May 31, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] R[redacted] V[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, C[redacted] R[redacted] Vi[redacted], expatriated himself on August 17, 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/

Since it is our conclusion that appellant pledged allegiance to Mexico voluntarily and with the intention of relinquishing his United States nationality, we affirm the Department's decision that he expatriated himself.

I

Appellant was born at C[redacted], C[redacted] on [redacted] of a Mexican citizen father, and thus acquired the nationality of both the United States and Mexico at birth. Shortly after his birth, appellant's parents took him to Mexico where he grew up and was educated. The Consulate General at Guadalajara ("the Consulate") issued appellant an identity card in 1976 and a passport in 1980.

1/ In 1984 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 --
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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,...

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;". It also amended paragraph (2) of section 349(a) by inserting "after having attained the age of eighteen years" after "thereof".

In April **1980** appellant, who was then in his last year medical school at the University of Guadalajara, and his mot visited.the Consulate to seek advice about problems related his medical education arising from the fact that he was a c national. Evidently he was concerned that in order to rece his degree he might be required to present a certificate Mexican nationality ("CMN"). (Under Mexican law, one applies for a CMN must expressly renounce any other national that he nay possess.) According to an entry on the c maintained by the Consulate concerning its dealing w appellant on citizenship matters, a consular assistant t appellant that he would not necessarily have to renounce United States nationality in order to receive his degree, explained the procedure he might follow to be able to compl his medical education in Mexico. (In brief, as the Bo understands it, the procedure entails electing to retain Uni States citizenship and renouncing Mexican citizenship, a obtaining permission to live and work in Mexico.) The consu assistant assured appellant that if he pursued the course s suggested, he could demand that his diploma be delivered to hi "as it is unconstitutional under Mexican law' to deny a degr to one otherwise qualified to receive it. The consul assistant further advised appellant that if he elected to rete his United States citizenship, he might have to pay t difference between the low tuition charged Mexican students (was enrolled as one) and the high one charged foreign student Appellant indicated he was aware of the fact. He said he wou discuss the matter with his father, and "promised to visit again if any future problems arise."

It appears that appellant completed his medical studi in **1981.** In January **1983,** while still in internship, he pass the examination established by the Educational Commission f Foreign Medical Students (Philadelphia) and made plans to go the United States where he hoped to specialize in obstetrics a gynecology (OB/GYN). When he submitted evidence to the Medic School that he had fulfilled the professional requirements receive his degree, the authorities informed him that he wou first have to present a CMN. Allegedly unwilling to renounc his United States citizenship, as required by law to obtain CMN, appellant decided instead to apply in the United States fc a residency in OB/GYN, even though he did not have his diplon in hand.

He states that in July **1983** he began his search in Ohio but was turned down by hospitals in seven cities. He wa offered an externship in Canton, but declined to accept it, a the experience "would not," in his view, "**be** recognized by an institution." Thereupon, he returned to Mexico. In August **1983** appellant called the Consulate and spoke to tne consular assistant. According to notes she made, appellant stated tha he did not want to renounce his United States citizenship. "H asked," she wrote

> ...if the renounciation [sic] to US nationality in front of Mex. authorities had any bearing on his US Nat. Was told YES, as in accordance to US law you will be committing highly expatriating act. He said he wanted to get his titulo [degree] but wanted to be able to retain both nationalities. He was told to prepare an affidavit for his reasons to apply for the CMN and attach whatever document he has to show he will be doing it under duress and this will be kept in his file to contest his loss. Was also explained that the fact that he could contest his loss of nationality did not mean he was not going to [word illegible - lose?] it. He had no ties in the US and was up to the Dept. as they take the final determination. But that he better think it carefully [sic] and know that he cannot have dual nationality indefinitely but he just has to decide about his future. He said he would attempt to enter US hospitals.

Between September and December 1983, appellant states, he wrote to "50 or more cities and Hospitals," seeking a residency in OB/GYN. He received no offers. In January 1984 appellant again went to the Consulate. The consular assistant made the following record of appellant's visit.

> Came in and presented a letter from Autonoma [Autonomous University of Guadalajara] req. that he presents his CMN so they can proceed to request his final documents. He explained that he had not been admitted to the US hospitals and he wants to do specialty in Mexico. But that it is at the IMSS [a medical center in Mexico City] and they request his final degree. He insisted that he does not want to lose his US Nationality. When asked why they had not followed my advice given to him and his mother in 1980. He said that he did not pay attention to that point at that time. That his parents had discussed the case and left everything pending to see what would happen when he finished his studies. Also said he did not want to pay the difference of tuition to be able to receive his titulo as it was too much money and besides he needs the [degree and professional certificate] to continue his studies

> in Mexico. He said he would bring and [sic] affidavit to the ConGen with attached documents proving he avoided as much as he could the taking of the oath to Mexico and application for the CMN. He was told he was most welcome to do this and was informed once again the Dept. said the final word. He insisted he will try everything as he does not want to lose his right to U.S. nationality.

A few days later, appellant showed an affidavit to t consular assistant who said it seemed clear. Appellant return on January 17, 1984, and before a consular officer swore to t affidavit in which he summarized the pertinent facts in his ca and declared:' "[T]o give up my American citizenship is again my ideal, but in order to get my M.D. degree I am being oblig *to* do it."

Appellant states that he visited Mexico City in ear 1984 and discussed his case with an officer of the Embassy whom he allegedly said he did. not "want to give up his Unit States citizenship but felt compelled to do *so.*

On August 16, 1984 appellant completed an application f a CMN at the Secretariat of Foreign Relations in Mexico Cit In tne application he declared that he expressly renounc United States citizenship and ail allegiance to the Unit States. He swore adherence, obedience and submission to t laws and authorities of Mexico. A CMN issued the followi day. Thereafter, appellant states, he informed the Embassy his action. It was not until a year later, however, (July 198 that the Embassy processed his case. There he completed t forms titled "Information for Determining United State Citizenship" and, for information purposes, an application for passport. The Embassy then requested that the Secretariat Foreign Relations confirm that it had issued a CMN appellant. This the Secretariat did in November 1985. On January 17, 1986, as required by law, a consular office executed a certificate of loss of nationality in appellant' name. 2/ The consular officer certified that appellant acquired the nationality of both the United States and Mexico at

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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

birth; that he made a formal deciaration of allegiance to Mexico on August 16, 1984; and received a certificate of Mexican nationality on August 17, 1984, thereby expatriating himself under the provisions Of section 349(a)(2) of the Immigration and Nationality Act. The Embassy forwarded the certificate to the Department in February 1986 under cover of a memorandum in which two consular officers argued strongly that appellant had performed the expatriating act involuntarily and lacked the requisite intent to relinquish his United States citizenship. The Department approved the certificate on March 28, 1986, approval consituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. On March 31, 1986 the Department responded to the memorandum of the Embassy, spelling out the grounds upon which the Department decided that appeilant had expatriated himself.

Appellant entered an appeal pro se in February 1987.

II

Tne statute provides 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 his United States nationality. 3/

There is no dispute that in applying for a certificate of Mexican nationality appellant made a valid declaration of allegiance to Mexico and thus brought himself within the purview of the statute. We therefore turn first to the issue whether he acted voluntarily.

2/ Cont'd.

> 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.

3/ Text note 1 supra.

In law it is presumed that one who performs a statuto expatriating act does so voluntarily, but the presumption may rebutted upon a showing by a preponderance of the evidence that the act was involuntary. 4/ To prevail on this issu therefore, appellant must adduce credible evidence that he w forced to act against his fixed will and purpose.

Appellant asserts that he was forced to apply for a C and thus make a formal declaration of allegiance to Mexico. makes the following argument in support of his position. tried since 1980 to avoid performing the expatriating ac After being told by medical school authorities that he wou have to present a CMN (which, as previously noted, would enta his performing an expatriative act), he tried to obtain appointment in the United States in OB/GYN, the area of h preference, even though he did not have a diploma in hand. made a conscientious effort between July and December 1983 t find a place in a United States institution but witho success. Since the option of training and working in the Unit States was denied to him, he accepted the residency in OB/GYN a a hospital in Mexico City that was offered to him in Decemb 1983. "I went personally to Mexico [City] but there they ask me for my Medical Degree, which I was unable to ootain witho giving up my US citizenship according to the UNAM (University

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4/ 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.

The Immigration and Nationality Act Amendments of 1986 Pub. L. 99-653 (Nov. 14, 1986), 100 Stat. 3655, repealed sectio 349(b) but did not redesignate section 349(c) or amend it t reflect repeal of section 349(b).

National Autonoma Of Mexico)." He continued: "I needed my Diploma *so* badly to keep working nere [in Mexico] that I decided to do it [apply for .a CMN and renounce United States citizenship]."

Duress connotes absence of opportunity to make a decision based on personal choice. Conversely, opportunity to make a decision based on personal choice is the essence of voluntariness. Jolley v. Immigration and Naturalization Service, 441 F.2d 1245, 1250 (5th Cir. 1971), cert. den'd 404 U.S. 946 (1971).

In the case before us, appellant undeniably faced a painful dilemma, but one that is not novel. In the Board's experience many young people, particularly young professionals, who acquired the nationality of both the United States and Mexico at birth have found themselves in a similar situation. Many hope to be awarded a university degree without surrendering their United States nationality, as Mexican law mandates that they do if they wish to avail themselves of what is considered one of the rights and privileges of Mexican citizensnip. Where, as here, such a dual national finally applies for and obtains a CMN (that is, performs an expatriating act), it is pertinent to inquire whether in the circumstances, he had a feasible alternative that would advance his career ambitions while protecting his United States citizenship.

To substantiate his contention that he was forced to jeopardize his United States citizenship, appellant must establish that he was unable to make a decision based on personal choice, that is, that he had no reasonable alternative *to* performing the expatriating act.

As we have seen, a consular employee explained to appellant in 1980 the process whereby he might avoid performing an expatriating act and still receive his degree. In 1983 appellant conceded to the same employee that he had not given much thought to her advice; ne and his parents simply decided to defer addressing the question of his citizensnip status until he had finished his medical studies. A year later, in an affidavit he executed on January 17, 1984, appellant declared that it had not been feasible in 1980 for him to go through the process of renouncing Mexican citizenship and obtaining documentation to enable him to live and work in Mexico. In 1980 he had only a year to go before beginning his internsnip. "By law, to be able to work in Mexico, it takes five years before you can obtain your final papers .... and finally begin to work. I was confident that somehow this obstacle could be avoided and decided to *go* ahead hoping that no more problems would occur.'

In none of appellant's submissions to the Board, however, did he discuss whether he even considered electing United States citizenship and renouncing his Mexican nationality. He has shed

no light on his evident failure even to explore a way that wo enable him to protect his United States citizenship and st advance his medical career. Not having established that course of action suggested to him by tne consular emplo offered no solution to his problem, appellant cannot be heard say that he was denied the opportunity to make a decision ba on personal choice.

If we were to grant, arquendo, however, that the solut offered by the consular employee was in fact wno impracticable, might it still be argued that appellant had realistic alternative to doing the expatriating act? We do think so.

We do not doubt that appellant made a bona fide unsuccessful effort to obtain a residency in OB/GYN in United States. We are not satisfied, however, that it may assumed from that fact that he had no options in the Uni States, for he has not established that he was unable to obt an appointment in a field other than the one he had selected his specialty, Might he not, with his apparently g qualifications, have obtained a residency in, say, gene medicine? We do not know whether such an alternative possible since appellant has not addressed the subject. On contrary, he has stated quite candidly that ne wanted residency in OB/GYN and in that specialty alone. As he wr the Board in May 1987, "I let them know that I wanted to be OBGYN and that's wath [sic] I am. I am not the type of per that takes anything they offer you, and I try hard to follow ideals." We do not challenge appellant's right to aspire excel in a particular field of medicine and only in that or But, as a matter of law, he cannot sustain a plea of duress asserting that because his best efforts to find a residency OB/GYN in the United States foundered, no residency was open him in another area that had reasonable relevance to education and training. For us to countenance such an argume would lead to the anomaly of allowing appellant to establish own personal standard for determining legal duress.

From the foregoing discussion, it is apparent th appellant has not shown, as it is his burden to do, th circumstances extrinsic to his control forced him to perform expatriating act. Accordingly, it is our conclusion that he h not rebutted the statutory presumption that he voluntarily ma a declaration of allegiance to Mexico.

III

There remains for determination the principal issue - whetner appellant intended to relinquish his United Stat nationality when he formally declared his allegiance to Mexico.

In loss of nationality proceedings, the government (here the Department of State) bears the burden of proving by a preponderance of the evidence that the citizen intended to relinquish his citizenship. Vance v. Terrazas, 444 U.S. 252, 270 (1980). An individual's intent may be expressed in words or found as a fair inference from proven conduct. 444 U.S. at 260. Intent is determined as of the time of the performance of the statutory act of expatriation. 'Terrazas v. Haig, 653 F.2d 285 (7th Cir. 1981). In the case before the Board, the intent that the government must prove is appellant's intent at the time he signed the application for a certificate of Mexican nationality in which he swore allegiance to Mexico and renounced United States citizenship.

Making a declaration of allegiance to a foreign state may be highly persuasive evidence of an intent to relinquish United States citizenship; it is not, however, the equivalent or conclusive evidence "of the voluntary assent of the citizen." The Supreme Court expressed the principle as follows in Vance v. Terrazas, supra,

> ..., we are confident that it would be inconsistent with Afroyim to treat the expatriating acts specified in section 1481(a) as the equivalent of or as conclusive evidence of the indispensable voluntary assent of the citizen. 'Of course', any of the specified acts 'may be highly persuasive evidence in the particular case of a purpose to abandon citizenship.' Nishikawa v. Dulles, **356 U.S. 129, 139** (1959) (Black, **J.**, concurring). But the trier of fact must in the end conclude that the citizen not only voluntarily committed the expatriating act prescribed in the statute, but also intended to relinquish his citizenship.

444 U.S. at 261.

In cases, where, as in the instant one, a citizen expressly renounces United States nationality in the course of making a declaration of allegiance to a foreign state, the courts have held that such words constitute compelling evidence of an intent to relinquish United States citizenship. Indeed, such statements have been the main (but not sole) factor supporting a finding of loss of nationality in a number of cases after Vance v. Terrazas, supra. The same cases make it clear that in order to conclude that a person intended to relinquish United States citizenship, the trier of fact must also conclude that the individual acted knowingly, intelligently and voluntarily, and that there are no other factors that would justify a different result.

In Terrazas v. Haig, supra, plaintiff made a declaratic of allegiance to Mexico and expressly renounced his Unite States nationality, The court recognized that plaintiff' renunciatory declaration, standing alone, would not support finding of intent to relinquish United States nationality whe it stated:

> ..., we again have thoroughly reviewed the record and the district court's recent opinion and conclude that the government established by a preponderance of tne evidence that, at the time plaintiff acquired the Certificate of Mexican Nationality, ne specifically intended to relinquish his United States citizensip. Of course, a party's specific intent to relinquish his citizenship rarely will be established by direct evidence. But, circumstantial evidence surrounding the commission of a voluntary act of expatriation may establish the requisite intent to 'relinquish citizenship. 4/
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> 4/ Footnote omitted.

653 F.2d at 288.

The court found "abundant evidence" that plaintif intended to relinquish his United States citizenship when h declared allegiance to Elexico "willingly, knowingly, an voluntarily." Id. First, the court noted, plaintiff was 2 years old and fluent in Spanish when he executed the applicatic for a certificate of Mexican nationality which contained an oat of allegiance to Mexico and the renunciation of United State citizenship. Second, the timing of plaintiff's actions cas "some doubt" upon his intent. He executed an application for certificate of Mexican nationality just one week after passing Selective Service physical examination, and later approache United States authorities about his citizenship status after h had been classified 1-A. Moreover, when informed that he migh have expatriated himself, plaintiff immediately informed hi draft board that he was no longer a citizen. Finally, h executed an affidavit stating that he had taken the oath o allegiance to Mexico voluntarily with the intention o relinquishing United States nationality.

Richards v. Secretary of State, 752 F.2d 1413 (9th Cir 1985), involved the naturalization in Canada of a United State citizen who swore an oath of allegiance and made a concomitan declaration renouncing all other allegiance. The Court o Appeals for the Ninth Circuit agreed with the district cour that "the voluntary taking of a formal oath that includes a explicit renunciation of United States citizenship is ordinarily

sufficient to establish a specific intent to renounce United States citizenship." 753 F.2d at 1421. Nonetheless, the court recognized that the totality of the evidence should be weighed in reaching its conclusion when it stated: "We also believe that there are no factors here that would justify a different result." Id.

The court of appeals agreed with the district court that the plaintiff wished to become a Canadian citizen and would have liked also to remain a United States citizen, but because Canada required relinquishment of his other citizenship, he chose to renounce United States citizenship in order to obtain Canadian citizenship. Indeed, the court found that the plaintiff characterized his true intentions in a questionnaire he completed several years after his naturalization when ne stated that: "I did not want to relinquish my U.S. citizenship but as part of the Canadian citizenship requirement I did so." Id. at 1422. Although tne court did not specifically evaluate other factors in the case, it noted in its recitation of the facts that after obtaining Canadian citizenship, plaintiff obtained a Canadian passport and used it to enter the United States; enrolled in an American university" as a foreign student; and obtained a second Canadian passport when he returned to Canada and travelled abroad on it.

In the same vein as Richards is Meretsky v. Department of Justice et al., memorandum opinion, No. 86-5184 (D.C. Cir. 1987). There the petitioner obtained naturalization in Canada and swore an oath of allegiance that included a declaration renouncing all other allegiance. In affirming the decision of the district court, the court of appeals declared that the oath the petitioner took renounced United States citizenship "in no uncertain terms." But it should be noted that the Court also took into account other evidence whicn it considered contradicted. the petitioner's allegations that he always considered himself to be a United States citizen. 5/

Under the criteria set down by the controlling cases, the direct evidence of this appellant's intent to relinquish his United States citizenship is very compelling. But we must

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5/ Cf. Matheson v. United States, 532 F.2d 809 (2nd Cir. 1976), cert. denied 429 U.S. 823 (1976). Tne citizen in Matheson made an oath of allegiance to Mexico while applying for naturalization; the oath at that time, however, did not require that the applicant renounce other citizenships. The court held that she did not manifest an intent to relinquish United States citizenship because the act was devoid of renunciatory character. Furthermore, the court found that there was a "wealth...of evidence" indicating that after she performed the

inquire further to determine whether he knowingly intelligently declared his allegiance to Mexico, He was t nearly 23 years old, well-educated and obviously fluent Spanish, the language in which the application form printed. Earlier he pointedly asked a consular employee whet making a renunciation of United States nationality bef Mexican authorities would affect his United States citizensh and was told with unmistakable clarity that it certainly wou Furthermore, he repeatedly acknowledged he knew that in order receive a CMN he would have to renounce his United Sta citizenship. Clearer evidence that appeliant acted with eyes wide open could hardly be imagined.

The final question is whether there are any factors sufficient probative weight to negate the very strong evide of intent to relinquish his United States nationality ti appellant manifested on August 16, 1984.

On a number of occasions beginning in April 1980 appellant expressed concern that he might be required by t university authorities to present a CMN, the obtaining of whi would entail his making a renunciation of his United Stat nationality. He stressed to a consular employee that if he we ultimately to make a declaration of allegiance to Mexico th contained a renunciation of his United States nationality, proposed to perform that act but would do so without t requisite intent to surrender his United States citizenship. have also seen that a few months before he signed t application for a CMN appellant executed an affidavit declari that "I do not under any circumstances wish to lose birthright."

The crucial question is whether appellant's pri professions of an intention to retain his United State nationality are sufficient to negate the highly persuasi evidence of an intent to abandon citizenship that he manifeste when, however reluctantly, he signed the application for a CMN.

As in numerous other cases which this Board ha considered where loss of United States nationality resulted frc making a formal declaration of allegiance to Mexico, appellan in the instant case made a declaration that included word expressly renunciatory of United States nationality. Not only did he sign the declaration but he himself wrote in two places

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5/ Cont'd,

expatriative act she continued to believe herself to be, an represented herself as, a United States citizen. Id. at 812.

the name of the country whose nationality and allegiance to which he was renouncing. Barring the most unusual Circumstances (and we find none here), such declaration must settle the issue of the individual's intent; his words and conduct, before or after the performance of the expatriative act which might manifest a wish to retain United States nationality, simply are not entitled to comparable probative value. What is determinative is the person's intent at the time of performance of the expatriative act. Admittedly the appellant gave up his United States citizenship reluctantly but signature of **the** renunciatory declaration shows that he intended to do *so.* How can one declare, "I renounce United States citizenship" if one does not intend to do **so?** If an intelligent person who understands the plain meaning of commonly used words does not intend to renounce, he does not knowingly declare the'contrary' unless, of course, we are to assume that the appellant intended to commit perjury in making his critical declaration. The Board cannot make such an assumption.

The record is abundantly clear as to why the appellant finally reached his decision to renounce United States citizenship. After a period of total frustration in securing a residency in OB/GYN in the United States, he decided that he had to pursue his medical career in Mexico. He therefore required a certificate of Mexican nationality, and in order to obtain a CMN he, under Mexican law, had to renounce his United States citizenship. His career circumstances determined his course of action. In spite of his earlier reluctance, he had to change his mind and renounce United States citizenship. He must have intended to do *so,* otherwise his career goals in Mexico could not have been achieved. His renunciation was effective under Mexican law because he received nis CMN. He therefore achieved the result which he intended, viz., a renunciation of United States citizenship and a CMN.

In Richards V. Secretary of State, supra, the court declared "that {s}ome expatriating acts nay be *so* inherently inconsistent with United States citizenship that persons performing them may be deemed to intend to relinquish their United States citizenship even in the absence of statements that they **so** intended the acts, or, indeed, even despite contemporaneous denials that they **so** intended the acts." 752 F.2d at 1420, N.5.

In Kahane V. Shultz, 653 F.Supp. **1486** (E.D.N.Y. 1987) the court took issue with the foregoing view of the 9th Circuit on the grounds that it seemed inconsistent with the holding in Afroyim **v.** Rusk, **387** U.S. 253 **(1967).** But the court considered Richards and Kahane distinguishable on their facts. In Kahane, plaintiff had not, in the court's judgment, performed any act that was "inherently inconsistent" with United States citizenship when he entered the Israeli Parliament. In Richards the plaintiff expressly renounced his United States nationality, as did appellant here.

In the particular circumstances of the case before us are unable to give greater weight to appellant's pr statements of lack of intent to relinquish United Sta citizenship than to his declaration surrendering t citizenship. The reasoning of the court in ~~Richards~~ Secretary of State, supra, thus seems applicable here.

> 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 out-weighed 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.

The preponderance of the evidence establishes tha appellant intended to relinquish his United States citizenshi It therefore follows that the Department has sustained it burden of proof.

IV

Upon consideration of the foregoing, we hereby affirm tn Department's determination that appellant expatriated himsel when he made a formal declaration of allegiance to Mexico.

Alan G. James, Chairman

Warren E. Hewitt, Member

Gerald A. Rosen, Member

Gerald A. Rosen, Member