DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: 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, A[redacted] B[redacted], expatriated himself under the provisions of Section 401(b) of the Nationality Act of 1940, 1/ by taking an oath of allegiance to Mexico upon his entry into Mexican military service on July 1, 1946.

Appellant was born at [redacted]. He thus acquired United States citizenship under the Fourteenth Amendment. B[redacted] moved to Mexico with his parents in August 1928, when he was one and a half years old. Although he was raised and educated in Mexico, he made occasional trips to the United States, presenting himself as a United States citizen on his border crossings. On one such border crossing, the fact of B[redacted]'s service with the Mexican military was discovered from a Mexican military card he was carrying. Appellant was referred to the American Consulate.

In an affidavit, signed June 15, 1949, B[redacted] stated that he had served in the Mexican Army from July 1, 1946 until June 30, 1947, and that he had taken an oath of allegiance to Mexico when entering the Service.

1/ Section 401(b) of the Nationality Act of 1940, 8 U.S.C. 801, reads:

> Sec. 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (b) Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state, . . .

The American Consulate at Monterrey, on June 15, 1949, prepared a Certificate of Loss of Nationality in the name of A[redacted] B[redacted] certifying that he had expatriated himself under the provisions of Section 401(b) of the Nationality Act of 1940. The Department approved the Certificate of Loss of Nationality on January 22, 1951. This Certificate of Loss of Nationality constitutes the Department's administrative holding from which this appeal lies to the Board of Appellate Review. Appellant gave notice of appeal from this administrative determination on April 24, 1981, and submitted an affidavit, executed on April 24, 1981, in support of his appeal.

This appeal was made after thirty years had elapsed from the time the Certificate of Loss of Nationality was approved by the Department of State. Appellant stated in his affidavit of April 24, 1981, that his appeal was being filed immediately after learning of the Supreme Court decision which, in appellant's words, "had affirmed the holding of a court which had repulsed a challenge to the contitutionality [sic] of the statute prescribing loss of citizenshio [sic] upon service in the Armed Forces of a foreign state." This statement is actually no explanation. It is erroneous in its implication that service in the Armed Forces of a foreign state was the basis of appellant's loss of nationality, and it is erroneous if it refers to the Supreme Court's decision in 1980, Vance v. Terrazas. Other than this brief statement, there is no explanation for his apparent failure to inquire of an American Consulate over a period of thirty years about reacquiring his United States citizenship, or about changes in the law, or about possible Supreme Court decisions that might have affected his citizenship status.

Under the Department's regulations which were in effect until November 30, 1979, and therefore applicable in this case, 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/ 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. In the light of this later and more definite specification of time, it is apparent that the standard of "reasonable time" would not have extended to a thirty-year delay. Generally, the "reasonable time" criteria is construed to allow sufficient time in which to assemble the necessary documents to support the appeal. The tolling of "reasonable time" commences with the receipt of the Department's holding of the loss, and not at the moment appellant may learn of a Supreme Court decision. In the circumstances of this case, where there is no showing of any requirement of time for the assembling of such documents, the Board is of the view that an elapse of thirty years clearly constitutes an unreasonable delay in taking the appeal. Accordingly, we find that the appeal taken on April 24, 1981, was not made within a reasonable time after receipt of the Department's holding of loss of nationality, 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

Warren E. Hewitt, Member

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.