

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A [REDACTED] M [REDACTED] - E [REDACTED]

This is an appeal from an administrative determination of the Department of State that appellant, A [REDACTED] M [REDACTED] - E [REDACTED] expatriated himself on February 13, 1985 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 Department determined on November 14, 1985 that appellant expatriated himself. Although the Department contested the appeal up to and after oral argument, it has now concluded that approval of the certificate of **loss** of nationality was "improperly made." It has therefore requested that the Board remand the case so that the Department may vacate the certificate of loss of nationality. The Board will grant the Department's request for remand.

I

Appellant was born at [REDACTED]. Through his mother, a United States citizen, he acquired United States nationality. By virtue of his birth in Mexico he also acquired the nationality of that state. From birth appellant was regularly documented as a United States citizen by the Embassy at Mexico City.

During 1984 appellant filed several affidavits with the Embassy, declaring that upon attaining the age of 18 he would be required by Mexican law to apply for a certificate of Mexican nationality, a procedure that would entail his swearing allegiance to Mexico and renouncing United States citizenship. He would, he asserted, make the oath and renunciatory declaration under

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

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;...

PL 99-953, Nov. 14, 1986 (100 Stat. 3655), amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality: " after "shall lose his nationality by;". It also amended paragraph (2) of section 349(a) by inserting "after having attained the age of eighteen years" after "thereof".

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compulsion without the intention of relinquishing United States citizenship. Appellant explained in a statement executed in May 1984 that he wished to retain both United States and Mexican nationality. While I definitely wish to retain my United States nationality, since it is very likely that I will want to live in the United States, at my present age of 18 [he was then 17 years and 5 months of age], there is still some uncertainty about my future, and I want also to retain my Mexican citizenship, as allowed by U.S. law." [Emphasis in original].

In February 1985 appellant applied for a certificate of Mexican nationality. In the application he expressly renounced United States nationality and allegiance to the United States, and pledged obedience and submission to the laws and authorities of Mexico.

As required by law, an officer of the Embassy executed a certificate of loss of United States nationality (CLN) in appellant's name in June 1985. 2/ The certificate recited that appellant acquired the nationality of both the United States and Mexico at birth; that he 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. In transmitting the CLN to Washington, the consular officer summarized various declarations and actions of appellant which, the officer contended, showed that appellant lacked the requisite intent to relinquish United States nationality when he made a formal declaration of allegiance to Mexico. The consular officer noted, in particular, appellant's continuous registration at the

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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.

Embassy; the fact that he had been educated at the American School in Mexico City; that he frequently visited the United States where he expected to continue his education; and that he had consulted an attorney "in his efforts to retain his U.S. citizenship." 3/ The consular officer concluded that appellant "has amply-demonstrated his attachment to his U.S. citizenship and his intention of retaining it."

The Department did not agree with the opinion of the consular officer. On November 14, 1985 it approved the CLN that the Embassy had submitted. The Department contended that the record did not support appellant's position that he lacked the requisite intention to relinquish United States citizenship; his intent to forfeit citizenship was manifested by declaring allegiance to Mexico while expressly renouncing United States citizenship.

A timely appeal was entered, and oral argument was heard in January 1987.

## II

Subsequent to oral argument, as requested by appellant's counsel, the consular officer who processed appellant's case made an affidavit on March 12, 1987, concerning the circumstance<sup>n</sup> leading up to and surrounding appellant's application for a certificate of Mexican nationality. In her affidavit, the consular officer stated that she had not changed her opinion (expressed in her memorandum to the Department of June 1986) that appellant lacked the intent to relinquish citizenship. The affidavit reads in pertinent part as follows:

2. On February 19, 1985, A [REDACTED] M [REDACTED] - E [REDACTED] met with me to discuss the effect that his application for a Certificate of Mexican Nationality would have on his American citizenship. In this connection, [REDACTED] - [REDACTED] completed a "Questionnaire - Information for Determining U.S. Citizenship" and filed a document containing supplemental information regarding his citizenship status, which documents were signed and sworn before me. I informed him that it was my understanding that it was Department of State practice to consider a statement as to intent to retain citizenship made at this Embassy under oath

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3/ The record also shows that appellant registered for United States Selective Service shortly before his 18th birthday; that he filed United States income tax returns; and had a United States Social Security card.

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prior to an application for a Certificate of Mexican Nationality as counter-balancing the evidence of the statement made in the application for a Certificate of Mexican Nationality before the Mexican authorities, and that the Department of State would therefore decide his case on the basis of other indicia of intent.

3. On June 17, 1985, in accordance with the State Department procedures in cases involving potential **loss** of nationality, I submitted an opinion and a Certificate of **Loss** of Nationality for State Department consideration.

4. In my memo of June 17, 1985, I described the lengthy history of contact that [REDACTED]-[REDACTED] has had with the American Embassy in Mexico City and his repeated statements to Embassy officials of his intention to retain his American citizenship. I also stated in the letter that, in my opinion, [REDACTED]-[REDACTED] had amply demonstrated his attachment to his U.S. citizenship and his intention of retaining it. In my opinion, [REDACTED]-[REDACTED] had been very direct and candid about his intention to retain both American and Mexican citizenship after his eighteenth birthday and maintained close contact with the American Embassy in this regard.

On April 9, 1987 the Deputy Assistant Secretary of State for Consular Affairs (Passport Services) submitted a memorandum to the Board, requesting that the case be remanded to the Department so that the certificate of **loss** of nationality might be vacated. The Department's memorandum gave the following rationale for its request:

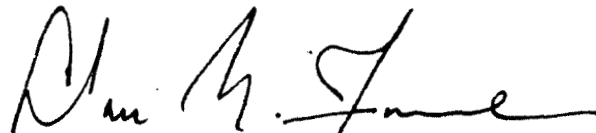
The Board's attention is referred to the record in this case, including the affidavit of Consul Mary Gerber dated March 12, 1987. (Copy attached.) The Board will note that consul Gerber sets out her recollection of what information she provided to the Appellant concerning the weight the Department would give to certain of appellant's actions surrounding the time of his application for a Certificate of Mexican Nationality.

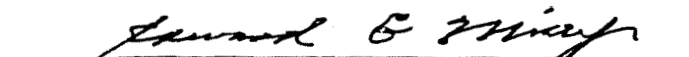
Consul Gerber's explanation of the significance to the Department of acts and statements of Appellant included incorrect interpretations of the Department's published guidelines on the procedures for determining **loss** of citizenship. Insofar as Consul Gerber's statements to Appellant may have prejudiced him in his presentation of his case during the time before the Certificate of **Loss** of Nationality was approved, the Department must consider them misinformation.

III

Inasmuch as the Department is of the view that approval of the certificate of **loss** of nationality was improperly made, and in the absence of manifest errors of fact or law warranting a different disposition of the case, the Board agrees to the Department's request that the matter be remanded for the purpose of vacating the certificate of **loss** of nationality.

The case is hereby remanded for further proceedings. 4/

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
G. Jonathan Greenwald, Member

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4/ Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2 (a) provides in part that:

...The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.