November 8, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] A[redacted] S[redacted]

This case is before the Board of Appellate Review on the appeal of R[redacted] A[redacted] S[redacted] from an administrative determination of the Department of State that he expatriated himself on February 9, 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/

We conclude that appellant voluntarily declared his allegiance to Mexico with the intention of relinquishing his United States nationality. The Department's determination of expatriation is accordingly affirmed.

I

Appellant acquired United States citizenship by birth to an American citizen mother at Mexico City on November 13, 1961. By virtue of his birth in [redacted] he also acquired the nationality of that country. A consul[redacted]ort of appellant's birth as a United States citizen was executed by the Embassy in August 1962. In 1975 the Embassy issued appellant an identity card, valid for five years. When identity cards were issued to his brother and sister in 1980 appellant did not, according to Embassy records, apply for renewal of his own,

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1/ Section 349(a)**(2)** of the Immigration and Nationality Act, **8** U.S.C. I481 (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; **. . .**

Appellant states, however, that in 1980 (he gives no specific date) he went to the United States Embassy in Mexico City to inquire "about getting my American citizenship." He reportedly filled out a form (not otherwise described) which he handed to a consular official who told him to wait for a call before signing it. Appellant states that he informed the official that he wanted to be a United States citizen so that he might live with his grandparents and study in the United States. He was assured, appellant states, that in due course he would receive a passport, but when he did not receive a call from the Embassy, he made a subsequent inquiry and was told "to wait a little longer, that I would soon receive their call which I never did."

The Embassy later reported to the Department, in reply to the latter's inquiry, that it had no record of a visit (or presumably of any inquiry) by appellant about his obtaining documentation as a United States citizen.

Appellant abandoned his plans to go to the United States allegedly because the family resources proved insufficient to finance his study there, and "I decided to continue studying in Mexico City and finish my career."

On March 31, 1981 appellant applied for a certificate of Mexican nationality (CMN), a process which required that he expressly renounce United States nationality and declare his allegiance to Mexico. There is no copy in the record of appellant's application for a CMN at that time, but the Embassy subsequently informed the Department that its files contained:

> Copy of note from Foreign Office dated June 12, 1981, stating that [redacted] had requested a certificate of Me[redacted] nationality, renouncing his U.S. citizenship in so doing, on March 31, 1981, but that the process was not yet completed. This information was said to have been furnished at Embassy's request in note 1020 dated May 22, 1981. No copy of this note is available here and no indication of what prompted Embassy's inquiry is recorded,

According to a statement appellant later made to a consular officer at the Embassy, he was studying at a commercial school (presumably in 1981) and had been told by the administration that he would have to present a CMN if he wanted to graduate, He therefore made application for that document. However, before the process was

completed, he found it necessary to leave school and seek employment. The firm in which he wanted to work also required a CMN. He therefore completed the procedure for obtaining the certificate.

There is no indication in the record that a CMN was issued consequent to appellant's March 31, 1981 application.

On January 12, 1982 appellant executed a second application for a CMN. In that document he expressly renounced his United States nationality and all allegiance and fidelity to the United States, and declared his allegiance to Mexico.

On May 11, 1982 the Department of Foreign Relations informed the Embassy that a certificate of Mexican nationality had been issued to appellant on February 9, 1982; that he had applied for said certificate of January 12, 1982; and had declared allegiance to Mexico and renounced United States nationality.

Over a year leter, appellant visited the Embassy, presumably to clarify his citizenship status. On October 6, 1983 he completed a form for determining United States citizenship and was interviewed by a consular officer. Following that interview, the Embassy sent a note to the Department of Foreign Relations, inquiring whether appellant had applied for a certificate of Mexican nationality. In reply it received a diplomatic note, dated October 27, 1983, which confirmed that appellant had applied for a CMN on January 12, 1982, but (curiously) stated that the proceedings had not yet been completed. Appellant, however, provided the Embassy with a copy of a certificate of Mexican nationality, number 1002, dated February 9, 1982, issued in his name. As the Embassy stated in a report to the Department: "This CMN established that the formalities had, in fact, been completed."

Thereafter, in compliance with the provisions of section 358 of the Immigration and Nationality Act, the Embassy prepared a certificate of loss of nationality in appellant's name on December 20, 1983, 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 and 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 Embassy certified that appellant acquired the nationality of both the United States and Mexico at birth; that he made a formal declaration of allegiance to Mexico; and thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on March 13, 1984. Approval of the certificate 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 dispatched to the Embassy on March 13, 1984 for transmittal to appellant.

The appeal was entered on September 3, 1984. Appellant asserts that he did not make a declaration of allegiance to Mexico voluntarily and that it was not his intention to relinquish United States nationality by so doing.

II

The statute provides that a citizen of the United States who makes a formal declaration of allegiance to a foreign state shall lose his nationality. Appellant concedes that he made such a declaration to Mexico. He thus brought himself under the provisions of the statute.

Performance of a statutory expatriating act will not in itself work expatriation, however, unless the proscribed act was voluntary and done with the intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980).

In law. it is Presumed that one who performs a statutorv expatriating act does so voluntarilv, althouqh the presumption mav be rebutted bv the actor upon a showinq by a preponderance of the evidence that the act was not voluntary. 3/

Since appellant contends that he made a formal declaration of allegiance involuntarily, he must adduce evidence that he acted against his will to do otherwise.

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

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.

According to appellant, he applied for a certificate of Mexican nationality, "due to causes that I consider of emergency like: at that moment 1 was under my parents economical support, being a student of accountancy...." He had hoped to study in the United States but his father's resources were insufficient;' due to a devaluation of the peso. He was therefore forced to remain in Mexico and complete his studies there. Furthermore, he asserts:

> ...At that time the university where I studied gave me the information that, to graduate, I had to get a Mexican Certificate of Nationality and also so that I wouldn't have to pay higher fees and tuitions.
>
> Meanwhile I was working at Harmon Hall Institute....They, also asked me for the certificate, so that I could work there, as the Mexican Government required them to have legal workers....

The cases make it clear that a person who pleads a defense of economic duress must show that his circumstances were extraordinary and that if he had not performed an expatriating act to ameliorate those circumstances, he would have faced a dire economic situation. Stipa v. Dulles, 223 F. 2d 551 (3rd Cir. 1956) and Insogna v. Dulles, 116 F. Supp. 437 (D.D.C. 1953) Those leading cases set the norms by which the trier of fact is to determine whether a citizen performed an expatriative act under economic pressures,

In both Stipa and Insogna, the petitioners performed a statutorily proscribed act in Italy after World War II in order to subsist. In both cases the courts held that the primordial instinct to survive rendered their acts involuntary. The requirement that acute economic distress be proved has not been materially modified by later decisions. 4/

4/ Cf. Richards v. Secretary of State, 753 F. 2d 1413, 1419 (9th Cir. 1985) where the court said: "Although we do not decide that economic duress exists only under such extreme circumstances /as those in Stipa and Insogna/, we do think that at the least some degree of economic hardship must be shown," In Richards the 9th Circuit was only required to determine whether the district court erred in concluding that the petitioner had not proved that he was under any duress. It concluded that the district court had not erred, Richards thus does not, in our view, overrule or qualify Stipa and Insogna.

Appellant has not shown that dire economic circumstances forced him to seek the financial security that possession of a certificate of Mexican nationality might bring him. Nor can it be maintained that he was under economic duress because Mexican law required him to produce a certificate of Mexican nationality in order to pay lower tuition, graduate from accountancy school and gain employment. The authority of a sovereign state to prescribe rules and regulations for its citizens governing registration of degrees and conditions of employment, obviously, is not open to question.

That financial constraints prevented appellant from studying in the United States, where he would have preferred to complete his education, and thus necessitated his remaining in Mexico is not, in our view, legal duress. His situation in that respect seems indistinguishable from those of many other dual nationals of the United States and Mexico who might prefer to come to the United States but are held back by limited financial resources. Not being able to avail oneself of optimal educational advantages is a fragile basis on which to rest a case of economic duress,

Even if we were to concede that appellant's position was economically weak, it is hard to conclude that he was forced into applying for a certificate of Mexican nationality by more than expediency. Here, the dictum of the court in Doreau v. Marshall, 170 F. 2d 712, 724 (3rd Cir. 1948) seems pertinent: "... it is just as certain that the forsaking of American citizenship, even in a difficult situation, as a matter of expedience, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress."

Given the inestimable worth of United States citizenship, the courts understandably have held that only the most exigent economic conditions can excuse performing an act in derogation of fidelity to the United States. Appellant has not proved that the circumstances in which he found himself were so desperate that he had no alternative to performing a statutorily proscribed act.

We conclude therefore that he has failed to overcome the presumption that he acted voluntarily when he pledged his allegiance to Mexico.

III

It is not enough that appellant acted voluntarily when he performed a statutory expatriating act. It remains for us to determine whether he had the requisite intent to relinquish United States citizenship. Vance v. Terrazas, supra. Under the Court's

holding in Terrazas, the Government must prove by a preponderance of the evidence that appellant intended to forfeit his United States citizenship. 444 U.S. at 267. Intent, the Court said, may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The intent that must be proved is appellant's intent when he made the proscribed declaration of allegiance to Mexico. Terrazas v. Haig, F. 2d (7th Cir. 1981).

In the case now before the Board, appellant made a formal declaration to a foreign state, an act that may be highly persuasive, although not conclusive, evidence of an intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. at 261, citing Nishikawa v. Dulles, 358 U.S. 129, 139 (1958). Furthermore, he expressly renounced his United States citizenship and all fidelity to the United States,

Express renunciation of United States citizenship has been held to manifest an intent to relinquish United States citizenship. In Terrazas v. Haig, supra, the court found abundant evidence of the petitioner's intent to relinquish United States citizenship in his willingly, knowingly and voluntarily acquiring a certificate of Mexican nationality, and in his subsequent conduct. 753 F. 2d at 288. In Richards v. Secretary of State, the court held that "the voluntary taking of a formal oath of allegiance that includes an explicit renunciation of United States citizenship is ordinarily sufficient to establish a specific intent to renounce United States citizenship." 752 F. 2d at 1421,

The trier of fact obviously must be satisfied that the citizen acted knowingly and understandingly in making a declaration of allegiance to a foreign state. In this case appellant had command of the language in which the application for a certificate of Mexican nationality was printed. He was also schooled. He has not alleged that he was unable to understand the meaning and consequences of making an express renunciation of his United States citizenship. So, we are unable to consider that his mere assertion that "the Mexican authorities urged me to sign an oath of allegiance without any warning that I could permanently lose my American citizenship,' casts any doubt on his having knowingly and understandingly made the declaration of allegiance.

Appellant maintains that his lack of intent to relinquish United States citizenship is demonstrated by the fact that before he applied for a certificate of Mexican nationality he twice went to the United States Embassy to inquire about how he could be a United States citizen, a contention he supported with declarations of his father and others. But, as we have seen, the Embassy has no record that appellant made such an application, although the Department specifically asked the Embassy whether there was any

evidence that appellant had endeavored to document himself as a United States citizen. Assuming, however, that appellant did try to obtain citizenship documentation, and the Embassy neglected to act on his application, it is puzzling why appellant did not persist. He appears to have let the matter drop after two visits.

In October 1983 appellant went to the Embassy to clarify his citizenship status and at that time his having made an oath of allegiance to Mexico came to the attention of the United States consular officials. Aside from that expression of interest in retaining United States citizenship, the record is barren of any concrete effort of appellant's to preserve his American nationality. In brief, there is nothing of record that would warrant a finding that appellant did not intend to relinquish his United States nationality at the time he applied for a certificate of Mexican nationality and made a renunciatory declaration of allegiance to Mexico.

Surveying the entire record, we are of the view that the Department has carried its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality when he declared his allegiance to Mexico.

VI

Upon consideration of the foregoing, we hereby affirm the Department's administrative determination that appellant expatriated himself.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

G. Jonathan Greenwald, Member