DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] J[redacted] J[redacted]

This case before the Board on the appeal of C[redacted] J[redacted] J[redacted] from a determination of the Department of State that he expatriated himself on October 11, 1991 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 Stockholm, Sweden. [1]

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

I

Appellant J[redacted] was born at B[redacted], N[redacted] Y[redacted] on [redacted], and thereby acquired United States citizenship st clause of the Fourteenth Amendment to the Constitution. He grew up and was educated in the United States. Around 1981 he went to Sweden. He is married to a Swedish citizen and has two children, both United States citizens.

After living in Sweden for several years, appellant decided to apply for naturalization. As he explained to the Board, "I need Swedish citizenship to secure future economic stability as only Swedish citizens are eligible for government

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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; . . .

pensions based on the number of years spent working and paying tax." 2 Around the autumn of 1990, he applied to the competent authority for naturalization. 159

Sweden opposes dual nationality. An applicant for naturalization therefore must submit proof to the competent authority that he has been "released" from his previous nationality by his government before naturalization will be granted. 3 Accordingly, after it considered appellant's application for naturalization, the National Immigration Board informed him on November 14, 1990:

> Concerning your application for Swedish citizenship
>
> The National Immigration Board has decided that you will become a Swedish citizen if you, within two years from today's date, show to the National Immigration Board that you have been released from your citizenship of the United States of America.

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2. Appellant, it seems, was mistaken in this view. As the consular officer who handled appellant's renunciation noted in a statement, dated May 10, 1993:

> According to the Swedish Social Security Administration nationality is not germane vis-a-vis an individual's participation in either the Swedish Basic Pension (Folkpension) or the National Supplementary Pension (Tillaeggspension -- ATP), which serve jointly as the host-country's pension.... U.S. citizens are also entitled to receive full pension benefits while residing in Sweden.

3. Article 6 of the Citizenship Act of June 22, 1950 prescribes in pertinent part:

> If an applicant who is a citizen of a foreign state should not lose such citizenship by reason of his naturalization without the consent of the government or other authority of the foreign state, it may be made a condition of the acquisition of Swedish citizenship that the applicant shall submit proof within a specified limit of time to the provincial government indicated by the King in Council that such consent has been granted. The provincial government shall decide whether sufficient evidence has been produced.

Appellant states that after receiving the above communication, he wrote to the United States Embassy at Stockholm to inquire how to comply with the conditions of Swedish naturalization. "Their reply [he stated] was that I would have to formally renounce my U.S. citizenship. [4] I then called the Embassy asking if there were any procedures which would allow me [sic] be a dual citizen, and if it was necessary to actually renounce U.S. citizenship as the phrase is so negative and final. The prospect of me actually doing that was not pleasant." The record does not disclose what response, if any, the Embassy made.

Appellant states that around September 1991, after "pondering the consequences'* he decided to proceed with renunciation, "hoping that the request would be denied as this would have also allowed me to proceed in acquiring Swedish citizenship...." [5]

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4. The United States has traditionally refused to "release" its citizens from United States citizenship. The right to relinquish citizenship belongs to the citizen alone; the state may not take citizenship away, absent the citizen's own act (unless one has procured naturalization by fraud). Therefore, the only way appellant could comply with Swedish law was to make a formal renunciation of his citizenship.

In the latter part of the 19th century and early 20th century, United States citizens on occasion asked the Department of State to issue a certificate, usually requested by a foreign government for purposes of naturalization, to ensure that the United States government did not object to the person's change of allegiance. This the Department consistently refused to do. As the Secretary of State explained to the United States Minister to Russia in 1894: "I am aware of no statute authorizing or making it a duty of a diplomatic or other officer of the United States to give such a certificate. A citizen's right to abandon citizenship under the laws of this country cannot be questioned. This Government holds that the right of expatriation is 'a natural and inherent right of all people.' (Rev. Stat. U.S., sec. 1999)...." III J. Moore, "A Digest of International Law," 714. Section 1999 of the Revised Statutes has been incorporated in 8 U.S.C. 1481, note (1981).

5. The National Immigration Board of Sweden has discretion to grant citizenship to a qualified applicant even if the applicant's government refuses to release him from his citizenship of origin.

He spoke to some one at the United States Embassy (apparently by telephone) requesting, as he put it, "the required documents and to make an appointment."

Appellant went to the Embassy on October 11, 1991 to renounce his citizenship. There he executed a statement of understanding (duly witnessed) in which he acknowledged, inter alia, that:

> 1. I have a right to renounce my United States citizenship.
>
> 2. I am exercising my right of renunciation freely and voluntarily without any force, compulsion, or undue influence placed upon me by any person.
>
> 3. Upon renouncing my citizenship I will become an alien with respect to the United States,...
>
> 8. The extremely serious and irrevocable nature of the act of renunciation has been explained to me by [the Consular Officer] and I fully understand its consequences. I do not choose to make a separate written explanation of my reasons for renouncing 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

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5. (Cont'd.)

Appellant, who obviously wished to be able to hold dual citizenship, wrote the Board on March 29, 1993, stating he hoped his "request" to renounce his citizenship would be denied "being that I am the legal guardian for two foreign born U.S. citizens (minors)," and thus might be able to acquire Swedish citizenship without having to relinquish his United States nationality. The consular officer concerned stated (declaration of May 10, 1993) that appellant was not told that the Embassy or the Department might deny his request to renounce, and he did not recall that appellant raised the point.

> 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 ex a certificate of loss of nationality in the name of C J J . 6 Therein, he certified that appellant a re nationality of the United States by birth in the United States; that he made a formal renunciation of United States citizenship, and thereby expatriated 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. On December 19, 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.

Appellant gave timely notice of appeal.

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Section 349(a)(5) of the Immigration and Nationality Act prescribes that a national of the United States shall

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6. 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.

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. [7] He thus brought himself within the purview of the relevant section of the Act.

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7. In response to the Board's request that he describe the proceedings on the day he renounced his citizenship, appellant stated:

> Upon arrival at the embassy I presented myself and waited approximately 20 minutes before being expedited. The actual act of renunciation took no more than 10 minu'tes as the 'interview' was held in the embassy's fully packed waiting room at one of the windows. I stood at the window the entire time as all documentation was passed back and forth through a compartment. No sit-down face-to-face talking nor even a simple handshake were exchanged. The /consul/ was pleasant and to the point. We went through the documents and signed them. He asked me if I understood the consequences of my act and I affirmed.
>
> I then handed over my passport on his request after which I left the Embassy.

Evidently at the Department's request, the consul who handled appellant's renunciation also responded to the queries the Board had put to appellant. In a statement, dated May 10, 1993, the consul declared:

> Owing to post security concerns, no applicants are allowed to enter the consular working area. All American citizen services and visa cases are processed at designated windows. (Three windows are available for American services and three are used for visa applicants.) We believe there is sufficient privacy.

It seems anomalous that an American citizen (apparently not menacing) who was about to perform an act with the gravest consequences for his civil status should not be permitted to sit down with a consular officer and quitely discuss the matter. Perhaps the procedure followed in this case did not amount to a denial of procedural due process, but we find it hard to understand why an American citizen in appellant's

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. 8 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 important in all loss of nationality proceedings. In cases where a person has formally renounced citizenship, voluntariness is often the decisive element. For if the trier of fact concludes that the renunciation was voluntary, the categoric language of the oath of renunciation leaves little room for doubt usually that the actor willed loss of citizenship.

Appellant has submitted virtually no evidence to rebut the presumption that his renunciation of United States nationality was voluntary. He merely suggests, as the Department points out in its brief, that economic considerations forced him to obtain Swedish citizenship.

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7. (Cont'd.)

situation should not have full and unfettered access to a consular officer.

8. 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.

Duress connotes absence of choice to make a personal decision, being forced by circumstances (largely beyond one's control) to do something contrary to one's will and purpose to do otherwise. "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); cert. denied, 404 US 946 (1971).

Appellant asserts he believed he would have to hold Swedish citizenship to qualify for pension benefits, and renounced his American citizenship on the basis of that understanding. He was, of course, misinformed. (See note 2, supra.) That he relinquished his citizenship on the basis of wrong information did not render his act involuntary. Possessing wrong information was not a circumstance beyond his control; he could easily have obtained the facts. In essence, he made a personal decision to relinquish his citizenship. That the choice was for him difficult does not change renunciation into an involuntary act. The matter turns on whether coercive factors impinged on appellant to force him to do an act contrary to his will, and we perceive none.

Appellant read, said he understood, and signed a statement of understanding in which he acknowledged that he had a right to relinquish his citizenship and "I am exercising my right of renunciation freely and voluntarily without any force, compulsion, or undue influence placed on me by any person." Nothing in the record admits of any doubt that appellant meant precisely what he said when he stated that he was acting freely and voluntarily.

Appellant has not rebutted the presumption that the formal renunciation of his United States citizenship was voluntary.

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 (1980).

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.

We are satisfied that 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 that he had been duly counseled by the consul about renunciation and its serious consequences. We have no reason to believe that appellant did not know what he was doing.

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 October 11, 1991 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 December 19, 1991 to that effect.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

George Taft, Member