

BOARD OF APPELLATE REVIEW

DEPARTMENT OF STATE

August 25, 1981

CASE OF: P [REDACTED] A [REDACTED] S [REDACTED]

This is an appeal from an administrative holding of the Department of State that appellant, Mrs. P [REDACTED] Anne S [REDACTED], expatriated herself on October 30, 1957, 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 her United States nationality at the American Embassy at Mexico City. 1/

The appellant, Mrs. S [REDACTED], nee W [REDACTED], was born at Santiago, Chile on May 23, 1932. Her father, W [REDACTED] A [REDACTED] W [REDACTED], who was born in England, was naturalized as a citizen of the United States on March 20, 1944. Her mother was naturalized on August 11, 1949. Appellant's father was employed

1/ 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 --

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

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by American businesses abroad. In August 1947, appellant came to the United States and subsequently acquired United States citizenship through her mother's naturalization. While her parents lived abroad, she attended schools in the United States. In 1951, appellant went to Singapore to live with her parents. Her father was at the time Secretary-Treasurer of the Goodyear Orient Sales Company at Singapore. Following her father's transfer to Mexico in 1954, appellant moved to Mexico City where she lived with her family until her marriage in 1957.

In September 1955, appellant applied for a new passport at the American Embassy at Mexico. In view of the fact that she was a naturalized citizen who had resided abroad for a protracted period, 2/ and because she was not previously registered as a United States citizen at the Embassy, the American consular officer issued her a passport on October 3, 1955, limited to one year instead of the regular period of two years. The passport thus was valid only until October 2, 1956. Appellant applied in February 1957 for an extension of her passport to its full validity. On March 26, 1957, in accordance with instructions received from the Department, the Embassy informed appellant that her passport may be extended to October 2, 1957, to its full validity, and that she may be registered as an American citizen until that date. On August 29, 1957, the passport was so extended to expire on October 2, 1957.

2/ Section 352 of the Immigration and Nationality Act, 8 U.S.C. 1484, provided for loss of citizenship by a naturalized citizen because of continuous residence in the territory of a foreign state, either the state of origin, where the period was three years, or any other foreign state, where the period was five years. Sections 353 and 354 of the Act, 8 U.S.C. 1485-1486, contained a list of exemptions from the penalty of loss of citizenship. The Supreme Court in Schneider v. Rusk, 377 U.S. 163 (1964) held section 352 unconstitutional.

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It appears that in the meantime appellant acquired on August 16, 1957, a Chilean passport. On October 15, 1957, she married D. [REDACTED] N. S. [REDACTED], a national of Chile.

On October 30, 1957, Mrs. S. [REDACTED] made a formal renunciation of her United States citizenship at the Embassy in Mexico City. The oath of renunciation which she executed read in part as follows:

I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(6) 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 thereunder pertaining and abjure all allegiance and fidelity to the United States of America.

In an affidavit dated October 29, 1957, which she executed at the Embassy, appellant explained the circumstances surrounding her intended act of renunciation. She stated that she had applied for and received a Chilean passport on August 16, 1957, and that she used it in lieu of her United States passport to re-enter Mexico from the United States in September 1957. She explained that because she was marrying a Chilean citizen and intended to make her home in Chile, she decided it would be "wisest" to assert her Chilean nationality and use a Chilean passport. Further, she stated that she was married in Mexico on October 15, 1957, and that since she was born in Chile, possessed Chilean nationality, married a Chilean, and intended to live in Chile, she felt that "it would be unwise, superfluous and a cause of innumerable difficulties" if she were to retain her United States citizenship. In her affidavit, she also said that she understood that she would lose her citizenship on October 2, 1957, unless she returned to live in the United States "for five consecutive years."

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On October 31, 1957, the consular officer before whom appellant's affidavit was taken, prepared an opinion on her case. He stated that contrary to appellant's belief that her citizenship was to terminate on October 2, 1957, she would not lose her citizenship under section 352(a)(2) of the Immigration and Nationality Act, by residing outside the United States for five years, until May 23, 1958. The consular officer also stated that Mrs. S [redacted] wanted to depart immediately for the United States and then to Canada and Chile with her husband, to travel as a Chilean citizen, to obtain a visa to the United States, and, if necessary, to renounce her United States citizenship.

As required by section 358 of the Immigration and Nationality Act, 3/ the Embassy prepared a

3/ 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.

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certificate of loss of United States nationality and forwarded it to the Department for approval. The Embassy certified that P [REDACTED] A [REDACTED] S [REDACTED] renounced her United States citizenship on October 30, 1957, at the Embassy and thereby expatriated herself under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act. The Department approved the certificate on January 17, 1958; the Embassy forwarded to appellant a copy of the certificate on March 19, 1958. The certificate of loss of nationality constitutes the Department's administrative holding of loss of nationality from which an appeal lies to the Board of Appellate Review.

In a letter dated July 20, 1979, appellant's counsel requested the Department to review Mrs. S [REDACTED]'s loss of nationality. On March 21, 1980, he gave notice of appeal to this Board. He contended that her renunciation of United States nationality was done under duress because of advice she allegedly received from the American consular officer to the effect that she renounce her citizenship and because of the circumstances in which she found herself at the time in endeavoring to obtain a valid passport to accompany her husband to the United States and then to his new assignment in Peru.

The threshold question that confronts the Board is whether the appeal was filed within the prescribed time. Under the current regulations of the Department, which were promulgated on November 30, 1979, the time limitation for filing an appeal is one year after approval of the certificate of loss of nationality. 4/

4/ Section 7.5 of Title 22, Code of Federal Regulations, 22 C.F.R. 7.5, reads in part:

(a) Filing of appeal. A person who has been the subject of an adverse decision . . . shall be entitled upon written request made within the prescribed time to appeal the decision to the

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The regulations further provide that an appeal filed after the time limit shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time. The current regulations, of course, were not in force at the time appellant renounced her citizenship or at the time the Department approved the certificate of loss of nationality that was issued in her case. Under the regulations which were in effect prior to the promulgation of the current regulations and which we consider applicable in the circumstances of this case with respect to limitations, the time limit for filing an appeal from a determination of loss of nationality was "a reasonable time after receipt of notice of such holding." 5/

Board. . . An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time.

(b) Time limit on appeal. (1) A person who contends that the Department's administrative determination of loss of nationality . . . is contrary to law or fact shall be entitled to appeal such determination to the Board upon written request made within one year after approval by the Department of the certificate of loss of nationality . . .

5/ Section 50.60 of Title 22, Code of Federal Regulations, 22 C.F.R. 50.60, the prior regulation in effect until November 30, 1979, 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.

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Thus, under time limitations governing this appeal, a person who contends that a Department's administrative holding of loss of nationality is contrary to law or fact is entitled to appeal such holding to the Board within a reasonable time after receipt of notice of the holding of loss of nationality. It follows, therefore, that if a person did not initiate his or her appeal to the Board within a reasonable time, the appeal would be barred and the Board would lack jurisdiction to entertain it.

The question of whether an appeal was taken within a reasonable time depends upon the circumstances in a particular case. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). Reasonable time has been held to mean as soon as circumstances permit, and with such promptitude as the situation of the parties and the circumstances of the case will allow. This does not mean, however, that a party be allowed to determine "time suitable to himself." In re Roney, 139 F.2d 175, 177 (1943). Generally, reasonable time means reasonable under the circumstances.

The record before the Board shows that appellant received from the Embassy, by letter dated March 19, 1958, a copy of the certificate of loss of nationality that the Department approved on January 17, 1958. Appellant thus was fully aware of the Department's determination of her loss of United States citizenship. She did not raise any question about her loss of citizenship with the Department until she requested, through her attorney, a review of her case in July of 1979. She gave notice of appeal on March 21, 1980, twenty-two years after the Department's determination of loss of nationality in 1958.

It is clear that appellant permitted a substantial period of time to elapse before taking an appeal. She offered no satisfactory explanation for the delay. At

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a hearing before this Board on April 3, 1981, her counsel stated that the question of the timeliness of the appeal troubled him but that he believed Mrs. S [REDACTED] "acted as promptly as she could, and as soon as she got competent counsel to advise her to look behind the renunciation she moved in a timely fashion." (TR. 82-83). ^{6/} Mrs. S [REDACTED] testified that when she lived in Lima she inquired about her citizenship status "with women friends whose husbands worked in the Consular Service there at the American Embassy" and that it was not until she came to the United States "two years ago" that she learned "the law was changed quite a long time ago" and then sought counsel from her attorney. (TR. 43).

Although the record is not clear whether Mrs. S [REDACTED] was informed specifically in 1958 of her right to appeal the Department's determination of loss of nationality, there is no reason why she could not have inquired at the Embassy in Mexico City or in Lima or any other foreign service post about the matter. Furthermore, this is not the case of one who performs an equivocal act of expatriation such as service in the armed forces of a foreign country, where the legal consequences of the act would not be readily known. Here, the appellant performed the most unequivocal of expatriating acts, the formal renunciation of her citizenship before a consular officer of the United States. It may very well be that until the time appellant consulted legal counsel in 1979 about her citizenship, she had no intention to appeal the Department's determination of loss of nationality. Her failure to take an appeal can scarcely be ascribed to any unawareness or doubt that she had lost her United States citizenship.

^{6/} "TR. 82-83" refers to the transcript of the proceedings before the Board of Appellate Review, April 3, 1981, at pages 82-83.

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In our view, appellant's failure to take any action before 1979, when she first sought review of her case by the Department, demonstrates that her delay in filing an appeal with this Board was unreasonable. Whatever the meaning of the term "reasonable time" as used in the regulations may be, we do not believe that such language envisages a delay of twenty-two years in taking an appeal.

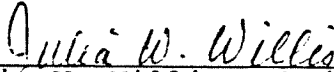
In addition, we believe that the delay of twenty-two years prejudices the Department's ability to meet its burden of proof. The Department is not in a position at this late date to provide any information which would confirm or disprove the erroneous advice said to be given appellant by the American consular officer in Mexico City in 1957, which allegedly led her to renounce her United States citizenship. The Department stated in its brief of September 9, 1980, that the consular officer who witnessed her renunciation could not be located. 7/

7/ Marc L. Severe, the American Consul at the Embassy at Mexico City, who witnessed appellant's renunciation and executed the certificate of loss of nationality on October 30, 1957, was born June 14, 1891. The Biographic Register 1957, U.S. Department of State.

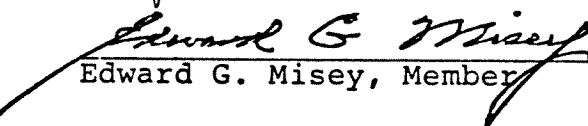
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On consideration of the foregoing, we are unable to conclude that the appeal was made within a reasonable time after receipt of the Department's administrative holding of loss of nationality, as prescribed in the regulations prior to 1979. Accordingly, the appeal is time barred and the Board is without authority to consider this appeal.

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



Julia W. Willis, Chairman



Edward G. Misey, Member



Warren E. Hewitt, Member