Vance v. Terrazas

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Vance v. Terrazas, 444 U.S. 252 (1980), was a United States Supreme Court decision that established that a United States citizen cannot have his or her citizenship taken away unless he or she has acted with an intent to give up that citizenship. The Supreme Court overturned portions of an act of Congress which had listed various actions and had said that the performance of any of these actions could be taken as conclusive, irrebuttable proof of intent to give up U.S. citizenship. However, the Court ruled that a person's intent to give up citizenship could be established through a standard of preponderance of evidence (i.e., more likely than not) — rejecting an argument that intent to relinquish citizenship could only be found on the basis of clear, convincing and unequivocal evidence.[1][2]

Contents

Background

Vance v. Terrazas

Supreme Court of the United States

Argued October 30, 1979
Decided January 15, 1980

Full case name	*Cyrus Vance, Secretary of State v. Laurence J. Terrazas*
Citations	444 U.S. 252 (https://supreme.justia.com/us/444/252/case.html) (*more*) 100 S. Ct. 540; 62 L. Ed. 2d 461
Prior history	Terrazas v. Vance, 577 F.2d 7 (7th Cir. 1978)
Subsequent history	Terrazas v. Muskie, 494 F.Supp. 1017 (N.D. Ill. 1980); Terrazas v. Haig, 653 F.2d 285 (7th Cir. 1981)

Holding

An American cannot have his U.S. citizenship taken away against his will. Intent to give up citizenship needs to be established by itself and cannot be irrebuttably presumed merely because a person did something established by law as an action automatically causing loss of citizenship. However, Congress has power to decide that an intent to give up citizenship may be established by preponderance of evidence.

Court membership

Chief Justice
Warren E. Burger

Laurence Terrazas was born in the United States in 1947.[3] Because Terrazas's father was Mexican and because Mexico's then-effective citizenship laws followed the principle of *ius sanguinis*, Terrazas held Mexican citizenship at birth, and because he was born in the United States, Terrazas also held U.S. citizenship under the *ius soli* of the Fourteenth Amendment; therefore, Terrazas was a dual citizen of the United States and Mexico at birth.[3]

Associate Justices
William J. Brennan, Jr. • Potter Stewart
Byron White • Thurgood Marshall
Harry Blackmun • Lewis F. Powell, Jr.
William Rehnquist • John P. Stevens

Case opinions

Majority	White, joined by Burger, Blackmun, Powell, Rehnquist
Concur/dissent	Marshall
Concur/dissent	Stevens
Dissent	Brennan, Stewart

Laws applied
U.S. Const. amends. V, XIV; Immigration and Nationality Act of 1952

While enrolled at a Mexican university in 1970,[4] Terrazas applied for a certificate of Mexican nationality. As part of his application, Terrazas signed a statement 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."[5]

During subsequent discussions with a U.S. consular official, Terrazas gave conflicting answers as to whether or not he had truly intended to abandon his rights as a U.S. citizen when he applied for his certificate of Mexican nationality.[6] The State Department eventually concluded that he had lost his U.S. citizenship[7]—a decision which Terrazas appealed, first before the State Department's board of appellate review,[8] and subsequently to the courts.[9]

Before the 1967 Supreme Court ruling in *Afroyim v. Rusk,* U.S. law had provided for numerous ways for U.S. citizens to lose their citizenship. In its *Afroyim* ruling, the Supreme Court held that the Fourteenth Amendment barred Congress from revoking anyone's U.S. citizenship without their consent. Specifically, the court held that a law automatically revoking the U.S. citizenship of anyone who had voted in a foreign election was unconstitutional and unenforceable.[10] However, U.S. law continued after *Afroyim* to list several other "expatriating acts," the voluntary performance of any of which would result in automatic loss of citizenship.[11]

The 7th Circuit Court of Appeals ruled that according to *Afroyim v. Rusk,* "Congress is constitutionally devoid of the power" to revoke citizenship;[12] and further, that Congress had no power to legislate any evidentiary standard for proving Terrazas's intent to relinquish his citizenship that fell short of a requirement of proof by clear, convincing and unequivocal evidence.[13] The Secretary of State appealed[14][15] this ruling to the Supreme Court, questioning

not only the appellate court's finding on the required standard of proof,[16] but also challenging the finding that a separate intent to give up citizenship was required (as opposed merely to the performance of a designated expatriating act).[17]

Opinion of the Court

A 5-to-4 majority of the Supreme Court held, first, that it was not enough for the government to prove "the voluntary commission of an act, such as swearing allegiance to a foreign nation, that 'is so inherently inconsistent with the continued retention of American citizenship that Congress may accord to it its natural consequences, i. e., loss of nationality.'" Rather, the court held that its 1967 ruling in *Afroyim v. Rusk* "emphasized that loss of citizenship requires the individual's 'assent,' . . . in addition to his voluntary commission of the expatriating act"—and that "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."[1] On this point, the Supreme Court agreed with the 7th Circuit ruling in Terrazas's favor.

The majority then turned its attention to the question of a standard of proof in loss-of-citizenship cases. Terrazas had argued—and the 7th Circuit had agreed—that the 14th Amendment, as interpreted in *Afroyim,* had left Congress without any constitutional authority to set the standard of proof for intent to relinquish citizenship at a level any lower than one of clear and convincing evidence. The Supreme Court majority rejected this claim and held that Congress was within its rights to specify a standard of preponderance of evidence (i.e., more likely than not) when cases alleging loss of U.S. citizenship were involved.[1]

Finally, the Supreme Court majority upheld the validity of another aspect of the law as enacted by Congress—namely, that it was all right for the government to assume that a potentially expatriating act had been performed voluntarily, and that any claim that a person had acted under duress was up to the person involved to establish by preponderance of evidence.[1]

The Supreme Court did not explicitly rule on whether or not Terrazas had lost his U.S. citizenship; rather, it remanded the case back to the original trial court (a Federal District Court in Illinois) for further proceedings consistent with the Supreme Court's ruling.

Although the court's membership was divided on the question of whether a "preponderance of evidence" standard was sufficient for establishing someone's intent to give up their U.S. citizenship, all nine justices — the five who joined in the majority opinion, and also the four who dissented (see below), unanimously agreed with the key holding in *Afroyim v. Rusk* that U.S. citizenship was safeguarded by the Fourteenth Amendment and could not be taken away by an

act of Congress from a person who had not wanted to give it up.

Dissents

The four justices who disagreed with the majority filed three separate dissenting opinions. All of the dissenting justices supported the *Afroyim v. Rusk* principle that retention of U.S. citizenship was a constitutionally protected right, and they all agreed (contrary to the court's majority) that Terrazas's actions should not have led to the loss of his U.S. citizenship.

Justice Thurgood Marshall rejected the majority's decision that an intent to give up U.S. citizenship could be established merely by a preponderance of evidence. Arguing that "the Court's casual dismissal of the importance of American citizenship cannot withstand scrutiny",[18] he said he "would hold that a citizen may not lose his citizenship in the absence of clear and convincing evidence that he intended to do so."[19]

Justice John Paul Stevens also argued that "a person's interest in retaining his American citizenship is surely an aspect of 'liberty' of which he cannot be deprived without due process of law," and that "due process requires that a clear and convincing standard of proof be met" in Terrazas's case or others like it.[20] Additionally, Stevens felt that Congress had not adequately addressed the question of specific intent to relinquish U.S. citizenship. "Since we accept dual citizenship," he wrote, "taking an oath of allegiance to a foreign government is not necessarily inconsistent with an intent to remain an American citizen. Moreover, as now written, the statute cannot fairly be read to require a finding of specific intent to relinquish citizenship."[19]

Justices William J. Brennan, Jr., and Potter Stewart argued that since Terrazas was born a dual U.S./Mexican national, his having taken an oath of allegiance to Mexico was not in any way inconsistent with his also being a citizen of the U.S. In Brennan's words: "The formal oath [of allegiance to Mexico] adds nothing to the existing foreign citizenship and, therefore, cannot affect his United States citizenship."[21] Brennan argued, in addition, that since "Congress has provided for a procedure by which one may formally renounce citizenship" before U.S. consular officials—a procedure which it was conceded by all that Terrazas had not availed himself of—Terrazas was still a U.S. citizen.[22]

Subsequent developments

After receiving Terrazas's case back from the Supreme Court on remand, the district court again ruled that Terrazas had lost his U.S. citizenship.[23] On subsequent appeal, the 7th Circuit Court of Appeals reversed its earlier decision and—this time using a preponderance-of-evidence standard per the instructions of

the Supreme Court—ruled against him, finding this time that there was "abundant evidence that plaintiff intended to renounce his United States citizenship when he acquired the Certificate of Mexican Nationality willingly, knowingly, and voluntarily."[24] Since the office of U.S. Secretary of State changed hands twice following the Supreme Court's ruling in the case — Edmund Muskie replacing Cyrus Vance in 1980, and Alexander Haig assuming the position in 1981 — the subsequent lower court cases are known as *Terrazas v. Muskie* and *Terrazas v. Haig.*

Congress amended the Immigration and Nationality Act in 1986 to specify, as required by *Vance v. Terrazas,* that a potentially expatriating act may result in loss of U.S. citizenship only if it was performed "with the intention of relinquishing United States nationality".[11][25]

Although the *Terrazas* ruling left intact Congress's right to specify a preponderance-of-evidence standard for judging intent to give up U.S. citizenship, the State Department in 1990 adopted a policy which, in most cases, pursues loss-of-citizenship proceedings only when an individual affirmatively states that he or she intends to relinquish U.S. citizenship.[26] When a case involving possible expatriation comes to the attention of a U.S. consular officer, the officer will normally "simply ask the applicant if there was intent to relinquish U.S. citizenship when performing the act. If the answer is no, the consular officer will certify that it was *not* the person's intent to relinquish U.S. citizenship and, consequently, find that the person has retained U.S. citizenship."[27]

A bill was introduced in 2005 which sought, among other things, to force the State Department to abolish the above policy on loss of citizenship and reinstate its pre-1990 policy "of viewing dual/multiple citizenship as problematic and as something to be discouraged, not encouraged."[28] However, this bill never made it to the floor of the House and died in committee when the 109th Congress adjourned.[29]

See also

- Multiple citizenship
- United States nationality law
- List of United States Supreme Court cases, volume 444

References

1. ^ ***a b c d*** Association, American Bar (March 1980). "Supreme Court Report" (http://books.google.com/books?id=83VMMk9dyu0C&

pg=PA374&lpg=PA374). *ABA Journal*: 374.
2. ^ Schoenblum, Jeffrey A. (2009). *Multistate and Multinational Estate Planning* (http://books.google.com/books?id=zktPurWpQyYC&pg=SA9-PA78&lpg=SA9-PA78) **1**. CCH. pp. 9–78. ISBN 978-0-8080-9228-5.
3. ^ **a** **b** *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 2 (7th Cir. 1978). Note the different order of the names in this lower court case.
4. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 3 (7th Cir. 1978).
5. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), paras. 4, 5 (7th Cir. 1978).
6. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 10 (7th Cir. 1978).
7. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 11 (7th Cir. 1978).
8. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 12 (7th Cir. 1978).
9. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 13 (7th Cir. 1978).
10. ^ Raymond, Walter John (1992). "Citizenship" (http://books.google.com/books?id=1dtn0olA8PcC&pg=PA71&lpg=PA71). *Dictionary of Politics: Selected American and foreign political and legal terms*. Brunswick Publishing. p. 71. ISBN 978-1-55618-008-8.
11. ^ **a** **b** Immigration and Nationality Act, sec. 349; 8 U.S.C. sec. 1481 (http://www.law.cornell.edu/uscode/8/1481.html). The phrase "*voluntarily performing any of the following acts with the intention of relinquishing United States nationality*" was added in 1986, and various other changes have been made over time to the list of expatriating acts; see notes (http://www.law.cornell.edu/uscode/html/uscode08/usc_sec_08_00001481----000-notes.html).
12. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 18 (7th Cir. 1978).
13. ^ *Terrazas v. Vance*, 577 F.2d 7 (http://cases.justia.com/us-court-of-appeals/F2/577/7/112973/), para. 29 (7th Cir. 1978).
14. ^ *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 258 (1980) (“The Secretary took this appeal under 28 U.S.C. § 1252.”).

15. ^ Stern, Gressman, and Shapiro, "Epitaph for Mandatory Jurisdiction (http://books.google.com/books?id=o50w_isIZ-EC&pg=PA4&lpg=PA4)." *ABA Journal,* December 1988, p. 66. "In 1937, during a time of constitutional challenges to many federal statutes, Congress also provided for direct appeals to the Supreme Court from decisions of any federal court—trial or appellate—holding a federal statute unconstitutional.... On June 27 [1988], President Reagan signed legislation that freed the Court from virtually all appeals...."
16. ^ *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 255 (1980).
17. ^ *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 258 (1980).
18. ^ *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 271 (1980).
19. ^ ***a*** ***b*** *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 272 (1980).
20. ^ *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 274 (1980).
21. ^ *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 276 (1980).
22. ^ *Vance v. Terrazas*, 444 U.S. 252 (http://supreme.justia.com/us/444/252/case.html), 275 (1980).
23. ^ *Terrazas v. Muskie*, 494 F.Supp. 1017 (N.D. Ill. 1980).
24. ^ *Terrazas v. Haig*, 653 F.2d 285 (7th Cir. 1981).
25. ^ Public Law 99-653; 100 Stat. 3655; 1986 U.S. Code Congressional and Administrative News 6182.
26. ^ 67 *Interpreter Releases* 799 (July 23, 1990); 67 *Interpreter Releases* 1092 (October 1, 1990).
27. ^ *Advice about Possible Loss of U.S. Citizenship and Dual Nationality* (http://travel.state.gov/law/citizenship/citizenship_778.html) (U.S. State Department web site).
28. ^ H.R. 3938 (109th Congress), sec. 703. (http://thomas.loc.gov/cgi-bin/bdquery/z?d109:hr3938:)
29. ^ All Congressional actions (http://thomas.loc.gov/cgi-bin/bdquery/z?d109:HR03938:@@@X) for H.R. 3938 (109th Congress).

External links

- Text of *Vance v. Terrazas*, 444 U.S. 252 (1980) is available from: Findlaw (http://laws.findlaw.com/us/444/252.html) Justia (http://supreme.justia.com/us/444/252/case.html)

Categories: History of immigration to the United States | United States Supreme Court cases | United States Citizenship Clause case law | 1980 in United States case law

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