September 6, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] J[redacted] M[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, C[redacted] Ja[redacted] M[redacted], expatriated himself on June 27, 1983 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 Sole issue for decision is whether appellant performed the statutory expatriating act with the intention of relinquishing his United States citizenship. We conclude that the Department has carried its burden of proving that such was his intent. Accordingly, the Department's determination of appellant's expatriation is affirmed.

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 to a foreign state or a political subdivision thereof;. . .

I

Appellant became a dual national of the United States and Mexico by birth of a [redacted]. He was registered as a United States in Mexico City in July 1973 when he obtained a passport. It appears that he went to the United States in 1973, and from 1975 to 1980 studied abroad.

The record shows that on July 6, 1983 the Department of Foreign Relations informed the United States Embassy by diplomatic note that appellant obtained a certificate of Mexican nationality (CMN) on June 27, 1983, The note further stated that in applying for the CMN appellant had declared his loyalty, obedience and submission to the laws and authorities of Mexico and renounced his United States nationality, Copies of appellant's application and the CMN were annexed to the note.

Following receipt of the diplomatic note, the Embassy wrote to appellant at the address shown on the documents submitted by the Mexican authorities to inform him that he might have expatriated himself, and requested that he complete an enclosed form to facilitate the determination of his citizenship status. The Embassy's letter was returned as undeliverable, as was a second letter presumably written in the same vein, Having no better address for appellant, the Embassy informed the Department on September 19, 1983 that it had been unable to interview him, Accordingly, the Embassy executed and forwarded to the Department a certificate of loss of nationality (CLN) in appellant's name. 2/

2/ 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.

"The CLN is therefore forwarded for your approval," the Embassy stated, "or for entering Mr. M[redacted] name in the lookout system as a 'possible loss case,' ...." The Department entered appellant's name in the lookout system in November 1983, and took no further action in the matter.

Appellant visited the Embassy in June 1984. The record does not indicate what prompted his visit, although appellant states he called "to apply for a passport and that is when he found out the difficulty he was in." He was interviewed by a consular officer. As the consular officer reported to the Department:

> During a June 20, 1974 /sic/ meeting at the Embassy, Mr. M[redacted] stated that he'd traveled on a Mexican passport and a U.S. visa some time in 1982. He stated a U.S. Immigration inspector at the border, confiscated his Mexican passport and visa, presummably /sic/ because they detected he was not entitled to the visa. In any case, he was apparently subsequently refused a new Mexican passport in 1983 because of his claim to U.S. citizenship, According to Mr. M[redacted] he signed the renunciatory oath which he was able to obtain his Mexican passport,
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> According to Mr. M[redacted] he performed the act voluntarily but not with the intention of jeopardizing his U.S. citizenship. While subject claimed to have resided in the U.S. for the last two years, he was not, however, able to substantiate that he was in fact living there as an Amcit. The fact that he had obtained the Mexican passport, in the last two years and a U.S. visa on at least one ocassion /sic/ usggests /sic/ he might have been residing there as a Mexican.

Appellant explained as follows the circumstances surrounding his application for a certificate of Mexican nationality:

> ...in the winter of 1983, ...had tried to obtain a U.S. passport in Tucson. James Corbett, the former mayor of the City of Tucson, and presently, the Clerk of the Superior Court in Pima County, talked to the Appellant about issuance of a U.S. passport. Mr. Corbett is the head of

> that department here in Tucson. Because of not having proof of his U.S. citizenship with him in Tucson, Mr. Corbett directed the Appellant to the Department of Immigration. The Appellant had no such luck there either and gave up in frustration. In June of 1983, when the Appellant was back in Mexico City, he went to the same place he had twice before to obtain a one-year Mexican passport rather than the U.S. Embassy. He did not go to the U.S. Embassy because of his frustration of what happened in Tucson at the Passport Office and the Department of Immigration several months prior to June of 1983. The Appellant wanted no more hassles and took the path of least resistance, He did only what he had done twice before.. ..

On June 20, 1984 the Embassy issued appellant a passport limited in validity to September 19, 1984, "until loss /of United States citizenship/ is adjudicated."

On June 29, 1984 the consular officer who interviewed appellant executed a second certificate of loss of nationality in his name, certifying that appellant acquired the nationality of both the United States and Mexico at birth: that he made a formal declaration of allegiance to Mexico on June 23, 1983; and thereby expatriated himself on June 27, 1983 under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on July 16, 1984, an action that constitutes an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to this Board. A copy of the approved certificate was sent to the Embassy for forwarding to appellant.

In October 1984 appellant applied in the United States to have his expired 3-month passport extended to full validity. The Department subsequently denied this request on the grounds of non-citizenship. An appeal to this Board was entered on January 10, 1985. Appellant does not contest that he performed the expatriative act voluntarily, but asserts that it was not his intention to relinquish his United States citizenship.

It is the Department's burden under the statute to prove that appellant performed a valid statutory expatriating act. This it has done by presenting in evidence documents showing that on June 23, 1983 appellant applied for a certificate of Mexican nationality and obtained the said certificate on June 27, 1983. On their face, these documents show that appellant made a formal declaration of allegiance to Mexico and thus brought himself within the purview of the statute. 3/

Appellant, however, seems to question the validity of the act. In his reply brief he states:

3/ Section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), provides:

...

(c) Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after the enactment of this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence,. 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.

> Regarding further facts stated in the Department's opening memorandum, the State uses the phrase "renunciating oath". The Appellant was never placed under oath for any of the three CMNs that he signed. He was placed under oath when he appeared at the U.S. Embassy with his father at the age of 18 or so to declare his choice of U.S. citizenship. The Appellant never swore an oath of allegiance to Mexico. He signed a document but was never placed under oath.

This contention lacks merit.

Appellant performed a meaningful act of adherence to Mexico whether or not he was duly sworn in the sense of United States law. Such was the conclusion of the Mexico authorities, and under United states law, the taking of such an obligation is deemed to be a meaningful act, for it is a consequential pledge of allegiance to Mexico.

See Terrazas v. Vance, No. 75-2370 (N.D. Ill, 1977). There plaintiff performed precisely the same statutory expatriating act as this appellant. In concluding that plaintiff had made a meaningful declaration of allegiance to Mexico, the court said:

> ...under sec. 349(a)(2) of the Act, 8 U.S.C. sec. 1481(a)(2), it is the form of the substantive statement of allegiance to a foreign state as opposed to the adjectival description of the statement itself which is determinative and most relevant in deciding matters of expatriation. Thus, under the statute, any meaningful oath, affirmation or declaration which "places the person [making] it in complete subjection to the state to which it is taken," 111 Hackworth, Digest of International Law, 219-220 (1942) may result in expatriation. See also, Savorgnan v, United States, 338 U.S. 491 (1950).

To result in expatriation the expatriative act must be voluntary and accompanied by an intention to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 369 U.S. 253 (1967).

Appellant conceded in the citizenship questionnaire he executed in June 1984 at the Embassy that he acted voluntarily, and in his pleadings did not repudiate that concession. The sole issue for decision therefore is whether appellant made a formal declaration of allegiance to Mexico with the intention of terminating United States citizenship.

The Department must prove by a preponderance of the evidence that appellant intended to relinquish his United States citizenship. Vance v. Terrazas, 444 U.S. at 263 and 267, Intent, the court said, may be expressed in a person's words or found as a fair inference from his proven conduct. Id at 260. The intent to be proved is appellant's intent when he performed the expatriative act. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

The Department rests its case that appellant intended to abandon United States citizenship primarily on the fact that appellant made an explicit renunciation of United States nationality in conjunction with his application for a certificate of Mexican nationality.

The controlling case law makes it clear that one who expressly renounces United States nationality and declares allegiance to a foreign state manifests an intent to relinquish United States citizenship, See Matheson v. United States, 400 F. Supp. 1241, 1245 (S.D.N.Y. 1975) (Aff'd. 532 F. 2d 809 (2nd Cir. 1976)):

> ...an oath expressly renouncing United States citizenship, as is required by the 1949 amendment would leave no room for ambiguity as to the intent of the applicant. However, an oath of allegiance to Mexico, without more, by one believing herself already a Mexican citizen by virtue of marriage, could be merely descriptive of her status as a dual citizen of both Mexico and the United States,...

See also Terrazas v. Haig, 653 F. 2d at 288:

> The court [the District Court: 494 F. Supp. 1017 (N.D. Ill. 1980)] found that plaintiff 'knowingly, understandingly and voluntarily* committed an expatriating act and 'knowingly and understandingly' renounced his United States citizenship, 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.

In the recent case of Richards v. Secretary of State, 752 F. 2d 1413, 1421, (9th Cir. 1985) the court said:

> ...The district court found Richards' intent to renounce his United States citizenship expressed in the words of the oath he executed upon becoming a citizen of Canada, Those words were the following:
>
> I HEREBY RENOUNCE ALL ALLEGIANCE AND FIDELITY TO ANY FOREIGN SOVEREIGN OR STATE OF WHOM OR WHICH I MAY AT THIS TIME BE A SUBJECT OR CITIZEN.
>
> The district court found that Richards knew and understood the words in the documents he was signing. The court found that, at the time he signed the documents, 'plaintiff would have preferred to retain American citizenship, and in his mind hoped to do so, but elected to sign the Canadian naturalization documents and accept the legal consequences thereof rather than risk loss of his job or career advancement.' The court concluded that his intent to renounce his United States citizenship was 'established by his knowing and voluntary taking of the oath of allegiance to a foreign sovereign which included an explicit renunciation of his United States citizenship.'
>
> [157] We agree with the district court that the voluntary taking of a formal oath that includes an explicit re-

> nunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship, We also believe that there are no factors here that would justify a different result....

The record shows that appellant expressly renounced United States nationality when he declared allegiance to Mexico, The record also shows that appellant was 27 years old when he performed the statutory expatriating act, and evidently was educated and Spanish speaking. It would be difficult to conceive that he did not understand the implications of the words to which he subscribed, Indeed, appellant replied to one question (describe the act you performed) on the citizenship information form he completed in 1984 at the Embassy as follows: "Had to travel and the fastest way I could think of was getting a fast Mexican passport, I had to sign a document of renunciation but the person told me that in order to get the real document I had to go back there in fifteen days and sign again. All was at Relaciones Exteriores Bureau at Mexico City - June 83." We are therefore led to the conclusion that appellant knowingly and intelligently made a formal declaration of allegiance to Mexico and expressed an intent to relinquish United States citizenship,

The cases, however, require that we consider other factors as well to determine whether they might warrant concluding that appellant did not intend to relinquish his United States citizenship.

Appellant argues that he lacked the requisite intent, He alleges that twice before 1983 he applied for a certificate of Mexican nationality and declared allegiance to Mexico simply to obtain a Mexican passport. As he put it in his opening brief:

> ...The fact that he had done this twice before is evidence showing that his intent was merely to obtain a Mexican passport and not to lose his United States citizenship. If the Appellant intended to lose his United States citizenship, this Board of Review must ask itself why the Appellant did not push his prior applications. The Appellant contends that somewhere along the line, an agreement has been struck between the American Consul and the Ministry of Foreign Affairs in Mexico to

> exchange information when an act such as the one committed by the Appellant to obtain a Mexican passport is committed. This Board may then ask why the Appellant did not go the the American Embassy and obtain a United States passport. The Appellant answers that question by simply stating that he followed the same procedure that he had before, and that he followed the path of least resistance, as it was very easy for him to do what he did, He was extremely careless, but he had no intention of relinquishing his American citizenship.

This argument has no merit.

There is no evidence that appellant in fact twice before 1983 applied for certificates of Mexican nationality and obtained Mexican passports. Even had he done so, it would appear to us that far from showing lack of intent in 1983 to relinquish United States citizenship, appellant manifested a persistent, unmistakable will and purpose to be a Mexican citizen, seeking to enjoy the rights and privileges of that citizenship in preference to that of the United States, And if he did make two prior applications, he would have had to renounce United States nationality, for seven years before appellant was born Mexican law was amended to require that dual nationals who opt for Mexican nationality through acquisition of a certificate of Mexican nationality shall expressly renounce their other nationality.

Even if we could accept appellant's contention that on prior occasions he sought and obtained Mexican passports (and thus made clear that his sole motive was to obtain such a passport and not give up United States citizenship), we cannot accept his argument that a motive different from an intent to give up United States citizenship renders his performance of the expatriating act ineffective.

The court made clear in Richards v. Secretary of State, 752 F. 2d at 1421 that motivation is irrelevant where one voluntarily makes a renunciation of United States nationality. There, plaintiff argued that he lacked the necessary intent because he never had a desire to give up United States citizenship. He said he became a Canadian citizen and renounced allegiance to the United States only to retain his employment.

The court refuted plaintiff's contention, asserting at 1421 that: "the cases make it abundantly clear that a person's free choice to renounce United States's citizenship is effective whatever the motive." The court continued:

> ...Whether it is done in order to make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship.
>
> We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly, Whenever a citizen has freely and knowingly chosen to renounce his United States citizenship, his desire to retain his citizenship has been outweighed by his reasons for performing an act inconsistent with that citizenship. If a citizen makes that choice and carries it out, the choice must be given effect.

In order for an appellant to overcome the strong presumption of intent to relinquish United States nationality manifested by an express renunciation of United States citizenship, very compelling evidence must be adduced of a contrary intent,

Surveying appellant's conduct,. we see no affirmative act or acts that would cast doubt on the meaning of his declaration of allegiance to Mexico in 1983. He concedes that after he obtained a Mexican passport he obtained a United States visa, and, we may assume, presented that passport to United States officials upon entering the United States. Furthermore, eleven years passed between 1973 and 1984 before appellant asserted a claim to United States citizenship, He has, as the record Shows, consistently conducted himself as an alien toward the United States.

There are no other factors that would justify our finding that appellant did not intend to relinquish United States citizenship. The Department has, in our view, carried its burden of proving by a preponderance of the evidence that it was appellant's intention in 1983 to terminate his United States citizenship.

III

Upon consideration of the foregoing, we affirm the Department's determination that appellant expatriated himself on June 27, 1983 by making a formal declaration of allegiance to Mexico.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Frederick Smith, Jr., Member

There are no other factors that would justify our finding that appellant did not intend to relinquish United States citizenship. The Department has, in our view, carried its burden of proving by a preponderance of the evidence that it was appellant's intention in 1983 to terminate his United States citizenship.

III

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