DEPARTMENT OF STATE

December 20, 1990

BOARD OF APPELLATE REVIEW

Decision No. 90-16

IN THE MATTER OF: M T B
Motion for Reconsideration

The Board of Appellate Review on May 15, 1990 affirmed an administrative determination of the Department of State that M T B expatriated himself on December 3, 1986 under the provisions of section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), by voluntarily making a formal renunciation of United States nationality with the intention of relinquishing that citizenship before a consular officer of the United States at Tel Aviv, Israel. Pursuant to 22 CFR 7.10, 1/ B moved for reconsideration of the Board's decision on October 2, 1990.

We grant the motion and reverse our original decision on Bolling's appeal.

1/ 22 CFR 7.10 provides that:

> The Board may entertain a motion for reconsideration of a Board's decision, if filed by either party. The motion shall state with particularity the grounds for the motion, including any facts or points of law which the filing party claims the Board has overlooked or misapprehended, and shall be filed within 30 days from the date of receipt of a copy of the decision of the Board by the party filing the motion. Oral argument on the motion shall not be permitted. However, the party in opposition to the motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the date the Board forwards a copy of the motion to the party in opposition. If the motion to reconsider is granted, the Board shall review the record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

I

B argues in support of his motion that the Board did not fully appreciate the nature of the duress to which he was subjected by the leadership of the Black Hebrew Community of which he was a member to renounce his United States nationality. His submission of October 2, 1990 details clearly and credibly the nature of the pressure exerted on him by the Community leadership and how the leadership played on his fears of being deported from Israel and separated from his family if he did not comply with the orders of the Community leaders.

The Department of State did not file a memorandum in opposition to B 's motion, but on December 5, 1990 submitted a statement the main points of which may be summarized as follows:

-- After the Board decided B 's appeal, the Department adopted new policy guidelines for administrative review of its decision on loss of nationality as a result of formal renunciation by members of the Black Hebrew Community.

-- The rationale for adopting new policy guidelines to determine whether a renunciant in the Black Hebrew Community made a free reasoned choice in renouncing American citizenship is that the environment in which members of the Community live is not conducive to making a free choice, when ordered to do so, whether to renounce citizenship or not.

-- The Department has therefore since adoption of the new policy guidelines reversed a large number of its original decisions of loss of nationality.

-- Accordingly, the Department stated, "we believe the Board should take this development into consideration when reviewing [B 's] request for review of its previous decision."

II

As an initial matter, we must determine whether we may entertain appellant's motion for reconsideration. A motion for reconsideration shall be filed within 30 days after the moving party receives a copy of the Board's decision on his citizenship appeal. Footnote 1 supra. In the instant case, B received on June 4, 1990 a copy of the Board's decision, which had been forwarded to him by the Embassy at Tel Aviv. He therefore had until July 5, 1990 to move for reconsideration. He did not do so until October 2, 1990. Nonetheless, several considerations warrant our entertaining his motion.

On July 27, 1990, the Chairman of the Board wrote to B as follows:

> The Department of State has recently made a policy decision affecting the handling of the cases of members of the Black Hebrew Community in Israel who have made a formal renunciation of their United States nationality. Such persons may, upon making a satisfactory statement of their reasons for believing that they were coerced to renounce their nationality, have their loss of nationality cases reviewed administratively by the Department, without making a formal appeal to this Board. Your case does not qualify for such review since the Board's decision on your appeal is final within the Department. However, in light of the Department's new policy, the Board considers it fair that you be given an opportunity to have your case reviewed by the Board. Accordingly, this letter is sent to advise you that the Board is prepared to entertain a motion for reconsideration of its decision on your appeal.

Following the Board's invitation to file a motion for reconsideration, B went to the Embassy at Tel Aviv in August to seek information about filing a motion for reconsideration. Thereafter, as noted above, on October 2, 1990 he wrote to the Board, setting forth his reasons for requesting that the Board reconsider its decision on his appeal.

In view of the fact that the Board itself urged B to seek relief; the Department's sympathetic stance with respect to the merits of his case; the evident lack of prejudice to the Department if we allow the motion; and the relatively brief delay in availing himself of the right to file a motion for reconsideration - all these considerations, we deem constitute good cause for the motion not being filed within the 30-day limitation. Accordingly, pursuant to 22 CFR 7.11, we will exercise our discretion and allow the motion. 2/

2/ 22 CFR 7.11 provides in pertinent part that: "The Board for good cause shown may in its discretion enlarge the time prescribed by this part for the taking of any action."

III

We find the Department's position - the environment of the Community at Dimona is not conducive to permit a free, unfettered and rational choice to renounce American citizenship - persuasive. Upon further review of the record and reconsideration, we are now unable to conclude that appellant's formal renunciation was wholly without taint of coercion. In our opinion, a renunciation procured by pressure, even pressure exerted on a presumptively strong, resourceful person cannot stand as a matter of law.

IV

Upon consideration of the foregoing, we hereby reverse our decision of May 15, 1990 in which we affirmed the Department's determination that B. voluntarily renounced his United States citizenship with the intention of terminating that citizenship.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member