

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: B [REDACTED] I [REDACTED] F [REDACTED]

The Department of State made a determination on March 19, 1987 that B [REDACTED] I [REDACTED] F [REDACTED] expatriated herself on July 16, 1986 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/ Ms. F [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 her United States nationality when she 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 26, 1987, as required by law. Therein the officer certified that appellant acquired the nationality of the United States by virtue of her birth at Boston Massachusetts, on March 15, 1966; that she also acquired the

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;

- 2 -

nationality of Mexico by virtue of birth abroad of Mexican citizen parents; that she made a formal declaration of allegiance to Mexico on July 16, 1984 and obtained a certificate of Mexican nationality on the same day, thereby expatriating herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. 2/

The Department approved the certificate on March 19, 1987, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to this Board. The appeal was filed on April 27, 1988.

II

The Acting Deputy Assistant Secretary of State for Consular Affairs (Passport Services) on April 5, 1990 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 that Ms. F [REDACTED] intended to divest herself of her U.S. citizenship when she took an oath of allegiance containing renunciatory language to

2/ The Department set forth the following additional facts about appellant's case in its memorandum to the Board of April 5, 1990:

When [Ms. F [REDACTED]] decided to attend the [Autonomous University of Mexico] she discovered that if she attended school as a Mexican, her education would cost much less. She came to the Embassy to inquire about her U.S. citizenship and Mexican citizenship. Feeling confident that she had no problems, on July 16, 1984 she applied for her CMN.

Soon after she acquired her CMN, appellant applied for her U.S. passport which she has used on several occasions.

- 3 -

Mexico on July 26 /sic/ 1984. 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 a Questionnaire for Determining U.S. Citizenship. There is no evidence except the questionnaire that pertains to Ms. F [REDACTED]' intent at the time of the expatriating act, and nothing to repudiate the validity of appellant's claim that she never intended to relinquish her U.S. citizenship when she swore allegiance to Mexico.

Ms. F [REDACTED], on the other hand, has several affidavits attesting to her intent at the time of her application for her CMN, and the fact that she applied for a U.S. passport soon after her receipt of her CMN. Accordingly, it is requested that this case be remanded in order that the Certificate of Loss may be vacated.

2/ (Cont'd.)


In 1986 the Embassy in Mexico City learned of her CMN application and had her complete the Questionnaire for Determining U.S. Citizenship. A Certificate of Loss of Nationality (CLN) was prepared at the Embassy on January 26, 1987 and approved by the Department on March 19, 1987.

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). Intent may be proved by a person's words or found as a fair inference from proven conduct. Vance v. Terrazas, 444 U.S. at 260. 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).

- 4 -

III

Inasmuch as the Department has concluded that it is unable to carry the burden of proving that appellant intended to relinquish her 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


 J. Peter A. Bernhardt, Member


 Gerald A. Rosen, 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.