

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

CASE OF: B [REDACTED] G [REDACTED] August 5, 1980

This case is before the Board of Appellate Review on appeal from an administrative holding of the Department of State that the appellant, B [REDACTED] G [REDACTED], expatriated himself under Section 401(f) of the Nationality Act of 1940 1/ by voluntarily executing a formal renunciation of his United States nationality before a United States consular officer at the American Embassy in Managua, Nicaragua on January 10, 1951.

Appellant was born in [REDACTED] on [REDACTED], [REDACTED], of Nicaraguan parents. He thus acquired United States citizenship under the Fourteenth Amendment. From 1932 to 1945, appellant resided with his parents in Nicaragua. From 1945 to 1947, appellant resided in the United States. He returned to Nicaragua in 1947 to live with his parents.

In 1948, when Mr. G [REDACTED] applied for a renewal of his United States passport, he was employed by the Government of Nicaragua in which capacity he was required to sign an oath to observe the laws of Nicaragua and to fulfill the obligations of the position. On May 10, 1949, the Board of Review of the Passport Division held that this oath did not constitute an oath of allegiance to a foreign country, and that Mr. G [REDACTED] did not thereby lose his nationality pursuant to Section 401(b) of the Nationality Act of 1940. Appellant's application for the renewal of his American passport was approved on May 20, 1949.

On January 10, 1951, however, Mr. G [REDACTED] executed an oath of renunciation of nationality before Robert C. Brewster, Vice Consul of the United States in Managua, Nicaragua. As a result of this formal renunciation, the Passport Division on February 12, 1951, approved a Certificate of Loss of Nationality.

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1/ Section 401(f) of the Nationality Act of 1940 provides:

Sec. 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:

. . .

(f) 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 (54 Stat. 1169; 8 U.S.C. 801); . . .

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A formal review of appellant's loss of citizenship was requested by letter, under date of January 30, 1980, to the Office of Citizenship, Nationality and Legal Assistance. Following receipt of this letter on February 28, 1980, the Board of Appellate Review in its letter of March 4, 1980, noted that appellant's request for a formal review would be regarded as giving notice of appeal to the Board from the Department's determination of loss of nationality. This appeal was made after 28 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 prior to November 30, 1979, the effective date of the current regulations (22 CFR Part 7; 44 Fed. Reg. 68825), 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 notice of such holding. 2/

It is beyond question that the appellant permitted a substantial period of time to elapse before taking an appeal. According to the record, the Department approved the Certificate of Loss of Nationality on February 12, 1951. The request for a formal review, which the Board of Appellate Review regarded as constituting an appeal, was not made until January 30, 1980, twenty-eight years later. Appellant has offered no explanation for the delay. In our view, this failure to pursue an appeal of his loss of nationality for twenty-eight years constitutes an unreasonable delay in taking an appeal. Accordingly, the appeal taken on January 30, 1980, is time-barred under the regulations then in effect. Consequently, the Board of Appellate Review is without jurisdiction to hear the appeal. 3/

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

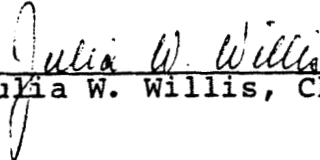
A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review.

3/ Under the Department's regulations which are now in effect, the prescribed period for taking an appeal to the Board of Appellate Review is one year from the time of the approval by the Department of the certificate of loss of nationality. Section 7.5(b) of Title 22, Code of Federal Regulations, effective November 30, 1979.

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The protracted delay has also, in our view, adversely affected the Government's ability to ascertain and establish certain facts, such as whether the appellant actually received a copy of the Certificate of Loss of Nationality, approved February 12, 1951.

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

  
G. Jonathan Greenwald, Member