competent on July 8, 1987 to make a rational renunciation of his citizenship. First by challenging the materiality of the medical evidence appellant has submitted.

In its brief, the Department attacked the first opinion of Dr. C. Y. Lee, who, the Department observed,

did not know Mr. [REDACTED] at the time of the renunciation and states: 'After having examined this case carefully, I consider it is possible that the mental state of the patient was unstable at the time (the time of renunciation).' (Emphasis added.) Since the doctor did not know the patient at that time, he uses the word 'possible' and his conclusion is only a conjecture.

The Department discounts the opinion of Dr. Kam, a general practitioner, not a psychologist or psychiatrist, because he examined appellant two years before his renunciation.

The opinions of Drs. Tsang and Hall the Department summarily dismisses as "without merit."

Dr. Hall has stated that he never met Mr. [REDACTED] and spoke only with him by telephone on two separate occasions [sic] for a total of 1.3 hours. Dr. Tsang has stated, 'A psychiatric examination consists of systemic observation of the patient during the interview,....' This statement refutes Dr. Hall's findings. (Emphasis in original.)

Dr. Tsang is presently treating Mr. [REDACTED] but did not know him at the time of his renunciation. Since he is basing his findings on the statements of the patient and his relatives,

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12/ (Cont'd).

conclude that the Service has not sustained its burden of proving by a preponderance of the evidence that the respondent was expatriated and was an alien....

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and did not know the patient at the time of his expatriating act, the Department contends that Mr. Tsang's findings are based on speculation.

Four medical professionals, three trained to diagnose and treat mental disorders, submit that appellant probably was unable to make a rational decision in July 1987 to renounce his citizenship. The Department is not qualified, without more, to challenge their competency to make the judgments they made in appellant's case. Granted, none saw appellant: around early July 1987. However, all four strongly suggest that it is possible he was not able to act rationally on July 8, 1987, given the well-documented history of appellant's abnormal behavior from 1985 to the spring of 1988. Drs. Lee, Tsang and Hall suggest that schizophrenia may persist over a protracted period of time, and that if one is diagnosed as schizoid prior to doing a particular act and again diagnosed as schizoid a few months after that event, the possibility that one suffered impaired capacity at the time the act was done is real.

None of the medical experts asserts that there is clear and convincing evidence that appellant was incompetent on July 8, 1987, or that appellant's impairment has been established beyond a reasonable doubt. It is not necessary, however, for appellant to do more than show that it is probable that he was incompetent on that date. The Department, represented by lay people, is not qualified to refute the evidence of medical professionals. It has not, as appellant's attorneys did, submitted the entire record to a psychologist or psychiatrist of standing and obtained an opinion evaluating the conclusions of the four doctors involved.

Not having introduced expert medical evidence that would cast doubt on the conclusions drawn by four doctors, the Department is hardly in the position to attack their clinical conclusions.

The Department undertakes to show that appellant probably was competent on July 8, 1987 by pointing out: in its brief that while none of the four medical professionals involved examined appellant around the time of his renunciation,

We do have a statement from the consular officer who presided at the renunciation and commented on Mr. [REDACTED] behavior and presence: 'Although [REDACTED] acted nervous, we have no reason to believe he is not of sound mind, and he appears to have reached his decision of his own volition.'

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The consular officer also executed a statement on October 25, 1989 in which he recalled in detail the events of July 8, 1987. The statement reveals a commendable sensitivity on the officer's part about the importance of handling renunciations with great care, and it is obvious that the officer accorded appellant every appropriate consideration. His statement reads in pertinent part as follows:

I had no reason whatsoever to question Mr. Szeto's rationality or his resolve to renounce....I explained renunciation procedures to Mr. [REDACTED] gave him the forms and hand-outs to study, and asked my FSN to explain the process and ramifications in Cantonese, just to make doubly sure that Mr. [REDACTED] understood. I also explained that if he renounced, the only way that he could move again to the U.S. was to begin the immigration process all over again.

The next day, Mr. [REDACTED] returned again to the consulate. He thanked me for being so cautious and careful, insisted that he had studied and considered all that he needed to, and that he wanted to renounce now. I refused to execute the oath and told him that I would insist that he wait at least until the next day. He returned on July 8th; I decided to accept his oath after having Mr. Lu [REDACTED] local employee explain the ramifications one more time in Cantonese and I in English.

Mr. [REDACTED] was determined, but always spoke calmly, even when his desires were thwarted. My FSN who talked with [REDACTED] in Cantonese had the same impression: that [REDACTED] was of sound mind and aware of what he was doing. Although I am not a psychiatrist nor a medical professional, I have dealt with friends who have had nervous breakdowns and Amcits of varying degrees of sanity as a consular officer, and based on my experience I saw no reason to question Mr. Szeto's competence. Had I doubted his competence, I would have checked with his family and co-workers and asked him to see a panel physician.

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In short, the Department contends that "Mr. Zuehlke's statement is the only evidence of the appellant's state of mind at the time of his renunciation." (Memorandum to the Board of October 27, 1989.)

The consular officer's report of July 8, 1987, and his subsequent declaration are, of course, entitled to fair evidential weight. However, as he concedes, he is neither a psychiatrist nor a medical professional. Furthermore, it is apparently not rare for schizoids successfully to conceal symptoms of their illness from lay people, however experienced. The latter may be in dealing with mentally disturbed people. In this regard Dr. Tsang's opinion, which stands uncontroverted by other more expert opinion, is pertinent. In the statement quoted above (see note 8), Dr. Tsang addressed the consular officer's assertions in this way:

According to the affidavit of Mr. Zuehlke, ... the patient spoke in a calm voice without hesitation & appeared to be entirely aware of what he was doing & no doubt about his competence. However, patient's symptoms initially appeared to be relatively encapsulated, allowing him to continue functioning in many areas of his life; that was not uncommon among schizophrenic patients.

A psychiatric examination consists of systemic observation of the patient during the interview, together with specific inquiries by specifically designed questions into various aspects of his thinking, feelings, perception & cognitive functioning. Patients with persecutory delusion are often reluctant to take medication & seek help. For a well-educated, intelligent patient as Mr. Szeto is, it is not difficult for him to conceal his delusion, hallucinations from a layman without psychiatric training. Therefore, a superficially calm, cooperative & coherent person does not automatically imply he was completely [sic] mentally competent.

In the circumstances, the consular officer's observations and conclusions should not, in our opinion, be considered dispositive.


On the basis of the record, we conclude that appellant has rebutted by a preponderance of the evidence the presumption

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that he voluntarily expatriated himself on July 8, 1987 when he made a formal renunciation of his United States nationality. Having shown that he acted involuntarily, there can be no expatriation. Vance v. Terrazas, 444 U.S. 252 (1980).

## III

Upon consideration of the foregoing, we hereby reverse the Department of State's determination that appellant expatriated himself.



Alan G. James, Chairman



Edward G. Missey, Member

Gerald A. Rosen, Member