June 2, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A[redacted] Y[redacted]

This is an appeal from an administrative determinatio of the Department of State that appellant, A[redacted] Y[redacted], expatriated herself on September 28, 1981, under the provisions of section 349(a)(2) of the Immigration and Nationality Act, by making a formal declaration of allegia to Mexico. 1/ The issues presented on appeal are whether appellant's declaration of allegiance to Mexico was volunt and performed with an intent to relinquish her United State citizenship.

We find that appellant's declaration of allegiance wa free and uncoerced and that it was accompanied by an inten abandon her United States citizenship. We will therefore affirm the Department's determination of June 21, 1982, to that effect.

I

Appellant was born in [redacted] and thus acquired the nationality of Mexico at birth. Through her American citizen mother she also acquired the nationality of the United States at birth. Appellant's

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

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

mother registered her as a United States citizen at the Embassy at Mexico, D.F. on February 18, 1958.

Except for attendance at a high school in the United States from 1975 to 1976, appellant has resided in Mexico since birth.

Appellant obtained passports from the United States Embassy at Mexico, her last having been issued in August 1980. She also obtained Mexican passports while under the age of eighteen. In September 1981, appellant sought a new Mexican passport, because, as she has stated, the one issued prior to her eighteenth birthday had expired.

In order to obtain a Mexican passport appellant was required to apply for a certificate of Mexican nationality. This she did on September 18, 1981. As prescribed by Mexican law, appellant expressly renounced her United States citizenship and declared her allegiance to Mexico. 2/ A certificate of Mexican nationality was issued to appellant on September 28, 1981. 3/

2/ Request for Certificate of Mexican Nationality by Birth, September 18, 1981. English translation, Division of Language Services, Department of State, LS no. 108005-A, Spanish (1982).

3/ Certificate of Mexican Nationality by Birth, no. 015, issued by the Department of Foreign Relations, September 28, 1981. English translation, Division of Language Services, LS no. 108005-B, Spanish (1982).

The Department of Foreign Relations informed the United States Embassy on December 2, 1981, that appellant had obtained a certificate of Mexican nationality. 4/ Accordingly, in February 1982, the Embassy wrote to appellant to inform her that by making a formal declaration of allegiance to Mexico she might have expatriated herself. She was invited to execute a questionnaire to assist the Department in making a determination of her citizenship status and to submit any evidence she might wish to be considered in that regard. Appellant called at the Embassy in April 1982 where she executed the questionnaire and was interviewed by a consular officer. On April 12, 1982, the Embassy prepared a certificate of loss of nationality in appellant's name, as required by section 358 of the Immigration and Nationality Act. 5/

4/ Diplomatic Note no. 7001916, December 2, 1981, Department of Foreign Relations. English translation, Division of Language Services, LS no. 108005-C, Spanish (1982).

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

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.

The Embassy certified that appellant acquired the nationality of the United States by virtue of her birth in Mexico to an American citizen mother; that she acquired the nationality of Mexico by virtue of her birth in that country; that she made a formal declaration of allegiance to Mexico; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. The Department approved the certificate on June 21, 1982, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

Appellant initiated this appeal by letter to the Board of Appellate Review, dated August 18, 1982. She contends that her declaration of allegiance to Mexico was involuntary and that she did not have the intention of relinquishing her United States citizenship when she made said declaration.

II

Section 349(a)(2) of the Immigration and Nationality Act provides that a person who is a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state. There is no dispute that appellant made a formal declaration of allegiance to Mexico in conformity with Mexican law. She thus brought herself within the reach of section 349(a)(2) of the Act.

Citizenship is deemed to continue, however, unless a person has surrendered it through a voluntary act. Perkins v. Elg, 307 U.S. 325 (1939); Afroyim v. Rusk, 387 U.S. 253 (1967).

The law of expatriation presumes the performance of a statutory expatriating act to have been voluntary, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was not performed voluntarily. 6/

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

An expatriating act is considered to have been performed voluntarily where an individual had the opportunity to make a decision on the basis of a free and unfettered choice. Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971). Generally, the circumstances surrounding the performance of an expatriating act must be extraordinary, forcing a person to act against his fixed will and intent, before the courts will deem the act to have been coerced. Doreau v. Marshall, 170 F. 2d 721 (1948).

Appellant contends that the sole reason she made a declaration of allegiance to Mexico was in order to obtain a passport which, after the age of eighteen, she could only obtain by applying for a certificate of Mexican nationality, a process that requires the applicant to make a declaration of allegiance to Mexico.

In the questionnaire she executed in April 1982 at the Embassy, appellant acknowledged that her act was voluntary because "my intent was to get the passport." In her letter to the Board of August 18, 1982, however, she stated:

> ...I feel that my understanding and use of the word "voluntary" in regard to the taking of the oath may have been wrong and may have adversely affected the decision /of the Department of State that she had expatriated herself./ When answering section 12b /of the questionnaire/ and using the expression "voluntary act" I meant that I was not coerced into taking the oath. In reality, it was involuntary in the sense that I did not do it willingly, but had no choice but to do it if I wanted the passport. /Emphasis in original./

In the same questionnaire, appellant asserted that she had no choice but to declare her allegiance to Mexico, "otherwise I would not have been able to leave the country."

We perceive no extraordinary element in the circumstances surrounding appellant's declaration of allegiance to Mexico. On the contrary, it is apparent that she had complete freedom of choice to apply for a certificate of Mexican nationality, or not to do so.

As the consular officer who handled appellant's case observed in her report to the Department in April 1982, appellant could have continued to reside in Mexico without

jeopardizing her American citizenship by obtaining an appropriate Mexican visa, a procedure which, the consular officer noted, had been followed by other dual nationals; as an American, appellant would not have required a Mexican passport to leave and enter the country. We note, however, that for appellant to have followed such a course would have required her to forsake her Mexican nationality -- a step she was evidently loath to take.

That Mexican law requires a dual national after age eighteen to choose between Mexican and his or her other nationality does not render involuntary an oath of allegiance to Mexico taken for the purpose of applying for a certificate of Mexican nationality.

Appellant's choice was arguably a difficult one, but, as the record reveals, it was not forced on her by external forces beyond her ability or will to resist. As the court stated in Doreau, forsaking American citizenship even in a difficult situation, as a matter of expediency, is not an involuntary act.

We therefore conclude that appellant has not rebutted the statutory presumption that her formal declaration of allegiance to Mexico was a voluntary act.

III

If a person fails to prove that his act was involuntary, the question remains whether on all the evidence the Government has satisfied the burden of proof that the expatriating act was performed with the necessary intent to relinquish citizenship. Vance v. Terrazas, 444 U.S. 252 (1980). An intent to relinquish citizenship, the Court declared, must be shown by the Government, whether "the intent is expressed in words or is found as a fair inference from proven conduct." The Court also made clear that it is the Government's burden to establish intent by a preponderance of the evidence. It is a person's intent at the time of performance of the act that must be determined. Terrazas v. Haig, 653 F. 2d 285 (1981).

In rendering its decision in Terrazas, the Court commented with approval on the following administrative guidelines of the Department of State to determine intent:

> In light of Afroyim and the Attorney General's statement of interpretation

> of that decision, the Department now holds that the taking of a meaningful oath of allegiance to a foreign state is highly persuasive evidence of an intent to transfer or abandon allegience. 8/

The Department argues that appellant's intent to relinquish her United States citizenship is established by the following considerations:

-- She voluntarily signed a declaration of allegiance to Mexico and expressly renounced her United States citizenship.

-- The Mexican Government understood appellant's words to mean that she intended to renounce or abandon her United States citizenship, a prerequisite established by Mexico to issuance of a certificate of Mexican nationality.

-- Appellant understood and accepted the meaning of the words she subscribed to.

-- Appellant knew that her application for a certificate of Mexican nationality constituted an act of expatriation under U.S. law.

-- Appellant proceeded to apply for a certificate of Mexican nationality without seeking official advice about the effect on her United States citizenship.

We find the Department's argument persuasive.

On September 18, 1981, when she applied for a certificate of Mexican nationality, appellant signed a statement that read in part:

8/ 8 Foreign Affairs Manual, 224.20.

> ...I hereby expressly renounce United States citizenship as well as all submission, obedience and allegiarce to any foreign government, especially that of the United States of America, of which I may have been a national, protection other than that of the laws and authorities of Mexico and any right that treaties and international law grant to aliens. I profess adherence and submission to the laws and authorities of the Mexican Republic. 9/

Appellant's oath of allegiance to Mexico is in itself highly persuasive evidence of an intent to transfer or abandon her allegiance. Coupled with an express declaration of renunciation of United States citizenship, the oath manifests an unmistakable purpose. As the court stated in United States v. Matheson, 400 F. Supp. 1241 (1975), Affd., 532 F. 2d 809 (1976), the declaration of allegiance to a foreign state in conjunction with the renunciatory language of United States citizenship "would leave no room for ambiguity as to the intent of the applicant."

Appellant maintains, however, that her act was not done with the intention of relinquishing her citizenship. She asserts that when she applied for a certificate of Mexican nationality she relied on the explanation of dual nationality prepared by the United States Embassy at Mexico which was published in a local newspaper The News, dated September 30, 1976. She had read that the United States Government has no objection to persons holding dual nationality as long as the individual does not seek any benefits of the other nationality. Although she admits that the article also explained that taking an oath of allegiance is expatriating, appellant states that after reading the statement that the United States does not in principle object to dual nationality,

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9/ Note 2, supra.

she assumed that "it /taking an oath of allegiance/ wou qualified by certain extenuating circumstances." She elaborated as follows in her letter of August 18, 1982, the Board:

> Now my assumption seems justified, for in section 12b of the form Information for determining U.S. Citizenship I declared that the above act was not done with the intention of relinquishing my U.S. citizenship and section 9 of the same form appears to bear out my belief when it says, "If you believe that expatriation has not occurred, either because the act was not voluntary or because you did not intend to relinquish U.S. citizenship, you should skip to item 10. /Emphasis in original./

Without more, appellant may not, merely by protestir that she lacked specific intent to relinquish her United States citizenship, excuse her performance of an act whic on its face is unequivocally derogatory of fidelity to th United States.

Through the article in The News of Mexico City, she on notice that taking an oath of allegiance to Mexico is an expatriating act. Had she been in any doubt about the effect of that act on her United States citizenship after reading an authoritative expose of dual nationality, prudence should have led her to obtain specific advice fr the United States Embassy, as the article recommended. Sh made no attempt to do so, and thus proceeded at her peril. Further, the record shows that appellant's elder brother, a dual national of the United States and Mexico from birth expatriated himself in precisely the way appellant later d Of that fact appellant can hardly have been unaware.

In sum, appellant performed an act which was totally inconsistent with an intention to retain her United States citizenship. Like the plaintiff in Terrazas, appellant in the case before the Board "knowingly, understandingly a voluntarily" took an oath of allegiance to Mexico and concurrently renounced her United States citizenship. Terrazas v. Muskie, 494 F. Supp. 1017 (1980). Appellant's intention to abandon her United States citizenship is manifested by her words and proven conduct.

IV

On consideration of the entire record, we conclude that appellant's declaration of allegiance to Mexico and her concurrent renunciation of her United States citizenship are compelling evidence of her intent to abandon her United States citizenship. The Department has thus carried its burden of proving by a preponderance of the evidence that appellant's voluntary declaration of allegiance to Mexico was accompanied by an intent to relinquish her United States citizenship. Accordingly, we affirm the Department's administrative determination of June 21, 1982, to that effect.

Alan G. James, Chairman

Gerald A. Rosen, Member

James G. Sampas, Member