DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

Decision # 96-2 July 10, 1996

IN THE MATTER OF: C S DeL

This case is before the Board of Appellate Review on the appeal of C S DeL from an administrative determination of the Department of State that he expatriated himself on March 12, 1987, under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer at Calgary, Alberta, Canada.[1]

The Department of State on March 27, 1987, approved the certificate of loss of nationality (CLN) that was issued in appellant's name. This appeal was entered in June 1995. Since the appeal was not made within one year after approval of the CLN, as prescribed by Federal Regulations, and since he has submitted no legally sufficient reason for not acting within the prescribed limitation, we conclude that the appeal is time-barred and 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 or 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 the nationality of the United States under section 301(a)(3) [now section 301 (c)] of the Immigration and Nationality Act by birth of two United States citizen parents on [redacted], at [redacted], Canada. He also acquired the nationality of Canada by virtue of his birth therein.

In early 1987, appellant visited the United States Consulate General at Calgary where he inquired about renouncing his United States citizenship. According to records of the Consulate General, the Consul General "spent a great deal of time discussing the issues with him [DeL] when he came to renounce and he was sent away." In March 1987, appellant returned to the Consulate General and stated to a vice consul that he wanted to renounce.

On March 12, 1987, in the presence of the Vice Consul and two witnesses, appellant made the prescribed oath of renunciation, the operative part of which reads:

> I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(5) 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.

He also subscribed to a statement of understanding in which he acknowledged inter alia that: he had the right to renounce his citizenship; was exercising that right "freely and voluntarily, without any force, compulsion, or undue influence" placed on him by any person; "the extremely serious irrevocable nature of the act" had been explained to him by the Vice Consul and he "fully understood its consequences"; he chose to make a separate written explanation of his reasons for renouncing.

Appellant's separate written statement reads as follows:

> My renunciation of citizenship of the United States of America is for the reason that I was born and raised in Canada, and that I plan to remain indefinitely. My renunciation is in no way a statement against the United States of America, it's [sic] people, government, or policies.

Appellant was then aged 18 years and one month.

As prescribed by law, the Vice Consul prepared a certificate of loss of nationality (CLN) in appellant's name.[2] Therein he certified that appellant acquired the nationality of the United States by virtue of his birth in Canada of two United States citizen parents; and that he made a formal renunciation of his United States nationality, thereby expatriating himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

The Consulate General forwarded the certificate and supporting papers to the Department for approval under cover of a memorandum which reads:

> He was issued a report of Birth Abroad on March 6, 1973 in Calgary under the provisions of Section 301(a)(3)INA. The applicant was included on his mother's U.S. passport Z1998232 issued April 11, 1974, in Calgary.
>
> The applicant came to the office earlier this year to discuss his plans to renounce his United States citizenship. He discussed the

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[2] Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501 (1996), provides:

> 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. 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. Approval by the Secretary of State of a certificate under this section shall constitute a final administrative determination of loss of United States nationality under this chapter, subject to such procedures for administrative appeal as the Secretary may prescribe by regulation, and also shall constitute a denial of a right or privilege of United States nationality for purposes of section 1503 of this title.

> matter with the consular officer and returned to the office on March 12, 1987. Mr. DeL stated that after careful consideration, he had decided to renounce his United States citizenship. He gave a written statement to the effect that his renunciation was not a statement against the U.S., its people, government or policies. A Certificate of Loss of Nationality has been prepared for Department's approval.

The Department approved the CLN on March 27, 1987, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

Appellant gave notice of appeal in June 1995.

He maintains that he did not renounce his United States nationality voluntarily, rather acted under the duress of his mother. For six months prior to his 18th birthday, his mother told him "almost daily" that he should renounce. His mother's reasons, appellant alleges, were that he had not been born in the United States and thus "did not deserve" United States nationality; and her "irrational" belief that he would be drafted and be sent to a foreign war. He continues:

> The emotional pressure became so intense (daily reminders, hand wringing, crying, thinly veiled threats of suicide) that by my eighteenth birthday, I felt I had no other option but to renounce my United States nationality. My mother even took the precaution of telling me to make sure to tell the consular officials that the renunciation was completely voluntary, obviously knowing that I would be asked this question. I dutifully followed her orders.
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> * * *
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> Renouncing my United States nationality was the only thing that would make my living with my mother bearable. At the time I was only 18 years old, quite emotionally dependent on my mother, still in high school and not employed. I could not afford to live elsewhere. My only option was to live with my mother. I was young, and of the belief that 'my mother loves me, she obviously knows what is best for me'. I had no other adult influence in Calgary and was not close to any other adult members of my family, she was my only real guidance in this and all matters.

* * *

I now believe that the major reason for my mother to put such pressure on me was that, since my parents' divorce and my father's return to the United States in 1982, my renunciation was a convenient way in which to permanently isolate me from my father and my other sister, [redacted], and other relatives that lived in the United States. My father lived in the United States in 1987 and at that time I was not in close contact with him (the lack of contact was also encouraged by my mother, who pushed the idea that he had abandoned me and did not care about me).

* * *

A second reason she had for placing such pressure on me stems from her negative feeling for the United States. Many times over my life I have heard extremely negative statements regarding the government, its people, its culture. In her eyes, it would be a grave betrayal for me to live and work in a country which she dislikes so intensely. This, I am certain, is also why I was subjected to her emotional tactics.

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 (1960)), 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), 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 March 27, 1987, approved the CLN that was issued in appellant's name by the Consulate General in Calgary. Under Federal Regulations, he had until March 27, 1988, to appeal from the Department's holding of loss of his nationality. He did not do so, however, until 1995, 7 years after the time allowed for appeal. However, appellant's delay in seeking appellate review of case may be excused if he is able to show a legally sufficient reason for not moving within the prescribed time.

"Good cause" is a term of art and of settled meaning. It is defined in Black's Law Dictionary 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 dispute that appellant received timely notice of his right to appeal. For on April 5, 1987, he acknowledged receipt of a copy of the approved CLN on the reverse of which are set forth the time limit on appeal and appeal procedures.

As to why he did not appeal within the one-year limit, appellant gives two reasons. First, he was deterred from making an appeal by discouraging information given him by a consular officer; and second, he feared how his mother would react if he were to appeal.

Appellant went to Consulate General at Calgary on October 1, 1987, to inquire about making an appeal. Notes made by a consular officer at that time record that:

> [redacted] [DeL] came to the office to inquire about appealing his renunciation. He is going to make a detailed written presentation and will bring it to this office for signature if he decides to pursue his appeal.

He did not, however, return to the Consulate General because, he asserts, the officer with whom he spoke informed him

> that appeals were not usually successful where someone has signed a Statement of Understanding stating I had done so voluntarily, as I had done. To my mind, this was a dissuasion to appeal. After all, what is the point of taking such a huge risk (considering my circumstances) by appealing--and it was a risk that was untakeable given the circumstances in which my mother had surrounded me--if you are surely going to lose anyway?

Appellant states that he also gathered from that conversation that "unless direct threats of physical harm to me could be proven, I had no case."

> At the time, I assumed that since the information came from a consular official, who is supposedly an expert in these matters, it was beyond doubt. I took the official's word to be binding Department of State policy. I had no idea at the time that it might simply be his opinion. After this discussion with the official, I just tried to forget about the whole renunciation 'nightmare' and get on with my life. For these, and the other reasons discussed, I did not return to the consulate to officially pursue an appeal after October 1, 1987. In [redacted] DeL 's affidavit of March 27, 1966, he states 'I recall [redacted] telling me that he had gone to appeal and was told he had no case.' Affidavit, p.3.

In response to an inquiry in November 1995 by the attorney representing the Department on this appeal, the Consulate General stated that appellant was not remembered at the Consulate General, that that office sees a lot of people and that no one would be told he could not appeal. "The usual answer is to point out that there is not a good case if a person renounced or signed it [citizenship] away, but that they could make a written statement and we would forward it to the Dept." This, the Consulate General surmised, was what had happened in appellant's case.

There is no contemporary record of what appellant was told when he went to the Consulate General to inquire about an appeal. It seems plausible, however, that he was informed, as the Consulate General suggested in November 1995 (presumably in response to a question about his chances of winning if he were to

appeal), that he did not have a good case, because he had made a formal renunciation of citizenship and signed a statement of voluntary and intentional relinquishment. There is no reason, however, to believe that appellant was not told the Consulate General would forward an appeal to Washington if he chose to make one.

Being told he did not have a promising case is not sufficient to excuse appellant from making a timely appeal. If he really believed he could show that he did not act voluntarily, one might assume he would have proceeded, even in the face of a negative estimate of his chances of prevailing. Indeed, he himself states candidly that even if he had been told he had a good chance of winning appeal, he would not have done so out of concern for his mother's reaction.

So, basically, it was fear of his mother's reaction that allegedly deterred appellant from taking a timely appeal. As he put it:

> Under the circumstances which I found myself at the time, I felt it was impossible to undertake a formal citizenship appeal since the same pressures which caused me to renounce in the first place were in place. In other words, nothing had changed regarding my mother's wish to have me not be a U.S. citizen. This included her serious suicide threats, which are credible since my father's affidavit shows evidence that self-destructiveness is a strong pattern in my mother. Alone, the threat of my mother's self-inflicted death is considerable good cause to not file an appeal within the prescribed time limit.

Not only would his mother not have been amenable to him making an appeal, appellant felt he risked his mother's wrath even by going to the Consulate General to inquire about an appeal. He asserts that his mother "blew up" when he hypothetically raised the question of an appeal. The circumstances, emotional and financial, at home did not reportedly change in the years after he renounced his citizenship. And even if he had lived apart from his mother which, he states, was financially impossible for him to do, she probably could have found out that he was defying her and making

an appeal. For financial reasons he could not afford to leave his mother's home. Only in the spring of 1995, after he had moved out, did he feel he had the freedom to appeal.

In support of his contention that he did not appeal within the time allowed because he feared the reaction of his mother, appellant submits affidavits of his father, brother and half sister, and the declaration of a psychologist. He has also submitted documents purporting to show that financially he was under his mother's control and thus could not afford to live apart from her.

The psychologist, who has known appellant only since 1994, states that appellant's "recounting to me of his renunciation of his U.S. citizenship [is] extremely credible." Considering that the psychologist has no first hand knowledge of events in appellant's life from 1987 to 1994, his declaration, which only by indirection suggests that appellant had good cause not to appeal within the limitation, is of marginal probative value.

The evidence appellant submits of his financial dependence on his mother is his 1987 Canadian income tax return, which he reports shows he was below the poverty line in 1987. Appellant asserts that his income tax return shows that "since my income was half that that can be considered a 'poverty' level, I truly had no option for moving out of my mother's house at that time."

We are not persuaded that appellant's ostensible economic dependence on his mother constitutes good cause for taking a late appeal, for he has not shown that he did not have a realistic alternative to reliance on his mother for support. He has not, for example, shown that he would not have received aid from his father had he but asked for it.

The dispositive question is whether the other evidence appellant has presented is sufficient to excuse a belated appeal; in other words, was he objectively perceived, so dominated emotionally by his mother as to be incapable of acting in what he obviously knew to be his own best interests, namely, promptly contesting the Department's decision of his expatriation?

Appellant's family's affidavits portray his mother as erratic, disturbed, emotionally demanding, selfish, accustomed to having her own way and angering quickly when thwarted. Appellant's father notes that his former wife had on occasion expressed "threats to self-destruct."

We have difficulty in accepting that these statements about appellant's mother's character excuse him from taking a prompt appeal. The affidavits have an obvious self-serving quality, considering their provenance. Moreover, there is no corroborative third-party evidence to establish appellant's purported total emotional dependence on his mother.

It appears that appellant feared that if he were to appeal, his mother would abuse him emotionally, making his life difficult; and that she might commit suicide. Possibly, she would have berated him at length had he made an appeal. He chose to believe that she would, and preferred to avoid unpleasantness by not defending his interests. He elected to avoid controversy rather than try to recover his citizenship.

Appellant's concern that he might provoke an emotional storm from his mother if he were to pursue an appeal seems of minor significance when weighed against promptly challenging the Department's adverse decision.

His mother's alleged threats to kill herself if he disobeyed her were, arguably, a more serious worry.

However, nowhere in the submissions of appellant and his family is it alleged, let alone shown, that appellant's mother had actually attempted suicide when thwarted. Whether she would have done away with herself if appellant had proceeded with a timely appeal is therefore a matter of speculation. Standing alone, mere assertions that appellant's mother might "self-destruct" if crossed, cannot be accepted as substantial evidence. As the Department noted in its brief on the appeal, the court in Woods v. The United States, 724 F.2d 1444, 1451 (9th Cir. 1984) held that: "Substantial evidence cannot be based upon an inference drawn from facts which are uncertain or speculative and which only raise a conjecture or a possibility."

Moreover, even if appellant were dominated as totally as he alleges at the time of his renunciation, is it credible, without more objective evidence, that her domination would have persisted for the next eight years? The words of the court in Maldonado-Sanchez v. Schultz, 706 F. Supp. 54, 58 (D.D.C. 1989) are relevant here.

> Even if the Court were to accept plaintiff's argument that he was dominated by his father at the time of his renunciation, that does

> not explain why he waited almost twenty years to challenge his loss of citizenship. Plaintiff would have the Court believe that his father's dominance persisted through the past two decades. This is not a colorable position.

In sum, we conclude that there were no circumstances beyond appellant's control to prevent him from exercising in timely fashion his right to appeal from the Department's decision of his expatriation.

III

Since the appeal was not filed within one year after the Department approved the certificate of loss of appellant's nationality and since he 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 so 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

Howard Meyers, Member

George Taft, Member