January 16, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] E[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, R[redacted] E[redacted] F[redacted] expatriated himself on February 7, 1978 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by recovering the Spanish nationality of his birth upon his own application. 1/

Two issues are presented on appeal: whether appellant acted voluntarily in reacquiring his nationality of origin, and whether he intended to relinquish his United States citizenship. The Board concludes that appellant's recovery of his original Spanish citizenship was wholly voluntary and that it was accompanied by the requisite intent to surrender his United States citizenship. Accordingly, the Department's determination of loss of appellant's United States nationality will be affirmed.

I

Appellant acquired the nationality of [redacted] by birth at [redacted]ao [redacted] He came to the United States in 1959, and on October 25, 1965 obtained United States citizenship by naturalization before the United States District Court for the District of Massachusetts.

1/ Section 349(a)(1) of the Immigration and Nationality ACt, 8 U.S 1481(a)(1), provides in relevant part as follows:

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, . . .

By obtaining naturalization in the United States, appellant forfeited his Spanish nationality under the provisions of article 20 of the Spanish Civil Code.

It appears that appellant lived in the United States until 1970. A merchant mariner (chief engineer), appellant travelled extensively between the United States and Spain between 1970 and 1978. He obtained a United States passport in 1975, valid until 1980.

On February 7, 1978 appellant appeared before a District Judge in Bilbao whom he petitioned for restoration of his Spanish citizenship under the provisions of Article 21 of the Spanish Civil Code, as amended by Law 14 of May 2, 1975. The certificate restoring appellant's Spanish citizenship records the following Statements:

> ...the Judge considered that the applicant's right to regain his Spanish citizenship was justified and decided that:
>
> (a) The applicant should take an oath renouncing United States citizenship, accepting Spanish citizenship, and swearing loyalty to His Majesty the King of Spain and obedience to Spanish Law in accordance with Article 9 of the Civil Code. The oath was given to him during this hearing in accordance with the required legal formalities.
>
> (b) A note should be added to the applicant's birth certificate at the Civil Registry Office, to the effect that Spanish citizenship was restored to him as requested....
>
> This statement was read, declared to be true, and approved by the persons appearing at the hearing who signed it together with the Judge, as I /clerk of the Court/ hereby certify. 2/

2/ Certificate Restoring Spanish Citizenship, February 7, 1978. English translation, Division of Language Services, Department of State, LS no. 113273, Spanish (1984).

According to the records of the United States Consulate General at Bilbao, appellant appeared at the Consulate on March 28, 1983, claiming to be a United States citizen, "who," as the Consulate General put it, "renounced his citizenship in 1977." The precise purpose of appellant's visit to the Consulate General is not clear from the record. As the Consulate General later informed the Department, appellant had not shown either a United States passport or his certificate of United States naturalization. He did, however, exhibit a Spanish passport (issued in 1982) bearing assorted non-immigrant visas issued by the United States Embassy at Madrid. The Consulate General further informed the Department that appellant had not stayed to complete a registration card or a form for determining United States citizenship.

Appellant alleges that he entered the United States on April 12, 1983. In September 1983 he applied for a United States passport at the Passport Agency in Los Angeles. In a statement attached to his application, appellant said that although his United States passport had expired in 1980, the immigration authorities at New York had allowed him to enter the United States by honoring his U.S. Merchant Marine card, and on appellant's promise that he would renew his United States passport as soon as possible. In his application for a United States passport, appellant further stated that in 1978 he had taken an oath of allegiance to Spain and renounced United States nationality "in order to legalize my status in Spain."

As requested by the Passport Agency, appellant completed two standard forms for determining United States citizenship in September, and executed an affidavit on October 4th in reply to certain questions posed by the Department concerning his naturalization. Shortly thereafter, the Department informed the United States Embassy at Madrid that appellant had applied for a United States passport and had stated that he had become naturalized in Spain. The Department requested comment on appellant's answers to certain questions on the forms for determining United States citizenship he had completed in September, specifically, that after appellant had explained to a United States official (presumably in March 1983 at Bilbao) that he had sworn an oath of allegiance to Spain, he had been told, in effect, that his naturalization would not affect his United States citizenship. The Consulate at Bilbao, whence the Embassy had referred the Department's inquiry, replied to the Department on November 2, 1983 as follows:

> Spanish naturalization procedures normally involve a renunciation of U.S. nationality, and Errasti stated to the L.A. passport agent that he signed a renunciation of his citizenship before the Spanish judge. It is post policy to pursue all cases of naturalization in a Spanish court as expatriation cases. Where possible the subject is requested to come to the Consulate and fill out a questionnaire concerning intent, which is then forwarded to the Department. In 1982 and 1983 the Department approved ten expatriation cases from Bilbao, most if not all of which involved naturalization procedures in a Spanish court. Therefore, it is highly unlikely that Errasti would have been told that naturalization in a Spanish court did not affect his U.S. citizenship.

The Department instructed the Consulate on November 25 to prepare a certificate of loss of nationality in appellant's name; this the Consulate did on January 12, 1984. 3/ The Consulate certified that appellant acquired the nationality of the United States by virtue of naturalization; that he acquired the nationality of Spain by recovering the nationality of his birth; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

3/ 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 Part III of this sub-chapter, 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 Department approved the certificate on January 25, 1984, approval constituting an administrative determination of loss of nationality from which an appeal properly and timely filed may be taken to this Board. On the same day the Department sent a copy of the approved certificate to appellant in Los Angeles where he was then residing. Appellant entered an appeal by letter to the Board dated June 4, 1984. He alleges that he was forced by economic reasons to recover his Spanish nationality and that he did not intend to relinquish his United States nationality.

II

The statute provides that a national of the United States who obtains naturalization in a foreign state upon his own application shall lose his United States nationality. Loss of nationality through performance of a proscribed statutory act shall not result however, unless the act was performed voluntarily and with the intention of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980).

The record makes clear, and appellant does not dispute the fact, that in 1978 he applied to recover his Spanish birthright and that Spanish nationality was restored to him. He thus brought himself within the reach of the relevant subsection of the Act; recovery of his former nationality was thus clearly naturalization in a foreign state within the meaning of the Act. 4/

We must now inquire whether appellant recovered his Spanish nationality voluntarily.

4/ Section 101(a)(23) of the Immigration and Nationality Act, 8 U.S.C. 101(a)(23), defines naturalization as "the conferring of nationality of a state upon a person after birth, by any means whatsoever."

Under law, a person who performs a statutory expatriating act is presumed to have done so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was done against the will of the party concerned. 5/ Appellant thus bears the burden of showing that recovery of his Spanish nationality was contrary to his true will and intent. He argues that naturalization was forced upon him for economic reasons, thus pleading duress as a defense to performance of the statutory expatriating act. As he stated to the Board:

> At the time I accepted the Spanish citizenship I was in a severe economic bind. In order to get a job so that I could return to the United States. My Card with my seaman rating was marked to indicate United States citizenship, I could not go to the Spanish ships with this citizenship shown and expect to get employment. I did go to the Spanish Court in 1978 and signed the statement to recover my Spanish citizenship.

He also explained that:

> In my title of Spanish chief engr. the Spanish authorities wrote, foreigner of U.S.A. nationality this prevented me from exercising my duties as a Ch. Eng. on Spanish flag vessels.

5/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), provides in pertinent part as follows:

...Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

We do not think that appellant has overcome the statutory presumption that his act was voluntarily.

He has submitted no evidence to show that the only way he could get employment in his profession was to regain his Spanish nationality. In 1978 appellant's United States passport was still valid. Absent evidence to the contrary, it may be presumed that he could have made his way to the United States and sought work on a U.S. flag vessel; he alleges he was in possession of a valid U.S. Merchant Mariner's card at that time.

Even if it were accepted that appellant experienced difficulties in finding suitable employment on Spanish flag vessels, he has not shown that his economic situation was so desperate that the only course of action open to him was to seek Spanish nationality, thus jeopardizing his United States nationality. The courts have set stringent standards for determining whether performance of an expatriative act was justified because of economic constraints. In general, one must have been faced with a demonstrable threat to one's economic survival before the courts will consider that performance of the expatriating act was not voluntary. Stipa v. Dulles, 233 F. 2d 551 (1956); and Insogna v. Dulles, 116 F. Supp. 473 (1953). Appellant has not, in our judgment, met the test laid down in those cases.

It is therefore our conclusion that appellant has failed to overcome the legal presumption that he recovered his Spanish nationality voluntarily.

III

Although we have found appellant's naturalization in Spain to have been voluntary, we must still determine whether on all the evidence he performed the expatriative act with an intent to relinquish his United States citizenship. Vance v. Terrazas, supra. In Terrazas, the Supreme Court held that it is the Government's burden to prove by a preponderance of the evidence that a party who performed a statutory act of expatriation had the requisite intent to surrender United States citizenship. Intent, the Court said, may be shown by a party's words or found as a fair inference from proven conduct. The intent to be proved is a party's intent at the time he performed the proscribed act. Terrazas v. Haig, 653 F. 2d 285 (1981).

In 1978 appellant's petition to recover the nationality of his birth was granted by the competent Spanish authority. In compliance with the Spanish Civil Code, he expressly renounced his United States citizenship and swore an oath of allegiance to the King of Spain. There is no evidence contemporary with that event

to show that appellant acted unwittingly or that he was incapable of understanding the import of the oath he swore. If at that time he had any mental reservations about forsaking United States citizenship, there is no evidence thereof. Five years later, when asked by the Department why he had admitted to the U.S. Passport Agency at Los Angeles that he had renounced his United States citizenship before the Spanish authorities and at the same time had contended that he had not done so, appellant replied:

> I signed an /sic/ statement before a Spanish judge on Febr. 1978. The statement read, allegiance to the King and to the Government of Spain and renouncement of my U.S.A. citizenship. The reason why I signed this statement was because I had to legalize my working status in Spain. The reasons why I claim not to have renounced of /sic/ my U.S.A. citizenship at any time, is because I never intended to do so and I never renounced before the U.S.A. authorities.

The courts have held that taking an oath of allegiance to a foreign state and simultaneously expressly renouncing one's allegiance to the United States is expatriating, for performing such an act clearly evidences an intent to relinquish United States citizenship. United States v. Matheson, 400 F. Supp. 1241, 1245 (1975); aff'd. 523 F. 2d 801 (1976).

Where a plaintiff, who instituted an action in Federal Court to regain his citizenship, had made a voluntary declaration of allegiance to Mexico, expressly renouncing his United States citizenship, the Court of Appeals for the Seventh Circuit held that:

> Plaintiff's knowing and understanding taking 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. Terrazas v. Haig, supra.

Appellant's own words in 1978 bespeak his intent at the decisive moment. Unsupported latter day statements that he lacked the subjective intent in 1978 to relinquish United States citizenship are entitled to no evidentiary value in the face of the

explicit undertaking he gave to the Spanish authorities to forswear allegiance to the United States.

Examining appellant's actions after 1978, we find no indication that he conducted himself in a manner that evidences an intent to retain United States nationality; and nothing in his later conduct casts any doubt on the intent he manifested when he acquiesced in the requirement of Spanish law that he relinquish his United States nationality. He did not, for example, renew his United States passport when it expired in 1980; and he obtained several U.S. visas in his Spanish passport.

It is the Board's view that the Department has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States citizenship when he re-acquired the nationality of Spain.

IV

Upon consideration of the foregoing, the Board affirms the Department's determination that appellant expatriated himself.

Alan G. James, Chairman

Mary E. Hoinkes, Member

James G. Sampas, Member