

June 1, 1987

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D [REDACTED] E [REDACTED]

This is an appeal from an administrative determination of the Department of State holding that appellant, [REDACTED] B [REDACTED], expatriated herself on May 14, 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 approved the certificate of loss of nationality that was executed in this case on December 6, 1985. Ms. [REDACTED] entered an appeal from that determination on December 5, 1986. After reviewing her case, the Department is now of the view that there is insufficient evidence to enable the Department to meet its burden of proving by a preponderance of the evidence that Ms. B [REDACTED] intended to relinquish her United States nationality when she made a formal declaration of allegiance to Mexico. The Department therefore requests that the Board remand the case to the Department so that the certificate of loss of nationality may be vacated. The Board will grant the Department's request for remand.

---

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

Public Law 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".

- 2 -

## I

A consular officer of the United States Embassy at Mexico City executed a certificate of loss of nationality in appellant's name on November 5, 1985. 2/ The officer certified that appellant was born at Mexico City on April 9, 1966 of a United States citizen father, thus acquiring United States nationality; that she also acquired Mexican nationality by virtue of her birth in Mexico; that she made a formal declaration of allegiance to Mexico on May 14, 1985; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. The Department approved the certificate on December 6, 1986, 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. An appeal was entered on December 5, 1986.

In lieu of a brief on the appeal, the Department on May 7, 1987 submitted a memorandum in which it requested that the case be remanded so that it might vacate the certificate of loss of nationality that it had approved in Ms. E [REDACTED] name. The Department presented the following rationale for its request:

Ms. E [REDACTED] applied for and received a Certificate of Mexican Nationality (CMN) on May 14, 1985. She went to the U.S. Embassy with her parents on May 13, 1985, the day before she made her application for the CMN, to ask for

---

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.

- 3 -

assistance in order that she not lose her U.S. citizenship. Ms. B [REDACTED] was advised by U.S. Consul, Mary G [REDACTED], who recommended that she make an affidavit which explained her intention. Ms. [REDACTED] executed an affidavit explaining her need to apply for her CMN and stated that it was her intention to retain her U.S. citizenship, despite the oath to the contrary she planned to sign the next day at the Mexican Foreign Office.

Ms. B [REDACTED] actions and statements are fully credible and uncontradicted by any evidence. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated. 3/

## II

Inasmuch as the Department has concluded that it is unable to carry its burden of proof, 4/ 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 Board remand the case for the purpose of vacating the certificate of loss of nationality.


---

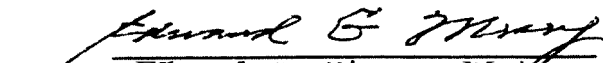
3/ In appellant's submissions to the Board, she also addressed her reliance on the advice given to her by U.S. Consul Mary I. Gerber to the effect that an affidavit stating her intent not to relinquish her United States citizenship status would "counterbalance" her explicit declaration of renunciation of United States citizenship in her application for a certificate of Mexican nationality. Although Consul Gerber's advice, in our view, was clearly erroneous, it appears from the record that appellant acted, in part, on the basis of such advice.

4/ Under the statute (text supra, note 1) and the cases, Vance v. Terrazas, 444 U.S. 252 (1980) and Afroyim v. Rusk, 387 U.S. 253 (1967), the Department bears the burden of proving by a preponderance of the evidence that a citizen voluntarily performed a statutory act of expatriation with the intention of relinquishing United States nationality.

- 4 -

The case is hereby remanded for further proceedings. 5/

  
Alan G. James, Chairman

  
Edward G. Misey, Member



---

5/ Section 7.2(a) of Title 22, code of Federal Regulations, 22 CFR 7.2(a) provides in part:..."The Board shall take any action it considers appropriate and necessary to the disposition of cases appeal to it."