August 16, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State that appellant, A[redacted] S[redacted] W[redacted] expatriated himself on August 13, 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/

The issues for decision are: 1) whether appellant sought Mexican citizenship voluntarily, and 2) if he did so, whether that act was accompanied by an intent to relinquish United States citizenship. It is the conclusion of the Board that the appellant made a formal declaration of allegiance to Mexico of his free will, and that his performance of the expatriative act was accompanied by an intent to relinquish United States citizenship. We accordingly affirm the Department's holding of loss of his United States nationality.

I

Appellant was born on [redacted] of an American citizen father, and thus acquired the nationality of both the United States and Mexico at birth. He has never resided in the United States.

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 was issued a United States passport in 1968 which he did not renew after it expired. He also obtained a Mexican passport while under the age of 18. In early August 1982, appellant urgently sought a new Mexican passport, because, he stated, he had to go to the United States to the funeral of his father, who had died in an accident in Texas (appellant did not specify when his father died or when the funeral was held), "and deal with all the necessary documents."

Being at that time over the age of 18, appellant was first required to obtain a certificate of Mexican nationality. To this end, he executed the prescribed application on August 4, 1982.

In the application for a certificate of Mexican nationality, appellant expressly renounced his United States citizenship as well as his allegiance to the United States, and declared his allegiance to Mexico, in conformity with the requirements of Mexican law for issuance of such certificates.

On August 4, 1982 a Mexican passport was issued to appellant, valid for 12 months. After receiving it, and obtaining a U.S. non-immigrant visa, appellant reportedly went to his father's funeral and then to Europe.

On February 10, 1983 the Department of Foreign Relations informed the United States Embassy that a certificate of Mexican nationality had been issued to appellant on August 13, 1982.

Appellant states that while he was in Europe his mother informed him that a letter had arrived for him from the Consulate General at Guadalajara. (He presumably refers to the standard letter sent to citizens who have performed an expatriative act to advise them that they might have lost their citizenship and to invite them to submit evidence for consideration in determining their citizenship status.) Appellant discussed his case at the United States Embassy at Rome, but apparently did not pursue the matter there, and returned to Mexico shortly thereafter.

On July 5, 1983 he visited the Consulate General at Guadalajara and informed a consular officer that he might wish to contest his putative loss of nationality. He was given forms to complete to facilitate the determination of his citizenship status. Appellant did not complete or return the forms. Nearly two months later after appellant had failed to communicate with the Consulate General, the latter office wrote on August 31,

1983 to inform him that if he did not within 30 days come forward to contest his possible loss of nationality, "your loss of nationality will be processed with the information available." Appellant did not respond to the Consulate General's letter of August 31st. Accordingly, the Consulate General executed a certificate of loss of nationality in appellant's name on October 23, 1983. 2/

The Consulate General certified that appellant acquired the nationality of both the United States and Mexico at birth; that he had made a formal declaration of allegiance to Mexico; and thereby expatriated himself under the provision of section 349 (a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on November 25, 1983, such approval constituting an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board.

Appellant instituted this appeal on January 9, 1984. He maintains that his declaration of allegiance to Mexico was involuntary and that he did not have the intention of relinquishing his United States citizenship. Appellant is now twenty-two years old and a student in Mexico.

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 provisions of chapter 3 of the 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.

II

Section 349(a)(2) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state. 3/

There is no dispute that appellant made such a declaration to Mexico, and thereby brought himself within the purview of the relevant section of the statute.

American citizenship shall not be lost, however, unless a citizen performs an expatriating act voluntarily and with the intention of relinquishing his American nationality. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

In the instant case the Board must first determine if appellant declared his allegiance to Mexico of his free will.

Section 349(c) of the Immigration and Nationality Act provides that a person who performs a statutory expatriating act is presumed to have done so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was not performed voluntarily. 4/

3/ See Note 1.

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

Appellant alleges that he made a declaration of allegiance to Mexico involuntarily. /I/t /applying for a certificate of Mexican citizenship/ now is," he has stated, "an absolute prerequisite to getting a Mexican passport without which one cannot leave the country. This is exacted from every citizen of Mexico who has foreign parents." He continued: "I do hope you understand that living and studying in Mexico it is very difficult to abandon this country and go to the United States from one day to the next without the possibility of earning a living there."

Appellant further argues that he had no choice but to apply for a certificate of Mexican nationality. If he had instead applied for a United States passport

> I would have been deported from Mexico at the age of nineteen,...
>
> My family and friends reside in Mexico, I am a student, and not really qualified at the moment to earn a living other than by doing menial work in the United States.
>
> One of the greatest problems is that the U.S. Embassy informs the Government if one asks for U.S. Citizenship and applies for a passport, so the Mexican Government once informed gives you ten days and a DEFINITE EXIT which as you can imagine is extremely ominous sounding. /Emphasis in original/.

Appellant acknowledged that the United States Embassy assures dual nationals of the United States and Mexico that if one were to opt for United States nationality and depart from Mexico, the Mexican Government would grant him every facility to return to Mexico for legitimate purposes. He observed, however:

> Without wanting to disagree with their point of view, I feel that they would not help at all willingly and that they would perhaps feel that by doing this (accepting US nationality over their own) betrayed, thus making every possible difficulty in the world.
>
> Throughout my life I have seen perfectly legal foreigners go through the utmost difficulties in getting legal residence,

> I can't imagine how they would react to a person they felt had voluntary /sic/ given up his citizenship.

We do not agree that the circumstances appellant has described rendered his declaration of allegiance to Mexico involuntary. The compulsion appellant allegedly felt fails to meet judicially settled standards of legal duress.

For a plea of duress to prevail, "extraordinary circumstances" must have forced a citizen against his will to perform an expatriating act. Doreau v. Marshall, 170 F. 2d 721 (3rd Cir. 1948). We perceive no extraordinary element in the circumstances surrounding appellant's declaration of allegiance to Mexico. On the contrary, his were the circumstances of numerous individuals holding the nationality of the United States and Mexico and who wish to exercise the rights of Mexican citizenship. That Mexican law requires dual nationals of Mexico and another state after age eighteen to choose between Mexican and his or her other nationality does not render involuntary making a declaration of allegiance to Mexico to procure a certificate of Mexican nationality. If such a person wishes to exercise the rights of Mexican nationality, he or she must comply with the duly enacted laws of that country.

Nor do we consider that the performance of the expatriating act was forced on the appellant by influence over which he had no control.

Appellant acknowledges that he had the option of choosing United States or Mexican nationality. He deliberately chose the latter, apparently having weighed the alternatives. Although opting for United States nationality might have created certain practical problems for appellant, it is clear, as a matter of law, that he had a viable alternative to declaring allegiance to Mexico. Where one has the opportunity to make a personal choice, there is no duress. Jolley v. United States Immigration and Nationality Service, 441 F. 2d 1245 (5th Cir. 1971).

Appellant's choice may have been a difficult one, but as the Court stated in Doreau, forsaking American citizenship even in a difficult situation, as a matter of expediency, is not an involuntary act.

We therefore conclude that appellant has not rebutted the statutory presumption that his formal declaration of allegiance to Mexico was a voluntary act.

III

Although the Board has determined that appellant has failed to prove that his act was involuntary, the question remains whether on all the evidence the Government has satisfied the burden of proving by a preponderance of the evidence that the expatriating act was performed with the requisite intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. (1980). Further, the Court's decision establishes that intent may be ascertained from words or as a fair inference from proven conduct. Intent is to be proven as of the time of the performance of the expatriating act. Terrazas v. Haig, 653 F. 2d 258 (7th Cir. 1981).

While an oath of allegiance to a foreign state is insufficient in itself to prove the requisite intent to relinquish United States citizenship, when it is coupled with an express renunciation of United States citizenship, the oath manifests an unmistakable purpose. As stated in United States v. Matheson, 400 F Supp. 1241, 1245 (S.D.N.Y. 1975), aff'd, 532 F. 2d 809 (2nd Cir. 1976), making a declaration of allegiance to a foreign state and expressly renunciating United States citizenship "would leave no room for ambiguity as to the intent of the applicant." Similarly, in Terrazas v. Haig, 653 F. 2d at 288.

> 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 citizenship.

In Terrazas, the Court found that plaintiff, an educated man, 22 years old, knowingly and understandingly declared his allegiance to Mexico. And it found in his conduct after he received a certificate of Mexican nationality clear evidence that he intended to relinquish United States citizenship when he made the declaration of allegiance.

In the case before the Board, appellant expressly renounced his United States citizenship and all fidelity to the United States, and formally declared allegiance to Mexico. It appears from his submissions that he weighed his choices before making application for a certificate of Mexican nationality -- to seek a Mexican or U.S. passport. And the record shows that he was of age, schooled and presumptively Spanish speaking. In the absence of any evidence that appellant misunderstood what commitments he was required to make to obtain a certificate of Mexican nationality,

(and thus a Mexican passport) or was misled into signing the application, we must conclude that he knowingly and intelligently cast his lot with Mexico and forswore allegiance to the United States.

Appellant has maintained after the event that he did not intend to relinquish his United States citizenship when he made his declaration of allegiance to Mexico. But the only incontrO-vertible evidence of his intent dating from the crucial moment are the words to which he signed his name. His inner will and purpose may have been to retain United States citizenship, but he outwardly manifested a contrary intent by expressly renouncing United States nationality.

Appellant has submitted statements of family and friends attesting to appellant's good character and declaring their belief that he did not intend to forfeit American citizenship. While accepting the sincerity of these declarants, we are unable to give their statements greater weight than the objective, categorical evidence of the contrary intent appellant manifested in 1982.

But we must also consider the circumstantial evidence - appellant's conduct. The record discloses no actions by appellant that would call into question his intent in 1982 to terminate United States citizenship. Virtually nothing he has done shows an affirmative will to preserve United States citizenship. He knew, as he himself has conceded, that he had the option of obtaining documentation as a United States citizen, but made no attempt to do so. He obtained a Mexican passport and a U.S. visa on which he travelled to the United States and abroad. Although he went to the Consulate General at Guadalajara in 1982, stating that he might wish to contest the potential loss of his United States citizenship, he did not submit any evidence in support of his case, as he was invited to do; nor has he explained why he did not. It was only after he received the certificate of loss of nationality that he sought to undo what he had done.

While not unsympathetic with appellant's situation, we must base our decision on concrete facts. Objectively perceived the facts in this case show that appellant voluntarily made a formal declaration of allegiance to Mexico. His intention to abandon his United States citizenship is evidenced by both his words and proven conduct. He has provided no compelling evidence that would lead the Board to doubt that he pledged allegiance to Mexico fully conscious of the implications and consequences of that act.

The Department has, in our opinion, sustained its burden of proving by a preponderance of the evidence that appellant's voluntary declaration of allegiance to Mexico was accompanied by an intent to relinquish his United States citizenship.

IV

Upon consideration of the foregoing, the Board affirms the Department's determination that appellant expatriated himself on August 13, 1982.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Warren E. Hewitt, Member