DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

Decision No. 90-17

IN THE MATTER OF: L L G
Motion for Reconsideration

The Board of Appellate Review on January 11, 1990 affirmed an administrative determination of the Department of State that L L G expatriated herself on April 28, 1987 under the provisions of section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), by voluntarily making a formal declaration of allegiance to Mexico with the intention of relinquishing her United States citizenship.

Ms. G moves for reconsideration of the Board's decision. 1/ For the reasons given below, we grant the motion and reverse our decision of January 11, 1990.

1/ 22 CFR 7.10 provides:

> 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

The Board transmitted a copy of its decision on the the appeal taken by L L G to the Consulate General at Monterrey on January 12, 1990, requesting that the consulate forward it to her. She acknowledged receipt of a copy of the opinion on January 30, 1990.

Thereafter, on July 12, 1990 the Board decided the citizenship appeal of her sister, T G . The Board remanded T 's case to the Department (at the Department's request) so that the certificate of loss of nationality that was approved in T 's name might be vacated. In requesting that T 's case be remanded, the Department stated:

> The Department is not unmindful of Matter of L L G , Dec.Bd.Ap.R., January 11, 1990, where the Board affirmed the Department's determination of loss of citizenship in very similar circumstances. The Department considers that the evidentiary standard now in effect requires a different conclusion in this case. Whether the result in the case of L L G should and could be reversed can only be determined if she were to seek to reopen the decision of the Board.

The evidentiary standard to which the Department referred was adopted in April 1990 and is based on the premise that American citizens intend to retain United States citizenship when they perform certain statutory expatriative acts, among them subscribing to a routine declaration of allegiance to a foreign state. 2/

Following issuance of the Board's decision remanding the case of T G , to the Department, the Chairman wrote to L G on August 16, 1990. After calling attention to the Board's decision in T 's case and the Department's observation concerning her own case (see above), the Chairman called L 's attention to 22 CFR 7.10 (note 1 supra) which provides that either party to a loss of nationality proceeding may move for reconsideration

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2/ See "Advice about Possible Loss of U.S. Citizenship and Dual Nationality," leaflet released to the public on September 21, 1990, by the Department's Bureau of Consular Affairs.

of a Board decision. Perhaps, after the Board rendered its decision on her appeal, the Chairman wrote, she did not realize she might move for reconsideration. The Chairman provided guidance on how to file a motion for reconsideration.

Meanwhile, on August 1, 1990, L G had written a letter to the Department of State (not to the Board of Appellate Review) which read as follows:

> Due to the change in policy that resulted in a new evidentiary standard on cases involving loss of U.S. citizenship of which I was informed by the U.S. Consulate General at this city /Monterrey/, I hereby seek to reopen the Board's decision and request administrative reconsideration on the Department's determination of loss of citizenship which was affirmed by the Board of Appellate Review on January 11, 1990.
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> On a memorandum sent by the Department of State to the Board of Appellate Review on the subject of my sister's Citizenship Appeal it is stated that the Department considers that this new evidentiary standard requires a different conclusion in my own case and that the result should and could be reversed, which is what I am requesting.
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> I would like to take this chance to remind you what I always stated while appealing: that even I've got a Certificate of Mexican Nationality (CMN), I never intended to relinquish my U.S. Citizenship and I was just doing what I was told to by my father.

On October 1, 1990, L G wrote to the Board to state that she had just received the Chairman's August 16th letter. She professed to be uncertain about what she should do to state a case for reconsideration, and simply noted to the Board "all I have done" about loss of her citizenship since September 1987. She enclosed copies of all the letters "I've sent during this two years since my first letter to you; there is nothing else I can say or more evidence from but what I have already presented to you."

The Board forwarded L G 's submissions to the Department on November 8, 1990, advising that if the Department wished to file a memorandum in opposition to L 's motion for reconsideration, it should do so within the time prescribed by 22 CFR 7.10. (Note 1 supra).

The Department submitted the following memorandum, dated December 12, 1990:

> The Department is opposed to Ms. G ' motion for reconsideration of loss of citizenship. In accordance with 22 CFR 7.10, Ms. G had until February 11, 1990 to file her motion for reconsideration. 2/ The time has long since past /sic/ to make her request viable.
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> The Department would have no objection to the Board entertaining the motion for reconsideration in the event it can find a basis under its regulations.

II

As an initial matter, we face the issue of whether to allow L G ' motion for reconsideration, for it was not filed within 30 days after she received a copy of the Board's decision on her citizenship. See 22 CFR 7.10.

Under 22 CFR 7.11, the Board for good cause shown may in its discretion enlarge the time prescribed by the regulations for the taking of any action.

Ms. G suggests that she did not file a motion for reconsideration within the time allowed because she did not realize until after expiry of the time for filing that she had such recourse. In itself such a reason is hardly good cause for not complying with the requirements of the regulations. But other considerations are relevant to the question whether it would be proper for the Board to exercise its discretionary authority and allow the motion. Ms. G , who at this date is only 21 years old, is not now represented by counsel, nor was she when the Board heard her appeal; she appears pro se. Some allowance may therefore appropriately be made for her ignorance of the regulatory requirements for filing a motion for reconsideration. We are impressed that she has shown concern about loss of her nationality from the first, and acted promptly to inquire about what she might do to recover

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2/ Appellant, of course, had until March 2, 1990 to file a motion, that is, 30 days after her receipt of a copy of the Board's decision.

citizenship once she learned that the Department had made a favorable decision in her sister T 's essentially similar loss of nationality case. Account too must be taken of the fact that there would be no prejudice to the Department if we allow the motion for reconsideration; the Department has in fact shown sympathy for Ms. G ' situation, and suggests that fairness would justify the Board's reversing its adverse decision on her appeal. While it is obvious that several months passed after expiry of the prescribed limit for moving for reconsideration, the length of the delay is by no means excessive, taking into consideration the circumstances and the other relevant factors presented here.

In short, the circumstances surrounding the filing of Ms. G ' motion for reconsideration are unique. The combination of variables here argues strongly for the Board to allow the motion, for they constitute in their sum sufficient good cause to permit the Board to exercise its discretion to enlarge the time for filing the motion. 3/ Accordingly, we will proceed to the merits of the motion.

III

In our opinion of January 11, 1990 we expressed the view that the evidence dating from the time Ms. G did the expatriative act established that she probably intended to relinquish her United States citizenship. Furthermore, the Board was of the view that appellant acted knowingly and intelligently, for, as we stated, the evidence showed that she understood what she was doing when she applied for a certificate of Mexican nationality (CMN) and in the process declared allegiance to Mexico.

In considering appellant's request for reconsideration of our decision, we will focus on whether we drew fair inferences from the evidence with respect to whether she acted knowingly and intelligently.

Upon further review of the record and reconsideration, we believe the Board should have given more weight to appellant's age at the time she did the expatriative act. She was then eighteen years old; although of legal age, it was only

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3/ The Board's holding on the timeliness of the motion for reconsideration that was filed in this case should not be considered precedential. The case before the Board is plainly sui generis. Whether in the future a motion for reconsideration filed outside the 30-day limitation should be allowed will be determined in light of all the facts and circumstances of the particular case.

by fifteen days. For age not to have been an important element in ascertaining her intent, evidence that appellant unambiguously willed loss of her citizenship would have to be adduced. The evidence was not that unambiguous.

We also feel that the Board should have attached greater significance to appellant's father's affidavit. In that affidavit her father averred that he counseled her to apply for a CMN and that he himself did not know such an act which entailed making a declaration of allegiance to Mexico could result in loss of his daughter's citizenship. Indeed, it is suggested in the affidavit ("she always said she wanted to live in the U.S. as soon as she could support herself") that at the relevant time loss of her United States citizenship was far from appellant's purpose. Although we had reason to believe that appellant knew that she needed a CMN in order to avoid the higher university tuition charged foreign students, it does not follow, as we implied, that appellant clearly perceived that if she made the required declaration of allegiance to Mexico her expatriation would probably ensue.

In brief, upon review, we find that the evidence before the Board was insufficiently indicative of an express will and purpose on the part of Ms. G to relinquish citizenship to warrant a conclusion that she made a knowingly and intelligent waiver of her United States citizenship.

IV

On consideration of the foregoing, we hereby reverse our decision of January 11, 1990.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member