

March 12, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M ██████ I ██████ On Motion for Reconsideration of the Board's Decision of February 9, 1984

The Board of Appellate Review on February 9, 1984 affirmed the Department of State's March 18, 1983 determination that appellant expatriated himself under the provisions of section 349(a) (1) of the Immigration and Nationality Act by obtaining naturalization in Mexico upon his own application. 1/

On February 26, 1984 when appellant wrote to the Board protesting its decision, the Board offered him the opportunity to move for reconsideration. 2/ On March 26 appellant wrote to the Board indicating that he did not wish to press the matter further; there was nothing more he could add. The Board accordingly assumed that appellant would not move for reconsideration. It appears, however, that there was a misunderstanding between the Board and appellant about whether the latter's

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

(1) obtaining naturalization in a foreign state upon his own application, . . .

2/ Section 7.9 of Title 22, Code of Federal Regulations, 22 CFR 7.9 provides that: 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.

letter of March 26, 1984 constituted a motion for reconsideration. Over the following months the Board and appellant exchanged correspondence, and in the end the Board gave appellant the benefit of the doubt and informed him on January 9, 1985 that it would entertain a motion for reconsideration, based on his letters to the Board between February and December 1984.

Appellant's grounds for requesting reconsideration are chiefly that he was forced by economic circumstances in 1974 to re-acquire the Mexican nationality of his birth in order to gain employment; the only positions available to him was closed to non-Mexicans. Then aged 57, he stated, he could not find employment in any other quarter. He also argued that his honorable service in the United States Army and the fact that he never made a formal renunciation of his United States citizenship before an official of the United States should be considerations in his favor.

On February 1, 1985 the Department of State filed a memorandum in opposition to the motion which stated in part as follows:

In his motion, Mr. Meza states, "Now, I do not mean to contend necessarily that the Board overlooked or misapprehended any points of law or fact in arriving at their decision...." He argues merely that the Board reached the decision it did because it was unsympathetic to his plight. He did not, in fact, indicate any facts or points of law which he believed the Board had not properly considered.

The Department has reviewed the entire record including letters from Mr. Meza since the Board made its decision and finds no fact or point of law, whether raised by Mr. Meza or not, that was either overlooked or misunderstood by the Board. The Department, therefore, opposes the motion for reconsideration.

The central issues in this case when the Board rendered its decision in February 1984 were whether appellant was forced, as a matter of law, by economic circumstances to obtain naturalization in Mexico against his will, and whether by obtaining such naturalization, he intended to relinquish United States citizenship. The Board then carefully weighed appellant's defense of economic duress. While conceding arguendo that appellant may have been in a difficult economic situation, the Board concluded

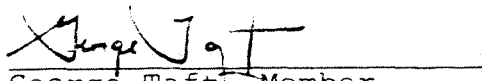
- 3 -

on the basis of all the evidence that his situation did not meet the stringent legal tests laid down by the cases to determine economic duress. The Board also concluded that appellant's intention to divest himself of United States citizenship was manifested by his express renunciation of United States nationality when he applied to be naturalized as a citizen of Mexico. The arguments appellant has presented in his motion for reconsideration are simply reiterative of those he made in his appeal statement and rebuttal of the Department's brief. The Board was not then nor is it now unsympathetic with his alleged plight. The Board must, however, decide the legal issues presented by each case, not pass judgment on an appellant's character or motives, however, worthy they may appear to be.

Upon consideration of the record in this case in light of appellant's motion for reconsideration of the Board's decision, 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 February 9, 1984. Appellant's motion is accordingly hereby denied.


 Alan G. Taft, Chairman


 Mary E. Hoinkes, Member


 George Taft, Member