

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

July 9, 1990

IN THE MATTER OF: K [REDACTED] S [REDACTED]

On Motion for Reconsideration

The Board of Appellate Review on November 15, 1989 affirmed an administrative determination of the Department of State that K [REDACTED] S [REDACTED] expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), by voluntarily making a formal renunciation of United States nationality before a consular officer of the United States at Munich, Federal Republic of Germany, with the intention of relinquishing that nationality.

I

On April 25, 1990 the Board informed appellant and the Department of State that it had accepted the submissions she made on February 10, and March 29, 1990 as a motion for reconsideration. 1/

1/ Section 7.10 of Title 22, Code of Federal Regulations, 22 CFR 7.10, provides that either party to a citizenship appeal may submit a motion for reconsideration within 30 days of receipt of a copy of the Board's decision.

In this case, appellant's husband signed a postal receipt acknowledging delivery of a copy of the Board's opinion on December 5, 1989. The due date for a motion for reconsideration thus was January 5, 1990. Although a motion was not filed on the latter date, the Board, in light of the following facts, considers it fair to accept appellant's submissions as constituting a timely motion for reconsideration.

In response to a letter from appellant's husband dated December 1, 1989, a few days before the Board's opinion reached appellant, in which he expressed the hope that the Board would render a decision favorable to his wife, the Board stated that its opinion affirming the Department's decision was in the mail; that with respect to possible recourse from the Board's decision she might file a motion for reconsideration or institute an action in federal district court for a judgment declaring her to be a United States citizen. The Board invited appellant to write to the Board to obtain more information

In her submission of February 10, 1990, appellant maintained that when she renounced her citizenship she was under psychological as well as financial pressure. She wrote:

However there are other kinds of pressure than financial that can take one's freedom of decision, although I was told that financial were the kind you would accept. There is for example psychological pressure about which it isn't easy to speak. To all my other problems at the time my husband told me that he believes a wife should have the nationality of the husband and only if I take the German citizenship can I have the child I wished for so long. If this isn't the kind of pressure that takes away any other choices I don't know of one!

Besides - even if I would have acted of my own free will which I press again I didn't - I would see now that I made a terrible mistake. I didn't like Germany very much in the first place but the idea of a new big united Germany gives me the chills. I don't want to have anything to do with it. If it would be today not even threats to my own life could force me to give up my **U.S.** citizenship.

The Board replied to appellant on March 1, 1990 stating that it was assumed that appellant wished her February 10th submission to be considered as a motion for reconsideration. If that assumption was correct, the Board stated, would appellant please explain why she did not in her original submissions before the Board decided her case, make the

1/ (Cont'd.)

about possible recourse. This she did on January 3, 1990, 2 days before expiry of the limitation on filing a motion for reconsideration, inquiring what precisely she might do. In reply, the Board explained how to file a motion for reconsideration. She wrote the Board on February 10, 1990 setting forth what she submitted were grounds for a motion for reconsideration, and supplemented that letter with another letter dated March 29, 1990. In the circumstances the Board was of the opinion that appellant's submissions met the requirements of 22 CFR 7.10.

argument that her husband subjected her to pressure to become a German citizen, thus requiring that she renounce United States citizenship. The Board further requested that appellant be more specific about the nature of the pressure her husband allegedly exerted upon her. On March 29, 1990, appellant wrote to the Board as follows:

I will try to answer your questions although it is very difficult to talk about the psychological pressure my husband put me under at the time of the renunciation /sic/.

I tried to tell about it in my note that I wrote to the expatriation document. I couldn't be more specific because Mrs. Hall (the American Consul) told me she doesn't believe that I'm acting of my own free will and in that case she won't sign the expatriation form. My husband told me that I shouldn't come home without it. About a month before I had an appointment with Mrs. Hall as I wanted to ask for help. Unfortunately she couldn't see me because she was sick.

I was pregnant at the time and I wanted very much to have the child but I also wanted it to grow up in a family. My husband told me that if I don't become German I can't keep the child. Either will I have to have an abortion or he will leave me. As you remember I was without work at the time and I also had to support my parents in Hungary. I also loved him, In my petitions I couldn't mention this because my husband read them. He let me make them because he started to realize how important my U.S. citizenship was to me and also because in March 1988 I lost the child and I didn't succeed to get pregnant again so he couldn't pressure me anymore.

His conviction that I have to be a German citizen explains also why I can't have an attorney. He is of the meaning that I can write to you and fight for my citizenship if I want to as long as it doesn't cost him any money.

I can't prove all this very much because he denies now the extent of the pressure

he put me under. He did have a very bad conscience though: only because of that did he write to you on my behalf.

I can only prove that I had a miscarriage in March 1988 t.i. that I really was pregnant at the time. I already wrote to the hospital (I was in Hungary at the time) to substantiate that. I was waiting for that document to arrive that I could send it with my letter but it didn't come yet. As soon as I receive it I will forward it to you. I can mention two other reasons why I didn't write about the psychological pressure in my previous letters. One is that I was very sure that you will reinstate me as a citizen. I was positiv /sic/ that everybody can see that I was forced to expatriate myself.

The other reason is that to write about this is still extremely painful to me.

The Department of State filed a memorandum in opposition to appellant's motion for reconsideration on May 17, 1990. "The sole issue raised on reconsideration," stated the Department's memorandum

...is whether appellant acted voluntarily in renouncing her U.S. citizenship. Dr. S. [REDACTED] asserts for the first time in this motion that she was compelled to renounce under psychological pressure from her husband which rendered her action involuntary. The Department maintains that this new allegation may not properly be raised on motion for reconsideration; should the Board address the merits of the assertion, the Department contends that the allegations do not warrant reconsideration of the Board's decision.

In support of its position, the Department stated that the consular officer who handled appellant's renunciation stated on May 8, 1990, in a report made in response to the Department's request, that appellant's renunciation was an emotionally charged event; proceedings had to be suspended until appellant could regain control and give assurance that she was acting voluntarily. The consular officer continued that

On the day of the renunciation, however, Conoff spoke in private with Dr. S [REDACTED] because she was concerned about her mental state and her ability to perform the act voluntarily. At no time did Dr. S [REDACTED] raise the issue of her pregnancy or give indication that her husband was exercising undue force over her. Conoff had the impression that Dr. S [REDACTED] was faced with a dilemma involving her profession and her marriage to a German citizen on one side and the inflexible German regulations which discriminate against U.S. and other foreign medical personnel, on the other side.

II

22 CFR 7.10 provides that the Board may entertain a motion for reconsideration of a Board's decision, and that the motion shall state with particularity the grounds of the motion, including any facts or points of law that the filing party claims the Board has overlooked or misapprehended. Plainly, 22 CFR 7.10 does not contemplate a reopening of the record to permit the submission of new testimony or other evidence. On the other hand, 22 CFR 7.2(a), which provides that "The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it," might reasonably be construed as permitting the Board to entertain a motion to reopen on the basis of new evidence.

However, as the case law makes clear, in order for the Board to entertain a motion to reopen - in effect the situation we have here - the moving party must establish that the evidence upon which the motion was based was not discoverable with due diligence or available before the litigation was completed. It is settled that 'evidence that was discoverable with due diligence or available before a decision has been rendered is inadmissible, barring a showing of good cause why such evidence should be admitted.

In the instant case, there is no question that at the pleading stage appellant could have presented the argument that she was subjected to pressure by her husband to renounce her United States citizenship. The question we must decide is whether she has shown good cause why she did not do so. The reasons appellant gives for not raising the issue of marital duress as an original matter are legally insufficient to persuade the Board to reconsider its decision.

That she would have found it "painful" to introduce the issue of her husband's psychological pressure earlier is not

legally sufficient to explain her avoiding the issue in her pleadings but raising it in a motion for reconsideration. Presumably it would have been no more painful for her to raise the matter then than now.

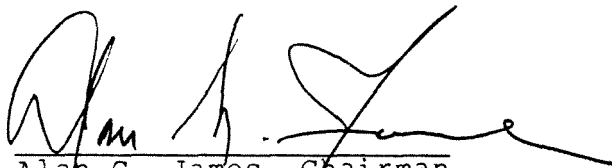
We do not know where appellant got the impression that the Board would only give consideration to an argument that she was under financial duress. One would think that in her appeal she would have tried to make the strongest possible argument that she acted involuntarily. So, if she really believed that her husband's pressure was an essential cause of her renunciation, she should have surfaced it then, not now. By her own admission, she thought she could prevail on the theory of economic duress, and so deliberately withheld the psychological duress argument.

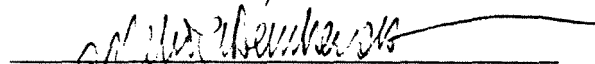
Finally, appellant gives no convincing explanation why she considered it important that her husband not know of all the grounds of her appeal but on motion for reconsideration does not deem it important if he should know.

In sum, appellant has proffered no reasons that would warrant the Board's concluding that she has shown good cause why we should admit her new testimony upon motion for reconsideration. We are therefore unable to accept it.

III

Appellant's testimony that she renounced her United States nationality under pressure from her husband being inadmissible, her motion for reconsideration is left devoid of substance. Obviously, therefore, it fails to show with particularity wherein the Board misunderstood or misapprehended any facts or points of law when it rendered its original decision. Accordingly, the motion for reconsideration is denied.


Alan G. James, Chairman


J. Peter A. Bernhardt, Member


Warren E. Hewitt, Member