November 25, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] I[redacted] B[redacted]

C[redacted] I[redacted] B[redacted] appeals an administrative determination of the Department of State that she expatriated herself on February 25, 1975 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

For reasons set out below, we conclude that appellant declared her allegiance to Mexico voluntarily and with the intention of relinquishing her United States citizenship. We therefore affirm the Department's holding of appellant's expatriation.

I

Ms. B[redacted] acquired the nationality of both the United States and Mexico by birth on [redacted], [redacted] of an American citizen father. He permanent idence has been in Mexico.

1/ Section 349(a)(2) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1481(a)(2) reads:

> (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 that in 1972 she was studying mechanical engineering in Torreon. Due to student strikes, she decided to give up her engineering studies and to apply for a scholarship at the International Civil Aviation Training Center (CIAAC) at Mexico City, with the aim of becoming a commerical pilot. Appellant won a scholarship, which paid for two-thirds of her tuition. The remaining third was met by a subsidy mainly from her mother with some assistance from her grandmother. Appellant states that she was able initially to satisfy the authorities at CIAAC that she had Mexican nationality, a requirement for admission, by exhibiting her Mexican birth certificate. She entered CIAAC in September 1972.

Appellant states that fifteen months later, early in December 1973, the authorities at CIAAC informed her that she would have to produce a certificate of Mexican nationality if she wished to continue to hold her scholarship and remain in school. Accordingly, she went to the Department of Foreign Relations to make application for the certificate. The following is appellant's account of what occurred there:

> I thought they would give it to me right away, because they knew what I was, and they wanted me to sign that paper, and I said I don't agree with that paper. I just want a paper stating that I am a Mexican, because that's what they are urging me at school, and they said do what you want, we are not going to give you one, and I went back to the school. And I told the directors that I wasn't able to get that paper, because they wanted me to sign something, and they said if you don't get that certificate, that nationality certificate, we can't keep you at school anymore. So you better go back and, you know, they were planning to fly out of the country, and they were planning the next advanced flight course, and they said you better get your passport at the same time, if you are going there, because I had never been at the Ministry in my life before, neither at any other office in the country, nor embassy, or anything.

> So I went back, and I argued there, and they said we are not going to listen to stories, if you don't sign this, you are not going to tet [sic] it.
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> I said, how can I sign something with which I don't agree, because I don't agree. And they said it is your deal, and I signed that paper,... 2/

The record shows that on December 6, 1973 appellant executed an application for a certificate of Mexican nationality. Therein she expressly renounced her United States nationality and declared her allegiance to Mexico. 3/ Appellant obtained a Mexican passport on the same day.

2/ [redacted]nscript of Hearing in the Matter of [redacted], Board of Appellate Review, August 16, [redacted]fter [redacted]d to as "TR"). pp. 14, 15.

3/ The declaration read as follows:

> I expressly renounce my United States nationality as well as all submission, obedience, and fidelity to whatever foreign government, particularly that of the United States of which I might have been a subject, all protection foreign to the laws and authorities of Mexico, and all rights that Treaties or International Law grant to foreigners. I pledge allegiance, obedience, and submission to the laws and authorities of the Mexican Republic.

[Underscored portions are hand written by the applicant.]

A certificate of Mexican nationality was not issued until over a year later, but appellant apparently was able to satisfy the authorities at CIAAC that she had duly applied for the required certificate, for she graduated in November 1974. Thereafter she was employed as a pilot by Mexicana Airlines,

On February 25, 1975 a certificate of Mexican nationality was issued to appellant, Her employment with Mexicana was terminated in February 1983.

On August 31, 1983 appellant called at the United States Embassy at Mexico, D.F. to apply for a United States passport. She completed a passport application and a form for determining United States citizenship. In the latter document she acknowledged that she had applied for a certificate of Mexican nationality, In response to the Embassy's diplomatic note inquiring whether a certificate of Mexican nationality had been issued to appellant, the Department of Foreign Relations stated on September 12, 1983 that such certificate had been issued on February 25, 1975.

Appellant was interviewed on January 5, 1984 by a consular officer to whom she described the circumstances under which she had applied for a certificate of Mexican nationality and made a declaration of allegiance to Mexico, The consular officer thereafter executed a certificate of loss of nationality in appellant's name on February 9, 1984. 4/ The certificate recited that appellant acquired the nationality of both the United States and Mexico at birth; that she made a formal declaration of allegiance to Mexico on December 6, 1972 /sic/; that a certificate of Mexican nationality was issued to her on February 25, 1975; and that she had thereby expatriated herself on February 25, 1975 under the provisions of section 349(a)(2) of the Immigration and Nationality Act,

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4/ 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 Department approved the certificate on April 3, 1984, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review.

The appeal was entered on December 17, 1984. Appellant contends that she was forced by economic circumstances to apply for a certificate of Mexican nationality, and thus to declare allegiance to Mexico. She further maintains that she did not intend to relinquish her United States nationality when she performed that statutory expatriating act. She requested oral argument, and a hearing was held on August 16, 1985, appellant appearing pro se.

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The statute prescribes that a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state. 5/ The Supreme Court has declared, however, that nationality shall not be lost unless the proscribed act was validly and voluntarily performed, and accompanied by an intention to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967); Nishikawa v. Dulles, 356 U.S. 129 (1958); Perkins v. Elg, 307 U.S. 325 (1939).

It is not disputed that appellant duly made a meaningful declaration of allegiance to Mexico, and thus brought herself within the purview of the statute. She contends, however, that she did not make the declaration voluntarily because she was subjected to economic duress.

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, although the presumption

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5/ Note 1, supra.

may be rebutted by the actor upon a showing by a preponderance of the evidence that the act was not voluntary. 6/

Since appellant contends that she made a formal declaration of allegiance involuntarily, it is her burden to prove that the act was coerced,

Appellant rests her defense of economic duress on the following considerations: had she not made a declaration of allegiance to Mexico she would have suffered economic disadvantage; her scholarship would have been lost, her place at CIAAC forfeit; and her mother's financial sacrifices rendered meaningless,

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6/ 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.

A person who pleads economic duress must show that his circumstances were extraordinary, and that, had he not performed the proscribed act to ameliorate those circumstances, he would have faced a dire economic situation. See 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 establish norms by which the trier of fact is to determine whether a citizen performed an expatriative act under economic pressure.

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 need to survive rendered their acts involuntary. The requirement that acute economic distress be proved has not been materially modified in later decisions. 7/

7/ 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, however, 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 overrule or qualify Stipa and Insogna as precedent in determining whether one who has performed a statutory expatriating act acted in response to dire economic conditions.

Appellant here has not shown that she faced acute economic distress or that she would have had difficulty in surviving had she not obtained a certificate of Mexican nationality. She has submitted persuasive evidence that her mother's resources were severely stretched to contribute a relatively modest amount to appellant's tuition at CIAAC. But both appellant and her mother apparently were able to subsist. Here the dictum of the court in Doreau v. Marshall, 170 F. 2d 721 724 (3rd Cir. 1948) is 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."

Duress, by definition, connotes the absence of personal choice, that one was forced by factors over which one has no control to do a particular act one would prefer not to have done. In the case before us, appellant was not impelled by forces over which she had no control. She placed herself in a position where, in order to pursue a course of instruction she found satisfying and promising from a career perspective, she was required by the laws of Mexico to perform an expatriative act in order to be able to exercise the rights of Mexican citizenship. Appellant studied engineering before entering CIAAC. As she suggested at the hearing, she could have continued in that course: "If 1 had studied industrial engineering, this wouldn't have happened to me." TR 60.

In a legal sense appellant had alternatives to placing her United States citizenship in jeopardy. As she conceded, she could have chosen a different professional field, and, although she pointed out at the hearing the many difficulties involved, she could have gone to the United States where she also has family. We are not indifferent to the situation of people like appellant who face a very difficult choice - to exercise the rights of one citizenship as opposed to another. For one like appellant to have uprooted herself to go to the United States would have been a wrench. But as a matter of law, appellant has not demonstrated that the latter course of action would have been impossible.

The compelling conclusion to which we are led is that the compulsion appellant felt to obtain a certificate of Mexican nationality was of her own design. "...the opportunity to make a decision upon personal choice is the essence of voluntariness." Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245, 1250 (5th Cir. 1971). Having exercised her choice, appellant may not be excused from the consequences flowing from it. Jolley, supra, at 1251.

We therefore find that appellant has failed to overcome the legal presumption that she acted voluntarily when she made a formal declaration of allegiance to Mexico.

III

It is not enough that appellant acted voluntarily when she performed a statutory expatriating act. It remains to be determined whether she had the requisite intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. 252. 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 of appellant that must be proved is her intent when she made the proscribed declaration of allegiance to Mexico. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

In the case before the Board, appellant made a formal declaration of allegiance 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. (1958). Furthermore, she expressly renounced her United States citizenship and all fidelity to the United States.

An express renunciation of United States citizenship has been held to manifest an intent to relinquish United States citizenship. In Terrazas v. Haig, 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 must be satisfied that the citizen acted knowingly and understandingly in making a declaration of allegiance to a foreign state. Here, there is abundant evidence that appellant knew what she was doing. She conceded at the hearing that she understood the meaning of the words of the renunciatory declaration. "I sure did understand, because I am a native [Spanish] speaker. I understood everything....

TR 57. She maintained, however, that she considered "the paper I was going to sign was meaningless to the United States authorities...." Id. Asked what she meant by meaningless," appellant responded: "Because I told them I didn't agree. It is not that I just carelessly signed it. I told them, but I don't agree with this." TR 57, 58. The exchange between appellant and the Board continued in the following vein:

> Appellant: they said those are the rules, you sign it, you get it or'not. And that's why I signed it, but I never thought you would give any meaning to it, and it's not that I was doing that knowing that I was expatriating myself, because I never did intentionally relinquish my U.S. citi-senship.
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> Board: What you signed says I expressly renounce my North American nationality. The Spanish is equally clear. By signing that, didn't the thought at least come to you that this may be something that will affect my American nationality?
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> Appellant: If I had only had the doubt, I would have gone to the U.S. Embassy before if I had only had the doubt that this would be not meaningless. If I had known that you were going to consider it, how can the Ministry tell you that she signed it, but she doesn't agree.
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> Board: You had no basis for thinking that the U.S. authorities would consider this as being meaningless? You had no experience upon which you based your con-clusion that the U.S. authorities would regard this as meaningless?
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> Appellant: No. I was being honest in front of them, and I told them I wouldn't agree, and I thought that was it. If they wanted to take that seriously, I thought it was their problem, not mine, because I didn't agree. I never felt tied to comply with it, see.
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> Board: 1 am afraid I don't see that. When you signed something that says I expressly

> renounce my North American nationality -- that must have been something that was meaningful to you.
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> Appellant: I told them that. I said I don't want to sign a paper saying this, I am not interested. And they said if you don't sign it, you don't get it. And that's when my decision was made. I was 19, and I didn't know legal matters. I never knew of somebody else having dual citizenship that had been led, like me, because if I had only known, that would have been different, and now at school they were trying to spell me out just right away, so I came back with a paper....

The declaration appellant made was, of course, not "meaningless." Since appellant acknowledged that when she first went to the Department of Foreign Relations she resisted signing a renunciatory pledge of allegiance to Mexico, we are unable to accept her contention that she did not believe the declaration would have meaning under United States law.

Here, appellant voluntarily, knowingly and understandingly made a pledge of allegiance to a foreign state. We grant that she may have done so reluctantly hesitatingly; she did so nonetheless. Patently, she would have preferred not to have made the expatriative declaration, for her evident motive was only to avail herself of the rights of Mexican nationality. Her motive, however, is irrelevant. "...a person's free choice to renounce United States citizenship is effective whatever the motivation." Richards v. Secretary of State! supra, note 7. Appellant's wish to retain United States citizenship cannot outweigh the clear meaning of a consciously performed expatriating act. '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 carried it out, the choice must be given effect. Richards, 752 F. 2d at 1421, 1422.

Surveying the entire record, we find no factors that would warrant concluding that appellant did not intend to divest herself of United States citizenship. She obtained a Mexican passport which she used with U.S. visas repeatedly to enter the United States. She conducted herself after pledging allegiance to Mexico solely as a citizen of that country.

Eight years passed from the time of her declaration of allegiance to Mexico until she asserted a claim to United States citizenship. In brief, there is no tangible indication that appellant took any action, save this appeal, to manifest an intent to preserve her United States nationality.

At the hearing, counsel for the Department of State observed that:

> When the Department is faced with a case such as this one, where the appellant obviously has a great deal of affection for the United States, we find ourselves in a very difficult position. These are the cases that often make our consular officers wish the laws were not what they are. No one enjoys making a finding of loss that someone who has expatriated herself when she does still hold affection for the United States and would like very much to live here.
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> Yet the Department and the United States Government is governed by United States nationality laws, to which we must adhere.

Counsel's comment is apt. Appellant's sincerity was evident at the hearing; there and in her written submissions she made it clear that she subscribes to the fundamental values of the United States and keenly wishes to be a United States citizen. Admirable though these sentiments may be, they cannot outweigh the objective evidence of appellant's intent to relinquish United States citizenship when she made a declaration of allegiance to a foreign state. In our view, the Department has carried its burden of proving that appellant intentionally forfeited her United States nationality.

IV

Upon consideration of the foregoing, the Board hereby affirms the Department's determination of appellant's expatriation.

/s/ Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Warren E. Hewitt, Member