July 12, 1990

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: K[redacted] W[redacted]

This is an appeal from an administrative determination of the Department of State that appellant K[redacted] W[redacted] expatriated himself on February 1, 1989 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, Israel. 1/

After the appeal was entered, the Department informed the Board it had concluded upon further review of the case that appellant had rebutted the statutory presumption that he acted voluntarily when he renounced his citizenship. Accordingly, the Department requested that the Board remand the case so that the certificate of loss of nationality that was approved in appellant's name might be vacated. We remand the case to the Department for further proceedings.

I

An officer of the United States Embassy in Tel Aviv executed a certificate of loss of nationality in the name of

---

1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), reads as follows:

> Sec. 349. (a) From and after the effective date of this Act 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 on 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; . . .

K[redacted] W[redacted] on February 1, 1989, as required by law. 2/ The certificate recited that appellant acquired the nationality of the United States by virtue of his birth to a United States citizen [redacted]) in [redacted]; that he never resided in the United States; and that he made a formal renunciation of United States nationality on February 1, 1989, thereby expatriating himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Deprtment of State approved the certificate on April 25, 1989, thus making an administrative determination of loss of nationality from which an appeal may be taken to this Board. A timely appeal was entered.

Appellant maintains that he renounced his United States citizenship involuntarily, having been pressured to do so by his mother, a member of the Black Hebrew Community, who reared him according to the tenets of that cult. At the time he renounced his nationality he was 18 years and 3 months old, and evidently had had very little formal schooling. He has since left the Community.

Appellant maintains that his renunciation was involuntary because:

> In the Community renouncing is a code of honor everyone is asked to do it. At one point or another most youngsters don't know exactly what they are giving away. They are to /sic/ afraid to say

---

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

> 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.

> no. They go on their parents /sic/ advice. If I was to refuse I would have been looked at as a rebel or a Infidale /sic/. I would have been put out and at the time I didn't have no place to go.

II

On June 18, 1990, the Deputy Assistant Secretary of State for Consular Affairs (Passport Services) submitted the record upon which the Department based its decision that appellant expatriated himself, and a memorandum in which the Department requested that the Board remand the case so that the certificate of loss of nationality that was approved in appellant's name might be vacated.

The Department takes the position that:

> In light of recent decisions of the Board, ruling on this same issue in parallel cases, the Department judges that appellant has rebutted the legal presumption that section 349(b) of the Immigration and Nationality Act of 1952, as amended, (INA), that his renunciation of U.S. citizenship was voluntary. 3/ Accordingly, it is requested that this appeal be remanded to permit the Certificate of Loss of Nationality (CLN) in Mr. W[redacted] name to be vacated.
>
> ...

---

3/ Two of the cases cited are: Matter of M.J.S., decided February 2, 1990, a case closely resembling the instant appeal. There a young man of 20 years of age, raised in the Communitv since the age of seven, was held to have renounced involuntarily under pressure of the Community leadership, largely because his background conditioned him to obev the leadership automatically. Matter of T.A.H., decided January 23, 1990. A young woman with two small children was held to have acted involuntarily because she feared separation from her children if she did not do as the Community leadership told her to do.

Viewing Mr. W[redacted] appeal in the light of these recent Board decisions, the Department has concluded that appellant has shown by those standards that it is more probable than not that his renunciation of **U.S.** citizenship was impelled by the influence of the **BHC** and his mother as a **BHC** member, that he had no reasonable alternative to renunciation, and that accordingly his renunciation was legally involuntary. 4/

III

Since the Department is of the view that appellant has succeeded in rebutting the statutory presumption that he recounted his citizenship voluntarily, and since we perceive no reason why we should not grant the Department's request for remand, we hereby remand the case for further proceedings. 5/

Alan G. James, Chairman

/Edward G. Misey, Member

Warren E. Hewitt, Member

---

4/ The Supreme Court has said that if a person successfully rebuts the presumption that an expatriative act was done Voluntarily, there can be no expatriation. Vance v. Terrazas, 444 U.S. 252 (1980).

5/ Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part as follows: "The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it."