

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF S [REDACTED] N [REDACTED] V [REDACTED] - On Motion for
Reconsideration of the Board's Decision
of July 25, 1984

The Board of Appellate Review on July 25, 1984 affirmed the Department of State's July 27, 1982 determination that appellant, S [REDACTED] N [REDACTED] V [REDACTED], expatriated himself on January 27, 1982 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

On October 5, 1984 appellant wrote to the Board taking issue with its decision. Construing appellant's letter as a request to file a motion for reconsideration of the decision, the Board granted him leave to file such a motion. 2/ On November 23, 1984

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

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 --

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(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof, or, . . .

2/ Section 7.9 of Title 22, Code of Federal Regulations, 22 CFR 7.9 provides: The Board shall entertain a motion for reconsideration of a Board's decision, if filed by either party. The motion shall state with particularity the grounds for the motion, including any facts or points of law which the filing party claims the Board has overlooked or misapprehended, and shall be filed within 30 days from the date of receipt of a copy of the decision of the Board by the party filing the motion. Oral argument on the motion shall not be permitted. However, the party in opposition to the motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the date the Board forwards a copy of the motion to the party in opposition. If the motion to reconsider is granted, the Board shall review the record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

appellant filed a motion in the form of a long personal statement. Good cause having been shown why the motion was not filed within the allowable period, the Board accepted appellant's motion.

In his motion appellant challenged the Board's decision on a number of counts. He called the questionnaire he completed to determine his citizenship status a "manipulated and misguided document," apparently referring to a contention he made in his earlier submissions that he had been misled by a consular officer to respond to one question by stating that he had acted voluntarily in applying for a certificate of Mexican nationality. Although it is arguable whether appellant was misled into stating that he performed the expatriating act voluntarily and whether the questionnaire is fair and clear, the Board did not rely on appellant's statements in the questionnaire in concluding that he had acted voluntarily.

Appellant further maintains in his motion that his situation was unique, not like that of many other dual nationals of the United States and Mexico; "...how many," he stated, "have honorable discharges and just wish to get some education and entered Mexico as a tourist." Appellant stresses that his act of pledging allegiance to Mexico was not voluntary because of economic constraints and that he did not have a free choice to pledge allegiance or not. He also implies, without spelling out his contention, that the Department did not carry its burden of proving that he intended to relinquish his United States citizenship.

The Department of State filed a memorandum in opposition to the motion for reconsideration on January 2, 1985, stating in part as follows:

...Our review of the file and Appellant's most recent submission does not indicate that the Board overlooked or misapprehended the facts or points of law in this case.

On the contrary, the evidence presented by appellant supports neither his claim of involuntariness nor his claim that he intended to retain his U.S. citizenship. The evidence substantiates the Department's position that Appellant made the decision to choose his Mexican nationality over his U.S. nationality when he took the Oath of Allegiance to Mexico. Although he claims to have done so because he was in fear of the Mexican Government, his actions were not consistent with those of one who truly wished to retain U.S. nationality. The logical solution for a U.S. citizen would have been to

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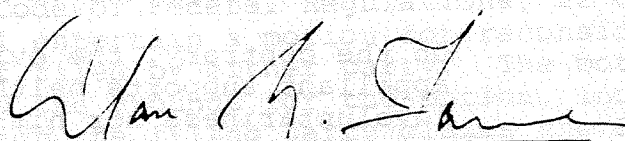
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consult with U.S. Embassy officials in Mexico City...Appellant's performance of an obviously expatriating act without the advice of the U.S. Government is a clear indication of his intent at the time -- to reaffirm his Mexican nationality at the expense of his U.S. nationality. Appellant must, therefore, accept the consequences of his actions....

Appellant's motion adduces no new or material elements bearing on the voluntariness with which, the Board concluded, he had performed the expatriative act; nor does it present any arguments that invalidate the Board's conclusion, squarely based on controlling case law, that by pledging allegiance to Mexico and expressly renouncing his United States citizenship and all allegiance to the United States, appellant manifested an unmistakable intention to divest himself of United States citizenship.

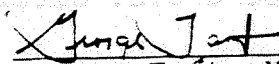
The Board made clear on July 25, 1984 that it had reached its decision reluctantly, given appellant's age and his honorable service in the United States Army. But, as it indicated at that time, the Board must decide the question of law and fact, and nothing else, that is presented in a loss of nationality proceeding; an appellant's good intentions and other commendable conduct are not in a legal sense relevant.

After careful review of appellant's motion and the record in this case, the Board is of the view that the motion fails to disclose any material facts or points of law that the Board may have overlooked or misapprehended, or any new matters that would warrant reconsideration of its decision of July 25, 1984. Accordingly, appellant's motion for reconsideration is hereby denied.



Alan G. James, Chairman

J. Peter A. Bernhardt, Member



George Taft, Member