DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

Decision # 94-3

Date: November 8, 1994

IN THE MATTER OF: K A B

K A B appeals from a determination made by the Department of State on November 23, 1984, that she expatriated herself on September 27, 1984, under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Hamburg, Germany.[1] The appeal was entered in early 1994, nearly ten years after the Department held that appellant expatriated herself. Since the appeal was not entered within the prescribed limitation (one year after approval of the certificate of loss of nationality) and since appellant has not shown good cause why the appeal could not have been filed within the prescribed time, we conclude that the appeal is time-barred. Accordingly, we dismiss it for lack of jurisdiction.

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[1] Section 349(a)(5) of the Immigration and Nationality Act, 9 U.S.C. 1481(a)(5), provides:

> Sec. 349. (a) A person who is a national of the United States whether by birth of naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality - -
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> . . .
>
> (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; . . .

I

Appellant acquired United States citizenship by virtue of her birth at Bremerhaven, Federal Republic of Germany, on [redacted], to a United States citizen father.[2] Her mother is a German citizen. Having been born abroad to a citizen father and alien mother, appellant was subject to certain requirements to retain citizenship. In 1964, the law required that such persons reside in the Unites States for 5 years between the ages of 14 and 28; in 1972, the period of residency was reduced to 2 years; and in 1978, the condition subsequent was repealed.[3] Persons like appellant who had not reached their 28th birthday by [redacted], were exempt from the residency requirement.

Appellant states that shortly after her birth, her parents took her to the United States where the family lived from August 1964 to August 1966. The family then returned to Germany where they resided for 4 years, until December 1970 when they went back to the United States. Sometime thereafter, appellant's father allegedly was sent to prison, and her mother, not knowing how she could support herself, appellant and her sister, decided that they should all return to Germany.

The record shows that in 1980 appellant obtained a United States passport at the Consulate General at Bremen. Subsequently, because she allegedly feared that the United States would take away her citizenship for not meeting the residency

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[2] Appellant acquired United States citizenship pursuant to section 301(a)(7) of the Immigration and Nationality Act, now section 301(g), 8 U.S.C. 1401 (g), which in 1964 read in relevant part as follows:

> (a) The following shall be nationals and citizens of the United States at birth:
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> . . .
>
> (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years; . . .

[3] See 8 USCA 1401, Historical and Statutory notes. (1994).

requirements to retain citizenship and she would become stateless, appellant applied to be naturalized as a German citizen. (Although born of a German citizen mother, appellant did not acquire German nationality at birth; until January 1975, children born of a German citizen parent and an alien parent acquired German citizenship only if the father was a German citizen.)

Under German law, an applicant for naturalization must establish that he or she has relinquished former nationality before the grant of German citizenship takes effect. Accordingly, appellant went to the United State Consulate General at Hamburg in the autumn of 1984 to make a formal renunciation of her United States citizenship. On September 27, 1984, she executed a statement of understanding, acknowledging, inter alia

-- she had the right to relinquish her United States citizenship and was doing so voluntarily;

-- she would, after renouncing, become an alien toward the United States;

-- she had been afforded an opportunity to make a separate written explanation of the reasons for her renunciation, but did not choose to do so; and

-- that the extremely serious nature of her contemplated act had been fully explained to her by the consular officer concerned and that she fully understood those consequences.

The statement was duly witnessed and attested. Appellant then made the prescribed oath of renunciation: "I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and duties of allegiance and fidelity thereto pertaining."

As required by law, the consular officer who presided executed a certificate of loss of nationality (CLN) in the name K A B .[4] Therein he certified that appellant

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[4] 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 (continued...)

acquired United States nationality by virtue of her birth in Germany of a United States citizen father; that she made a formal renunciation of United States nationality; and thereby expatriated herself under the provisions of section 149(a)(5) of the Immigration and Nationality Act.

The Consulate General referred the case to the Department for adjudication under cover of a memorandum which stated:

> The enclosed Certificate of Loss of the Naturalization of the United States on behalf of Ms. K A B is being submitted for the Department's approval. Ms. B applied for German naturalization; proof of loss of the nationality of the United States was a prerequisite for naturalization in the Federal Republic of Germany.
>
> The Consular Officer interviewed at length and in detail. Subject clearly understood significance of Oath of Renunciation, which was explained to her in detail. She explained her wish to give up American citizenship in order to acquire citizenship in the Federal Republic of Germany. She had no mental reservations or hesitations about taking the oath.
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> Conoff recommends a finding of loss of U.S. nationality.

The Department approved the CLN on November 23, 1984, approval being an administrative determination of loss of nationality from which a timely appeal may be taken to the Board of Appellate Review. A copy of the approved certificate was sent by the Consulate General to appellant who acknowledged receipt on December 21, 1984.

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[4](...continued)
the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary. 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.

In January 1994, appellant informed the Board that she wished to appeal from the Department's holding of loss of her citizenship. She concedes that she acted voluntarily but submits that she lacked the requisite intent to relinquish her United States citizenship because she misapprehended the legal facts pertaining to her citizenship status. She explains that because she had to return to Germany, she could not live in the United States long enough to fulfill the residency requirements to retain her citizenship, that is, reside in the United States for 5 years before attaining the age of 28 years. (She was, of course, correct as far as the residency requirement pertaining in 1964 was concerned.) After she returned to Germany in late 1971 and for some years thereafter, she allegedly feared that she would lose her United States citizenship "by not maintaining the required five years of residency." (She was wrong in assuming that after 1972 she needed to reside in the United States for 5 years, for, as noted above, in 1972 the period was reduced to 2 years. Thereafter, in 1978, the residency requirement was appealed.)

> Appellant stated her case as follows:
> After returning to Germany with my mother, it was imperative for me to do something about citizenship before becoming a 'Stateless Person'. I actually thought that if the U.S. took my citizenship away for not meeting residency requirements that I'd have no citizenship at all. This was the basis for my formal renounciation [sic] of U.S. citizenship. By renouncing U.S. citizenship, I became a German citizen by virtue of my mother. Had I known at that time that I would not have automatically lost my U.S. citizenship by not maintaining the required five year residency, I would have never formally renounced it. To the best of my knowledge now, the residency law changed in 1984, the same year I renounced U.S. citizenship. I was never provided information about the change in this law and was under the true belief that I would lose my citizenship whether I renounced it or not. During the formal renounciation [sic] at the U.S. Consulate in Hamburg, Germany, no one asked me about my situation. No one provided me with information about the new law. The Vice Consul at that time, Mr. Ortblad, never asked me why I was renouncing my U.S. citizenship.

II

As an initial matter the Board must determine whether the jurisdictional prerequisites to our consideration of the appeal have been satisfied. Timely filing being mandatory and jurisdictional, (United States v. Robinson, 361 U.S. 220 (1961)), the Board's jurisdiction depends upon whether the appeal was filed within the limitation on appeal prescribed by the applicable federal regulations. The limitation on appeal is set forth in section 7.5(b)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1), which reads as follows:

> A person who contends that the Department's administrative holding 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 of the Department of the certificate of loss of nationality or a certificate of expatriation.

The regulations further provide that an appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time. 22 CFR 7.5(a).

The Department of State on November 23, 1984, approved the CLN that was executed by the Consulate General at Hamburg in appellant's name. Under the regulations, she had until November 1985 to appeal the Department's holding. She did not do so, however, until 1994, nearly 10 years after the time allowed for appeal. Appellant's delay in seeking appellate review of her case may therefore be excused only if she is able to show a legally sufficient reason for not moving within the prescribed time.

"Good cause" is a term of art and settled meaning. It is defined in Black's Law Dictionary, 5th ed. (1979), as "a substantial reason, one that affords a legal excuse. Legally sufficient ground or reason." What constitutes good cause depends upon the circumstances of the particular case. In general, to establish good cause for taking an action belatedly one must show that unforeseen circumstances beyond one's control intervened to prevent one from taking the required action.

There is no question that appellant received in timely fashion a copy of the approved CLN with information on the reverse about the time limit on appeal and how one might pursue an appeal before the Board. From the first she was on notice of her right to appeal and how to make one.

As we understand appellant's position, she maintains that we should allow her appeal because not until late 1993 did she learn that she renounced her citizenship under a misapprehension about United States law as it applied to her case; and because she was not informed about appeal of the citizenship retention requirements before she renounced her citizenship.

The Board does not consider such an explanation legally sufficient to permit us to excuse appellant's long delay in seeking redress in this matter.

It was no one's fault but appellant's that she was uninformed in 1984 about the repeal of citizenship retention requirements. By her own account, she was aware from an early date that there were citizenship retention requirements for people like herself. With that knowledge it was incumbent on her to keep informed about changes in the law. One might imagine , for example, that when she applied for a passport in 1980 at the Consulate General in Bremen she would have so inquired.

If indeed she renounced her citizenship because she feared she might soon become stateless by failing to meet the residency requirements, she should have sought official advice before acting. Not having done so, she may not now be heard to assert that because she acted in ignorance of the true situation, the Board should hear her case 10 years later. We find a parallel to appellant's case in a recent case, Icaza v. Shultz, 656 F. Supp. 819 (D.D.C. 1987). In Icaza, the court held that an action by an individual to be declared a United States citizen was time-barred because she did not start her action within the time allowed. There the plaintiff argued that although she did not move within the time allowed, she should be entitled to a new trial on the issue of her entitlement to citizenship because the government had an obligation to inform her of changes in the law that affected her entitlement to citizenship. The court rejected plaintiff's claim, asserting that the government had no obligation to inform her of changes in the residency requirements to retain citizenship.

Since in the case before us, the government had no obligation to inform appellant that the residency requirement had been repealed in 1978, she may not rely on her alleged ignorance of its repeal to assert that she should be excused from complying with the limitation on appeal.

III

Since the appeal was not filed within one year after the Department approved the certificate of loss of appellant's nationality and since she has failed to show good cause why the Board should enlarge the prescribed time for taking the appeal, the Board has no discretion to allow the appeal. It is time-barred and must be, and hereby is, denied for lack of jurisdiction.

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

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

George Taft, Member