DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

Decided by the Board July 21, 1986

Appellant was born in Mexico City of a United States citizen parent and so became a national of the United States and Mexico. She married a Mexican citizen in 1978. In the summer of 1982, in contemplation of a trip to Europe, appellant applied for a certificate of Mexican nationality in order to obtain a Mexican passport. In the application she expressly renounced her United States citizenship and allegiance to the United States and declared allegiance to Mexico. A Mexican passport was issued in her name in July 1982. Appellant contended, however, that when her Mexican passport had not arrived she panicked and applied for a United States passport in Tucson in late September 1982. One was issued to her three days later. Appellant's plans changed and she did not use either passport. The Consulate at Hermosillo executed a certificate of loss of nationality (CLN) in appellant's name after the Mexican authorities informed United States authorities that appellant had obtained a certificate of Mexican nationality.

The certificate of loss of nationality attested that appellant expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. The Department did not act on the CLN until, as it instructed the Consulate to do, that office interviewed appellant and submitted its assessment of the issue whether she intended to relinquish her United States citizenship. A timely appeal was entered after the Department approved the CLN.

Held: Appellant did not undertake to rebut the statutory presumption that she made a declaration of allegiance to Mexico voluntarily. The Board concluded that she had acted of her own free will.

The Department met its burden of proving that appellant intended to relinquish her United States citizenship. She made a formal declaration of allegiance to Mexico that included express renunciation of her United States citizenship and all allegiance to the United States. Furthermore, the evidence showed clearly that she made the declaration knowingly and intelligently. The Board found no factors in the evidence that would warrant its concluding appellant lacked the intent to relinquish citizenship. The fact she applied for a United States passport a few months after she made the declaration of

allegiance to Mexico was not persuasive on the issue of her intent. So many unanswered questions arose about why she applied for a U.S. passport, especially why she did so in Tucson not Hermosillo where she had been documented previously, that the Board could give no decisive weight to that action.

The Board affirmed the Department's determination that appellant expatriated herself.

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This is an appeal from an administrative determination of the Department of State that appellant, M. J. C., expatriated herself on August 12, 1982 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 determinative issue presented by the appeal is whether Mrs. C. intended to relinquish her United States citizenship when she made a formal declaration of allegiance to Mexico. For the reasons elaborated below, we conclude that she had the requisite intent. Accordingly, we affirm the Department's decision that she expatriated herself.

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

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

Mrs. C., nee R., acquired United States citizenship by birth at [redacted] of a United States citizen mother on [redacted]. Through birth in Mexico she also acquired Mexican nationality. Shortly after her birth her mother registered appellant at the United States Embassy in Mexico City. Mrs. C. has stated that from an early age she was aware that she was a citizen of both the United States and Mexico. In 1973 when she was 16 years old she obtained an identity card at the Embassy, and renewed it in 1978. Appellant married A. C., a Mexican citizen, in August 1978. The couple moved to Hermosillo. In 1980 she renewed her United States identity and registration card at the Consulate in Hermosillo.

Appellant has stated (affidavit of April 15, 1985) that she planned to go to France to study in the fall of 1982. She realized she would not be able to travel abroad on her United States identity card and that her Mexican passport (presumably issued to her while she was a minor) had expired in 1980. After family discussion, it was, she said, agreed that it would be quicker for her to obtain a new Mexican passport than a United States passport, and that she would avoid problems in returning to Mexico if she were to travel on a Mexican passport. She states that her father arranged the necessary paper work in Mexico City for issuance of a passport and called her to Mexico City "when everything was ready."

When she arrived in Mexico City (presumably at the Department of Foreign Relations), she has stated, "I was told that I could not have a new Mexican passport unless I affirmed my Mexican nationality." The procedure to obtain a Mexican passport requires that one execute an application for a certificate of Mexican nationality (CMN). Mrs. C. therefore signed an application for a CMN on August 10, 1982; to judge from the copy of the application in the record, it appears that another filled out the form for her. The application appellant signed stated that she expressly renounced her United States nationality and all allegiance to the United States. She also declared loyalty, obedience and submission to the laws and authorities of Mexico. She was then 25 years old. A CMN was issued in the name of Mrs. C. on August 12, 1982. 2/

2/ Appellant claims that the certificate was received by her father in December 1982.

According to a statement appellant later made to an officer at the Consulate in Hermosillo, when her Mexican passport had not arrived 3/ and the date of her planned departure for Europe drew near, she panicked and went to Tucson, Arizona (where she and her husband owned a house) to apply for a passport. The record shows that on September 27, 1982 Mrs. C. applied for a United States passport at Tucson, indicating on the application that she planned to go abroad in December. The Houston Passport Agency issued appellant a United States passport on September 30, 1982, valid to 1987. In the end, appellant has stated, her study program was cancelled and she did not use either her Mexican or United States passport.

On October 22, 1982 the Department of Foreign Relations informed the United States Embassy that Mrs. C. had applied for and obtained a CMN. Three months later the Consulate at Hermosillo wrote to Mrs. C. on January 26, 1983 to inform her that she might have lost her United States citizenship by making a declaration of allegiance to Mexico. She was advised that she might submit evidence to be considered by the Department in making a decision about her citizenship status, and was invited to complete a form for determining U.S. citizenship. If no reply were received within 60 days, the letter stated, the Consulate would assume that she did not wish to submit any evidence on her behalf. Appellant completed the citizenship questionnaire on May 28, 1983 and mailed it to the Consulate. The Consulate forwarded the questionnaire to the Department on July 31, 1983, requesting an advisory opinion on appellant's citizenship status. The Department replied by cable on August 31, 1983 to instruct the Consulate to execute a certificate of loss of nationality in appellant's name under section 349(a)(2) of the Immigration and Nationality Act. On September 8, 1983 the Consulate executed a certificate of loss of nationality in the name of Mrs. C. 4/ The officer

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3/ In appellant's submissions there is a copy of a Mexican passport issued to appellant on July 10, 1982, valid until December 30, 1982.

4/ 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.

concerned certified that appellant acquired citizenship 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. In October the Department informed the Consulate that the CLN would not be approved pending further clarification. Specifically, the Department instructed the Consulate to interview Mrs. C. to ascertain more information about her contention that she did not intend to relinquish her United States citizenship when she made a formal declaration of allegiance to Mexico.

A consular officer interviewed Mrs. C. on February 8, 1984. In reporting the interview to the Department the consular officer offered the following comments about her case:

> In view of the clearly stated renunciation of foreign citizenships in the Mexican application, it is unlikely that C. did not have at least an idea of the seriousness of her actions. She impressed conoff as an educated and intelligent woman. She is now 23 years /sic/ old and has ample time in the five years since she reached the age of 18 to obtain complete information and proper documentation regarding her citizenship. Conoff is willing to believe that C. acted hastily and out of desperation. However, C. does not deny that she signed the oath, she repeatedly stated that she read all the documents she signed at the time of application and she does not claim that she did not understand the renunciation statement. In conoff's opinion, haste and desperation do not excuse the fact that, regardless of her stated intention not to renounce, she applied first for the Mexican passport and signed a clear statement of renunciation of her US citizenship when she was presumably well aware of her right to US citizenship and had been informed on at least one occasion of the possible problems of dual citizenship.

The Department approved the certificate of loss of nationality of March 20, 1984. In advising the Consulate that the certificate had been approved the Department offered the following rationale for its determination:

foreign state. 5/ The record attests that Mrs. C. made a formal pledge of allegiance to Mexico on August 10, 1982 in conjunction with an appelication for a certificate of Mexican nationality. The Mexican authorities obviously considered that she had made a meaningful declaration of loyalty to Mexico, thus complying with the requirements for issuance of a certificate of Mexican nationality, for a certificate issued in her name. Since the declaration she made was clearly meaningful (it placed her in complete subjection to Mexico), she brought herself within the purview of the United States statute. See Terrazas v. Vance, No. 75-2370, memorandum opinion (N.D. Ill. 1977).

Nationality will not be lost by performance of a statutory expatriating act, however, unless the citizen did the proscribed act 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).

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, but the actor may rebut the presumption upon a showing by a preponderance of the evidence that the act was not voluntary. 6/

Mrs. C. has not undertaken to rebut the legal presumption that she acted voluntarily. She has simply asserted without elaboration that her action was involuntary. See her affidavit of April 15, 1985. Therein she stated that she had told her husband she felt "compelled" to sign the application for a certificate of Mexican nationality.

5/ Supra, note 1.

6/ 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.

It is evident to us that there was no compulsion in Mrs. C.'s case. She had a free choice to sign the application or not. It is beyond question a legitimate exercise of national sovereignty for Mexico to require dual nationals who wish to enjoy the rights and privileges of Mexican nationality to declare their loyalty to Mexico and repudiate all other allegiance. Mrs. C. was not compelled to act by forces over which she had no control. She had a choice and she exercised it. This is the essence of voluntariness. See Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir. 1971).

III

Although Mrs. C. voluntarily performed a statutory expatriating act, it remains for us to determine whether she 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 her United States citizenship. 444 U.S. at 267. Intent, the court said, may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The intent that must be proven is appellant's intent when she made the proscribed declaration of allegiance to Mexico. Terrazas v. Haig, 653 F. 2d, 285 (7th Cir. 1981).

Mrs. C. 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 she also expressly renounced her 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. Similarly, Meretsky v. Department of State, et al., Civil Action 85-1985, memorandum opinion, (D.D.C. 1985).

The trier of fact must 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).

As we have seen, appellant applied for a certificate of Mexican nationality in August 1982 in order to obtain a Mexican passport for a trip she planned to make to Europe later that year. In her affidavit of April 15, 1985, she stated in part as follows:

> 7. When I arrived at the Passport Office, I was told that I could not have a new Mexican passport unless I affirmed my Mexican nationality. This came as a total surprise to me as I was never required to do this before. Then when I saw the oath that I was supposed to sign, I saw that it said I was renouncing my United States citizenship.
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> 8. I was told that I could not get my new passport unless I signed the oath. Although I was bothered by the wording of the oath, I did not believe that by signing it I was choosing between my Mexican and American citizenships, as I was confident in my belief that such an oath was effective as a renunciation of my American citizenship only if I swore it in front of an American Consular Official.

Appellant's own words attest that she made a formal declaration of allegiance to Mexico wittingly. 25 years of age at the time and fluent in the language of the application, Mrs. C. was presumptively capable of understanding that she was giving a serious, consequential undertaking to Mexico. Precisely because the renunciatory language of the declaration bothered her, she should have paused to seek advice from United States officials instead of rationalizing that the commitment she was making to Mexico would have no impact on her United States citizenship.

In both the citizenship questionnaire she completed on May 28, 1983 and her affidavit of April 15, 1985, Mrs. C. stated that she had no intention of relinquishing her United States citizenship when she made a declaration of allegiance to Mexico. Her only intent, she asserted, was to obtain a Mexican passport. The cases hold, however, that motivation is irrelevant to the issue of intent if one manifests an intention to relinquish United States citizenship in declaring allegiance to a foreign state. See Richards, supra, where the Ninth Circuit rejected petitioner's argument that his particular motivation negated his intent to

relinquish his citizenship. In Richards the court found that an effective renunciation of citizenship is not limited to cases in which a plaintiff's "will" to renounce his citizenship "is based on a principled, abstract desire to sever allegiance to the United States." 752 F. 2d at 1421. The court stated:

> /it is/ abundantly clear that a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, /or/ to advance a career . . . a United States citizen's free choice to renounce his citizenship results in loss of that citizenship.

Similarly, Meretsky v. Department of State, supra.

Finally, we must determine whether there are any factors here that so outweigh the highly persuasive evidence of an intent to relinquish United States citizenship inherent in appellant's declaration of allegiance to Mexico as to lead us to conclude that the Department has not sustained its burden of proof. 7/

As evidence of a lack of intent to relinquish her United States citizenship, appellant stresses the fact that she applied for and obtained a United States passport shortly after she performed the expatriative act.

7/ As noted above, in informing the Consulate at Hermosillo in March 1984 that it had approved the certificate of loss of nationality in Mrs. C.'s case, the Department stated that it believed she had not presented sufficient evidence of intent to retain citizenship to overcome the presumption, given the clear language of the renunciatory language in the application for a CMN, that she intended to relinquish United States citizenship.

It is, of course, impermissible to presume intent to relinquish citizenship. See Vance v. Terrazas, 444 U.S. 252, 268 (1980). Having analyzed the Department's language, we conclude that it did not place the burden on appellant to prove lack of intent, but its formulation was, to say the least, infelicitious.

The Department observed in its March 1984 cable to the Consulate that such action might suggest lack of intent to relinquish United States citizenship, but given the facts in appellant's case, the suspicion arose that she might have sought to avoid a question as to whether she had applied for a CMN and a Mexican passport. We agree.

Appellant told an officer of the Consulate in February 1984 that she had applied for a United States passport in Tucson because she panicked when the Mexican passport had not arrived and the date of her departure for Europe drew closer. Her contention was that she was desperate to get a passport, any passport. But in appellant's submissions is a copy of a Mexican passport bearing an issue date of July 10, 1982, one month before she applied for a certificate of Mexican nationality. Was that passport not delivered to appellant until after she applied for a United States passport in September 1982? Furthermore, in her application for a United States passport she indicated that she would not depart for Europe until December 1982. The reason for appellant's panic in the fall of 1982 is hard to understand.

More importantly, why did appellant not apply for a United States passport at the Consulate at Hermosillo in the fall of 1982 rather than at Tucson? In an affidavit executed on January 29, 1986, appellant simply stated that it was more convenient for her to do so since she and her husband were in Tuscon where they owned a home in September 1982. The following except from the report the Consulate made to the Department in February 1984 is especially revealing:

> Consulate records show that C. applied for a US identification card on May 8, 1980. She was therefore familiar with the application form and the conditions for retaining citizenship listed on the back of the form. FSNE /local employee/ who dealt with C. on that occasion states that C. asked her if she could later apply for a passport at the Consulate. She could not explain why she ultimately chose to go to Tucson to obtain her US passport. When asked by ConOff why she did not seek further information regarding the consequences of obtaining a Mexican passport, she said only that she was in such a hurry that she thought only of getting whichever she could lay her hands on first.

We do not think appellant has been deceitful. But so many unanswered questions about her application for a United States passport in Tucson in September 1982 arise that they negate whatever probative value that action might have with respect to her intent to retain United States citizenship.

Surveying the entire record, we find no affirmative actions by appellant that manifest a resolve to retain her United States nationality when she made a formal declaration of allegiance to Mexico and expressly renounced her United States citizenship and allegiance to the United States. We think the Department has carried its burden of proving that Mrs. C. intended to relinquish her United States citizenship.

IV

Upon consideration of the foregoing, we hereby affirm the Department's March 31, 1984 determination that Mrs. C. expatriated herself.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Frederick Smith, Jr., Member