

October 2, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: L [REDACTED] A [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, L [REDACTED] A [REDACTED]-P [REDACTED] expatriated herself on August 7, 1981 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 Department of State determined on July 27, 1983 that appellant had expatriated herself. It now submits that, upon further examination of the administrative record, the evidence of record is insufficient to support a holding of loss of nationality. The Department therefore requests that the Board remand appellant's case so that the certificate of loss of nationality may be vacated.

The Board will grant the request for remand.

I

The United States Embassy at Mexico City prepared a certificate of loss of nationality in the name of P [REDACTED] /sic/ A [REDACTED]-P [REDACTED] on June 3, 1983, acting in compliance with the provisions of section 358 of the Immigration and Nationality Act. 2/

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

Section 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....

2/ 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 was born on [REDACTED] at [REDACTED] and thereby acquired United States citizenship; that she also acquired the nationality of Mexico at birth through her Mexican citizen father; that she made a formal declaration of allegiance to Mexico on August 7, 1981, and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department concluded that the evidence of record was insufficient to support Ms. [REDACTED] contention that she was forced to apply for a certificate of Mexican nationality wherein she had made a formal declaration of allegiance to Mexico; and that her intent to relinquish United States nationality was evidenced by the fact that in the application she expressly renounced her United States nationality. Accordingly, the Department approved the certificate on July 27, 1983, approval being an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to this Board.

The Appeal was entered on April 12, 1984.

Appellant contends that she applied for the certificate of Mexican nationality during a time of psychological depression and under the duress of her father, a senior official of the Mexican Government who allegedly was concerned about his own political standing if his dual national daughter were to retain her United States citizenship. Appellant further maintains that she did not intend to relinquish her United States nationality. Statements in support of appellant's case were submitted by her father, her doctor and her lawyer who, at appellant's father's initiative, obtained the application for a certificate of Mexican nationality and processed it on appellant's behalf.

The record also contains statements of the two consular officers of the United States Embassy at Mexico who had interviewed appellant and who expressed the opinion that she lacked the requisite intent to relinquish United States nationality.

On September 21, 1984 the Deputy Assistant Secretary for Consular Affairs submitted the administrative record and a memorandum requesting that the Board remand appellant's case for the purpose of vacating the certificate of loss of nationality.

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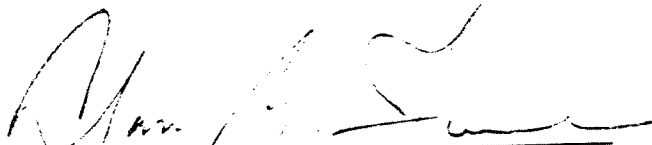
The Department supported the request for remand with the following argument.

In the case of Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court held that a person could not be found to have expatriated herself unless it is shown by a preponderance of the evidence that she had voluntarily performed an act declared by Congress to be expatriating with the intent thereby to relinquish her United States citizenship. Whereas the voluntariness of a statutorily-designated expatriatory act may be presumed under Section 349(c), Immigration and Nationality Act of 1952, 8 U.S.C. Section 1481(c), the Department carries the burden of proving a person's intent to relinquish citizenship, by a preponderance of the evidence. Vance v. Terrazas, supra. After reviewing the submissions made by the appellant in this appeal, along with the statements of the two consular officers at the Mexico City U.S. Embassy who were involved in the case, the Department believes it cannot carry this burden of proof. While the Department still maintains the appellant has not presented substantial enough evidence to rebut the presumption of voluntariness, it is now persuaded that she did not intend to relinquish her U.S. citizenship when she took the renunciatory oath to Mexico. The Department requests therefore that the Board remand Ms. Alvarez' case for cancellation of the Certificate of Loss of Nationality and restoration of her U.S. citizenship.


II

Inasmuch as the Department has concluded that it is not able to carry its burden of proving that appellant intended to relinquish her United States citizenship, and in the absence of manifest errors of law or fact, the Board agrees to the request for remand.

The case is hereby remanded for further proceedings.


Alan G. James, Chairman


J. Peter A. Bernhardt, Member


Frederick Smith, Jr., Member

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

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