July 22, 1985

DEPARTMENT OF STATE

BOARD **OF APPELLATE REVIEW**

IN THE MATTER OF: A[redacted] P[redacted] N[redacted]

This case is before the Board of Appellate Review on appeal from an administrative determination of the Department of State that appellant, Al[redacted] P[redacted] N[redacted], expatriated himself on January 18, 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 to be resolved in this appeal is whether appellant's statutory expatriating act was accompanied by an intent to relinquish his United States citizenship, We conclude that it was performed with the intent to surrender citizenship. Accordingly, we will affirm the Department's determination of loss of citizenship.

I

Appellant was born at Mexico, D.F., Mexico, on May 8, 1958, and acquired United States nationality by virtue of his birth abroad of parents who were citizens of the United States, He also acquired Mexican citizenship at birth. He was a dual national, a citizen of Mexico and the United States.

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481, 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 resided with his family in Mexico. He attended primary and junior high schools in Mexico and, from 1973-76, the Tabor Academy in Marion, Massachusetts,

The American Embassy at Mexico issued appellant U.S. passports in 1969 and 1974. He obtained his latest U.S. passport at Los Angeles in 1980, Appellant likewise held Mexican passports. It appears that the possession of both passports enabled appellant to leave and re-enter Mexico with his Mexican passport and to travel into and out of the United States with his U.S. passport. Appellant also alleged that having a Mexican passport enabled him to work in Mexico without the need of other documentation.

In 1975, appellant, at age 17, obtained a Mexican passport, It expired in 1982, when he was twenty-three years of age, After age 18, the Mexican authorities require a passport applicant, if a dual national, to confirm his or her Mexican nationality by means of a certificate of Mexican nationality issued by the Secretariat of Foreign Relations. The Mexican Government enforces this legal requirement by requiring the dual citizen applicant to sign an application for a certificate of Mexican nationality, in which the applicant renounces any other nationality and swears allegiance to Mexico.

On November 9, 1982, appellant executed an application for 'a certificate of Mexican nationality to enable him to acquire a new Mexican passport. The record copy of the signed application before us contains a statement that appellant expressly renounces his United States citizenship as well as any submission, obedience, and loyalty to any foreign government, especially that of the United States of America, and swears adherence, obedience, and submission to the laws and authorities of the Mexican Republic. The certificate of Mexican nationality was issued on January 18, 1983.

On February 25, 1983, the Mexican Department of Foreign Relations informed the American Embassy at Mexico City of appellant's certificate of Mexican nationality. The Embassy, thereafter, informed appellant on June 16, 1983, that he might have lost his United States citizenship as a consequence of making a formal declaration of allegiance to Mexico and invited him to submit information to assist in determining his United States citizenship status.

On July 7, 1983, appellant visited the Embassy to discuss his acquisition of the certificate of Mexican nationality and submit information about his citizenship. According to the report

of the U.S. consular officer at the Embassy, appellant gave the following explanation:

> ...Mr. N[redacted] explained that his parents had secured a CMN 2/ for him while he was a child and that he believed he was merely reaffirming that CMN. Mr. N[redacted] stated he did not realize he was taking an oath of allegiance to Mexico, but rather, that he was only signing an application form for his Mexican passport. Throughout the interview, Mr. N[redacted] was emphatic that he never intended to relinquish his U.S. citizenship. According to subject, he wanted to retain his dual nationality and to have both U.S. and Mexican passports. Mr. N[redacted] said he had been misinformed by his parents, concerning dual nationality, and that he had no idea he could expatriate himself by obtaining a CMN by his own application,...

In an affidavit executed on the occasion of his visit to the Embassy, appellant stated:

> It really never came to my attention that I was supposed to decide my citizenship when I turned 18, and after the Mexican government gave me a six-year passport when I was 17½ years I figured I had no problem in having both passports,
>
> Now, July 1983, I am told that I was supposed to decide when I turned twenty-one, but at that time I was never notified not even by the Mexican government. So, when was I supposed to decide?

2/ "CMN" means "Certificate of Mexican Nationality."

> Six years later, my Mexican passport expired when I was 23½ years old. I still believed that I could keep both passports, so when I went to the Delegacion Miguel Hildalgo they asked me to renew my Certificado de Nacionalidad Mexicana por Nacimiento. This would enable me to acquire a new passport. I did so, believing that what I had signed, my parents had also signed on April 7, 1971.

Upon review of appellant's citizenship case, the Embassy issued on August 6, 1983, a certificate of loss of United States nationality in appellant's name, 3/ The consular officer certified that appellant acquired United States citizenship by virtue of

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3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. I501, reads:

> Section 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 Skate, 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.

his birth in Mexico to United States citizen parents; that he acquired Mexican nationality by birth: that he made a formal declaration of allegiance to Mexico on November 9, 1982; that he was issued a certificate of Mexican nationality on January 18, 1983; and that he thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. The Department approved the certificate on September 16, 1983. Such approval constitutes the Department's administrative determination from which an appeal, properly and timely filed, may be taken to this Board,

Appellant gave timely notice of appeal on September 12, 1984. A hearing was held on May 9, 1985. Appellant did not appear, but was represented by counsel.

Appellant contends, through counsel, that the Department has failed to sustain its burden of establishing by a preponderance of the evidence that he intended to relinquish his United States citizenship when he made a formal declaration of allegiance to Mexico. Appellant does not dispute that he voluntarily applied for a certificate of Mexican nationality in which he swore allegiance to Mexico.

11

Under section 349(a)(2) of the Immigration and Nationality Act, a person who is a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state, Although appellant admits that he voluntarily subscribed to an oath of allegiance to Mexico and performed a statutory act of expatriation, he maintains that he did not intend to relinquish his United States citizenship.

On the issue of intent, the Supreme Court declared in Afroyim v. Rusk, 387 U.S. 253 (1967), that a United States citizen has a constitutional right to remain a citizen unless he "voluntarily relinquishes that citizenship." 387 U.S. at 268, The Court rejected the view that Congress has any general power, expressed or implied, to take away an American citizen's citizenship without his or her assent, Although Afroyim did not define what conduct constitutes "voluntary relinquishment" of citizenship, it nevertheless made loss of citizenship dependent upon evidence of an intent to transfer or abandon allegiance.

In Vance v. Terrazas, 444 U.S. 252 (1980), the Supreme Court affirmed the Afroyim holding on intent. The Government, the Court said, must prove an intent to terminate United States

citizenship, as well as the voluntary performance of the expatriative act under the statute, The Court further said that such an intent may be expressed in words or may be found as a fair inference from proven conduct. The Court made it clear that it is the government's burden to establish by a preponderance of the evidence that the expatriating act was performed with the necessary intent to relinquish citizenship, 4/ The intent to be proved is appellant's intent at the time of the expatriating conduct. Terrazas v. Haig, 653 F. 2d 285 (7th Cir. 1981).

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

(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.

It should be noted, as the U.S. Court of Appeals, Seventh Circuit, observed in Terrazas v. Haig, supra, that "a party's specific intent to relinquish his citizenship rarely will be established by direct evidence." The Court went to say, however, that "circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to relinquish citizenship." The Court referred to an earlier Ninth Circuit decision in King v. Rogers, 364 F. 2d 1188 (1972), in which the latter court stated that the Secretary of State may prove intent by acts inconsistent with United States citizenship or by affirmative acts clearly manifesting a decision to accept foreign nationality. Such proof, as we have noted above, need be only by a preponderance of the evidence,

In his letter of appeal, dated September 12, 1984, appellant contended that his intent in signing the application for a certificate of Mexican nationality with its concomitant declaration of allegiance to Mexico and renunciation of United States citizenship was for the purpose of obtaining a Mexican passport, and not "to resign" his United States citizenship. He said that he never wanted to jeopardize his United States citizenship and that it was not his intent to do so.

At the hearing, appellant's counsel alleged that appellant's intention at the time of signing the Mexican application was to preserve his Mexican nationality and that he "didn't mean to renounce his United States citizenship." 5/

5/ Transcript of Proceedings, In the Matter Of Alexander Phillip Noble, Department of State, Board of Appellate Review, May 9, 1985 (hereinafter cited as TR), at 30.

There is, however, no contemporaneous corroborative evidence in the record that would support appellant's allegation of lack of intent to relinquish his United States citizenship when he made a declaration of allegiance to Mexico. Neither is there evidence to support the conjectures of appellant's counsel as to what appellant had in mind at that time,

On the contrary, the record shows that appellant willingly and knowingly applied for a certificate of Mexican nationality and made a formal declaration of allegiance to Mexico that included an explicit renunciation of United States nationality, Whatever appellant's motive may have been in seeking a certificate of Mexican nationality in 1982, the fact remains that he voluntarily and knowingly subscribed to an oath of allegiance to Mexico and explicitly renounced his United States citizenship. Such conduct manifests clearly an intent to give up citizenship and, as a rule, has been held to constitute a sufficient finding of an intent to relinquish citizenship. Terrazas v. Haig, supra; Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985).

Appellant's counsel argued "that there must be something more than the signing of the oath" to confirm an individual's intent. 6/ According to counsel, appellant's oath of allegiance to Mexico, which contained an explicit renunciation of his United States citizenship, is not sufficient to establish the requisite intent to relinquish citizenship. We disagree,

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6/ TR at 4, 25-27.

Appellant here was approximately twenty-four years of age when he applied for the Mexican certificate of nationality. He was educated and able to understand the contents of the application, the oath of allegiance to Mexico and the renunciation of any other nationality. The language of the application he signed is hardly ambiguous; he expressly renounced his United States citizenship and swore allegiance to Mexico.

Appellant's counsel in his written submissions to the Board also argued that appellant was unaware when he subscribed to the oath of allegiance on the application for the certificate of Mexican nationality that it might result in the loss of his United States citizenship status. He maintained that appellant's subsequent actions "themselves do not indicate any intent to renounce his citizenship." The actions, counsel apparently refers to, are: appellant's repeated statements to the effect that he never intended to renounce his United States citizenship and that he only intended to renew his Mexican passport; appellant's use of his U.S. passport until he was advised by the consular officer of his possible loss of citizenship; and appellant's residence in the United States since that time.

We are not persuaded that appellant was unaware of the contents of the application for a certificate of Mexican nationality. The language is clear. The applicant "expressly" renounces his other citizenship and any submission, obedience, and loyalty to any foreign government, especially that government of which he might be subject; and, he swears adherence, obedience, and submission to the laws and authorities of the Mexican Republic. There is no uncertainty as to an applicant's intent. Whether appellant here chose to read the application before signing it or signed it on the advice of his parents or on the assumption that he was applying for a new Mexican passport, is not, in our view, material.

Appellant could, of course, have easily obtained an official view from the Embassy concerning the legal effect of an application for a certificate of Mexican nationality, but did not do so. He reportedly told a consular officer at the Embassy that it never occurred to him to consult with the Embassy prior to signing the application. In any event, he must be held to have proceeded at his own risk in reaffirming his Mexican citizenship status and renouncing his United States citizenship. His mistaken belief that he would thereafter still retain dual nationality status, being a mistake of law, does not excuse appellant's oath of allegiance to Mexico. Neither do appellant's subsequent statements that he never intended to give up his United States

citizenship expunge the intention manifested by his oath of allegiance to Mexico and express renunciation of United States citizenship.

In light of the Supreme Court decisions in Afroyim and Terrazas, it is a person's conduct at the time the expatriating act occurred that is to be looked at in determining the voluntary assent of the citizen to relinquish citizenship. Appellant's conduct after he subscribed to the oath of allegiance is not strictly relevant where the expatriating act, as here, is accompanied by an express declaration of renunciation. 7/ In such circumstances, the oath of allegiance to Mexico with its declaration of renunciation of United States citizenship demonstrates, in our opinion, an intent to transfer allegiance to Mexico and relinquish allegiance to the United States. Appellant's contention that he did not intend to give up his United States citizenship is contravened by his voluntary application for a certificate of Mexican nationality, his explicit renunciation of United States citizenship, and his oath of allegiance to Mexico.

7/ The Board recognizes that there may be circumstances where subsequent conduct may raise doubt as to whether the individual made a knowing and understanding forfeiture of United States citizenship.

Taking into account the facts and circumstances surrounding appellant's performance of the expatriating act and the record before the Board, we are of the view that appellant's own statements and conduct at the time establish an intent to transfer his allegiance to Mexico. In our judgment, the Department has satisfied its burden of proof that appellant intended to relinquish his United States citizenship when he made a formal declaration of allegiance to Mexico.

III

On consideration of the foregoing, we conclude that appellant expatriated himself by making a formal declaration of allegiance to Mexico. We affirm the Department's administrative determination of September 16, 1983, to that effect.

Alan G. James, Chairman

Edward G. Misey, Member

Frederick Smith, Jr., Member