February 26, 1992

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] G[redacted] G[redacted]

R[redacted] G[redacted] G[redacted] appeals a determination made by the Department of State on October 25, 1990 that he expatriated himself on October 4, 1990 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer of the United States at Munich Germany. 1

For the reasons set forth below, we conclude that appellant voluntarily renounced his nationality with the intention of relinquishing it. Accordingly, we affirm the Department's holding of his expatriation.

I

Appellant Ro[redacted] G[redacted] G[redacted] became a United States cit[redacted] through birth at [redacted] on [redacted]. His citizen fat[redacted]he U States Army in Germany. His mother, who was born in Germany, obtained naturalization in the United States before appellant was born. The family lived in Germany until 1972 when appellant's father was transferred to Texas. His parents were divorced in 1981.

Appellant states that he 'trained' at the University of Texas and at Austin Community College School of Nursing. While studying, appellant also worked, taking it 'upon myself to help my mother make ends meet." He continued: "After several years of struggling in Texas, my mother and I decided to

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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: . . .

return to Germany." The year they returned, appellant has indicated, was 1986.

Appellant states that despite his mother's German birth, he was officially considered a foreigner in Germany "to include all the hassles and uncertainties associated with being a foreigner." He reportedly acquired resident status, obtained a work permit and was employed by a clinic in Wuerzburg and later a hospital in Munich. After living in Germany for several years, he decided to apply for German citizenship, and did so at Munich in the spring of 1990. On June 27, 1990, the competent authorities issued a document ("Einbuergerung-zusicherung") confirming that appellant would be granted German citizenship, provided that within two years he submitted proof that he had relinquished his United States citizenship.

It appears that around 1990 (appellant has not specified when), he went to Saudi Arabia and obtained a position as a registered nurse at a hospital in Riyadh. On September 10, 1990, appellant visited the United States Embassy in Riyadh where he swore to a statement before a consular officer which reads as follows:

> I R[redacted] G[redacted] G[redacted], hereby express my desire not to intentionally give up my United States citizenship. As a person of German-American heritage, I have applied to become a German citizen. In taking this action, I realize that German authorities may insist on certain steps that might jeopardize my U.S. citizenship. My reasons for applying for German citizenship are of a purely personal and practical nature. I want to be able to visit my relatives, live, and work in Germany without the restrictions normally imposed on 'foreigners.' For these and these reasons only, have I applied for German citizenship; not to renounce my American heritage or U.S. citizenship.

A few weeks later, appellant returned to Germany for a visit. He appeared at the United States Consulate General at Munich on October 4, 1990, and informed an officer that he wished to renounce his United States nationality. After the appeal was filed, the consular officer concerned, at the Department's request, made a statement regarding the circumstances of appellant's renunciation. He was, she stated, insistent that renunciation be accomplished as soon as possible. To the consular officer's question why he wanted to renounce his citizenship, appellant allegedly replied he wanted to stay with his mother in Germany. It was explained to him that this was a serious step and was irrevocable. He was then

shown the prescribed statement of understanding regarding the consequences of renunciation. After reading it, appellant reportedly said he wanted to renounce that very day. Thereafter, in the presence of two witnesses and the consular officer, he signed the statement of understanding. In it, he acknowledged, inter alia, that he had the right to renounce his nationality; wished to exercise that right and was doing so voluntarily: would thereby become an alien toward the United States; and that the consular officer had carefully expalined to him the serious implications of renunciation which he fully understood. Although offered an opportunity to make a statement explaining why he was renouncing his citizenship, appellant declined to do so. Nor did he introduce into the proceedings the statement he executed at Riyadh the month before. He then made the oath of renunciation.

On October 4, 1990, the consular officer executed a certificate of loss of nationality (CLN) in appellant's name, as required by section 358 of the Immigration and Nationality Act. [2] She certified that appellant acquired United States nationality by virtue of his birth therein; resided in the United States from 1972 to 1989 /sic/; and made a formal renunciation of his United States nationality on October 4, 1990, and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Consulate General forwarded the relevant documents to the Department for adjudication under cover of a transmittal slip which stated:

> Enclosed for the Department's approval is Certificate of Loss of Nationality of the United States and related documents which were prepared by this Consulate General in the name of'R [redacted] G [redacted] G [redacted].
>
> Passport No. J 169932 issued in Houston on April 27, 1988 has been cancelled and return /sic/ to Mr. G [redacted].

The Department approved the CLN on October 25, 1990, approval constituting an administrative determination of loss

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

> Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or

of nationality which may be appealed to the Board of Appellate Review, A timely appeal was entered on March 6, 1991.

II

Section 349(a)(5) of the Immigration and Nationality Act prescribes that a United States citizen shall lose his citizenship if he voluntarily and with the intention of relinquishing citizenship makes a formal renunciation of citizenship before a consular officer of the United States in a foreign state, in the form prescribed by the Secretary of State. There is no dispute that appellant's formal renunciation of nationality was accomplished in the manner and form prescribed by law and regulation. He thus brought himself within the purview of the relevant section of the Act.

The first issue to be addressed is whether appellant performed the act of renunciation voluntarily.

In law, it is presumed that one who performs a statutory expatriative act does *so* voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was not voluntary. 3 Thus, to prevail on the

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2. (Cont'd.)

> 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.

3. Section 349(b) of the Immigration and Nationality Act, 8 U.S.C. 1481(b), reads:

> (b) Whenever the loss of United States nationality is put in issue in **any** action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Any person who

issue of voluntariness, appellant must come forward with preponderant evidence to establish that more probably than not he acted under duress.

Appellant makes no effort to demonstrate that he acted involuntarily; he simply implies that the need to support his mother was one of the factors that motivated him to renounce.

The case law holds that one who contends that economic duress rendered performance of an expatriative act involuntarily must establish that his situation was dire. Maldonado-Sanchez v. Shultz, 706 F. Supp. 54 (D.D.C. 1989). It is clear on the facts that appellant's economic situation was not "dire." While he may have been his mother's main source of support, he has not shown that his being a German citizen was an economic imperative. On the contrary, the evidence shows that he could have continued to reside in Germany as a foreigner and have remunerative work. And as a skilled health care worker in the Kingdom of Saudi Arabia he probably commanded a good wage, presumptively higher than what he got in Germany, sufficient to meet his and his mother's needs.

Appellant's own statements show that his renunciation was voluntary. He signed a statement of understanding, after it was carefully explained to him and he had read it, that he was not acting under any compulsion and fully understood the consequences of his act. In his submissions, he virtually conceded that he acted out of personal preference - to acquire the status of a German citizen and thus obviate "the hassles and uncertainties associated with being a foreigner." The inescapable conclusion is that appellant made a personal choice to renounce his United States citizenship. "/O/pportunity to make a decision based upon personal choice is the essence of voluntariness...." Jolley v. INS, 441 F.2d 1245 (5th Cir. 1971), cert. denied, 404 U.S. 946 (1971).

There is no duress here. We therefore hold that appellant's renunciation of his United States citizenship was free and uncoerced.

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3. (Cont'd.)

> 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.

The other issue to be determined is whether appellant intended to terminate his United States citizenship when he formally renounced it at Munich on October 4, 1990. Unlike the issue of voluntariness, there is no presumption that one who does an expatriative act does so with an intent to relinquish citizenship. The government must prove intent to relinquish citizenship and do so by a preponderance of the evidence. Vance v. Terrazas, 444 U.S. 252, 270 (1980). Intent to relinquish citizenship may be "expressed in words" or "found as a fair inference from proven conduct." Vance v. Terrazas, 444 U.S. at 260.

Appellant argues that although he performed an expatriative act, he lacked the requisite intent to surrender his citizenship. He bases this assertion on the statement he executed on September 10, 1990 at Riyadh in which he expressed an intention to retain citizenship even though he might be required to do various things in connection with his German citizenship application which might cause him to lose citizenship. As he put it in his initial submission to the Board:

> Months ago when I applied for German citizenship, I realized that in the process I might be required to commit acts which would cause me to loose /sic/ my U.S. citizenship. Before applying for German citizenship, I went to the U.S. Embassy in Riyadh, Saudi Arabia to seek advice. On the advice of a Consular Official, I submitted my desire not to intentionally give up my U.S. citizenship and the reasons for applying for German citizenship....

The consular official at Riyadh, to whom he explained his situation reportedly advised him of legal precedent and the doctrine of intent, and gave him a "flyer," a copy of section 1208 of the Foreign Affairs Manual (7 FAM 1208). As stated in the flyer, a written statement submitted to an official U.S. diplomatic or consular office before one obtains foreign naturalization, expressing an intent to maintain U.S. citizneship, would be accorded substantial weight in loss of nationality proceedings.

The Department of State submits that: (1) renunciation is in se an act inconsistent with an intent to retain citizenship and must result in its loss; (2) appellant is estopped by his own acts from asserting that his Riyadh statement (which,in the Department's view, is inoperative) evidences his intent to retain citizenship; and (3) the

preponderance of the evidence shows that appellant knew what he was doing and chose freely to divest himself of his United States nationality.

The Board cannot accept appellant's novel theory that the statement he made prior to making a formal renunciation of his citizenship establishes that his specific intent on October 4, 1990 was to retain citizenship.

The "flyer" given him at Riyadh (which it was his obligation to read, no matter how encouraging he believed the consular officer's oral advice), also warned:

> A statement made or signed in connection with foreign naturalization that reflects renunciation of present citizenship would be considered strong evidence of an intent to relinquish U.S. citizenship and would usually support a finding of loss of citizenship.

A fortiori, formal renunciation of American citizenship made to satisfy the legal pre-requisite of a conferring state that birthright citizenship must be terminated before it will grant its citizenship, is overwhelming evidence of an intent to relinquish United States citizenship.

To deem appellant's so-called saving statement to be more expressive of his specific intent than the solemn act of formal renunciation would stand logic on its head. It would be rather like allowing appellant to have his cake and eat it. The logical fallacy of maintaining that the saving statement is evidentially more persuasive than the formal act of renunciation becomes obvious when one realizes that had appellant presented the statement to the consular officer, the officer would have had to refuse to accept his renunciation. How can one honestly divest oneself of citizenship and still intend to retain it? So without imputing deceit to appellant, we state the obvious: if his position were accepted, it would mean that his renunciation was no more than a sham and thus a deceit on the German government.

Appellant's position is not dissimilar to that of the plaintiff in Kahane v. Shultz, Civil Action, No. 88-3093, D.C.C. (1991). In Kahane, the plaintiff argued that he had no "subjective intent' to relinquish his American citizenship when he (like appellant here) formally renounced it. Subjective intent is not the standard to be applied, said the court. "Indeed, application of a subjective intent standard would mean

that intent could never be found." (Id. at 23.) The court continued: "Instead, the proper focus to determine intent is to examine whether plaintiff exercised a 'conscious' purpose'". If so, then the requisite intent for expatriation purposes has been demonstrated." (Id.) In the case before the Board, appellant's conscious purpose in renouncing was to gain German citizenship. As he was fully aware, he could only become a German national if he definitively divested himself of his birthright citizenship.

Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985) also is relevant. Plaintiff in Richards made an oath renouncing United States citizenship upon obtaining Canadian naturalization. He maintained that he did not intend to renounce his United States citizenship because he did not have a "principled, abstract desire" to terminate it. The Ninth Circuit categorically rejected plaintiff's argument.

> We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly. Whenever a citizen has freely and knowingly chosen to renounce his United States citizenship, his desire to retain his citizenship has been outweighed by his reasons for performing an act inconsistent with that citizenship. If a citizen makes that choice and carried it out, the choice must be given effect.

752 F.2d at 421-22.

The cases hold that a voluntary, knowing and intelligent renunciation of United States nationality as prescribed by law and regulations promulgated by the Secretary of State constitutes unequivocal and intentional divestiture of that nationality. "A voluntary oath of renunciation is a clear statement of desire to relinquish United States citizenship." Davis v. District Director, Immigration and Naturalization Service, 481 F.Supp. 1178, 1181 (D.D.C. 1979). Intent to abandon citizenship is inherent in the act. The oath of renunciation expresses the utterer's intent:

> I hereby absolutely and entirely renounce my United States nationality together with all rights and privi-

leges and all duties of allegiance and fidelity thereunto pertaining.

Beyond question, appellant acted knowingly and intelligently, fully aware of the implications of making a formal renunciation of his American nationality. As noted above, he signed a statement of understanding in which he acknowledged that renunciation was irrevocable and that he would become an alien toward the United States. He admitted he had been told by the German authorities ("to my dismay") that dual citizenship is recognized in German law only rarely, and in his own case he would probably have to relinquish American citizenship. He knew he confronted a stark choice; terminate United States citizenship or forego German citizenship. He chose the former. Since he obviously proposed to acquire German citizenship, there can be no doubt that on the day he renounced United States nationality he carried out a pre-conceived plan. A mature, purportedly educated man, appellant presumptively knew what he was doing. We perceive no inadvertence or mistake of law or fact on his part.

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

The Department has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality when he formally renounced that nationality.

IV

On consideration of the foregoing, we conclude that appellant expatriated himself on October 4, 1990 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 October 25, 1990 to that effect.

Alan G. James, Chairman

Warren E. Hewitt, Member

Howard Meyers, Member