

DEPARTMENT OF STATE
BOARD OF APPELLANT REVIEW

IN THE MATTER OF: E [REDACTED] G [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, E [REDACTED] G [REDACTED], expatriated herself on July 29, 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/

Appellant concedes that she voluntarily made a formal declaration of allegiance to Mexico. The sole issue for decision therefore is whether she performed the statutory expatriating act with the intention of relinquishing her United States nationality. We conclude that appellant's performance of the proscribed act was accompanied by an intent to surrender United States citizenship. We will, accordingly, affirm the Department's holding of **loss** of her United States nationality.

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 was born on [REDACTED] She derived United States nationality through her American citizen father, and Mexican citizenship by birth in that country. Her permanent residence since birth has been in Mexico.

The records of the United States Embassy at Mexico, D.F. show that appellant has been registered there since birth, and that periodically she was issued a U.S. identity card, the last having been issued in April 1976.

It appears that in the Spring of 1981 appellant thought about choosing between her United States and Mexican nationalities. According to her submissions:

At the end of May 1981 I E [REDACTED] G [REDACTED] R. went to the passport office at the American Embassy in Mexico City and asked to have my U.S. I. D. card renewed since it fell due on the 23rd. of June 1981. At that time the Consul told me that I had to go to the Secretaria de Relaciones and arrange my Mexican status, there first, since I was born in Mexico of an American born father and a Mexican born mother.

Embassy records, however, present a somewhat different picture. A notation made on a card recording official Embassy contacts with appellant reads as follows:

June 2, 1981 - Info sheet on dual-nat. given to daughter E [REDACTED] this date. She indicated she will probably keep Mexican nationality. Will wait until June 23, 1981 when she becomes 18 and will come back with a decision. ace 2/

2/ The "Info sheet on dual-nat." is presumably the document is: by the United States Embassy at Mexico, D.F. entitled "Information concerning American-Mexican Dual Nationals." Mex/PPT-3 December 1979 GLQ. It sets out clearly and in considerable detail the provisions of Mexican law that require dual nationals to elect between their foreign and Mexican nationality upon attaining the age of 18. It also warns that making a formal declaration of allegiance to Mexico is a potentially expatriating act under U.S. law. ("ace" presumably refers to the consular officer or employee who entered the information.)

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Appellant continues :

During the first week of June of this same year I went to the Exterior Relations Dept. and they told me to come after my 18th birthday. I returned there thinking that I was to sign papers giving up my Mexican citizenship and leaving a clear path towards receiving my definite American citizenship. I presented myself without legal or parental advice, since my parents at the time were traveling and requested that I join them in August in Los Angeles. I then still had my Mexican passport which I had taken out a year before.. ..

The record shows that on June 26, 1981, three days after her 18th birthday, appellant signed an application for a certificate of Mexican nationality. As required by Mexican law, she expressly renounced her United States nationality and all fidelity to the Government of the United States. Simultaneously, she declared allegiance to the laws and authorities of Mexico.

A certificate of Mexican nationality was issued to appellant on July 29, 1981.

Thereafter, appellant states,:

...I [sic] returned to the American Embassy and asked once again for my U.S.I.D. card. I was asked what had happened at the Exterior Relations Dept. I stated that I had signed a paper they gave me, I did not remember what it said, under these conditions the U.S. passport Dept. issued one visa for a three month period indicating that my citizenship was in process of being determined and they collected and canceled my U.S.I.D. card.

The record confirms that appellant visited the Embassy in the Summer of 1981, for on August 11th appellant completed a form entitled "Information for Determining U.S. Citizenship." In it she acknowledged that she had obtained a certificate of Mexican nationality. On the same day, the Embassy's Citizenship and Nationality Ssction apprised the Visa Section that appellant might have lost a claim to United States citizenship, and recommended that she be given a visa valid for one entry, "since her Certificate of Loss of Nationality is in process." Appellant

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evidently received a visa, for she state⁵ that she joined her parents in California, and that later they returned together to Mexico.

In October 1981 the Department of Foreign Relations informed the United States Embassy that appellant had made a formal declaration of allegiance to Mexico and has seen issued a certificate of Mexican nationality. 3/

On October 26, 1981 the Embassy wrote to appellant to inform her that she might have lost her citizenship by making a formal declaration of allegiance to Mexico. The Embassy presumably also invited appellant to call for an interview regarding her case, for it appears that appellant visited the Embassy on January 4, 1982, and on that date completed a second form for determining U.S. citizenship.

On January 8, 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. 4/ The Embassy

3/ Diplomatic Note 7001436, Department of Foreign Relations to the United States Embassy, Mexico, D.F., October 5, 1981.

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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certified that appellant acquired the nationality of both the United States and Mexico at birth; 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 August 5, 1982, approval being an administrative determination of **loss** of nationality from which an appeal, properly and timely filed may be brought to this Board.

Appellant initiated the appeal on July 13, 1983. Although she concedes that she voluntarily applied for a certificate of Mexican nationality and in the process pledged allegiance to Mexico, she argues in effect, that she did not have the intention of relinquishing her United States citizenship. She did not, she contends, understand that by declaring her allegiance to Mexico she might lose her United States citizenship. "I didn't realize the consequences."

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 a formal declaration of allegiance to Mexico and thus brought herself within the reach of the statute. The Supreme Court has held, however, that citizenship shall not be lost through performance of a statutory act of expatriation unless the act was done voluntarily and with the intention of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

Here, appellant has conceded that she voluntarily made a declaration of allegiance to Mexico. The sole issue to be determined therefore is whether her performance of the proscribed act **was** accompanied by the requisite intent to give up United States citizenship.

Under the rule enunciated by the Supreme Court in Vance v. Terrazas, it is the Government's burden to prove by a preponderance of the evidence that the expatriating act in question was done with the intention of relinquishing United States citizenship. Intent, the Supreme Court said, may be ascertained from a person's words or found as a fair inference

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from proven conduct. Performance of the acts the statute prescribes as expatriating, may, the Court also said, be highly persuasive evidence, but not conclusive, of an intention to give up United States citizenship. ^{5/} Intent is to be determined as of the time the expatriating act was done. ^{6/}

Appellant maintains that she did not intend to relinquish her United States citizenship when she made a declaration of allegiance to Mexico. The Department contends, however, that her intent to surrender United States citizenship is proved by the statements she made renouncing U.S. citizenship and allegiance to the United States when she applied for a certificate of Mexican nationality, and by statements she made in the citizenship questionnaires she completed in August 1981 and January 1982.

The controlling case law holds that making a declaration of allegiance to a foreign state in conjunction with renunciation of one's United States citizenship manifests an intent to give up United States citizenship. As the court said in Terrazas v. Haig:

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. ^{7/}

In Terrazas, the court found that plaintiff, an educated man, 22 years old, knowingly and understandingly declared his allegiance to Mexico. And it found in his conduct after he received a certificate of Mexican nationality abundant confirmatory evidence of his intent to relinquish his United States citizenship when he made the declaration of allegiance.

Here, appellant, although young, was of legal age when she performed the expatriating act in question. Her submissions to the Board show that she is of average acumen, and the record shows that she is fluent in Spanish. She was given clear, precise and readily comprehensive information about the applicability of U.S. and Mexican law to dual nationals like herself before she applied for a certificate of Mexican nationality. Furthermore, the language of the application for a certificate of Mexican nationality is easily comprehensible to any literate person. The import of the phrases "expressly renounce my United

^{5/} Citing Nishikawa v. Dulles, 356 U.S. 129 (1958).

^{6/} Terrazas v. Haig, 653 F. 2d 285 (1981).

^{7/} Id., 288.

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States citizenship and all fidelity and allegiance to any foreign government" are hardly ambiguous. We are therefore unable to accept appellant's contention that she was not aware of the consequences of declaring allegiance to Mexico. It is apparent that appellant knowingly and understandingly made such a declaration, being fully cognizant of the legal consequences for her United States citizenship that might flow therefrom.

Appellant's statements in the citizenship questionnaires of August 1981 and January 1982 supply additional evidence of her intent only a few months earlier to terminate United States citizenship.

In the form completed in August 1981 appellant stated: "I renounced American nationality, renouncing at the Embassy and asking for a letter of Mexican nationality at the Foreign Office." She stated that she knew she might lose U.S. citizenship by performing the act in question, "and for this reason I renounced American citizenship and took the Mexican nat."

In the January 1982 form appellant signed a statement that read as follows:

I, E [REDACTED] G [REDACTED], performed the act of expatriation in Item 7 (a) (b) /obtained naturalization in a foreign state and made a formal declaration of allegiance to a foreign state/ voluntarily and with the intention of relinquishing my U.S. nationality.

She did not complete the remainder of the form wherein she had the opportunity to provide further information about the circumstances surrounding her performance of the expatriating act.

Nothing of record about appellant's conduct after she applied for and obtained a certificate of Mexican nationality raises doubts about her intent at the time she declared allegiance to Mexico. As noted above, the statements she made thereafter to the Embassy substantiate the highly persuasive evidence of her intent at the critical time - June/July 1981. Moreover, in August 1981 she obtained a visa from the Embassy to travel to the United States on a Mexican passport.


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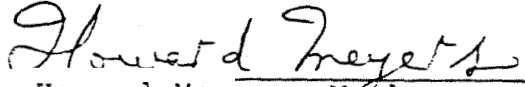
Although appellant may have acted hastily and, as she has stated, without parental guidance, close reading of the record discloses nothing that would lead us to doubt that appellant made a rational decision while of legal age to divest herself of United States citizenship and assume Mexican nationality.

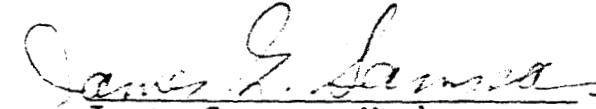
The Department has carried its burden of proving that appellant intended to relinquish her United States citizenship when she made a formal declaration of allegiance to Mexico.

III

After reviewing the entire record and on the strength of the foregoing analysis, it is our conclusion that appellant voluntarily made a formal declaration of allegiance to Mexico with the intention of terminating her United States citizenship. Accordingly, we affirm the Department's holding to that effect.


Alan G. James, Chairman


Howard Meyers, Member


James Sampa, Member