DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M. C. G. In Loss of Nationality Proceedings

Decided by the Board May 10, 1985

Appellant, a dual national of the United States and Mexico, applied for a certificate of Mexican nationality in 1973, allegedly on the recommendation of an attorney that she obtain the certificate to protect her interests when she married a Mexican citizen and in order to obtain a passport quickly to make a trip to Europe. In executing the application for the certificate, appellant expressly renounced United States nationality and declared allegiance to Mexico. A certificate of Mexican nationality was issued two months later.

Upon learning that appellant had obtained a certificate of Mexican nationality, the Consulate General at Guadalajara wrote in 1974 to inform her that she might have expatriated herself under section 349(a)(2) of the Immigration and Nationality Act, and to invite her to submit evidence for the Department to consider in determining her citizenship status. Appellant did not reply to that letter, or to a second sent by the Consulate General some months later. In 1975 the Embassy at Mexico City twice wrote to appellant in the same, but received no reply.

In 1981 appellant appeared at the Consulate General at Guadalajara and asked to be documented as a United States citizen. After she had submitted information about her performance of the expatriating act, the Consulate General executed a certificate of loss of nationality certifying that appellant expatriated herself under section 349(a)(2) of the statute. The Department approved the certificate in 1982. A timely appeal was entered.

Appellant contended that no expatriation occurred because she never made a formal declaration of allegiance to Mexico; that she applied for a certificate of Mexican nationality under duress; and that she lacked the necessary intent to relinquish United States citizenship.

HELD: The absence of a formal ceremony incident to appellant's execution of the application for a certificate of Mexican nationality did not, contrary to appellant's assertion,

render invalid her pledge of allegiance to Mexico. It was evident that appellant performed a meaningful act of adherence to Mexico which placed her in complete subjection to the laws and authorities of Mexico.

The facts alleged by appellant did not constitute duress. She was free to apply for a Mexican or United States passport, but chose to obtain one from Mexico. Her allegations of economic duress were not only not spelled out but also were not substantiated by any evidence that she would have suffered economic hardship had she not obtained a certificate of Mexican nationality.

Appellant was of legal age when she applied for the certificate, apparently schooled and fluent in Spanish. As a matter of law she must be presumed to have acted knowingly and understandingly, and to have comprehended that in order to obtain the rights of a Mexican citizen she would have to relinquish United States nationality. No factors which would justify a different result having been disclosed by the record, the Board concluded that appellant's voluntary and express renunciation of United States nationality manifested an intention to terminate that citizenship.

The Department's holding of expatriation was affirmed.

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This is an appeal from an administrative determination of the Department of State that appellant, M. C. G., nee G., expatriated herself on August 2, 1973 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

The questions presented for decision are whether appellant performed a valid expatriating act, and did so both voluntarily and with the intention of relinquishing United States citizenship. Since our answers to each question is in the affirmative, we affirm the Department's determination of appellant's expatriation.

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provides:

Section 349. (a) From and After the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

. . .

(2) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof....

I

Appellant became a United States citizen by birth at [redacted] She also acquired Mexican citizenship at birth. 2/ For her first eleven years appellant lived in the United States. In 1962 her parents took her to Mexico where she has since lived, except for visits to the United States.

On June 18, 1973 appellant, who was then unmarried, applied for a certificate of Mexican nationality. In an affidavit executed November 2, 1983, appellant stated that she visited an attorney on June 18, 1973 whom she informed that she had been selected by her school to make a trip to Europe in July. She also informed him that she was considering marriage in the coming year. The attorney reportedly recommended that she obtain a certificate of Mexican nationality so that she could get a passport immediately, and "made it clear" to her that if she had a certificate of Mexican nationality when she married, "it would be much less complicated and assure that I retained all my rights. Her affidavit continues:

> I was fearful that I might lose my United States citizenship, however, he assured me that I would not be losing any nationality rights, only gaining the rights I was born with as a citizen of both countries. He explained that my United States citizenship was represented by my birth certificate and I would need to apply for a certificate based upon my Mexican mother to establish the citizenship of Mexico. He presented a photostatic copy of a form and showed me where to sign the form. He...would take care of everything including obtaining a passport expeditiously.

2/ Appellant claims that she acquired Mexican citizenship through her mother. The Mexican authorities, however, considered that she derived it through her father, and so attested on the certificate of Mexican nationality issued to appellant in 1973.

The record copy of the application for a certificate of Mexican nationality sets forth that appellant expressly renounced United States nationality as well as all fidelity and allegiance to any foreign government, especially to the United States of America, and that she declared adherence, obedience and submission to the authorities and laws of Mexico. When she signed the application, appellant states, the form contained blanks where the words "United States" later were filled in.

Shortly after signing the application, appellant obtained a Mexican passport which she appears to have used for a trip to Europe; she states that she left on July 2 and returned August 10, 1973.

On August 2, 1973 a certificate of Mexican nationality was issued in the name of M. C. G. B. The certificate recited in pertinent part that appellant acquired the nationality of Mexico by birth abroad to a Mexican father; that she had renounced her United States nationality; and declared allegiance to Mexico.

On February 4, 1974 the Department of Foreign Relations informed the United States Embassy at Mexico City that a certificate of Mexican nationality had been issued to appellant. Upon receipt of this information, the Consulate General at Guadalajara (appellant was living there when she applied for the certificate) wrote appellant on March 11, 1974 to inform her that she might have expatriated herself, and invited her to submit information about the circumstances surrounding her application for a certificate of Mexican nationality. If she did not reply within 60 days, the letter stated, "it may be necessary to make a final decision against you in due course."

Appellant married M. G., a Mexican citizen, in April 1974.

Appellant did not reply to the Consulate General's letter. A second, "final" letter was sent to appellant on October 16, 1974, warning that if she did not reply within 60 days, it would be considered that she intended to relinquish United States citizenship when she performed the expatriative act. Appellant did not reply to that letter.

On February 4, 1975 the Consulate General informed the Embassy at Mexico City that it had learned appellant was living in the Embassy's jurisdiction, and accordingly transferred her case file to the Embassy for further action, giving an address

for appellant in the Federal District and both her maiden and married names. 3/

The Embassy twice wrote to appellant to convey the same information that the Consulate General had sent her. Appellant did not respond to either letter; the Embassy's letter of October 20, 1975 was returned undeliverable.

On January 20, 1976 the Embassy prepared a certificate of loss of nationality in appellant's name, but the Department did not approve it on the grounds that appellant had not been afforded the opportunity to present evidence regarding her intent to relinquish United States citizenship. The Department instructed the Embassy to refer appellant's case to the Department should she respond to the Embassy's letters or apply for citizenship documentation.

Five years passed. In September 1981 appellant informed the Consulate General that she had been born in the United States and wished to be documented as a United States citizen. After considerable delay, appellant completed the customary forms for determining United States citizenship and submitted them to the Consulate General in May 1982. It also appears that she was interviewed by a consular officer.

3/ In 1981 appellant told a consular officer that after her marriage (she was not specific about the date) she had visited the Consulate General and informed someone that she had married. The Consulate General's record of contact with appellant opened in February 1975 shows that she was married on April 27, 1974 to M. G.

On June 15, 1982, the Consulate General executed a certificate of loss of nationality in appellant's name, in conformity with the provisions of section 358 of the Immigration and Nationality Act. 4/ The certificate recited that appellant acquired the nationality of both the United States and Mexico at birth; that she made a formal declaration of allegiance to Mexico; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on September 22, 1982, approval being an administrative determination of loss of nationality from which an appeal, properly and timely filed may be taken to this Board. Notice of appeal was given on September 19, 1983.

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

Section 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.

Appellant contends that no expatriation occurred because she never made a formal declaration of allegiance to Mexico; that she applied for a certificate of Mexican nationality under duress; and that she lacked the necessary intent to relinquish United States citizenship.

II

In loss of nationality proceedings, the Government bears the burden of proving that a valid expatriating act was performed. 5/ The Department submits that appellant brought herself within the purview of the statute by signing an application for a certificate of Mexican nationality on June 18, 1973 wherein she declared adherence, obedience and submission to the authorities and laws of Mexico.

Appellant contends that she never made a formal declaration of allegiance to Mexico, suggesting that the declaration she made was not a "formal" one. She thus raises the issue of the legal sufficiency of the declaration, basing her contention on the following considerations set out in her affidavit of November 1983.

5/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), provides in pertinent part:

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.

> At the time I signed the application and gave the attorney my picture, there was no official of the government present, no stamps, seals or official signatures were on the form, and no flag or other symbols of Mexico or any Mexican State was displayed in the office....

She also implies that because the spaces where the words "United States" were later inserted were blank when she signed the form, the declaration was not due and proper.

The absence of a formal ceremony incident to appellant's signing an application for a certificate of Mexican nationality is irrelevant to the issue of the validity of the declaration of allegiance. The relevant question is whether appellant performed a meaningful act of adherence to Mexico. It is clear that the Mexican authorities considered that she did. And under United States law there is no doubt that appellant made a consequential pledge of allegiance to Mexico. See Terrazas v. Vance, No. 75-2370 (N.D. Ill. 1977). There plaintiff performed precisely the same statutory expatrating act as this appellant. He too argued that he signed a form of application for a certificate of Mexican nationality in which there were blank spaces that were later filled in by another who presented it on his behalf to the Department of Foreign Relations. The court gave no weight to plaintiff's contention, for the District Judge did not even discuss the point in his opinion. In concluding that plaintiff had made a meaningful declaration of allegiance to Mexico, the court said:

> ...under sec. 349(a)(2) of the Act, 8 U.S.C. sec. 1481(a)(2), it is the form of the substantive statement of allegiance to a foreign state as opposed to the adjectival description of the statement itself which is determinative and most relevant in deciding matters of expatriation. Thus, under the statute, any meaningful oath, affirmation or declaration which "places the person /making/ it in complete subjection to the state to which it is taken," III Hackworth, Digest of International Law, 219-220 (1942) may result in expatriation. See also, Savorgnan v. United States, 338 U.S. 491 (1950).

We accordingly find that appellant's declaration of allegiance to Mexico brought her within the purview of section 349(a)(2) of the statute.

III

The law presumes that one who performs an act prescribed by statute as expatriating does so voluntarily, but the presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act was involuntary. 6/ Appellant must therefore come forward with credible evidence that she declared allegiance to Mexico against her fixed will and intent.

Appellant submits the following arguments in support of her contention that she acted involuntarily:

> This lady was misled by official misinformation and driven to accept the bad advice by a desire to avail herself of a trip to Europe and impending marriage to a Mexican citizen. She was selected by her school in Mexico for a trip to Europe. The family recommended an elderly attorney in Mexico City if she needed assistance. First she tried at the government office to take care of the problem of documentation by herself. She was told what application she needed and went to the attorney for his assistance. This was the only opportunity she would have to make such a trip. She was, as the Government brief suggests, "constrained by a force outside" herself, to take advantage of the willing sacrifice accepted by the family to guarantee she could make this trip of a lifetime.

6/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), reads in relevant part as follows:

... Except as otherwise provided in subsection (b), 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.

> The Government failed to comment upon the legal consequences of a marriage in Mexico between a Mexican citizen male and a female unable to prove herself a Mexican citizen. No effort has been made to rebut the statement that Mrs. G. was compelled to seek a certificate of nationality because of an impending marriage. Both of the cases involving duress, quoted by the Government brief involve the issue of economic duress. Mrs. G. knew she would have been at an overwhelming economic disadvantage if unable to prove her Mexican citizenship acquired at birth. She has always claimed the signing, of a blank application form for the issuance of a certificate of Mexican nationality, was involuntary. The duress she claims is based upon accepting the benefit of being selected by her school for a trip to Europe and her impending marriage to a Mexican citizen.

The facts alleged by appellant do not amount to legal duress.

It is evident that appellant was not forced by circumstances over which she had no control to apply for a certificate of Mexican nationality in order to obtain a Mexican passport. Perhaps a Mexican passport could have been issued more quickly than a United States passport, but no reason is suggested by the record why she could not have obtained an American passport, and thus avoid performing an act that could put her American citizenship in jeopardy. It seems likely that appellant either preferred to hold a Mexican passport or simply did not think about trying to obtain an American one. As a matter of law, she exercised a free choice in applying for the requisite certificate of Mexican nationality. Where one has the opportunity to make a choice between alternatives there is no duress. Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir. 1971).

We are also unable to see any economic duress in this case. Appellant has not spelled out what economic necessity compelled her to apply for a certificate of Mexican nationality, nor has she submitted any evidence to support such a claim. Arguably, being documented as a Mexican citizen was economically advantageous to appellant; she could, as she has said, make sure of having

the legal rights to which she was entitled as a Mexican citizen. But feeling the need to ensure economic advantage or well-being is hardly equatable with economic duress.

The leading cases require that appellant show that she would have suffered economic hardship had she not secured a certificate of Mexican nationality. See Stipa v. Dulles, 233 F. 2d 551 (3rd Cir. 1956), and Insogna v. Dulles, 116 F. Supp. 473 (D.D.C. 1956). Also Richards v. Secretary of State, 752 F. 2d 1413, 1419 (9th Cir. 1985):

> Although we do not decide that economic duress exists only under such extreme circumstances /as in Insogna and Stipa/ we do think that at least some degree of hardship must be shown.

Not having proved the alleged duress, appellant has not rebutted the statutory presumption that she made a formal declaration of allegiance to Mexico of her own free will.

IV

We must still determine whether appellant intended to relinquish United States citizenship when she performed the proscribed act. For even though she performed a voluntary act of expatriation, the question remains whether the Department has proved by a preponderance of the evidence that appellant intended to transfer her allegiance from the United States to Mexico. Vance v. Terrazas, 444 U.S. 252 (1980).

The Department may prove appellant's intent to relinquish United States citizenship by her words or by drawing a fair inference from her proven conduct. 444 U.S. at 260. The intent to be proved is appellant's intent at the time she made a declaration of allegiance to Mexico. Terrazas v. Haig, 653 F. 2d 285 (7th Cir. 1981). Making a declaration of allegiance to a foreign state although highly persuasive, is not conclusive evidence of an intent to relinquish citizenship. 444 U.S. at 261.

The cases are quite clear about the legal consequences of making a formal declaration of allegiance to a foreign state that includes an express renunciation of United States nationality.

In Terrazas v. Haig, 653 F. 2d 285, plaintiff executed an application for a certificate of Mexican nationality. The

application, printed in Spanish, contained an oath, which as translated, "expressly renounce/d/ United States citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America...." Plaintiff also swore "adherence, obedience, and submission to the laws and authorities of the Mexican Republic." A Certificate of Mexican Nationality was issued to plaintiff by the Mexican government on April 3, 1971. The certificate expressly recited plaintiff's oath of loyalty to Mexico and his renunciation of any other claim of citizenship.

Noting that the District Court had found that plaintiff "knowingly, understandingly and voluntarily" committed an expatriating act and "knowingly and understandingly" renounced his United States citizenship, the Circuit Court concluded: "plaintiff's knowing and understanding taking of an oath of allegiance to Mexico and anexplicit renunciation of his United States citizenship is a sufficient finding that plaintiff intended to relinquish his citizenship."

Four years later in Richards v. Secretary of State, 752 F. 2d at 1421, the Seventh Circuit said in the case of one who had pledged allegiance to Canada and expressly renounced all other allegiance:

> We agree with the district court that the voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship. We also believe that there are no factors here that would justify a different result....

Appellant here was of legal age in 1973, apparently educated and fluent in Spanish. She was presumably quite able to understand the application form which required her to renounce United States nationality, despite the fact that the spaces denominating the "United States" may have been blank when she signed the application.

Although appellant's intent to relinquish United States citizenship is evidenced by her express renunciation of United States nationality, we must consider whether there are other factors that might justify a different conclusion.

In January 1982 appellant reportedly told a consular officer that when she received her Mexican passport (summer of 1973) she visited the Consulate General at Guadalaraja and was denied a visa because of her birth in the United States; therefore she entered the United States on her American birth certificate and had been doing so ever since. In the questionnaire she completed in May 1982 she wrote:

> After I got my Mexican passport I wanted to travel to USA by plane and came to the American Consulate for my visa and the Vice Consul told me that as I was born in Chicago I didn't need one. This was in the year 1973.

In the affidavit she executed in November 1983, appellant said:

> ...After my trip to Europe /i.e., after August 10, 1973/, I went to the American Consulate in Guadalajara and was told by the Consul that I had not lost my citizenship of the United States. He said what I did was not meant by the Supreme Court of the United States as the kind of Act which would take away my citizenship.

And in her reply brief appellant stated:

> Obviously, Mrs. G. had questions upon her return from Europe and discovery of the language of the certificate. She went to the American Consulate at Guadalajara and produced for that officer, not just the certificate of Mexican nationality, but also a Mexican passport on which she had relied when traveling in Europe....

Appellant seems to be saying that her visit to the Consulate General sometime in 1973 and the statements she made at that time are evidence of a lack of intent to relinquish United States citizenship.

There is, however, no official record that appellant made such a visit. If indeed she had disclosed to the consular officer that

she had obtained a certificate of Mexican nationality and a Mexican passport, it is inconceivable that he would not have made a record of such an important matter and taken appropriate action to develop a possible loss of nationality case. It is no less incredible that any consular officer would have assured appellant that she had not jeopardized United States citizenship by obtaining a certificate of Mexican nationality.

Appellant's visit or telephone call to the Consulate General (probably in early 1975) when she informed someone (probably a clerk) that she had married and intended to contest the possible loss of her nationality is hardly probative of an intent to retain United States citizenship. The consular officer who interviewed her in 1982 believed that she had actually called at the Consulate General around 1975, but the only official record of that visit (or phone call) is an entry on form FS 558 (record of contact with U.S. citizens) regarding the date of appellant's marriage and her husband's name. There is no evidence that appellant expressed an interest in arguing for retention of her United States citizenship. Even if she had expressed such an intention, six years passed before she finally took any action to that end. As appellant admitted to the consular officer who asked her why she had not gone to the United States Embassy to contest her case, she kept postponing a visit to the Embassy and in the end never went. Now, (1981) she told the consul that she wished to contest her possible loss of nationality as she was planning to reside in the United States in the near future with her husband and children.

The circumstantial evidence appellant relies on to establish a lack of intent in 1973 to relinquish United States nationality when weighed against her explicit renunciation of United States nationality is too equivocal to justify any conclusion but that she intended to transfer her allegiance to Mexico.

The Department has, in our opinion, carried its burden of proving by a preponderance of the evidence that appellant intended to abandon United States citizenship when she made a formal declaration of allegiance to Mexico.

V

Upon consideration of the foregoing, we affirm the Department's determination of September 22, 1982 that appellant expatriated herself.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Mary E. Hoinkes, Member