December 10, 1981

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: T[redacted] A[redacted] B[redacted]

This case is before the Board of Appellate Review on appeal from an administrative holding of the Department of State that the appellant, T[redacted] A[redacted] B[redacted], expatriated himself under the provisions of Section 349 (a)(1) of the Immigration and Nationality Act by obtaining naturalization in Sweden on October 30, 1974, upon his own application. 1/

Appellant was born at [redacted] on [redacted]. He thus acquired United States citizenship under the Fourteenth Amendment. B[redacted], having experienced an unstable childhood - living in orphanages since the age of ten, and then with friends and relatives between the ages of sixteen and eighteen - enlisted in the United States Army on July 19, 1968, at the age of nineteen. Appellant, in his letter of appeal, referred to his emotional problems and heavy drinking at the time he went AWOL on January 7, 1970, for the second time from his Army post in Germany. He went to Sweden where he met his Swedish wife whom he married within a few months of his arrival. He has two children who are United States citizens.

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481 (a)(1), reads:

> Sec. 349. (a). From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by --
>
> (1) obtaining naturalization in a foreign state upon his own application, . . .

On October 30, 1974, appellant obtained naturalization in Sweden as a result of his own application. On the same date, the Swedish Immigration Board notified the United States Embassy in Stockholm that B[redacted] had on that day acquired Swedish citizenship. The Embassy tried twice, by letters dated January 31, 1975 and May 15, 1975, to notify appellant of the expatriating character of his naturalization and invited him to explain his intent with respect to his United States citizenship. B[redacted] did not respond to either letter, but acknowledged receipt of the May 15 letter.

On September 15, 1975, the Embassy executed a Certificate of Loss of Nationality in the name of T[redacted] A[redacted] B[redacted], which was approved by the Department on October 15, 1975.

Appellant was informed of his undesirable discharge from the Army on March 30, 1977, as a "deserter, alien in prolonged AWOL status living in a foreign country". Since his arrival in Sweden in January 1970, B[redacted] has made several trips to the United States for visits but has continued to live in Sweden where, in his own words, "I have worked, studied and taken care of my family."

Although the Board of Appellate Review has no record of having received a letter from B[redacted] dated January 30, 1980, appealing from the Department's holding of his loss of citizenship, the text of the letter was subsequently transmitted to the Board by the Embassy in cable under date of October 3, 1980. This appeal was made after five years had elapsed from the time the Certificate of Loss of Nationality was approved by the Department of State.

Under the Department's regulations which were in effect on October 15, 1975, the date of the Department's approval of appellant's Certificate of Loss of Nationality, a person who contended that the Department's holding of loss of nationality was contrary to law or fact, was entitled to appeal such holding to the Board

"within a reasonable time" after receipt of such holding. 2/ Although the current Regulations, effective as of November 30, 1979 (22 CFR Part 7) prescribe a period of one year from the time of the approval by the Department of the Certificate of Loss of Nationality in which an appeal must be filed with the Board, the Board has determined that the time limitation on appeal in effect at the time notice of the Department's holding was received govern. Therefore, in this case, the applicable standard is "within a reasonable time.".

With respect to the lapse of time from October 1975 until January 1980, when he filed his appeal, B[redacted] explained the delay, in his letter of January 30, 1980 as follows:

> My tardiness with this application, (since I was discharged in 1977) is purely the product of my earlier incompetens (sic) to make such an application plus all the fear and paranoia that builds up in a situation like this....

The Board is sympathetic with the circumstances in which appellant finds himself as well as with his persistence, however belated, in trying to remedy his loss of citizenship. The Board also finds creditable the claim that a certain degree of fear and paranoia may have plagued appellant during the years he was subject to criminal prosecution for having deserted his military duties. However, B[redacted] was notified of his undesirable discharge from the military on March 30, 1977, and since that time has had no reason to fear criminal prosecution as a consequence of his desertion. Appellant has not adequately explained his failure

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2/ Section 50.60 of Title 22, Code of Federal Regulations, (1975), 22 CFR 50.60 provided:

> A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review.

to file an appeal during the three years between his discharge and the January 30, 1980 letter of appeal. Appellant has offered no evidence to support a claim of fear and paranoia or lack of competence during this three-year period and none can be adduced from the record. On the contrary, B[redacted], himself, has revealed a normal mental state and level of competence with his statement in his letter of January 30, 1980, that since he has been in Sweden, "I have worked, studied and taken care of my family".

Generally, a "reasonable time" criteria is construed to allow sufficient time in which to assemble the necessary documents to support the appeal. In the circumstances of this case, the Board is of the view that even on the favorable presumption that appellant did not feel free to act until his discharge in 1977, his failure to pursue an appeal for three years, until January 30, 1980, constitutes an unreasonable delay in taking an appeal. Accordingly, we find that the appeal taken on January 30, 1980, was not made within a reasonable time after receipt of the Department's holding of loss of nationality, as prescribed in the regulations then in effect, and, therefore, is time-barred. Consequently, the Board of Appellate Review is without jurisdiction to hear the appeal.

Given our disposition of this case, we find it unnecessary to make other determinations with respect to this case.

Julia W. Willis, Chairman

Edward G. Misey, Member

Alan G. James, Member

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