January 27, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This case comes 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 November 11, 1966, under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

The issues for decision are whether appellant performed a valid statutory act of expatriation, and, if so, whether the act was done freely and with the intention of relinquishing his United States citizenship. We conclude that appellant voluntarily performed a valid expatriating act, and that it was accompanied by an intention to terminate his United States citizenship. Accordingly, we will affirm the Department's holding of loss of nationality.

/ Section 349(a)(2) of the Immigration and Nationality Act, 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; . . .

I

Appellant was born in Mexico on [redacted], of two United States citizen parents and thus acquired United States citizenship at birth under section 1993 of the Revised Statutes of the United States in effect on that date. Under that section, a person born outside the United States of two American citizen parents, became a United States citizen at birth.

By virtue of his birth in Mexico and since he did not avail himself of his option under Mexican law to choose his father's nationality within three months of attaining the age of twenty-one, appellant also acquired citizenship of Mexico. 2

Appellant was educated in Mexico. On his eighteenth birthday he registered for the united States draft at the Consulate General at Monterrey, and was inducted into the United States Army in July 1944. He served in the Philippines campaign and the occupation of Korea. Following an honorable discharge in August 1946, appellant joined the Enlisted Reserve Corps in which he served for three years. He attended Loyola University at New Orleans and returned to Mexico in 1949.

2/ Article 2 (Provisional) of the Mexican Nationality and Naturalization Law of January 5, 1934.

In that year and again in 1951 appellant was registered as United States citizen at the Consulate General in Monterrey. e obtained a passport at New Orleans in 1952 to travel to onduras where he was employed by the United Fruit Company. e renewed his passport at the Consulate at San Pedro Sula, onduras in 1955.

It seems that appellant returned to Mexico in 1955, and eriodically from 1956 through 1962 was registered as an American itizen at the Consulate General in Monterrey.

According to appellant's submissions, he worked for the ockheed Missile and Space Company at Vandenberg Air Force Base rom 1962 to 1964. He obtained a certificate of United States itizenship from the Immigration and Naturalization Service at San 3is Obispo, California, on June 20, 1963, as authorized by ection 341 of the Immigration and Nationality Act. 3/

/ Section 341 of the Immigration and Nationality Act, 8 U.S.C. $52, provides in part:

Sec. 341. A person who claims to have derived United tates citizenship through the naturalization of a parent r through the naturalization or citizenship of a husband, r who is a citizen of the United States by virtue of the rovisions of section 1993 of the United States Revised tatutes,....may apply to the Attorney General for a ertificate of citizenship...."

Appellant states that he returned to Mexico in July 1964 to be near his elderly and ailing parents, and that he obtained employment in San Luis Potosi.

In 1966, appellant says, he was appointed chairman of the board of the company for which he was working, a position allegedly requiring Mexican citizenship. On advice of counsel, he decided to obtain a certificate of Mexican nationality to document his Mexican citizenship.

The record shows that [redacted] signed a power of attorney on June 9, 1966, at San Luis Potosi, authorizing Lic. Carlos Santos Rowe to:

> ...obtain from the Department of Foreign Relations my renunciation of United States citizenship derived from my father and my adoption of Mexican citizenship to which I am entitled by my birth in that country, authorizing you to sign all the necessary papers...required to obtain my Mexican citizenship card. 4/

4/ English translation, Division of Language Services, Department of State, L.S. No. 110633, Spanish (1983).

The power appears to be a general one, with a large space at the beginning to be filled in with the terms of the power. The entry on the form was made by typewriter.

The record also discloses that "[redacted] signed an application for a certificate of Mexican nationality on June 22, 1906, at San Luis Potosi, professing "adherence, obedience and submission to the law and authorities of Mexico" and "expressly renounc/ing/ United States citizenship as well as all submission, obedience and allegiance to any foreign government, especially that of the United States of America,..... 5/

5/ The application contained the following statement:

> Accordingly, I hereby expressly renounce ..... citizenship as well as all submission, obedience and allegiance to any foreign government, especially that of ..... to which I may'have been subject, all protection alien to the law and authorities of Mexico, and any right that treaties and international law grant to aliens. In addition, I profess adherence, obedience and submission to the law and authorities of Mexico.

English translation, Division of Language Services, Department of State, LS No. 107320-A, Spanish (1982).

The blank spaces in the statement were filled in with the words "Norteamericana" (United States) and "Estados Unidos de America" (United States of America), respectively.

On November 11, 1966, a certificate of Mexican nationality was issued by the Department of Foreign Relations in the name of "[redacted]" The certificate recited in part as follows:

> The Head Clerk of the Department of Foreign Relations certifies that [redacted] has duly proven to this Department that he was born in the national territory on April 22, 1926, and is covered by Article 2 (Provisional) of the Nationality and Naturalization Law of January 5, 1934, in force. Inasmuch as within three months after attaining legal age he did not avail himself of the right to elect the foreign nationality of his father referred to in the aforesaid Article, he holds Mexican nationality by birth. 6/

According to appellant, he received the certificate in late November from his attorney to whom it had been sent by the Department of Foreign Relations.

There is no record of any dealings between appellant and the United States Government from 1963, when he obtained a certificat of United States citizenship, until 1979.

6/ English translation, Division of Language Services, Department of State, No. LS 107320-C, Spanish (1982).

In September 1979, appellant visited the United States Consular Agency at San Luis Potosi to apply for registration as an American citizen. He executed a questionnaire to assist the Department to make a determination of his citizenship status, answering "No" to a question whether he had ever been naturalized in, or taken an oath of allegiance to, a foreign state.

On May 2, 1980, the Department of Foreign Relations, responding to an inquiry of the United States Embassy at Mexico, D.F., informed the Embassy that appellant had renounced his United States citizenship and had been issued a certificate of Mexican nationality. 7/

In June 1980, the Consulate General at Monterrey asked appellant to complete a supplemental statement in connection with his application for registration. This he did. The

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7/ Diplomatic Note. No. 0527, May 2, 1980, from the Department of Foreign Relations to the United States Embassy, Mexico, D.F. English translation, Division of Language Services, Department of State, LS No. 107320-B, Spanish (1982).

Consulate General then prepared a certificate of loss of nationality in appellant's name, in accordance with section 358 of the Immigration and Nationality Act. 8/

The Consulate General certified that appellant had been born at Fresnillo, Zacatecas, Mexico, on April 22, 1926; that he acquired the nationality of the United States by virtue of his birth in Mexico of United States citizen parents; that he acquired the nationality of Mexico by virtue of birth therein; that he made a formal declaration of allegiance to Mexico on June 22, 1966, and obtained a certificate of Mexican nationality on November 11, 1966; and thereby expatriated himself under section 349(a)(2) of the Immigration and Nationality Act.

After holding appellant's case under advisement for nearly a year in order to investigate certain factual matters, the Department approved the certificate on May 11, 1981. Approval constitutes an administrative determination of loss of nationality from which a properly and timely filed appeal may be brought to this Board.

8/ 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.

Appellant initiated this appeal by letter to the Board dated September 1, 1981. He contends that his obtaining a certificate of Mexican nationality was not accompanied by an intent to relinquish his United States citizenship and/or to transfer his allegiance to Mexico; and that his purpose in seeking the certificate was simply "to request to /sic/ the Mexican Department of Foreign Relations to issue an official certificate stating that I was born in the Territory of Mexico." In brief, he asserts that "the act of expatriation with the intent to relinquish my U.S. citizenship was never concented /sic/ by me voluntarily and knowingly."

II

Under the statute, a national of the United States who makes a formal declaration of allegiance to a foreign state shall lose his nationality. 9/ The Supreme Court, however, has held, that expatriation shall not result from performance of a statutory expatriating act unless the act was performed voluntarily and in accordance with applicable legal principles. Perkins v. Elg, 307 U.S. 325 (1939). The Government has the burden, under the statute, to prove that a valid expatriating act was performed. 10/

9/ Note 1, supra.

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

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.

The instant case bears close analogy to that of Terrazas v. Vance, NO. 75-2370 D.C. N.D. Ill.), August 16, 1977. Plaintiff in Terrazasand appellant here both executed applications for a certificate of Mexican nationality. In both cases, the application form was printed in Spanish and contained a statement of express renunciation of United States nationality and a declaration renouncing all submission, obedience and fidelity to any foreign government, especially to the United States. The form also contained a declaration of adherence, obedience and submission to the laws and authorities of Mexico. Plaintiff in Terrazas testified that when he signed the application, the form contained blanks where the words "United States" and "United States of America" later were filled in. Appellant here makes the same contention, stating that the attorney he empowered to obtain the certificate on his behalf filled in the blank spaces after he had signed the form. On the strength of the applications signed by both Terrazas and appellant in this case, the Mexican authorities issued certificates of Mexican nationality. Both Terrazas and this appellant accepted the certificate.

In rendering his decision in Terrazas, the District Judge did not comment on the plaintiff's allegation that he had merely signed the application and that the blank spaces had later been filled in by another. It is obvious from the District Judge's opinion that he did not consider the plaintiff's contention in that regard to be material. The District Judge found that an oath of allegiance to Mexico and renunciation of a foreign citizenship were conditions precedent under Mexican law to issuance of a certificate of Mexican nationality. He also found that the oath or declaration of allegiance contained in the application signed by Terrazas was meaningful, since it placed him in complete subjection to Mexico. The District Judge therefore concluded that Terrazas' declaration of allegiance to Mexico brought him within the purview of section 349(a) (2) of the Immigration and Nationality Act.

Applying the precedent of Terrazas to the instant case, we conclude that appellant performed a valid act of expatriation when he signed an application for a certificate of Mexican nationality.

III

Under law, a person who performs an act, designated by statute as expatriating, 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 done involuntarily. 11/

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

. . .

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.

Appellant has made the barest allegation of involuntariness without essaying his burden of proof. He admits that he applied for a certificate of Mexican nationality. And it is clear that he did so deliberately after consultation with counsel. His decision was not the result of any external pressure; rather it was the product of a personal choice.

Since "the opportunity to make a personal choice is the essence of voluntariness," 12/ we conclude that appellant voluntarily declared his allegiance to Mexico.

IV

Even though we have concluded that appellant voluntarily made a meaningful declaration of allegiance to Mexico, we must still determine whether he did so with the intention of relinquishing his United States citizenship. For, as the Supreme Court held in Vance v. Terrazas, 444 U.S. 252 (1980), loss of nationali will not ensue unless the trier of fact in the end concludes on all the evidence that the citizen not only voluntarily committed an expatriating act prescribed by the statute, but also intended to relinquish citizenship. The Government must, the Supreme Court stated, establish such intent by a preponderance of the evidence. Under the Court's holding, intent may be ascertained from a person's words or be found as a fair inference from proven conduct.

Intent is to be determined as of the time the allegedly expatriating act was done. Terrazas v. Haig, 653 F. 2d 285 (1981

Making a formal declaration of allegiance to a foreign state like performance of the other enumerated acts of the statute, may be highly persuasive evidence of an intent to relinquish United States citizenship, but it is not conclusive evidence. Vance v. Terrazas, citing Nishikawa v. Dulles, 356 U.S. 129 (1958).

12/ Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (1971).

There is no evidence bearing on appellant's intent contemporaneous with his 1966 declaration of allegiance to Mexico, with the possible exception of the power of attorney he gave his counsel, Carlos Santos Rowe, to obtain a certificate of Mexican nationality. 13/ He did not raise the issue of his intent until 1981 when he initiated this appeal.

In the statement of appeal he filed in September 1981, appellant contended that it never was his intention to renounce his United States nationality; "it was simply a matter to request to the Mexican Department of Foreign Relations an official certificate stating that I was born in the territory of Mexico."

Appellant submitted two sworn statements (dated September 13, 1982, and November 1, 1983, respectively) in which he described why he sought a certificate of Mexican nationality and how his request had been executed.

Regarding his execution of the power of attorney, appellant recalled that it "was a simple printed form you buy in any stationary /sic/ store, in which you filled in the terms....I merely signed the form and left Lic. Carlos Santos Rowe fill the blank space."

13/ Appellant informed the Board in September 1982 that he had not kept a copy of the power of attorney. At the Board's request, the U.S. Embassy at Mexico, D.F. obtained a copy from the Department of Foreign Relations and submitted it to the Board in August 1983.

Appellant has consistently maintained that he signed the power of attorney in blank. As noted above, the specific terms of the power - "to obtain my renunciation of United States citizenship and obtain a certificate of Mexican nationality" - were inserted by typewriter at the beginning of the instrument.

The record also shows that two weeks later, on June 22, 1966, an application for a certificate of Mexican nationality was executed in appellant's name with the signature "[redacted]" appearing at the bottom. Appellant acknowledged in his affidavi of November 1, 1983, that he had signed the application. 14/ All entries on the printed application were made by typewriter. At the beginning of the application, following the formal reques for issuance of a certificate, there is also a typed entry: "authorizing Lic. Carlos Santos Rowe...".

In his affidavit of September 13, 1982, appellant explained what happened next.

> Lic. Carlos Santos Rowe handled all by himself in the Mexican Department of Foreign Relations in order to get the certificate I stated before, a Certificate stating that I was born in Mexico only, and not that I was renouncing to /sic/ United States citizenship. I never went to the Department of Foreign Relations personally to request the certificate in question and/or to sign any paper or document for that effect and none the less to renounce my United States citizenship.

14/ In his earlier submissions, appellant had not specifically stated that he had signed the application. He left the impress: that his signature might have been placed on the application by, his attorney pursuant to the power he had granted the latter. provenance of the signature on the application was only establi: after the Board asked appellant to submit an affidavit stating whether he had signed the application.

Appellant stressed that Santos Rowe handled the whole affair "without my personal interference as it was just a matter of getting a certificate stating that I was born in Mexico."

Amplifying the foregoing statement, appellant stated in his affidavit of November 1, 1983:

> The Power of Attorney, dated June 9, 1966, and the "sheet of paper" in which the application for a certificate of Mexican nationality, dated June 22, 1966, was written on, were sent under the request of Lic. Santos Rowe to him in BLANK, these two blank forms were signed by me as [redacted] here in San Luis Potosi. Later on in Mexico City, Mr. Santos Rowe filled them out himself at his discration /sic/ these two documents, keeping me ignorant as of its content.

The certificate of Mexican nationality was issued November 11, 1966.

Mexican law requires that in order for a certificate of Mexican nationality to be issued, the interested party must personally sign the petition as well as the renunciation of his previous nationality. A legal representative may, however, carry out the other related procedures and present documents. 15/

15/ Article 45 of the Nationality Act of January 5, 1934, as amended. See also Diplomatic Note No. 7001261, Department of Foreign Relations to the United States Embassy, Mexico, D.F. April 5, 1983, English translation, Division of Language Services, Department of State, No. 109833, Spanish (1983).

We do not challenge appellant's contention that he signed the power of attorney in blank and was not aware that his attorney later inserted a statement about appellant's renunciation of his United States citizenship. The relevant inquiry is whether in signing the application for a certificate of Mexican nationality appellant manifested an intention to relinquish his United States citizenship.

We will accept appellant's statement that at the time he signed the application the two spaces referring to the citizenship renounced and the name of the government to which "all submission, obedience and allegiance" were renounced were blank, and that he did not himself fill in the words "United States" and "United States of America," respectively. And it is possible that appellant may have signed his name hastily after having given the form only a cursory glance. But it is clear from the record that appellant is an educated man, was of mature years in 1966, and fluent in Spanish. If he did not in fact read the form he should have done so, and may not, as a matter of law, assert that he had no knowledge of its import. He should have noted that in order to obtain a certificate of Mexican nationality, the applicant is required to declare that he expressly renounces a specific citizenship and all fidelity to any foreign government, especially that of a specific country. Having only United States and Mexican nationality, at the time, appellant could have been in no doubt that the words "United States" and "United States of America" were to be inserted in the blank spaces.

The application was hardly a "sheet of paper." It concerned a vital matter - appellant's citizenship status, and he knew that fact. His purpose in soliciting a certificate of Mexican nationality may simply have been to document the fact that he had been born in Mexico and held Mexican citizenship. But he had ample notice that a requirement of Mexican law for issuance of the certificate is express renunciation of any other nationality, as clearly set forth on the printed application for a certificate of Mexican nationality. He ought not have proceeded without ascertaining all the consequences of his act. Whatever may have been his subjective intent in 1966, the intent the Department must prove is the intent appellant manifested by his words or proven conduct. In signing the application appellant gave palpable expression to his intent.

We construe appellant's signing an application for a certificate of Mexican nationality in the same way the court construed the act of plaintiff in Terrazas v. Haig. Therein the court said:

Plaintiff's knowing and understanding taking of 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.

Nothing in appellant's conduct subsequent to his signing an application for a certificate of Mexican nationality casts any doubt upon his intention in 1966 regarding his United States citizenship. From 1963 when he obtained a certificate of United States citizenship until 1979 when he sought registration as a United States citizen, there is no record that appellant exercised the rights and duties of United States citizenship. The only fair inference that might be drawn from his comportment after he formally declared his allegiance to Mexico is that it tacitly ratified his actions of 1966.

The Department has, in our view, sustained its burden of proof 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.

V

Upon consideration of the foregoing and our examination of the entire record, we conclude that appellant expatriated himself. Accordingly, we affirm the Department's holding of May 11, 1981, to that effect.

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member