March 6, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] W[redacted]

This is an appeal to tne Board of Appellate Review from an administrative determination of the Department of State that appellant, R[redacted] Wi[redacted] expatriated herself on July 7, 1932 under tne provisions of section 349(a)(2) or the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. [1]

The sole issue for determination is whether appellant had the requisite intent to relinquish her United States citizenship when sh performed this statutory expatriating act. It is our conclusion tha the Department has carried its burden of proving that appellant had such an intent. Accordingly, we affirm the Department's holding of loss of appellant's United States citizenship.

I

Appellant was born at [redacted] of United States citizen parents, thus acquiring the nationality of bot the United States and Mexico at birth. She has lived most of her life in Mexico, although she states she resided for short periods in the United States. Appellant registered at the United States Embass at Mexico City in July 1976, and was issued a United States passport

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1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S. I481, 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;...

On October 30, 1981 Ms. W[redacted] made application for a certificate of Mexican nationality (CMN). She was then twenty-three years of age. In the application, as required by Mexican law, she expressly renounced her United States nationality and all allegiance to the United States, and declared her allegiance and submission to the laws and authorities of Mexico.

In her communications with the Board appellant has explained that she applied for a CMN because she had been advised by "private counsel and family" that in order to live and work in Mexico it would be easier for her to apply for such a certificate than to go through the process of obtaining permission to live and work in Mexico as an alien.

On July 7, 1982 a certificate of Mexican nationality was issued to appellant. A few months later on October 11, 1982 the Department of Foreign Relations informed the United States Embassy by diplomatic note that appellant had been issued a certificate of Mexican nationality and that in making application therefor she had expressly renounced United States nationality and all allegiance to tne United States, and had declared her allegiance to Mexico.

The Embassy wrote to appellant on January 31, 1983 to inform her that by making a declaration of allegiance to Mexico she might have lost her United States citizenship. She was asked to complete a form to assist the Department in making a determination of her citizenship status. She filled out the form on February 2, 1983 and returned it to the Embassy. It appears that she was interviewed in March 1983 by a consular officer.

Thereafter, the consular officer executed a certificate of loss of nationality in Ms. [redacted] name. 2/ He certified that she acquired the nationality of [redacted] United States by birth abroad of United States citizen parents: 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. In forwarding the certificate to the Department, the consular officer made the following comments on appellant's case:

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 stare has lost his United States nationality under any provision ot 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 suck! 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.

Amcit Ruth Dorcas [redacted] was born in Oaxaca, Mexico On September 29, 1958 to Amcit parents. On October 30, 1981, Miss [redacted] took an oath of allegiance to Mexico which contained language renouncing her U.S. citizenship. Subject performed a potentially expatriating act when she obtained a Certificate of Mexican Nationality on July 7, 1982.

While Miss [redacted] indicated a desire to retain her U.S. citizenship she stated she had obtained the CMN because of her desire to live in Mexico and to continue with her missionary work. Subject indicated she maintains a residence in the U.S., however, she was not clear as to whether or not she had filed U.S. tax returns. Miss [redacted] has been registered at the Embassy since July 20, 1976, when she was issued passport No. 22599831.

Consular office recommends that CLN be approved in subject's name.

The Department approved the certificate on February 22, 1984, approval constituting an administrative determination of loss of nationality from which an appeal, timely and properly filed, may be brought to this Board.

Appellant initiated this appeal on September 24, 1984. Although she concedes that she voluntarily applied for a certificate of Mexican nationality and in the process pledged allegiance to Mexico, she argues, in effect, that she did not have the intention of relinquishing her United States citizenship. She did not, she contends, understand that by declaring her allegiance to Mexico she might lose her American nationality.

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.

There is no dispute that appellant made a formal declaration of allegiance to Mexico and thus brought herself within the purview of the statute. The Supreme Court has held, however, that citizenship shall not be lost through performance of a statutory act of expatriation unless the act was performed voluntarily and with the intention of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967).

Here appellant has conceded that she voluntarily made a declaration of allegiance to Mexico. The question remains, however, whether appellant had the specific intent to relinquish her United States nationality when she made a declaration of allegiance to Mexico. She contends that she did not intend to relinquish her citizenship. The Department, which takes a contrary position, must prove by a

preponderance of the evidence that she had such intent. Vance v. Terrazas, 444 U.S. at 268. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. A party's specific intent rarely will be established by direct evidence, but circumstantial evidence surrounding performance of an expatriative act may establish such intent. Terrazas v. Haig, 653 F. 2d 285, 287 (7th Cir. 1981). The intent that the Government must prove is the person's intent at the time the expatriative act was done. Id.

Appellant contends tnat her citizenship should be restored because she lacked the necessary intent to give it up. She argues as follows:

> I thought at the time that I could obtain mexican /sic/ citezenship /sic/ without loosing my U.S. citezenship.
>
> When I was younger, my parents signed mexican documentation indicating that I resigned my U.S. citezenship in order to obtain a Mexican passport without which I could not leave the country. Although this was done, it did not effect /sic/ my U.S. citezenship. Therefore, I thought thIs instant matter to be a similiar /sic/ case, and signed the documentation only to find out that I was about to lose my U.S. citezenship. My intent in signing was to be able to live and work in Mexico and not to lose my U.S. citezenship. I did not realize the seriousness of my under taking and realize 1 should have sought counsel first at the U.S. Embassy applying for mexican citezenship. I did not know that I needed to do this until it was too late.

The cases make it clear that formally declaring one's allegiance to a foreign state and expressly renouncing United States nationality evidences an intent to relinquish United States citizenship. Terrazas v. Haig, 653 F. 2d at 288, Richards v. Secretary of State, 752 F. 2d 1412 (9th Cir. 1985); Meretsky v. Department of State et af. Civil Action No. 85-1985, memorandum opinion, D.D.C. 1985.

Appellant's subscription to the words of the application for a certificate of Mexican nationality renouncing United States nationality and her pledging allegiance to Mexico plainly manifests an intent to relinquish United States citizenship. And there seems no doubt that she knowingly and intelligently subscribed to the declaration of allegiance. She was twenty-three years old when she did so, evidently educated and fluent in Spanish. In our opinion, the import of the undertakings she made in the applicatiCn should have been crystal clear to her, despite her alleged belief that because her parents made a similar renunciatory statement on her behalf while

she was a minor and the Embassy officials reportedly said it would have no legal effect. Appellant should have realized that the legal effect of the action of her parents during her minority and her own action is totally different; if she had had any doubts on that score, she should have consulted tne United States Embassy before acting, as 'she herself belatedly concedes.

To appellant's contention that her only motive in making the declaration of allegiance to Mexico was to live and work there, we must point out that a person's specific intent does not turn on his or her motivation.

> ...a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, /or/ to advance a career...a United States citizen's free choice to renounce his citizenship results in loss of that citizenship. Richards, 752 F. 2d at 1421.

Our careful examination of the record indicates no actions by appellant that raise doubts about her probable intent when she declared her allegiance to Mexico. Although as she reportedly told a consular officer in 1983, she "maintains" a residence in the Unite States, she has adduced no evidence of a determination to maintain her allegiance to the United States. It seems apparent to us therefore that appellant made a rational decision while of legal age to divest herself of United States citizenship in order to enjoy the rights and privileges of Mexican nationality.

The Department of State has sustained its burden of proving by a preponderance of the evidence that appellant intended to relinquis her United States citizenship.

III

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

Alan G. James, Chairman

Edward G. Misey, Member

Frederick Smith, Jr., Member