

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: S [REDACTED] A [REDACTED] R [REDACTED]

S [REDACTED] A [REDACTED] R [REDACTED] has taken an appeal from the Department of State's administrative determination that he expatriated himself on October 20, 1983 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

The Department determined on June 5, 1987 that appellant expatriated himself. After appellant entered the appeal and filed a brief in support, the Department re-examined the record and concluded that there was insufficient evidence to enable it to carry its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality when he performed the statutory expatriating act. Accordingly, the Department requested that the Board remand the case so that it might vacate the certificate of loss of nationality that it previously approved in appellant's name. The Board grants the Department's request.

1/ When appellant made a formal declaration of allegiance to Mexico, section 349(a)(2) of the Immigration and Nationality 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 --

...

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

Pub. L. 99-653 (approved Nov. 14, 1986), 100 Stat. 3655, amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by". Pub. L. 99-653 also amended paragraph (2) of subsection (a) of section 349 by inserting "after having obtained the age of eighteen years" after "thereof".

As required by law, an officer of the United States Embassy at Mexico City executed a certificate of loss of nationality in appellant's name on June 9, 1986. 2/ There the officer certified that appellant acquired United States nationality by virtue of birth on [REDACTED] a United States mother; that he acquired the nationality of Mexico by virtue of his birth therein; that he made a formal declaration of allegiance to Mexico on October 20, 1983 and obtained a certificate of Mexican nationality the same day; and thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

In a memorandum transmitting the certificate of loss of nationality to the Department, the Embassy recommended that the Department not approve the certificate on the grounds that appellant was "clearly unaware" of his United States citizenship when he performed the proscribed act. The circumstances surrounding his performance of the act were, the Embassy stated, "ones under which it is impossible to ascribe intent" and to relinquish his United States nationality.

The Department did not agree with the Embassy's opinion maintaining that appellant had offered insufficient evidence to sustain his claim that he was unaware he held United States citizenship when he made a formal declaration of allegiance to Mexico. Accordingly, the Department approved the certificate of

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

Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a **person** while in a foreign state has lost his United States nationality under **any** provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, **as** amended, he **shall** certify the facts upon which such belief is based to the Department of State, in writing, **under** regulations prescribed by the Secretary of State. **If** the report of the diplomatic or consular officer is approved **by** the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report **was** made shall be directed to forward a copy of the certificate to the person to **whom** it relates.

loss of nationality. Such approval 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. Counsel for appellant entered a timely appeal on his client's behalf.

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The Deputy Assistant Secretary of State for Consular Affairs submitted to the Board on April 22, 1988 the record upon which the Department made its determination that appellant expatriated himself and a memorandum in which the request was made that the Board remand the case so that the Department might vacate the certificate of loss of nationality that it had approved in appellant's name. Upon review of the case, the Department indicated, it accepted as credible appellant's testimony that he had no inkling before he performed the expatriative act that he was a United States citizen, and that he had been told by a visa officer of the United States Embassy that he had no claim to United States citizenship. "There is nothing in Mr. Ramirez' file" the Department's memorandum concluded, "to repudiate the validity of his claim that he never had an intent to relinquish his U.S. citizenship since he never knew that he was a citizen. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated."

Inasmuch as the Department asserts that it is unable to prove that appellant had the requisite intent to relinquish his United States nationality when he performed a statutory expatriating act, and in the absence of manifest errors of fact or law that would mandate a different result, the Board grants the Department's request that we remand appellant's case in order that it may vacate the certificate of loss of his nationality.

The case is hereby remanded for further proceedings. 3/

Alan G. James, Chairman

Edward G. Missey, Member

Member

3/ Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a), provides in part that:

...The board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.