September 16, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State that appellant, C[redacted] A[redacted] S[redacted], expatriated herself on February 21, 1975 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 principal issue we must decide is whether the Department has carried its burden of proving that appellant intended to relinquish her United States citizenship when she pledged allegiance to Mexico. For the reasons set forth below, we conclude that the Department has met its burden of proof. We therefore affirm the Department's administrative determination that Ms. S[redacted] expatriated herself.

I

Ms. S[redacted] was born at S[redacted] D[redacted], C[redacted] on [redacted], thus acquiring United States citizenship. [redacted] also [redacted]red Mexican citizenship through her Mexican citizen mother. Her father was a United States citizen.

According to appellant, her mother took her to Mexico shortly after she was born in order to remove her from her emotionally disturbed father with whom appellant's mother was having marital difficulties. Ms. S[redacted] states that a Mexican lawyer recommended to her mother that she obtain a Mexican birth certificate for appellant, allegedly as insurance that her father would not be

---

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provides that:

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; ...

able to take her away. In 1957 appellant's mother obtained a Mexican birth certificate attesting that A C S T was born at . Appellant's mother and father were divorced in 1957.

On October 9, 1974 Ms. S executed an application for a certificate of Mexican nationality (CMN). Therein she expressly renounced her United States citizenship and all allegiance to the United States. She declared allegiance and submission to the laws and authorties of Mexico. In the application she stated that she had been born in Mexico City of a United States citizen father and a Mexican citizen mother. A certificate of Mexican nationality was issued in appellant's name on February 21, 1975.

She obtained a Mexican passport in June 1975 and evidently renewed it when it expired. The record shows that the United States Embassy issued B-2 (non-immigrant) visas to Ms. S in June 1975, July 1976 and December 1978. She again applied for a visa in November 1983. On that occasion the fact that she had been born in the United States came to light. As she stated in her initial submission to the Board:

> I applied for entry visas at the American Embassy several times (11), and it was until Nov/83 when one of the counselors made me aware that I could formaly /sic/ apply for the american citizenship, because I had an american birth certificate (that my mother had given me when I was 27 years old), because I was born in the U.S.A., and because my father was an american citizen. I was surprised when the counselor told me all this. I asked for information in the citizenship department (in the American Embassy in Mexico City.. ..

She was issued a visa good for one entry only "pending investigation of claim to U.S. citizenship."

The Embassy's records show that Ms. S visited that office in February 1984. According to the notes of a consul:

> Miss S came to the Embassy to discuss her solicitation and obtention of a CMN /Certificate of Mexican Nationality/. She Completed the necessary forms, paid the fee and discussed her obtention of the CMN. Seh /sic/ explained that while she knew since the age of 17 or 18 of her claim to US citizenship she never bothered to come to the

> Embassy to discuss or otherwise seek to be documented, She explained that she was living and studying in Mexico and it was much easier to do so as a Mexican. She showed me two differednt /sic/ Mexican passports which had 4 to 5 different US visas. She also stated that she didn't want me to do anything that would jeopardize her Mexican citizenship. RFG /Initials of Consul Gonzalez/

In the form titled "Information for Determining United States Citizenship" she completed on February 20, 1984 she set forth the circumstances under which she had applied for a certificate of Mexican nationality:

> I can say I was not aware what was going on when my mother decided to inscribe me as borne /sic/ in Mexico because I was 2 years old. She never told me that I was born in U.S.A. until I was about 17-18 years old. By that time I needed the Mexican certificate of nationality (because my father was american and if you want to study or whatever you want to do, you have to have this certificate as a requisite of the Mexican Government.

In August 1984 she also executed an affidavit. (The record does not disclose why the processing of her case took so long.) The affidavit read as follows:

> At the age of 18-19 my mother showed me my American birth certificate and told me that I was born in San Diego, USA: and the reasons why she had to tell the Mexican government that I was born in Mexico. Then, when I was 18, I had to have a "Certificado de Nacionalidad" (a requisite for all Mexicans with a foreign parent). My mother insisted that I sign this certificate in order for me to study and afterwards receive a medical degree. At the time I had no choice but to follow my mother's wishes and didn't realize the gravity of this act, which also relinquished my american citizenship in the eyes of the Mexican government.
>
> Last year (Nov/83) when I applied for a visa to travel to the United States I was told at the visa department of the

> American Embassy that I should claim my american citizenship because: I only relinquished my american citizenship with [redacted]overnment, I was born in the [redacted] and have an american birth certificate, and because my father is american. This is the first time I realized I could claim my right to American citizenship.

A consular officer interviewed Ms. [redacted] and on September 13, 1984 executed a certificate of loss of n[redacted]lity in her name.[2] He certified that appellant acquired both United States and Mexican nationality 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. The consular officer recommended approval of the certificate on the following grounds:

> When asked if she had ever considered coming to the Embassy to seek to clarify her U.S. citizenship status, she replied that she had not. When asked if she realized the application form for the CMN had language expressly renouncing her U.S. citizenship, she replied in the affirmative.
>
> Miss [redacted] has never been documented as a U.S. citizen. She has traveled exclusively

---

2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads as follows:

> 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.

on Mexican passports and U.S. tourist visas, which she has secured on 4 or 5 ocasions. She has never voted in the U.S.; however, she has voted in at least two Mexican elections.

Despite subject's claim that she was not aware of her claim to U.S. citizenship until a short period prior to obtaining the CMN, she does not deny that she was aware of her claim when she applied for the CMN. By her own admission, living and studying in Mexico was much easier as a Mexican. This, in addition to subject's failure to consult the Embassy and her exclusive use of a Mexican passport and U.S. visas lead this officer to conclude that she fully intended to renounce her U.S. citizenship when she applied for the CMN. Conoff, therefore, recommends that CLN prepared in subject's name be approved.

The Department agreed with the consular officer's opinion and approved the certificate on October 22, **1984.** Approval of the certificate is an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. Ms. [redacted] entered an appeal on September **18, 1985.**

II

The statute prescribes that a national of the United States shall lose his nationality by making a formal declaration of alle[redacted]e to a foreign state. 3/ There can be no doubt that Ms. [redacted] made a formal declaration of allegiance to Mexico and so brought herself within the purview of the statute. The cases hold, however, that nationality shall not be lost unless the citizen did the proscribed act voluntarily and with the intent of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 **(1980);** Afroyim v. Rusk, 387 U.S. 252 (1967); Nishikawa v. Dulles, 356 U.S. 129 **(1958);** Perkins v. Elg, 307 U.S. 325 (1939).

3/ Supra, note 1.

In law, it is presumed that one who performs a statutory expatriating act does so voluntari y, but the presumption may be rebutted by the actor upon a showing by a preponderance of the evidence that the act was not voluntary. 4/ Therefore, to prevail on this issue, Ms. [redacted] must come forward with credible evidence that she acted involuntarily.

She submits that she was coerced by circumstances to declare allegiance to Mexico. She had not been "entirely aware" she was a United States citizen when she applied for a certificate of Mexican nationality. Nor was she aware how she might claim United States citizenship. At age **18/19** she was **so** dependent on her mother that she could not act independently. Her mother had decided what was best for her - "obviously, she wanted me to be a Mexican citizen ." She had no choice but to bow to her mother's wishes.

We find appellant's allegations that she acted involuntarily legally insufficient to rebut the presumption of voluntariness. First of all, she has submitted no persuasive evidence that she could not perform a voluntary expatriating act because she was unaware of being a United States citizen. Initially, appellant categorically asserted she did not know she was a United States citizen when she applied for a CMN, and she submitted an affidavi of her mother's attesting to this assertion. Later in the proceedings, however, Ms. [redacted] indicated that she was uncertain exactly when her mother had told her she had been born in the United States and showed her her San Diego birth certificate.

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

Whenever the loss of United States nationality is put in iss in any action or proceeding commenced on or after the enactment o this subsection under, or by virtue of, the provisions of this or any other Act, the burden shall be upon the person or party claim ing 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 provisi 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 commit or performed were not done voluntarily.

The record leaves little doubt that Ms. [redacted] was aware on February 21, **1975** that she was a United States citizen. She so indicated by filling the blank spaces on the application for a CMN with the words "United States." In the questionniare she completed at the Embassy in **1984** she indicated that she knew before age **19** she was a United States citizen. And, as noted above, the consular officer who interviewed Ms. [redacted] in **1984** reported to the Department that she conceded to him she knew she was a United States citizen at the crucial time.

Nor are we impressed by appellant's contention that in **1974** she did not know how she might assert a claim to United States citizenship. Since we have no doubt she knew she was a United States citizen, we believe she could easily have found out how to document herself as one by inquiring at the United States Embassy. Surely such a simple step should have suggested itself to a person of appellant's purported intelligence.

In the eyes of the law, appellant's natural attachment to her mother at age 18/19 does not per se constitute duress; there is no evidence that her mother forced appellant by threats or worse to sign the application for a CMN. Judging from what appellant wrote in the questionnaire for determining citizenship which she completed in **1984** - "if you want to study...you have to have this certificate" - she had decided that her career interests would be best served by asserting a claim to her Mexican rather than United States nationality.

On consideration of the foregoing, we see no coercive elements in this case. The course appellant took seems clearly to have been of her own choosing. It is settled that the opportunity to make **a** personal choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, **441** F. 2d **1245** (5th Cir. 1971.) Appellant has not overcome the statutory presumption that she voluntarily made a formal declaration of allegiance to Mexico.

III

Although Ms. [redacted] voluntarily performed **a** statutory expatriating act, it remains for us to determine whether she had the requisite intent to relinquish United States citizenship. Vance v. Terrazas, **444** U.S. 252 **(1980).** Under the court's holding in Terrazas, the government must prove by a preponderance of the evidence that appellant intended to forfeit her 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 that must be proved is appellant's intent at the time she made a declaration of allegiance to Mexico, Terrazas v. Haig, **653** F. 2d, 285 (7th Cir. 1981).

Ms. [redacted] not only made a formal declaration of allegiance to a foreign state, an act that may be highly persuasive, evidence of an intent to relinquish United States citizenship. Vance v. Terrazas, 444 U.S. at 261, citing Nishikawa v. Dulles, 358 U.S. 129, 139 (1958), but also she expressly renounced her United States citizenship and all allegiance to the United States.

Express renunciation of United States citizenship has been held to manifest an intent to relinquish United States citizenship. In Terrazas v. Haig, supra, 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. 653 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. Similarly, Meretsky v. Department of State, et al., Civil Action 85-1985, memorandum opinion, (D.D.C. 1985).

The evidence that Ms. [redacted] intended to relinquish her United States citizenship when she declared allegiance to Mexico is thus very compelling. We must, however, be satisfied that Ms. [redacted] acted knowingly and intelligently. Terrazas v. Haig, supra; United States v. Matheson, 532 F. 2d 809 (2nd Cir. 1976).

The evidence of record gives us no reason to doubt that Ms. [redacted] consciously and purposefully filled out the application for a CMN and signed her name to it. She states that her mother took her to a lawyer's office on February 21, 1975 to complete the necessary paperwork. She does not allege that the lawyer misled her as to what she was doing, and we think that a person of appellant's educational level was capable of understanding the meaning and logical consequences of the words "I expressly renounce my United States citizenship."

Nor do we find any variables in the record before us that would lead us to doubt Ms. [redacted] intended to relinquish her United States citizenship when she made a formal declaration of allegiance and submission to Mexico.

After she obtained a certificate of Mexican nationality she also obtained a Mexican passport which she had visaed repeatedly for travel to the United States. She made what we must assume was a calculated decision in 1974/1975 to pursue a medical education in Mexico, and, until she met an American whom she wished to marry, apparently held fast to that decision. We think that had she real

wanted to assert a claim to United States citizenship before 1984 she would have done so. It seems clear that at the relevant time she wanted to enjoy the rights and privileges of a Mexican citizen. Her intent to relinquish her United States citizenship seems manifest. We therefore are of the view that the Department has carried its burden of proving by a preponderance of the evidence that Ms. [redacted] intended to transfer her allegiance from the United States to Mexico.

IV

Upon consideration of the foregoing, we hereby affirm the determination of the Department of State's determination of October 22, 1984 that Ms. [redacted] expatriated herself.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

Frederick Smith, Jr., Member