January 28, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A[redacted] A[redacted] M[redacted]

This is an appeal from an administrative determination of the Department of State holding that appellant, A[redacted], expatriated herself on July 24, 1984 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

For the reasons stated below, we affirm the Department's holding of appellant's expatriation.

I

Ms. M[redacted] was born at [redacted] of a United States citizen mother and a Mexican citizen father. She thus acquired at birth the nationality of both the United States and Mexico. The United States Embassy at Mexico City issued a report of Ms. M[redacted] birth as a United States citizen in 1966, and in 1969, 1974 and 1976 issued her cards of identity. In 1982 she obtained a passport from the Embassy. Two years later [redacted] visited the Embassy to discuss the problems of dual nationality with a consular officer who made the following record of her visit:

1/ Prior to November 14, 1986 section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provided 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;.,.

The Immigration and Nationality Act Amendments of 1986, PL 99-[illegible] approved November 14, 1986, amended subsection (a) of section 349 [illegible] inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "Shall lose his nationality by;" and amended paragraph (2) of section 349([illegible] by inserting "after having attained the age of eighteen years" after "thereof."

> June 25, 1984 – Subject came to the Embassy accompanied by her mother to discuss dual nationality. Subject exhibited US ppt # 24299876 issued at Mexico City on July 27, 1982. Subject claimed that in order to keep from paying a higher rate of tuition and to keep from jeopardizing stocks she held in her father's co's and property he's given to her. [sic] I advised her that taking the oath owuld [sic] jeopardize her US citizenship and she should, instead, seek to reside and study in Mexico on some form of FM. Subject completed an affidavit explaining her situation and that she did not want to jeopardize her US citizenship. RFG [Consul Richard F. Gonzalez]

The affidavit appellant executed on June 25th reads as follows:

> I would like to be American, renouncing Mexican citizenship, but because of the property I have in my name here in Mexico, renouncing Mexican citizenship may cause me to forfeit the properties.
>
> I am planning to live in the U.S.A. after finishing my studies because this would make life easier for me and I like it very much. 2/

Ms. M[redacted] applied for a certificate of Mexican nationality on July 9, 1984. She was then 18 years and 8 months of age. In the application she expressly renounced her United States nationality and all allegiance to the United States, and pledged obedience to the laws and authorities of Mexico.

Two days later she again visited the Embassy where on July 11, 1984 she executed a second affidavit which reads as follows:

> Since I was nervous at the time of my earlier declaration (of July 9, 1984,) [Sic] [Possibly she meant her affidavit of June 25, 1984 but confused its date with the date on which she applied for a certificate of Mexican nationality] I thought about my dual nationality situation during the following days and concluded that since I am going to study and work in Mexico during the coming years, and because I have some properties

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2/ English translation, Division of Language Services, Department of State, LS no. 119053 Spanish (1985).

> in my name, I decided to become a Mexican citizen.
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> In order to obtain Mexican citizenship at the Ministry of Foreign Affairs they make me sign a paper in which I renounce American citizenship, but I do not for any reason wish to lose my American nationality.
>
> Therefore I ask you to take into account my desire to obtain my American citizenship at some future date, and to fulfill the obligations of U.S. citizenship. My [word missing from photocopy] live in the United States and my mother will live there later. 3/

The Department of Foreign Relations sent a diplomatic note to the Embassy on September 26, 1984, stating that Ms. M[redacted] had obtained a certificate of Mexican nationality. Copies of her application and certificate of nationality were enclosed. On October 5, 1984 the Embassy wrote to Ms. M[redacted] to inform her that by making a formal declaration of allegiance to Mexico she might have lost her United States citizenship. She was asked to complete a form "Information for Determining U.S. Citizenship" and was advised that if she wished to discuss the matter with a consular officer, the Embassy would arrange an appointment. Ms. M[redacted] completed the form the Embassy sent her on December 29, 1984 and returned it to the Embassy. Therein she acknowledged that she made a declaration of allegiance to Mexico and had obtained a Mexican passport.

As required by law, a consular officer executed a certificate of loss of nationality in appellant's name on January 9, 1985. 4/

3/ Id.

4/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, provides that:

> 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 wnich 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.

Therein she certified that appellant acquired 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 that the Department approve the certificate since he was of the view that Ms. M[redacted] intended to relinquish her United States citizenship. The consular officer's report continued:

> The provisions of section 349(a)(2) of INA were amply explained to Miss [redacted] by Conoff on 6/25/84. In her enclosed affidavit Miss [redacted] states that, although she wishes to retain her U.S. citizenship, she applied for her Mexican nationality because she is "going to study and work in Mexico for the next few years and because she has some investments here in Mexico". Miss [redacted] last statement in the affidavit reads that she hopes that her wish of not to lose her U.S. cit. will be taken into consideration in the future since her grandparents live in U.S. and later on her mother also plansto go back to U.S. It is Conoff's opinion that Miss [redacted] claimed allegiance to U.S. is one of convenience in the event that she decides to live in U.S. in the future,

The Department agreed with the opinion of the consular officer and approved the certificate on February 13, 1985, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. In advising the Embassy of its decision the Department stated that:

> The provisions of section 349(a)(2) INA, were explained to Miss M[redacted] before she applied for a certificate of Mexican nationality. Her affidavit of July 11, 1984 indicates that she made a conscious choice for Mexican nationality by her act, Therefore, the Department concurs with the consular officer's opinion that available evidence indicates that Miss M[redacted]'s application was motivated by convenience and that apparently she intendea to relinquish U.S. citizenship by her act.

Ms. [redacted] entered an appeal from the Department's determination pro se on July 24, 1985.

II

The statute prescribes that a national of the United States shall lose his nationality by voluntarily making a formal declaration of allegiance to a foreign state with the intention of relinquishing United States nationality. 5/

Appellant contends that her loss of citizenship was invalid.

> ...since the impression I have after consulting Hector Virgilio Flores Davila, Esq., is that it is not a valid renunciation since it did not take place in accordance with the laws of the United States of America, regardless of the fact that Mexico has not recognized me as a Mexican citizen.

If appellant means that the act of expressly renouncing her United States citizenship before Mexican authorities did not in itself work expatriation, she is correct. One may formally renounce United States citizenship only in the manner prescribed by law, that is, in a foreign state before a consular officer of the United States in the form prescribed by the Secretary of State. Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5). But, as we will discuss below, making a formal declaration of renunciation of United States citizenship before foreign authorities may evidence an intent to relinquish United States citizenship. So if appellant means that because she did not appear before a consular officer of the United States she did not perform a valid expatriating act, she is mistaken. There can be no question that appellant duly performed a statutorily proscribed act when she made 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, as the courts have made clear:

> ...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 expatria-

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5/ supra, note 1.

> tion. 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). 6/

In law it is presumed that one who does a statutory expatriating act does so voluntarily. 7/ The presumption may, however, be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. Ms. [redacted] does not undertake to rebut the presumption. It is clear from the affidavits she executed at the Embassy in June and July 1984 that she knew she was to make a choice between her United States and Mexican nationalities, and believing (at least for a time) it to be to her advantage to opt for Mexican nationality, did so. There is no coercion in such a situation, She acted of her own free will. Where one has opportunity to make a personal choice there is no duress. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971). Ms. [redacted] has not overcome the presumption that she acted voluntarily,

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6/ Terrazas v. Vance, No. 75C 2370, Memorandum Opinion at 5 (N.D. Ill 1977).

7/ Section 349(c) of the Immigration and Nationality Act provides that:

> (c) 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 Immigration and Nationality Act Amendments of 1986, PL 99-653 approved Nov. 14, 1986, repealed section 349(b) but did not expressly designate section 349(c).

III

The question remains, however, whether on all the evidence appellant intended to relinquish her United States citizenship when she pledged allegiance to Mexico. As the Supreme Court held in Vance v. Terrazas, 444 U.S. 253, 270 (1980), under the statute, 8/ the Government bears the burden of proving a person's intent and must do so by a preponderance of the evidence, 444 U.S. at 269. Intent may be expressed in words or found as a fair inference from proven conduct. Id. at 260. The intent the Government must prove is the person's intent at the time the expatriating act was performed. Terrazas v. Haig, 653 F.2d 285, 287 (7th Cir. 1981). Making a declaration of allegiance to a foreign state although not conclusive evidence of an intent to relinquish United States citizenship, may be highly persuasive evidence of such an intent. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958)(Black, J. Concurring.)

Ms. M[redacted] expressly renounced United States nationality and all allegiance to the United States and pledged allegiance to Mexico when she applied for a certificate of Mexican nationality.

The cases are absolutely clear that provided no other factors are present that would warrant a different result, voluntarily, knowingly and intelligently renouncing United States citizenship in the course of performing a statutory expatriating act, evidences an intent to relinquish United States citizenship. In Terrazas v. Haig, supra, the Court held that plaintiff manifested an intent to relinquish citizenship by voluntarily, knowingly and understandingly applying for a certificate of Mexican nationality that contained an oath of allegiance to Mexico and the renunciation of United States citizenship, See also Richards v. Secretary of State, 752 F.2d 1413, 1421 (9th Cir. 1985). The voluntary taking of a formal oath that includes an explicit renunciation of United States citizenship is "ordinarily sufficient to establish a specific intent to renounce United States citizenship." Similarly, Meretsky v. Department of State, et. al., Civil Action 85-1985, memorandum opinion (D.D.C. 1985).

It is evident that Ms. [redacted] acted knowingly and intelligent when she made a formal decla[redacted] of allegiance to Mexico. As both the Embassy and the Department have pointed out, the legal consequences of making such a declaration were explained to Ms. [redacted] two weeks before she applied for the certificate. As noted above, two days after she applied for the certificate she stated in an affidavit that she decided to become a Mexican citizen, thus indicating an interest to transfer her allegiance to Mexico.

8/ Section 349(c) of the Immigration and Nationality Act, Text, supra, note 7.

The affidavit also made clear that she realized she might have lost her United States citizenship but wished the record to show that she would like to be able to recover it one day. She says it was to her advantage to elect Mexican citizenship; plainly she did not blindly make the proscribed declaration of allegiance to a foreign state.

We have reviewed the evidence to determine whether there are any factors that might require us to find lack of intent to relinquish her United States citizenship, We find none,

In her appeal Ms. [redacted] candidly revealed her true intent in 1984.

> At that time I choose [sic] the Mexican citizenship because I understood that there was some mexican property in my name and if I became a U.S. citizen I would lose it, and I wanted to finish my studies and work while I lived in Mexico,
>
> Since then I was told that I do not have any property in my name, it was a mistake. Therefore the advantages I would have as a mexican citizen are no longer valid.

It is apparent to us that the Department has carried its burden of proving that Ms. [redacted] intended to relinquish her United States citizenship when she made a formal declaration of allegiance to Mexico.

IV

Upon consideration of the [redacted] we hereby affirm the Department's determination of Ms. [redacted]' expatriation.

Alan G. James, Chairman

James G Sampas, Member

George Taft, Member