February 12, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determin[redacted] of the Department of State that appellant, M[redacted] E[redacted]th L[redacted] S[redacted], expatriated herself on May 25, 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 Ms. L[redacted] S[redacted] voluntarily declared her allegiance to Mexico with the intention of relinquishing her United States nationality. Accordingly, we will affirm the Department's determination that she expatriated herself.

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 ana 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 99-651 (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

Ms. [redacted] - [redacted] was born on [redacted] [redacted] [redacted] [redacted] As her mother was a United States citizen, she acquired United States nationality under section 301(a)(7) of the Immigration and Nationality Act. 2/ By virtue of birth in Mexico she also acquired the nationality of that state. She is the fifth of six brothers and sisters all of whom were dual nationals at birth, Appellant's birth as a United States citizen was registered by the United States Embassy at Mexico City in December 1964, In 1973 and 1979 the Embassy issued her cards of identity.

While studying for a degree in public accountancy at the Autonomous Technological Institute of Mexico, appellant applied for a certificate of Mexican nationality on May 4, 1984. She was then 20 years old. In the application Ms. [redacted] - [redacted] expressly renounced her United States nationality and allegiance to the United States. She also declared obedience and submission to the laws and authorities of Mexico, A certificate of Mexican nationality issued to appellant on May 25, 1984. In June 1984 she obtained a Mexican passport and a few days later obtained a multiple entry visitors visa from the Embassy,

On August 10, 1984 the Department of Foreign Relations sent a diplomatic note to the Embassy, stating that Ms. [redacted] - [redacted] had applied for and obtained a certificate of Mexican nationality. Copies of her application and of the certificate were enclosed. The Embassy wrote to Ms. [redacted] - [redacted] on September 18, 1984 to inform her that by making a declaration of allegiance to Mexico she might have lost her United States nationality. The Embassy's letter continued:

2/ Section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. 1401(a)(7), read 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.

> You should be aware that the U.S. Supreme Court has decided that a person cannot lose U.S. citizenship because of the law mentioned above unless that person intended to relinquish U.S. citizenship when performing the act listed in the statute. Our primary purpose in writing is to learn from you whether you intended to relinquish U.S. citizenship when you made a formal declaration of allegiance to Mexico. Please assist us by completing the enclosed questionnaire, 'Information for Determination of U.S. Citizenship.'
>
> You may wish to "discuss this matter with a consular officer before completing the form. We will be pleased to arrange an appointment if you wish to consult a member of our consular staff...

Appellant visited the Embassy where she was interviewed by a consular officer. She also completed a form for determining United States citizenship and, for information purposes, an application for a passport/registration. Thereafter, as required by law, a consular officer executed a certificate of loss of nationality in appellant's name on October 16, 1984. 3/ Therein the officer certified that appellant acquired the nationality of both the United States and Mexico 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.

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.

In forwarding the certificate of loss of nationality to the Department, the consular officer made the following report on the case:

> Ms. [redacted] stated that she obtained the CMN because she could not afford to pay the higher school fees charged foreigners. Although she did not want to lose her American citizenship, she did not know what else to do. Her four older brothers and sister have also obtained CMNs and so, she claimed, it seemed logical for her to do so as well, She stated also-that her mother and three older siblings had come to the Embassy to ask advice regarding the problem of the higher tuition charged non-Mexican citizens and were told their only option was to go to SRE and renounce their U.S. citizenship.
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> In the past, Ms. [redacted] used her American card of identity and registration to travel to the U.S. One of her older brothers told her that because she had renounced her American citizenship, and as her I.D. Card expired 10 June 1984, she would have to get a Mexican passport and U.S. visa. She obtained the Mexican passport on 11 June and the visa on 13 June, in order to visit her grand-parents. Ms, [redacted] lives with her parents and has not paid taxes in either Mexico or the U.S. and has voted in Mexico but not the U.S.
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> Although Ms. [redacted] stated that she did not want to lose her American citizenship, because of the experience of her four older siblings she was aware of the consequences of signing the renunciatory oath. She had travelled in the past to the U.S. as an American citizen, but when faced with making a choice between American and Mexican nationalities, she chose the Mexican because of financial pressures, without coming to the Embassy to explore her options. She then obtained a U.S. visa, again without coining to the Embassy to discuss the situation. It is this officer's opinion that Ms. [redacted] did not make a credible effort to maintain her U.S. citizenship, even given the financial and family pressures she was under, and that therefore the CLN prepared in her name should be approved.

The Department approved the certificate on November 9, 1984, 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 informing the Embassy of its approval of the certificate, the Department gave the following rationale for its action:

> 1. Ms. L[redacted] was aware from the experience of older siblings of the possible consequences of obtaining a certificate of Mexican nationality. However, she did not go to the Embassy at that time to inquire as to how she might preserve her U.S. citizenship. Subsequently she obtained a U.S. visa on her Mexican passport. Again without raising the citizenship question.
>
> 2. The Department concurs with the consular officer that Ms. L[redacted] made no credible effort to maintain her U.S. citizenship. Therefore, we have concluded that she intended to relinquish U.S. citizenship by her act. The CLN was approved on Nov, 9, 1984. The consular officer is commended for her clear and thorough development of this case.

Ms. [redacted]-[redacted] entered an appeal on September 25, 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 Ms. [redacted]-[redacted] duly made a formal declaration of allegiance to Mexico and so brought herself 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 showing by a preponderance of the evidence that the act was involuntary. 5/

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

Ms. [redacted] thus bears the burden of proving that she did not make her pledge of allegiance to Mexico voluntarily.

> The loss of my U.S. nationality was the result of my being issued a Certificate of Mexican Nationality by the Department of Foreign Relations (Annexes 4 and 5), which I had to request for the following reasons:
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> - In order to continue studying for my degree, I requested the Certificate of Mexican Nationality to be able to pay my tuition as a Mexican. Otherwise I would have had to pay the tuition for foreigners, which I could not have afforded.
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> - To obtain a professional degree and thereby exercise one's profession in my country, the Mexican authorities require the Certificate of Mexican Nationality of students born of foreign parents. Otherwise the degree is very 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.
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> 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 the Certificate of Mexican Nationality does not [sic] entail automatic loss of U.S. citizenship.

As we understand appellant's arguments, she contends she was forced to do the expatriative act by economic pressure and because she believed she had no alternative except obtaining a certificate of Mexican nationality if she wished to obtain a degree and practice her chosen profession.

5/ Cont'd

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

We are unable to give any weight to appellant's contention that because she understood her brothers and sister had been informed by the Embassy that they had no alternative to renouncing United States citizenship if they wished to live and study in Mexico after age 18, she had been indirectly misled by United States authorities into performing the expatriative act. First of all, she cannot prove her allegations. As she conceded in her reply to the Department's brief, "unfortunately, I cannot provide evidence (dates, names, etc.) to corroborate such visits [by her siblings]." Further, it was her responsibility to ascertain the legal alternatives open to her, since she states she realized obtaining a certificate of Mexican nationality might cost her her citizenship but aid not really wish to relinquish United States nationality. She may not blame unnamed consular officers for misleading advice they allegedly gave her brothers and sisters when she did not take the trouble to ascertain the facts.

Nor are we persuaded that appellant has made a case of economic duress. The case law on economic duress is quite clear that only if a citizen would otherwise have faced a dire economic situation can performance of a statutory expatriating act be justified. Stipa v. Dulles, 223 F.2d 551 (3rd Cir. 1956), 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. We can understand that Ms, L[redacted]- [redacted] would wish to avoid paying the higher tuition charged foreign students and therefore chose to document herself as a Mexican citizen. We are, however, unable to accept that because she would have had to pay a higher tuition (had she not performed the expatriative act), she was subjected to economic pressures that meet the standards set by the cases cited above. For one thing, she has offered no evidence to show that she could not afford the higher tuition; making a conclusory statement is not shouldering the burden of proof. Nor has she shown that she explored but found no viable alternative that would advance her career without jeopardizing her U.S. citizenship status.

Mexican law requires that dual nationals elect between their nationalities after attaining age 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 w to enjoy the rights and privileges of Mexican nationality shall renounce their other nationality is a legitimate exercise of national sovereignty. No cases suggest that United States courts consider that enforcement of Mexican law constitutes duress on American citizens who happen also to be Mexican.

As a matter of law, Ms. [redacted] had a choice. She was plainly aware that making a decision of allegiance to Mexico could result in loss of her United States citizenship. Yet she still decided to enjoy the benefits Mexican nationality would confer on her. Where one has opportunity to make a person 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 Ms. [redacted] has not overcome the presumption that her formal declaration of allegiance to Mexico was voluntarily made.

III

The question remains, however, whether on all the evidence appellant intended to relinquish her United States citizenship when she pledged allegiance to Mexico. In Vance v. Terrazas, 444 U.S. 253 (1980), the Supreme Court held that under 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 may e 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. [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 make it 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. 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 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

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

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). See also Terrazas v. Vance, No. 75-C 2370, memorandum opinion, 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 uneguivocally renounced his allegiance to the United States. Fletes-Mora v. Rogers, 160 F. Supp. 215 (C.D. Calif. 1958)."

From Ms. [redacted] own statements it is clear that she knowingly and intelligently made a formal declaration of allegiance to Mexico. In the form she completed at the Embassy in October 1984 to determine United States citizenship she stated that she knew "I could lose it [American citizenship] but I did not know what else to do." When she applied for a certificate of Mexican nationality she was over 20 years of age and attending an institution of higher learning. Further, it appears that several years before appellant applied for a certificate of Mexican nationality, her older sister and at least two of her brothers had expatriated themselves by performing the same expatriative act. Nothing of record i[illegible] that she 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 her United States citizenship. After making the choice to become solely a Mexican citizen, Ms. [redacted] obtained a Mexican passport and a United States visa, and visited the United States as a Mexican citizen, She may now regret that she chose Mexican nationality, but regret aside, there is nothing palpable in the record to lead us to conclude that in 1984 it was not her intention [illegible] quish her United States citizenship.

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

IV

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

Alan G. James, Chairman

Howard Meyers, Member

J. Peter A. Bernhardt, Member