DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A[redacted] G[redacted] P[redacted]

This case comes before the Board of Appellate Review on the appeal of A[redacted] G[redacted] P[redacted] from an administrative determination of the Department of State, dated January 9, 1987, that he expatriated himself on May 8, 1986 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer of the United States at Tel Aviv. 1/

For the reasons given below, we conclude that appellant's renunciation of his citizenship was made voluntarily with the intention of relinquishing his United States citizenship. Accordingly, we affirm the Department's determination of loss of citizenship .

I

Appellant P[redacted] acquired the nationality of the United States by virtue of his birth at [redacted] He lived in the United States until 1984 when at age 28 he went to Israel. There he joined the Hebrew Israelite Community ("Black Hebrews") at Dimona. He married a member of the Community. They reportedly have a child.

The record shows that on May 8, 1986, appellant visited the United States Embassy at Tel Aviv where he made a formal

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1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), 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 -
>
> . . .
>
> (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; ...

renunciation of his United States nationality. Before making the oath of renunciation, appellant was asked to read and did read a statement of understanding, and having done so, affirmed that he had read it and understood its contents. In the statement appellant declared that he was voluntarily exercising his right to renounce his nationality, "without any force, compulsion or undue influence;" that having renounced, he would become an alien with respect to the United States; and that the extremely serious and irrevocable nature of renunciation had been explained to him by the consular officer, and that he understood the consequences.

Appellant also executed an affidavit which the Department has developed for use in the cases of formal renunciation of nationality by Black Hebrews. 2/ The affidavit posed a number of questions to the prospective renunciant to ascertain whether the renunciation was voluntary and not made under duress. The first question read: "Have you retained an attorney to represent you in this matter of renunciation? If not, why not? Do you want additional time to consult with an attorney, friends or family advisors?" To

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2/ In 1973 a number of Black Hebrews indicated to the Embassy that they wished to renounce their United States nationality. The Department accordingly sent instructions on September 26, 1973 to the Embassy to govern the processing of formal renunciation by Black Hebrews. The instructions read in pertinent part as follows:

> In view of the circumstances involved, Embassy must make certain that renunciation be voluntary and not performed under duress, coercion or influence. Request Black Hebrews who wish to renounce to answer following questions in supplemental affidavi'.:
>
> ...
>
> (There followed the questions set forth in the text above.)
>
> If Consul believes that the renunciant may have any reservations, do not repeat do not administer the oath of renunciation, but send to the Department for decision all documents and a memorandum of conversation in the event of refusal to sign affidavits.
>
> If no reservations are apparent, administer the oath of renunciation and send all documents to the Department.

each part of that question appellant answered "no," "I don't need one," and "no." The second question read: "Is your decision to renounce based: (a) on the fact that the GOI (Government of Israel) is considering deporting you?; (b) on your present financial condition?; (c) on personal or family problems and/or living conditions. (d) on influence, force and/or coercion that is being brought upon you by any person or persons?" Appellant answered "no" to all four parts of that question.

Appellant then made the oath of renunciation, swearing that he absolutely and entirely renounced his United States nationality, "together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining."

After the proceedings were concluded, the consular officer executed a certificate of loss of nationality (CLN) in appellant's name, as prescribed by law. 3/ The certificate recited that appellant acquired the nationality of the united States by virtue of his birth therein; that he made a formal renunciation of United States nationality; and that he thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Embassy forwarded the certificate and supporting documents to the Department under cover of a memorandum which simply stated:

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 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 khe person to whom it relates.

> Enclosed for the Department's approval is a Certificate of Loss of Nationality which was executed by the Embassy in the case of Mr. [redacted] a Black Hebrew, who made a formal renunciation of his U.S. nationality on May 8, 1986.
>
> The certificate is accompanied by an Oath of Renunciation, a statement of understanding and an additional Affidavit as requested in reftel.
>
> Mr. [redacted] U.S. passport is also enclosed.

The Department approved the certificate on January 9, 1987, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review. 22 CFR 7.3(a).

The appeal was entered on January 20, 1989.

II

The time limit on appeal to the Board of Appellate Review is one year after the Department of State approves a CLN. 4/ An appeal filed after that time shall be denied unless the Board determines for good cause shown that the appeal could not have been taken within the time allowed. 5/

4/ Section 7.5(b)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1), reads as follows:

> A person who contends that the Department's administrative determination of loss of nationality or expatriation under Subpart C of Part 50 of this Chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval of the Department of the certificate of loss of nationality or a certificate of expatriation,

5/ 22 CFR 7.5(a) provides in pertinent part that:

> An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time.

The Department approved the CLN that was executed in this case on January 8, 1987. The appeal was filed on January 20, 1989, one year after the time allowed for appeal. Since timely filing is mandatory and jurisdictional, United States v. Robinson, 361 U.S. 220 (1961), the issue posed is whether the Board may entertain this appeal. Whether we may do so, turns on whether appellant has shown good cause why he could not appeal within the one-year period.

"Good cause" is a term of art the meaning of which is well settled. It means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th ed. (1979). It is generally accepted that to meet the standard of good cause, a litigant must show that failure to file an appeal or brief in timely fashion was the result of some event beyond his immediate control and which to some extent was unforeseeable.

Appellant's reason for not appealing within the time allowed is that he did not know he might appeal. He said that he did not receive a copy of the CLN and supporting papers until April of 1988. He apparently obtained them from the authorities of the Community at Dimona after learning that they had been sent to him there. Furthermore, appellant stakes that only a short time before he filed the appeal did he understand how he might appeal.

Standing alone, the reasons appellant gives for not appealing withing one year after approval of the CLN are not substantial. However, for the reasons that follow we consider that his delay in appealing has been satisfactorily explained.

Federal regulations prescribe that when an approved CLN is forwarded to the person concerned, such person shall be informed in writing of the right to take an appeal within one year after approval of the CLN. 22 CFR 50.52. Information about the right of appeal, the time limit, and appeal procedures is set forth on the reverse of the CLN.

In this case, the Embassy on January 28, 1987, sent appellant a letter, enclosing a copy of the CLN, at the Community's address at Dimona. The record shows a postal receipt for the letter, but the signature thereon is not that of appellant.

What appears to have happened in appellant's case is what has happened in the cases of a number of Black Hebrews who have appealed to the Board: the Community authorities intercepted the Embassy's letter and withheld it from appellant. Inkercepting mail addressed to members of the Community seems to be the practice of the leadership, as the Embassy attested recently in response to an inquiry of the Board concerning the appeal of another Black Hebrew:

> Since the Hebrew Israelite members lead a communal life under the authoritative leadership of Ben-Ami Carter, with one central postal address in Dimona, it is most likely that the mail is inhercepted and in certain cases withheld from the addressees. 6/

Appellant was entitled, as a makter of law, to timely notice of the righh of appeal. Due to the evident meddling of Community authorities he did not receive it. This was an event clearly beyond his conkrol. In the circumstances, and given the relative brevity of the delay, we do not consider that it was incumbent upon him to act sooner than he did. Substantial doubt having been raised whether he was informed of his appeal rights in timely fashion, we consider it fair to resolve the doubh in appellant's favor, especially since there is no demonstrable prejudice to the Department if we were to allow the appeal. Accordingly, we proceed to the merits of the case.

III

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

The record shows that appellant's formal renunciation of United States nationality was executed in accordance with law and as prescribed by the Secretary of State. He therefore brought himself within the purview of the statute. Thus, hhe first issue we address is whether appellant voluntarily made a formal renunciation of his Uniked States nationality.

In law, it is presumed that one who performs a shatutory expatriahive 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. 7/

6/ Telegram from the U.S. Embassy, Tel Aviv, to hhe Departmenk, No. 13577, Sept. 22, 1989.

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

Therefore, to prevail, appellant must establish that his renunciation was the result of circumstances that deprived him of the opportunity to make a free choice.

Appellant asserts that his renunciation was involuntary because he acted under pressure exerted by the authorities of the Black Hebrew Community. "I was told," appellant wrote to the Board, "that I would have to renounce in order to continue living in Israel (meaning I would be better off stateless). Also I was told to renounce according to the plan of God and that anyone who does not do this is considered wicked to God or a traitor." It was his view that ne had been "coerced into renouncing for the purpose of being controlled by those same authorities."

A Black Hebrew friend of appellant who also has filed an appeal with the Board executed an affidavit in which he stated that:

> I, Roger Nathaniel Swails due solumly /sic/ sware that I knew [redacted] during the time of his [redacted] /sic/ of his United States citizenship, and that I can verify that all statements and information that he has given is true and correct. As a matter of fact we are in the same situation.

7/ (Cont'd.)

> (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 snowing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

Appellant's wife, Deborah Benton, who renounced her citizenship in June 1986 filed a joint appeal with appellant. Constructively, she attests to the truth of the statements he made regarding the involuntariness of his act.

Citizenship being an important civil right can only be waived as the result of free and intelligent choice." Inouye et al. v. Clark, et al., 73 F. Supp. 1000, 1004 (S.D. Cal. 1947), reversed on procedural grounds, Clark, Atty. Gen. et al. v. Inouye et al., 175 F.2d 740 (9th Cir. 1949). A voluntary act is one "proceeding from one's own choice or full consent unimpelled by another's influence. To determine whether an act is voluntary, "the trier of fact must examine all relevant facts and circumstances which might cause the actor to depart from the exercise of free choice and respond to compulsion from others." Kasumi Nakashima v. Acheson, 98 F.Supp. 11, 12 (S.D. Cal. 1951).

Tne means of exercising duress - interfering with one's freedom of choice - is not limited to force or threat of force. Fear of loss of an important right or privilege "can be more coercive than fear of physical violence." Kasumi Nakashima v. Acheson, Supra, at 13. See also Takano v. Dulles, 116 F. Supp. 307 (D. Hawaii 1953).

Although there is limited direct evidence that appellant was ordered to renounce citizenship, circumstantial evidence leaves little doubt that, as he maintains, he acted in response to instructions of the Community leadership. The Board takes note that since 1973 the Community has directed many members to renounce their citizenship. Approximately 360 have done so since 1973; 275 oetween 1985 and 1988. Those who have appealed loss of their nationality to the Board have given such consistent accounts of the pressure brought upon them as to lend credibility to this appellant's contention. 8/

Against appellant's allegations that he was subjected to duress and the circumstantial evidence lending support to that claim,are the two statements he signed on the day he renounced in which he declared that his act was voluntary.

8/ See Matter of M.E.G., decided February 13, 1986; Matter of I.Y.A., June 30, 1988; Matter of M.A.I., June 30, 1983; Matter of S.J.P., June 30, 1989; Matter of L.P.C., July 5, 1989; Matter of T.A.H, January 23, 1990; Matter of M.J.S., February 2, 1990; Matter of V.P.A, February 22, 1990; Matter of G.J.P., March 22, 1990; and Matter of M.T.B., May 22, 1990 and Matter of N.R.S.: June 25, 1990.

These statements are, of course, evidentially important, but not dispositive, for they must be weighed against all the relevant facts and circumstances in the case that bear on the issue of voluntariness.

In weighing all the evidence, we must determine whether the quantum of influence brought to bear on appellant was sufficient to render his act involuntary, To determine wnether the quantum of influence rose to the ievei of legal duress entails making a judgment whether he had a reasonable alternative to relinquishing his citizenship. Several considerations lead us to the conclusion that despite the fact that appellant probably was told to renounce his citizenship, he has not shown that he was confronted with a situation that left him without opportunity to make a choice.

At the time appellant renounced his citizenship he was a mature person of 29 years of age and evidently in good health. He was informed by the Embassy of the legal consequences of his renun iation and given every opportunity to express any reservations he might have had or explain any compulsion or fear he might nave felt to act against his free will. He decided to renounce. Also, there is no evidence that appellant would have been physically abused or restrained if he tried to remove himself and his wife and child from the Community, had he decided not to renounce his citizenship. What apparently constrained appellant from defying the Community leadership was not lack of courage or capacity to fend for himself and his family, but a perception that because the Community fulfilled some kind of spiritual or psychological need, being forced to leave it as punishment for disobedience would be intolerable, The Community, doubtless, had influence on appellant, His failure to stand up to it, however, sprang not from his being in a position of weakness in relation to the Community leadership, but rakher from what appears to have been his judgment at the time of his renunciation that loss of his cikizenship was of lesser import than possible loss of his rights and privileges as a member of the Community.

In our view, appellant has not shown that the pressure TO which he says he was subjected was so strong as to negate his freedom of choice, For he has not established that he lacked an alternative to resist the demands of the Community. Thus, appellant was in effect in a situation where he had sufficient opportunity to make a decision based on personal choice. Such a situation cannot objectively be described as one of duress. See 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 statutory presumption that he renounced his United States nationality voluntarily.

IV

Finally, there is the question whether appellant intended to relinquish his united States nationality when he formally renounced it. The government bears the burden of proving by a preponderance of the evidence that such was his intention. Section 349(b) of the Immigration and Nationality Act (note 7 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. Id. at 260.

Formal renunciation of United States citizenship in the manner mandated by law and in the form prescribed by the Secretary of State 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 oath of renunciation appellant took is unambiguous:

> 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 my united States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

Our sole inquiry therefore is whether appellant executed the oath of renunciation knowingly and intelligently, as well as voluntarily. The record shows that appellant, a mature person, was aware of the consequences of his act. He signed two statements in which he acknowledged that he knew what he was doing and what the consequences of renunciation were. He voluntarily made a formal renunciation of United states citizenship in the form and manner prescribed by the Secretary of State; and he understood the nature of the act.

We perceive no inadvertence or mistake of law or fact on appellant's part.

V

Upon consideration of the foregoing, we conclude that appellant expatriated himself on May 8, 1986, by making a

formal renunciation of his United States nationality before a consular officer of the United States at the Embassy in Israel, and affirm the Department's determination of loss of his nationality.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member