February 22, 1990

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

V[redacted] P[redacted] A[redacted] appeals from a determination made by the Department of State on January 7, 1987 that she expatriated herself on October 15, 1986 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Tel Aviv, Israel. 1/

For the reasons that follow, it is our conclusion that appellant's renunciation of United States nationality was not a voluntary act. Accordingly, the Department's holding of loss of her nationality is reversed.

I

Appellant, V[redacted] P[redacted] A[redacted], became a United States citizen upon her birth in [redacted] a on [redacted]. She obtained a passport in August 1983 and went to Israel where she joined the Hebrew Israelite Community (so-called Black Hebrews) at Dimona.

Sometime prior to the day on which she renounced United States nationality, forty-six of the seventy Community members working at a packing plant at Rehovot where appellant was employed were arrested in a raid by the Israeli authorities.

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;. ..

According to appellant, those arrested were imprisoned for an indefinite period and then deported. She was absent from the plant at the time of the raid. After the raid, the leadership of the Community told appellant that she would have to renounce her United States citizenship. The day before she went to the Embassy to renounce, she and several other prospective renunciants were instructed by Community leaders in the process of renunciation. They were told that renunciation was "to countermand the [Israeli] governments [sic] threat of mass deportation," she wrote to the Board. Appellant continued, "we were told not to ask any questions at the Embassy and that regardless to what the Embassy officials might say or if they tried to convince us not to renounce to always be assertive and strong in our conviction to renounce."

On October 15, 1986 appellant and several other Black Hebrews were "taken" to the Embassy for the purpose of renouncing United States citizenship. Before making the oath of renunciation, appellant was asked to read and did read a statement of understanding, and having done so, affirmed that she had read it and understood its contents. In the statement appellant affirmed that she was voluntarily exercising her right to renounce her nationality, "without any force, compulsion or undue influence;" that having renounced, she would become an alien vis-a-vis the United States; and that the extremely serious and irrevocable nature of renunciation had been explained to her by the consul who presided over the renunciation. Appellant also executed an affidavit which the Department developed for use in the cases of formal renunciation of nationality by Black Hebrews. 2/ The

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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 affidavit:
>
> 1. 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?

affidavit poses a number of questions to the prospective renunciant. The first question reads: "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 each part of that question appellant answered "no, don't need one," and "no." The second question reads in part: 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? To all four parts of that question, appellant answered: "no."

Appellant then made the oath of renunciation. Swearing (rather than affirming as she did in the case of the statement of understanding and the special affidavit) that she absolutely and entirely renounced her United States nationality, "together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining."

2/ (Cont'd.)

2. Is your decision to renounce in any part based:

(A) On the fact that the GOI is considering deporting you? If so, explain.

(B) On your present financial condition? If so, explain.

(C) On personal or family problems and/or living conditions? If so, explain.

(D) On influence, force and/or coercion that is being brought upon you by any person or persons? If so, explain.

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.

When the proceedings were over, 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 her birth therein and that she made a formal renunciation of United States nationality, thereby expatriating herself 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 stated simply that:

> Enclosed for the Department's approval is a Certificate of Loss of Nationality which was executed by the Embassy in the case of Ms. V[redacted] P[redacted] A[redacted], a Black Hebrew, who made a formal renunciation of her U.S. nationality on October 15, 1986.
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> The certificate is accompanied by an Oath of Renunciation, a statement of understanding and an additional Affidavit as requested in reftel.
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> Ms. [redacted] U.S. passport is also enclosed.

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 the person to whom it relates.

The Department approved the certificate on January 7, 1987, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review, pursuant to 22 CFR 7.3(a).

Stating that she had made up her mind to leave the Community, appellant wrote to the Board on January 28, 1989 to initiate this appeal. She told the Board that she was using the address of a friend in Tel Aviv "to ensure that the Community officials aren't aware of these correspondences in which case I am not even sure because by some 'peculiar' way the Community officials are somewhat kept informed as to who goes to the Embassy from the Community."

II

The time limit on appeal to the Board of Appellate Review is one year after the State Department 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/ The State Department on January 7, 1987 approved the CLN that was executed in this case. The appeal was filed on January 28, 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 has authority to entertain this appeal. Whether we may do so, turns on whether appellant has shown good cause why she could not appeal within the one-year period.

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.

"Good cause" is a term of settled import. It means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th ed. (1979). It is generally accepted 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.

"I wasn't aware that an appeal could be made," appellant wrote to the Board, "for it was never explained or mentioned by the officials of the Hebrew Community or by the Embassy officials. Once I decided to leave the Community I began to seek any information and documents that might aid in my severing my ties with the Community." Continuing, appellant stated that she never received "my Loss of Nationality papers from the officials of the Community until two weeks ago [presumably sometime in January 19891 when I personally requested them." She asserted that mail is strictly and tightly controlled within the Community like all other aspects of our existence," and believed that the certificate of loss of nationality was deliberately withheld from her.

In short, appellant contends that she did not file her appeal within the time allowed because she did not know she might appeal and was not informed that there was a limitation until after one year had passed. The Board considers that appellant's reason for not taking a timely appeal is a colorable excuse for not initiating the appeal until she did so.

Federal regulations prescribe that a person who has been held to have expatriated himself shall be informed in writing at the time the CLN is forwarded to him of the right of appeal to this Board within one year after approval of the CLN. 22 CFR 50.52. Information about the right of appeal, the time limit on appeal and appeal procedures is set forth on the reverse of the CLN. The government has the responsibility to inform an expatriate promptly of the right to appeal to this Board. Here it made a fair effort to do so. On January 28, 1987 the Embassy forwarded a copy of the approved CLN to appellant at Dimona by registered mail. The Embassy's letter was received at Dimona on February 6, 1987. The postal receipt was not signed, however. We may therefore assume that someone other than appellant received the letter. The Community has apparently often withheld from Community members communications addressed to them. As the Embassy at Tel Aviv stated 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 intercepted

and in certain cases withheld from the addressees. 6/

We consider it quite possible, as appellant maintains, that she did not receive the appeal information in timely fashion because it was kept from her by the Community leadership, a circumstance she could not foresee and over which she had no control. In the circumstances, we do not consider that it was incumbent upon appellant to act sooner than she did. Substantial doubt having been raised whether appellant was made aware of her appeal rights in timely fashion, we consider it fair to resolve the doubt 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 United 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 so prescribed by the Secretary of State. Thus, the first issue to be addressed is whether appellant voluntarily made a formal renunciation of her United States nationality.

In law, it is presumed that one who performs a statutory 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 voluntary. 7/ Therefore, to prevail,

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

7/ 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

appellant must establish no more than that her renunciation probably was the result of circumstances that deprived her of the opportunity to make a free choice.

The right of citizenship, being an important civil one, 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). Similarly, Akio Kuwahara v. Acheson, 96 F. Supp. 38, 43 (S.D. Cal. 1951: "The trier of fact must consider all evidence relating to the mental condition of the actor to determine whether his act was 'unimpelled by another's influence.'"

In examining appellant's claim that she was coerced into making a formal renunciation of United States nationality, we are also guided by the injunction of Justice Frankfurter in Nishikawa v. Dulles, 365 U.S. 129, 140 (1958), concurring opinion that:

> ...Where a person who has been declared expatriated contests that declaration on grounds of duress, the evidence in support of this claim must be sympathetically scrutinized. This is so both because of the extreme gravity of being denationalized and because of the subtle, psychologic factors that bear on duress.

"The reason for my renunciation," appellant wrote to the Board

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1/ (Cont'd.)

> 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.

> ...was to avoid being imprisoned and deported in that many of my friends and fellow workers were deported and imprisoned in Israel for an extended period of time. It has always been Israeli policy of the government to harass, incarcerate, and deport members of the Black Hebrew Community. Therefore, I did follow their orders to renounce my citizenship...

"At the time of my renunciation," appellant explained, I was a dedicated follower [of the Community]." She acknowledged that "I did choose to be a member of the Black Hebrew Community, and to follow their instructions and suggestions,' She leaves little doubt that in October 1986 as a committed member of the Community she feared that if she did not renounce her citizenship she might be expelled from the Community. Expulsion, which probably meant being separated from her friends and cast loose to fend for herself in Israel, obviously seemed the ultimate punishment to appellant.

> Once you go against those instructions you are no longer entitled to the benefits and security of the group but do in fact become and are considered an 'adversary' even to the point of alienation from family and friends because of the extent and depth of dedication and indoctrination. It could somewhat be compared to Hilter's [sic] indoctrination of the 'Aryan Germans' to the point that friends and family turn you in and they turn against you.
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> ...It is not looked on favorably when one goes outside the established order here in the community. Often times one is threatened with separation of friends and family. Even as I am undergoing this appeal process I fear at any minute I could be faced with separation if these facts were to become known (if they aren't already reported). At this time [October 19891 I am eight months pregnant. So, for the officials to put me out of the community would be an inhumane act. By being stateless it is hard to get jobs and because of so much

> bad publicity the Israeli populace doesn't like to involve itself with us. With no one to care for my child and no medical coverage, where would the baby be born and how would I support a child and myself? Many times one is ostracized that has adversities with the Community and the established order so bad to the point that it is impossible to continue living here.

The 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, 98 F.Supp. 11, 13 (S.D. Cal. 1951). In Kasumi Nakashima the court held that the plaintiff, a dual national of the United States and Japan, did not expatriate herself by voting in a political election in Japan (a statutory expatriative act until 1967).

> ... It is apparent from her testimony that the real effect of the occupation authorities' campaign and the conversations of her neighbors was to inculcate in her a fear that she would acquire a reputation of uncooperativeness and thereby endanger her opportunity to return to the United States by inviting the wrath of the authorities.

Similarly, Takano v. Dulles, 116 F.Supp. 307, (D. Hawaii 1953). Plaintiff (a dual U.S./Japanese national) voted in Japanese elections because she feared punishment if she did not comply with the order of the occupation authorities granting women the privilege of voting, because she feared loss of her rations card, and because she feared failure to vote might hinder her return to the United States. The court held that such factors constituted duress and voided the expatriative act. Accord, Hatsuye Ouye v. Acheson, 91 F.Supp. 129 (D. Hawaii 1950).

Pressure by way of moral persuasion, by persons in a position of authority over the actor, to perform an act of formal renunciation may raise a serious doubt whether the renunciation was free of the "taint of incompetency." See Tadayasu Abo et al. v. Clark et al., 77 F. Supp. 806 (N.D. Cal. 1948). There parental pressure by alien parents on citizen children to renounce their United States citizenship in order to prevent family break-up and avoid draft induction was held

to render involuntary formal renunciation of United States citizenship. 8/

In the case before the Board, appellant unquestionably was influenced by others to renounce United States nationality, but the pertinent inquiry is whether the quantum of influence was sufficient to render her renunciation involuntary. The quantum of influence which would remove the act of renunciation from the sphere of free choice varies according to the character of the act. Akio Kuwahara v. Acheson, supra. There the plaintiff, a dual citizen of the United States and Japan, voted in an election in Japan because he feared the consequences if he disobeyed the instructions of the occupation authorities to vote. Addressing the issue of the degree of influence required to make such an act involuntary, the court said:

> ...For example, 'Committing any act of treason against, or attempting by force to overthrow or bearing arms against the United States * * *' subsection (h) [of the Nationality Act of 1940] should require a far greater degree of influence or compulsion to justify a finding that it was involuntary than would the act of voting in an election. Likewise, it would seem that being naturalized in a foreign state, subsection (a), or swearing allegiance to a foreign state, subsection (b), or serving in the armed forces of a foreign state, subsection (c), (particularly of an enemy country), or making a formal renunciation of nationality, subsection (f), all are acts which

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8/ In Tadayasu Abo, the court observed that the parties agreed that a combination of a number of factors lead to the execution of the renunciations which were made at Tule Lake camp, including threats, camp conditions. What disagreement there was, the court stated, concerned which factors were primary, and which subordinate, as to the effect and impact upon the plaintiffs. The court was of the view that: "such factors, singly or in combination, cast the taint of incompetency upon any act of renunciation made under their influence by Americans interned without Constitutional sanction, as were plaintiffs." [Emphasis added.] 77 F. Supp. at 808.

> would require a higher degree of pressure than would the act of voting.

96 F.Supp. at 42.

With respect to the issue of whether appellant surrendered her citizenship voluntarily, the contemporary evidence consists solely of (1) the statement of understanding in which she averred that she was acting voluntarily and (2) the supplemental affidavit in which she declared that no influence, force or coercion had been brought upon her. As we have seen, the Embassy, in reporting appellant's renunciation to the Department, did not comment upon the circumstances surrounding it, nor did it make any observations about appellant's demeanor or apparent state of mind.

In an affidavit executed on September 18, 1988, in connection with the appeal of another Black Hebrew, the consular officer who administered the oath of renunciation to appellant outlined the procedures he generally followed in 1986 in formal renunciation by Black Hebrews. After each renunciant had been given a copy of the statement of understanding and the supplemental affidavit, the consular officer stated,

> ...I then took each person separately into my office where, in the presence of two Foreign Service Nationals, I conducted the interview which lasted up to an hour. I had the person read each question in the affidavit and Statement of Understanding and I discussed each question with him/her. I explained the seriousness of renunciation of citizenship and the consequences of being stateless. I informed the person that renunciation of citizenship is an irrevocable act and that the only way a renunciant could reacquire U.S. citizenship was through the naturalization process. I questioned the person about his motives in seeking to renounce his citizenship. The would-be renunciants, without exception, stated that they had come to renounce their citizenship voluntarily and were not under duress from any source. I would then offer the person additional time to think over his decision and presented the option of deciding not to renounce.

> If the renunciant still wished to proceed with the renunciation, I would have him execute the affidavit and statement of understanding. I asked the person to read the oath of renunciation. I would then offer a final opportunity to change his mind. If he chose *to* continue, I would administer the oath of renunciation and inform the renunciant that he was no longer a United states citizen.

The consular officer's statement indicates that in appellant's case he probably followed the Department's guidelines governing formal renunciation. 9/ It does not, however, shed any light on appellant's probable state of mind on October 15, 1986. To gauge whether appellant was coerced into making a formal renunciation of United States nationality we must examine all the relevant facts and circumstances which affected appellant.

Although there is no direct evidence that appellant was ordered by the Community leadership to renounce her citizenship, circumstantial evidence leaves little doubt that, as she maintains, she acted as instructed by 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 between 1985 and 1988. Those who have appealed loss of their nationality to the Board have given such consistent accounts of the pressure

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9/ With respect to the procedure followed in her own case, appellant informed the Board that the Embassy was closed to the general public the afternoon that she went to renounce; "it was a basic routine that they followed in handling our cases. This I feel personally might also be against the State Dept.'s policy." She and the other Black Hebrews arrived at 1:30 P.M. "which was the Community's regular appointment time on Wednesdays for several groups had already been doing this weekly. Everything seemed to be done only as a formality 1,2,3 and we were finished.. ..Everything was executed very speedily, we signed out papers and left." Appellant claimed that the papers were signed in the presence of a Community official, that the signing was done at the front desk and that the papers "were already prepared for us when we entered the office."

The Board is unable to make any evaluation of the accuracy of appellant's recollection of the events of October 15, 1986.

brought upon them as to lend credibility to this appellant's contention. 10/ Nor is there any question that appellant and the others who renounced when she did were escorted to the Embassy by a Community official who listened to the preliminary briefing about renunciation that was given to the renunciants by the local employee of the Embassy and who remained in the waiting room while each renunciant performed the act. 11/ The mere presence of the community official injects, in our opinion, a coercive element.

In short, several objective considerations lend credence to appellant's contention that she acted under the influence of others. It was at the direction of the Community that she

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10/ 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, 1988; Matter of S.J.P., June 30, 1989; Matter of L.P.C., July 5, 1989; Matter of T.A.H., January 23, 1990, and Matter of M.J.S., February 2, 1990.

11/ See telegram from the Embassy at Tel Aviv, No. 14505, October 12, 1988, describing the Embassy's general procedures in such cases:

> One of Mr. Ben Ami Carter's [Community leader] 'Lieutenants' has escorted prospective renunciants (not exceeding four persons at one time) to the Embassy. He has remained with them in the CITSVCS interior waiting room until every one is interviewed separately, and has then escorted them out of the Embassy after the renunciation procedure is over. He is never present during the renunciation procedure.

The Board recognizes that the Embassy official who handled appellant's case was not in an easy position. Since expatriation is a "natural and inherent right" of all American citizens, the officer was constrained in how far he could go to discourage appellant. In accordance with the Department's instructions, he apparently made a fair effort to elicit and document expressions of voluntariness from appellant. (See note 2 supra.) Furthermore, given the many previous renunciations made by community members while an official of the community waited in the anteroom which the Department has approved, it is understandable that the official should have felt he could not act differently.

renounced citizenship. She was thoroughly coached by Community officials about renunciation procedures so as to be conditioned to resist any attempt by a consular officer to cause her pause to reflect upon what she was doing. She was taken to the Embassy by a Community official who waited while she renounced and then escorted her from the Embassy.

There are "subtle psychological factors" as well which bear on the issue of the voluntariness of appellant's renunciation.

As a "dedicated follower" of the Community of which she had been a member for three years, she was thoroughly conditioned to obey instructions given her by higher authority. Accordingly, she feared that if she did not renounce her citizenship as instructed, she might suffer one of the Community's sanctions against a recalcitrant - expulsion from the Community and be left to fend for herself.

Evidently she has now become disillusioned with the principles of the Community, and wishes to leave it on her own terms. But in October 1986 she arguably was so emotionally and materially dependent upon the Community that expulsion would indeed constitute for her an extreme punishment to be avoided at all costs, even by renouncing her American citizenship. Three years before she performed the expatriative act she placed herself in a position where the influence of the Community could be exerted upon her in any number of situations. Does that fact make her renunciation voluntary? We do not think it does. For the proximate cause of her renunciation was the order of the Community that she do so. Renunciation was not demonstrably the intelligently formulated design of appellant.

The Community, as is well-known, is an authoritarian cult in which the leader Ben Ami Carter has the final word in every important matter. It is reported that he metes out punishment to those who disobey. Ordinary members of the Black Hebrew Community usually fear not to do what they are told. A single woman, aged 24, appellant arguably was in a vulnerable position vis-a-vis the Community in 1986, one characterized by weakness on her side, strength on the Community's. "Feebleness on one side and overpowering strength on the other imply

duress." Yuichi Inanyo v. Clark, supra, at 1003. It would not be an exaggeration to say that appellant had been molded and formed by the Community, and so at the crucial time had limited capacity to exercise free will.

It is not easy to gauge whether the quantum of influence exerted by others upon appellant here to renounce United States nationality was greater than that which was exerted upon plaintiffs in the Japanese voting cases cited above. But it seems to us it was. Appellant was a stranger, an alien in Israel. If she had been expelled from the Community and left to fend for herself she might have suffered real deprivation to try to make a living. In the Japanese voting cases, the plaintiffs were Japanese citizens as well as United States citizens. They might have suffered loss of ration cards; at least that is what they allegedly feared. Yet it is interesting to note that in Takano v. Dulles, supra, at 309, the court observed that: "...Further evidence brought out on cross examination revealed that there was no actual threat of bodily harm, or loss of job, or loss of food, if she failed to vote, nor had she ever heard of anyone losing a ration card for failure to vote at a Japanese election." It seems to us that in the circumstances of the case before us, the influence exerted on appellant was more directly menacing than that involved in the voting cases. Appellant was after all singled out by the Community to renounce; in the Japanese cases the plaintiffs were reacting to a generalized injunction of the occupation authorities to vote.

In October 1986 appellant lived in a climate that could only be called oppressive. Theoretically, she might have refused to renounce, but if she had done so, she could be sure of punishment, possibly the ultimate (to her) sanction - expulsion.

Examination of all the relevant facts and circumstances leaves us in doubt whether appellant renounced United States nationality as a result of free and intelligent choice. Rather, the evidence strongly suggests that her renunciation was caused by the compulsion of others. As such it cannot be considered voluntary.

We thus conclude that appellant has rebutted the presumption that she renounced her United States citizenship voluntarily. Accordingly, since she has succeeded in proving that her act was not voluntary, there can be no expatriation. Vance v. Terrazas, 444 U.S. 253,270 (1980).

IV

The Department's determination that appellant expatriated herself is hereby reversed.

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member