DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: E[redacted] Y[redacted] K[redacted]

This case is before the Board of Appellate Review on the appeal of E[redacted] Y[redacted] K[redacted] from a determination of the Department of State that he expatriated himself on May 12, 1992 by making a formal renunciation of his United States nationality before a consular officer of the United States at Tel Aviv, Israel. 1 For the reasons that follow, we affirm the Department's determination that appellant voluntarily renounced his United States citizenship with the intention of relinquishing that citizenship.

I

[redacted] Y[redacted] K[redacted], was born in [redacted] H[redacted]ved to Palesti[redacted] **1935** here by his parents), and in **1952** became an Israeli citizen. He was educated in Israel and received degrees from The Hebrew University. In 1967, appellant came to the United States where he resided and taught for the next **24** years. On June 7, **1976**, he acquired the nationality of the United States by naturalization before the United States District Court for the Northern District of New Jersey. He is married and has three children, all of whom are American citizens, as is his wife.

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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; . . .

In early 1986, while teaching at a college in New Jersey, appellant had a dispute with the head of his academic department that affected him emotionally. He consulted a psychiatrist who evaluated him as emotionally ill and not capable of performing his usual academic duties; a leave of absence appeared to be necessary, and one was granted. In 1986, appellant also initiated an action in the Worker's Compensation Division of the New Jersey Department of Labor against the college for strain and stress caused him by the head of his department.

The same psychiatrist saw appellant in 1987 for further psychiatric evaluation. At that time, appellant reportedly appeared "emotionally distraught" about any confrontation with the head of his department; such a reaction, the psychiatrist observed, "might almost be seen as a reaction to a phobic object." A face-to-face meeting between the two should be avoided.

A third psychiatric evaluation of appellant was made in 1988 by the same specialist who prescribed tranquilizers to allay appellant's "obsessional rumination" over an ongoing struggle between the union and the college administration. (The reference appears to be appellant's action for worker's compensation.)

The psychiatrist observed that appellant had symptoms of depressed mood, insomnia, headaches and general aches.

> The above symptom picture [the psychiatrist continued] appears to be an outgrowth of a struggle within the university department in which Dr. K[redacted] feels he has been unfairly treated. In my opinion he suffers with an 'Adjustment Disorder with Depressed Mood.' If administratively feasible, the symptomology would likely be greatly relieved, even eliminated, if he could be assigned a teaching role 'apart' from his present chairperson.

Appellant retired in June 1991, and went to Israel. "I found here in Israel," he stated to the Board

> ...a very high rate of unemployment of scientists, refugees from Russian and the other republics of the formerly USSR, in general, and in this city, Arad, in particular. They all were at a very severe state of despair. The Mayor of the city, Mr. Tabib, who knew that I was a

> retired professor from America, asked me to help the municipality to assist the unemployed scientists. I agreed to do it voluntarily. I established in Arad, for these refugees, an "Institute for Advanced Studies"..., in which we absorbed all of the (about 500) individuals, and I assumed the responsibility for the institute. Gradually, the member scientists demanded that I represent them, and the rest of the unemployed refugee scientists in the whole country, unofficialy [sic] and officially, in all public affairs. Eventually, they established a political party [the Tali party] unofficially, as a preparation for the general election in Israel, on June 23, 1992....

It appears that the President of the Association of Russian Immigrants to Israel, Robert Golan, founder of the Tali party, asked appellant to stand for the Knesset in the parliamentary elections of June 1992. As both appellant and Golan have stated, appellant initially refused, but after urging by Golan, agreed, and appellant's name was placed on the Tali party list of candidates.

Under Israeli law, a person may not be registered as a party candidate and run for the Knesset if he or she holds the citizenship of another country in addition to that of Israel. [2] The practical effect of such law is that persons who are dual nationals and who wish to be registered as Knesset candidates must first divest themselves of their non-Israeli citizenship(s).

After the Tali party filed its list, Golan allegedly learned that appellant was a dual citizen of Israel and the United States and thus not eligible to be registered as a

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2. In 1987, the basic Knesset law was amended. The amendment (No. 10) provides in pertinent part that:

> Clause 6(b) A citizen of Israel who has also been a citizen of another country and the laws of that country permit him to renounce that nationality, shall not be a candidate for the Knesset unless, prior to presentation of the list of candidates containing his name, and to the satisfaction of the Chairman of the Central Electoral Committee, he has done all that is required on his part to be freed thereof (the second nationality).

candidate for the Knesset. Since withdrawal of appellant's name would, Golan asserted, disqualify the party as a whole,

> I demanded that Professor K[redacted] take all the necessary steps in order to meet the legal requirements even if it would take for him to renounce his US citizenship, or else he would be responsible for the collapse of the 'Tali' party. I insisted that Professor K[redacted] take all necessary acts not later than May 15, 1992. (Statement of July 5, 1993.)

What happened thereafter is a matter of dispute between the parties to this appeal.

According to the United States Embassy at Tel Aviv, appellant was one of several dual nationals who inquired about renouncing United States citizenship during the run-up to the 1992 Knesset elections. Sometime in early May 1992, (the Embassy later reported to the Department of State by telegram of April 25, 1993), appellant visited the Embassy where he talked with a consular officer. He inquired whether there was a way to place his citizenship "in trust." If elected he would renounce his citizenship, if he were not, he would take his citizenship out of trust. The consular officer reportedly told appellant it was not possible to do this under United States law; a person was a United States citizen or he was not. The officer gave appellant papers relating to renunciation which he encouraged him to study carefully; this appellant purportedly promised he would do.

Several days later, on May 12, 1992 (the Embassy's 1993 report continues), appellant returned to the Embassy. He informed the consular officer that he had decided to proceed with renunciation because he thought it important that he run for the Knesset. Appellant could not present his naturalization certificate (to establish his United States citizenship) because it was in New Jersey with other personal papers. The consular officer therefore suggested (and it was apparently agreed) that appellant might immediately proceed with renunciation, completion of the certificate of loss of nationality being deferred until the relevant information about appellant's acquisition of United States citizenship could be ascertained.

The record shows that on May 14, 1992, the Embassy reported to the Department that appellant had come to the Embassy on May 12, 1992 to renounce his United States citizenship in order to comply with Israeli law and register as a candidate for the Knesset. He had told the consular officer that he was naturalized before the U.S. District Court

for the Northern District of New Jersey in 1973 or 1974. He stated that it would be some time before he could return to the United States and search for the document, and that he was anxious to renounce his nationality without delay. The Embassy therefore requested that the Department obtain the specific date and place of appellant's naturalization so that the certificate of loss of nationality might be accurately executed.

Appellant's account of the circumstances surrounding his renunciation is at variance with that of the Embassy.

Appellant stated during oral argument on his appeal that around the end of April, he and Golan learned that dual nationals may not be registered as Knesset candidates. [3] Golan "said do something about it and I insisted on that I'm not going to renounce my citizenship." [4] So, appellant maintains, he went to the American Embassy "to seek help." There he discussed his case with a consular officer who reportedly indicated he would assist him. "He /the consular officer/ suggested that he will prepare some paper to assist me in this case, and set May 12, for it." Appellant insists that at the first meeting with the consular officer renunciation did not come up. What he hoped to obtain from the Embassy was an affidavit that would state that he had done all he could within his power to comply with the requirements of Israeli law, without actually renouncing his citizenship. Appellant said he hoped that since he could not present his naturalization certificate, the consular officer would be able to give him a paper attesting that appellant had done all he could to renounce his other citizenship but could not actually do so. Such a statement would, appellant hoped, suffice to permit the Tali party list to be registered. When the consular officer told appellant to return to the Embassy at a later date, appellant says he thought [redacted] would be given an affidavit that would state that "Mr K[redacted] came to the Embassy and he's not able to renounce his or whatever they will say but never go through the renunciation procedure." [5]

Appellant stated to the Board that when he returned to the Embassy on May 12, 1992,

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3. Transcript of Hearing in the Matter of [redacted] [redacted] K[redacted], Board of Appellate Review, August 18, 1993, hereafter referred to as "TR," 62.

4. Id.

5. TR 64.

> ...they immediately put me on the other side of the counter and he said here are some documents and I was at that time in very--I was under--it was a deadline that Golan put me on the 15th of May. By that time you either do it or take the consequences. He put me on the other side and he said I do and sign here. I didn't even read it. I didn't know what, as I mentioned before I didn't have glasses even with me. I didn't have the--he just said sign here sign here and then he said may I have your passport I said what do you need the passport for. He said you just renounced your citizenship. I said what do you mean. After the act was over...I didn't want to insult him, but I wanted to say you tricked me into something I didn't want in the first place. 6

The record shows that on May 12, 1992, appellant executed a statement of understanding (duly witnessed) in which he 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 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 [the Consul] 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:

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6. TR 64, 65.

> 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.

Since appellant could not present his naturalization certificate, the information in the oath of renunciation regarding the appellant's acquisition of United States nationality stated merely "That I am a national of the United States by virtue of naturalization before U.S. District Court....New Jersey....1974."

In response to the Embassy's telegram of May 14, 1992, the Department sent the Embassy the required information, and the consular officer on June 12, 1992 duly executed a certificate of loss of nationality in appellant's name, as required by law, [7] and filled in the blanks in appellant's oath of renunciation.

The consul certified that appellant acquired the nationality of the United States by virtue of naturalization and that he made a formal renunciation of United States nationality on May 12, 1992, thereby expatriating himself

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7. 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.

under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Department approved the certificate on June 19, 1992, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

Appellant initiated this appeal in October 1992 and requested oral argument which was heard on August 18, 1993, appellant appearing pro se.

Around the time the Embassy executed the certificate of loss of appellant's nationality, a Judge of Compensation in New Jersey issued a judgment holding that appellant had suffered a 15% diminution of his capacity to perform his academic duties due to occupational strains and stress. He was awarded monetary damages of around $11,000.

After filing the appeal, appellant visited a psychiatrist in Israel who examined him on November 23, 1992. This specialist's evaluation of appellant's mental health varies from that of the psychiatrist who treated him in the United States several years earlier. The Israeli psychiatrist opined, "on the basis of the analysis of the patient's anamnesis, and a heteroanamnesis from his wife, and medical documents that he showed me from previous treatments for mental health that he received in the U.S.A.", that appellant "has been suffering since 1986 from prolonged depression of the major depression type, having a definite endogenic variation."

Since those who cared for appellant in the United States treated his condition "more as an adaptation reaction," the Israeli psychiatrist continued, "he did not receive any real anti-depressant drug treatment." That was why, he added, "there was no significant improvement in his mental health and why during periods of exacerbation he did things as a result of an impairment to his judgment due to this impairment in the emotional and intellectuar [sic] realms that he would not have done had he not been in a depression of this type and of this intensity." As examples of appellant's impaired judgment, the psychiatrist cited his wanting to give up his teaching position (in 1990) and later changing his mind when there was a certain improvement in his mental state: and, at the time he decided to resign, spending money without thinking and later regretting having done so.

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 a foreign state, in the form prescribed by the Secretary of State.

The record shows that appellant's renunciation of his United States citizenship was accomplished in the manner prescribed by law, and by the rules, regulations and procedures of the Department of State. 8

The first issue to be determined 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. 9 Thus, to prevail on the issue of voluntariness, appellant must come forward with evidence that establishes, more probably than not, that he did not act voluntarily.

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8. Appellant contends that the oath of renunciation was invalid because the consular officer altered it after he signed it. His contention has no merit.

When appellant signed the oath of renunciation, precise information about where and on what date he was naturalized as a United States citizen was lacking because appellant could not present his naturalization certificate, that document then being in New Jersey with other personal papers. Obviously as an accommodation to appellant, the consular officer allowed him to renounce so that he could meet the deadline to register his candidacy for the Knesset, it being understood that the relevant information would be inserted in the oath (and thereafter the certificate of loss of nationality) as soon as it could be obtained.

The insertion of certain limited, factual information in the oath after appellant signed it cannot possibly be considered a material alteration of that document sufficient to invalidate it. Moreover, as the only contemporary record of appellant's renunciation shows (the Embassy's May 14, 1992 telegram to the Department), appellant undoubtedly acquiesced in this procedure.

9. 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

Appellant asserts that he was incapable on May 12, 1992 to make a voluntary renunciation of his United States citizenship.

> On May 12, 1992, and a long period before and after that day, I was under stresses and strains, which affected me emotionally and psychologically: and
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> I have been suffering from permanent emotional disability which is of neuro-psychiatric nature; and
> I was temporarly [sic] insane, and incapable of making sound, prudent, valid and free from my illness decisions and judgements [sic]; and
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> ...in spite of the fact...the Consul... and the witnesses, made all the effort to assure that I understand the 'Consular Officer's Attestation', none of them were aware of the fact that I was ill, and was given to serious stresses and strains, and was emotionally disable, due to neuro-psychiatric infuences [sic], and in effect, I did not comprehend the meanings of the words, and the nature of the document I signed.

He elaborated as follows: the emotional illness he suffered in the 1980's recurred when Golan, head of the Tali Party, pressed him to take all necessary steps to renounce his United States citizenship. It was never his intention to renounce his citizenship, he simply sought a way short of renunciation to satisfy the requirements of Israeli election law as that the Tali party could qualify to stand in the forthcoming elections. He had expected that the consular officer with whom he spoke initially would help him out of the

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9. Cont'd.

> 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.

dilemma and give him a paper that would satisfy the Israeli authorities. But he said at the hearing, the consular officer "tricked" him: instead of assisting him, he led him into renouncing his citizenship. Asked why the consular officer would want to trick him into renouncing his citizenship, appellant answered: "well, I hate to use the word trick, I would rather say the word help. He helped me but sometimes too much help is not good either. He helped me. He really wanted to help me and he thought that that's the way to help me.'' 10

Citing his experience in the **1980's** with mental illness, the June 1992 worker's compensation award and the finding of 15% diminished capacity to perform his academic duties, and the evidence of the Israeli psychiatrist who examined him in November **1992**, appellant maintains that he could not comprehend what he was doing on May **12, 1992.**

It is a fundamental principle of law that one is presumed to be sane and sufficiently lucid to be held accountable for one's actions. United States **v.** Freeman, 357 F.2d *606* (2nd Cir. 1966). **United** States, ex **rel.,** Johnson v. Brierly, **334** F. Supp. 661 (E. D. **PA, 1971).** In the matter before us, it is therefore incumbent upon appellant to rebut this legal presumption.

The test for mental capacity is whether the person concerned had sufficient ability at the time the act was performed to do it with a reasonable degree of rational understanding of the proceedings. Duskv v. United States, **362** U.S. **402 (1960).**

At the outset we note that appellant has introduced no psychiatric evidence of his mental condition at or around the time of his renunciation. 11 Indeed (as far as the record shows), four years had passed since appellant's mental condition had been evaluated. In **1988**, the examining psychiatrist expressed the view that appellant was suffering

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10. TR 74–75.

11. Appellant's wife, daughter and sister have made statements about his behavior in **1992.** "He behaved irrationally," stated his wife, "he left home without telling me where he was going and returned without telling me where he had been." When his sister visited him in the spring of *1992,* she noted a "personality change, he was nervous and irritable, hard to communicate with; absent minded, restless and acting irrationally.'' "Appellant's actions were rash and irrational," stated his daughter.

from "Adjustment Disorder with Depressed Mood." He seemed sure 173
that if the cause of appellant's depression were eliminated, that is, if he were out of contact with the "probic object" (his academic chairman), "the symptoms would be greatly relieved, if not eliminated." In the event, appellant left the environment that caused his depression when he left the United States in 1991 and went to Israel. Absent evidence to the contrary, it may be assumed that his mental illness had thereby been significantly ameliorated. (The worker's compensation award has no probative value on the issue of appellant's mental competency. It merely compensated him for his inability to work at more than 85% of capacity due to confrontation with his academic superior.)

The psychiatric evaluation made of appellant in November 1992 raises the question whether apellant was suffering from a type of depression more serious than "Adaptation Disorder with Depressed Mood." The Israeli psychiatrist states that appellant's depression was of the major type, which, it is commonly understood, implies dysfunction.

In the Board's opinion, the November 1992 evaluation (made 'six months after the relevant time) cannot be deemed to have the same standing as an evaluation made around the time appellant renounced his citizenship. Assume, however, arauendo, that the November 1992 evaluation had been made around May 1992 and that appellant had then been diagnosed as suffering from a major depression that impaired his judgment. It seems evident that the examples the Israeli psychiatrist gave of faulty judgment on appellant's part do not, without more, indicate appellant lacked the capacity to make a knowing and intelligent renunciation of his citizenship or perform an act of equivalent gravity. The Israeli psychiatrist did not suggest that appellant was mentally incompetent.

The Board notes that when appellant was diagnosed in the 1980s to be suffering from "Adaptation Disorder with Depressed Mood," he was perfectly able to do constructive work, write articulately on political problems in the Middle East, attend conferences (even preside over a panel on one occasion), and perform his academic duties. We note, too, that from 1991 onward, appellant was engaged in useful and interesting work to help Russian emigree scientists, work at which he was evidently quite successful.

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11. Cont'd.

The evidence presented by appellant's family is of limited probative value. Not only is it in the nature of self-serving evidence, given its source, it does not adduce any conduct which could be considered psychotic or wholly dysfunctional. Odd or bizarre behavior is not presumptively equatable with mental incompetency.

Appellant maintains, however, that the pressure Golan exerted on him to renounce his citizeship (if necessary in order to qualify the Tali Party to participate in the Knesset elections) resuscitated his earlier illness and rendered him incompetent to make one and only one decision - the renunciation of his citizenship. We do not agree. Even if in May 1992 he suffered a recurrence of his 1980s illness, he was nonetheless presumptively able to make an intelligent decision about renouncing his citizenship, for his earlier condition had not, as noted above, rendered him at that time dysfunctional.

Absent credible evidence to the contrary, we believe that the contemporary evidence demonstrates that appellant was able to perform a knowing and intelligent act of renunciation in May 1992. The Embassy's May 1992 telegram to the Department of State (requesting information about appellant's acquisition of United States citizenship) unqualifiedly states that appellant was single-minded in his wish to renounce his citizenship and to **do** so immediately in order to meet the Knesset candidate filing deadline. 12

In our opinion, appellant has not presented credible evidence that on May 12, 1992 he lacked the mental capacity to perform an intelligent and knowing act of renunciation.

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12. We find without merit appellant's contention that he could not read the statement of understanding about the grave consequences of renunciation because he did not have his glasses. The statement was read to him, and, since we are not persuaded that appellant was mentally incompetent, that is, incapable of comprehending the meaning of renunciation, he surely was able to grasp orally what he allegedly could not read.

Nor can we accept on the basis of the evidence presented that the consular officer concerned, tricked, misled or simply did not understand appellant.

It is presumed (in the absence of evidence to the contrary) that public officials perform their official duties in accordance with law and the rules, regulations **and** procedures of the agency for which they work. Since appellant has p'resented no contrary evidence, it may be presumed that' when appellant sought advice and counsel from the Embassy around the beginning of May 1992, the consular officer made clear to him that there was no half way solution to his problem. He might not put his citizenship in trust and take it out if he were not elected to the Knesset. He had no option but to renounce his citizenship if he wished to qualify to stand for the Knesset.

There remains to be determined, however, a further matter relating to voluntariness - whether the pressure Golan exerted on appellant (even though mentally competent) to take all steps he could including if necessary renouncing his citizenship in order to qualify the Tali Party for the Knesset elections constituted legal duress.

Duress is defined as pressure amounting to or tending to coerce the will of another, and actually inducing one to do an act contrary to one's free will. Black's Law Dictionary, 5 Ed. Pressure may take several forms: intense moral suasion, force or threat of force. To render an act involuntary, duress must be not of the actor's own making, that is, one must be faced with circumstances largely beyond one's control. Therefore, "opportunity to make a decision based on personal choice is the essence of voluntariness." Jolley v. I.N.S., 441 F.2d 1245 (5th Cir. 1971), cert. denied, 404 U.S. 846 (1971).

Tali party leader Golan has declared that only after he imposed pressure on appellant did the latter agree to have his name put on the list of Tali candidates for the Knesset. When Golan became aware that appellant was a dual national and therefore ineligible to run for the Knesset, Golan "demanded" that appellant take all necessary steps in order to meet the legal requirements "even if it would take for him to renounce his US citizenship." "I insisted that appellant take all necessary acts not later than May 15, 1992. I know that he did indeed renounced [sic] reluctantly his US citizenship upon this threat."

Evidently Golan was very insistent that appellant go to any length (even to renounce his citizenship) to qualify the Tali Party. Such pressure does not, in our opinion consititute legal duress. Appellant may have been reluctant to be a candidate for the Knesset (the mere difficulty of a choice does not constitute duress), but he obviously felt great loyalty to the Tali Party as the representative of Russian immigrant scientists in Israel whom he admired and felt a strong wish to help. On his own admission he was reluctant to let the scientists down. At the hearing, appellant was asked whether he was afraid of Golan. He replied that Golan was "a very powerful man" and "I wanted to see this institute in Arad - generally speaking I wanted to see that the Soviet Jewry will get their way in the country. He was leader. I just like him to lead because I felt that he's going probably to help the scientists. 13 Furthermore, appellant leaves undefined the nature and intensity of the

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13. TR 66-67.

pressure he alleges Golan subjected him to, or demonstrated that he was unable reasonably to resist such pressure.

It seems appellant was prepared to go to any lengths to help the Tali Party and the scientists for whom it spoke. While he may have been reluctant to relinquish his citizenship, the record shows that he nonetheless considered it his obligation so to act To judge from the record, appellant made a free and conscious choice when he relinquished his citizenship. The impetus to act was his own willingness to comply with Israeli law regarding registration of Knesset candidates, not pressure Golan put on him.

In the absence of evidence demonstrating that the pressure Golan exerted on appellant was such as to force appellant to **do** what he would not have done of his free will, we must accept as highly persuasive the statement of understanding appellant signed on May 12, **1992**: "I am exercising my right of renunciation freely and voluntarily without force, compulsion or undue influence placed upon me by any person."

Appellant has not rebutted the presumption that his renunciation of United States nationality was an act of free will.

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 intentional divestiture of that nationality. It is, on its face, unequivocal. Jolley, **441** F.2d at **1250**. "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.

The record in this case demonstrates that appellant had a conscious purpose and made a free and knowing choice. He renounced so that he might qualify to stand as a candidate for the Knesset. Moreover, he requested prompt approval by the Department of State on his renunciation.

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 May 12, 1992 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 19, *1992* to that effect.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Frederick Smith, Jr., Member