

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: W [REDACTED] B [REDACTED] G [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State holding that appellant, W [REDACTED] B [REDACTED] G [REDACTED] expatriated himself on September 30, 1983 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 that follow, we conclude that G [REDACTED] voluntarily made a formal declaration of allegiance to Mexico with the intention of relinquishing United States nationality. We therefore will affirm the Department's determination that he expatriated himself.

1/ Prior to November 14, 1986, 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;...

The Immigration and Nationality Act Amendments of 1986, PL 99-553 approved November 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;". PL 99-553 also amended paragraph (2) of section 349(a) by inserting "after having attained the age of eighteen years" after "thereof."

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I

G [REDACTED] was born on [REDACTED] [REDACTED] [REDACTED]. Through his father he acquired United States citizenship. Through birth in Mexico he acquired the nationality of that state as well. G [REDACTED]'s father registered his birth at the United States Embassy. In 1972 and 1977 the Embassy issued him cards of identity and registration. He obtained a United States passport at Boston in 1981 while attending Brown University during the academic year 1980-1981. Aside from summer jobs in the United States from 1975 to 1980 and one-year's study at Brown, [REDACTED] has lived all his life in Mexico.

While in his second year of medical school at the Autonomous University of Guadalajara, [REDACTED] applied for a certificate of Mexican nationality (CMN) on [REDACTED] 8, 1983. In the application he expressly renounced his United States nationality and allegiance to the United States. He also made a formal declaration of allegiance to Mexico. On September 30, 1983 the Department of Foreign Relations issued a CMN to [REDACTED] (He obtained a Mexican passport in March 1985 which he apparently never used.)

By diplomatic note dated October 3, 1983 the Department of Foreign Relations informed the Embassy that [REDACTED] had obtained a CMN, and enclosed a copy of that document as well as [REDACTED] application therefor. The Embassy wrote to [REDACTED] on January 30, 1984 to inform him that by making a formal declaration of allegiance to a foreign state he might have lost his United States nationality. He was asked to complete a form to assist the Department to make a determination of his citizenship status and offered the opportunity to discuss his case with a consular officer.

G [REDACTED] visited the Embassy in March and again in September 1984 and was interviewed by a consular officer. He completed the citizenship form and, for information purposes, an application for a passport/registration. Thereafter, on September 25, 1984 a consular officer executed a certificate of

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loss of nationality (CLN) in [REDACTED] name.^{2/} The official certified therein that [REDACTED] acquired— United States; citizenship by birth abroad to a United States citizen father; that he also acquired Mexican nationality 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. The Department approved the certificate on November 21, 1984, so making an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. [REDACTED] entered the appeal pro se on June 25, 1986.

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Before proceeding, we must determine whether the Board may exercise jurisdiction over this appeal. Since timely filing is mandatory and jurisdictional, United States v. Robinson, 361 U.S. 220 (1960), our jurisdiction depends on whether the appeal was entered within the limitation prescribed by the applicable regulations. The limitation on appeal is one year after the Department approves the certificate of loss of nationality that was issued in the case. Section 7.5(b)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1): An appeal not filed within the prescribed limitation shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the allowable time. 22 CFR 7.5(a).

^{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.

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In [REDACTED] case the appeal was entered seven months over the allowable time. [REDACTED] was not, however, informed that his right of appeal should be exercised within one year after approval of the CLN, as prescribed by 22 CFR 59.52. 3/ Notice of the right of appeal and the limitation on appeal is customarily conveyed to the affected party by information printed on the reverse of the CLN. The CLN that was sent to [REDACTED] was, however, obsolete; it did not bear current information about the right of appeal. The information about appeals therein cited the regulations governing appeals that were in force from 1967-1979. 4/ Under the predecessor regulations, namely, 22 CFR 50.60, an aggrieved party might take an appeal 'within a reasonable time' after receiving notice of the Department's determination of loss of nationality.

[REDACTED] plainly was entitled to rely on the appeals information given him officially - to assume that he had a flexible period of time within which to appeal. That he relied on the information conveyed to him through the CLN is apparent from the explanation he gave why he did not take his appeal within the one-year limitation:

3/ 22 CFR 59.52 reads as follows

Sec. 50.52 Notice of right to appeal.

~~When~~ an approved certificate of loss of nationality or certificate of expatriation is forwarded to the person to whom it relates or his or her representative, such person or representative shall be informed of the right to appeal the Department's determination to the Board of Appellate Review (Part 7 of this chapter) within one year after approval of the certificate of loss of nationality or the certificate of expatriation.

4/ The Federal regulations governing appeals to the Board were amended and revised effective November 30, 1979.

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...., I can only say that I was not aware of any limit. In fact my father was told by one of his friends in the embassy who should have known, that 'you can always appeal a citizenship case'. Given the seriousness of a loss of citizenship, this statement seemed to make sense to me. The official document to which we referred - the back of Certificate of Loss of Nationality of the United States ... does **not** mention any time limit. There did not seem to be any urgency, especially since an attitude of urgency and haste was what originated my citizenship problems. Also during much of this time I was outside of the Mexico City area, I did not hear of this time limit until I went to the Embassy to file my appeal.

The failure of the Department and the Embassy to inform [REDACTED] as mandated by regulations with the force of law, that he would have to exercise his **appeal** right within one year excuses his delay. We consider the appeal timely and will consider it on the merits.

- III -

The statute provides 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/ It is evident that [REDACTED] duly made a formal declaration of allegiance to Mexico and thus brought himself within the purview of the statute. 6/

5/ Text supra, note 1.

6/ [REDACTED] suggests that he did not perform a valid act of expatriation because:

I did sign [sic] an application [sic] for a certificate of Mexican Nationality by birth. Although the language of this was explicit, I did not consider it valid in the eyes of the United States government because there was no representative of the United States there to validate the proceedings.

Go [REDACTED]'s contention is without legal foundation. The statute does not prescribe that a United States official must be present to make the act of swearing allegiance to a foreign state a valid act within the meaning of the statute.

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The first issue to be addressed therefore is whether he made the declaration of allegiance voluntarily. In law it is presumed that one who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 1/

Appellant maintains that he acted under "extreme duress" in an attempt to help his family financially. Specifically, he applied for the CMN (which required him to make oath to Mexico) in order to avoid payment of around \$30,000 (U.S.) in tuition at medical school. He formulated his case in a letter to the Board dated August 12, 1986 as follows:

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

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, 100 Stat. 3655, repealed subsection (b) but did not redesignate subsection (c)

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When I came back to enroll for my fifth semester (after having completed two years of study) I was told that I could not enter and would have to see the director of the school, Dr. Nestor Velasco Perez. Dr. Velasco Perez informed me that since in his eyes I was an American I could not continue with my college education at the University unless I signed a Solicitud de Certificado de Nacionalidad Mexicana por Nacimiento (Request for Certificate of Mexican Nationality by Birth). I was born in Mexico. My citizenship had never before been brought up. If I could not produce this Certificate of Mexican Nationality by Birth I would immediately have to pay American tuition for the coming and all previous years of attendance, a matter which he calculated at \$30,000 dollars. I was then only a few days away from the enrollment deadline. My parents were unavailable and I had no way of coming up with this amount of money. Nor did I think that even if my parents had been available that they could produce such a sum. I was in a state of panic and confusion; I signed the request for a certificate of Mexican Nationality by birth.

We do not doubt that [REDACTED] would have had to pay a large sum of money had he not obtained a CMN. The consular officer who interviewed G [REDACTED] stated in a report to the Department that an inquiry to the medical school confirmed that foreigners "are charged a much higher rate of tuition about 10,000 per year." 8/ The basic issue is whether as a matter of law, the circumstances that confronted [REDACTED] when he applied for a CMN constituted legal duress.

8/ [REDACTED] asserted in a statement he submitted to the Embassy in 1986 that students documented as Mexican citizens pay about \$300 (US) per semester.

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Duress of course negates freedom of choice. To prove duress one must show that circumstances he neither created nor was able to control forced him to perform an expatriative act. The rule was stated in Doreau v. Marshall, 170 F.2d 721 (3rd Cir. 1948):

If by reason of extraordinary circumstances amounting to true duress an American national is forced into the formalities of citizenship of another country, the sine qua non of expatriation is lacking. There is no authentic abandonment of his own nationality. His act, if it can be called his act, is involuntary. He cannot be truly said to be manifesting an intention of relinquishing his country.

170 F.2d at 724.

In Doreau, plaintiff obtained French nationality during the German occupation of France in order to escape incarceration, fearing for her life and her unborn child's. The court held that in such circumstances the expatriative act she performed was involuntary. Economic pressures too have forced American citizens to perform an expatriative act. See the leading cases: Stipa v. Dulles, 233 F.2d 551 (3rd Cir. 1956); Insogna v. Dulles, 116 F. Supp. 473 (D.D.C. 1953). In Insogna v. Dulles the expatriating act was performed to obtain money necessary "in order to live." 116 F. Supp. at 475. In Stipa v. Dulles, the alleged expatriate faced "dire economic plight and inability to obtain employment." 233 F.2d at 556. petitioners in both Stipa and Insogna performed a statutorily proscribed act in Italy during and after World War II in order to subsist. In both cases the courts held that the primordial instinct to survive forced them to perform the act.

The circumstances surrounding G[REDACTED]'s performance of an expatriative act manifestly were far different from those of plaintiffs in the leading cases cited above. G[REDACTED] wanted to be a doctor, chose to study in Mexico, and sought to avoid paying the large sum of money he would owe for tuition were he classed as a non-Mexican student. He placed himself in a position where, in order to pursue a preferred course of study and to avail himself of the full privileges of Mexican citizenship he had to perform an expatriative act. As a matter of law, he had the opportunity to make a free choice and did so. We do not criticize him for the choice he made, and we appreciate that there may have been limitations on making different choices from the one he did. That the alternatives

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might have been expensive or unacceptable to him does not, given the precious right at stake, render his act any less voluntary in the eyes of the law. Go [REDACTED] reaped a financial benefit in performing the expatriative act. Here the dictum of the court in Doreau v. Marshall, supra, seems apposite:

...On the other hand it is just as certain that the forsaking of American citizenship, even in a difficult situation, as a matter of expedience, with attempted excuse of such conduct later when crass material considerations suggest that course, is not duress.

170 F.2d at 724.

The conclusion to which we are led is that the compulsion appellant Eelt to obtain a certificate of Mexican nationality was of his own design. "...the opportunity to make a decision upon personal choice is the essence of voluntariness." Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971), cert. denied. 404 U.S. 946 (1971). Having exercised his choice, appellant may not be excused from the consequences flowing from it. Jolley, supra, at 1251.

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Even though we have concluded that appellant voluntarily made a formal declaration of allegiance to Mexico, "the question remains whether on all the evidence the Government has satisfied its burden of proof that the expatriating act was performed with the necessary intent to relinquish citizenship." Vance v. Terrazas, 444 U.S. 252, 270 (1980). Under the statute, ^{9/} 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 267. 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 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, 365 U.S. 129, 1139 (1958) (slack, J. Concurring.)

^{9/} Section 349(c) of the Immigration and Nationality Act. Text, supra, note 3.

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G [REDACTED] expressly renounced United States nationality and all allegiance to the United States when he pledged allegiance to Mexico in applying for a Certificate of Mexican nationality.

The cases make it clear that, provided no other factors are present warranting a different result, the voluntary, knowing and intelligent renunciation of United States citizenship in the course of performing a statutory expatriating act, evidences an intent to relinquish United States citizenship. See Terrazas v. Haig, supra. There, 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. Similarly, 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." And, Meretsky v. Department of State, et. al., Civil Action 85-1985, memorandum opinion (D.D.C. 1985). See also United States v. Matheson, 400 F. Supp. 1241, 1245 (S.D.N.Y. 1975), aff'd, 532 F.2d 809 (2nd Cir. 1976), cert. denied, 429 U.S. 823 (1976); where the court observed a declaration of allegiance to a foreign state in conjunction with the renunciatory language of United States citizenship "would leave no room for ambiguity as to the intent of the applicant."

In order to carry its burden of proving that appellant intended to relinquish United States nationality, the Department must also establish that he made the declaration of allegiance knowingly and intelligently, and that there are no factors to offset the highly persuasive evidence of a renunciatory intent manifested by his pledge of allegiance to Mexico and renunciation of United States citizenship.

Appellant described his application for a certificate of Mexican nationality as a "rash act." He said he "stupidly, hastily and without consultation" signed the application for a certificate of Mexican nationality. We note, however, that appellant was 21 year; of age at the time, a university student, and assuredly fluent in Spanish, the language of the application. Furthermore, he acknowledged to the consular officer who processed his case that the language in the application "sounded pretty final." And he knew that in order to benefit from a reduction in university tuition he would have to possess a certificate of Mexican nationality and that to

obtain that document he would have to subscribe to the renunciatory language of the application. Plainly, appellant's pledge of allegiance to Mexico was a conscious, deliberate act.

Appellant suggests, however, that several factors negate the evidence of an intent to relinquish United States nationality manifested by his application for a certificate of Mexican nationality. These, he summarizes as follows:

...I and my family have always considered me an American citizen; I have always conducted myself as an American; I have always thought and felt like an American; my family is completely American oriented.

I have been issued United States passport B765475 and have been traveling in and out of the United States and to other countries like any other American citizen. I have continued to use this passport as an American in all situations which require my identification as a citizen of a particular nation.

Although I have been issued a Mexican passport I have never used it for any purpose. Instead I have always utilized my American passport for any purpose that required such a document.

Without in any way belittling the American background, orientation and education of appellant, we do not consider such factors relevant to the issue whether appellant intended to relinquish United States citizenship when he made a declaration of allegiance to Mexico. His background may have disposed him to want to remain a United States citizen, but in 1983 he voluntarily and consciously signed an unambiguous statement expressly renouncing his United States nationality.

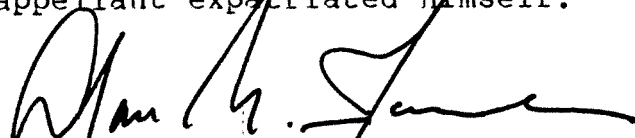
Appellant's exclusive use of a United States passport is the sole consideration that arguably suggests lack of intent to relinquish United States nationality. We do not, however, consider that fact dispositive of the issue of intent. He obtained a United States passport in 1981, two years before he made a formal declaration of allegiance to Mexico. It seems to us one might fairly infer that his use of the United States passport was as much a matter of convenience as it was a conscious act to demonstrate that he did not intend to relinquish United States nationality.

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██████████ case resembles many that the Board has review ██████████, like other young dual nationals, faced a difficult decision after attaining the age of 18 years, and the Board is not unsympathetic with him in his quandry. However, if one voluntarily, knowingly and intelligently pledges allegiance to a foreign state while expressly renouncing United States nationality, he must bear the consequences that the law decrees shall flow from such a choice.

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Upon consideration of the foregoing, we conclude that appellant voluntarily made a formal declaration of allegiance to Mexico with the intention of relinquishing United States nationality. Accordingly, we hereby affirm the Department's determination that appellant expatriated himself.


Alan G. James, Chairman


Warren E. Hewitt, Member


George Taft, Member