January 11, 1990

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: L[redacted] L[redacted] G[redacted]

This is an appeal from an administrative determination of the Department of State, dated November 13, 1987, that [redacted] expatriated herself on April 28, 1987 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 sole issue to be decided is whether appellant intended to relinquish her United States nationality when she made a pledge of allegiance to Mexico. For the reasons given below, we conclude that the Department has carried its burden of proving by a preponderance of the evidence that appellant intended to surrender her United States nationality. Accordingly, we affirm the Department's holding of loss of appellant's nationality.

I

Appellant, L[redacted] L[redacted] G[redacted], became a United States citizen upon her birth at Laredo, Texas on April 13, 1969. As her parents are citizens of Mexico, she also acquired Mexican nationality at birth. A month after she was born her parents

---

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

> Section 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 relinquishiing 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; ...

took her to Mexico where she has since lived, save for nine months' residence in Israel, July 1986-April 1987. According to the Consulate General at Monterrey, where appellant lives, "[s]he has never registered as a U.S. citizen, has always used a Mexican passport for travel-including trips to the United States on an average of six times per year. U.S. visas were also applied for and received by subject at Monterrey and Tel Aviv."

On April 28, 1981, while enroute to Monterrey from Israel, appellant stopped off in Mexico City where she made an application for a certificate of Mexican nationality (CMN). She was accompanied by her father who apparently had come from Monterrey to advise his daughter. In the application she declared that she expressly renounced her United States nationality and all allegiance and fidelity to the United States. She also declared "adherence, obedience and submission to the laws and authorities of the Mexican Republic." A CMN issued in appellant's name on the same day, Later at the Consulate General, when she was asked why she applied for a CMN, appellant stated that she did so to facilitate entry into what the Consulate General has described as a serious, prestigious, expensive technical institute in Monterrey, In her appeal, appellant amplified her reasons for obtaining a CMN:

> So I took oath to become mexican taking my father's advice, that it will be faster if we did it there, in Mexico City, to avoid the bureaucracy and that I needed it to continue my studies in Mexico, living with my parents, without the necessity of a student visa from the mexican authorities, and not to pay extra tution [sic] as a foreigner student at the University, I did wanted [sic] to study in the U.S. but my parent's can't afford it, not even if I got a scholarship and I knew it;...

By diplomatic note, dated April 29, 1987, the Department of Foreign Relations advised the Embassy that appellant had applied for and been issued a CMN. Attached to the note were copies of appellant's application and the CMN. It appears that sometime thereafter the Consulate General informed appellant that she might have expatriated herself by making an oath of allegiance to a foreign state. On September 23, 1987, appellant, accompanied by her father, visited the Consulate General where she was interviewed by a consular officer; completed a form titled "Information for Determining U.S. Citizenship," and made an application for registration as a United States citizen. On September 30, 1987, in compliance with the law, a consular officer executed a certificate of loss

of nationalitiy in appellant's name. 2/ The certificate recited that appellant acquired United States citizenship by birth in the United States; acquired the citizenship of Mexico by derivation from her Mexican citizen parents; 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.

The Department approved the certificate on November 31, 1987, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board.

The appeal was entered on June 28, 1988.

II

Section 349(a)(2) of the Immigration and Nationality Act 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 after the age of eighteen years.

There is no dispute that appellant, then aged eighteen years, applied for a CRN and made a meaningful declaration of allegiance to Mexico, thus bringing herself within the

---

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.

purview of the statute. Further, appellant does not dispute that she applied for a CMN and made the declaration of allegiance to Mexico voluntarily. The sole issue for the Board to determine therefore is whether appellant intended to relinquish her United States nationality when she performed the expatriative act.

In loss of nationality proceedings, the government bears the burden of proving by a preponderance of the evidence that a citizen who performed an expatriative act 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 she signed the application for a CMN in which she 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, conclusive evidence "of the voluntary assent of the citizen." The Supreme Court expressed the principle as follows in Vance v. Terrazas:

> ..., 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.

The courts have consistently held that making an express renunciation of United States nationality while pledging allegiance to a foreign state is very strong evidence of an intent to relinquish United States nationality and ordinarily warrants a finding of loss of nationality. Terrazas v. Haig, supra; Richards v. Secretary of State, 752 F.2d 1413 (9th Cir. 1985); Meretsky v. Department of Justice, et al., memorandum opinion, No. 86 5184 (D.C. Cir. 1987). See also United States v. Matheson, 400 F. Supp. 1241, (S.D.N.Y. 1975), aff'd., 532 f.2d 809 (2nd Cir. 197), cert. denied, 429 U.S. 823. As noted

by the court in Matheson, the declaration of allegiance to a foreign state in conjunction with the renunciatory language of United States citizenship "would leave no room for ambiguity as to the intent of the applicant." 400 F.Supp. at 1245.

Appellant here expressly renounced her United States nationality and all allegiance to the United States while pledging allegiance to a foreign state. The evidence is therefore very compelling that at the relevant time she intended to transfer her allegiance from the United States to Mexico. Nonetheless, as triers of fact, the Board must also determine whether appellant not only voluntarily made a formal declaration of allegiance to Mexico but also did so knowingly and intelligently.

Appellant was eighteen years old when she performed the expatriative act, but only by two weeks. Although she was of legal age, her youth requires that we scrutinize very carefully the facts and circumstances surrounding her act. What appellant said in her appeal about why she applied for a CMN (see facts statement in this opinion) indicates that appellant understood what she was doing. We are also impressed by the report the consular officer who processed her case made to the Department when he forwarded the certificate of loss of nationality for the Department's consideration: "Subject is bright, industrious, from an educated and economically comfortable family and does not attempt to deny she knew a renunciation of her U.S. nationality was involved in the acquisition of her CMN." We note further that appellant's father apparently was present when she made the application for a CMN, indeed counseled her to apply for one. In a declaration he executed on January 17, 1989, appellant's father stated that:

> ...it was because of me that my daughter [redacted] L. [redacted] applied for a certificate of Mexican nationality (CMN) thinking that this way she wouldn't have any trouble at the time of her school registration; but I didn't know she will lose her United States citizenship, and I had no intention to make her relinquish it, since she always said she wanted to live in the U.S. as soon as she becomes able to support herself.

Nothing of record indicates that appellant's father coerced her into applying for a CMN. Rather, to judge from appellant's own submissions, it is reasonable to assume that he simply acted as her adviser. In the circumstances, we have no reason to doubt that appellant acted in full awareness of the implications of applying for a CMN which, as she concedes, would bring her tangible benefits.

Finally, we are required to establish whether there are any factors which would counterbalance the strong, objective evidence that appellant probably intended to relinquish her United States nationality when she pledged allegiance to Mexico.

To judge from the record before us, appellant has done nothing over the course of her eighteen years to demonstrate that she considers herself a United States citizen. Admittedly, at her age she is unlikely to have done much which would graphically show that she wished to continue to be a United States citizen. But we do note that she never attempted to obtain a United States passport, an identity card, or other United States documents; nor did her parents so attempt on her behalf. We note too that she travelled frequently to the United States on a Mexican passport with a United States visa.

Barring unusual circumstances, and we find none here, what appellant said about her United States citizenship on the occasion of performing the expatriative act must be decisive. At that time not only did appellant make a formal declaration of allegiance to Mexico. She expressly declared that she renounced her United States nationality and all allegiance to the United States.

The preponderance of the evidence establishes that appellant intended to relinquish her United States citizenship. It therefore follows that the Department has sustained its burden of proof.

III

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

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member