January 28, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: S[redacted] A[redacted] D[redacted]

S[redacted] A[redacted] D[redacted] appeals an administrative determination of the Department of State holding that she expatriated herself on September 7, 1981 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 key issue to be decided is whether Ms. D[redacted] performed the proscribed act with the intention of relinquishing her United States nationality. For the reasons stated below, we conclude that the Department has carried its statutory burden of proving by a preponderance of the evidence that she intended to terminate her American citizenship. Accordingly, we will affirm the Department's decision.

I

Ms. [redacted] of a Mexican citizen mother and a United States citizen father. She thus acquired the nationality of both the United States and Mexico.

"As far back as I can remember," appellant stated to the Board upon filing her appeal, "I had two passports; a U.S. and a Mexican one. I used both for travel." The record shows that in 1968 she was documented as a United States citizen by obtaining an identity card from the Embassy at Mexico City. In 1969 she obtained a United States passport. The record also shows that even before she obtained

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1/ Prior to November 14, 1986, section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provided that:

> Sec. 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 --
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> ...
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; or

The Immigration and Nationality Act Amendments of 1986, PL 99-653, approved November 14, 1986, amended subsection (a) of 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 insert "after having attained the age of eighteen years" after "thereof."

a Certificate of Mexican Nationality she held a Mexican passport from 1978 to 1980. She obtained a multiple entry visitors visa in 1979 from the United States Embassy at Mexico City, valid to 1983.

It appears that around 1981 (appellant is not specific about the date) she applied for a position that would have required some travel. "It suddenly seemed as if I might get the job," she wrote to the Board, "and would have to be ready to leave Mexico in two days." Since both her Mexican and United States passports had expired, she decided to renew her Mexican passport, She was informed by the Mexican authorities, however, that she would not be entitled to receive a Mexican passport unless she first obtained a certificate of Mexican nationality, She made application therefor on September 7, 1981. In the application Ms. D[redacted] expressly stated that she renounced her United States nationality and all allegiance to the United States. She also declared submission and obedience to the laws and authorities of Mexico, A certificate of Mexican nationality was issued to Ms. [redacted] on September 7th. On the same day she obtained a Mexican passport, valid to 1983. On the next day, September 8th, she obtained a multiple entry visitors visa from the Embassy, valid to 1986. It appers that she made a number of trips to the United States after September 1981. She obtained a five-year renewal of her Mexican passport in 1984.

Ms. [redacted] visited the Embassy in June 1984 for a purpose not disclosed by the record. At that time she. told a consular officer that she had made a declaration of allegiance to Mexico. Accordingly, the Embassy requested confirmation of that fact from the Mexican authorities, Confirmation was received by diplomatic note. Ms. [redacted] completed a form titled "Information for Determining U.S. Citizenship," and, for information purposes, an application for passport/registration. Thereafter, as required by law, a consular officer executed a certificate of loss of nationality in the name of [redacted] [sic] on August 30, 1984. 2/ The consular

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2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

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.

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. In forwarding the certificate to the Department the consular officer recommended approval on the following grounds:

> Based on the evidence available and particularly subject's exclusive use of Mexican passports and U.S. visas, after obtaining the Certificate of Mexican Nationality, Conoff concludes subject's statements on the application for the CMN are credible and that she intended to renounce her U.S. citizenship. This officer recommends the CLN prepared in Miss D[redacted]'s name be approved.

The Department approved the certificate on October 11, 1984, and so made a determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. Ms. D[redacted] entered an appeal on June 17, 1985, but did not respond to the Board's inquiry whether she wished to file a brief until January 1986, when she stated that she had nothing to add to her original submission. The Department submitted its brief in March 1986 After the Board had made several inquiries, appellant wrote to the Board on October 30, 1986, stating that since she had nothing to add to her initial submission, she decided not to file a reply to the Department's brief.

II

The statute prescribes that a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state. 3/ There can be no doubt that Ms. D[redacted] made a formal declaration of allegiance to Mexico and so brought herself within the purview of the statute. The cases and the statute provide, however, that nationality shall not be lost unless the citizen did the proscribed act voluntarily and with the intent of relinquishing United States citizenship. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 252 (1967); Nishikawa v. Dulles, 356 U.S. 129 (1958); Perkins v. Elg, 307 U.S. 325 (1939).

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3/ Supra, note 1.

In law, it is presumed that one who performs a statutory expatriating act does so voluntarily, but the presumption may be rebutted by the actor upon a showing by a preponderance of the evidence that the act was not voluntary. 4/ Therefore, to prevail on this issue, Ms. [redacted] must come forward with credible evidence that she acted involuntarily.

Ms. [redacted] intimates that she did not act voluntarily. "I do not believe that my action at the Foreign Ministry [where she applied for a certificate of Mexican nationality] was a conscious 'choice'.., To me, a choice is one when it is freely made, when one has all the knowledge and facts at hand." She does not, however, present any evidence to support her contention that her decision was not freely made. Of course, if someone prevented her from getting the relevant information to the effect that making a formal declaration of allegiance to a foreign state is a potentially expatriating act, that would be one thing. But there is no evidence that she could not have ascertained the implications of the act, had she made an effort to do so. She may not take refuge behind lack of knowledge when it is she who should have ascertained the relevant facts before proceeding. Ms. [redacted] has not supported her generalized allegations of involuntariness with any evidence, and has not therefore rebutted the legal presumption that she made a formal declaration of allegiance to Mexico of her own free will.

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

> 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 theevidence, that the act or acts committed or performed were not done voluntarily.

The Immigration and Nationality Act Amendments of 1986 repealed section 349(b) but did not expressly redesignate section 349(c) as section 349(b).

III

Although Ms. [redacted] voluntarily performed a statutory expatriating act, it remains for us to determine whether she had the requisite intent to relinquish United States citizenship, under the Supreme Court's holding in Vance v. Terrazas, supra, the government must prove by a preponderance of the evidence that appellant intended to forfeit her United States citizenship. 444 U.S. at 267, Intent, the court said, may be expressed in words or found as a fair inference from proven conduct. Id, at 260. The intent that must be proved is appellant's intent at the time she made a declaration of allegiance to Mexico, Terrazas v. Haig, 653 F.2d, 285 (7th Cir. 1981).

Ms. [redacted] not only made a formal declaration of allegiance to a foreign state, an act that may be highly persuasive evidence of an intent to relinquish United States citizenship, Vance v. Terrazas, 444 U.S. at 261, citing Nishikawa v. Dulles, 358 U.S. 129, 139 (1958), but also expressly renounced her United States citizenship and all allegiance to the United States.

Express renunciation of United States citizenship has been held to manifest an intent to relinquish United States citizenship, In Terrazas v. Haig, supra, the court found abundant evidence of the petitioner's intent to relinquish United States citizenship in his willingly, knowingly and voluntarily acquiring a certificate of Mexican nationality, and in his subsequent conduct. 653 F.2d at 288, In Richards v. Secretary of State, 752 F.2d 1413, 1421 (9th Cir. 1985), the court held that "the voluntary taking of a formal oath of allegiance 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).

The evidence that Ms. [redacted] intended to relinquish her United States citizenship when she declared allegiance to Mexico is thus very compelling. We must, however, be satisfied that she acted knowingly and intelligently. Terrazas v. Haig, supra; United States v. Matheson, 532 F.2d 809 (2nd Cir. 1976).

In an argument closely resembling her contention that she did not act voluntarily, Ms. [redacted] contends that her actions were not conscious. She states that she remembers "being in a daze" when she went to the Department of Foreign Relations to apply for a Mexican passport "but I also recall that it seemed like a mere bureaucratic measure, I never consciously thought, 'Here I am, giving up my American citizenship.'"

We are unable to accept that such an allegation is sufficient to show that she did not knowingly and intelligently make a formal

declaration of allegiance to Mexico. She was 29 years old in 1981, evidently educated (she has indicated that she is a journalist with Time magazine) and fluent in Spanish. Nothing of record suggests that she was unable to appreciate what a serious step she was taking and the meaning of the words "I expressly renounce my United States nationality." For her to state now that "I never pledged allegiance to Mexico" is either naive or disingenuous.

Finally, nothing of record offsets the intent to relinquish her United States citizenship that she showed when she declared her allegiance to Mexico. Immediately after receiving the certificate of Mexican nationality she obtained another Mexican passport and obtained visas on two occasions for trips to the United States. She did not seek to renew her United States passport. Use of a foreign passport to enter the United States is, in these circumstances, plainly inconsistent with an avowed intention not to relinquish United States citizenship.

Ms. D[redacted] has expressed a dilemma that apparently a good many dual nationals of the United States and Mexico feel:

> My entire life has been 'ambivalent' as far as my identity is concerned. To my brother and mother, I speak English. With my sisters, I speak Spanish. There are things in Mexico which I see with a great distance, others that I feel close to. And the very same thing happens when I am in the States. It is precisely this ambiguity which makes it difficult for me to state my case. My father was an American and one part of me feels very American also. Just as another part feels Mexican, and that is the reason why for years I travelled with a Mexican passport. There was no thought-out reason for that, it just happened....

The Board is not indifferent to Ms. D[redacted]'s feelings of ambivalence. Mexican law does confront dual nationals with a difficult choice, usually while they are very young adults. But in law a choice it is. A citizen of the United States and Mexico who voluntarily, knowingly and intelligently elects to acquire the rights and privileges of Mexican citizenship cannot escape the legal consequences of such action for his or her United States citizenship.

The Department, in our judgment, has met its burden of proof that appellant intended to relinquish her United States citizenship when she made a formal declaration of allegiance to Mexico.

**IV**

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

Alan G. James, Chairman

James G. Sampas, Member

George Taft, Member