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105  
May 24, 1985

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

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

[REDACTED] E [REDACTED] I [REDACTED] appeals from an administrative determination of the Department of State that she expatriated herself on September 17, 1971 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 determined on February 22, 1984 that appellant had forfeited United States citizenship. Appellant gave notice of appeal on February 6, 1985. Upon a further review of the administrative record, the Department now submits that it is unable to carry its statutory burden of proving that appellant intended to relinquish her American nationality when she made a formal declaration of allegiance to Mexico. Accordingly, the Department requests that the Board remand the case for the purpose of vacating the certificate of loss of nationality that was approved in appellant's name. We grant the request.

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....

I

The United States Embassy at Mexico City executed a certificate of loss of nationality in the name of J [REDACTED] E [REDACTED] D [REDACTED] on October 13, 1983. The certificate recited that appellant was born at [REDACTED] of United States citizen parents; that she acquired the nationality of the United States and Mexico at birth; that she made a formal declaration of allegiance to Mexico on July 30, 1971 and was granted a certificate of Mexican nationality on September 17, 1971; and thereby expatriated herself on September 17, 1971 under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on February 22, 1984, <sup>2/</sup> an act that constitutes an administrative determination of loss of nationality from which an appeal, timely and properly filed, may be taken to the Board of Appellate Review. The appeal was timely, having been entered on February 6, 1985.

The Deputy Assistant Secretary of State (Passport Services) on May 6, 1985 submitted the administrative record upon which the Department's holding of appellant's expatriation was based and a memorandum of law and fact requesting that the Board remand the case for the purpose of vacating the certificate of loss of nationality.

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2/ There appears to be an irregularity with respect to the Department's approval of the certificate of loss of nationality that was executed by the Embassy. Although the stamped notation on the record copy of the certificate shows the approval date of February 22, 1984, it is not signed by an authorized designee of the Secretary of State to approve such certificate.

The Department's memorandum reads in pertinent part as follows:

The appellant has lived most of her life in Mexico and is married to a Mexican. She has always thought of herself as a dual citizen. She obtained Cards of Identity on September 13, 1956, November 21, 1958, January 10, 1960, and January 10, 1966. However, on September 17, 1971 Mrs. Da [redacted] obtained a Certificate of Mexican Nationality (CMN) by making an oath of allegiance to Mexico which contained language expressly renouncing her U.S. citizenship.

In an interview on September 21, 1983 with a Consular Officer, Mrs. [redacted] said that she could not recall the circumstances under which she signed the oath nor that the oath contained language in which she renounced her United States citizenship. She was also unaware of the Mexican law which did not permit dual nationality after the age of 18.

Mrs. [redacted] applied for a U.S. passport on October 8, 1971, only three weeks after receiving her CMN. She then obtained U.S. passports on December 8, 1972 and January 24, 1978, clearly demonstrating that she did not intend to relinquish her United States citizenship when she naturalized as a Mexican citizen.

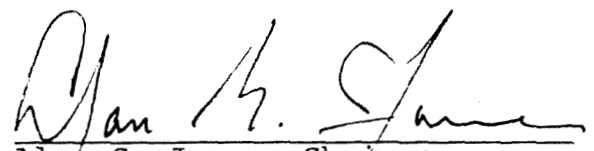
In the case of Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court held that a person could not be found to have expatriated herself unless it is shown by a preponderance of the evidence that she had voluntarily performed an act declared by Congress to be expatriating with the intent thereby to relinquish her United States citizenship. Although the Department believes the appellant did voluntarily perform an expatriatory act by making a formal declaration of allegiance to Mexico, upon reconsideration it has concluded that the preponderance of the evidence does not demonstrate an intent to relinquish United States citizenship.

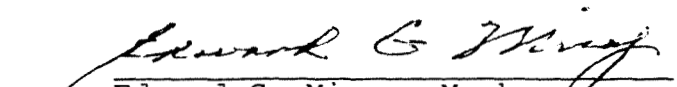
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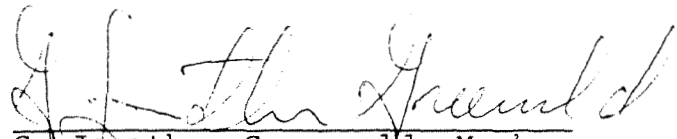
II

Inasmuch as the Department has concluded that it is unable to sustain its burden of proof that appellant intended to relinquish United States nationality when she made a formal declaration of allegiance to Mexico, and in the absence of manifest errors of fact or law, the Board agrees to the Department's request that the matter be remanded for the purpose of vacating the certificate of loss of nationality.

The case is hereby remanded for further proceedings. 3/

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
G. Jonathan Greenwald, Member

Legal Adviser

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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.