

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

November 7, 1980

CASE OF: G [REDACTED] A. W [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, G [REDACTED] A [REDACTED] W [REDACTED], expatriated himself on March 6, 1957, under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of United States nationality. 1/

Appellant W [REDACTED] was born in [REDACTED] on [REDACTED]. His father was born in Peru of British parents; his mother was a citizen of Nicaragua. In 1940, W [REDACTED] came to the United States to attend college. He was inducted into the Army of the United States on July 23, 1943, and was honorably discharged on December 29, 1945. While serving in the U.S. Army, appellant was naturalized as a United States citizen before the District Court of the United States at Anniston, Alabama on December 18, 1943. W [REDACTED] returned to Nicaragua in 1946 and except for occasional trips to the United States, has resided outside the United States since that time.

On February 4, 1957 W [REDACTED] executed at the Embassy at Managua a passport application. He stated in his application that he intended to travel to Mexico, the United States, and Europe. He also executed at the time an affidavit to explain his protracted foreign residence in Nicaragua. On February 25,

1/ Section 49(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), reads:

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, redesignated former paragraph (6) of section 349(a) of the Immigration and Nationality Act as paragraph (5).]

- 2 -

1957, the Department of State instructed the Embassy to the effect that W██████ was only to be issued a passport for travel to the United States, and that further instructions would be forthcoming. The subsequent instructions were sent by the Department on March 21, 1957, but in the meantime W██████ renounced his United States citizenship. The subsequent instructions explained the reasons why W██████ should be issued a passport for travel to the United States only.

On March 5, 1957, presumably after learning of the Department's passport authorization of February 25, for travel to the United States, W██████ appeared at the Embassy with a Nicaraguan passport and sought a visa to the United States. When advised by the consular officer that a visa could not be issued until it was certain he had no claim to United States citizenship, and it was suggested that he wait until further instructions from the Department were received, appellant insisted that he be permitted to renounce his citizenship in order that he might obtain a visa to the United States. W██████ stated, according to the Embassy, that he had very little time for his vacation and that he did not wish to spend that time in Washington and New York to arrange for a passport for travel to Europe. He also stated that he had to make definite plans for his trip and did not have time to wait for the Department's further instructions on the matter. Accordingly, on March 6, 1957, appellant made a formal renunciation of his United States nationality before a consular officer at the Embassy. The oath which he executed read in part as follows:

I desire to make formal renunciation of my American nationality, as provided by section 349(a)(6) (sic) of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely renounce my nationality in the United States and all rights and privileges thereunto pertaining and abjure all allegiance and fidelity to the United States of America.

On March 20, 1957 the Embassy prepared a certificate of loss of United States nationality, as required by section 358 of the Immigration and Nationality Act,^{2/} and forwarded it to

^{2/} 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 (contd over)

- 3 -

the Department of State for approval. The Embassy certified that appellant renounced his United States citizenship on March 6, 1957, and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Department approved the certificate of loss of nationality on May 14, 1957, a copy of which the Embassy apparently sent to appellant in accordance with established procedure. The approved certificate of loss of nationality constitutes the Department's administrative holding which appellant is now appealing to the Board of Appellate Review.

In February of 1978, appellant applied at the Embassy for a passport. In a statement dated February 17, 1978, which accompanied the application, he explained the circumstances under which he renounced his United States citizenship in 1957. He maintained that his "rights" were taken away from him wrongly and that several times "in the past" he had received notices from the Justice Department "indicating that I could reopen my case any time I felt like it." The Embassy referred W██████'s passport application to the Department for review. On April 18, 1978, the Department advised the Embassy that W██████ may take an appeal from the Department's holding of loss of nationality to this Board or, if he preferred, request an administrative review of his loss of United States citizenship. Appellant filed an appeal with the Board on May 28, 1979.

The regulations of the Department of State, which were in effect at the time W██████ filed his appeal, prescribe that an appeal be filed within a reasonable time. Under the regulations, a person, who contends that the Department's holding of loss of nationality is contrary to law or fact,

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- 2/ (contd) 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.

- 4 -

is entitled to appeal such holding to the Board within a reasonable time after receipt of the notice of holding. ^{3/} If an appeal is not taken to the Board within a reasonable time, the appeal would be time barred and the Board would lack jurisdiction to determine it. Unlike a fixed limitation, the question of whether an appeal is filed within a reasonable time depends on the facts and circumstances in a particular case. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). Furthermore, as the court declared in In re Roney, 139 F. 2d 175 (1943), "reasonable time" does not mean a time suitable to a party taking an appeal.

The record before the Board shows that appellant permitted a substantial period of time to elapse before taking his appeal. The Department approved the certificate of loss of nationality on May 14, 1957, and the appeal therefrom was not filed until May 18, 1979, twenty-two years later. In a letter to the Board dated February 18, 1980, appellant alleged that this delay was due to the fact that he never received a communication informing him "officially" that he could appeal. He also alleged that, whenever he inquired at the Embassy as to what he could do about his loss of citizenship, the Embassy was unable to advise him. On the other hand, the record also shows that in a statement dated February 17, 1978, W [REDACTED] declared that on several occasions in the past he had received "notes from the Justice Department" with respect to reopening his citizenship case.

There is, however, no record of any interest by appellant in establishing his claim to United States citizenship prior to his visit to the Embassy in February 1978. In our view, his failure to take any action before then demonstrates an unreasonable delay in seeking a determination by this Board of his loss of nationality. Whatever the meaning of the term "reasonable time", as used in the regulations, may be, we do not believe that such language contemplates a delay of twenty-two years in taking an appeal.

^{3/} Section 50.60 of Title 22, Code of Federal Regulations, 22 CFR 50.60, prior to November 30, 1979, provides:

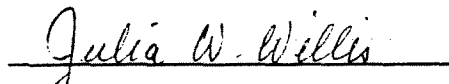
A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review.

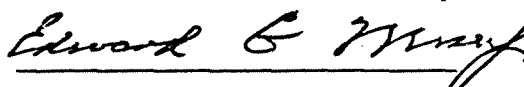
- 5 -

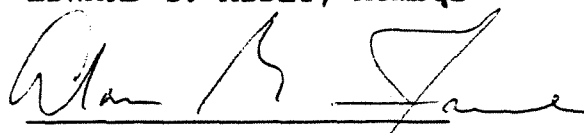
Although the record before the Board does not disclose whether appellant actually received in 1957 notice of his right to appeal the Department's holding of loss of nationality, he was, of course, aware that he had formally renounced his citizenship. Moreover, we are unable to accept appellant's allegations regarding the failure or inability of the Embassy to advise him about an appeal. In any event, it is plain that his failure to take an appeal can scarcely be ascribed to any unawareness or doubt that he had performed an unequivocal act of expatriation.

We also believe that the delay of twenty-two years in taking an appeal to this Board prejudices the Department's ability to meet its burden of proof. The Department is not in a position after this long lapse of time to investigate or provide any information which would support or disprove appellant's allegations that he was misled or misinformed by the Embassy or that his "rights were taken away... wrongly."

It follows from the foregoing that the appeal was not made within a reasonable time after receipt of the Department's administrative holding of loss of nationality, as prescribed in the regulations. Accordingly, we find that the appeal is time barred and that the Board is without authority to consider the appeal.


JULIA W. WILLIS, Chairman


EDWARD G. MISEY, Member


ALAN G. JAMES, Member