February 14, 1991

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: N K C

N K C appeals from an administrative determination of the Department of State that she expatriated herself on May 8, 1974 by obtaining naturalization in Canada upon her own application. 1/.

The Department made its determination with respect to Mrs. Campbell's nationality on September 20, 1988. Since she entered this appeal on December 20, 1989, three months after the one-year period prescribed for appeal by the applicable federal regulations, we confront at the threshold the issue of whether the Board has jurisdiction to entertain the appeal.

For the reasons set forth below, we deem the appeal untimely. Accordingly, it is dismissed for lack of jurisdiction.

I

Mrs. C acquired the nationality of the United Stat virtue of her birth at 1 She graduated from the of 1966 and obtai a Michigan teachers certificate. In 1967 she married K C l, a Canadian citizen, and moved with him to Canada. Wishing to pu career as a public school teacher in Canada, Mrs. C took the prescribed training courses. Having learned that the Ontario Secondary School Teachers Federation required that teachers in the province hold Canadian citizenship, she decided to apply for naturalization. "By this point," appellant stated to the Board, "our third

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 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 -
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> (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: ...

child was expected and without the teachers certificate, all my University training and the years of 'updating' my certificate would be useless in the event of a family emergency requiring me to work full time." 2/ Continuing, she wrote: "Thus, the teaching certificate was-an 'insurance policy' and I felt I had no other option but to apply for Canadian citizenship in order to get it."

Appellant was granted a certificate of Canadian citizenship on May 8, 1974. At that time she made the prescribed oath of allegiance which reads as follows:

> I, ..., swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors, according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen, so help me God.

It appears that in early 1988 the fact that appellant had acquired naturalization in Canada came to the attention of the United States consular authorities in Canada. According to a report the Consulate General at Toronto later sent to the Department of State, appellant's case came to the notice of that office when her son inquired whether he had a claim to American citizenship. As appellant described her contact with the Consulate General, she and her husband realized after talking with friends that their two children who were born in Canada before appellant became a Canadian citizen were eligible to hold Canadian and United States citizenship. They therefore then began the process to establish the children's dual citizenship.

The record shows that on January 17, 1988, appellant completed a preliminary questionnaire at the request of the Consulate General. In it she set forth personal data about herself and her family, and stated that she had obtained naturalization in Canada. On February 8, 1988 the Canadian authorities confirmed the latter fact to the Consulate General. On April 8, 1988 the Consulate General sent a registered letter to appellant **to** inform her that she might have expatriated herself. She was asked to complete another questionnaire to facilitate'determination of her citizenship status, and informed that she might discuss her case with a consular

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2/ Mr. and Mrs. Ca[redacted] have three children, all born in Canada. Two were born before May 8, 1974, the date of her expatriation: one afterwards.

officer. Appellant signed the postal receipt for the letter, but did not reply. On July 8, 1988, the Consulate General again wrote to appellant to request that she complete the citizenship questionnaire; if no reply were received by August 8, 1988, the Consulate General stated, "the Department of State might conclude that you have no interest in retaining your U.S. citizensihp." Appellant's son signed a postal receipt for the letter in the absence of his mother, and forwarded it to her in Michigan where she had moved in May 1988. It appears that in the spring of 1988 appellant's husband was transferred to Michigan by his employer. Appellant's husband was issued an L-1 visa (intra-company transferree); she received an L-2 visa (wife of an L-1 visa holder), and entered the United States in late May 1988.

No reply having been received to the Consulate General's July 8, 1988 letter, an officer at that post executed a certificate of loss of nationality (CLN) appellant's name on August 17, 1988. 3/ Therein the officer certified that appellant acquired-United States nationality by virtue of her birth in the United States; and that she obtained naturalization in Canada upon her own application, thereby expatriating herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Consulate General forwarded the certificate to the Department of State under cover of a brief memorandum which read in pertinent part as follows:

3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads as follows:

> Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

> Mrs. C[redacted] was requested to complete the information for determining U.S. citizenship questionnaire on two occasions but has failed to respond, Enclosed are the signed postal receipts to proved that she received the letters.
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> Mrs. C[redacted]s lack of interest in her citizenship can be assumed by her failure to respond to the inquiries. Consular officer recommends that the enclosed Certificate of Loss of Nationality be approved.

On September 2, 1988, after the consular officer executed the CLN, appellant filled out and returned to the Consulate General the form enclosed in the Consulate General's letter of July 8, 1988, titled "Information for Determining U.S. Citizensip." In response to the following question in the form, she replied as indicated:

> 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/s specified in item 7 with the intention of relinquishing United States citizenship, you may sign the statement below and return this form to us. We will then prepare the necessary forms to document your loss of United States citizenship.
>
> STATEMENT OF VOLUNTARY RELINQUISHMENT OF UNITED STATES NATIONALITY
>
> 'I N[redacted] C[redacted], performed the act of expatriation indicated in item 7 voluntarily and with the intention of relinquishing my United States nationality.'
>
> N[redacted] C[redacted]. September 2, 1988.
>
> If you believe that expatriation has not occurred, either because the act you performed was not voluntary or because you did not intend to relinquish United States citizenship you should complete the remainder of this form.

Mrs. C[redacted] did not complete the remainder of the form. The Consulate General forwarded the questionnaire to the Department which approved the CLN on September 20, 1988. Approval constitutes an administrative determination of loss of nationality from which an appeal may be taken to the Boar3 of Appellate Review. Appellant initiated this appeal on December 20, 1989. Oral argument was heard on July 16, 1990. 4/

II

As an initial matter we must determine whether the Board has jurisdiction to entertain the appeal. The Board's jurisdiction depends upon whether the appeal was filed, or may be deemed to have been filed, within the applicable limitation, for timely filing is considered mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1961). With respect to the limitation on appeal to the Board of Appellate Review, section 7.5(b)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1), provides that:

> A person who contends that the Department's administrative determination of loss of nationality or expatriation under Subpart C of Part 50 of this chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval of the Department of the certificate of loss of nationality or a certificate of expatriation.

22 C.F.R. 7.5(a) provides in pertinent part that:

> An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time.

The Department approved the CLN that was executed in this case on September 20, 1988. The appeal was entered on December 20, 1989, three months after the time prescribed for appeal. Our first inquiry is whether appellant has shown good

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4/ Disposition of the appeal was delayed because after the hearing the Board considered it desirable to obtain clarification from both appellant and the Department of several issues presented by the appeal. Obtaining such clarification entailed (regretably) greater delay than the Board anticipated.

cause why the Board should excuse her delay in seeking appellate review of her case.

Appellant states that after she received the CLN around December 6, 1988, she assumed loss of her citizenship was an accomplished fact, and did not think she had any legal basis on which to seek recourse. Then in December 1989, about one week before Christmas, she allegedly received in the mail a paper from the Canadian citizenship authorities, dated December 6, 1989, which was similar to the one issued by those same authorities in February 1988; both attested that appellant had obtained Canadian citizenship. 5/ However, the statement, dated December 6, 1989, in distinction to the one issued in February 1988, bore the notation "No oath of renunciation taken" alongside an entry stating that the oath of allegiance was taken on May 8, 1974. At the hearing on July 16, 1990, appellant stated that after receiving the statement from the Canadian authorities she believed she might have a chance to do something about loss of her American citizenship. She therefore immediately left Michigan and went to Toronto where she visited the United States Consulate General. 6/ On December 19, 1989 she was allegedly told by an official or employee of the Consulate General that she might file an appeal with the Board; she was outside the time allowed for appeal, but might have a chance. That night she wrote her letter of appeal. She stated to the Board: "I don't think my response was untimely. I know it was past the appeal date but I never thought there-was a basis for appeal before. With the new information /reportedly she was told at the Consulate General that persons-like herself who obtained naturalization in Canada were alowed to be dual nationals/, I felt there might be a chance." 7/

The regulation (22 CFR 7.5(b) quoted above) which determines the Board's jurisdiction is phrased in unambiguous terms. When applied according to the facts of the present case, the appeal was filed three months too late. We, however, view the regulation in question as requiring application in a manner which best reflects its purpose, which is to allow a

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5/ The record does not indicate why the Canadian authorities issued the second statement confirming appellant's naturalization in Canada.

6/ Transcript of the hearing in the Matter of Nancy Kay [redacted], July 16, 1990, before the Board of Appellate Review (hereafter referred to as "TR"). TR 21.

7/ TR 22.

prospective appellant as close as possible to one year, but no longer, in which to decide upon and to initiate an appeal. While the applicable regulation provides for appeals "within one year after approval of the Department of the certificate of loss of nationality," the regulation should properly be read as requiring knowledge on the part of a prospective appellant of the approval by the Department of the certificate of loss of nationality (CLN) before the year's delay can be said to have started to run. A basic question of fairness arises in cases in which a significant delay elapses between approval by the Department of the CLN and receipt of the CLN by the prospective appellant. If the delay were due to circumstances not the fault of the appellant there would clearly be presented substantial grounds for the Board to invoke the "for good cause shown" exception which is a part of the regulation in question, (22 CFR 7.5(a), quoted above.) Only in so doing could the Board avoid a grossly unfair result in which the person involved would otherwise be put to serious disadvantage.

In the'present case we have taken fully into account the special circumstances bearing upon receipt of the CLN by appellant. The CLN was forwarded to appellant reasonably promptly by the Consulate General at Toronto by registered mail about a month after its approval by the Department on September 20, 1988. Because appellant had moved to the United States it was received and signed by her son in Canada, who subsequently forwarded the CLN to his mother in Michigan. Appellant avers that she did not receive the CLN until around December 6, 1988. She did not initiate her appeal until December 20, 1989, more than one year after she allegedly received the CLN.

Thus, even under a most liberal application of the jurisdictional regulation, which defers to appellant's claim of delayed receipt of the CLN as being "for good cause shown," we must conclude that the Board lacks jurisdiction to entertain the appeal. The Board is bound by the letter of the regulation as fairly applied. Appellant had ample time to decide upon an appeal one full year after she claims to have received the CLN. It is likely that she knew of the Department's approval of the CLN even weeks before she actually received it through contacts she had with her son who forwarded it to her. The reasons which appellant has advanced to explain her delay beyond one year after receipt of the CLN do not amount to additional good cause. She was on notice about the year's time limit for appeal. She appears unfortunately to have determined her reactions to the CLN on the basis of mistaken or confused assumptions. She certainly had ample time to test her assumptions and clarify the relevant factors underlying a possible appeal had she chosen to pursue her case with the competent authorities or other knowledgeable persons. A year went by and she apparently did nothing about a possible appeal. She finally acted two weeks after the expiration of the allowable period of delay. In the circumstances of this

case we do not consider two weeks to be de minimis. The fifty two week period of delay laid down in the applicable regulation, even when measured from her receipt of the CLN, had expired. The Board is bound by the regulation. To add two weeks to the one year period in the absence of good cause shown would require a rationale applicable to all future cases involving application of the same regulation. In fact, the Board would be acting to amend the regulation, an act which it is not empowered to perform.

In light of the above, we conclude that the appeal is time-barred.

Since the appeal is time-barred, the Board is without jurisdiction to consider and decide it. Accordngly the appeal is dismissed.

Given our disposition of the case, we do not reach the substantive issues presented.

Warren E. Hewitt

Warren E. Hewitt, Member

Gerald A. Rosen

Gerald A. Rosen, Member

Dissenting Opinion

In my opinion it would be proper for the Board to allow the appeal.

The reason appellant gives for not taking an appeal within the time allowed (see statement of facts in majority opinion) is probably insufficient standing alone to excuse her delay. The information about appeals on the reverse of the certificate of loss of United States nationality (CLN) that was sent to appellant gave her explicit instructions about the limit on appeal, how and where to file an appeal and the grounds on which she might seek review of her case. With little effort she could have obtained further information or clarification from the Consulate General at Toronto or from the Board.

Nonetheless, although appellant was careless about protecting her citizenship rights, I would not deny her the opportunity to have her case heard on the merits. I take this position because the period by which appellant's filing exceeded the time allowed is minimal (in no case in recent years where the appeal was not filed within the limitation has the delay been so short); and because other factors too argue for allowing the appeal.

As I calculate it, the delay here amounts to a mere 14 days over the one-year period allowed for appeal. I reach this conclusion by the following analysis of the applicable provisions of the regulations governing appeals to this aoard.

When the federal regulations were revised and amended in 1979, the drafters were of the view that the limitation on appeal that had been in effect since 1967, namely, "within a reasonable time" after the affected party received notice of the Department's adverse decision with respect to his nationality (22 CFR 50.60), was too vague and should be changed to a time certain. Hence, provision was made that an appeal should be taken within one year after approval of the CLN. See 22 CFR 7.5(b)(1) which provides:

> (b) Time limit on appeal. (1) A person who contends that the Department's administrative determination of loss of nationality ... is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval by the Department of the certificate of loss of nationality ....

The underlying intent of the drafters plainly was that a person who is the subject of an adverse citizenship determination should have a year - not a reasonable time - after approval of the CLN to apply for review by the Board.

If, as I submit, the premise of 22 CFR 7.5(b)(1) is that an expatriate should have one full year in which to make a written request to appeal to the Board, the limitation on appeal logically must be considered to run from the time the affected person receives notice of the Department's adverse decision - not from the date on which the Department approves the certificate. That this construction of 22 CFR 7.5(b)(1) is a reasonable one is borne out by 22 CFR 50.52 which reads as follows:

> Notice of right to appeal.
>
> When an approved certificate of loss of nationality or certificate of expatriation is forwarded to the person to whom it relates or his or her representative, such person or representative shall be informed of the right to appeal the Department's determination to the Board of Appellate Review (Part 7 of this chapter) within one year after approval of the certificate of loss of nationality or certificate of expatriation.

The Department has a legal duty to apprise a person who has been held to have expatriated him or herself of the right of appeal. Until the Department has done so, the affected person has no duty to move for review by this Board and should not be penalized for not doing so. To contend that the limitation on appeal begins to run from the date on which the Department approves the CLN might be tenable if, as a matter of practice, the Department were able to inform the adversely affected person of appeal rights simultaneously with the making of the citizenship determination. Instantaneous notification of loss of citizenship and appeal rights is not possible and does not occur; often there is a considerable delay (either on the part of the Department or the office which executed the CLN) in apprising the party concerned of loss of his or her nationality and the right to take an appeal.

If the limitation on appeal is held to run from the date on which the Department approves the CLN, any delay in informing the expatriate of tha right to appeal obviously would reduce the time available to act. Since the purpose of the limitation indisputably is to give such a person an entire year within which to seek appellate review, it would be inequitable

to penalize him or her for the failure of the Department or its agent to act with dispatch.

In my view, fairness and reasonable construction of the applicable regulations argue strongly for the proposition that the one-year limitation on appeal to this Board should begin upon an appellant's receipt of notice of the Department's adverse determination.

In the instant case, the Department approved the CLN on September 20, 1988 and or about that date sent it to the Consulate General at Toronto to forward to appellant. On October 27, 1988, the Consulate General sent the CLN to appellant by rzgistered mail to the address where appellant had lived in Canada before she went to the United States. The CLN was received by her son who signed the postal receipt, and forwarded it to his mother in Michigan. The postal receipt eventually was returned to the Consulate General. 1/ According to her sworn statement, appellant did not-receive the CLN until around December 6, 1988. By my analysis, appellant therefore had one year from December 6, 1988 to initiate an appeal. 2/ I note that she addressed a written request to the Board to 'Sake an appeal one year and 14 days later, that is, on December 20, 1989.

The Board has consistently (and correctly) taken the position that timely exercise of the right of appeal is of first importance; a delay in seeking relief that is not sufficiently explained ordinarily should bar the appeal. In the case before us, however, we face a novel issue: whether a delay which constructively is no more than 14 days after the prescribed limit should bar the Board from deciding the case on the merits. I do not think it should. The delay here is not inordinate; it plainly is de minimis. Further, if the appeal were allowed, there would be no perceivable prejudice to the Department of State, as the attorney for the Department acknowledged at the hearing (Transcript page 47). While the Board must always be concerned about the integrity of the regulations, I am of the view that in this case fairness

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1/ We do not know the date on which appellant's son received the CLN. The Consulate General's record merely shows that it sent the signed postal receipt to the Department on November 28, 1988. The receipt is not in the case record.

2/ Appellant's statement, which is dated August 20, 1990, was executed in response to the Board's request that she state to the best of her recollection the date on which she received the CLN.

requires that we observe a sense of proportion. What interest in the orderly administration of justice would be served by barring this appeal? None that I can see. The Board is not a court, and appellant, like most individuals who come before the Board, is a lay person, not represented by counsel. In the unusual circumstances of this case, I would not deny appellant the opportunity to be heard on the merits simply because she moved a mere handful of days beyond the one-year period within which she was entitled to make a written request to the Board to entertain her appeal.

II

If the Board had allowed the appeal, I would have voted to reverse the Department's holding of loss of nationality. For I am unable to conclude on the basis of the evidence of record that appellant's voluntary naturalization in 1974 was accompanied by an intent to relinquish her United States citizenship.

Appellant duly obtained naturalization in Canada, thus bringing herself within the purview of section 349(a)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. 1481, which provides that performance of such an act shall be expatriating but only if it was done voluntarily with the intention of relinquishing United States citizenship.

In my opinion, appellant has not rebutted the statutory presumption (INA, sec 349(b)) that she obtained Canadian citizenship voluntarily. She submits that only by obtaining Canadian citizenship could she qualify as a school teacher and thus be able in an emergency to support her family. Thus her naturalization was involuntary.

Appellant's situation was not one which, as a matter of law, could be considered desperate. Presumably there were other ways she could protect her family in an emergency; at least she has not explained that there were none. Nor has she shown that she had to work as a teacher to maintain the family, for her husband was employed. Therefore, none of the elements of economic duress are present in this case. Before the courts will accept an argument that one was forced by economic necessity to perform an expatriative act, it must be established that one's situation was dire. See Maldonado-Sanchez v. Shultz, 706 F. Supp. 54, 60 (D.D.C. 1989): "While economic duress may avoid the effect of an expatriating act, the plaintiff's plight must be 'dire'", citing Stipa v. Dulles, 233 F.2d 551 (3rd Cir. 1956).

Appellant has not provided sufficient evidence of economic hardship to overcome the presumption that she acted freely. Her naturalization must therefore be considered voluntary.

III

Although appellant's Canadian naturalization was voluntary, I am of the view that the Department has not sustained its burden of proving by a preponderance of the evidence as required by Vance v. Terrazas, 444 U.S. 263, 267 (1980)) that appellant intended to relinquish her United States citizenship.

The only contemporaneous evidence relevant to appellant's intent in 1974 (the intent the government must prove is the party's intent at the time he or she performed the expatriating act, Terrazas v. Haig, 553 F.2d 285, 287 (7th Cir. 1981)) is the fact that she obtained naturalization in Canada and made an oath of allegiance to a foreign sovereign. In themselves these facts will not, of course, support a finding of intent to relinquish citizenship, although they may constitute some evidence of such intent. Vance v. Terrazas, supra, at 261; King v. Rogers, 463 F.2d 1188, 1189 (9th Cir. 1972). Furthermore, making a non-renunciatory oath of allegiance to a foreign sovereign leaves the intent of the utterer with respect to his United States citizenship ambiguous. Richards v. Secretary of State, No. CV 80-4150, slip op. at 5, (C.D. Cal Aug. 4, 1982); aff'd., 752 F.2d 1413 (9th Cir. 1985). It is therefore necessary to consider appellant's words and conduct after she obtained naturalization in order to determine whether, as the Department of State maintains, they establish more probably than not the necessary intent. Terrazas v. Haig, supra, at 288.

The essence of the Department's case is this: since appellant believed that obtaining naturalization in Canada would result in loss of her United States citizenship and since she proceeded to obtain naturalization in spite of that belief, she intended to terminate American citizenship. The result of naturalization - expatriation - was intended because it was contemplated as a probable consequence. Bad appellant not intended to relinquish her American citizenship in 1974, she would not have conducted herself for so many years solely as a Canadian citizen; nor would she have signed a statement of voluntary relinquishment of United States citizenship.

The essential question is whether appellant's belief (note that it was not expressed until many years after the crucial event) is sufficient to support a finding that she intended in 1974 to relinquish citizenship. I think it is not.

Knowledge is not identical with intent. Morissette v. United States, 342 U.S. 246, 270 (1952). See also Witters v. United States, 106 F. 2d 837, 840 (D.C. Cir. 1939).

> ...knowledge is 'information as to a fact. The act of knowing; clear per-

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> ception of the truth; firm belief; information'. 13/ While both intent and knowledge are recordations in the mental processes, intent is the 'design, resolve, or determination' with which a Person acts.
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> 13/ [Footnote omitted]

"Since intent may be conceived of apart from knowledge, the mode of proving intent is a **problem** distinct from that of proving knowledge." II Wigmore on Evidence. Section 301, 3rd ed. Knowledge that a particular **act** is expatriative *by* law does not establish intent to **relinquish** citizenship. Something more than knowledge is required.

> A United States citizen effectively renounces his citizenship by performing an expatriating **act only if** he means the act to constitute a renunciation of his united States citizenship. 6/ In the absence of such an intent, he **doe5 not** lose his citizenship simply ***by*** performing an expatriating act even ***if*** he knows that Congress has designated the act as an expatriating act.
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> 6/ [Footnote omitted-]

Richards v. Secretary of State, 753 F.2d 1413, 1420, (9th Cir. 1985.)

In Richards, the petitioner made **an** oath of allegiance upon obtaining naturalization in **Canada** that included express renunciation of all other allegiance. His statements, coupled with later conduct, constituted, in **the court's** opinion, abundant evidence of a renunciatory intent at the relevant time. In the instant appeal, appellant **made** no such renunciatory statement upon obtaining Canadian citizenship which would indicate that at that time she meant her naturalization to constitute renunciation of United States citizenship.

Appellant concedes that she conducted herself solely as a Canadian citizen for many years after **her** naturalization. It does not necessarily follow, however8 that that fact proves as more likely than not that in 1974 her **design** was to terminate her United States Citizenship. Acting as a Canadian citizen arguably is expressive of no more than a belief that she lost her American citizenship - not necessarily that she had formulated a will and purpose to terminate citizenship.

Furthermore, there is no evidence that she did or said anything expressly derogatory of United States citizenship.

Nor can I attribute significant evidentiary weight to the fact that when her case was processed by the Consulate General in 1988 appellant signed a statement of voluntary relinquishment of United States citizenship. As her statements at the hearing showed, she was confused by the form, as indeed have been a number of other unrepresented lay appellants who have expressed similar confusion and uncertainty about now to handle the statement. By any objective standard the statement is anything but a model of clarity for lay people. Further, it lacks sufficient formality - solemnity - to be fair or reliable evidence that appellant intended in 1974 to terminate her Untied States citizenship. The questionnaire she completed is not a sworn statement. Considering appellant's evident confusion and lack of competent guidance, it cannot conceivably command the respect of, say, an oath of renunciation of United States citizenship, or affidavit of expatriated person which on their face are executed with full awareness of the probable legal consequences.

In short, I consider that the link between the fact appellant assumed (automatic expatriation) and a consensual waiver of her constitutional right to remain a United States citizen is too tenuous to support the Department's case that in 1974 appellant intended to relinquish her citizenship.

In my opinion, the Department failed to sustain its burden of proving that appellant intended to abandon her United States citizenship. Accordingly, I would reverse the Department's holding of loss of nationality.

Alan G. James, Chairman