

March 13, 1984

## DEPARTMENT OF STATE

## BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [REDACTED]

This case is before the Board of Appellate Review on an appeal brought by [REDACTED] from an administrative determination of the Department of State that he expatriated himself on March 9, 1979, under the provisions of section 349(a) (2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

Two issues are presented by the appeal: whether appellant voluntarily made a formal declaration of allegiance to Mexico; and, if so, whether the act was accompanied by an intention to relinquish his United States citizenship.

It is our conclusion that appellant performed the statutory expatriating act in question of his own free will, and that he did so with the intention of terminating his allegiance to the United States. Consequently, we will affirm the Department's holding of loss of nationality.

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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; . . .

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## I

Appellant acquired the nationality of both the United States and Mexico by virtue of his birth in Mexico of an American citizen father on [REDACTED].

For two years after his birth appellant lived in Mexico; from 1960 to 1965, in the United States. When his parents separated, appellant's mother took him back to Mexico, a country of which she was a citizen. He has resided there since. In 1977 appellant registered to vote in Mexico; performed compulsory Mexican military service; and entered university at Mexico City.

On a date not shown in the record, appellant applied for a certificate of Mexican nationality, allegedly to obtain a Mexican passport to visit the United States. (He has never held a United States passport.)

On February 15, 1979, appellant obtained a Mexican passport and a U.S. visa to travel to the United States. Subsequently, on March 9, 1979, he was issued a certificate of Mexican nationality.

The record does not contain a copy of appellant's application for a certificate of Mexican nationality. 2/

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2/ We find the record unsatisfactory in this respect. Nothing in the record, however, indicates that appellant did not follow the procedures laid down by Mexican law when he applied for the certificate. Nevertheless, in the interest of completeness a copy of the application should have been obtained and made part of the record.

The Board notes, however, that under Mexican law, **3/** an applicant for a certificate of Mexican nationality is required to profess "adherence, obedience and submission to the law and authorities of Mexico," and expressly renounce any other nationality he may hold, as well as **all** allegiance to the government of any foreign state **of** which he is **a** citizen. Applicants for a certificate of Mexican nationality must personally sign an application form in Spanish that is largely but not wholly pre-printed, The nationality one expressly renounces and the name of the foreign government to which all allegiance is renounced must be inserted by the applicant in two blank spaces in the form. We may presume that in conformity with the requirements of Mexican law and regulations, **this** appellant inserted the words "United States" and "United States of America" respectively in the two blank spaces in the form he signed to apply for a certificate of Mexican nationality.

In the summer of **1981** it appears that the United States Consulate General at Monterrey learned that appellant had been issued a certificate of Mexican nationality. The Consulate General wrote **to** appellant to inform him that by making a formal **declaration of** allegiance to Mexico he might have expatriated himself. He was invited to fill out a questionnaire to facilitate the determination of his citizenship status. This he did on August 11, **1981**. It **also** seems that he was interviewed by a consular officer at Monterrey in September **1981**, but this is not stated explicitly in the record.

Apparently on the basis **of** information appellant himself provided, the Consulate General prepared a certificate **of** loss **of** nationality in appellant's name on January **13, 1982**, as required by section **358** of the Immigration and Nationality Act. 4/

**3/** The Law of Nationality and Naturalization of January **5, 1934**, as amended.

**4/** 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.

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The Consulate General certified that appellant acquired the nationality of the United States and Mexico at birth; that he made a formal declaration of allegiance to Mexico; and thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on March 15, 1982, approval being an administrative determination of loss of nationality from which a timely and properly filed appeal may be brought to his Board.

Appellant gave notice of appeal on December 8, 1982. He contends that he did not act voluntarily, and that he did not intend to relinquish his United States citizenship.

## II

Section 349(a)(2) of the Immigration and Nationality Act provides that 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 such a declaration to Mexico, and thereby brought himself within the purview of the relevant section of the Act.

American citizenship shall not be lost, however, unless a citizen performs an expatriating act voluntarily and with the intention of relinquishing that citizenship. 5/

The first issue to be determined is whether appellant declared his allegiance to Mexico of his own free will.

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5/ Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

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Under law, a person who performs a statutory expatriating act **is** presumed to have done so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 6/

Appellant avers in his submissions on appeal that he acted involuntarily. He asserts that:

I lost my American Citizenship, without having the proper knowledge **or** adequate advice to help me realize what an enormous and grave mistake **I** was committing. **I** was then only 19 years of age, without the sufficient maturity or experience necessary to know that upon obtaining a Mexican passport, **I** would lose **all** rights to my American Citizenship.

He adduces no evidence, however, to show lack of capacity to perform a voluntary act of expatriation. If he did not have adequate knowledge of the meaning of the act he proposed to perform, he could have and should have got official advice from a **U.S.** consular office before acting. He made no evident effort to do so. Furthermore, the consular officer who, we assume, interviewed appellant in September 1981, reported that he admitted (presumably to her) he was old enough to understand the meaning of the application for a certificate of Mexican nationality; that he had not been forced to sign it; and had not attempted to avoid taking the required oath. Appellant's own words, written August 11, 1981, in the citizenship questionnaire he filled out at the Consulate General at Monterrey attest to the **voluntariness** of his act,

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6/ Section 349(c) of the Immigration and Nationality Act, 8 **U.S.C.** 1481, provides in pertinent part as follows:

...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.

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despite his later claim to the contrary. He wrote: "I took the oath voluntarily because it was necessary to obtain the Mexican passport."

It is our conclusion that appellant voluntarily made a formal declaration of allegiance to Mexico.

### III

Even though appellant voluntarily performed a statutory expatriating act, the question remains whether on all the evidence he did so with the intention of relinquishing his United States citizenship. 7/

It is the Department's burden to prove by a preponderance of the evidence that appellant intended to relinquish his United States citizenship when he made a formal declaration of allegiance to Mexico. 8/ Intent may be shown by appellan words or found as a fair inference from proven conduct. 9/ Intent is to be proved as of the time the alleged expatriatin act was performed - in this case, 1979. 10/

To support his contention that he lacked the intent to give up his United States citizenship, appellant submits that his only purpose in seeking a certificate of Mexican nationality was to obtain a Mexican passport so that he could visit the United States and return to Mexico. He contends as follows:

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7/ Vance v. Terrazas, note 4, supra.

8/ Id.

9/ Id.

10/ Terrazas v. Haig, 653 F. 2d 285 (1981).

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If I had intentionally wanted to lose my Citizenship, I would have gone directly to the American Consulate for this purpose. I was under the impression, at that time, that the only procedure acceptable to the American Consulate for revoking American Citizenship was to appear before an Official of the Consulate and there state that I wanted to voluntarily renounce to my Citizenship.

The Department bases its case of intentional relinquishment of citizenship on two principal considerations: (1) appellant expressly renounced his United States citizenship and all allegiance to the United States when he pledged allegiance to Mexico; and (2) that he did nothing before or after he made the declaration of allegiance to Mexico in 1979 to cast doubt on his intent to terminate citizenship when he applied for a certificate of Mexican nationality.

Where a plaintiff, who instituted an action in Federal court to regain his citizenship, had made a similar voluntary declaration of allegiance to Mexico and expressly renounced his United States citizenship, the Court of Appeals for the Seventh Circuit held that:

Plaintiff's knowing and understanding taking an oath of allegiance to Mexico and an explicit renunciation of his United States citizenship is a sufficient finding that plaintiff intended to relinquish his citizenship. 11/

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11/ Terrazas v. Haig, note 9, supra.

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It seems clear that appellant in the case before us declared his allegiance to Mexico knowingly and understanding. Shortly before applying for a certificate of Mexican national he had completed a university education. Having lived and studied in Mexico since childhood he evidently was fluent in Spanish. He can therefore hardly have mistaken the import of the words in the application: "I expressly renounce United States citizenship."

The record contains no evidence putting in question the intent appellant so clearly revealed when he swore allegiance to Mexico and renounced his United States citizenship. There is no indication that he held himself out as a United States citizen until 1981, or that he exercised the rights or discharged the duties of United States citizenship.

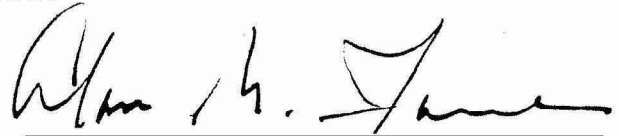
The Board is not indifferent to appellant's professed remorse at having made "a big mistake." But the issue is not what his subjective intent might have been in 1979; it is the intent he showed overtly by his words or proven conduct. He performed a statutory expatriating act voluntarily and affirm unreservedly that he renounced his United States citizenship. Specific intent could not be more obvious.

We have no basis to find that appellant's intent in 1979 was other than to forsake his allegiance to the United States.

It is our judgment that the Department has carried its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States citizenship when he made a formal declaration of allegiance to Mexico.

## IV

On consideration of the foregoing and our review of the entire record, we conclude that appellant voluntarily and intentionally relinquished his United States citizenship. We therefore affirm the Department's determination of March 15, 1982, to that effect.



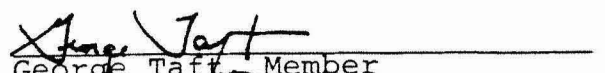

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 Alan G. James, Member




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 J. Peter A. Bernhardt, Member




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 George Taft, Member