July 12, 1990

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

DECISION NO. 90-13

IN THE MATTER OF: T G

This case is before the Board of Appellate Review on the appeal of T G from an administrative determination of the Department of State that she expatriated herself on July 9, 1984 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

After the appeal was entered, the Department made a further review of the case and informed the Board that it could not carry its burden of proving that appellant intended to relinquish her United States nationality when she made a formal declaration of allegiance to Mexico. Accordingly, the Department requested that the Board remand the case so that the certificate of loss of appellant's nationality might be vacated. We remand the case for further proceedings.

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

> **Sec. 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 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; ...

I

An officer of the United States Consulate General at Monterrey executed a certificate of loss of nationality in the name of T G on January 31, 1989, in compliance with the statute. 2/ Therein he certified that she acquired United States nationality by virtue of her birth at [redacted], that she also acquired the nationality of Mexico by virtue of her birth of Mexican citizen parents; that she resided in the United States for one month after her birth (she has resided in Mexico since March 1966); that she made a formal declaration of allegiance to Mexico on July 9, 1984 and acquired a certificate of Mexican citizenship on the same day, thereby expatriating herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department of State approved the certificate on June 15, 1989, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board. An appeal was entered in December 1989.

II

The Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on June 18, 1990 submitted the

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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 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.

record upon which the Department based its decision that appellant expatriated herself and a memorandum in which the Department stated:

> After careful review, the Department has concluded that there is insufficient evidence to sustain its burden of proving that appellant intended to relinquish her U.S. citizenship at the time she formally declared allegiance to Mexico and obtained a Certificate of Mexican Nationality. It is therefore requested that the case be remanded to permit the Certificate of Loss of Nationality to be vacated. 3/

The Department bases its request for remand on the following considerations:

> A 'uniform evidentiary standard within the Department' was recently promulgated to simplify and make more uniform the judgment of intention in determining possible loss of citizenship where a U.S. citizen has performed certain potentially expatriating statutory acts. The new standard presumes intention to retain citizenship when a U.S. citizen obtains naturalization in, declares allegiance to, or accepts a non-policy level position in, another state. In those circumstance, the presumption is considered inapplicable only:

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3/ The government bears the burden of proving by a preponderance of the evidence that a United States citizen who performed a statutory expatriative act did so with the intention of relinquishing citizenship. Vance v. Terrazas. 444 U.S. 252, 261 (1980); section 349(a)(2), Immigration and Nationality Act; 8 U.S.C. 1481(a)(2). There is no dispute that appellant performed a valid statutory expatriative act and that she did so voluntarily. Therefore the sole issue to be determined is whether she intended to relinquish her United States citizenship.

'-- when ... the proven conduct is so inconsistent with obligations to the United States as to compel the conclusion that the intent to relinquish was present (we envision cases in this category would be quite rare and would involve fact situations substantially beyond pro forma disavowals of allegiance to the U.S.)', or

'-- when an individual ... formally advises the consular officer in writing that his or her intent was to relinquish U.S. nationality.'

. . .

Applying this evidentiary standard to the facts of the present appeal, it is manifest that the evidence will not sustain a finding that Ms. G intended to abandon her U.S. citizenship when she obtained a CMN.

The clear language of appellant's renunciatory declaration and the long period of her residence in Mexico without identifying herself in any way as an American citizen could support the judgment that Ms. G was content to abandon her U.S. citizenship in return for the benefits of obtaining a CMN. But that evidence is contradicted by appellant's relative youth and her statements that she obtained the CMN on her father's advice only to facilitate her Mexican education and obtain a Mexican passport and that she did not intend to relinquish her U.S. nationality and had not thought through the consequences of her actions.

While appellant's actions could be said to imply intent to abandon, they certainly do not compel such a conclusion. Nor are they inconsistent

> with a reasonable finding that Ms. G did not intend to give up her U.S. citizenship. In such equivocal circumstances, the Department is of the view that the new evidentiary standard does not permit a finding of loss of citizenship.

III

Inasmuch as the Department has concluded that it is unable to carry the burden of proof that appellant intended to relinquish her United States citizenship, we hereby remand the case to the Department so that the Department may vacate the certificate of loss nationality that it approved in appellant's name. 4/

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member

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4/ Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part that:

> The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.