BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M P A

This case was heard by the Board of Appellate Review on the appeal of M P A from a determination of the Department at Guatemala City that he had expatriated himself on March 12, 1990 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 Guatemala. 1

For the reasons set forth below, we affirm the determination of the Department of State.

I

Appellant A acquired the nationality of the United States pursuant to section 1993 of the Revised Statutes by virtue of his birth in Guatemala to a United States citizen father on [redacted] 2 Appellant spent his early years in

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

> 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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> . . .
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> (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; . . .

2. In 1925, Section 1993 of the Revised Statutea of the United States read as follows:

> Sec. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Guatemala. In 1938 the family went to the United States, and for the next three years he attended high school in California. He returned to Guatemala in 1941, remaining until 1943 when he went to Canada. There he began engineering studies and enlisted as a cadet in the R.C.A.F After the war, he went back to Guatemala briefly. In 1947 he enrolled in Louisiana State University which awarded him an engineering degree in 1950.

After graduating from LSU, appellant entered business in Guatemala. He had a distinguished career in business, education (he founded and was president for seventeen years of the Universidad Fransisco Marroquin), and public service (served in the Guatemala Legislative Assembly for four years.)

Although not a professional politician, appellant was asked by the National Liberation Movement (NLM) in October 1989 to be its candidate for President of the Republic in the 1990 elections. According to appellant (statement of June 24, 1992), prior to accepting the offer, "on several occasions I explicitly and specifically addressed this issue [his being a United States citizen] with the leaders of my party and the groups supporting the party, and made my position clear that I did not intend to renounce my U.S. citizenship. I was lead [sic] by these persons to believe that this would not be a problem. However,

> Within four months after my acceptance, the party's position changed drastically. Pressure from party leaders mounted steadily to induce me to renounce my citizenship. They informed me that, because of my U.S. citizenship, I was subject to disqualification as a candidate. After the election, no longer within the party structure, I was able to determine that this had, indeed, not been the case. However, at the time, I accepted the legal advice of the party attorneys.

So it was, appellant submits, "under considerable pressure" from his party and groups which supported it, he was "induced" to take "with great reluctance" measures to divest himself of his United States citizenship.

The record shows that around the beginning of March 1990, appellant visited the United States Embassy at Guatemala where, according to the Consul General (statement of August 12, 1992), he discussed with her his United States citizenship. The Consul General continued:

> He was running for the office of President of Guatemala, and asked me how that would affect his citizenship status. I told him that merely running for office did not make him subject to a potential loss of U.S. citizenship, however, if he were elected he would certainly become subject to its possible loss. He informed me that he thought his chances of being elected were extremely remote. From what I knew of the current political scene, I agreed with him.
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> A short time thereafter, he sought another appointment with me and came to the Embassy on March 12, 1990. At that time he told me he had decided to renounce his U.S. citizenship. I asked him why he had made this decision, as it still appeared that his chances of a successful campaign were not great. He said he had received information that some of his political opponents intended to make use of the fact that he was a U.S. citizen to question his loyalty to Guatemala and thereby affect his presidential campaign. He did not want anyone to be able to question his Guatemalan patriotism, and therefore had decided to renounce his U.S. citizenship to forestall any such allegations. He could then in truth say he was a citizen of Guatemala and of no other country.

On March 12, 1990, appellant executed a statement of understanding in which he acknowledged, **inter alia**, that:

> 1. I have a right to renounce my United States citizenship.
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> 2. I am exercising my right of renunciation freely and voluntarily without any force, compulsion, or undue influence placed upon me by any person.
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> 3. Upon renouncing my citizenship I will become an alien with respect to the United States,...
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> 8. The extremely serious and irrevocable nature of the act of renunciation has been explained to me by Consul Phyllis D. Speck at the American Embassy at Guatemala, Guatemala, and I fully understand its consequences. I choose to make a separate

> written explanation of my reasons for renouncing my United States citizenship.

Appellant's separate written explanation of his reasons for renouncing simply states: "The reason I am renouncing my United States citizenship is that I am seeking the political office of President of the Republic of Guatemala."

Appellant then made the prescribed oath of renunciation of United States citizenship, the operative part of which reads as follows:

> I desire to make a formal renunciation of my American nationality, as provide 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.

As prescribed by law, the consular officer exe d a c at los nationality in the name of Ma F [redacted] Cor [redacted] [3] Therein, she certified tha a t ired nationality of the United States by

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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.

birth abroad of a United States citizen parent; and that he made a formal renunciation of United States citizenship, thereby expatriating himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Embassy forwarded the certificate and supporting papers to the Department for adjudication. Eight months later on July 29, 1991 the Department approved the certificate, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review. 4

Appellant gave timely notice of appeal and requested oral argument, which was heard on December 14, 1992, appellant appearing pro se.

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Section 349(a)(5) of the Immigration and Nationality Act prescribes that a national of the United States shall lose his nationality if he voluntarily and with the intention of relinquishing citizenship makes a formal renunciation of citizenship before a consular officer of the United States in a foreign state, in the form prescribed by the Secretary of State. There is no dispute that appellant's formal renunciation of nationality was accomplished in the manner and form prescribed by law and regulation. He thus brought himself within the purview of the relevant section of the Act. The first issue to be addressed therefore is whether appellant performed the act of renunciation voluntarily.

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

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4. In July 1990, appellant withdrew as NLM candidate for the presidency of the Republic, reportedly because he and the party leadership had a falling out. Appellant states that the party perceived that if he were elected, he would not tolerate being manipulated by NLM politicians to further their careers and fortunes. Around September or October 1990, appellant joined the ticket of the National Centrist Union as its vice presidential candidate. In the election of November 11, 1990, appellant's party won the highest number of votes, but lost in the run-off election in January 1991.

of the evidence that the act was not voluntary. 5 Thus, to prevail on the issue of voluntariness, appellant must come forward with evidence which establishes, more probably than not, that he did not act voluntarily.

The issue of voluntariness is, of course, important in all loss of nationality proceedings. In cases where a person has formally renounced citizenship, voluntariness is of supreme importance. For if the trier of fact concludes that the renunciation was voluntary, it is rare (in distinction to cases where a less explicit expatriative act was done) that the person concerned will prevail on the issue of intent to relinquish citizenship; the categoric language of the oath of renunciation leaves little room for doubt that the actor willed loss of citizenship.

As triers of fact we must therefore examine conscientiously appellant's claims of duress. As Justice Frankfurter put it:

> /W/here 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. Nishikawa v. Dulles, 356 U.S. 129, 140 (1958) concurring opinion.

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5. 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 essence of appellant's case is that he renounced his United States citizenship because renunciation was demanded of him by the NLM party. In his statement of June 24, 1992, appellant expanded on the theme of duress.

Early in 1990, "/p/ressure from party leaders mounted steadily to induce me to renounce my citizenship. They informed me that, because of my U.S. citizenship, I was subject to disqualification as a candidate." He continued:

> Pressure from the party was something I could not take lightly. A substantial amount of money had been invested in my candidacy, and it was late from a political standpoint for the party to come up with, and achieve name recognition for, another candidate.
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> Political campaigns in a country like Guatemala are not the relatively seemly affairs they are in other parts of the world. Violence is a constant factor and threat. For example, an attempt on my life was carried out on May 3, 1990 with the explotion /sic/ of a grenade at campaign headquarters. No one was injured only because, luckily, there was no one in the immediate vicinity of the explosion although several of my assistants, including my wife, were severely shaken, two being thrown off their chairs.
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> In Guatemala it is well-known that 'betrayal' of a party has in the past led to violence. During this beginning phase of my campaign, I and members of my family received threats of physical harm ('death threats'); although we never knew who was responsible, the result was a multiplying effect on the other pressures. On March 12, 1990, I yielded and renounced my U.S. citizenship.
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> ...
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> I had been backed into a corner where my choices were either to betray my party with possibly violent consequences, or to renounce my citizenship.

At the hearing on December 14, 1992, appellant endeavored to support his claim that he acted under duress by

expanding on the violent nature of politics in Guatemala and his own frame of mind at the relevant time. He disputed the assertion of the Embassy (in response to the Department's request, the Embassy submitted observations on the 1990 elections) that it was not aware of threats against him during the political campaign. Threats are hardly ever made explicit, appellant stated. "If someone wants to kill you, he is not going to tell you about it ahead of time." 6 He maintained that the bombing of his political headquarters, although it occurred after he renounced his citizenship, was relevant to the issue of duress. "The occurrence just proves that those things do occur." 7

Appellant stated that he and his allies in the party were all aware of the dangers if he refused the damands of party bosses that he renounce his citizenship. "I wish you could see some of those meetings, after I was accepted, and I was already in the party, I would go to these meetings. Everybody had a gun sticking out of his belt. Everybody looked terrible. It was not a very edifying experience to find out what I had gotten myself into." 8

What would have happened if he had stood his ground and said he refused to renounce his American citizenship, asked counsel for the Department? Would the party leaders have ousted him at that point? Appellant replied:

> No, I don't think they wanted to be blamed for the breakup at that time. I think they would have staged an accident. That is what I think because then they would have come out very clean and /would have said/ the other people shot him. Now we have to change candidates; but they weren't going to take the blame for it. 9

It is axiomatic that "/i/f by reason of extraordinary circumstances amounting to true duress, an American citizen is forced into the formalities of citizenship of another country /or to perform any other statutory expatriative

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6. Transcript of Hearing in the Matter of M[redacted] E[redacted] A[redacted], December 14, 1992 (hereafter referred to as "TR").

7. Id.

8. TR. 29, 30.

9. TR. 31.

act7, the sine qua non of expatriation is lacking. There is not authentic abandonment of his own nationality." (Doreau v. Marshall, 170 F.2d 721, 724 (3rd Cir. 1948). "Opportunity to make a decision based upon personal choice is the essence of voluntariness" (Jolley v. Immiaration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971). Such a choice is unavailable, however, to one who is powerless in the face of external pressures not of his own making. Nishikawa v. Dulles, supra.

Our initial inquiry is whether in the winter of 1989-1990 appellant faced extraordinary Circumstances which forced him against his will to renounce his citizenship - whether circumstances over which he had no control deprived him of the opportunity to make an unfettered personal decision about his citizenship.

Appellant has alleged that he faced extraordinary, dangerous circumstances in the early part of 1990. He has not, however, introduced a shred of hard evidence to support such allegations. During oral argument, he was asked by Board members whether he could present evidence of threats of physical harm. He admitted he could not do so, and in response to the question of one member explained:

> Well, I don't have any specific evidence of that. I am sure though that it would not be hard to establish the character of the leaders of the party, and that when they talk softly about 'you better do this,' you know what they mean. Nobody is going to leak evidence of threats. So it is impossible to produce them. The fact is that they are violent. It is generally accepted and that this party was characteristic of that in many instances, it is well known. This is a rough bunch. Politics is rough -- it is getting better but this threat could not be taken lightly. I didn't think anything would happen to my family. I thought, what they implicated was, they would abort the campagin by having a tragedy; 10

In effect, appellant asks the Board to infer from an acknowledged fact (Guatemala politics are violent) and his

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10. TR. 52, 53.

own unsupported statements that he was subject to legal duress to renounce his United States citizenship. That we are unable to do. It is incumbent upon him to come forward with credible evidence of the danger he allegedly faced were he not to accede to the demands of his political party. While politics in that country may be turbulent and politicians overly fond of the gun, such circumstances do not without more warrant concluding that appellant was, as he avers, the subject of real menaces. He had the affirmative burden of coming forward with hard evidence that he did not act freely. Self-serving, speculative declarations will not suffice to meet that burden, especially here where at the time of his renunciation appellant averred that he was acting freely, and where the United States Embassy in its commentary on the background of the 1990 elections in Guatemala observed that: those elections were generally considered to be free and fair; there was no significant political violence during the campaign; and the Embassy was unaware of any credible threats against any individual candidate during the campaign.

It might have been difficult for appellant to substantiate his allegations that he was subjected to threats, but he has not shown it would have been impossible, say, to obtain confidential affidavits from his political allies so that the Board might properly evaluate his testimony.

Since appellant has failed to introduce any evidence which might conceivably rebut the presumption that his renunciation of American nationality was voluntary, we must conclude that he acted freely and without any duress or external pressure being exerted upon him.

III

In contrast to the issue of voluntariness, it is incumbent upon the Department of State to show by a preponderance of the evidence that the act of expatriation was done with the required intent. Vance v. Terrazas, 444 U.S. 252, 270 (1979).

The Department submits that it has met its burden of proof by introducing the oath of renunciation which appellant swore. We agree.

A voluntary, knowing and intelligent renunciation of United States nationality as prescribed by law and regulations promulgated by the Secretary of State constitutes unequivocal and intentional divestiture of that nationality. "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 expresses the utterer's intent:

> 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.

Beyond question, appellant acted knowingly and intelligently, fully aware of the implications of making a formal renunciation of his American nationality. He signed a statement of understanding in which he acknowledged that renunciation was irrevocable and that he would become an alien toward the United States. He conceded in his written submissions and during oral argument that he had been duly counseled by consular officers about renunciation and its serious consequences. A mature, highly intelligent man, appellant plainly acted wittingly, in full knowledge of the ramifications of his act. We perceive no inadvertance of mistake of law or fact upon his part.

In brief, on all the evidence, appellant accomplished the voluntary forfeiture of his United States nationality in due and proper form, fully conscious of the gravity of his act.

The Department has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality when he formally renounced that nationality.

IV

On consideration of the foregoing, we conclude that appellant expatriated himself on March 12, 1990 by making a formal renunciation of his United States citizenship before a consular officer of the United States in the form prescribed by the Secretary of State. Accordingly, we affirm the Department's administrative determination of July 29, 1991 to that effect.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Howard Meyers, Member