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VANCE v. TERRAZAS
SUPREME COURT OF THE UNITED STATES
444 US 252
January 15, 1980

OPINION: Mr. Justice WHITE…Section 349(a)(2) of the Immigration and Nationality Act (Act) provides that "a person who is a national of the United States whether by birth or naturalization, **shall lose his nationality by…taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof**." The Act also provides that the party claiming that such loss of citizenship occurred must "establish such claim by a **preponderance** of the evidence" and that the voluntariness of the expatriating conduct is rebuttably presumed. The issues in this case are whether, in establishing loss of citizenship, a party must prove an intent to surrender United States citizenship and whether the United States Constitution permits Congress to legislate with respect to expatriation proceedings by providing the standard of proof and the statutory presumption contained in [the Act].

Appellee, Laurence J. Terrazas, was **born in this country**, the **son of a Mexican citizen**. He thus acquired at birth both United States and Mexican citizenship. In the fall of 1970, while a student in Monterrey, Mexico, and at the age of 22, appellee executed an application for a certificate of Mexican nationality, swearing "adherence, obedience, and submission to the laws and authorities of the Mexican Republic" and "expressly renouncing United States citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America,…" The certificate, which issued upon this application on April 3,

1971, recited that Terrazas had sworn adherence to the United Mexican States and that he "has expressly renounced all rights inherent to any other nationality, as well as all submission, obedience, and loyalty to any foreign government, especially to those which have recognized him as that national." Terrazas read and understood the certificate upon receipt.

A few months later, following a discussion with an officer of the United States Consulate in Monterrey, proceedings were instituted to determine whether appellee had lost his United States citizenship by obtaining the certificate of Mexican nationality. Appellee denied that he had, but in December 1971 the Department of State issued a certificate of loss of nationality. The Board of Appellate Review of the Department of State, after a full hearing, affirmed that appellee had voluntarily renounced his United States citizenship. As permitted by §360(a) of the Act, appellee then brought this suit against the Secretary of State for a declaration of his United States nationality…

The District Court recognized that the first sentence of the Fourteenth Amendment, as construed in *Afroyim v. Rusk*, "protects every citizen of this Nation against a congressional **forcible** destruction of his citizenship" and that every citizen has "a constitutional right to remain a citizen …unless he **voluntarily** relinquishes that citizenship." A person of dual nationality, the District Court said, "will be held to have expatriated himself from the United States when it is shown that he voluntarily committed an act whereby he unequivocally renounced his allegiance to the United States." Specifically, the District Court found that appellee had taken an oath of allegiance to Mexico, that he had "knowingly and understandingly renounced allegiance to the United States in connection with his Application for a Certificate of Mexican Nationality" and that "the taking of an oath of allegiance to Mexico and renunciation of a foreign country citizenship is a condition precedent under Mexican law to the issuance of a Certificate of Mexican Nationality." The District Court concluded that the United States had "proved by a preponderance of the evidence that Laurence J. Terrazas knowingly, understandingly and voluntarily took an oath of allegiance to Mexico, and concurrently renounced allegiance to the United States" and that he had therefore "voluntarily relinquished United States citizenship pursuant to §349(a)(2) of the…Act."

In its opinion accompanying its findings and conclusions, the District Court observed that appellee had acted "voluntarily in swearing allegiance to Mexico and renouncing allegiance to the United States" and that appellee "knew he was repudiating allegiance to the United States through his actions." The court also said, relying upon and quoting from *United States v. Matheson*, that "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.'"

The Court of Appeals reversed. As the Court of Appeals understood the law…the United States had not only to prove the taking of an oath to a foreign state, but also to demonstrate an intent on appellee's part to renounce his United States citizenship. The District Court had found these basic elements to have been proved by a preponderance of the evidence; and the Court of Appeals observed that, "assuming that the proper evidentiary standards were applied, we are convinced that the record fully supports the court's findings." The Court of Appeals ruled, however, that under *Afroyim v. Rusk*, Congress had no power to legislate the evidentiary standard contained in §1481(c) and that the Constitution required that proof be not merely by a preponderance of the

evidence, but by "clear, convincing and unequivocal evidence." The case was remanded to the District Court for further proceedings.

The Secretary took this appeal…[and because] the invalidation of §1481(c) posed a substantial constitutional issue, we noted probable jurisdiction…

With respect to the principal issues before it, the Court of Appeals held that Congress was without constitutional authority to prescribe the standard of proof in expatriation proceedings and that the proof in such cases must be by clear and convincing evidence rather than by the preponderance standard prescribed in §1481(c). We are in fundamental disagreement with these conclusions…

We are unable to conclude that the specific evidentiary standard provided by Congress in §1481(c) is invalid under either the Citizenship Clause or the Due Process Clause of the Fifth Amendment. It is true that in criminal and involuntary commitment contexts we have held that the Due Process Clause imposes requirements of proof beyond a preponderance of the evidence. *Mullaney v. Wilbur* (1975); *Addington v. Texas* (1979). This Court has also stressed the importance of citizenship and evinced a decided preference for requiring clear and convincing evidence to prove expatriation. *Nishikawa v. United States*. But expatriation proceedings are civil in nature and do not threaten a loss of liberty. Moreover, as we have noted, *Nishikawa* did not purport to be a constitutional ruling, and the same is true of similar rulings in related areas. None of these cases involved a congressional judgment, such as that present here, that the preponderance standard of proof provides sufficient protection for the interest of the individual in retaining his citizenship. Contrary to the Secretary's position, we have held that expatriation requires the ultimate finding that the citizen has committed the expatriating act with the intent to renounce his citizenship. This in itself is a heavy burden, and **we cannot hold that Congress has exceeded its powers by requiring proof of an intentional expatriating act by a preponderance of evidence…We also conclude that the presumption of voluntariness provided in §1481(c) is not otherwise constitutionally infirm…**

In sum, we hold that in proving expatriation, an expatriating act and an intent to relinquish citizenship must be proved by a preponderance of the evidence. We also hold that when one of the statutory expatriating acts is proved, it is constitutional to presume it to have been a voluntary act until and unless proved otherwise by the actor. If he succeeds, there can be no expatriation. If he fails, the question remains whether on all the evidence the Government has satisfied its burden of proof that the expatriating act was performed with the necessary intent to relinquish citizenship.

The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion. So ordered.

DISSENT: Mr. Justice STEWART…[Not Provided.]

CONCURRENCE/DISSENT: Mr. Justice MARSHALL…**I would hold that a citizen may not lose his citizenship in the absence of clear and convincing evidence that he intended to do so.**

CONCURRENCE/DISSENT: Mr. Justice STEVENS…[Not Provided.]

DISSENT: Mr. Justice BRENNAN/STEWART…The Court holds that one may lose United States citizenship if the Government can prove by a preponderance of the evidence that certain acts, specified by statute, were done with the specific intent of giving up citizenship. Accordingly, the Court, in reversing the judgment of the Court of Appeals, holds that the District Court applied the correct evidentiary standards in determining that appellee was properly stripped of his citizenship. Because I would hold that one who acquires United States citizenship by virtue of being born in the United States, U.S.Const., Amdt. 14, §1, can lose that citizenship only by formally renouncing it, and because I would hold that the act of which appellee is accused in this case cannot be an expatriating act, I dissent.

This case is governed by *Afroyim v. Rusk*. *Afroyim*, emphasizing the crucial importance of the right of citizenship, held unequivocally that a citizen has "a constitutional right to remain a citizen…unless he voluntarily relinquishes that citizenship." "The only way the citizenship… could be lost was by the voluntary renunciation or abandonment by the citizen himself." The Court held that because Congress could not "abridge," "affect," "restrict the effect of," or "take… away" citizenship, Congress was "without power to rob a citizen of his citizenship" because he voted in a foreign election.

The same clearly must be true of the Government's attempt to strip appellee of citizenship because he swore an oath of allegiance to Mexico. Congress has provided for a procedure by which one may formally renounce citizenship. In this case the appellant concedes that appellee has not renounced his citizenship under that procedure. Because one can lose citizenship only by voluntarily renouncing it and because appellee has not formally renounced his, I would hold that he remains a citizen. Accordingly, I would remand the case with orders that appellee be given a declaration of United States nationality…

It appears Justices Brennan and Stewart have lost their senses on this one. This man "expressly renounced United States citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America." Just because he did not do it per Congressional formality does not mean he did not knowingly give up his U.S. citizenship.