January 28, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: [redacted]

This is an appeal from an administrative holding of the Department of State that appellant, [redacted], expatriated himself on August 12, 1969, under the provisions of Section 349(a)(6), now Section 349(a)(5), of the Immigration and Nationality Act by making a formal renunciation of his United States nationality at the American Consulate at Mexicali, B.C., Mexico. 1/

Appellant V[redacted] was born at [redacted] on [redacted], thus acquiring United States citizenship at birth. He acquired the nationality of Mexico by virtue of the Mexican nationality of his father. He resided in the United States until 1964.

Appellant, on May 27, 1969, appeared at the American Consulate at Mexicali, Mexico to file a registration application. On the same day, he executed an Affidavit of Expatriated Person which read in part as follows:

> I entered and served in the Mexican Military Service on August 16, 1967; that I entered said military service knowing full well that by such action I would lose my American citizenship, which I was

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1/ Section 349(a)(6), now Section 349(a)(5), of the Immigration and Nationality Act, 8 U.S.C. 1481, 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 --
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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; . . .

Public Law 95-432, approved October 10, 1978, 92 Stat. 1046, repealed paragraph (5) of Section 349(a) of the Immigration and Nationality Act, and redesignated paragraph (6) of Section 349(a) as paragraph (5).

> not interested in retaining. I was aware of losing my American citizenship through information from my father, who was an official of the Mexican Customs Office at the Border. My father has just passed away, and I am planning to work for the Mexican Government in a position that only Mexican citizens can occupy. 2/

On the basis of the Affidavit, the American Vice Consul on the same day, prepared a Certificate of Loss of Nationality stating that V[redacted] had expatriated himself on August 16, 1967, under the provisions of Section 349(a)(3) of the Immigration and Nationality Act. 3/

2/ Appellant submitted a statement, dated April 25, 1980, as an attachment to his brief filed in support of his appeal, from Mexican Military authorities, complying with his request to annul his military registration card, which was issued to him on August 16, 1967, as evidence that he never completed the military service in the Republic of Mexico. The statement also noted that his military registration card had been issued to him by mistake. His I.D. card and a copy of his birth certificate were remitted to appellant "with the understanding he definitely chose to become an American citizen."

3/ Section 349(a)(3) of the Immigration and Nationality Act, 8 U.S.C. 1481, 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 --
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> (3) entering, or serving in, the armed forces of a foreign state unless, prior to such entry or service, such entry or service is specifically authorized in writing by the Secretary of State and the Secretary of Defense: Provided, That the entry into such service by a person prior to the attainment of his eighteenth birthday shall serve to expatriate such person only if there exists an option to secure a release from such service and such person fails to exercise such option at the attainment of his eighteenth birthday; ...

The Department of State, however, disapproved the Certificate of Loss of Nationality, explaining in a memorandum of July 2, 1969, to the American Consulate that V[redacted] had entered the Mexican Army before he attained his eighteenth birthday, and that he would become subject to the operation of Section 349(a)(3) of the Immigration and Nationality Act only if an option existed to secure his release and he failed to exercise that option before he became eighteen years of age. The Department further noted that it was understood that such an option is not available to members of the Mexican Army.

On August 12, 1969, V[redacted] again appeared at the American Consulate at Mexicali, this time to renounce formally his United States citizenship. On that day, he signed an Oath of Renunciation of the nationality of the United States in which was stated "...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." Appellant also executed a statement in which he explained: "It is my desire to renounce my United States nationality because I promised my father in his death bed I would take over his post in the Mexican Customs office in Mexicali, B.C., Mexico and in order to do so, I must be a citizen of Mexico. It is my desire to work there." Also on that same day, V[redacted] executed a Statement of Understanding by which he attested that the extremely serious nature of his contemplated act of renunciation had been fully explained by the Vice Consul and that he fully understood the consequences of his intended action. The Vice Consul attested that the Statement has been read and explained to appellant in the Spanish language. The Vice Consul then, on the same date, prepared a Certificate of Loss of Nationality in which he certified that appellant had expatriated himself on August 12, 1969, under the provisions of Section 349(a)(6) of the Immigration and Nationality Act. The Department approved the Certificate of Loss of Nationality on November 7, 1969. Ten years later, on November 12, 1979, V[redacted] filed this appeal with the Board of Appellate Review.

The regulations in effect at the time appellant's Certificate of Loss of Nationality was approved, on

November 7, 1969 (22 C.F.R. Sec. 50.60) provided with regard to the timeliness of filing an appeal:

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

In an undated letter from V[redacted], received by the Board on October 15, 1979, appellant stated that he was writing to revoke the renunciation of his citizenship made in 1969 and that he had never received a copy of the approval of that renunciation. Counsel for appellant, in the brief filed with the Board on May 5, 1980, contended that the issue of the timeliness of the appeal need not be addressed because appellant never received notice of the Department's holding in his case.

Section 358 of the Immigration and Nationality Act requires that the consular officer provide a copy of the approved Certificate of Loss of Nationality to the person who has lost his nationality. 4/ The Certificate of Loss

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4/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, reads:

> 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 of State. 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.

of Nationality made in the name of E[redacted] V[redacted] bears a notation that a copy was forwarded to the consular officer. It is a well established legal presumption that public officers perform their duties in compliance with required procedures. Boissonas v. Acheson, 101 F. Supp. 138 (S.D. N.Y. 1951). Apart from this legal presumption of regularity of official performance, the Board requested and has received certification from the American Consulate at Tijuana that a copy of the Certificate of Loss of Nationality was mailed to V[redacted] by registered mail on November 7, 1969.

In addition to the fact that knowledge of the loss of citizenship is implicit in the act of renunciation, V[redacted] expressly acknowledged his awareness of this loss in his undated letter, referred to above, which he wrote to revoke his renunciation. For these reasons, the Board does not accept the argument that the issue of the timeliness of this appeal need not be addressed.

The standard of reasonable time, applicable in this case, generally refers to the time required to assemble the material and documents required for the presentation of a case. The Supreme Court has recognized that "what constitutes a reasonable time depends upon the circumstances of the particular case." Chesapeake and Ohio Railway v. Martin, 283 U.S. 209, 213 (1931). "Reasonable time" should not be construed to mean a period suitable to one's purposes or convenience. In re Rony, 139 F. 2d. 175, 177 (7th Cir., 1943).

Appellant has not offered any explanation for the delay of ten years, in either pursuing this appeal or in failing to inquire of the Consulate as to his citizenship status or an available remedy of his loss. Nor is there anything in the record of this case to indicate that any specified period of time was required for the assembling of essential materials or documents for the presentation of this appeal.

In the circumstances of this case, the Board is of the view that the elapse of ten years constitutes an unreasonable delay in taking the appeal. Accordingly, we find that the appeal taken on November 12, 1979, was

not made within a reasonable time 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

Gerald A. Rosen, Member