

September 22, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: K [REDACTED] M [REDACTED] P [REDACTED]

This is an appeal from an administrative [REDACTED] on [REDACTED] Department of State that appellant, K [REDACTED] M [REDACTED] P [REDACTED], expatriated himself on November 5, 1976, under the provisions of section 349(a) (2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

On August 14, 1981, the Department of State determined on the basis of the record before it that appellant had lost his United States nationality. It now contends that it can bear the burden of proving that appellant intended to relinquish his United States citizenship when he made a formal declaration of allegiance to Mexico. The Department therefore requests that the Board remand the **case** for the purpose of vacating the certificate of loss of nationality. The Board will agree to the request.

I

On November 21, 1980, the United States Embassy at Mexico, D.F. presented a certificate of loss of nationality in the name of K [REDACTED] M [REDACTED] P [REDACTED]. The Embassy certifies that [REDACTED] of [REDACTED] therein; that he made a formal declaration of allegiance to Mexico on November 5, 1976; that he obtained a certificate of Mexican nationality on November 5, 1976; and thereby expatriated himself under the provisions of section 349(a) (2) of the Immigration and Nationality Act

---

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

The Department of State approved the certificate on August 14, 1981, approval constituting an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board.

Appellant gave notice of appeal on July 26, 1982.

On September 13, 1983, the Special Counsel, Office of Citizenship Appeals and Legal Assistance, Bureau of Consular Affairs, submitted the record upon which the Department's determination of loss of nationality was based, and a brief requesting that the Board remand the case to the Department for the purpose of vacating the certificate of loss of nationality that was issued in appellant's name. The brief sets forth with particularity points of law and fact which in the Department's judgment warrant remand.

Although the Department maintains that appellant's formal declaration of allegiance to Mexico was a voluntary act, it asserts that the evidence of record is insufficient to support a finding that appellant intended to relinquish his United States citizenship when he performed the allegedly expatriating act; the Department therefore cannot bear its statutory burden of proving by a preponderance of the evidence that appellant intended to surrender his American nationality. 2/

2/ As the Supreme Court held in Vance v. Terrazas, 444 U.S. 252 (1980), section 349(c) of the Immigration and Nationality Act places on the Government the burden of proving by a preponderance of the evidence that the expatriating act was accompanied by the requisite intent to relinquish citizenship.

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

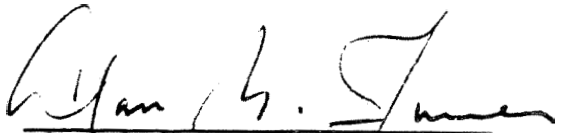
Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish 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.

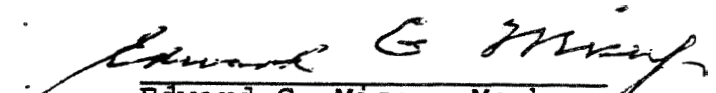
II

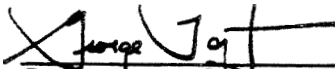
We do not find the Department's arguments in support of its request for remand entirely persuasive, principally in light of Terrazas v. Haig, 653 F. 2d 285 (1981). Furthermore, the record as it now stands does not clearly substantiate appellant's allegations in support of the proposition that he lacked the requisite intent to relinquish his United States citizenship.

Nonetheless, in view of the fact that the Department upon further review of appellant's case maintains that it cannot meet the burden of proving that appellant intended to relinquish his United States citizenship when he declared his allegiance to Mexico, and in the absence of manifest mistakes of law or fact in these proceedings, the Board is agreeable to the request for remand.

The case is hereby remanded for further proceedings. 3

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
George Taft, Member

---

3/ Section 7.2, Title 22, Code of Federal Regulations, 22 C 7.2, provides in part:

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