DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J[redacted] d[redacted] l[redacted] T[redacted]-C[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, J[redacted], expatriated himself on July 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/

Two issues are presented: (1) whether appellant voluntarily declared allegiance to Mexico, and (2) if his act be found to have been voluntarily performed, whether it was accompanied by an intention to relinquish his United States citizenship.

It is our conclusion that appellant made a declaration of allegiance to Mexico of his own free will and that on all the evidence it was his intention to relinquish his United States citizenship. The Department's determination of appellant's expatriation is therefore affirmed.

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;...

I

Appellant was born at [redacted] of Mexican citizen parents who at that time were legal reside of the United States. He thus acquired the nationality of both the United States and Mexico at birth.

When appellant was two years old his parents returned with him to Mexico where he has since lived, Appellant received all his education in Mexico, studying veterinary medicine at the Universidad Nacional Autonoma de Mexico. He states that in **1981** the university asked him to submit proof of his Mexican nationality in order that he could receive credit for his studies, i.e., have his degree registered. Appellant therefore applied for a certificate of Mexican nationality on April **24, 1981.** As required by Mexican law, he pledged allegiance to Mexico and expressly renounced his United States citizenship and all allegiance to the United States. A certificate of Mexican nationality was issued to appellant on July 13, **1982.** He obtained a Mexican passport on July **19, 1982.**

Appellant appeared at the United States Embassy in August **1982** to apply for documentation as a United States citizen. In support, he submitted a hand-written statement dated August 6, **1982,** explaining the circumstances of his "renunciation" of United States citizenship:

> This is to affirm that I renounced my United States citizenship because I was misinformed. I was required to submit a Certificate of Mexican Nationality at the National Autonomous University of Mexico to accredit my M.U.Z. /Veterinary?7 studies, but I did not know €hat there Were other procedures available to me without having to renounce my U.S. citizenship.
>
> During the renunciation formalities, I carefully assessed my situation and concluded that renunciation was not necessary. I therefore went to the Nationality Office in the Department of Foreign Relations in order to cancel the renunciation proceedings. I was required at that time to sign a copy of the Certificate of Mexican Nationality, but I was not told that this concluded the proceedings. I assumed that the renunciation required some other type of formalities, such as taking an oath in the presence of an attorney, witnesses, and the Mexican flag, and so I signed the certificate. After

> being informed of the effect of my having signed the document, I immediately went to see Mr. [redacted] the Director of the Nationality Office, and asked him to cancel the proceedings. I told him that I had not realized the consequences of what had been done because I had not been duly informed. I was then told that there was no way to reverse the proceedings, but that if I could get the U.S. Consul in Mexico to acknowledge my U.S. citizenship, the renunciation of my Mexican citizenship could be processed immediately.
>
> I respectfully request that this explanation of my involuntary renunciation be given due consideration. 2/

Appellant also completed at the request of the Embassy a form for determining United States citizenship and an application for a passport and registration as a United States citizen. He acknowledged on the form for determining United States citizenship that he had obtained a certificate of Mexican nationality as a result of wrong information with respect to his rights and options as a United States citizen and because of the university's requirements that he produce such a certificate in order to receive credit for his studies.

2/ Statement of [redacted]. English translation, Division of Language Services, Department of State, LS No. 113181, Spanish (1984).

After obtaining from the Mexican authorities copies of appellant's application for the certificate of Mexican nationality and the certificate, the Embassy on October 15, 1982 executed a certificate of loss of nationality in the name of Jesus de la Torre. 3/ The Embassy 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 provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on February 28, 1983, approval constituting an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board. Appellant entered an appeal on

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3/ 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 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.

February 27, 1984. He states that he applied for a certificate of Mexican nationality involuntarily because the university forced him to obtain proof of his Mexican nationality. He also states that he did not intend to relinquish his United States nationality. 4/

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. 5/ The courts have 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 is no question that appellant duly made a meaningful declaration of allegiance to Mexico, and thus brought himself within the purview of the statute. He contends, however, that he did not make the declaration voluntarily.

4/ The Department filed its brief on August 1, 1984. Despite repeated inquiries by the Board, appellant did not indicate whether he would file a reply brief/statement, or whether he wished to make oral argument. Finally, in December 1985, the Board informed appellant that it would proceed to decide his appeal on the basis of the existing record.

5/ Supra, note 1.

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/

Since appellant contends that he was forced to perform an expatriative act, he bears the burden of proof. He submits that he did not act of his own free will because:

> ...All of a sudden he had to present evidence as a Mexican citizen and to all the places and persons he asked didn't inform him right of what other way he could do it to get his documents without giving up his citizenship, so all of a sudden he ended up giving out [sic] his citizenship in order not to loose [sic] anymore time and get his title.
>
> It is now that he realizes that all of a sudden he thought he had had no other choice than that; his parents were the only and sole support; he never thought that by doing that he was so concerned about all his schooling and not being able to get his diploma that he went the easiest route....

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 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's father has declared that: "Due to lack of proper information to obtain his professional title my son..., was forced against his wishes to renounce to his US citizenship."

Appellant has not, in our opinion, made a case for involuntary conduct.

To act under coercion implies that one had no choice but to act as he did. Here, appellant had a choice as a matter of law. He could have elected United States citizenship instead of declaring for Mexican. He decided, however, to take the latter course as the "easiest route." The pressures he felt to opt for Mexican citizenship were self-generated, arising from his wish to practice veterinary medicine in Mexico. As a prerequisite to entry into that profession, appellant was required by Mexican law to have his degree certified, a step that by law could only be completed when he produced evidence of his Mexican nationality. That Mexican law requires dual nationals who wish to exercise the rights of Mexican citizenship to choose between Mexican and their other nationality by obtaining a certificate of Mexican nationality is not legal duress.

We concede that for appellant to have chosen United States citizenship over that of Mexico would have presented him with some difficult practical problems, The mere difficulty of the choice involved, however, cannot be equated with duress. Forsaking American nationality even in difficult circumstances as a matter of expediency is not duress. Doreau v. Marshall, 170 F. 2d 721, 724 (3rd Cir. 1948). See also Prieto v. United States, 289 F. 2d 12 (5th Cir. 1961); and Jubran v. United States, 225 F. 2d 81 (5th Cir. 1958). Where one has the opportunity to make a free choice between alternatives, there is no duress. Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245, 1250 (5th Cir. 1971).

Appellant chose a course of action convenient to himself and must bear the consequences.

We conclude therefore that appellant has not rebutted the statutory presumption that he acted freely when he pledged allegiance to Mexico.

III

It is not enough that appellant acted voluntarily when he performed a statutory expatriating act. It remains to be determined whether he 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 his intent when he 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, he expressly renounced his United States citizenship and all fidelity to the United States. See also King v. Rogers, 463 F. 2d 1188, 1189 (9th Cir. 1972): "An oath of allegiance, while alone insufficient to prove a renunciation of United States citizenship, provides substantial evidence of intent...."

An express renunciation of United States citizenship manifests 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 record indicates that appellant knowingly and intelligently, if perhaps precipitately, made a declaration of allegiance to Mexico. When he applied for a certificate of Mexican nationality, appellant was 27 years of age, educated, and fluent in the language in which the application was printed. Furthermore, the statement he submitted to the Embassy in August 1982, in which he referred to the "renunciation formalities", suggests that he knew what he was doing but later considered that he had acted hastily.

Without more, therefore, we have no reason to doubt that appellant understood the legal consequences of subscribing to a document in which he expressly forswore his United States citizenship.

We must, however, consider all other relevant factors to determine whether or not they substantiate the highly persuasive evidence of an intent to relinquish United States citizenship found in appellant's declaration of allegiance to Mexico.

Although the record shows that appellant knew from an early age that he was a citizen of the United States as well as Mexico, he took no action until 1982 to assert a claim to United States citizenship. On the contrary, just one week after issuance of the

certificate of Mexican nationality, appellant obtained a Mexican passport. That he underwent a change of heart a short time after renouncing his United States nationality has no bearing on the intent he manifested at the time he applied for a certificate of Mexican nationality. In short, beyond an after-the-event wish to recover United States citizenship, nothing in appellant's conduct is sufficiently persuasive to offset the strong evidence of intent to relinquish United States citizenship found in the declaration of allegiance he made to Mexico.

In our view, the Department has sustained its burden of proving that it was appellant's intent to divest himself of United States citizenship.

IV

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

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Member