

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

August 27, 1996

Decision # 96-3

IN THE MATTER OF:      R      W      R

This case is before the Board of Appellate Review on the appeal of R      W      R from an administrative determination of the Department of State that he expatriated himself on August 12, 1994, 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 of the United States at Bonn, Germany.<sup>1</sup>

The Department of State on September 16, 1994, determined that appellant expatriated himself. It now submits that after further examination of the record, it cannot sustain its burden of proving that appellant intended to relinquish his United States citizenship. Accordingly, the Department requests that the Board remand the case for the purpose of vacating the certificate of loss of nationality.

The Board grants the request.

I

A vice consul of the United States Embassy at Bonn prepared a certificate of loss of nationality in appellant's name on August 12, 1994. The officer certified that appellant became a citizen of the United States by birth at [REDACTED], Massachusetts, on [REDACTED]; that he made a formal renunciation of his United States nationality on August 12, 1994, and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Department approved the certificate on September 16, 1994.

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<sup>1</sup> Section 349(a)(5) of the Immigration and Nationality Act, 8 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 - -

(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; . . .

Appellant entered this appeal on January 28, 1996. On July 26, 1996, the Deputy Assistant Secretary of State for Consular Affairs (Passports) submitted a memorandum, requesting that the Board remand the case so that the Department might vacate the certificate of loss of nationality.

In requesting that the case be remanded, the Department stated:

On review of the above appeal, the Department has determined that it cannot sustain the finding that appellant committed an expatriating act voluntarily and with the intention of relinquishing United States citizenship. Accordingly, the Department proposes to set aside the determination of loss of citizenship and therefore requests that the appeal be dismissed as moot.<sup>2</sup>

## II.

The Code of Federal Regulations (Section 7.5(b)) prescribes that an appeal from an administrative determination of loss of nationality shall be brought within one year after approval of the certificate. An appeal filed after that time shall be denied unless the Board, for good cause shown, determines that the appeal could not have been brought within the prescribed limitation. (Section 7.5(a).)

This appeal was entered four and one-half months after expiry of the one-year limitation on appeal. We find, however, that, in the particular circumstances of this case, appellant has made a sufficient showing of good cause why he did not take the appeal within the one-year grace period.<sup>3</sup> Accordingly, we deem the appeal to have been timely filed, and will assert jurisdiction.

## III.

Inasmuch as the Department has concluded that it is unable to carry its burden of proof that appellant intended to relinquish his United States citizenship, and, in the absence of manifest errors of law or fact, the Board is agreeable to the request of the

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<sup>2</sup> Under section 349(b) of the Immigration and Nationality Act, 8 U.S.C. 1481(b), the Government bears the burden of proving that a person who performed a statutory expatriative act intended to relinquish citizenship. Vance v. Terrazas, 444 U.S. 252 (1980).

<sup>3</sup> The Board considers plausible appellant's explanation of why he did not appeal within the one-year grace period (confusion about how to state a proper appeal; the distraction of changing his residences constantly in the months after he renounced his citizenship). Furthermore, this de minimis delay should also be excused because, while appellant clearly received a copy of the approved certificate of loss of nationality, there is no indication in the record when he received it and thus when he was informed of his right of appeal and the limitation of appeal.

Department that the case be remanded for the purpose of vacating the certificate of loss of nationality.

The case is hereby remanded for further proceedings.<sup>4</sup>

Alan G. James, Chairman  
J. Peter A. Bernhardt, Member  
Mary Elizabeth Hoinkes, Member

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<sup>4</sup> Section 7.2(a) of Title 22, Code of Federal Regulations, 22 CFR 7.2(a) provides in part:

...The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.

While the Board welcomes the Department's decision to request that we remand the case so that the certificate of loss of nationality (CLN) might be vacated, we are constrained to comment on the perfunctory manner in which the Embassy presented the case to the Department for decision.

Certain pro forma facts aside, the Embassy's report merely stated:

The consequences of renunciation were discussed with Mr. [REDACTED] at length. The consular officer was satisfied that he was aware of the seriousness of this action and took it voluntarily.

The very brevity of the report raises doubt about how thoroughly the consular officer investigated the case, particularly since the Department, after reviewing the record and evaluating appellant's statements, concluded that he probably did not renounce his citizenship voluntarily with the intent of relinquishing it.

In our opinion, simple fairness demands that a consular officer who presides over a ritual as grave as formal renunciation of United States citizenship, should take the time and make the effort to write a comprehensive report about the event, addressing, as was not done here, such matters as whether the renunciant was encouraged to take, and did take, time to ponder the seriousness of his act before doing it; the renunciant's apparent demeanor during interviews with the consular officer; the precise content of the consular officer's discussion with the renunciant; the reasons the renunciant gave for wishing to forfeit citizenship, if, as here, the renunciant did not make a separate statement to that effect; and any other factors that the reporting officer believes the Department ought to evaluate in order to make a fair, reasoned decision whether or not to approve the CLN.