DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R. M.-S. - In Loss of Nationality Proceedings

Decided by the Board July 9, 1987

A dual national of the United States and Venezuela from birth, appellant made a formal renunciation of his United States nationality at Caracas in 1967. According to testimony of appellant and his father, appellant renounced his citizenship under pressure from the latter who feared that if his son, then 18 years of age, retained his United States citizenship he might be drafted into the United States Army, sent to Viet Nam and there killed. Shortly after appellant made his renunciation, the Department of State approved the certificate of loss of nationality (CLN) that was executed by the Embassy at Caracas. An appeal from the Department's determination of loss of appellant's nationality was entered 20 years later in the spring of 1987.

Appellant maintained that the appeal was timely and that the Board should hear it on the merits, to wit, that his renunciation was invalid because it resulted from parental coercion. He argued that the appeal was timely because it was taken within one year after denial (on grounds of non-citizenship) of his passport application in early 1987. For purposes of determining the Board's jurisdiction, he contended, the first administrative determination of loss of nationality in his case occured when he was denied a passport in 1987, not when the Department approved the CLN in 1967. In support of this reasoning, appellant cited Whitehead v. Haig, 794 F.2d 115 (3rd Cir. 1986). Therein the Court held that for purposes of determining whether plaintiff's action for a judgment to be declared a United States citizen was brought within the five-year limitation of the statute, the final administrative denial of a right or privilege as a United States citizen was not the Department's approval of the CLN, but its denial of Whitehead's application for a passport which he made some 20 years after the approval of the CLN.

Appellant further argued that his appeal was timely because he had never been informed of the right of appeal and because he thought for many years that no one would believe his story that he had been forced into renouncing his citizenship.

HELD:

The appeal lay from the Department's 1967 determination of loss of appellant's nationality, not from its denial in 1987 of his passport application. The Board has no jurisdiction

under the applicable federal regulations to take jurisdiction of an appeal from the denial of a passport on grounds of non-citizenship. Whitehead v. Haig was inapposite, since that case relates solely to the five-year statutory period within which proceedings may be initiated in a federal district court for a declaration of United States nationality. The Board has jurisdiction to hear and decide appeals from "administrative determinations" of loss of nationality. The term "administrative determination" relating to the Board's jurisdiction is not synonymous with the terms "final administrative denial" of a right or privilege. Thus an administrative determination for purposes of the Board's jurisdiction in citizenship cases is the Department's holding of loss of nationality in a particular case as evidenced by an approved certificate of loss of nationality.

The Board found appellant's further arguments on timely filing unpersuasive.

The Board concluded that the appeal was untimely and dismissed it for lack of jurisdiction.

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This appeal involves an administrative determination of the Department of State that appellant, R M -S , expatriated himself on June 15, 1967, under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act, by making a formal renunciation of United States nationality before a consular officer of the United States at Caracas, Venezuela. 1/

The Department of State (the "Department") made its determination of loss of nationality on July 6, 1967; the appeal here was entered on March 2, 1987, nineteen years later, following the Department's disapproval of appellant's application for a United States passport on February 9, 1987.

1/ Section 349(a)(5), formerly section 349(a)(6), of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), reads as follows:

Section 349. (a) From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --

. . .

(5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State; ...

Public Law 95-432, approved October 10, 1978, 92 Stat. 1046, repealed paragraph (5) of subsection 349(a) of the Immigration and Nationality Act, and redesignated paragraph (6) of subsection 349(a) as paragraph (5).

Public Law 99-653, approved November 14, 1986, 100 Stat. 3655, amended subsection 349(a) by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by;".

Appellant maintains that his appeal is from the Department's denial of a passport, not from the Department's determination of loss of his citizenship. He argues that "the first such administrative determination took place when the Department denied the passport" on February 9, 1987, not when the Department approved, on July 6, 1967, the certificate of loss of United States nationality that the Embassy at Caracas issued in this case. We disagree. As the applicable regulations make clear, the appeal before us can only lie from the Department's original decision that appellant expatriated himself.

The initial issue thus to be decided is whether the appeal was timely filed under governing limitations. We find that the appeal was not timely taken and dismiss it for want of jurisdiction.

I

Appellant was born in [redacted], and acquired United States citizenship at birth. He also acquired the nationality of Venezuela because his parents were citizens of that country.

Appellant's early years were spent in Venezuela and the United States. He attended high school in New York City. When he became eighteen years of age, he registered with the Selective Service System.

According to appellant, his parents were fearful that he would be drafted into the armed forces and have to serve in the Vietnam war. He stated that, following his graduation from high school, his father announced to him that the family would return to Venezuela and that he would have to renounce his United States citizenship at the United States Embassy at Caracas. In a citizenship information form that appellant executed on October 2, 1986, he explained the situation (in 1967) as follows:

> ...I had just turned 18 years of age and registered with the Selective Service System when it became apparent that I would be drafted into the armed forces and have to serve in the Vietnam war. My parents, whom I had been living with and supported by, became very upset. All they could talk about was the war and that I might get killed as thousands of other boys had been. As they became more nervous I became more confused.
>
> My father, a strong willed man, ruled our home with a strong hand. We were taught to obey and respect him. I always did.

> One day he told me that he had made a decision that would solve the problem. I was to renounce my citizenship. I did not know what remouncing [sic] my citizenship really meant. All I knew was that my father had made a decision and that my assent was not necessary. He would have me or any other member of my family do exactly what he wished when his mind had been made up.

Accompanied by his father, appellant visited the Embassy at Caracas on June 15, 1967, and executed a formal renunciation of his United States nationality. 2/ Prior to his renunciation, he executed and submitted an affidavit, explaining the reasons for his renunciation. He averred that he was a Venezuelan citizen, had his residence in Caracas, and intended to remain in Venezuela for the rest of his life. He also declared that the seriousness of his contemplated act of renunciation and its consequences were explained and understood by him.

The Embassy, thereafter, prepared a certificate of loss of United States nationality in appellant's name, in compliance with section 358 of the Immigration and Nationality Act. 3/

2/ Appellant subscribed to the following oath of renunciation:

> That I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(6) of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

3/ 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.

The consular officer certified that appellant acquired United States nationality by virtue of his birth in the United States; that he acquired the nationality of Venezuela by virtue of his birth abroad of Venezuelan citizen parents; that he made a formal renunciation of United States nationality before a consular officer of the United States on June 15, 1967; and that he thereby expatriated himself under the provisions of section 349(a)(6) (now section 349(a)(5)) of the Immigration and Nationality Act.

After review and further consideration of the certificate of loss of nationality, the Department approved it on July 6, 1967, approval constituting an administrative holding or determination of loss of nationality from which an appeal lies. On August 2, 1967, the Embassy at Caracas forwarded to appellant a copy of the approved certificate of loss of nationality and a copy of his oath of renunciation.

Shortly after his renunciation, appellant moved with his family to Italy where he pursued his education. He stated that from 1967 to 1970 he studied at the Academy of Art in Rome and was enrolled in the first year of architecture at the University of Rome. In 1970, he went to England, and continued his studies there until 1978. During this period, he studied at Cambridge University, receiving a Bachelor of Arts degree, and, at the Architectural Association School in London, from which he graduated in 1976. He also received a Master of Arts in Architecture from Cambridge.

On July 25, 1986, appellant applied for a United States passport at the Passport Agency in Stamford, Connecticut. Following a review of the Department's records, the regional director of the Stamford Passport Agency disapproved appellant's passport application, and, by letter dated February 9, 1987, informed him, in part, as follows:

> A further review of our records discloses that the Secretary of State approved a Certificate of Loss of Nationality in your name on August 2, 1967 reflecting his determination that you expatriated yourself on August 2, 1967 pursuant to Section 349 (a)(5) of the Immigration and Nationality Act of 1952, by your voluntary act of renouncing your United States citizenship.
>
> By law, a United States passport can be issued only to a citizen or national of the United States. Since you have presented no evidence to show that you reacquired United States citizenship since the Certificate of Loss of Nationality was approved, we are unable to issue you a United States passport and your application of July 25, 1986 must be disapproved.

On March 2, 1987, appellant, through counsel, gave this Board notice of appeal from the regional director's denial of the passport. 4/ In the brief that was submitted, appellant's counsel states that appellant "appeals an administrative determination of the Department of State, dated February 9, 1987, denying him a passport".

It is appellant's position on this appeal, counsel states, that his United States citizenship status was never lost "because his renunciation was involuntary and unintentional, and therefore void ab initio", and that, accordingly, the regional director "erred in denying the passport." Counsel contended that appellant's renunciation was the result of parental duress and, therefore, was not performed voluntarily. Counsel also contended that appellant lacked the requisite intent to relinquish his United States citizenship status "permanently" when he renounced his citizenship because "he did not believe that taking the oath entailed permanent loss of citizenship."

A hearing before this Board was held on June 5, 1987.

II

In view of appellant's assertion that his appeal is from an administrative determination of the Department denying him a passport because of his renunciation of United States nationality, we find it necessary at the outset to clarify the matter of the Board's jurisdiction.

With respect to passport cases, the Board's jurisdiction is limited to appeals taken from administrative decisions of the Assistant Secretary for Consular Affairs denying, revoking, restricting, or invalidating a passport under 22 CFR 51.70 and

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4/ Appellant's counsel, A. N B , in his letter of March 2, 1987, also informed the Board concerning an order requiring appellant and his family to appear before an immigration judge to determine appellant's excludability. Mr. B stated:

> In order to pursue his passport application, Mr. M entered the United States from France in late 1986. Believing that Mr. M had immigrant intent but did not possess an immigrant visa, the INS inspector ordered Mr. M and his family to appear before an immigration judge to determine his excludability. The exclusion hearing is scheduled for April 8, 1987. Accordingly, I would be extremely grateful if this case could be expedited in any way possible.

51.71. 5/ The Board's jurisdiction, however, does not encompass appeals taken from the above adverse actions of the Department taken by reason of non-citizenship. The federal regulations for review of such adverse actions specifically exclude "action taken by reason of non-citizenship. 6/

5/ 22 C.F.R. 7.3(b) (1986) reads:

Sec. 7.3 Jurisdiction.

The jurisdiction of the Board shall include appeals from decisions in the following cases:

. . . .

(b) Appeals from administrative decisions denying, revoking, restricting or invalidating a passport under sections 51.70 and 51.71 of this chapter.

22 C.F.R. 7.7 (1986) reads:

Sec. 7.7 Passport cases.

(a) Scope of review. With respect to appeals taken from decisions of the Assistant Secretary for Consular Affairs denying, revoking, restricting, or invalidating a passport under sections 51.70 and 51.71 of this chapter, the Board's review, except as provided in paragraph (b) of this section, shall be limited to the record on which the Assistant Secretary's decision was based.

(b) Admissibility of evidence. The Board shall not receive or consider evidence or testimony not presented at the hearing held under sections 51.81-51.89 of this chapter unless it is satisfied that such evidence or testimony was not available or could not have been discovered by the exercise of reasonable diligence prior to such hearing.

6/ 22 C.F.R. 51.80 (1986) reads:

Sec. 51.80 Applicability of secs. 51.81 through 51.105

The provisions of secs. 51.81 through 51.105 apply to any action of the Secretary taken on an individual basis in denying, restricting, revoking, or invalidating a passport or in any other way adversely affecting the ability of a person to receive or use a passport except action taken by reason of non-citizenship or refusal to grant a discretionary exception from geographical limitations of general applicability. The provisions of this subpart shall constitute the administrative remedies provided by the Department to persons who are the subject of adverse action under sec. 51.70 or sec. 51.71.

In light of the foregoing, the Board is without jurisdiction to entertain an appeal taken from the Department's denial of a passport to appellant because of his lack of United States citizenship status. It may also be noted in this connection that there has been no decision of the Assistant Secretary of Consular Affairs from which an appeal may be taken to this Board. 7/ It would follow that the appeal be dismissed for want of jurisdiction.

Upon examination of appellant's submissions, however, we find that the appeal is actually one taken from the Department's administrative determination that appellant expatriated himself, by making a formal renunciation of his United States nationality in 1967. Appellant contends, as we have seen, that his renunciation was involuntary and unintentional; thus citizenship was never lost. The appeal, if timely filed, falls within the jurisdiction of the Board. 8/

7/ 22 C.F.R. 51.89 (1986) provides:

> Sec. 51.89 Decision of Assistant Secretary for Consular Affairs; notice of right to appeal.
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> The person adversely affected shall be promptly notified in writing of the decision of the Assistant Secretary for Consular Affairs and, if the decision is adverse to him or her, the notification shall state the reasons for the decision and inform him or her of the right to appeal to the Board of Appellate Review (Part 7 of this chapter) within 60 days after receipt of notice of the adverse decision. If no appeal is made within 60 days, the decision will be considered final and not subject to further administrative review.

8/ 22 C.F.R. 7.3(a) (1986) reads:

> Sec. 7.3 Jurisdiction.
>
> The jurisdiction of the Board shall include appeals from decisions in the following cases:
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> (a) Appeals from administrative determinations of loss of nationality or expatriation under subpart C of Part 50 of this Chapter.

Appellant's counsel recognizes that an appeal from the Department's determination of loss of nationality is required to be filed within the prescribed time limit in order to engage the Board's jurisdiction. It is appellant's contention here that the time limit for taking this appeal runs from the Department's denial of his passport application on February 9, 1987, and not from the receipt of the certificate of loss of nationality in 1967. Appellant asserts that the Department's denial of his passport application was the first administrative determination of his loss of nationality, and, that since the appeal was filed within less than a year of that determination (denial of his passport application), the appeal was timely filed within one year, as required under 22 CFR 7.5(b). That regulation, however, requires that the appeal be made within one year "after approval by the Department of the certificate of loss of nationality;" it does not state that it be made one year after the Department's denial of a passport application. 9/

Appellant argues that, in light of Whitehead v. Haig, 794 F.2d 115 (3rd Cir. 1986), the issuance of a certificate of loss of nationality, as approved by the Department, does not constitute an administrative determination of loss of nationality; the first administrative determination occurred when his passport application was denied.

Whitehead involved an appeal from a district court of the United States dismissing an action brought by a person who had formally renounced his United States citizenship in 1965 and sought a declaratory judgment adjudging him to be a national of the United States. The district court dismissed the claim as time-barred pursuant to section 360(a) of the Immigration and

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9/ 22 C.F.R. 7.5(b) (1986) reads:

Sec. 7.5 Procedures

(b) Time limit on appeal. (1) A person who contends that the Department's administrative determination of loss of nationality or expatriation under subpart C of Part 50 of this Chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year after approval by the Department of the certificate of loss of nationality or a certificate of expatriation.

Nationality Act. 10/ Under section 360(a), an action may be instituted in a district court of the United States only within five years after the "final administrative denial" of a right or privilege claimed as a national of the United States by a person who is within the United States. The Court of Appeals reversed the district court and held that the applicable "final administrative denial" for determining when the five-year limitation period for seeking adjudication of citizenship had run was the Department's denial of his passport application in 1980 rather than the Department's prior approval of certificate of loss of nationality in 1965.

10/ Section 360(a) of the Immigration and Nationality Act, 8 U.S.C. 1503(a), reads:

> Sec. 360. (a) If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under the provisions of section 2201 of title 28, United States Code, against the head of such department or independent agency for a judgment declaring him to be a national of the United States, except that no such action may be instituted in any case if the issue of such person's status as a national of the United States (1) arose by reason of or in connection with any exclusion proceeding under the provisions of this or any other act, or (2) is in issue in any such exclusion proceeding. An action under this subsection may be instituted only within five years after the final administrative denial of such right or privilege and shall be filed in the district court of the United States for the district in which such person resides or claims a residence, and jurisdiction over such officials in such cases is hereby conferred upon those courts.

The Third Circuit in Whitehead said it was hard pressed to see how a "final administrative denial" of a right or privilege might result from the issuance of a certificate of loss of nationality. The act of expatriation by formal renunciation, the court stated, occurs entirely without formal or informal administrative determination. The court found, therefore, that the automatic issuance of a certificate of loss of nationality upon the act of a formal renunciation does not constitute a final administrative denial for the purpose of determining when the five-year time limitation contained in section 360(a) begins to run. The denial of Whitehead's passport application in 1980, the court stated, is an occurrence which constitutes such a denial.

It is clear that Whitehead relates solely to the five-year statutory time limitation within which proceedings may be instituted in a district court of the United States for a declaration of United States nationality. Since the complaint was filed within five years of Whitehead's passport denial, the court concluded that his claim was not time barred under section 360(a). The court, as noted above, considered the denial of Whitehead's passport application a "final administrative denial" of a claim or right or privilege as a United States national for maintaining a section 360(a) action.

This Board has jurisdiction to hear and decide appeals from "administrative determinations" of loss of nationality or expatriation under subpart C of 22 CFR Part 50. With respect to loss of nationality through formal renunciation, 22 CFR 50.50 provides that the diplomatic or consular officer shall forward to the Department for approval the oath of renunciation together with a certificate of loss of nationality, as provided by section 358 of the Immigration and Nationality Act. If the certificate of loss of nationality is approved by the Department, copies of the certificate are required to be forwarded to the Immigration and Naturalization Service, Department of Justice, and to the person to whom it relates or his or her representative. 22 CFR 50.52 provides that such person or representative be informed of the right to appeal "the Department's determination" to the Board of Appellate Review within one year after approval of the certificate of loss of nationality. Under the regulations, approval of the certificate by the Department constitutes an administrative determination of loss of nationality from which an appeal may be taken to this Board, and establishes the date from which the time limit on an appeal shall commence to run.

The term "administrative determination" as used in the federal regulations relating to the Board's jurisdiction is not synonymous with the term "final administrative denial of such

right or privilege" found in section 360(a) of the Immigration and Nationality Act as the latter term is interpreted by the Third Circuit in Whitehead, supra. The term "administrative determination" is a general and descriptive one; it is not a technical term with a fixed or specific content. Generally, it means a decision or judgment or finding reached after weighing the facts and taking into account the applicable law and regulations. The term would include the Department's approval of a certificate of loss of nationality issued by a diplomatic or consular office. It should be noted that the approval of a certificate of loss of nationality is the end of the matter on the administrative level, unless, of course, the affected party avails himself of the right to have his case reviewed by the Board of Appellate Review.

In sum, an administrative determination for the purpose of the Board's jurisdiction in citizenship cases is the Department's holding of loss of nationality in a particular case as evidenced by an approved certificate of loss of nationality.

III

We must now decide whether the Board may consider and determine an appeal entered nineteen years after appellant received notice of the Department's administrative determination or holding of loss of nationality. In order to do so, the Board must conclude that the appeal was filed within the limitation prescribed by the applicable regulations.

Timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). If an appellant does not bring the appeal within the applicable limitation and adduces no legally sufficient excuse therefor, the appeal must be dismissed for want of jurisdiction. Costello v. United States, 365 U.S. 265 (1961).

Under existing regulations, the time limit for filing an appeal from the Department's administrative determination of loss of nationality is one year "after approval by the Department of the certificate of loss of nationality or a certifiate of expatriation." 11/ The regulations require that an appeal filed after one year be denied unless the Board determines for good cause shown that the appeal could not have been filed within one year after approval of the certificate. 12/ These regulations, however, were not in force on July 6, 1967, when the Department approved the certificate of loss that was issued in this case.

11/ 22 C.F.R. 7.5(b) (1986).

12/ 22 C.F.R. 7.5(a) (1986).

The regulations in effect on July 6, 1967, regarding an appeal by a nationality claimant, had the following provision:

> A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Review on Loss of Nationality. 13/

The "reasonable time" limitation in the above regulation was adopted in the regulations promulgated for the Board of Appellate Review when it was established in 1967, and remained in effect until revoked on November 30, 1979, by the current regulations. 14/

We consider the "reasonable time" limitation in effect in 1967 to govern in the instant case, and not the current limitation of one year after approval of the certificate of loss of nationality. It is generally accepted that a change in regulations shortening a limitation period, as current regulations prescribe, operates prospectively, in the absence of an expression of a contrary intent. If a retrospective effect were given, an injustice might result or a right that was validly acquired under previous regulations might be disturbed.

13/ 22 C.F.R. 50.60, 31 Fed. Reg. 13539 (1966). The Board of Review on Loss of Nationality terminated its activities with the establishment of the present Board of Appellate Review in 1967 (32 Fed. Reg. 16258).

14/ 22 C.F.R. 50.60 (1967-1979), 32 Fed. Reg. 16259 (1967) provided:

> A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review.

Thus, under the above governing limitation, a nationality claimant, who contends that the Department's holding of loss of nationality is contrary to law or fact, is required to take an appeal from such holding within a reasonable time after receipt of notice of such holding. If an appeal is not initiated within a reasonable time, the appeal would be barred by the passage of time and the Board would have no alternative but to dismiss it for lack of jurisdiction. The limitation of "within a reasonable time" is fundamental to the Board's exercise of jurisdiction in this case. 15/

The determination of what constitutes a reasonable time depends on the facts and circumstances in a particular case. Generally, a reasonable time means reasonable under the circumstances. It has been held to mean as soon as circumstances will permit, and with such promptitude as the situation of the parties and the circumstances of the case will allow. This does not mean, however, that a party will be allowed to determine a time suitable to himself. What is a reasonable time also takes into account the reason for the delay, whether the delay is injurious to another party's interest, and the interests in the repose, stability, and finality of prior decisions. 16/

15/ The Attorney General in an opinion rendered in the citizenship case of Claude Cartier in 1973 stated:

> The Secretary of State did not confer upon the Board the power...to review actions taken long ago. 22 CFR 50.60, the jurisdictional basis of the Board, requires specifically that the appeal to the Board be made within a reasonable time after the receipt of a notice from the State Department of an administrative holding of loss of nationality or expatriation.

Office of Attorney General, Washington, D.C. File: CO-349-P, February 7, 1972.

16/ See Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931); In re Roney, 139 F.2d 175 (1943); Lairsey v. Advance Abrasives Co., 542 F.2d 928 (5th Cir. 1976); Security Mutual Casualty Co. v. Century Casualty Co., 621 F.2d 1962 (10th Cir. 1980); Ashford v. Steuart, 657 F.2d 1053 (9th Cir. 1981)

The rationale for requiring that an appeal be filed within a reasonable time is to allow an appellant sufficient time to assert his or her contentions that the Department's finding of loss of nationality is contrary to law or fact. It is intended to compel one to take such action while the recollection of events upon which the appeal is grounded is fresh in the minds of parties concerned and sufficient evidence is available to enable an appellate body to consider and determine the appeal.

Here, as we have seen, the Embassy forwarded to appellant on August 2, 1967, a copy of the certificate of loss of nationality, which appellant admitted having received. Appellant did not enter an appeal until March 2, 1987.

Appellant testified at the hearing that prior to 1985 he did not have the courage to raise the issue of his loss of nationalitiy with embassy or consular officers. He said that until that time, although always of the belief that he renounced his United States citizenship against his will, he did not think anyone would believe his "story". He said that in 1985, after discussing his renunciation of citizenship with some friends in New York, he was encouraged by them "to challenge the State Department, and tell them that this was done against my will ." 17/

In the citizenship information form, which he executed on October 2, 1986, appellant stated that he appeared at the consular office at the Embassy in Paris, France, and asked "if they could assist" him. He reported the outcome of that interview as follows:

> ...They suggested that I consult with an attorney. The lawyer I retained recommended that I should just apply for a passport. After I entered the United States on February 14, 1986 I went to the passport office in Stamford, Conneticut and completed form DSP-11 and paid the fee. After several months I contacted the passport office and was told I had renounced my citizenship. I told them that this was done involuntarily.

As noted above, appellant submitted his passport application on July 25, 1986, at Stamford Passport Agency, which disapproved it on February 9, 1987.

17/ Transcript of hearing In the Matter of R M - S , Board of Appellate Review, Department of State, June 5, 1987 (hereafter referred to as "TR"), 42, 43.

Appellant's counsel in his brief pointed out that at the time appellant received the certificate of loss of nationality in 1967 he "was in no position to mount a challenge." Counsel stated that the same parental pressure that had forced appellant to take the oath of renunciation prevented him from making any attempt "to contest the issuance of the certificate." While parental pressure may have accounted for appellant's failure to take an appeal in the year or so following notice of his loss of citizenship, it strains credulity to accept that such pressure persisted during his adult years.

At the hearing, appellant's counsel also contended that "blame for not proceeding at an earlier time" is not completely appellant's; it rests partly on the Department because of its failure to follow its own internal guidelines and notify him that he had a right of appeal. 18/

The record before us does not disclose whether appellant was informed, pursuant to standing Department guidelines, that he had the right to take an appeal. 8 Foreign Affairs Manual 224.21(a) (1962), "Advice on Making Appeals." Absent evidence we have no way of knowing whether the Embassy complied with standing Departmental instructions and sent appellant information about making an appeal. But, assuming, arguendo, that appellant did not receive the information about making an appeal, we still do not consider that his delay of nineteen years to take an appeal was justified or excusable. Here appellant performed the most unequivocal act of expatriation, formal renunciation of his United States citizenship. He knew on June 15, 1967, that he had lost his American nationality, a fact that was officially confirmed when he received notice of the Department's holding of loss. He had ample cause therefore to have been put upon inquiry. And the opportunity to find out what right of redress he might have was readily at hand, as appellant could have ascertained by inquiring at any United States diplomatic or consular establishment abroad. In failing to make any inquiries until years later, he cannot be said to have exercised reasonable care or shown interest in recovering his United States citizenship. It is firmly settled that implied notice of a fact is legally sufficient to impute actual notice to a party. The law imputes knowledge when opportunity and interest, coupled with reasonable care, would necessarily impart it. U.S. v. Shelby Iron Co., 273 U.S. 571 (1926); Nettles v. Childs, 100 F.2d 952 (1939).

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18 / TR 120, 121.

It can hardly be denied that a substantial period of time transpired before appellant took this appeal. Appellant did not dispute his loss of citizenship until he gave notice of appeal to this Board on March 2, 1987, following the Departement's disapproval of his application for a United States passport on February 9, 1987. At the hearing, he testified that he never thought of making any inquiry at a diplomatic or consular office of the United States, because he was ashamed of what he had done, or of taking steps to investigate the matter. 19/

That appellant had ample opportunity to take an appeal prior to 1987 is beyond dispute. In our view, his failure to take any action before then demonstrates convincingly that his delay in seeking appeal was unreasonable. The period of reasonable time commences to run with appellant's receipt of the Department's holding of loss of nationality in 1967, as evidenced by the approved certificate of loss of nationality, and not, as appellant maintains, on February 9, 1987, when the Department denied him a passport. Whatever the meaning of the term "reasonable time" as used in the regulations may be, we do not believe that such language contemplates a delay of nineteen years in taking an appeal. In our opinion, appellant's delay was unreasonable in the circumstances of this case

IV

On consideration of the foregoing, it is our judgment that the appeal was not taken within a reasonable time after appellant received notice of the Department's holding of loss of nationality. As a consequence, the appeal is time barred, and the Board is without jurisdiction to consider it. The appeal is hereby dismissed.

Given our disposition of the case, we do not reach the other issues that may be presented.

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Member

19/ TR. 59, 60.