

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A M S

The Department of State made a determination on June 12, 1987 that A M S expatriated herself on November 15, 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/ A timely appeal was filed through counsel.

There is one issue to be decided: whether appellant intended to relinquish her United States nationality when she made a formal declaration of allegiance to Mexico. For the reasons that follow, it is our conclusion that the Department of State has not met its burden of proving that appellant possessed the requisite intent. Accordingly, we reverse the Department's holding of loss of nationality.

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Appellant, A M S, acquired United States citizenship by birth of an American citizen father in Mexico on [REDACTED]. 2/ By virtue of her birth in Mexico, she also

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; or ...

2/ Appellant acquired United States nationality under the provisions of section 301(a)(7) of the Immigration and Nationality Act, 8 U.S.C. 1401(a)(7), now section 301(g), 8 U.S.C. 1401(g).

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acquired the nationality of that state at birth, and so enjoyed the status of a dual national. The Embassy executed a report of birth on behalf of appellant in 1968, and issued her a card of identity in 1973 and a passport in 1978.

In June 1983 the Embassy issued her a second passport of limited validity, pending advice from the Mexican authorities whether she had applied for and obtained a certificate of Mexican nationality (CMN). 3/ Shortly afterward, the Mexican authorities informed the Embassy that in 1971 while appellant was a minor her parents took an oath of allegiance on her behalf and obtained a CMN for her. In August 1983, appellant informed the Embassy by telephone that since she had a United States passport valid until June 1984 she would not then decide which citizenship she would choose. Accordingly, she was informed that when she returned to the Embassy in 1984, another inquiry would be made of the Mexican authorities. In May 1984, in reply to a further Embassy inquiry, the Mexican authorities again stated that appellant had applied for a CMN through her parents, but had not confirmed her Mexican citizenship. "Case closed on this date, if she comes trying to get her passport extended we will send another Dip. Note. srd.", reads an entry in the Embassy's record of its dealings with appellant.

Later in May 1984, appellant, her father and her brother visited the Embassy and spoke to a consular officer about dual citizenship. The record made by the consular officer of that discussion reads as follows:

May 31, 1984 A , son of P came to the Embassy to ask questions concerning dual citizenship. A , his sister also took part in the meeting. A said that he may take an oath of allegiance to Mexico but that he did not want to lose his US citizenship. He was advised of US law and attitude along

3/ The government of Mexico tolerates dual nationality until an individual reaches the age of eighteen, freely issuing a Mexican passport to enter and re-enter Mexico as a Mexican citizen. Upon attaining the age of eighteen Mexican law requires that a dual national elect either Mexican or his other nationality. If such person wishes to exercise the rights of Mexican nationality, he must possess a certificate of Mexican nationality, application for which must be made one year after his eighteenth birthday. To obtain a certificate of Mexican nationality the applicant must expressly renounce previous nationality and make a declaration of allegiance to Mexico.

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with Supreme Court decisions. He was given our info sheet on the above and it was pointed out that he could do nothing in advance that would guarantee he would not lose his US citizenship. He asked to make a sworn statement, the original of which was given to him. A copy should be in our files. gjs.

On that occasion, appellant executed an affidavit which reads as follows:

I would like to state and certify that if in the future before the Mexican State Department (Gobernacion) I may have to renounce with signature my U.S. citizenship in order to be able to stay in Mexico in my present situation. This is not my intention, I am American, I'm proud to be American, and I want to stay American until the day I die.

The Embassy extended appellant's passport to full validity (10 years) in October 1984. In January 1985, the Embassy inquired again of the Mexican authorities whether a CMN had been issued to appellant. In February 1985, the Department of Foreign Affairs sent the Embassy a diplomatic note, stating that on November 15, 1984 appellant had applied for and on the same date was issued a CMN. The note enclosed a copy of the CMN that was issued to appellant and her application therefor. In the application appellant expressly renounced United States nationality and all allegiance and fidelity to the United States. Further, she declared adherence, obedience and submission to the laws and authorities of Mexico.

Shortly after receiving the diplomatic note, the Embassy wrote to appellant to inform her that by making a formal declaration of allegiance to a foreign state she might have expatriated herself. The Embassy stated that it wished to learn whether appellant intended to relinquish her United States nationality when she declared her allegiance to Mexico. She was therefore asked to complete a questionnaire to facilitate determination of her citizenship status, and invited to discuss the matter with a consular officer. Appellant completed the questionnaire on March 20, 1985 and, for information purposes, filled out a form for registration as a citizen. On April 1, 1985, as required by law, a consular officer executed a

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certificate of loss of nationality in appellant's name. 4/ The officer certified that appellant acquired United States nationality by birth in Mexico of a United States citizen father; that she also acquired the nationality of Mexico by birth in that state; that she made a formal declaration of allegiance to a foreign state, to wit Mexico; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act. In forwarding the certificate to the Department, the Embassy recommended that the certificate not be approved, expressing the view that appellant lacked the requisite intent to relinquish her United States nationality.

For reasons not disclosed in the record, The Department took no action in the case for more than two years. Finally, on June 12, 1987, the Department approved the certificate, approval being an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review. An appeal was filed through counsel in May 1988. The Board heard oral argument in April 1989. 5/

4/ 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.

5/ After oral argument, a delay of several months ensued while counsel for appellant and counsel for the Department sought additional information regarding the facts and circumstances surrounding appellant's visit in May 1984 to the Embassy where she executed an affidavit disclaiming intention to relinquish United States citizenship, if she were at a future date to make a renunciation of United States citizenship before the Mexican authorities.

