DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: G. D. W. - In Loss of Nationality Proceedings

Decided by the Board May 5, 1986

In 1975 at age 18, appellant, a dual national of the United States and Mexico, applied for a certificate of Mexican nationality allegedly in order to obtain documentation to enable him to attend university in Mexico at reduced tuition, travel between the United States and Mexico and reside legally in Mexico. As required by Mexican law, he renounced in the application his United States nationality and declared allegiance to Mexico. In 1982 the fact that appellant had made an oath of allegiance to Mexico came to the attention of the Embassy at Mexico City. After developing his case, the Embassy executed a certificate of loss of nationality under section 349(a)(2) of the Immigration and Nationality Act. The certificate was approved a few months later. The appeal was entered in 1985.

HELD: Although entered two years beyond the allowable limit, the appeal was timely. Appellant was not informed of the right of appeal, as mandated by federal regulations. Those regulations impose a legal duty on the Department and consular posts to inform an expatriate of the right of appeal which was not performed.

Appellant acted voluntarily in making a declaration of allegiance to Mexico. Although he alleged he could not have lived and studied legally in Mexico without being documented as a Mexican citizen, a point the Department contested, the Board concluded that, as a matter of law, he had an alternative to compromising his United States citizenship: he could have come to the United States and settled here. Having had a personal choice and exercised it, appellant could not be said to have acted involuntarily.

His intent to relinquish United States citizenship was manifested by his expressly renouncing United States nationality while pledging allegiance to Mexico. Appellant argued that he signed the application for a certificate of Mexican nationality, in effect, blindly; he had been hurried in signing by a bureaucrat, and had not had a chance to read the renunciatory language in the application. There was, however, no evidence of record to substantiate appellant's claim made 10 years after the event. Finally, nothing in appellant's proven conduct evidenced such an unmistakable will and purpose to retain United States citizenship as to discount the evidence of intent to relinquish United States citizenship manifested by his declaring allegiance to Mexico.

The Board affirmed the Department's determination of loss of nationality.

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G. D. W. appeals an administrative determination of the Department of State holding that he expatriated himself on August 28, 1978 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 principal issues we must decide are whether W. acted voluntarily when he declared allegiance to Mexico and, if it be established that he did, whether he performed the act with the intention of relinquishing his United States citizenship. For reasons set out below, it is our conclusion that he acted voluntarily and with the intention of abandoning United States citizenship. The Department's determination that W. expatriated himself is accordingly affirmed.

I

W. was born at [redacted] of United States citizen parents on [redacted], and so became a national of both the United States and Mexico. He was registered at the United States Embassy in 1963 and was issued a passport. A second passport was issued to him in 1966. In 1970 when W. was 14 years old his father died. In 1972 his mother applied for a certificate of Mexican nationality for her son, who was then 16 years old, presumably so that he might obtain a Mexican passport. In 1973 he obtained a third United States passport.

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 political subdivision thereof....

When he was about 18 years old, W. applied for admission to a Mexican university to study architecture. He has stated that the university authorities insisted that he submit proof of his Mexican citizenship, specifically, a Mexican passport. He alleges that he also required a Mexican passport in order to travel between Mexico and the United States, which he did frequently, and to live legally in Mexico.

In order to obtain a Mexican passport, an applicant must first apply for a certificate of Mexican nationality (CMN). W. accordingly completed an application for a CMN on May 2, 1975. Therein he expressly renounced his United States nationality and all allegiance to the United States, and declared fidelity and submission to the laws and authorities of Mexico. He was then aged 18 years and 11 months.

A certificate of Mexican nationality was not issued to W. until August 28, 1978, but his application for the certificate evidently sufficed to qualify him for a Mexican passport, for one was issued to W. immediately after he completed the application for the CMN. W. married a Mexican citizen late in 1978. In September 1980 he obtained a second Mexican passport.

On May 19, 1981 W. visited the consular section of the United States Embassy at Mexico City. As noted in Embassy records, "Mr. W. came to apply for a U.S. ppt. He is 26 and obtained his last ppt. before he became 18." As a consequence of W.'s visit, the Embassy sent a diplomatic note to the Department of Foreign Relations on June 12, 1981 to inquire whether he had ever been issued a certificate of Mexican nationality. The Department replied by note dated July 10, 1981, stating that W. had applied in 1972 for such a certificate (actually, as we have seen, his mother did so on W.'s behalf), but proceedings had not been completed. Enclosed with the note was a copy of the application W.'s mother had completed in 1972. Shortly after the Embassy sent its note to the Department of Foreign Relations but before it had received a reply, the Embassy issued a B-1 visa to W. in his Mexican passport. There is no indication in the Embassy's records whether the Citizenship and Passport Section and the Visa Section exchanged information at this time regarding W.'s case.

W. visited the Embassy again on March 30, 1982. According to Embassy records: "Mr. W. came today and indicated that he has a Cert. of Mex. Nat. and a Mexican Ppt., that he is Mexican and wants to immigrate to the U.S. He was asked to bring the CMN and Mex. ppt. before we can do anything."

On March 31st he returned to the Embassy and exhibited a certificate of Mexican nationality (CMN) and a Mexican passport. He executed an affidavit explaining why he had applied for a CMN which reads as follows:

> Its hard to explain mistakes you make in life, but when I was 18 years old and by law, had to resign one of my both nationalities I had. At that moment I was in college, here in Mexico, and had a very good oportunity /sic/ in college to go threw /sic/ and finish. How could I now /sic/ that 7 years later I would change goals in life and want to do something else. Its something I did without thinking in the future. Today I am married and have a daughter. I am offered a good job in the USA. And I don't mean I have bad job here. I am a /sic/ architect that is building and doing very well in Mexico but I am looking for more things in life than this and the USA can offer them to me. On the other hand I have a place to live in San Diego wich /sic/ is from my inlaws so it is not that I am planning to leave without nowing /sic/ were /sic/ to live or were to work. Language is no problem for me because I learned in an American school and spoke it at home always. I am sure that even thow /sic/ I did make a mistake in life it was without looking further than the present I was at that time.

W. also completed a questionnaire to facilitate determination of his citizenship status. After the Department of Foreign Relations had confirmed that a certificate of Mexican nationality had been issued to W. and had sent the Embassy a copy of his application therefor, the Embassy, as required by law, executed a certificate of loss of nationality in W.'s name on May 24, 1982. 2/ The Embassy certified that W.

2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, provides that:

> 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 the 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.

acquired both United States and Mexican nationality at birth; that he made a formal declaration of allegiance to Mexico; and thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. The Department approved the certificate on July 15, 1982 and sent a copy to the Embassy to forward to appellant. A notation on the Embassy's file copy of the certificate reads as follows: "Approved by Dept. July 15, 1982. Mailed to Subject July 29, 1982." A notation on the Embassy's passport and nationality card for W. shows the same information.

II

Before proceeding we must dispose of a jurisdictional matter. The Department of State determined on July 15, 1982 that W. expatriated himself. Three years later he entered an appeal. The question we must answer is whether the appeal may be deemed to be timely under the limitation of the applicable limitation.

The time limit on appeal is within one year after the date on which the Department approves the certificate of loss of nationality. Section 7.5(b)(1), Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1) 3/

3/ 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 entitl 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 or a certificate of expatriation.

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 limitation. 22 CFR 7.5(a). 4/

Good cause means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th Ed. (1979). Good cause depends on the circumstances of each particular case, and the finding of its existence lies largely within the discretion of the judicial or administrative body before which the cause is brought. Wilson v. Morris, 369 S.W. 2d 402, (Mo. 1963). Generally, to meet the standard of good cause, a litigant must show that failure to file an appeal or brief in timely fashion was the result of some event beyond his immediate control and which was to some extent unforseeable. Manges v. First State Bank, 572 S.W. 2d 104 (Civ. App. Tex. 1978); and Continental Oil Co., v. Dobie, 552 S.W. 2d 193 (Civ. App. Tex. 1977). Good cause for failing to make a timely filing requires a valid excuse as well as a meritorious case. Appeal of Syby, 66 N.J. Supp. 460, 167 A.2d 479 (1961). See also Wray v. Folsom, 166 F. Supp. 390 (D.C. Ark. 1958).

W. contends that his delay in appealing should be excused because he had never been informed by either the Department of State or the Embassy at Mexico City of his right of appeal, indeed, did not know he had such right until several years later.

Appellant states that sometime in 1982 the Department of Foreign Relations gave him a packet of papers that included the certificate of loss of nationality (CLN) and copies of diplomatic correspondence between the Embassy and the Department regarding his case. To the CLN was affixed the seal of the Embassy. A notation on the bottom of the obverse of the CLN stated that appeal procedures were set out on the reverse. W. states that the reverse was blank.

4/ 22 CFR 7.5(a) provides that:

(a) Filing of Appeal. A person who has been the subject of an adverse decision in a case falling within the purview of section 7.3 shall be entitled upon written request made within the prescribed time to appeal the decision to the Board. The appeal shall be in writing and shall state with particularity the reasons for the appeal. The appeal may be accompanied by a legal brief. 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.

At the hearing counsel for the Department said it seemed incredible that W. should have received his copy of the CLN from the Mexican authorities. 5/ However, she indicated that although the Embassy had insisted to her that it had mailed the CLN direct to W. , she understood that in 1982 the Embassy did not mail such documents by registered mail. 6/

We think W. is entitled to be believed. Save for the notations the Embassy made on its passport and nationality card for W. and its file copy of the CLN, the Embassy has produced no evidence that it mailed the CLN to W. It could have mistakenly addressed the CLN to the Department of External Relations or put it in the wrong envelope.

Counsel for the Department also explained that she had been told that someone at the Embassy "got lazy" and had not xeroxed the reverse of many copies of the CLN form it used. 7/ We note that the Embassy's file copy has no appeal procedures on the reverse.

5/ Transcript of Hearing in the Matter of G. D. W., Board of Appellate Review, February 12, 1986 (hereafter referred to as "TR"). pp. 48-51.

6/ TR 48.

7/ TR 55, 56.

Federal regulations prescribe that when a certificate of loss of nationality is sent to an expatriate, he shall be informed that he has the right to take an appeal to this Board within one year after approval of the certificate. 22 CFR 50.52. 8/ Clearly W. was not informed of his right of appeal. Counsel for the Department argued at the hearing, however, that when W. read the note on the obverse of the certificate of loss of nationality that appeal procedures were to be found on the reverse, he should have inquired about his right of recourse, if he were truly concerned about loss of his citizenship. 9/ Counsel cited cases where the Board of Appellate Review found that failure of the Department or a consulate to advise an expatriate of the right of appeal was not material error because the person concerned knew or had reason to believe that he had lost his citizenship and should have used that knowledge to ascertain what appeal rights he might have. 10/

The cases counsel cited are not, however, apposite to W.'s case. In the cited cases, the Department's determination of loss of nationality was made prior to November 30, 1979, the effective date of the present regulations. Prior to November 30, 1979 there was no provision in the federal regulations applicable to the Board that an expatriate be informed of the right of appeal. Although Departmental guidelines (8 Foreign Affairs Manual 224.21 (1977)) prescribed that consular officers should inform an expatriate of the right of appeal when forwarding the CLN, those guidelines did not have the force of law. 22 CFR 50.52 does, however, have the force of law. It is not permissive but peremptory.

8/ 22 CFR 50.52 provides that:

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 the certificate of expatriation.

9/ TR 70.

10/ TR 71.

Arguably, if W. had been prudent he would have made inquiries about whether he had any right of recourse, since he states that he was very upset when he learned of the loss of his citizenship. 11/ Asked whether he didn't want to ask someone about the matter, W. replied:

> ...I don't think I understood what an appeal was at the moment. I didn't live in the United States. Even though it was like an American atmosphere, we were brought up in the Mexican customs. And you don't appeal, you don't question -- you don't. They tell you, they tell you; and, basically, that's it.
>
> Yes, it bothered me. But, on the other hand, when I turned over the page and it didn't have nothing, I said, 'Well, maybe this is just a form they filled out and in certain circumstances you can do something.'
>
> And it wasn't until later on that I really found out that I could do something about it. 12/

The sufficiency of W.'s explanation to excuse his delay is not at issue, although we find it not entirely unpersuasive. What is at issue is the fact that the Department and its agent, the Embassy, had a legal duty to inform W. of his right of appeal and that they did not perform that duty. Furthermore, we perceive no prejudice to the Department in the premises. We therefore consider the appeal timely, and now proceed to consider the merits.

III

The statute prescribes that a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state. 13/ Nationality will not be lost,

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11/ TR 31, 32.

12/ Id.

13/ Supra, note 1.

however, unless the citizen did the proscribed act validly and voluntarily, and intended to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 252 (1967); Nishikawa v. Dulles, 356 U.S. 129 (1958); Perkins v. Elg, 307 U.S. 325 (1939).

It is not disputed that W. made a declaration of allegiance to Mexico in the form prescribed by Mexican law, and thus placed himself in submission to the laws and authorities of Mexico. His act was legally sufficient under United States law, and he thus brought himself within the purview of the statute.

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted by the actor upon a showing by a preponderance of the evidence that the act was not voluntary. 14/

At the hearing, W.'s counsel gave the following reasons why his act should be deemed involuntarily:

> In 1970, when G. was 14, his father C. passed away. Having been left with four children and now no husband, she [appellant's mother] faced financial hardship. She had no choice but to remain in Mexico to raise and educate her children. G. had no choice but to live with his mother in Mexico.
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> From time to time Mr. W. found it necessary to travel to the United States to visit his grandmother and relatives. Though he travelled to the United States with his U.S. passport, he had difficulties reentering Mexico with it. And, of course, it is illegal to reside in Mexico without appropriate documentation.

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

> 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. 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.

> Mr. W. applied to the University of Anahuaz to study architecture. All of his previous studies being accomplished at American schools, the University was reluctant to accept him; and, also, they requested his school records.
>
> When they finally accepted him, they insisted on seeing his Mexican passport, along with all of his other documentation.
>
> But, furthermore, without the passport, he was ineligible for the reduced tuition, without which he would be unable to attend.
>
> A valid Mexican passport was essential for Mr. W. to live in Mexico legally, to re-enter from his travels, and to attend the University.... 15/

Given the inestimable worth of United States citizenship, the courts have established very stringent standards to prove duress. See Doreau v. Marshall, 170 F. 2d 721, 724 (3rd Cir. 1948):

> If by reason of extrarodinary circumstances, an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is no authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. He cannot be truly said to be manifesting an intention of renouncing his country. On the other hand it is just as certain that the forsaking of American citizenship, even in a difficult situation, as a matter of expediency, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress.

Economic circumstances have forced many United States citizens to perform a statutory expatriating act. But where economic duress has been pleaded, the courts have demanded that the petitioner show he or she was faced with a dire economic situation. Stipa v. Dulles, 223 F. 2d 551 (3rd Cir. 1956); Insogna v. Dulles, 116 F. Supp. 437 (D.D.C. 1953). Plaintiffs in those cases performed an expatriating act during and after World War II respectively. The courts found

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15/ TR 6.

that plaintiffs had acted involuntarily because they had no choice; they were forced to jeopardize United States citizenship in order to subsist.

Thirty years after Stipa and Insogna, the Ninth Circuit had occasion to consider what circumstances might amount to economic duress in the case of Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985). Re: Stipa and Insogna, the court said:

> ...Conditions of economic duress, however, have been found under circumstances far different from those prevailing here. In Insogna v. Dulles, for instance, the expatriating act was performed to obtain money necessary 'in order to live.' 116 F. Supp. at 475. In Stipa v. Dulles, the alleged expatriate faced 'dire economic plight and inability to obtain employment.' 233 F. 2d at 556. Although we do not decide that economic duress exists only under such extreme circumstances, we do think that, at the least, some degree of hardship must be shown. 752 F. 2d at 1419.

Counsel for W. suggests that Richards stands for the proposition that only some degree of economic hardship need be shown to excuse performance of an expatriating act. We strongly disagree. In Richards the Court of Appeals was required to determine only whether the district court had erred in finding that Richards had been subjected to no economic pressures of any kind when he obtained naturalization as a Canadian citizen in order to preserve his employment. It was not called upon to decide the standard of proof of duress. The Ninth Circuit concluded that the district court had not erred, asserting that Richards had failed to prove he had been subjected to any economic duress. 752 F. 2d at 1419.

Further, the theory that merely some degree of economic hardship need be shown is totally inconsistent with the proposition, which we consider sound, that only the most exigent circumstances may excuse doing an act that places the priceless right of citizenship in jeopardy.

Duress implies absence of choice. The case law makes it abundantly clear that if one has a viable alternative, there is no duress. Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245, 1250 (5th Cir. 1971): "But opportunity to make a decision based upon personal choice is the essence of voluntariness." 16/

16/ In finding that petitioner in Jolley, who made a formal renunciation of his United States citizenship because he disapproved of United States draft laws and did not wish to transgress them, acted voluntarily, the Fifth Circuit said:

W.'s argument runs this way: he was compelled by economic exigencies to live and study in Mexico; since he might not legally reside in Mexico without being documented as a Mexican citizen, he had no choice but to apply for a certificate of Mexican nationality. We are not persuaded by this argument.

First of all, W.'s situation does not appear to us to have been "extraordinary." We find it scarcely distinguishable from that of many other appellants who have come before the Board. They, like W., were dual nationals of the United States and Mexico, raised and educated in Mexico, and because of the provisions of Mexican law, were required to make an admittedly difficult decision at age 18 about which of their two citizenships to choose.

16/ Continued.

This conclusion is even more manifest in light of analogous decisions which have considered claims of duress by aliens barred from citizenship because they sought exemption from military service. See 50 U.S.C.A. App. sec. 454(a); 8 U.S.C.A. sec. 1426. Pressures beyond moral considerations, such as fear of retaliation or financial burden, have been rejected as sufficient grounds upon which to posit duress. E.g., Prieto v. United States, 5 Cir. 1961, 289 F. 2d 12; Jubran v. United States 5 Cir. 1958, 255 F. 2d 81; Petition of Skender, 2 Cir. 1957, 248 F. 2d 92, cert. denied, 355 U.S. 931, 78 S.Ct. 411, 2 L.Ed.2d 413; Savoretti v. Small, 5 Cir. 1957, 244 F. 2d 292. In each case

> 'it was concluded that the alien had a free choice, that he chose to forego military service and must endure the consequences, and that there was no coercion in contemplation of law. The mere difficulty of this choice is not deemed to constitute duress. If the alien made a free and deliberate choice to accept benefits, he will be bound by his election.' Gordon & Rosenfield, Immigration Law & Procedure, sec. 2.49d at 2-239 (1970). 441 F. 2d at 1250 (n. 10).

Second, we do not think he has proved that he was subjected to dire economic pressures. He was not supporting his mother; indeed, he was not employed but was a student and was dependent on his mother for maintenance. That he might have had to pay a higher tuition at university if he were not documented as a Mexican citizen, cannot be deemed to be economic duress.

Third, as a matter of law, W. had an alternative to performing the statutory expatriating act: he could have opted for United States citizenship and applied to reside in Mexico as an alien. There was no legal bar to his doing so. Granted, had he elected United States citizenship he would have had to leave Mexico, renounce Mexican nationality at a Mexican diplomatic or consular post, and apply for permission to enter Mexico as a permanent resident. The Department maintains that it would have been feasible for him to have followed the foregoing course. In a memorandum submitted after the hearing at the Board's request, the Department contended that the procedure to obtain a work permit can be difficult but work permits can be obtained. 17/

In refutation of the Department's argument, counsel for appellant submits that the Department "ignores the problems of travelling into Mexico, the financial consequences of studying there, and the ability to obtain employment without some sort of authorization." 18/

17/ At the hearing on February 12, 1986, W. asserted that it would be very difficult (he seemed to imply impossible) for a person who was not documented as a Mexican citizen to live and work in Mexico. TR 42 et seq. The Board requested that the Department comment on W.'s contentions. In response, the Department on April 4, 1986 informed the Board as follows:

> According to our Embassy in Mexico City, there are approximately 280,000 Americans living in Mexico. Although it is difficult for dual citizens to work in Mexico, it is not totally impossible. The procedure can be difficult but work permits can be obtained. Although the Mexican Government does not favor dual nationality, they will not deport a dual national or harass him, for they consider him to be a Mexican national.

18/ Letter to the Board, dated April 27, 1986.

It is impossible at this time, counsel asserts, to obtain permanent residency. He did not have a choice, she argues, to document himself or not as a Mexican. He could not afford to attend university in the United States, and without proof of Mexican citizenship could not afford to attend university in Mexico. He could not relocate to the United States, and did not wish to leave his mother. He needed a Mexican passport for education, travel and work in Mexico.

It is not necessary that we determine whether Mexican law would have permitted W. to reside permanently and work in Mexico as an alien. For, even if he might not have done so legally, he had another alternative in the eyes of United States law: he could have come to the United States. In 1975 he had close relatives in the United States, and, of course, there was no legal bar to him settling here. He has submitted no evidence to support his contention that he could not afford to move to the United States. Quite possibly, however, it might have been difficult for him to have elected to take the foregoing course. We are not, therefore, indifferent to or unsympathetic with the position of a young person who would confront the need to restructure his life in order to preserve his United States citizenship. But, has he been subjected to duress?

To our knowledge, the courts have not expressly ruled on the issue of whether one who would have to make a profound, possibly expensive, alteration in life style in order to retain United States citizenship has been subjected to duress. Judicial standards of proof of duress are, however, most exacting. And the cases make it clear that the necessity to make a difficult choice (which in this case arises solely because Mexican law requires such a choice be made) is a fact in itself insufficient to sustain a defense of duress.

At the hearing counsel for appellant cited as pertinent to her client's case the observation of the court in Acheson v. Maenza, 202 F. 2d 453, 459 (D.C.C. 1953), that the law does not exact a crown of martyrdom as a condition of retaining citizenship. Query: can it fairly be said that W. would be "martyred" by a finding that he was not subjected to duress because he could have made an onerous choice to preserve his United States citizenship by coming to this country?

In contemplation of law, W. had the opportunity to make a personal choice, and did so. It is accordingly our conclusion that he has not rebutted the statutory presumption that he voluntarily pledged allegiance to Mexico.

IV

Although W. voluntarily performed a statutory expatriating act, it remains for us to determine whether he had the requisite intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980). Under the court's holding in Terrazas, the government must prove by a preponderance of the evidence that appellant intended to forfeit his United States citizenship. 444 U.S. at 267. Intent, the court said, may be expressed in words or found as a fair inference from proved conduct. Id. at 260. The intent that must be proved is appellant's intent when he made the proscribed declaration of allegiance to Mexico. Terrazas v. Haig, 653 F. 2d, 285 (7th Cir. 1981).

W. not only made a formal declaration of allegiance to a foreign state, an act that may be highly persuasive, but not conclusive, evidence of an intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. at 261, citing Nishikawa v. Dulles, 358 U.S. 129, 139 (1958). But he also expressly renounced his United States citizenship and all fidelity to the United States.

Express renunciation of United States citizenship has been held to manifest an intent to relinquish United States citizenship. In Terrazas v. Haig, supra, the court found abundant evidence of the petitioner's intent to relinquish United States citizenship in his willingly, knowingly and voluntarily acquiring a certificate of Mexican nationality, and in his subsequent conduct. 653 F. 2d at 288. In Richards v. Secretary of State, the court held that "the voluntary taking of a formal oath of allegiance that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." 752 F. 2d at 1421. See also Meretsky v. Department of State, et al., Civil Action 85-1985, memorandum opinion, (D.D.C. 1985).

The trier of fact must, however, be satisfied that the citizen acted knowingly and intelligently in making a declaration of allegiance to a foreign state. Terrazas v. Haig, supra; United States v. Matheson, 532 F. 2d 809 (2nd Cir. 1976).

Counsel for appellant contends that W. did not act knowingly and intelligently. In appellant's reply brief, counsel expressed the foregoing contention thus:

> ...In his application for the Mexican passport in 1975, the Dept. Relaciones Exteriores, demanded that he sign a document of allegiance to Mexico which also contained a renunciation of United States citizenship. It was not signed in the U.S. Embassy nor was it signed in front of a U.S. Consulate officer. Mr. W. was not aware or advised of the

implications of signing the document. After much protest G. signed it but did not intend to relinquish his U.S. citizenship.

At the hearing, W., questioned by his counsel, described as follows what happened when he applied for a certificate of Mexican nationality:

Q Is this your handwriting? [referring to the application for a certificate of Mexican nationality].

A No. I --

Q I'm pointing to the two places here: "Americana" and "Estados Unidos de Norte America."

A I always manuscript handwriting. I didn't learn actually to hand print until I was in architecture....

Q Did you read this document before you signed it?

A No. I remember that when I went in for my passport I filled out a Mexican passport application. I handed it in; I waited in line. The man came back and I sort of remembered him. I was on the other side of the counter and he turned them around to me and just said, "Sign, sign, sign." That's what I did: I signed, signed, signed. A few minutes later, I got a passport.

Q It wasn't explained to you then?

A No.

Q Do you realize that your testimony is under penalty of perjury?

A Yes.

Q And you still maintain that it was never read to you? You'd read it and you've never understood it?

A A hundred percent.

Q Could you have taken it away from him? Could you have held it or was it held for you?

A Well, he turned it around and he put them like this (indicating) and he held my hand and said, "sign, sign, sign.: So at the moment it never occurred to me I would be signing something like citizenship -- or maybe I was too young to realize that I could do that anyplace [sic] just by signing. I don't know. I just went ahead and signed it. I didn't read it.

Q Did you understand what renunciation meant?

A I don't think so. I had one thing on my mind that time, and it was -- I don't know -- "Just get my passport and get into college"; and, basically, that was it. 19/

Without more, appellant's contentions do not establish that he did not act knowingly and intelligently. While we do not challenge W.'s good faith, we must point out that ten years have elapsed since the occasion on which he contends he blindly signed a declaration of allegiance to Mexico. There is no evidence to bear him out, and memory can be a self-serving, although perhaps unwitting, instrument. In 1975, although young, he was of legal age, fluent in Spanish, and a university student. Barring proof that he lacked capacity on the day in question or that the official who handled his case acted deceitfully, we are unable to conclude that W. has shown why he should be relieved of the legal consequences of his declaration of allegiance to Mexico.

Counsel for appellant submits that W.'s sole objective was to obtain a Mexican passport, not to sever his ties to the United States or "to advance his opportunities." 20/ She further asserts that his lack of intent is demonstrated by the fact that after making the declaration of allegiance to Mexico he continued to travel to the United States on a United States passport and by "his entering the U.S. Consulate for its renewal...." 21/

Even though W.'s alleged motive for making a declaration of allegiance to Mexico was simply to obtain documentation to permit him to continue to live, study and work in Mexico, his motive is irrelevant and does not establish lack of intent to relinquish United States citizenship. A person's free choice to renounce United States citizenship is effective whatever the motivation. Richards v. Secretary of State, 752 F. 2d 1413, 1421 (9th Cir. 1985).

Even if we accept that W. did use a United States passport to travel to the United States after he performed the expatriating act, that is the only action suggesting that he still considered himself a United States national. There is no record of other actions to show he conducted himself as a United States citizen or did things that would raise material doubt about whether he intended to relinquish United States citizenship. His last United States passport expired in 1978. He did not try to renew it until June 1981, and even then he obtained a U.S. visa in his Mexican passport and presumably used that passport to travel to the United States.

19/ TR 19,20.

20/ TR 84.

21/ TR 83.

On all the evidence, we conclude that the Department has sustained its burden of proof that W. intended to relinquish his United States nationality when he applied for and obtained a certificate of Mexican nationality.

V

Upon consideration of the foregoing, we hereby affirm the Department's determination that appellant expatriated himself by making a formal declaration of allegiance to Mexico.

Alan G. James, Chairman

Howard Meyers, Member

George Taft, Member