February 12, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] M[redacted] L[redacted]-S[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, C[redacted] M[redacted] L[redacted]-S[redacted], expatriated himself on May 23, 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 set forth below, we conclude that L[redacted] S[redacted] voluntarily declared allegiance to Mexico with the intention of relinquishing his United States nationality. Accordingly, we 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 Aiiendments of 1986, PL 99-953 (approved November 14, 1986) 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;" and amended paragraph (2) of section 349(a) by inserting "after having attained the age of eighteen years" after "thereof."

I

L[redacted]-S[redacted] was born on [redacted]. Through his mother, a United States citizen, he derived United States citizenship at birth, 2/ Since he was born in Mexico he also acquired the nationality of that state at birth, He is the fourth of six brothers and sisters all of whom were dual nationals at birth. Appellant's birth as a United States citizen was recorded by the United States Embassy at Mexico City in December 1963. The Embassy issued him an identity card in 1973 and again in 1979.

While he was studying at the School of Architecture of the Intercontinental University, [redacted] applied for a certificate of Mexican nationality on April 26, 1984. He was then almost 22 years of age, In the application, he expressly renounced United States nationality and allegiance to the United States. He also pledged obedience and submission to the laws and authorities of Mexico. A certificate of Mexican nationality was issued to appellant on May 23, 1984, He obtained a Mexican passport in June 1984 and a few days later obtained a visitors visa from the United States Embassy with unlimited validity.

On June 14, 1984 the Department of Foreign Relations informed the Embassy that [redacted] has obtained a certificate of Mexican nationality. Copies of his application and the certificate were enclosed. The Embassy wrote to him on August 1, 1984 to inform him that by making a formal declaration of allegiance to Mexico he might have lost his United States citizenship. The Embassy's letter continued:

2/ Section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. 1401(a)(7) reads in pertinent part as follows:

> Sec. 301.
>
> (a) the following shall be nationals and citizens of the United States at birth:
>
> ...
>
> (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years;...

Public Law 95-432, 95 Stat. 1046 (Oct. 10, 1978) amended section 301 by striking out "(a)" after "Sec. 301.", and by redesignating paras. (1) through (7) as subsections (a) through (g), respectively,

> It will be helpful in determining your present citizenship status if you would complete the enclosed "Information for Determining U.S. Citizenship" form. Please return the completed form within 30 days in the enclosed envelope. If no reply is received the Department may make an official determination of your citizenship status on the basis of all available information.
>
> You may want to discuss this matter with a consular officer before filling out this form. We will be pleased to arrange an appointment if you do wish to consult a member of our consular staff....

Appellant visited the Embassy on August 29, 1984 and was interviewed by a consular officer. He completed a form titled "Information for Determining U.S. Citizenship" and, for information purposes, an application for a passport/registration as a United States citizen, Thereafter, as required by law, a consular officer executed a certificate of loss of nationality in appellant's name on September 12, 1984. 3/ The officer certified that [redacted] 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 forwarding the certificate to the Department, the consular officer made the following report on [redacted]' case.

3/ 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.

...He indicated that while it was not his intention to renounce his U.S. citizenship, rather, he applied for the CMN in order to not lose his university scholarship, He claimed that if he had not obtained the CMN he not only would have lost his scholarship he would have had to have paid a much higher rate of tuition. According to subject, his father was on a small pension and could not afford to pay the higher rate of tuition required of foreigners.

Subject indicated he signed the oath to Mexico voluntarily and With full knowleage that it would jeopardize his U.S. citizenship. Mr. [redacted] related that three of his brothers and sisters had taken the oath and had lost their U.S. citizenship. When asked why he had not come to the Embassy to discuss the consequences of obtaining the CMN, he responded that he was in a big hurry and did not have the time.

Mr. [redacted] has voted in Mexico and not the U.S. and has not registered for the draft, He recently obtained a Mexican passport and secured a U.S. tourist visa.' Asked why he had not applied for a U.S. passport instead of a Mexican document- and U.S. visa, he replied he suspected he had expatriated himself when he obtained the CMN.

It is clear that despite Mr. [redacted] obtention of a U.S. card of identity in 1979, that he considered himself to be and otherwise conducted himself like a Mexican citizen, Because at least 3 brothers/sisters had lost their citizenship by taking an oath of allegiance to Mexico, it is almost certain he was aware of the consequences of his actions. His preference for traveling on a Mexican passport and U.S. visa further support this officer's contention that Mr, [redacted] intended to renounce his U.S. citizenship when he took the oath of allegiance to Mexico. Conoff, therefore, recommends CLN prepared in subject's name be approved.

The Department approved the certificate on October 11, 1984, an action that constitutes 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 informing the Embassy of its approval of the certificate, the Department gave the following rationale for its action:..

> 1. Mr. [redacted] was aware from the experience of older siblings of the probable consequences of obtaining a certificate of Mexican nationality. However, he did not inquire of the Embassy as to how he might maintain his U.S. citizenship. Subsequently he obtained a U.S. visa on his Mexican passport. When asked why ne didn't apply for a U.S. passport he replied it was because he believed he had expatriated himself by obtaining a CMN.
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> 2. The Dept concurs with Conoff's opinion that Mr. [redacted] intended to relinquish U.S. citizenship by his act.

Mr. [redacted] entered an appeal on September 23, 1985.

II

The Immigration and Nationality Act 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. 4/ There is no dispute that [redacted] duly make a formal declaration of allegiance to Mexico and so brought himself within the purview of the statute.

In law it is presumed that a statutory expatriating act is voluntary, but the presumption may be rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 5/ L[redacted]

4/ Section 349(a)(2). Text supra, note 1.

5/ 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 rebuttec upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

[redacted] thus bears the burden of proving that he did not pledge allegiance to Mexico voluntarily.

Appellant's case that he acted voluntarily rests on the following allegations:

> - In my final year of architectural studies (1984-85), under a full scholarship from the National Autonomous University of Mexico, I requested the Certificate of Mexican Nationality to be able to continue my studies with the Mexican scholarship. Otherwise I would have lost the scholarship and had to pay the tuition for foreigners, which I could not have afforded,
>
> - To allow me to obtain my professional degree and thereby exercise my profession, the Mexican authorities require the Certificate of Mexican Nationality of students born of foreign parents, Otherwise the degree is difficult to obtain as a foreigner.
>
> - The Mexican authorities require the Certificate of Mexican Nationality of those over 18 seeking to obtain a Mexican passport in order to leave Mexico,
>
> In requesting the certificate, I was aware that I could lose my U.S. citizenship; however, my older siblings had been in the same situation and the United States Embassy had informed them that all they could do was renounce it, and they were never informed that requesting the Certificate of Mexican Nationality would not [sic] entail automatic loss of U.S. citizenship.
>
> In that situation it never occurred to me to request information from the Embassy,..,

Briefly stated, appellant contends that he performed an expatriative act against his fixed will and intent because he was forced to do so by economic pressures and because he understood that there was no alternative way to acquire an academic degree and to practice his chosen profession except by obtaining a certificate of Mexican nationality.

5/ Cont'd.

Public Law 99-653, approved November 14, 1986, repealed section 349(b) but did not redesignate section 349(c) as section 349(b).

We are not persuaded by appellant's contention that because he understood his older brothers and sister had been informed by the Embassy that they had no alternative except to renounce their American citizenship if they wished to study and work in Mexico, he had been misled and so acted involuntarily. He has not demonstrated that he was misinformed by United States officials; he has submitted no proof of his allegations, It was his responsibility to find out what his legal situation was - not to rely on a vague understanding of his older brothers and sister, Since [redacted] did not ascertain the facts before acting, he may not be heard to say his act was involuntary simply because he thought he had no alternative.

Nor are we persuaded that appellant has made out a case of economic duress. The case law on economic duress is absolutely clear: only if the citizen faced such a dire situation that he could not provide for his own or his family's subsistence unless he performed an expatriative act, could the doing of the act be characterized as involuntary, Stipa v. Dulles, 223 F.2d 551 (3rd Cir. 1959); Insogna v. Dulles, 116 F. Supp. 437 (D.D.C. 1953). In Insogna v. Dulles, for instance, 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.

The pressures on appellant do not rise to the level of subsistence threatening, for his situation could hardly be described as "dire . Granted, paying a higher tuition because he was classed as a foreign student might have been burdensome to him and his father, but doing an expatriative act simply to lessen a financial burden incident to one's education cannot be described as acting involuntarily, He offers no proof that he could not find the monies to fund his tuition; he merely states that his father was the recipient of a small pension and could not subsidize him, He has not shown, as he must do, that he explored in vain alternatives to obtaining a certificate of Mexican nationality.

Mexican law requires that dual nationals elect between their nationalities after attaining the age of 18. This law confronts many young adults with very difficult decisions. But that fact alone cannot be considered coercive, for to require that those dual nationals who wish to enjoy the rights and privileges of Mexican nationality shall renounce their other nationality is undeniably a legitimate exercise of national sovereignty. No cases suggest that United States courts consider that enforcement of its law by Mexico constitutes duress on American citizens who happen also to be Mexican.

As a matter of law, [redacted]z had a choice. He was plainly aware that making a declaration of allegiance to Mexico could result in loss of his United States citizenship. Nonetheless, he decided to enjoy the benefits Mexican nationality would confer

on him. Where one has opportunity to make a personal choice there is no duress, for opportunity to make a choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971).

We conclude that [redacted] has not overcome the presumption that his formal declaration of allegiance to Mexico was made voluntarily.

III

The question remains, however, whether on all the evidence appellant intended to relinquish his United States citizenship when he pledged allegiance to Mexico, In Vance v. Terrazas, 444 U.S. 253 (1980), the Supreme Court held that unaer the statute, 6/ 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 ma 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. Terr 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 persuas evidence of such an intent. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958) (Black, J. Concurring.)

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

The cases hold that provided no other factors are present warranting 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. Terrazas v. Haig, 563 F.2d 285 (7th Cir. 1981). There, the Court held that plaintiff manifested an intent to relinquish citizenship by voluntarily, knowingly and unaerstandingly applying for a certificate of Mexican nationality tha 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 forma 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. Departme of State, et. al., Civil Action 85-1985, memorandum opinion (D.D.C. 1985). See also Terrazas v. Vance, No 75-C 2370, memorandum opinion,

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6/ Section 349(c) of the Immigration and Nationality Act, text supra, note 5,

p. 8 (N.D. Ill. 1977:" A person of dual nationality will be held to have expatriated himself from the United States when it is shown that he voluntarily committed an act whereby he unequivocally renounced his allegiance to the United States." Fletes-Mora v. Rogers, 160 F. Supp. 215 (C.D. Calif. 1958).

From [redacted] own statements it is clear that he knowingly and intelligently made a formal declaration of allegiance to Mexico. In the form he completed for determination of United States citizenship at the Embassy in August 1984, he stated that he knew he could lose American citizenship but "if I didn't [obtain a certificate of Mexican nationality] I would not be able to obtain my degree in school, and I wouldn't be able to continuing [sic] living in Mexico," When he applied for the certificate he was nearly 22 years of age, schooled and fluent in Spanish. As noted by the consular officer who processed his case, [redacted] was aware of the experience of his brothers and sister who like him were found to have expatriated themselves by making a formal declaration of allegiance to Mexico, We find nothing in the record to indicate that appellant acted inadvertently.

Finally, we find no factors in this case that would support a finding of lack of intent on appellant's part to relinquish his United States citizenship. After choosing to become solely a Mexican citizen, [redacted] obtained a Mexican passport and a United States visa, and visited the United States as a Mexican citizen. He contends such conduct "does not indicate a desire to relinquish U.S. citizenship." Standing alone it might not, but travelling to the United States as a foreign citizen hardly signifies an intention to retain citizenship. Aside from [redacted] expressions of regret at losing United States citizenship, we perceive no factors that would lead us to doubt that it was has intention to surrender United States citizenship and transfer his allegiance to Mexico,

On all the evidence the Department has carried its burden of proving that Mr. [redacted] intended to relinquish his United States citizenship,

IV

Upon consideration of the foregoing, we hereby affirm the Department's administrative determination that Mr. [redacted] expatriated himself.

Alan G. James, Chairman

Howard Meyers, Member

J. Peter A. Bernhardt, Member