December 10, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State that appellant, A[redacted] R[redacted] E[redacted], expatriated herself on June 19, 1978 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

Since we conclude that the Department has proved by a preponderance of the evidence that appellant voluntarily declared allegiance to Mexico with an intent to relinquish her United States citizenship, we affirm the Department's holding of appellant's expatriation.

I

Ms. [redacted] was born at [redacted] of an American citizen father and a Mexican citizen mother. She thus acquired the nationality of both the United States and Mexico at birth.

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

Appellant's birth as a United States citizen was documented by the United States Embassy in a consular report issued shortly after her birth. She was brought up and educated in Mexico. In 1966 and 1972 she was documented as a United States citizen by the Embassy.

On June 14, 1978 appellant applied for a certificate of Mexican nationality, which, she maintains, the university authorities told her she would have to present to obtain certification of her degree as a certified public account. She was then twenty years old. In the application, appellant made the following declaration, as prescribed by Mexican law:

> I hereby expressly renounce North American citizenship as well as all submission, obedience and allegiance to any foreign government, especially that of the United States of North America, of which I may have been a national, any protection other than that of the laws and authorities of Mexico, and any right that treaties and international law grant to aliens. I profess adherence, obedience and submission to the laws and authorities of the Mexican Republic....

The underscored words were inserted on the pre-printed form by appellant, in accordance with prescribed Mexican practice.

A certificate of Mexican nationality was issued to appellant on June 19, 1978. Several months later, the Department of Foreign Relations informed the United States Embassy that appellant had applied for and obtained a certificate of Mexican nationality; made a declaration of allegiance to Mexico; and renounced United States citizenship.

On December 12, 1978 the Embassy sent appellant a registered letter informing her that she might have lost her United States citizenship by making a declaration of allegiance to Mexico. She was asked to complete an enclosed form for determining United States citizenship and to submit any evidence she wished to be considered in her case. The Embassy informed her that she might appear for an interview with a consular officer, and stated that if appellant did not reply within 60 days, it would be assumed that she did not intend to submit any evidence for consideration in connection with a decision regarding her loss of nationality.

A postal receipt acknowledging that the Embassy's letter had arrived at appellant's home was signed in January 1979 by her parents' maid who, when the Embassy later telephoned her, said she had delivered the letter to appellant. Appellant's mother subsequently informed the Embassy that her daughter had "signed the letter" and sent it back, adding that appellant might call the Embassy shortly. By early May 1979 appellant had not replied to the Embassy's letter. The Embassy therefore executed a certificate of loss of nationality on May 4, 1979. 2/

The certificate stated that appellant acquired the nationality of both the United States and Mexico at birth; that she made a formal declaration of allegiance to Mexico; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. Inasmuch as appellant had not submitted evidence regarding the voluntariness of her performance of the expatriative act or her intent with respect to United States citizenship, the Department took no action on the certificate of loss of nationality at that time.

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.

In July 1984 appellant went to the United States Embassy to inquire about her citizenship status. A report the Embassy made to the Department recounted the interview she had with a consular officer:

> ...When advised that the Embassy had, on several ocassions, /sic/ sought to contact her concerning her obtention of the CMN, Miss E[redacted] responded that she never knew of our efforts to communication /sic/ with her. She explained that she "was forced to get the CMN" when she attempted to obtain her CPA degree. She stated that school authorities refused to certify her degree until she secured the Mexican Nationality document. She claimed not to know that the procedure would jeopardize her U.S. citizenship, rather she stated she'd been advised that the only way a U.S. citizen could lose his/her U.S. citizenship was by making a formal renunciation before a Consul at the Embassy. Miss E[redacted] stated she was last documented as an Amcit in 1972, when she was 14, and traveled thereafter on Mexican passports and a border crossing card issued to her shortly after she secured the CMN. Miss E[redacted] could not explain why she never sought to be documented as an Amcit after she solicited the CMN, particularly if she really believed she had not jeopardized her U.S. citizenship by obtaining the CMN. When asked if she realized that she'd presented herself as an alien when she applied for the BCC, she responded that she did so realize.

The consular officer further noted that Ms. E[redacted] came to the Embassy most recently to inquire about obtaining a student visa.

Appellant completed a form for determining United States citizenship. On July 18, 1984 the consular officer who interviewed appellant recommended that the certificate of loss of nationality that was already in her file be approved.

In August 1984 appellant applied to be registered as a United States citizen and for issuance of a passport. She was documented with a limited passport valid until February 1985 pending approval or disapproval of the certificate of loss of nationality.

The Department approved the certificate on November 30, 1984, approval being an administrative determination of loss of nationality from which a timely and properly filed appeal lies to the Board of Appellate Review. Appellant gave notice of appeal through counsel on February 6, 1985. Oral argument was requested and was heard on September 30, 1985, appellant appearing by counsel.

II

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. 3/ 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).

There can be no question that appellant duly performed a statutorily proscribed act by making a declaration of allegiance to Mexico in the form prescribed by Mexican law and regulations. The declaration was accepted by the Mexican authorities as meaningful and, clearly placed appellant in submission of the laws of Mexico. It was thus sufficient under United States law.

> ...under section 349(a)(2) of the Act, 8 U.S.C. section 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, III Hackworth, Digest of International Law,' 219-220 (1942) may result in expatriation. See also, Savorgnan v. United States 338 U.S. 491 (1950). 4/

Appellant thus brought herself within the purview of the statute.

3/ Supra, note 1.

4/ Terrazas v. Vance, No. 75C 2370,Slip Op. at 5 (N.D. Ill 1977).

Counsel seems to suggest that the act was not valid because appellant was not twenty-one years of age when she made the declaration. Obviously, her act was valid, for the statute makes it clear that eighteen not twenty-one is the legal age for performance of this expatriating act. 5/

Appellant further implies that she was coerced into making a declaration of allegiance to Mexico. Note her statement to the consular officer who interviewed her in July 1984 that she had been forced to get a certificate of Mexican nationality in order to obtain her CPA degree.

5/ Section 351(b), 8 U.S.C. 1483(b), provides that:

...

(b) A national who within six months after attaining the age of eighteen years asserts his claim to United States nationality, in such manner as the Secretary of State shall by regulation prescribe, shall not be deemed to have expatriated himself by the commission, prior to his eighteenth birthday, of any of the acts specified in paragraphs (2), (4), (5), and (6) of section 349(a) of this title.

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, although the presumption may be rebutted by the actor upon a showing by a preponderance of the evidence that the act was not voluntary. 6/

Appellant does not essay the burden of proving that she acted against her free will in making the pledge of allegiance to Mexico, and it is obvious that she was in no legal sense compelled by forces over which she had no control to perform an expatriating act.

Having worked for it, she understandably wished to possess her degree, but Mexican law required that in order to complete the accreditation process, she exhibit a certificate of Mexican nationality. That the laws or regulations of a sovereign state require those who wish to enjoy the benefits of its citizenship to do certain things cannot, however, be termed legal duress.

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.

The facts of the case show that appellant had a choice: to apply for the certificate of Mexican nationality or to do what her brother, also a dual national, did in 1978, opt for United States citizenship and apply for formal permission to depart from Mexico. We are not indifferent to the practical problems that choosing United States nationality over Mexican might pose for a dual national who has always lived in Mexico, but no cases of which we are aware stand for the proposition that even such a difficult choice amounts to legal duress.

From the perspective of the law, appellant had the opportunity either to jeopardize her United States nationality or to preserve it. The opportunity to make such a choice is the essence of voluntariness. See Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245, 1250 (5th Cir. 1971).

Appellant has not overcome the legal presumption that she voluntarily made a declaration of allegiance to Mexico, and we so hold.

III

Voluntary performance of a statutory expatriating act will not result in expatriation unless it is proved that the actor intended to relinquish citizenship. Vance v. Terrazas, 444 U.S. 252. The Government has the burden of proving a person's intent by a preponderance of the evidence. 444 U.S. at 270. Intent may be proved by a person's words or found as a fair inference from proven conduct. Id. at 260. The intent to be proved is the intent of the person at the time the expatriating act was done. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981).

The Department submits that appellant's intent to relinquish United States citizenship is evidenced by the following factors:

> First of all, in taking the oath of allegiance to Mexico, appellant explicitly renounced all "submission, obedience, and fidelity" to the United States. Twice in the oath she filled in words in her own hand to indicate that her United States (or "North American") citizenship was the nationality she was expressly relinquishing. The courts have been unanimous in their opinions that where an expatriating act includes an express renunciation of U.S. citizenship, there is "no room for ambiguity as to the intent of the applicant." United States v. Matheson, 400 F. Supp. 1241 (S.D.N.Y. 1975), Aff'd 532 F. 2d 809 (2nd Cir. 1976). In

> Terrazas v. Haig, 653 F. 2d 285, the Seventh Circuit Court of Appeals held that Mr. Terrazas' intent to relinquish his U.S. citizenship was established by the very same renunciatory oath taken by appellant: "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 /U.S./ citizenship." Terrazas v. Haig, 653 F. 2d at 288....
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> ...Since her obtention of her CMN, appellant has never sought to be documented as a U.S. citizen. She has travelled exclusively on her Mexican passport, and she even applied for an alien border crossing card (BCC) in order to facilitate her entry into the United States. She admitted to the consular officer that she was aware she had presented herself as an alien in applying for the BCC.
>
> In addition, appellant has never voted in the U.S., never obtained a Social Security card, nor has she ever even lived in the U.S. According to the consular officer, she recently approached the Embassy to inquire about obtaining a student visa, a clear sign she considered herself not to be a U.S. citizen....

As the Department points out, it is settled that the taking of an oath of allegiance to a foreign state that includes an express renunciation of United States nationality ordinarily is sufficient to warrant a finding of intent to relinquish United States nationality. See also Richards v. Secretary of State, 752 F. 2d 1413 (9th Cir. 1985).

Appellant asserts that it was not her intent to relinquish her United States citizenship; her only motive in signing the renunciatory declaration was to ensure that she would be awarded her CPA degree. Her motive, however, it not relevant to the issue of her intent. "...a person's free choice to renounce United States citizenship is effective whatever the motivation." Richards v. Secretary of State, supra, at 1420.

Appellant's counsel characterized appellant's signing the application for a certificate of Mexican nationality as "a youthful

ndiscretion," 7/ not, apparently, a knowing and intelligent act of xpatriation.

True, appellant was young at the time she signed the applica-ion for the certificate of Mexican nationality but at twenty she as of legal age. She was a university student and fluent in the anguage in which the application was printed. Absent contrary vidence, it must be assumed that she did not act inadvertently, nd she must be considered to have been competent to understand he meaning of the words to which she subscribed.

Counsel for appellant argued at the hearing, as he had done n his submissions, that appellant believed the only way she could ose her United States citizenship by making a formal renuncia-ion before a consular officer at the Embassy. TR 5. However, he has produced no evidence that she had been officially so nformed. Indeed, at the hearing, when asked by the Board hether there was any such evidence, counsel for appellant re-lied: "I have no evidence to maintain that position." TR 15.

The record indicates clearly, in our opinion, that appellant cted knowingly and understandingly when she made a formal eclaration of allegiance to Mexico and concurrently forswore llegiance and fidelity to the United States.

A careful examination of the facts of record fails to reveal onduct that might cast doubt on appellant's specific intent in 978. After obtaining the certificate of Mexican nationality she ppears to have conducted herself in every respect as a Mexican itizen. There is no record of any actions indicating a will and urpose to assert United States citizenship. She enjoyed the ights a certificate of Mexican nationality gave her, and travelled o the United States as a Mexican citizen, although it appears she sed the passport (valid for six months) issued by the Embassy in August 1984 to go to Illinois where she is now studying. In short, we find no evidence that appellant did not mean precisely what she said in 1978 when she made a declaration of allegiance o Mexico.

The Department has clearly sustained its burden of proof.

7/ Transcript of Hearing in the Matter of Ana Regina P[redacted], Board of Appellate Review, September 30, 1985 (hereafter referred to as "TR"). p. 5.

IV

Upon consideration of the foregoing, the Board hereby affirms the Department's determination that appellant expatriated herself by making a formal declaration of allegiance to Mexico.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Frederick Smith, Jr., Member