DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M P G

This case is before the Board of Appellate Review on a appeal Drought by M P G from an administrativ determination of the Department of State, dated November 28 1984, that she expatriated herself on September 26, 1982 unde the provisions of section 349(a)(2) of the Immigration an Nationality Act by making a formal declaration of allegiance t Mexico. 1/

The principal issue for the Board to decide is whethe appellant intended to relinquish her United States citizenshi when she declared allegiance to Mexico. For the reasons tha follow, it is our conclusion that the Department has carried it burden of proving that appellant had such an intent Accordingly, we affirm the Department's holding of loss o appellant's United States citizenship.

I

Appellant was born on , at As her parents were United States citizens, she acquired

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1/ When appellant made a formal declaration of allegiance t Mexico, section 349(a)(2) of the Immigration and Nationalit Act, 8 U.S.C. 1481, 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 --
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> . . .
>
> (a) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof;...

Pub. L. No. 99-653, 100 Stat. 3655 (1986), amende subsection (a) of section 349 by inserting "voluntaril performing any of the following acts with the intention o relinquishing United States nationality:" after "shall lose hi nationality by;". Pub. L. 99-653 also amended paragraph (2) o subsection (a) section 349 by inserting "after having obtaine the age of eighteen years" after "thereof".

their citizenship. By virtue of birth in Mexico she became a national of that state as well. She thus enjoyed dual nationality.

The United States Consulate General at Guadalajara issued a report of appellant's birth as a United States citizen on November 22, 1955. Appellant returned with her parents to the United States in 1960, and for the next ten years or so attended primary and secondary school in the United States. She returned to Mexico around 1970 and has resided there since. In 1973 she began working.

In October 1979, the Consulate at Mazatlan registered appellant as a United States citizen and issued her an identity card, valid to 1984. According to the records of that office, Ms. G[redacted] appeared at the Consulate in 1981 "with a Mexican passport, requesting a tourist visa, and indicated that she had renounced her American citizenship and obtained the Mexican nationality." The record presented to the Board does not disclose what action, if any, the Consulate took on appellant's purported application for a visa. Nor does the record indicate that she had applied for a certificate of Mexican nationality prior to 1982 and obtained a Mexican passport.

At the Board's request, appellant submitted a declaration (dated November 23, 1987) commenting on her aforementioned visit to the Consulate. She had indeed gone to the Consulate to request a tourist visa in a temporary Mexican passport. She needed the visa because "I was being scrutinized at the airport by the Mexican officials who thought I was working illegally in Mexico." She spoke first to a local employee who said "something like: 'Now you are going to be a Mexican,'" and requested that she hand in her U.S. identity card. A consul appeared and "told me something to the effect, 'you cannot use it (the U.S. identity card) anymore.'" There was no discussion that she had given up her U.S. citizenship, "nor did I ever renounce my U.S. citizenship at that time." Appellant stated that she was surprised by the entry on the Consulate's records: both the consul and local employee knew her and her family well, knew her citizenship status and her problems working in Mexico as a U.S. citizen. She described the entry in the records as "implausible." She never toll anyone at the Consulate that she had renounced her American citizenship at any time.

On September 10, 1982 appellant executed an application for a certificate of Mexican nationality. She was then 27 years old and single. 2/ In the Spanish language application, she made the following declaration:

2/ Subsequently (the record does not disclose when) appellant married a Mexican citizen. They have two children.

> ... I hereby expressly renounce United States citizenship as well as all submission, obedience, and allegiance to any foreign government, especially that of the United States of America, of which I may have been a national, protection other than that of the laws and authorities of Mexico, and any right that treaties and international law grant to aliens. In addition, I profess adherence, obedience, and submission to the laws and authorities of the Mexican Republic. 3/

At that time appellant was working for an America enterprise, Frontier Airlines.

One year later, on September 26, 1983, a certificate Mexican nationality was issued to appellant. Three days lat the Department of Foreign Relations informed the United Stat Embassy in Mexico City by diplomatic note (dated September 29t that appellant had obtained a certificate of Mexican nationali and had pledged allegiance to Mexico and renounced her Unite States nationality. With the note the Department of Forei Relations forwarded copies of appellant's application for t certificate and the certificate.

The Consulate General at Guadalajara received from t Embassy the note of the Department of Foreign Relations a wrote to appellant on October 19, 1983 to inform her that making a formal declaration of allegiance to Mexico she mig have expatriated herself. She was asked to complete questionnaire, titled "Information for Determining U. Citizenship," and advised that she might discuss her case wit consular officer. Appellant completed the questionnaire November 12, 1983 and returned it to the Consulate General. consular officer acknowledged its receipt on December 9, 198 but informed appellant that she would have to submit proof her acquisition of United States nationality before her ca could be processed. As soon as the requested documentation w received, the officer stated, her case would be submitted Washington for determination of her citizenship status. T consular officer concluded by volunteering that:

> ...You must understand, however, that your contested loss of nationality has little chance of succeeding. As you yourself explain, you applied for the Certificate of

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3/ English translation, Division of Language Service Department of State, LS No. 123831, Spanish, 1987.

> Mexican Nationality voluntarily, with the knowledge that you were taking an oath of allegiance to Mexico and renouncing your US citizenship in front of the Mexican government, and you have made your way of life in Mexico...

Since appellant did not reply to the consular officer's letter, the latter wrote to her again in February 1984, stating that if she did not reply within 30 days, her case would be submitted to the Department "for consideration with the information in hand." Appellant wrote to the Consulate General on February 27, 1984, enclosing copies of the consular report of her birth as a United States citizen. "I would sincerely consider it a great loss if I were to loose.[sic] my U.S. citizenship," she wrote. She had no plans in the near future "of taking advantage of my citizenshp," she wrote, but her roots were in the United States and "losing my citizenshp would be as if I were being spiritually uprooted."

Appellant's letter of February 27th did not reach the Consulate General, however, until March 26th. Meanwhile, on March 22, 1984, as required by law, a consular officer had executed a certificate of loss of nationality in the name of [redacted] 4/ The consular officer certified that appellant acquired United-States nationality by virtue of birth abroad to United States citizen parents; acquired the nationality of Mexico by virtue of birth therein; made a formal

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4/ 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.

declaration of allegiance to Mexico; and thereby expatriate herself under the provisions of section 349(a)(2) of th Immigration and Nationality Act. The consular officer submitte the certificate of loss of nationality and supporting document to the Department under cover of a memorandum, dated March 23 1984, which reads in part as follows:

> The Consulate General has prepared the CLN despite her statement that she did not intend to relinquish U.S. nationality, considering her lack of interest to communicate with the Consulate General and also her statement to question 13 of the Information for Determining U.S. Citizenship questionnaire that she was aware that by applying for a CMN she might lose her U.S. nationality. That her lifestyle is in Mexico and her desire to reside permanently in Mexico. The CLN is hereby transmitted for consideration with the recommendation of approval as it is evident that her intention was to relinquish her U.S. nationality when she applied for the Certificate of Mexican Nationality.

The Department informed the Consulate General by telegra on May 25, 1984 that it was not completely satisfied that Ms [redacted] intended to relinquish United States citizenship.

> Her failure to respond to your letters suggests disinterest in her U.S. citizenship, yet her statements in her questionnaire appear sincere and are persuasive. We believe her statement of awareness 'that obtaining a CMN might jeopardize her U.S. citizenship should not necessarily be held against her.

It would not make a decision in appellant's case, t Department stated, until a consular officer had interviewed h and submitted.his opinion on the case.

Meanwhile, appellant hai moved to Mazatlan. Accordingl the Consulate General at Guadalajara transferred her file to t Consulate in Mazatlan. On August 28, 1984 an officer of latte Consulate interviewed appellant, and thereafter submitted report of their conversation to the Department, expressing t opinion that she intended to relinquish her United Stat nationality. The consular officer was convinced that she kn what she was doing when she made a declaration of allegiance Mexico. She had not tried to arrange a status that would n have entailed performing an expatriating act, he stated, and d not seek consular assistance. These facts "raise further

doubts" regarding her contention that she did not intend to relinquish United States citizenship. "All facts considered," the consular officer concluded, "there appears to be considerable evidence that she has committed acts together with the requisite intent to have expatriated herself."

The Department on November 28, 1984 approved the certificate of loss of nationality that had been executed in appellant's name in March, 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. By telegram dated November 29th the Department informed Mazatlan of its action and gave the following rationale for its decision:

> It is clear from her conversation with the consular officer that she understood the nature and possible consequences of the renunciatory language in her application for a certificate of Mexican nationality. However, she did not inquire of a consular officer at that time concerning the matter. Even when she was contacted by the Consulate at Guadalajara she was not responsive, indicating a lack of interest in her U.S. citizenship.

Counsel for appellant filed notice of appeal on her behalf in November 1985. By the end of July 1986, written pleadings had been completed. Since appellant's counsel had indicated that his client wished to make oral argument, the Board asked counsel in late July 1986 to offer several dates when she could come to Washington for a hearing. After a number of exchanges between the Board and appellant's counsel, the latter informed the Board that his client could not come to Washington for a hearing. He asked leave, which the Board granted, to submit a declaration by appellant and a memorandum with points and authorities in lieu of oral argument. These submissions were made in August. After the Department informed the **Board** in late September that it would not comment on those submissions, the case was ready for the Board's consideration.

II

Section 349(a)(2) of the Immigration and Nationality Act provides that a national of the United States shall lose his nationality by making a formal declaration of allegiance to a foreign state. 5/ The Department of State asserts that

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5/ Text supra, note 1.

appellant made such a declaration to Mexico and thereby brough herself within the purview of the relevant provision of th Act. Under section 349(c) of the Act, the party claiming tha loss of United States nationality occurred bears the burden of proving such claim by a preponderance of the evidence. 6/ To meet its burden of proof, the Department of State submits i evidence a copy of appellant's application for a certificate o Mexican nationality which, as noted above, the Mexica Department of Foreign Relations sent to the Embassy under cove of a diplomatic note in September 1983. In the application, a we have seen, appellant renounced United States citizenship an declared allegiance to the Mexican Republic. Appellant throug counsel contends, however, that she did not perform a vali expatriative act. The application for a certificate of Mexica nationality that appellant signed was not accompanied by th formality which such a solemn act demands; appellant was no sworn; no official was present, merely a young clerk whos authority to receive oaths of allegiance has not bee established; the application for the certificate of Mexica nationality that was submitted was not properly authenticated "This type of activity," appellant asserts, hardly constitute solemn or formal undertaking of the type contemplated b Congress by which an individual might lose his citizenship whe making an oath of allegiance to a foreign country. In this regard, appellant states, the court in Gillars (Gillars v United States, 182 F.2d 962 (D.C.Cir.1950)), stated at page 984 that:

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

> (c) 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.

Pub. L. 99-653, 100 Stat. 3655 (1986) repealed subsectio (b) of section 349, but did not redesignate subsection (c) o amend it to delete reference to subsection (b).

> Congress had in mind any solemn, formal, and binding obligation to serve a foreign state voluntarily entered into by a citizen of tne United States." (Citations omitted.) (Emphasis added.) 7/

Appellant's argument lacks merit. An application for a certificate of Mexican nationality which contains an express declaration of allegiance to that state and has been duly executed by a United States citizen in the presence of a government clerk or official, or even outside the presence of such person, is sufficient evidence that the American citizen performed the expatriative act in question. See Terrazas v. Vance, memorandum opinion, No. 75-2370 (N.D. Ill. 1977). In Terrazas, the plaintiff executed an application for a certificate of Mexican nationality, not before a Mexican government official or clerk, but in the state of Illinois. His application was then taken or sent to Mexico City. The district court held that the declaration of allegiance plaintiff made was a meaningful oath under section 349(a)(2) of the Immigration and Nationality Act. The aosence of invocation of the Deity did not detract from the meaningfulness of the oath, the court said. Under Mexican law, the declaration of allegiance contained in the application serves as tne equivalent of an oath. "It **is** the form of the substantive statement of allegiance to foreign state as opposed to the adjectival description of the statement itself which is determinative," the court declared. "Thus under the statute," tne court continued, "any meaningful oath, affirmation or declaration which 'places the person [making] it in complete subjection to the state to which it is taken,' III Hackworth, Digest of International Law, 219-220 (1942) may result in expatriation. See also, Savorgnan v. United States, 338 U.S. 491 (1950)." 8/

We therefore conclude that the Department has established that appellant brought herself within the reach of section 349(a)(2) of the Immigration and Nationality Act.

7/ **The** citation is actually from an opinion of the Solicitor of the Department **of** State, and is quoted in Hackworth, Digest of International Law, Vol. 111, p.221.

8/ Throughout the subsequent journey of the Terrazas case through the courts neither the Court of Appeals for the 7th Circuit nor the Supreme Court took issue with the original holding of the district court that the declaration made by the plaintiff in his application for a certificate of Mexican nationality was legally sufficient to place him within the reach of the relevant provisions of the statute.

III

Loss of United States nationality will not result frc performance of a statutory expatriating act, however, unless ti citizen did the act voluntarily with the intention c relinquishing United States citizenship. Section 349(a) of th Immigration and Nationality Act. Text supra, note 1.

Our next inquiry therefore is whether appellant acted c her free will when she made a declaration of allegiance t Mexico. Under section 349(c) of the Immigration and Nationalit Act, a person who performs a statutory expatriating act i presumed to do so voluntarily, but the presumption may b rebutted upon a showing, by a preponderance of the evidence, tha the person did not act voluntarily. Text supra, note 6.

It is settled that a defense of duress is available t one who has performed a statutory expatriating act. Vance v Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 25 (1967); Nishikawa v. Dulles, 356 U.S. 129 (1958). For a defens of duress to prevail, however, it must be shown that ther existed "extraordinary circumstances amounting to a true duress which "forced" a United States citizen to follow a course o action against his fixed will, intent, and efforts to ac otherwise. Doreau v. Marshall, 170 F.2d 721, 724 (3rd Cir 1948). By definition, the phrase "extraordinary circumstances connotes absence of choice, or lack of reasonable alternatives In cases involving so-called economic duress, compellin circumstances involving a matter of survival must be shown i order to support a finding of involuntariness. Stipa v. Dulles 233 F.2d 551 (3rd Cir. 1956); Insogna v. Dulles, 116 F.Supp. 47 (D.D.C. 1953).

Appellant contends that factors outside her contro forced her to perform an expatriative act. To protect he employment she found it necessary to obtain a Mexican passport 9/ She therefore obtained a certificate of Mexica nationality. As noted above, in applying for the certificat she made a declaration of allegiance to Mexico as required b law. Appellant alleges that she required a Mexican passport s that she might leave and enter Mexico on business of he American air carrier employer without being questioned b customs and immigration officials who might believe, because o her physical appearance (i.e., not seeming to be Hispanic) tha she was an alien working illegally in Mexico. Getting a Mexican

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9/ Presumably the temporary Mexican passport which she showec to officials of the Consulate at Mazatlan in 1981 (see statement of facts above) had expired and could not be renewed without submission of a certificate of Mexican nationality.

passport was necessary, she explained in her opening brief, "in order to avoid payoffs and bribes which Mexican officials constantly attempt to obtain." In a later submission, appellant contended that she had actually been harrassed by "corrupt" officials seeking bribes to cover up the fact that she did not hold Mexican documentation. She added in an affidavit, executed November 8, 1985, that since her job was her only source of income, protecting it by obtaining a Mexican travel document was vital.

The fundamental weakness in appellant's case is that she has offered no evidence to substantiate allegations that she was forced to make a declaration of allegiance to Mexico. Nor is there anything in the record of which we can take notice to corroborate her claims.

Even assuming that appellant would have lost her job had she not obtained a Mexican passport, could it be said that she acted involuntarily? The answer to that question must be "no," if we conclude that she had freedom of choice to provide for herself in a way that would not jeopardize her United States citizenship. The opportunity to make a personal choice is the essence of voluntariness, Jolley v. Immigration and Naturalization Service, 441 F.2d 1245 (5th Cir. 1971).

Since appellant bears the burden of rebutting the legal presumption that she acted voluntarily, she must show that she tried, but unsuccessfully to find employment that would not require her to p'erform an expatriative act. See Richards v. Secretarv of State, 752 F.2d 1143, 1149 (9th Cir. 1985).

There is no evidence that she ever considered pursuing an alternative to obtaining a Mexican passport which led her to perform a statutory expatriating act. The consular officer who interviewed appellant in August 1984 stated in a report to the Department that he asked appellant whether she had looked into the possibility of obtaining immigrant status, that is, to be allowed to work while retaining her American citizenship. She replied that she had not. Appellant and her counsel express surprise that the consular officer should suggest that she ought to have obtained immigrant status to remain and work in Mexico. She **was,** they assert, already working legally in Mexico as a Mexican citizen by virtue of her birth in Mexico. Why, then, they ask, should she apply for immigrant status?

Surely it should be obvious why the consular officer put that question to appellant. Appellant was, of course, born in Mexico. But to possess and exercise recognized rights as a Mexican citizen, she, a dual national, would have to obtain a certificate of Mexican nationality and in the process renounce her other nationality. If she wished to retain her United States nationality but continue to work in Mexico, she would have to follow a different, more complicated procedure, renounc-

ing her right to Mexican nationality and qualifying t re-enter Mexico as an alien with a visa permitting her to work.

The record shows that appellant understood that she wa required to make a choice between Mexican nationality and Unite States nationality. She acknowledged in the citizenshi questionnaire she completed in November 1983 that she "realized that by obtaining a Mexican passport I could not obtain a U.S passport,..." She did nothing to retain United State nationality; she did not seek advice about possible alternativ she might have to performing an expatriative act. sc constructively, appellant made a personal choice.

It is evident, and we so conclude, that appellant ha failed to rebut the presumption that she made a declaration c allegiance to Mexico of her own free will.

IV

Although we have concluded that appellant made declaration of allegiance to Mexico voluntarily, the question remains whether on all the evidence the Department "ha satisfied its burden of proof that the expatriating act wa performed with the necessary intent to relinquish citizenship." Vance v. Terrazas, supra, at 270. The government (here th Department of State) must prove the party's intent and do so b a preponderance of the evidence. Id. at 267. Intent may b expressed in words or found as fair inference from prove conduct. Id. at 260. The intent that the government must prov is the party's intent when the expatriating act was done, : appellant's case, her intent when she voluntarily performed th proscribed act. Terrazas v. Haig. 653 F.2d 285, 287 (7th Cir 1981).

The record shows that appellant made a declaration c allegiance to Mexico, and we are satisfied, as we have discuss6 above, that that declaration constituted a formal declaration c allegiance to a foreign state within the meaning of the Unite States statute. The Supreme Court has held that performing an of the enumerated statutory expatriating acts may be high: persuasive evidence of an intent to relinquish United State nationality; it is not, however, conclusive evidence of such a intent. Vance v. Terrazas, supra, at 261, citing Nishikawa v. Dulles, 356 U.S. 129, 139 (1958), (Black, J. concurring Appellant also expressly renounced her United States nationali and all allegiance to the United States.

The case law is clear about the legal consequences fo one's United States citizenship if one makes a forma declaration of allegiance to a foreign state and abjur allegiance to the United States. Subscribing to su undertakings will result in loss of United States citizenshi if it be shown that the party performed the expatriative act

knowingly and intelligently, and provided there are no factors that would mandate a different result.

In Terrazas v. Haig, supra, the court found abundant evidence of the petitioner's intent to relinquish United States citizenship in the fact that he willingly, knowingly and voluntarily made a declaration of allegiance to Mexico that included renunciation of his United States Citizenship, and in his subsequent conduct. 653 F.2d at 288. In Richards v. Secretary of State, supra, 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," provided that there are no factors that would justify a different result. 752 F.2d at 1421. Similarly, Meretsky v. U.S. Department of Justice, et. al., C.A. No 85-01895, memorandum opinion (D.C. Cir. 1986).

In the case before the Board, the evidence strongly suggests that Ms. [redacted] intended to relinquish her United States citizenship. She submits, however, that she lacked the requisite intent because she did not want to forfeit her United States citizenship. "Her only intention and motivation at said time," she states, "were to obtain a Mexican passport to avoid hassles with Mexican officials at the airport where she was working...." Petitioner in Richards v. Secretary of State, supra, (who made a renunciatory oath of allegiance upon obtaining naturalization in Canada,) presented a similar argument; he had no wish to obtain naturalization in Canada independent of his desire to promote his career. To that argument the Ninth Circuit responded as follows:

> In Terrazas, [Terrazas v. Vance, 444 U.S. 252 (1987)] the Court established that expatriation turns on the 'will' of the citizen. We see nothing in that decision, or in any other cited by Richards, that indicates that renunciation is effective only in the case of citizens whose 'will' to renounce is based on a principled, abstract desire to sever ties to the United States. Instead, the cases make it abundantly clear that ...a person's free choice to renounce United States citizenship is effective whatever the motivation. Whether it is done in order to make more money, to advance a career or other relationship, to gain someone's hand in marriage, or to participate in the political process in the country to which he has moved, a United States citizen's free choice to renounce his citizenship results in the loss of that citizenship.

> We cannot accept a test under which the right to expatriation can be exercised effectively only if exercised eagerly. We know of no other context in which the law refuses to give effect to a decision made freely and knowingly simply because it was also made reluctantly. Whenever a citizen has freely and knowingly chosen to renounce his United States citizenship, his desire to retain his citizenship has been outweighed by his reasons for performing an act inconsistent with that citizenship. If a citizen makes that choice and carries it out, the choice must be given effect.

752 F.2d at 1421, 1422.

As the cases make clear, we must also consider whether Ms. [redacted] acted knowingly and intelligently in making a formal declaration of allegiance to Mexico. See Terrazas v. Haig supra; United States v. Matheson, 532 F.2d 809 (2nd Cir. 1976) cert. denied 429 U.S. 823 (1976). The evidence makes clear that she proceeded in the face of an evident understanding of the consequences of her actions. She was 27 years of age when she applied for a certificate of Mexican nationality. She was fluent in Spanish. She recognized that the declaration in the application for a certificate of Mexican nationality was renunciatory in nature; indeed she states she balked initially at signing the application, She told the consular officer who interviewed her in August 1984 that she did not want to sign the declaration, and that she had asked the Mexican officials if there were any other way to obtain a Mexican passport. After being told that only by applying for and obtaining a certificate of Mexican nationality could she obtain a passport, she proceeded to perform the expatriative act. Clearer evidence of a witting act would be difficult to find.

Scrutiny of the record discloses no factors that would lead us to doubt that Ms. [redacted] intended to relinquish her United States citizenship when she performed the expatriative act. There is no evidence that after she performed the expatriative act she held herself out as a United States citizen or did anything to manifest a will to remain a United States citizen.

Finally, appellant argues that her act should not be considered expatriative because in signing the application for certificate of Mexican nationality to obtain a Mexican passport "she was entitled [as a dual national of the United States and Mexico] to exercise such a routine privilege which was available to her." In support of her argument, she cites Jalbuena v. Dulles, 254 F.2d 379 (3rd Cir. 1958); In Re Bautista's Petition 183 F.2d F.Supp. 271 (D.C. Guam 1960); and United States v.

Matheson, supra.

We do not accept appellant's argument. In the first instance, Mexican law does not permit one to retain dual nationality after majority. The government of Mexico tolerates dual nationality until the individual reaches the age of eighteen, freely issuing a Mexican passport to enter and re-enter Mexico as a Mexican citizen. Upon attaining the age of eighteen, a dual national must elect either Mexican or his other nationality. If such person wishes to exercise the rights of Mexican nationality, for example, the possession of a Mexican passport, he or she must possess a certificate of Mexican nationality. To obtain a certificate of Mexican nationality the applicant must expressly renounce previous nationality and make a declaration of allegiance to Mexico.

The cases cited by appellant, in our opinion, also fail to support appellant's argument. The citizens in the three cited cases were dual nationals of the United States and another state; they made oaths of allegiance in order to obtain a right or privilege from the foreign state. Those oaths did not, however, contain renunciatory language. 10/ See in particular the opinion of the court in Jalbuena v. Dulles, supra, "It follows that, because nothing done by Jalbuena can fairly be viewed as a renunciation of the United States citizenship he enjoyed simultaneously with Philippine citizenship, section 401 [of the Nationality Act of 1940] cannot properly be read as applying to him." 254 F.2d at 382. See also United States v. Matheson, 400 F.Supp. 1241 (S.D.N.Y. 1975). There the court said the citizen's intent was not explicit on the face of her application for a certificate of Mexican nationality. (No renunciation of previous allegiance was required by Mexico at the date the citizen executed it). "This is true," the court said, "because an oath expressly renouncing United States citizenship [as required by a later Mexican regulation] ...would leave no room for ambiguity as to the intent of the applicant." 400 F.Supp. at 1245. When the second circuit affirmed the holding of the district court, it did not take issue with the dictum of the district court. United States v. Matheson, supra. That dictum was also cited by the district court in

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10/ In Re Bautista's Petition, we note that the petitioner made a separate renunciation of her United States nationality before a notary public of the Philippines in 1951. The district court of Guam declared that renunciation a nullity. The court did not consider her act as a renunciation because it was not taken before a diplomatic or consular officer of the United States in a foreign state pursuant to section 401(f) of the Nationality Act of 1940.

Terrazas v. Vance, No. 75-C 2370, memorandum opinion, (N.D. Ill 1977) and by the Court of Appeals for the Seventh Circuit i Terrazas v. Haig, 653 F.2d 285 (7th Cir. 1981).

Having carefully reviewed all the evidence in this case we conclude that tne Department has carried its burden o proving by a preponderance of the evidence that appellan intended to relinquish her United States nationality when sh made a formal declaration of allegiance to Mexico.

V

Upon consideration of the foregoing, we hereby affirm th determination of the Department of State that appellan expatriated herself.

Alan G. James, Chairman

Edward G. Misey, Member

Warren E. Hewitt, Member