DEPARTMENT OF STATE

May 10, 1990

BOARD OF APPELLATE REVIEW

Decision No. 90-9

IN THE MATTER OF: J J. G

J J. G appeals from a determination made by the Department of State on May 9, 1988 that he expatriated himself on December 2, 1977 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

For the reasons that follow, we conclude that appellant made a declaration of allegiance to Mexico voluntarily, but lacked the requisite intent to relinquish his United States nationality. We therefore reverse the Department's determination that he expatriated himself.

I

Appellant G acquired the nationality of the United States by virtue of his birth at [redacted], Ohio on [redacted], [redacted]. Since his parents were citizens of Mexico, appellant acquired through them the nationality of Mexico, and thus enjoyed dual nationality. Appellant's parents, both doctors, emigrated to the United States a few years before his birth and became citizens through naturalization in 1976. While he was less than one year old, appellant's parents took him to [redacted], Texas, where he grew up and received his early schooling. In 1977 he graduated from the University of [redacted] where he took a premedical course.

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

> 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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> . . ..
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, after having attained the age of eighteen years; or ...

In the autumn of 1977, appellant enrolled in the medical school of the University of [redacted], where his father received his medical training. Allegedly having poor command of Spanish (he states that he generally spoke English with his parents and had little formal training in Spanish), appellant had a three-month tutorial in Spanish in Monterrey before entering medical school.

Concerned about his ability to finance the education of appellant (and that of six other children), appellant's father asked the University authorities around the autumn of 1977 whether there was some way in which his son might qualify for the tuition charged Mexican citizen students. (Affidavit of July 25, 1989). The tuition foreign students paid was several times higher than that paid by Mexican students. The senior G states he was informed that his son might enroll as a Mexican student "if he signed a letter of intention to become a Mexican citizen." Appellant's father continued:

> Since I previously signed /in 1959/ such a Declaration of Intention to Become a United States Citizen which had no significant legal effect, I told my son to sign such a declaration with the Mexican Government so that I could afford to pay for his medical school at the University of Monterrey;...

At the hearing on February 23, 1990, appellant amplified what his father had been told by the University authorities. "If I started naturalization proceedings and showed them proof of that...I could enroll as a Mexican citizen..." 2/ The authorities were only interested, he said, in verifying that he had initiated the process. "And then it didn't really matter what happened after that." 3/ The authorities indicated that it would probably take a few years to complete the naturalization process, appellant said, "but as long as we had some documentation that I had started that I could go ahead and enroll...." 4/

"I told my son to sign such a declaration with the Mexican government," Dr. G has stated, and in obedience to his father's instructions, appellant "inquired with the Mexican

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2/ Transcript of Hearing in the Matter of J J. G , Board of Appellate Review, (hereafter described as "TR"). TR 24.

3/ Id.

4/ Id.

government and signed the form at a local government office /in Monterrey/ on November 18, 1977."

What appellant signed was an application for a certificate of Mexican nationality (CMN) which contained the following statement:

> I therefore hereby expressly renounce ..... citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially that of ....., of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.

The blank spaces were filled in with the words "Norte Americana" (North American) and, it appears (the copy of the application in the record is very indistinct), "Estados Unidos de Norte America" (United States of North America) respectively.

The Department of Foreign Affairs issued a CMN in appellant's name on December 2, 1977.

Appellant states that shortly before the Christmas holidays (1977), he received a letter from the Mexican government "which indicated that I had obtained Mexican nationality." He insists that the letter did not enclose a CMN; it merely felicitated him upon becoming a Mexican citizen. 5/

During the Christmas holidays, appellant discussed the Mexican government letter with his father who, he states, "felt terrible for misleading me." 6/ Father and son agreed that the plan for him to enter as a Mexican student should be dropped and that on his return to Monterrey he should enroll as an American citizen. Further, he should inquire about the legal implications of the letter from the Mexican authorities at the United States Consulate in Monterrey.

5/ TR 40-41. According to appellant, he did not see the CMN that was issued and approved in his name until 1989 when his attorney showed him a copy that had been procured from the State Department.

6/ TR 42.

Sometime early in January 1978, appellant allegedly visited the Consulate General where he showed the letter from the Mexican government to a vice consul and explained the facts and circumstances surrounding his application for what he had assumed was a preliminary step in naturalization in Mexico. 7/ He was allegedly informed that "it would have no legal effect as long as I did not pursue the matter any further with the Mexican government." (Affidavit of July 25, 1989.) At the hearing, appellant recalled that the Vice Consul said "This is ridiculous. They can't do that." 8/ The officer also asked him questions, such as whether he had served in the Mexican army or obtained a Mexican passport, to which he replied, no. At the officers request, he filled out a short questionnaire. There is no copy of such a paper in the record nor is there any record of appellant's visit to the Consulate General.

Appellant entered medical school in January 1978, and evidently throughout his training paid the tuition charged foreign students.

Shortly after appellant's visit to the Consulate General, the Department of Foreign Affairs informed the United States Embassy at Mexico City by diplomatic note dated February 23, 1978 that appellant had been issued a CMN. Copies of the CMN and his application therefor were attached. The Embassy forwarded the note to the Consulate General at Monterrey which received it on March 10, 1978. There is no indication in the record whether the Consulate General took any action after receiving the note. Nor does the record show when or how the diplomatic note with its attachments were forwarded to the Department. Possibly the Consulate General eventually sent it back to the Embassy which forwarded it to the Department in 1986 after the Embassy processed appellant's case.

On January 13, 1981, while still in medical school, appellant applied for a United States passport (his first) at the United States District Court at Abilene, Texas. (Apparently during the first three years of his studies he was in tourist status without holding a United States passport.) The record which the Department submitted to the Board did not contain a copy of appellant's passport application, but appellant submitted one which his counsel stated he procured from the Department under the Freedom of Information Act.

7/ Appellant states that he no longer has the letter. He believed he filed it but later threw it out. TR 76, 77.

8/ TR 44.

We take notice that an applicant for a passport is required to swear that since acquiring United States citizenship he has not performed any of the expatriative acts listed on the reverse of the application. Appellant signed the statement so averring, but did not strike out the phrase on the reverse of the application which reads: "Taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state." 9/ Instead, appellant appended the following statement:

> To Whom it May Concern:
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> In October 1977 /sic/ I signed an affirmation to become a Mexican citizen. However I have not pursued my affirmation nor have I received my benefits or privileges by making this affirmation. I no longer wish to become a Mexican citizen and therefore am applying for an American Passport.

The fact that appellant had applied for a passport was presented to the appropriate authorities of the Department, one of whom by TWX dated January 22, 1981 (three years after the Mexican authorities had notified the Embassy that appellant had performed an expatriative act) informed the clerk of the District Court that a passport might issue to appellant. One valid until 1986 was issued on the same day approval came from the Department.

In 1985 appellant graduated from medical school and returned to the United States. In February 1986 he applied at the Passport Agency at Houston to renew his passport. On May 23, 1986 he completed a form titled "Information for Determining U.S. Citizenship," to which he appended the following statement:

> I have added this additional note as an explination /sic/ for the reasons I resided abroad, in order to expidite /sic/ my application for re-newal of my U.S. Passport.
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> I resided in Mexico on a temporary basis for the purposes of attending the University of Monterrey. The documentation I

9/ On the copy of the application which appellant submitted the foregoing phrase has been stricken. Appellant asserts that he did not strike it. TR 88, 89. How it came to be or by whom stricken is yet another mystery in this matter.

> used was a Student Visa (FM-9) granted to me by the Mexican government, along with my U.S. Passport. While at the University I paid the full North American tuition which was four times the tuition paid by resident Mexican nationals. I received no other benefits from the Mexican government.
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> During the time I spent studing [sic] in Mexico I maintained my permanent residence in Abilene, Texas and my United States Citizenship....

Appellant's application was referred to the Department which cabled the Embassy in Mexico City that appellant was seeking a passport, and that a "lookout" had been entered in May 1981 based on his obtaining a certificate of Mexican nationality in December 1977. Who held that information and why it had not been adduced much earlier, is yet another unanswered question in this record. The Department stated that it would communicate directly with appellant (who was in the United States) to request that he make a statement regarding his intent at the time he obtained a CMN. Meanwhile, the Embassy should execute a certificate of loss of nationality in appellant's name and forward it to the Department.

In compliance with the Department's request and the provisions of section 358 of the Immigration and Nationality Act, an officer of the United States Embassy executed a certificate of loss of nationality in appellant's name on June 26, 1986. 10/ The certificate recited that appellant acquired

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10/ 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

the nationality of the United States by virtue of his birth in the United States; that he acquired the nationality of Mexico through Mexican citizen parents; that he made a formal declaration of allegiance to Mexico on November 18, 1977 and obtained a certificate of Mexican nationality on December 2, 1977; thereby expatriating himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

Early in July 1986 the Department wrote to appellant to offer him opportunity to make a statement regarding the issue of whether he intended in 1977 to relinquish his United States citizenship. Appellant replied by an undated letter probably written in the summer of 1986, requesting additional time to consult an attorney before "I submit my final statement."

In April and again in June 1987 an attorney in Abilene wrote to the Department setting forth the facts and circumstances surrounding appellant's performance of the expatriative act. The Department did not reply to the attorney's request that he be advised what further steps appellant should take in order to be able to receive a passport. Eventually, to a Member of Congress from Texas who intervened in the matter, the Department stated in November 1987 that appellant's case was being reviewed and a decision would be made shortly.

In reply to yet another letter from appellant's counsel, a Department officer stated that the submissions counsel made in April and June 1986 had not been received. Counsel sent copies thereof to the Department in March 1988, and in April 1988 appellant set forth in some detail the circumstances surrounding his performance of the expatriative act.

On May 9, 1988 the Department approved the certificate of loss of nationality that the Embassy at Mexico City executed in appellant's name. Approval constitutes an administrative determination of loss of nationality from which an appeal may be taken to this Board. An appeal was entered by counsel for

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10/ (Cont.d.)

> 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 in April 1989. Oral argument was heard on February 25, 1990. 11/

II

There is no dispute that by making a formal declaration of allegiance to Mexico in an application for a certificate of Mexican nationality appellant brought himself within the purview of section 349(a)(2) of the Immigration and Nationality Act. The statute provides, however, that citizenship shall not be lost by performance of an expatriative act unless the act was done voluntarily with the intention of relinquishing citizenship. Since appellant contends that he did not act voluntarily, we first address that issue. In law, it is presumed that a person who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 12/

In his brief, appellant maintained that although he was reluctant to apply for Mexican nationality, he had no real choice but to follow his father's instructions and sign a document which purportedly would allow him to obtain reduced tuition at medical school. His brief continues:

11/ It may be observed that this case raises, on its face, a question with respect to the authority of the Secretary of State to determine appellant's nationality status. Under section 104(a) of the Immigration and Nationality Act, 8 U.S.C. 1104, the Secretary is authorized to administer and enforce the provisions of the Act and all other immigration and national laws relating to "the determination of nationality of a person not in the United States."

Appellant here made a formal declaration of allegiance to Mexico on December 2, 1977, and resumed living in the United States in 1985. The Embassy at Mexico City, on June 26, 1986, executed a certificate of loss of United States nationality in appellant's name which the Department of State approved on May 9, 1988. Appellant was then residing in the United States. It would thus appear that appellant was not "a person not in the United States" when the Department (Secretary of State) made its determination of loss of nationality.

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

> (b) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment

> ...Appellant, being preoccupied with medical school and relying on his father's advice, followed his instructions without questioning his father's authority as he had been raised to do throughout his life. See letter from psychiatrist Dr. Kenneth Day with articles from psychological journals on Mexican-American children, attached hereto as Exhibit "K". This letter from Dr. Day clearly confirms that Appellant had no real choice in following his father's instructions and that he did not voluntarily sign the oath of allegiance to Mexico.

At the hearing, appellant maintained that if he had defied his father there would have been "a major confrontation, alienation from him with the rest of the family." 13/ If he had said no, he probably could not have gone home or lived there; he would probably have to go out on his own. 14/ Possibly, he said, he could have had great difficulty in Mexico. /T/he worst case probably would have been not to go to medical school, and get an apartment and a job and try to support myself that way." 15/

In short, appellant argues (reply brief) that the duress he acted under "was grounded in the obedient and respectful

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12/ (Cont'd.)

> 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 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.

13/ TR 28.

14/ TR 29.

15/ TR 65-66.

relationship that he had with his father," refusal to obey could have caused irreparable harm to that relationship.

Family obligations may be so compelling as to negate freedom of choice on the part of one who performs a statutory expatriative act. See Mendolsohn v. Dulles, 207 F.2d 37 (D.C. Cir. 1953); Ryckman v. Acheson, 106 F. Supp. 739 (S.D. Tx. 1952). In Mendelsohn, the petitioner expatriated himself by remaining abroad in excess of the time permitted a naturalized citizen in order that he might care for his wife who was gravely ill. The court considered that he "acted under coercion of marital affection, which was just as compelling as physical restraint." 207 F.2d at 39. Similarly, in Ryckman, the plaintiff remained abroad longer than permitted by statute in order to care for an aged, infirm mother. She stayed abroad "for no other reason than to perform the natural duty she owed her mother." 106 F. Supp. at 739. American citizenship should not be lost, the court added, "for doing nothing other than her filial duty." Id.

The evident difference between the case before the Board and those cited above is that in the latter cases the citizenship-claimant owed a definable, recognized moral duty of care toward the ailing spouse/mother. In the case before the Board, appellant owed his father respect and consideration. But appellant was 21 years old when he performed the expatriative act. He did not owe his father blind obedience, if he considered his father was wrong or was ordering him to do something which, as appellant has stated, he was reluctant to do.

In any event, in his affidavit of July 25, 1989, Dr. G said nothing about having threatened his son with alienation if he disobeyed him. He had simply expected that his son would do as he said.

> Ours is a very close family and in the tradition of the Hispanic culture, my family looks to me for advice and follows my advice and suggestions when they are given;
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> My son J had never questioned any of my instructions and, as he has always done, he followed my advice and attempted to sign such a Declaration of Intention with the Mexican government; ....

We will grant that if appellant had not done as his father told him, their relationship might have been strained. But he has not shown by a preponderance of the evidence that it would have been irreparably damaged. How can one be reasonably sure any anger his father might have felt would not have been ephemeral? To predicate involuntariness on assumed reactions that cannot be known until something has transpired is at best speculative.

In sum, we do not believe that appellant's sense of filial duty or obedience toward and dependence on his father was sufficient to render the declaration of allegiance he made to Mexico involuntary. Despite the pressures and difficulty of the choice, we think appellant has not shown that he had no alternative to doing the expatriative act, and thus has not rebutted the presumption that he acted voluntarily.

III

It remains to be determined whether appellant intended to relinquish United States citizenship when he made a formal declaration of allegiance to Mexico.

The government bears the burden of proving that one who performed a statutory expatriative act did so with an intent to relinquish United States nationality. Vance v. Terrazas, 444 U.S. 252, 262 (1980). Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The evidentiary standard is a preponderance of the evidence. Id. at 267. Proof by a preponderance is proof which would lead the trier of fact to find that the existence of the contested fact is more probable than its non-existence. McCormick on Evidence, 3rd Ed., section 339. It is the citizenship-claimant's intent at the time he performed the expatriative act that the government must prove. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981).

In cases where, as in the instant appeal, a citizen expressly renounces United States nationality while making a declaration of allegiance to a foreign state, the courts have held that such words constitute strong evidence of an intent to relinquish United States citizenship. Absent persuasive counterbalancing factors, the evidence of renunciatory intent expressed in the party's own words will support a finding of an intent to relinquish citizenship.

In Terrazas v. Haig, supra, the plaintiff like appellant in the case before the Board, made a declaration of allegiance to Mexico and expressly renounced his United States citizenship. The court did not rest its decision that appellant intended to expatriate himself solely on the fact that he made a formal declaration of allegiance to Mexico and expressly renounced United States nationality. "Of course," the court

said "a party's specific intent to relinquish his citizenship rarely will be established as direct evidence. But circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship...." 653 F.2d at 288. After examining all the facts, the court concluded that there was "abundant" evidence the plaintiff intended to relinquish his citizenship. He made no effort to halt the process of his application for a certificate of Mexican nationality after he was free of an allegedly domineering father who reportedly forced him to apply for the certificate. He informed his draft board he was no longer a United States citizen after being told by a consul he might have lost his citizenship. And he made an affidavit attesting that he voluntarily made an oath of allegiance to Mexico with the intention of relinquishing United States nationality.

Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985), involved the naturalization in Canada of a United States citizen who swore an oath of allegiance and made a concomitant declaration in effect renouncing his United States citizenship. The Court of Appeals for the Ninth Circuit agreed 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." 753 F.2d at 1421. Nonetheless, the court recognized that the totality of the evidence should be weighed, but concluded that: "We also believe that there are no factors here that would justify a different result." Id.

In the same vein as Richards, is Meretsky v. Department of Justice et al., memorandum opinion, No. 86-5184 (D.C. Cir. 1987). There the petitioner obtained naturalization in Canada and swore an oath of allegiance that included a declaration renouncing all other allegiance. In affirming the decision of the district court, the court of appeals declared that the oath the petitioner took renounced United States citizenship "in no uncertain terms." But it should be noted that the court also took into account other evidence which it considered contradicted the petitioner's allegations that he always considered himself to be a United States citizen.

Merely proving that appellant voluntarily made a declaration of allegiance to Mexico and renounced United States citizenship, does not, of course, satisfy the Department's burden of proof. To establish that he intended to relinquish citizenship, it must also be shown that he acted knowingly and intelligently when he signed the application for a certificate of Mexican nationality, and that there are no other factors which would justify a different result.

Appellant explained in detail at the hearing how he executed what he allegedly learned much later was a CMN. 16/ As instructed by his father, he went to a government office where he asked a young clerk at the counter for a form to make a declaration of intent to become a Mexican citizen. He assumed that the form given him was an application to begin the process of naturalization, so did not examine it closely. With the help of the clerk he filled it out. His facility in Spanish being limited, and the form being in legal phraseology, he did not realize that it contained a declaration of renunciation of his United States citizenship and declaration of allegiance to Mexico. He only scanned the form before signing it. He recalled that the clerk told him he would be contacted by mail, leading him to think that other steps would be necessary.

The Department submits that appellant, who it notes was then 21 years old and well-educated, knowingly and intelligently declared allegiance to Mexico. The language of the application for a CMN was "clear and unequivocal." His contention that he had too limited a command of Spanish to understand the document is unpersuasive; it must be presumed that if he were able to attend a medical school where the curriculum was in Spanish, he was "reasonably conversant in Spanish." If he signed the application without reading it carefully, knowledge of its contents must be attributed to him. It could not be said that he acted with the caution a reasonably prudent person is presumed to exercise when signing a legal document.

We are not persuaded by appellant's claim that he was unaware that the document he signed contained a declaration of renunciation of his United States citizenship and of allegiance to Mexico. His Spanish may have been rudimentary but the phrases "hago renuncia a la nationalidad Norte Americana" and "protestando ademas adhesion, obediencia, y sumision a las Leyes y Authoridades de la Republica Mexicana" are so clear and similar to English that anyone who ever had Spanish lessons, let alone someone of parents of Mexican origin, can hardly have been confused.

Nonetheless, we accept that appellant's sole aim in executing the CMN application was to carry out a plan formulated by his father. Given appellant's youth, his acceptance of the correctness of his father's guidance, it is plausible that he thought he was making the first step in the naturalization process and that his undertaking to renounce United States

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16/ TR 32-39; 68-72.

citizenship and declare his loyalty to Mexico was only preliminary and would be formalized in a naturalization ceremony at a later date.

The decisive considerations in this case, however, are the numerous other factors which bear on the issue of appellant's probable intent when he performed the expatriative act.

It is evidentially significant that appellant apparently sought advice about his American citizenship status from the Consulate General after he received notice that he had been granted Mexican nationality. Although there is no record of his visit, we accept that he made one. He and his father made sworn statements to that effect, and we have no reason to doubt their veracity.

As we have seen, appellant and his father have submitted that the authorities of the University of Monterrey medical school informed the senior G that his son might enroll as a Mexican student (at a lower tuition than non-Mexicans) if he presented evidence that he had begun the process of becoming a Mexican citizen. When it appeared that the intended limited action was not limited but had resulted in the actual grant of Mexican citizenship, father and son became concerned about the implication for appellant's American citizenship, and decided that appellant should consult the American Consulate General at Monterrey and enroll in medical school as a foreign student. As stated, appellant evidently did go to the Consulate General in January 1978 shortly before he began his medical studies. Why did he visit the Consulate General sua sponte if not to express concern about his American citizenship status? There is no other apparent reason. There is no indication he was called in; it was not until February 1978 that the Mexican authorities informed the Embassy at Mexico City that appellant had obtained a CMN.

We find it unnecessary to address the government's challenge to appellant's contention that the consular officer to whom appellant spoke told him that if he took no further action with the Mexican authorities, he would have nothing to worry about as far as his American citizenship was concerned. So far from 1978 and in the absence of any contemporary record, it is impossible to establish what the consular officer told appellant. What is important is that he probably visited the consulate General within a very short time after he performed the expatriative act. If we accept that this visit was prompted by concern for his American citizenship, and the logic to do so is strong, it follows that the visit must be regarded as an effort to protect his citizenship, thus raising doubt whether he had the requisite intent to relinquish citizenship when he made a declaration of allegiance to Mexico.

Appellant's proven conduct, both immediately after he performed the expatriative act and for years afterwards is eloquent on the issue of whether he intended to relinquish his American citizenship. It is plainly the conduct of one who intended in 1977 to retain citizenship.

As we have seen, in January 1978, presumably around the time he visited the Consulate General, appellant enrolled in medical school as a foreign student, paying the higher tuition which he and his father had hoped to avoid - but not, one might fairly infer, say at the price of appellant's sacrificing his United States nationality. For three years appellant attended medical school as a tourist; in 1981 after obtaining a United States passport, he obtained a Mexican student visa. He paid a high duty as a foreigner to have the use of his American automobile at Monterrey. In short, he never sought or obtained any privileges incident to acquiring the formal status of a Mexican citizen.

Not only did appellant conduct himself in Mexico after performing the expatriative act in every respect as a United States citizen, he also consistently held himself out in the United States as one who never believed he lost or intended to lose citizenship. The years of his medical schooling aside, appellant has always lived in the United States. In 1981, as we have seen, when he applied for a passport, he candidly stated that he had signed an affirmation to become a Mexican citizen, but did not wish to become Mexican. He applied again in 1986 for a United States passport. He has submitted evidence that from before 1977 he has met his responsibilities as a United States citizen, filing income tax returns, voting in state and local elections in Texas, maintaining Abilene, Texas as his permanent residence. And he is making his medical career in the United States. Briefly, appellant has done virtually all the things that the Department of State regards as indicia of a will to retain citizenship.

No single act, no particular set of words (unless there is no other evidence in the record) is sufficient to establish intent to relinquish citizenship. As the Supreme Court has made quite clear, even if the actor fails to prove that the expatriative act was involuntary, "the question remains whether on all the evidence the Government has satisfied its burden of proof....Vance v. Terrazas, 444 U.S. at 270. Juxtaposed against a single act, which appellant arguably performed without full comprehension of its far-reaching consequences, is abundant evidence that he intended to preserve his United States citizenship. Since the preponderance of the evidence suggests that appellant probably did not intend to relinquish his United States citizenship in 1977, it follows that the Department has not met its burden of proof.

IV

Counsel for appellant submits that the certificate of loss of nationality that the Department approved in this case should be vacated under the doctrine of laches due to the passage of time and prejudice to appellant. Appellant relied, counsel asserts, on assurances of the consular officer at Monterrey in 1978 and the actions of the Passport Agency in 1981 that he never lost United States citizenship. Therefore, failure of the government to act until 10 years have passed has prejudiced appellant, who now is unable to acquire additional documentation and locate contemporaries who can give evidence that he did not intend to relinquish his citizenship.

Given our disposition of the case, we find it unnecessary to address counsel's argument that equity dictates that the doctrine of laches be applied in this case. Nonetheless, we are constrained to register our concern over the lapses and procedural anomalies which characterize the handling of this case.

V

Having carefully weighed all the evidence presented to us, we conclude that the Department erred in determining that appellant expatriated himself by making a formal declaration of allegiance to Mexico. According, we hereby reverse the Department's decision of May 9, 1988.

Alan G. James, Chairman

George Taft, Member

Concurring Opinion

I agree completely with the Board's decision reversing the Department's decision of May 9, 1988 that appellant G[redacted] expatriated himself. I also fully support the Board's reasoning on the issues of voluntariness and intent.

There is, however, one aspect of the case, discussed briefly in Section IV of the Board's opinion, which I think deserves fuller comment.

All of the evidence relied upon by the Department in justification of its approval in 1988 of the certificate of loss of nationality in appellant's name was known to the Department in 1981. It was the appellant who in 1981 drew to the Department's attention the fact that he had signed in November, 1977 the application for a certificate of Mexican nationality. It is this single signed application that constitutes the Department's case today in support of its position that appellant G[redacted] has expatriated himself. But in 1981 the Department regarded the effect of appellant's signature of that application differently. In January, 1981 the Department informed the clerk of the United States District Court at Abilene, Texas that a passport might issue to appellant. Apparently, different officials in the Department today interpret the evidence differently from the concerned officials in the Department in 1981.

In defending its present position, the Department appears to assert a capacity to reopen settled issues at its whim even though not a scintilla of new evidence has been put forward. The result is that for persons in appellant G[redacted]'s position, who might have sometime in the past performed a possibly expatriating act, the passport application process becomes a sort of lottery, hinging upon whether a Departmental officer will decide to take a new look at old evidence. In such a situation the Department claims too much for itself; it seeks the whole advantage while the private individuals whom it is supposed to serve can be put at a serious disadvantage.

For example, in the present case the Department very belatedly, after the hearing held on February 23, 1990, decided to try to locate the consular officer at the Consulate General in Monterrey who dealt with appellant G[redacted] in 1978. The Department and/or appellant would certainly have had greater chance of locating this person in 1981 than in 1990. If the appellant had been denied a passport in 1981, he very likely would have found it in his interest to locate the Monterrey consular officer then. The lapse of so many years with increased difficulty in acquiring additional evidence could well have been to the serious prejudice of appellant.

Under the circumstances of this case equity requires that the Department be estopped now from reopening issues which it settled more than seven years earlier by authorizing the issuance of a passport to appellant in 1981. In my view, it would have been proper for the Board to have decided for the appellant on that ground alone.

Warren E. Hewitt, Member