DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: G I C

G I C appeals from a determination of the Departme of ta th expatriated herself at San Jose, Costa Rica on May 10, 1991 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by voluntarily making a formal renunciation of her United States nationality with the intention of relinquishing that nationality. 1

For the reasons that follow, the Board concludes that the Department's determination should be and hereby is affirmed.

I

Ms. C acquired the nationality of the United States by virtue of birth at Hollywood, California on August 25, 1967. Since her father was a national of Costa Rica, she also acquired the nationality of that country. Appellant lived a few years in the United States; briefly in Costa Rica; about nine years in Colombia; and from 1980 to 1991 in Costa Rica. She is now studying in Canada.

Appellant attended the University of Costa Rica which awarded her diplomas in law in 1990 and 1991. In January 1991, she applied for a McGill University/CIDA (Canadian International Development Agency) International Canada Fellowship. A few months later (April 1991), the Fellowships Office of McGill University informed appellant that she had been recommended for award of a fellowship, the terms and

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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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> . . .
>
> (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; . . .

conditions of which were spelled out in an enclosure to the Fellowship Office's letter. The condition of the award relevant to this appeal stipulated that the person accepting the award should acknowledge that he/she was "a citizen of a country [Costa Rica is one] which qualified for Canadian development assistance through CIDA and does not also hold citizenship of a developed country." (Emphasis on form.)

On May 2, 1991, appellant accepted the fellowship by signing and returning to McGill University the "Acknowledgment and Conditions" form. The next day, according to appellant, she visited the United States Embassy in San Jose where she was received by a consular officer to whom, as she put it, "I explained my situation."

The consular officer who tried to find a solution to her problem allegedly asked her about the possibilities of getting scholarships or similar fellowships in the United States. (It is apparent that the consular officer wanted to make sure that appellant had explored alternate possibilities to continue graduate studies without being placed in a position, as acceptance of the McGill/CIDA fellowship inherently required, of having to relinquish her United States citizenship.) Appellant informed the Board she explained to the consular officer that she had investigated her options carefully before applying for the Canadian fellowship and concluded that for various reasons she could not qualify for scholarships or fellowships in the United States, or it would be too expensive for her to study here. The McGill/CIDA fellowship was really the only one that met her purposes.

Appellant continued that after explaining her situation to the consular officer, he told her to come back to the Embassy on a later date "to pick up the papers of renunciation."

Shortly after her first meeting, appellant returned to the Embassy and spoke again to the consular officer. The date was May 10, 1991.

> I asked his personal opinion about the possibility of coming to Canada without renouncing my nationality. He told me that I could risk losing the scholarship if I did not renounce my nationality before leaving Costa Rica. Finally, on May 10, I had no option but to make a formal renunciation of my United States nationality. I was also informed by Mr. G[redacted] that I could have the possibility of appealing to my renunciation because in the past there had been cases similar to mine in which

> american [sic] citizens had been required to renounce their citizenship for different motives.

The record shows that on May 10, 1991, appellant executed a statement of understanding in which she acknowledged, inter alia:

> 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 alienwith 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 vice-Consul Steven B. Groh at the American Embassy at Guatemala, Guatemala, and I fully understand its consequences. I (do not) chose to make a separate written explanation of my reasons for renouncing my United States citizenship.

Nonetheless, appellant did make a statement of her reasons for renouncing her United States nationality. It reads as follows:

> I am renouncing my citizenship because I was granted an International Canada (MCGILL/CIDA) Fellowship. One of the conditions of the acceptance of the fellowship is that I do not hold citizenship of a developed country. So that, in order to meet the requirements I must renounce ,my United States citizenship.

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 provided 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 executed a certificate of loss of nationality in the name of [redacted] 2 Therein, he certified that appellant [redacted] red the nationality of the United States by virtue of birth in the United States; that she made a formal renunciation of her United States nationality on May 10, 1991; and thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Department approved the certificate on June 13, 1991, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review. Appellant entered a timely appeal and waived oral argument.

II

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

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2. 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.

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. She thus brought herself 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 of the evidence that the act was not voluntary. [3] Thus, to prevail on the issue of voluntariness, appellant must come forward with evidence which establishes, more probably than not, that she did not act voluntarily.

Appellant maintains that economic circumstances forced her to apply for and accept the McGill/CIDA fellowship despite its requirement that she not hold the citizenship of the United States, a developed country.

> The granting of the McGill/CIDA scholarship represented to me the only possibility to study at the Master's level in International Business Law. Indeed, due to the complete financial support of the Canadian government I was going to be able to obtain a better education.

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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.

> Nevertheless, the main benefit of studying in the post-graduate level is that it makes it easier to find a job 1 in Costa Rica. Certainly, before receiving the scholarship I looked for a job for almost a year (since I finished my bachelor's degree), and the only one I found was a part time position, as a lawyer assistant, in which I earned approximately $150 per month.
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> Not only the frustration that as a professional you can have by earning such a salary, but the impossibility to live with it, justified my desire of obtaining a Master's degree. Moreover, I chose the Master's program of International Business Law because in Central America there is a lack of professionals specialized in this area.
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> Undoubtedly, when I finish my studies I am going to have a much better possibility of finding a job that provides me with the necessary financial resources to have a proper level of life.
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> ...The offering of the McGill/CIDA scholarship was a unique opportunity of getting a financial help to study and, therefore, to have a better financial future. Indeed, I was forced to act in such a way due to financial reasons. It is evident that I did not voluntarily renounce my citizenship.

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1 Nowadays, in Costa Rica there is an excessive number of professionals, mainly lawyers, due to the existence of many private small universities.

Appellant asks us, it appears, to accept that compulsion, amounting to legal duress, to improve her intellectual capacities and skills and thus better her economic position left her no choice but to forfeit her United States citizenship.

The facts of the case simply do not support appellant's contention that her economic situation was such as to leave her no reasonable alternative to renunciation of her United States citizenship. Essentially, the question is whether appellant

had opportunity to make a free, unfettered choice to relinquish or retain her United States citizenship. "Opportunity to make a decision based upon personal choice is the essence of voluntariness" (Jollev v. Immigration 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, 356 U.S. 129 (1958). To establish economic duress the courts have consistently applied the test whether the plight of the citizen who allegedly performed an expatriative act because of economic considerations was "dire." See Maldonado-Sanchez v. Shultz, 706 F.Supp. 54 (D.D.C. 1989); and Stipa v. Dulles, 233 F.2d 531 (3rd Cir. 1956).

In the case before the Board, appellant has presented not a shred of evidence to establish that her economic situation at the time she renounced her citizenship was anything like "dire." Even if we were to accept that without an advanced degree she might find it difficult to obtain employment worthy of her talents and aspirations in Costa Rica, such facts do not amount to legal duress sufficient to call into question appellant's freedom of choice plainly when she decided that losing a valuable fellowship which might ensure her future was not worth keeping her American nationality.

We find it difficult to accept that appellant could not have found ways to earn an advanced degree in law without relinquishing her United States citizenship. She has not made a persuasive case that she could not study at a university in the United States; it will not do for her to assert, as she did to the consular officer who interviewed her in May 1991,

> I told him that I had already applied for scholarships in the United States but I have not been considered among the possible candidates because, although I hold the Costa Rican nationality, I was born in the United States. Thus, neither the Fulbright Postgraduate Fellowship Program nor el Programa Centroamericano de Becas para la Paz (CAPS), de la Agencia Para el Desarrollo Internacional de los Estados Unidos (A.I.D.), were available to persons who were born in the United States.
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> Regarding the possibility of going to study in the United States, I had also made the necessary investigations before applying for the Canadian scholarship. I was informed that I would not be admitted to an American university under the status of 'resident' of the state where the university is located.

> Thus, I would have to pay non-resident fees in spite of being a United States citizen. Facing the fact of not being able to study in the United States due to financial reasons, I decided to apply to a McGill/CIDA scholarship.

So many young men and women situated like appellant have found ways to pursue their studies in the United States that we find it difficult to believe that with perseverance appellant could not have managed to find a way to do so. Thus, it seems to us, appellant had opportunity to make a personal choice in May 1991 whether to forego the McGill/CIDA scholarship or surrender her United States citizenship. [4]

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4. Appellant makes an ancillary argument in rebuttal of the presumption of voluntariness which we find without merit. The letter of offer from McGill stated that the 'Conditions form' had to be returned no later than April 15, 1991. She states that she received the papers on May 2nd. So "I decided to file and send them immediately by fax in order to avoid the possibility of losing the scholarship."

> Due to the late arrival of the award letter, I was forced to renounce my nationality in order to comply with the required conditions. What makes this claim even more evident is that prior to receiving the offer letter I was not advised that it was required not to hold a nationality of a developed country. Indeed, if I knew that the above was one of the requirements for the scholarship, I would not have applied for it.

We do not think that the late arrival of the letter from McGill or the fact that prior to receiving the offer letter appellant was not expressly cautioned that she might not accept the fellowship if she held citizenship of a developed country renders her expatriation involuntary. First, as discussed above, the condition attached to acceptance of the offer of a fellowship was one appellant was free to accept or not; it was a question of which she attached more importance to - her U.S. citizenship or an attractive scholarship.

She may have had little time to make a decision, given the late arrival of the letter of offer, but whether she had a month or a day matters little. She needed no facts of which she was unaware to decide whether it was worth giving up her citizenship to get the fellowship or to make a new effort to find graduate possibilities that would not require her to relinquish her United States citizenship.

Since appellant has not introduced any evidence which might conceivably rebut the presumption that her renunciation of American nationality was voluntary, we must conclude that she acted freely and without any duress or external pressure being exerted upon her.

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, Immiaration 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.

But did appellant act knowingly and intelligently, fully aware of the implications of renunciation of United States citizenship? The record leaves no doubt that she did so. She signed a statement of understanding acknowledging that she was acting freely, without any duress or compulsion. She has indicated that the consular officer involved attempted to ensure that she did not give up her citizenship without exploring or having explored scholastic alternatives that would have obviated the need to do so. Of age, evidently intelligent and educated, appellant plainly acted wittingly, in full knowledge of the ramifications of her act.

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

The Department has sustained its burden of proving by a preponderance of the evidence that appellant intended to

relinquish her United States nationality when she formally renounced that nationality.

IV

On consideration of the foregoing, we conclude that appellant expatriated herself on May 10, 1991 by making a formal renunciation of her 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 June 13, 1991 to that effect.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Frederick Smith, Jr., Member