

November 30, 1989

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

The Department of State made a determination on May 11, 1988 that A [REDACTED] R [REDACTED]-A [REDACTED] expatriated himself on May 10, 1985 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/ [REDACTED]-[REDACTED] appeals.

After the appeal was entered, the Department re-examined the record and concluded that there was insufficient evidence to enable the Department to meet its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States nationality when he made a renunciatory oath of allegiance to Mexico. The Department accordingly requested that the Board remand the case so that it might vacate the certificate of loss of appellant's nationality. We grant the Department's request.

I

An officer of the United States Embassy at Mexico City executed a certificate of loss of nationality in appellant's name on January 22, 1986, as required by law. Therein the officer certified that appellant acquired the nationality of the United States by virtue of his birth at [REDACTED] that he also acquired the nationality of [REDACTED]

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provides that:

Sec. 349 (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality --

...

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; after having attained the age of eighteen years;

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Mexico (through adoption by citizens of Mexico); that he made a formal declaration of allegiance to Mexico on April 30, 1985 and obtained a certificate of Mexican nationality on May 10, 1985, thereby expatriating himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. 2/

The Department approved the certificate on May 11, 1988, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board. The appeal was filed on May 9, 1989.

II

The Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on October 18, 1989 submitted the record upon which the Department's holding of loss of appellant's citizenship was based and a memorandum in which the Department requested that the Board remand the case so that the certificate of loss of nationality might be vacated.

The Department gave the following rationale for requesting remand:

It is the Department's burden to prove by a preponderance of the evidence

2/ The Department set forth the following facts about appellant's case in its memorandum to the Board of October 18, 1989:

Two months before appellant's eighteenth [sic] birthday he came to the U.S. Embassy in Mexico City, Mexico. He completed an affidavit in which he stated that he did not want to relinquish his U.S. citizenship. He applied for a social security card, registered for the selective service, and executed an application for a U.S. passport. On April 30, 1985 he made a formal declaration of allegiance to Mexico and was issued a Certificate of Mexican Nationality on May 10, 1985.

On May 12, 1985 appellant came to the Embassy in Mexico and completed the Questionnaire for Determining U.S. Citizenship.

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that Mr. ██████████ intended to divest himself of his U.S. citizenship when he made an oath of allegiance to Mexico. The intent to be shown is the intent at the time of the expatriating act. 3/

...

The evidence that has been submitted in support of the Department's case is the Questionnaire for Determining U.S. Citizenship. [see note 2, supra] The consular officer who conducted the interview, more than likely in response to appellant's answers, amended the questionnaire. The questionnaire, when completed by the appellant, was sworn to. Unfortunately, the officer did not have Mr. Rico-██████████ initial the changes or indicate that he was aware that the questionnaire had been altered after he had signed it. It is not known for sure who else wrote on the questionnaire, but it is obvious by the ink color and handwriting that the appellant did not complete the form by himself.

There is no evidence except the questionnaire that pertains to Mr. ██████████ intent at the time of the expatriating act, and nothing to repudiate the validity of appellant's claim that he never intended to relinquish his U.S. citizenship. Since just prior to his expatriating act the appellant exhibited actions of a

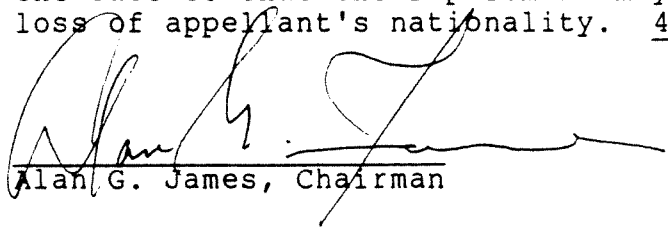
3/ In loss of nationality proceedings, the government bears the burden of proving by a preponderance of the evidence that the citizen intended to relinquish United States nationality when he or she performed an expatriative act. Vance v. Terrazas, 444 U.S. 252 (1980); Afroyim v. Rusk, 387 U.S. 253 (1967). The intent the government must prove is the party's intent at the time he performed the expatriative act. Terrazas v. Haig, 653 F.2d 285, 287 (1981).

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responsible U.S. citizen, the Department cannot sustain its burden of proof that he demonstrated an intent to relinquish his U.S. nationality. Because of the changes on the questionnaire, the Department feels that it cannot use the questionnaire as evidence of the appellant's intent. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated.

III


Inasmuch as the Department has concluded that it is unable to carry the burden of proving that appellant intended to relinquish his United States nationality, and since we perceive no grounds that would require us to deny the Department's request, we hereby remand the case so that the Department may vacate the certificate of loss of appellant's nationality. 4/



Alan G. James, Chairman



Gerald A. Rosen, Member



George Taft, Member

4/ 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.