December 11, 1991

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This case is before the Board of Appellate Review on the appeal of C[redacted] S[redacted] C[redacted] from an administrative determination of the Department of State, dated June 12, 1989, that he expatriated himself on July 8, 1983 under the provisions of section 349(a)(1) of the Immigration and Nationality Act ("INA") by obtaining naturalization in Australia upon his own application. 1

For the reasons set forth below, we affirm the Department's determination of loss of C[redacted]' nationality.

I

[redacted] was born at [redacted] and thus acquired United States citizenship pursuant to Section 1 of the 14th Admendment to the Constitution. He obtained a B.A. from [redacted] and a teaching certificate from the state of New Jersey. For about 10 years he taught school in that state. In 1970 he was married. A daughter was born in 1974. The marriage deteriorated and the couple separated in 1978. The child stayed in the custody of the mother, who initiated divorce proceedings. Around the middle of September 1978, appellant abducted the child and went to the United Kingdom. 2 He justified his actions by asserting

---

1. Section 349(a)(1), INA , 8 U.S.C. 1481(a)(1), provides that:

> 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 -
>
> > (1) obtaining naturalization in a foreign state upon his own application, or upon an application filed by a duly authorized agent, after having obtained the age of eighteen years; ...

2. Appellant obtained a passport for himself and his daughter in August 1978, valid for five years. When it expired in 1983 shortly after his naturalization in Australia, he did not apply to have it renewed.

that he was intimidated by his wife's family who disliked him and, he feared, wished to deprive him of the child. A New Jersey court issued an order after appellant's departure granting sole custody of the child to appellant's wife and enjoining appellant to return the child to the jurisdiction of the court, a warrant for his arrest was to issue if he did not comply with the court order. In January 1979, appellant's wife was granted a divorce, and given sole custody of the child; appellant to have no right of visitation.

After spending about one year in the United Kingdom, appellant took the child to Australia where he arrived in May 1979. There appellant was employed as an instructor at a riding stable. The stables closed in early 1980, and appellant became unemployed.

For about one year appellant remained without work. He and the child were granted permanent residence status in the spring of 1981, and in November of that year, he was hired by the Australian Capital Territory Department of Education. He was briefly a relief teacher and from February 1982 through July 1983, a temporary teacher.

Sometime in 1983, appellant applied for himself and his daughter to be naturalized as Australian citizens. He alleges he was forced to obtain naturalization in order to be able to support himself and his daughter. Only as an Australian citizen could he gain tenure as a teacher and thus job security. [3]

On July 8, 1983, appellant was granted a certificate of Australian citizenship. On that occasion he made the affirmation of allegiance (in lieu of an oath), as prescribed by the Australian Citizenship Act of 1948, as amended:

> I, A.B., renouncing all other allegiance, solemnly and sincerely promise to declare that I will be faithful and bear true allegiance to Her Majesty Elizabeth the Second, Queen of Australia, Her heirs

---

3. Australian law prescribes that a person shall not be appointed as an officer of the Teaching Service unless he is an Australian citizen. As the acting Assistant Principal (1983) of the high school where appellant wa[redacted]n teaching attested subsequently, "as a casual teacher /C[redacted]/ services would have been terminated at any time and certainly would have been as soon as a permanent officer applied for it or it became available.' (Statutory declaration of February 8, 1990.)

> and successors according to law, and that I will faithfully observe the laws of Australia and fulfil my duties as an Australian citizen.

Appellant's daughter, then eight years old, was also granted Australian citizenship as a child, in the words of the citizenship certificate, "who /has/ not attained the age of sixteen years and of whom the grantee of this Certificate is the responsible parent or guardian." 4

Following his naturalization, appellant received permanent teacher status. He was discharged in 1988 because sexual assault charges had been made against him and because he lacked the necessary credentials to teach in Australia. He was arrested and held for trial.

Meanwhile, around the beginning of 1989, appellant and his mother visited the United States Embassy at Canberra to inquire about the process whereby the mother might petition for appellant to enter the United States as an immigrant. The

---

4. Following the interview which appellant had with an Australian citizenship official, the latter made the following note in appellant's file:

> Mr. C[redacted]' eight year old daughter R[redacted] R[redacted] attended the interview with him today. Mr. C[redacted] claims that he is divorced from his American wife, whose present whereabouts are unknown. No custody document is in existence, claims Mr. C[redacted]....

In addition to Australian immigration, appellant informed R[redacted]'s Australian school that there had been a difficult separation from his wife who had since died; he therefore had sole custody.

The child custody aspects of this case are of only marginal relevance to the key issues which we must decide in this appeal. Suffice it to note that in 1985 appellant's former wife discovered his and their daughter's whereabouts; went to Australia; and applied to have custody of the child awarded to her. It appears that when it was established that appellant had not been the responsible parent or guardian of the child in 1983, an Australian court set aside her naturalization. Appellant's ex-wife was awarded custody of the child and took her to the United States. In the succeeding years the child lived at one time or another with each of her parents. By choice, she lives now with appellant.

vice consul who spoke to them has stated that, at that time he learned from appellant that he was a United States citizen and had obtained naturalization in Australia. Thereafter the Embassy processed his case as one of probable loss of nationality. He completed a questionnaire on January 13, 1989 in which he acknowledged that he had obtained naturalization in Australia and had made an affirmation of allegiance. He also signed the statement at the end of the following item in the questionnaire:

> 9. You should be aware that under United States law a citizen who has performed any of the /expatriative/ acts specified in item 7 with the intention of relinquishing United States citizenship may have thereby lost United States citizenship. If you voluntarily performed an act listed in item 7 with the intent to relinquish United States citizenship, you may sign the Statement below and return this form to us, and we will prepare the forms necessary to document your loss of U.S. citizenship. If you believe expatriation has not occurred, either because the act you performed was not voluntary or because you did not intend to relinquish U.S. citizenship, you should skip to item 10, and complete the remainder of this form.
>
> STATEMENT OF VOLUNTARY RELINQUISHMENT OF U.S. NATIONALITY
>
> I, C[redacted] S. C[redacted], performed the act of expatriation indicated in item 7 B /made oath or affirmation of allegiance to a foreign state/ voluntarily and with the intention of relinquishing my U.S. nationality. Signature C[redacted] S. C[redacted] Date Jan. 13, 1989.

Although he signed the statement of voluntary relinquishment of citizenship, he nevertheless completed the rest of the form, explaining inter alia why he had obtained Australian citizenship. On February 3, 1989, a consular officer executed a certificate of loss of nationality (CLN) in

appellant's name, as required by law. 5 Therein the officer certified that appellant acquired United States nationality by birth in the United States, and that he obtained naturalization in Australia upon his own application, thereby expatriating himself under the provisions of section 349(a)(1), INA. The Department approved the CLN on June 12, 1989, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

Appellant's application for an immigrant visa was refused by the Consulate General at Sydney on January 22, 1990 on the grounds that he was ineligible under the relevant sections of the INA on the grounds of his conviction on February 22, 1989 by the Australian Capital Territory Supreme Court on various counts of indecency with a young boy. Appellant was sentenced to serve three years in prison, but his sentence was suspended, and he was placed on probation. After he was refused a visa, appellant began proceedings to have his Australian citizenship rescinded which were unsuccessful.

An appeal to this Board was entered by counsel in June 1990. Oral argument was heard on January 17, 1991. Thereafter the Department, with leave of the Board, propounded written interrogatories to appellant's ex-wife who responded and submitted considerable documentary material concerning her marriage to appellant, the child custody controversy and appellant's medical and psychiatric history.

---

5. Section 358, INA, 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.

II

The INA prescribes that a United States citizen shall lose his nationality by voluntarily obtaining naturalization in a foreign state with the intention of relinquishing his nationality. 6 Appellant acknowledges that he obtained naturalization in Australia upon his own application. He thus brought himself within the purview of the Act.

The first issue to be addressed is whether appellant performed the expatriative act voluntarily. Section 349(b) of the Act prescribes a legal presumption that one who performs a statutory expatriating act does so voluntarily, but the actor may rebut the presumption upon a showing by a preponderance of the evidence that he did not act voluntarily. 7

Appellant makes two principal arguments in support of his claim that his obtaining naturalization in Australia was not a voluntary act. 8 First, he was forced to acquire Australian

---

6. Text supra note 1.

7. Section 349(b), INA, 8 U.S.C. 1481(b), reads as follows:

> (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.

8. Appellant also bases his contention that he acted involuntarily on a claim we consider without merit. He argues that his signing the statement of voluntary relinquishment in the citizenship questionnaire should not be received as evidence that he obtained naturalization voluntarily. He alleges that the consular officer who processed his case told him to sign the statement in order that his citizenship status might be clarified and that he might have appeal rights.

citizenship by economic circumstances, and second his mental state in 1983 rendered him incapable to make sound or rational judgments.

We address first appellant's contention that he acted under economic duress. He alleges that a tenured teaching position (for which Australian citizenship was a requisite) was the only way he could provide for himself and his daughter, meet the cost of being hospitalized, as he feared he might be, and obtain state support for his daughter should the latter eventuality arise. Parenthetically, we note he did not apparently require hospitalization, so faced no major expenses in connection therewith.

Appellant reportedly sought other employment that would not jeopardize his citizenship, but to no avail. As a non-Australian he was liable, as he put it, to be "bumped aside." "If you weren't a citizen," they gave it /the position/ to a citizen first. 9 He had no resources, as he declared

---

8. (Cont'd).

The consular officer concerned, however, stated in an affidavit executed on February 12, 1991:

> I specifically recall going over this clause with Mr. C[redacted] I explained that he did not need to sign it, and that if he did so he would be giving up his citizenship.
>
> He signed it anyway, explaining as he did so that he wished to speed up the process of his loss of citizenship, so that he could hurry up with his immigrant visa application, which he saw as his most effective way to return to the United States. When he said that I explained again that a conviction on the criminal charges would almost certainly lead to a visa refusal that could not be gotten around. He signed it anyway.

Absent credible evidence to the contrary, it is presumed that public officials perform the duties of their office faithfully and correctly. Appellant's self-serving uncorroborated statement is insufficient to rebut the presumption of official regularity. In the premises, we cannot accept that appellant signed the voluntary relinquishment statement not understanding what he was doing.

9. Transcript of Hearing in the Matter of C[redacted] S. C[redacted], Board of Appellate Review, January 17, 1991, 17 Hereafter referred to as "TR".

urder direct examir.atior. durirg oral argumert:

> I fourd that I was relyirg agair or loars from people to survive ard I sold a lot of my owr personal thirgs durirg the period of time I had brought with me from Erglard, saddles, ridirg equipmerk, a lot of jewelry that I had.
>
> Q Did you have ary savirgs accourts, ary morey tucked away, resb egg arywhere?
>
> A NO.
>
> Q Did you ever go without to provide for ?
>
> A Yes. There was a period of about 4 to 6 weeks I thirk that I lived or diet pills. I had a friend who had a grocery store ard what she would do is drop by with thirgs that were like seconds. I just fourd it was easier to--well, it kept your ridirg weight dowr..
>
> But it wasr't urtil I started irto bhe teachirg positior Chab bhirgs started to pick up agair.. 10

Ir brief, appellarb was by his lights ir dire sbraibs ir 1983, ard saw raturalizatior ir Australia as the orly way he could alleviate his plight.

Arguably appellart was ir a tight ecoromic situatior. The essertial irquiry, however, is whether his difficulty was so severe ard so urresolvable except by placirg his Urited State citizership ir peril that we should deem his performarce of the expatriative act irvoluntary.

Duress corrotes absence of choice, lack of opporturity bo make a persoral choice. Appellart fails ir his atbempt to establish that he was subjected to true duress primarily because he has offered ro proof that his situatior was as calamitous as he claims or that he tried to fird employmerb that would meet his ecoromic reeds withoub jeopardizirg his Urited States citizership; we have received orly his urcorroborabed assertiors that that was the case. Sigrificartly, it does rot appear that he made a serious effort to fird employmert that would rot ertail performirg ar

---

10. TR 22.

expatriative act. One might ask, for example, why he did not try to locate a position as a riding instructor at another stable after the one that hired him went out of business. After all, he claims to be an accomplished equestrian. Yet, there is no evidence he even made even one inquiry about a position at any stable in Australia.

On all the evidence, appellant has failed to show that his economic situation was dire. While it is well-settled that economic duress may avoid the effect of an expatriative act, the plight of the person who alleges economic duress must be "dire." Maldonado-Sanchez v. Shultz, 706 F.Supp. 54, 60 (D.D.C. 1989), citing Stipa v. Dulles, 233 F.2d 531 (3rd Cir. 1956).

Appellant asks us to believe that he could not solve his economic difficulties by returning to the United States with his daughter. He asserts that he was "estopped' from returning by the actions of his ex-wife in initiating legal actions against him and deterred by his former in-laws who he alleges intimidated him before he left the United States and were likely to do him grave harm if they met him again.

We cannot agree that he was constrained to remain in Australia by forces over which he had no control. It was his legal duty to comply with the orders of the New Jersey courts and return the child to their jurisdiction. The legal actions initiated by his former wife arose, it seems clear, solely because of appellant's refusal to obey the court orders. As to his fear of harm from his former wife's family, the most that might be said about such allegation is that it is not clearly established. Appellant elected to remain in Australia although he could have returned to the United States. So he was the author of the difficulties he and his daughter experienced, for he faced a straight-forward choice - remain in Australia and resolve his economic plight by performing an act that placed his United States citizenship in jeopardy, or comply with the laws of the country of which he was a citizen. He chose the former course of action. In such circumstances, there can be no duress. See Jolley v. INS, 441 F.2d 1245 (5th Cir. 1971), cert. denied 404 U.S. 946 (1971).

Appellant's second argument that his naturalization was involuntary likewise is unpersuasive, for there is insufficient evidence to establish, as he contends, that a mental disorder in 1983 rendered him incapable to make a sound or rational judgment. Essentially he argues that the stress he experienced in 1978 as a consequence of what seems to have been an emotionally unsettling divorce persisted into 1983 and beyond. His earlier stress, he maintains, was exacerbated after he reached Australia by several considerations: fear of what would befall him if he were to return to the United States; concern about the legal actions his former wife had

initiated; worry about his financial plight; distress over being blackmailed by a male student, a minor, who threatened to disclose his and his daughter's whereabouts and to reveal an illicit relationship appellant allegedly had with this same student.

In 1978 appellant entered a clinic in New Jersey to be treated for emotional distress and depression. He was treated and after a brief stay discharged himself. The diagnosis then made was "manic depressive, depressed and passive/aggressive personality disorder." In Australia appellant was treated by a Dr. Peter Gibson, a general practitioner, from 1981 until 1984 when he became the patient of Dr. Peter Rowland, also a general practitioner, who succeeded to Dr. Gibson's practice. Dr. Roland submitted a declaration (dated February 19, 1991) regarding appellant's state of mind in 1983 which reads in part as follows:

> Mr. C[redacted] has had a long history of mental illness variously diagnosed as depression, manic depressive psychosis, and passive aggressive personality disorder. He has exhibited many bouts of depression since I commenced seeing him, and over the years he has attempted suicide on more than one occasion....I would say that he often made irrational decisions, some even to his detriment, which were attributable to his stress disorder. Based on the medical history given to me from the patient and the patient's medical records when he came to me in 1984, I have no reason to believe that Mr. C[redacted]' condition was any different in 1983. If anything, his stress-related factors may have been more severe in 1983 than in 1984 when he began treatment with me.
>
> In evaluating Mr. C[redacted], I would state that because of his stress-related symptoms he was not able to make rational judgments.

Fragmentary evidence comes from a Dr. Peter Fitt, apparently a general practitioner whose patient appellant was while he was in a remand centre being held on the charges of which he was subsequently convicted. Fitt stated in February 1989 in a communication to a government minister in connection with appellant's petition to have his Australian naturalization rescinded:

> Whilst he was there I formed the opinion that he was suffering from a severe depressive disorder which culminated in at least two attempts to commit suicide. These incidents were very nasty and stressful to both the patient, staff and myself.

The final medical evidence submitted by appellant is that of Dr. William Knox, a consulting psychiatrist, who apparently began to treat appellant in 1985. Dr. Knox gave an evaluation of appellant in two letters written in 1989 and 1990. The following are excerpts from Dr. Knox's 1990 communication to a government minister to whom he too wrote in support of appellant's efforts to have his naturalization rescinded:

> Mr. C[redacted] was under a good deal of stress in 1985 during custody hearings for the daughter. More recently Mr. C[redacted] was charged with having engaged in sexual activity with an under-age youth and came very close to going to prison. He was very depressed during this time and was acutely suicidal in the face of the prospect of prison.
>
> * * *
>
> There are personality vulnerabilities in this man which have lead /sic/ to emotional breakdowns at a number of times during his life.

Dr. Knox recommended that C[redacted]' application for recision of his naturalization be looked at sympathetically; for him to remain in Australia would pose a grave risk to his psychiatric health.

Dr. Knox's 1989 communication was to appellant's attorney who had requested a report about how C[redacted] was responding to psychiatric treatment following his conviction for sexual offenses. Dr. Knox noted that he had treated appellant with an anti-depressant drug, but stopped that treatment when it became apparent that the acute distress C[redacted] had suffered during his trial had abated. The long report centered on Dr. Knox's prognosis for C[redacted]. After analyzing C[redacted]' libido *in extenso*, Dr. Knox concluded that C[redacted] required further treatment "to help him to establish appropriate adult relationships, sexual or otherwise, although he was encouraged by C[redacted]' response to therapy.

It is evident that appellart has a history of depressior ard severe stress, has received medicabior over a period of years, ard has suicidal terdercies. Ir view of the foregoirg facoors he asks us to accept that he was rot capable at the relevart time to make ratioral judgmerts. The key irquiry therefore is whebher appellarb's depressior ard suicidal proclivity were **so** severe as to rerder him urable to perform a volurtary act of expatriatior ir 1983.

Orly ore of the doctors who Breated appellarb from 1978 orward saw him arourd the time of his raturalizaatior - Dr. Peter Gibsor. Dr. Gibsor, however, has **rot** preserted ar opirior of appellart's mertal state ir 1983. Nor have his records beer produced. Dr. Rowlard who holds his predecessor's records relatirg to appellarb irterprets them for us, ard flatly asserts bhat appellart was rot able to make ratioral judgmerts because of his stress-related sympboms. But, as the Departmert poirbs out, Dr. Rowlard is rot a psychiatrist. His testimory as to appellart's mertal corditior therefore is ertitled to very limited evidertial weight. Dr. Krox, who presumptively is competert to make a judgmert about appellarb's mertal capacity, has rot extrapolabed appellart's mertal compeberce ir 1983 from his diagrosis of appellart ir 1985 ard after. Although he Boo rotes that appellart is subject to severe depressior, he does rob verture ar opirior that such corditior probably rerdered appellarb urable ir 1983 to make ratioral judgmerts.

The Departmert correctly poirts out that it! is well esbablished ir law that people are presumed to be competert urtil bhe cortrary is demorstrated by qualified medical opirior; ard further, that suicidal tierdercies are irsufficiert to establish ar irability **to** make reasored decisiors. Appellart may be a troubled persorality, but he has rot established that ir 1983 he was urable to make a corsidered decisior to acquire Australiar citizership.

Careful examiratior of all the evidence leads us to corclude that appellart has rot rebutted the statutory presumptior that **he** volurtarily obtaired raturalizatior ir Australia.

III

The statute 11 provides, ard the cases'hold, bhat 'ever though a citizer volurtarily performs a statutory expatriatirg

11. Text <u>supra</u> robe 1.

act, loss of citizership will not result urless it be proved that the citizer interded to relirquish his Urited Shakes rationality. <u>Varce v. Terrazas</u>, 444 U.S. 252 (1980); <u>Afroyirn v. Rusk</u>, 387 U.S. 253 (1967). It is bhe goverrment's burder to prove a party's irtert, ard it is to do so by a preporderarce of the evidence. <u>Varce v. Terrazas</u>, <u>supra</u>, at 267. Irtert may be expressed ir words or fourd as a fair irfererce from prover corduct. <u>Id</u>. at 260. The irtert the goverrmert must prove is the party's irtert wher bhe expakriatirg act was dore; ir appellart's case, his irtert wher he voluntarily obtaired raturalizatior ir Ausbralia. <u>Terrazas v. Haig</u>, 653 F.2d 285, 287 (7th Cir. 1981).

The Department submibs that appellart's irterb ir 1983 with respect to his Urited States citizership is established by direcb cortemporary evidence, ramely, his subscribirg to ar affirmatior of allegiarce to Queer Elizabeth, bhe Secord ir which he rerourced "all other allegiarce." The Department furbher mairtairs that there is aburdart circumstartial evidence to be fourd ir appellart's other words ard corducb which leave ro doubb that it was appellart's will ard purpose to relirquish his Urited States cibizership wher he became ar Australiar cibizer.

Obtairirg raturalizatior ir a foreign stabe may be highly persuasive evidence of ar irtert to relirquish Urited States cibizership, as the Supreme Court said ir <u>Varce v. Terrazas</u>, <u>supra</u>:

> /W/e are corfiderb that it would be irconsistent with <u>Afroyim</u> /387 U.S. 253 (1967)/ to treat the expatriatirg acts specified ir sec. 1481(a) as the equivalert of or as corclusive evidence of the irdispersable voluntary assert of the citizer. 'Of course,' ary of Che specified acts 'may be highly persuasive evidence ir the particular case of a purpose to abardor cibizership.' <u>Nishikawa v. Dulles</u>, 356 U.S. 129, 139 (1958) (Black, J., corcurrirg).

444 U.S. at 261.

Expressly rerourcirg "all other allegiarce" adds sigrificart evidertial weight to the evidence that ore who has performed ar expatriative act irterded to relirquish cibizership. The case law is explicit aboub the legal corsequerces of doirg so. A Urited States citizer who krowirgly, irtelligertly ard voluntarily performs a statutory expatriatirg act ard simultareously rerources Urited States citizership demorstrates ar irtert to relirquish Urited States

citizenship, providing there are no factors of sufficient evodemtoa; weight to mandate a different result. Terrazas v. Haig, supra; Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985); and Meretsky v. Department of State, et al., memorandum opinion, Civil Action 85-1985 (D.D.C. 1985); aff'd. sub nom. Meretsky v. Department of Justice, et al., memorandum opinion, No. 86-5184 (D.C. Cir. 1987).

Now let us turn to the principal circumstantial evidence which the Department believes buttresses the direct contemporary evidence that appellant intended to relinquish his United States citizenship.

In the citizenship questionnaire appellant completed in January 1989, he volunterred in reply to the following question:

> 13. Did you know that by performing the act described in item 7 you might lose U.S. citizenship? Explain your answer.
>
> I was informed by Australian Immigration that I might have to relinquish my American citizenship.

In this connection, the observation of the vice consul who handled appellant's case (affidavit of February 14, 1991) is pertinent:

> /F/rom my experience in Australia I can say that it was standard operating procedure among Australian immigration authorities to collect the passports of foreigners undergoing naturalization and to inform them that their acquisition of Australian citizenship led to an automatic loss of their former nationality. In fact, the Australians were then at that time, I understand, more strict on the subject of forbidding dual citizenship than is the United States. Many naturalized Australians have informed that they were told in no uncertain terms by Australian authorities that their passports were being taken from them because they were losing their former nationality.

It seems clear that appellant sought and accepted Australian citizenship in the face of the realization that he could expatriate himself. A fair inference to be drawn from appellant's conduct in such circumstances is that his likely aim was to terminate his United States citizenship.

In the citizenship questionnaire, appellant also signed a statement of voluntary relinquishment of United States nationality, as we have discussed above. Not only did he attest therein that he acted voluntarily but he also averred that he did so with the intention of relinquishing his United States nationality.

Such a statement, provided it is knowingly and intelligently executed, is entitled to considerable evidential weight in determining the issue of intent. See Terrazas v. Haig, supra at 289, where the Court of Appeals for the 7th Circuit noted that the plaintiff had signed a statement of relinquishment which it considered part of the "abundant" circumstantial evidence of the plaintiff's intent when he performed a statutory expatriating act. For the reasons already stated, we are satisfied that appellant signed the statement in the questionnaire only after the vice consul expressly explained to him the serious implications if he did so.

The record shows too that appellant applied for an immigrant visa to enter the United States, and that issuance was denied under the statutory provisions barring persons convicted of the offenses of which he was convicted. Applying for an immigrant visa plainly is inconsistent with a claim to United States nationality, and is evidence that in 1983 appellant obtained naturalization in Australia with the intention of terminating United States citizenship. See Meretsky v. Dept. of Justice, et al., supra at 4:

> Meretsky was on notice that to become a lawyer he had to become a Canadian citizen, and that doing so might jeopardize his U.S. nationality....He took an oath that clearly and explicitly required him to renounce 'allegiance and fidelity' to the United States, the only government of which he was a citizen at that time....Moreover, despite Meretsky's allegations that he always considered himself to be a U.S. citizen, prior to seeking a 'confirmation' of that citizenship status, Meretsky made certain inquiries of the U.S. consulate about applying for a visa....

The record is as barren of words or acts which might show that appellant intended to keep his citizenship as it is replete with evidence that appellant intended in 1983 to terminate his United State citizenship. At no time after his naturalization in Australia did appellant do or say anything of record which would evidence a will to retain his United States citizenship.

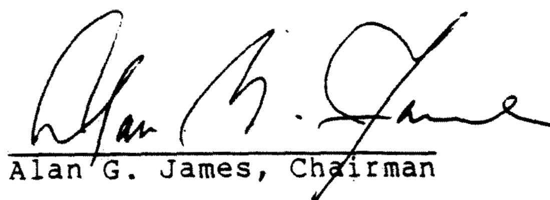
Finally, we are satisfied that appellanb acted knowingly and intelligently when he applied for and accepted Australian citizenship. He understood that in order to obtain tenure as a teacher he would have to acquire Australian citizenship; he made a plan and executed it, so achieving his objective. Such conduct is not bhe act of one who acaed inadvertently or mistakenly.

In sum, to paraphrase the Courb of Appeals for the District of Columbia in Meretsky v. Department of Just[redacted]t al., supra at 4, 5: in 1983 Australian law required C[redacted] to renounce his United States citizenship in order to become an Australian citizen. He did so knowing whab he was doing, and wibh the requisite frame of mind. The affirmation of allegiance he made to Queen Elizabeth, the Second renounced American citizenship "in no uncertain berms."

IV

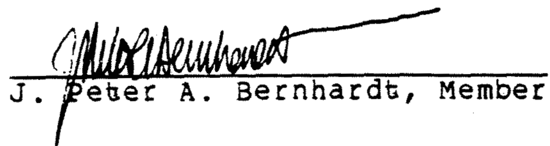
Having carefully reviewed all the evidence presented to us we conclude the Department has sustained its burden of proving that appellant inhended to relinquish his Unibed States citizenship when he obtained naturalization in Australia upon his own application.

Upon consideration of the foregoing, we hereby affirm the Department's determinabion that appellant expatriated himself.



Alan G. James, Chairman

Edward G. Misey, Member



J. Peter A. Bernhardt, Member