December 17, 1990

DEPARTNENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] A[redacted] Z[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, M[redacted] A[redacted] Z[redacted], expatriated herself on October 17, 1977, under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining naturalization in Canada upon her own application. 1/

The sole issue to be decided is whether appellant obtained naturalization in Canada with the intention of relinquishing her United States nationality. For the reasons given below, we are unable to conclude that appellant's voluntary naturalization was accompanied by an intent to relinquish her United States citizenship. Accordingly, we reverse the Department's holding of loss of citizenship.

I

Appellant was born in [redacted] and acquired United States nationality by virtue of her birth in the United States. In December 1958, she moved with her family to Canada, where she has since resided. In 1981, she married a Canadian citizen.

Appellant entered employment as a secretary with the Ministry of Community and Social Services of the Province of Ontario in 1977, and remained with that agency until 1979. On October 17, 1977, she acquired Canadian citizenship by

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), provides that:

> Sec. 349. (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality -
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> > (1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having obtained the age of eighteen years: ...

naturalization. According to appellant, she voluntarily became a Canadian citizen because being a Canadian would nake her employment "more secure." Appellant said that she was under the impression that if she had not become a Canadian citizen within the first year of her government employment she might be dismissed.

In October 1988, after allegedly being informed by a relative that she "might be able to regain U.S. citizenship", appellant visited the United States Consulate General at Toronto concerning her citizenship status. Appellant had assumed that she had lost her citizenship as a consequence of her naturalization in 1977. To determine her present status, the consulate requested her to execute an application for registration as a United States citizen and to complete a citizenship questionnaire. The consulate thus first became aware of her naturalization in Canada. The next day after completing her citizenship questionnaire at the consulate, appellant requested a new citizenship questionnaire that "could be completed more comfortably at home." Her responses in the second citizenship questionnaire did not differ materially from those in the first questionnaire, except that appellant this time signed the statement in the questionnaire attesting to voluntary relinquishment of United States nationality when she obtained Canadian citizenship.

On March 21, 1989, the Consulate General executed a certificate of loss of United States nationality in appellant's name, as required by section 358 of the Immigration and Nationality Act. 2/ The consular officer certified that

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2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

> 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

appellant acquired United States nationality by virtue of her birth in the United States, obtained naturalization in Canada, and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. In transmitting the certificate of loss of nationality to the Department for consideration, the consular officer recommended its approval.

The consular officer was of the opinion that the evidence of record, including appellant's conduct since becoming a Canadian citizen and her own statements, show it was her intention to relinquish her United States citizenship. The consular officer submitted:

> In examining Ms. [redacted] course of conduct during her prolonged residence in Canada it is noted that she made no inquiry to U.S. officials regarding her status until her relatives recently advised her that she may regain her United States citizenship. She has identified herself as a Canadian citizen when entering the United States. Ms. Z[redacted] states 'I have visited the U.S. Documentation for proof of citizenship was not requested. Had it been requested, I would have shown my Canadian Driver's license and/or Canadian passport. She further states 'I assumed that by taking on Cdn. citizenship, I would automatically lose my U.S. citizenship'. Ms. Z[redacted] has consistently identified herself as a Canadian citizen throughout the documents submitted suggesting that she was well aware that obtention of Canadian nationality would result of loss of her United States citizenship. Furthermore, Ms. Z[redacted] has abandoned all obligations of her United-States nationality. She has not filed a United States income tax return nor has she voted in any United States elections as an absentee voter.

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2/ Cont'd.

directed to forward a copy of the certificate to the person to whom it relates.

> Therefore, the preponderance of the evidence submitted does demonstrate through her voluntary acts a clear decision on the part of Ms. Z[redacted] to accept Canadian nationality while at the same time abandoning the privileges and obligations of United States citizenship.

The Department concurred in the consular officer's opinion that the evidence of record was sufficient to support a holding that appellant intended to relinquish her United States citizenship when she was naturalized in Canada. Accordingly, the Department approved the certificate of loss of nationality on June 23, 1989, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board. On June 6, 1990, appellant? entered an appeal. she contends that she mistakingly acquired Canadian citizenship in 1977 for no other reason than to secure employment with the Canadian government and that it was not her deliberate intention to relinquish United States citizenship.

II

Section 349(a)(1) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality by voluntarily obtaining naturalization in a foreign state with the intention of relinquishing United States nationality. Tnere is no dispute that appellant sought and obtained Canadian citizenship, nor is there any disputie that she voluntarily became a Canadian citizen. Appellant admitted in her citizenship questionnaires that the act was voluntary, that she "was not forced to become a Canadian."

We note, however, that in her reply of September 28, 1990, to the Department's brief she appears less certain of the voluntariness of her- act. She states:

> I honestly do know know if the act was voluntary or involuntary and used the word 'suppose'. ..to denote the ambiguity of my circumstances. On one hand, the act was voluntary because I did it. On the other hand, it was involuntary because of being under duress.

Under section 349(b) of the Immigration and Nationality Act, a person who performs a statutory act of expatriation is

presumed to have done so voluntarily. 3/ Such presumption, however, may be rebutted upon a showing by a preponderance of the evidence, that the act of expatriation was not done voluntarily. Although appellant said she acquired Canadian citizenship to secure her government employment, she does not argue that her actions were involuntary in the legal sense of that term; neither does she offer any evidence to rebut the statutory presumption that her naturalization was voluntary.

As noted, appellant bears the burden of rebutting the statutory presumption that her naturalization was voluntary. She has riot attemped to rebut the presumption that she acted of her own free will, and we conclude, therefore, that her naturalization was done voluntarily,

III

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

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

> (b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

The intent to be determined is the citizen's intention to relinquish citizenship at the time of the performance of the statutory act of expatriation. The person's own words or conduct at the time the expatriating act occurred are to be looked at in determining his or her intent. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981). It is recognized, however, that a party's specific intent to relinquish citizenship "rarely will be established by direct evidence", but that circumstantial evidence surrounding the performance of a voluntary act of expatriation may establish the requisite intent. Terrazas v. Haig, supra, at 288. In the case before the Board, the intent that the government must prove by a preponderance of the evidence is appellant's intent at the time she voluntarily obtained naturalization in Canada in October 1977.

The Department submits in its brief that the preponderance of the evidence in the record shows appellant's intent to relinquish her United States citizenship. The specific evidence referred to consists of: the act of her naturalization in 1977; two citizenship questionnaires that she completed in 1988; appellant's letter of December 15, 1988, to the Consulate General; and, appellant's submissions to the Board on appeal.

The only contemporaneous evidence bearing on appellant's intent in 1977 is the fact that she voluntarily obtained naturalization in Canada and took the prescribed oath of allegiance to Queen Elizabeth the Second. The oath of allegiance did not include any declaration renouncing United. States citizenship. There is no other direct evidence of appellant's intent when she became a Canadian citizen.

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

> /T/hat it Mould be inconsistent with Afroyim to treat the expatriating acts specified in sec. 1481 (a) as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen. 'Of course,' any of the specified acts 'may be highly persuasive evidence in the particular case of a purpose to abandon citizenship.' Nishikawa v. Dulles, 356 U.S. 129, 139 (Black, J., concurring). But the trier of fact must in the end conclude that the citizen not only voluntarily committed

> the expatriating act prescribed in the statute, but also intended to relinquish his citizenship.

The first expressions of appellant's intent appear in the two citizenship questionnaires that she completed in 1988, some eleven years after her naturalization. In the first questionnaire that she completed at the consulate she did not sign the prinked statement declaring that she obtained naturalization voluntarily and with the intention of relinquishing United States nationality. She stated in the first questionnaire, however, that she "did realize" that her actions "may cause me to lose my U.S. citizenship."

In describing the circumstances under which she completed the first questionnaire, appellant informed the Consulate General in her letter of December 15, 1988:

> Because of being unsure of how to answer some of the questions with respect to my situation, I expected to discuss my responses with a Consulate member in their office, as was done many years ago when I obtained my own U.S. passport. Upon submitting the forms to the cashier, I was surprised to learn that she was to be the one who would assist me. It was awkward completing the forms in this manner--standing in the waiting room with a bunch of people behind me, while talking through a glass partition, passing the forms back and forth.
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> The C-16 /citizenship questionnaire/ was completed to the best of my ability under those circumstances. The next day, I called the Consulate office and asked that they send me another C-16 so that it could be completed more comfortably at home.

In the second questionnaire, appellant signed the printed statement that she performed the act of obtaining naturalization voluntarily and with the intention of relinquishing United States nationality. Appellant, nonetheless, continued to complete the remainder of the citizenship questionnaire, even though she signed the statement of voluntary relinquishment. According to the instructions in the form, the remainder of the questionnaire was to be completed if the person believed that expatriation has not occurred "either because the act you performed was not

voluntary or because you did not intend to relinquish United States citizenship."

Appellant was apparently confused about her citizenship status as a result of her naturalization, the statement of voluntary relinquishment appearing in the questionnaire, and the other questions that were to be answered if she believed that expatriation has not occurred. In explaining why she signed the statement of voluntary relinquishment and then completed the remainder of the questionnaire, appellant said in her letter to the consulate:

> The act I performed was voluntary. I did, to the best of my knowledge, relinquish U.S. citizenship and suppose it can be said that I intended to do so. Had I been aware of someone who could advise me to discuss my concerns at that time, I know I would have chosen to keep my status. For these reasons, I completed the remainder of the C-16.

In her second questionnaire, appellant reiterated her statement in the first questionnaire that by obtaining naturalization she assumed that she would automatically lose her United States citizenship.

We do not agree, as the Department contends, that appellant's foregoing statements in her two citizenship questionnaires and letter of December 15, 1988, to the consulate show her intent to relinquish United States citizenship at the time of her naturalization in 1977. It appears fairly obvious from appellant's responses in her citizenship questionnaires and submissions to the Board that she had difficulties. She said that she was uncertain how to answer some of the questions in the questionnaire with respect to her situation and that, instead of having the opportunity to discuss her case with a member of the consular staff, she was constrained to complete her first questionnaire with such assistance as might be forthcoming from the cashier at the consulate.

Appellant also stated that she had difficulty understanding the statement of voluntary relinquishment of United States nationality that she left blank in her first questionnaire but signed in ner second questionnaire. The difficulty arose from the fact that she was uncertain of her citizenship status as a result of her naturalization, that is, whether expatriation had occurred. Therefore, after signing the statement that she performed an act of expatriation with the intention of relinquishing United States nationality, she proceeded to complete the remainder of the questionnaire which was only to be completed if the person believed that expatriation has not occurred.

Appellant is rot alone in professing confusion about how to handle the statement of voluntary relinquishment. Other appellants too have indicated uncertainty. The text may be clear to legal professionals but it tends to leave not a few lay people at sea. Although there is a cautionary statement at the end of the questionnaire (the answers will become part of the official record and the executant should be sure before signing the form that they are complete and accurate), lay people often do not heed the injunction and, even if confused about one or more questions, may not ask for consular assistance to complete the form properly. Appellant here should have Seen given access to a consular officer to discuss her responses and not be limited to the assistance of a cashier. Any negligence that might be attributed to her €or not insisting on seeing a consular officer, is not, of course, determinative of her intention to relinquish United States citizenship. Furthermore, the statement of voluntary relinquishment lacks sufficient formality - solemnity - to be fair or reliable evidence that appellant intended in 1977 to terminate her United States citizenship. The questionnaire she completed is not a sworn statement. Considering appellant's evident confusion and lack of competent guidance, it cannot conceivably command the respect of, say, an oath of renunciation of United States citizenship, or affidavit of expatriated person which on their face are executed with awareness of the probable legal consequences.

In the circumstances, we are not satisfied that appellant's signature of a statement of voluntary relirquishment of United States citizenship establishes that eleven years earlier she knowingly and willingly intended to give up her United States citizenship.

The Department further argues in its brief that appellant "has not contended that she lacked the necessary intent" to relinquish her citizenship when she obtained naturalization. "Rather," the Department states, "she has accepted the fact that she lost her U.S. citizenship the day she became a Canadian and now wants to regain it."

We find hhis argument untenable. In giving her reasons for the appeal, appellant clearly stated in her appeal that the Department's determination of loss of United States nationality was contrary to fact "because it was not my deliberate intention to relinquish United States citizenship." Furthermore, in appellant's reply to the Department's brief, she stated that although she "did not intend or want to give up U.S. citizenship", she accepted the probability that United Skates citizenship might have beep lost by acquiring Canadian citizenship. She said, however, that she was not fully convinced of her status and that she acquired Canadian

citizenship "not to relinquish all rights and privileges of the U.S. citizen I was proud to be" but to seek protection for her government employment. In our opinion, appellant's admissions that she believed her United States citizenship might have been lost as a consequence of acquiring Canadian citizenship are inconclusive as to her intent. Knowing or believing that an act might result in loss of citizenship is not the same thing as intending to give up that citizenship.

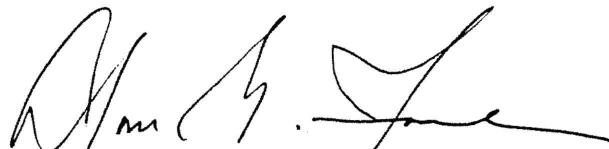
In our view, the evidence that the Department presented in this case is insufficient to support a finding that appellant intended to relinquish her United States citizenship when she became a Canadian citizen. As noted, the only concrete and direct evidence on the matter of appellant's intent at the time she obtained naturalization is the fact that she performed the statutory act of expatriation and swore an oath of allegiance to Queen Elizabeth the Second. The oath did not include a renunciation of United Skates citizenship. While naturalization may be highly persuasive of an intent to relinquish United States citizenship, it is not conclusive evidence of such an intent. With respect to circumstantial evidence surrounding her naturalization, derived entirely from appellant's delayed disclosures in her two citizenship questionnaires and other submissions to the Board, made eleven years after she was naturalized, we find no clear expression of a design to sever her allegiance to the United States.

The record before the Board, as we have seen, is not reasonably free from uncertainty as to her intent to give up her United States citizenship. In such circumstances, it is incumbent upon the Board to resolve uncertainty in favor of retention of appellant's citizenship. Where deprivation of the "precious right of citizenship" is involved, "the facts and the law should be construed so far as is reasonably possible in favor of the citizen." Nishikawa v. Dulles, 356 U.S. 129, 134 (1958); citing Schneiderman v. United States, 320 U.S. 118, 122 (1943).

It is the government's burden to establish by a preponderance of khe evidence that the expatriating act was performed with the intent to relirquish citizenship. In our judgment, the Department has not satisfied its burden of proof.

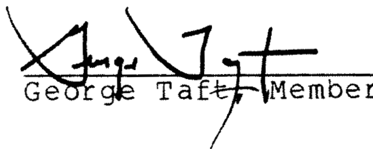
IV

Upon consideration of the foregoing, we are unable to conclude that appellant expatriated herself by obtaining naturalization in Canada and, accordingly, reverse the Department's determination that she expatriated herself,



Alan G. James, Chairman

Edward G. Misey, Member



George Taft, Member