September 2, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

ASE OF: G T M

This is an appeal from an administrative determination f the Department of State that appellant, G T r, expatriated herself on February 9, 1967, under the rovisions of section 349(a)(6) of the Immigration and lationality Act by making a formal renunciation of her inited States citizenship before a consular officer of the inited States at Rome, Italy. 1/

I

Appellant was born at She was employed by the Department of State rom 1952 to 1961, serving in Washington and the United tates Embassies in Afghanistan and Ceylon (Sri Lanka). In 963 appellant obtained a passport to visit friends in Manila. he applied for another passport in 1965, again to travel to anila. There on March 28, 1965, she married n attache of the Swiss Embassy at Manila.

/ Section 349(a)(6) of the Immigration and Nationality Act, U.S.C. 1481(a)(6), provided:

From and after the effective date of this Act a person ho is a national of the United States whether by birth or aturalization, shall lose his nationality by --

. . .

(6) 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, enumbered section 349(a)(6) of the Immigration and Nationality ct as section 349(a)(5).

Shortly before appellant's marriage, the Swiss Government on December 29, 1964, promulgated an ordinance concerning the terms *of* service of functionaries of the Political Department under whose jurisdiction her husband served. 2/ The ordinance, which took effect April 1, 1965, required, inter alia, that foreign wives of officials of the Political Department renounce their original citizenship where the laws of their native country so permitted. The ordinance also stipulated that an officer's terms of employment might be modified or his service terminated should his foreign-born wife not comply with the ordinance. The ordinance was rescinded effective April 15, 1976.

On April 10, 1965, the Political Department drew appellant's husband's attention to the ordinance. Then began, according to appellant's submissions, a period **of** resistance on her part to compliance with the requirements of the ordinance. In January 1966, she visited the American Embassy at Manila to submit a statement:

> At that time /her marriage in March 1965/ it was my understanding that I could retain my United States passport. On April 1, 1965, the Swiss Government issued a new ruling in which it requested that foreign wives of their diplomats have Swiss citizenship only. They asked that I turn in my passport which would be forwarded to Bern. My husband told me that unless **I**

2/ Ordinance on the Relations of Service of Officials of the Political Department (Regulation concerning Officials III), December 29, 1964. Article 95(55) provided in pertinent part:

Article 94(55)

Modification or Termination of Service Relations for Justifiable Reasons.

1. Certain circumstances may justify modification or termination of service relations within the meaning of Article 55(2) of the Law on Regulations, in particular:

. . .

d. When a wife of foreign nationality does not renounce her native citizenship although the Paws of her country enable her to do *so.,..*

English translation, Division *of* Language Services, Department

> did so, his career would be affected and that he might have to resign....Upon receipt of the passport, the Swiss Government stated that they also expected me to renounce my citizenship. I have not done this since I am hopeful that the Swiss Government will not consider the matter of great importance at this moment. I am fearful, however, that in the future when it will involve my husband's career, that I shall have to take this step. In that event my renunciation will be done most reluctantly.

In reporting on this matter to the Department on February 3, 1966, the Embassy stated:

> She /Mrs. Moser/ is, of course, seriously concerned over-the pressure being exerted on her for renunciation of U.S. nationality, but maintains that she will resist as long as possible. Her approach to the Embassy was primarily for the purpose of making her problem a matter of record....

In an affidavit executed September 3, 1981, in support of her appeal, appellant stated that she refused for two years to comply with the ordinance because, as she put it,

> I knew that we would never live in Switzerland. My husband had no family ties there. My family lives in Massachusetts where we intend to live when my husband retires. My total inclination, sentiments and affections are for the United States.

On January 20, 1967, the Swiss authorities again advised appellant's husband, who had meanwhile been transferred to the Swiss Embassy at Rome, that appellant would have to renounce her American citizenship. The communication directed M[redacted] to inform the Political Department by March 31 whether his wife had renounced her citizenship or had applied for renunciation.

According to a report which the American Embassy at Rome addressed to the Department on February 10, 1967, the day after her renunciation, appellant visited an officer of the Embassy sometime in January to discuss her dilemma. The officer advised her of the serious consequences of renunciation and persuaded her to try to ascertain whether there was some way short of renunciation which would satisfy the Swiss requirement.

The consular officer reported, however, that her husband subsequently called the Embassy to confirm that renunciation was necessary and that no other action his wife could take would comply with the Swiss regulation.

Appellant appeared at the Embassy on February 9, 1967, and informed the consular officer that she did not wish to delay renunciation any longer. After having been counseled again about the consequences of renouncing her United States citizenship, she took an oath of renunciation before the consular officer, subscribing in her maiden name. She also executed an affidavit attesting that the seriousness and consequences of renunciation had been clearly explained to her, that she clearly understood them, and that she nevertheless had requested that she be permitted to renounce her American citizenship. She added the following statement:

> My Husband, [redacted], is a Swiss diplomat and it is a recent ruling of the Government of Switzerland that foreign wives of diplomats renounce their citizenship. This I do reluctantly.

In her affidavit of September 3, 1981, appellant observed: "It was evident that if I did not comply with this request [of the Swiss Government] my husband's career would be in jeopardy."

As required by section 358 of the Immigration and Nationality Act, the Embassy on February 10, 1967, executed a certificate of loss of nationality in appellant's name. 3/

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 part III of this subchapter, 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.

The Embassy certified that Georgia Tavoularis acquired the nationality of the United States by virtue of her birth at Lowell, Massachusetts on March 5, 1925; that she made a formal renunciation of nationality before a consular officer of the United States in a foreign state on February 9, 1967; and that she had thereby expatriated herself under section 349(a)(6) of the Immigration and Nationality Act.

The Department approved the certificate on February 17, 1967, and on the same day sent a copy to the Embassy to be delivered to appellant. Approval of the certificate constitutes an administrative determination of loss of nationality from which an appeal may be taken to this Board.

Appellant inquired in July 1981 at the Consulate at Florence, Italy, about the possibilities of her case being reconsidered in light of the 1976 repeal of the ordinance under which she had been required to renounce her United States citizenship -- against her will and intent, as she asserted. The Department declined to reconsider her case, and instead suggested that she consider taking an appeal to this Board. Mrs. M[redacted] initiated this appeal in the fall of 1981.

II

Eefore the Board can properly proceed in this matter, we are of the view that the Board in the first instance must determine whether it has jurisdiction to consider this appeal. Initially, the Board must determine whether the appeal has been timely filed. If we find that the appeal was not filed within the prescribed period of time, the Board would lack jurisdiction over the case.

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/ The regulations further provide that an appeal filed after the time limit shall be denied unless the Board for good cause shown determines that the appeal could not have been filed within the prescribed time. The current regulations, of course, were not in force at the time the Department approved the certificate of loss of nationality that was issued in this case.

4/ Section 7.5 of Title 22, Code of Federal Regulations, 22 CFR 7.5.

The Department's regulations, which were in effect on February 17, 1967, the date the Department approved the certificate of loss of nationality, provided as follows:

> 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/

We consider the above time limitation, not the current stricter standard, applicable in the circumstances of this case. Thus, under the governing time limitation, a person who contends that the Department's holding of loss of nationality is contrary to law or fact is required to appeal such holding to the Board within a reasonable time after receipt of notice of the holding of loss of nationality. If a person does not initiate his or her appeal to the Board within a reasonable time, the appeal would be barred and the Board would be without authority to entertain it.

The criteria for determining whether an appeal has been filed within a reasonable time are well established. Whether an appeal has been timely filed depends on the circumstances in a particular case. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). It has been held to mean as soon as circumstances will permit and with such promptitude as the situation of the parties will allow. This does not mean, however, that a party will be allowed to determine a "time suitable to himself". In re Roney, 139 F. 2d 175 (1943). Nor should reasonable time be interpreted to permit a protracted and unexplained delay which is prejudicial to either party. Smith v. Pelton Water Wheel Co., 151 Ca. 393 (1907).

The rationale for allowing a reascnable period of time to appeal a decision adverse to one's citizenship status is pragmatic and fair. It is intended to allow an appellant sufficient time to prepare a case showing that the Department's holding of loss of citizenship was contrary to law or fact. It presumes, however, that an appellant will prosecute his or her appeal with the diligence and prudence of an ordinary person.

5/ Section 50.60 of Title 22, Code of Federal Regulations (1967), 22 CFR 50.60,

Dietrich v. U.S. Shipping Board Emergency Fleet Corp., C.C.A.N.Y., 9 F. 2d 733 (1926). At the same time allowance is made for circumstances beyond an appellant's control which may impede him or her from promptly petitioning the Board. Where there has been a delay in taking an appeal the appellant is required to show a valid execuse. Appeal of Syby, 66 N.J. Super. 460, 169 A. 2d 749 (1961). Further, reasonable time begins to run with receipt of notice of the Department's holding of loss, not at some subsequent time years later when appellant for whatever reason may seek to restore his or her United States citizenship status.

In this case the Department approved the certificate of loss of nationality on February 17, 1967. The record does not indicate when appellant received a copy of the approved certificate, but she has not contended that she did not duly and promptly receive notice that the Department had approved it. This appeal was initiated in the fall of 1981, more than fourteen years after appellant was informed of the administrative determination of loss of her United States citizenship.

The Department asserts that circumstances should have permitted appellant to appeal, at the latest, as soon as Swiss ordinance 94(55) was repealed, that is, in 1976; since she did not do so even at that late date, her appeal should be deemed time barred under 22 CFR 50.60.

In her reply brief appellant explained the reasons for her delay in taking an appeal as follows:

> While the Swiss ordinance 95, Article 55 was in effect, I did not consider appealing for re-instatement of my nationality for reasons already stated in my brief of September 3, 1981....If I did not make an appeal within a "reasonable time", it was because I did not know that the Swiss Ordinance 94(55) had been deleted in 1976. ...In the circumstances /that is, had her husband seen the regulation repealing the ordinance/ he would have told me about it and I would have appealed at that time. Furthermore, we were with the Swiss Embassy in Morocco and the Administrative Officer was not aware that I had an interest in re-acquiring my United States citizenship. My husband takes exception to Dr. Gaudenz Ruf's statement that 'concerned officers were certainly advised of the change in the

> regulations prior to its effective date.' /Ruf, an official of the Swiss Department of Foreign Affairs, so informed Embassy Bern in January 1982./
>
> ....I am distressed that the Department of State questions our veracity regarding our statements about ignorance of the Swiss Law of Renunciation before our marriage, and its repeal in 1976. When my husband was in Bern last year /1981/ he learned from a Swiss colleague that the Swiss Government was no longer enforcing the Ordinance.

As previously stated, reasonable time begins to run with receipt **of** notice of the Department's determination of loss of nationality, not some time years later when appellant for whatever reason seeks to restore his or her United States citizenship. Without accepting as valid appellant's contention that she had a justifiable reason for not appealing earlier than 1976, we will, for purposes of analysis in this particular case, first examine the question of whether an appeal taken five years after 1976 can be considered timely. Proceeding on this basis, our key inquiry is whether, as **a** matter ***of*** law, appellant should have known in April 1976, or within a reasonable time thereafter, that the ordinance which she alleges forced her against her will to renounce her United States citizenship, had been repealed, and thus, at that date at least, an impediment to taking an appeal had been removed. Alternatively, the question is whether appellant's alleged ignorance of the repeal of the ordinance (the sole ground on which she justifies her delay in taking an appeal) constitutes **a** valid explanation for the elapse **of** five years and thus the appeal may be deemed timely filed, within the meaning of 22 CFR 50.60.

It is likely that the Swiss Embassy at Rabat received a copy of the regulation which repealed ordinance 94(55) prior to its entry into force on April 15, 1976. As the United States Embassy at Bern reported to the Department on January 13, 1982, Dr. Gaudenz Ruf, Chief of the Service for Administrative Law Matters, General Secretariat of the Federal Department of Foreign Affairs, informed the Embassy that publication of ordinances prior to their effective date is required in Switzerland. He further stated that Swiss Foreign Service personnel were informed of the change in the ordinance in question prior to the date of its entry into force.

The Board does not gainsay appellant's contention that nad her husband seen the regulation rescinding ordinance 94(55), he would have so informed her and she would then have sppealed. Nor do we impugn the veracity of appellant (or her husband) when she alleges that neither had actual notice at the time that ordinance 94(55) was to be or had been repealed. That is not the issue. What is at issue is whether as a matter of law, not of fact, appellant had notice of the repeal of ordinance 94(55).

It is axiomatic that ignorance of the law furnishes no excuse for any mistake or wrongful act. Whiteside v. United States, 93 U.S. 147 (1876). All persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them. North Laramie Land Co., v. Hoffman, 268 U.S. 276 (1924). Everyone is bound to take notice *of* the provisions of a statute relating to matters in which the general public are concerned. Ketchum v. St. Louis, 101 U.S. 306 (1879). Furthermore, the law imputes knowledge where interest and opportunity combined with reasonable care would necessarily impute knowledge. Wollensack v. Reiher, 115 U.S. 96 (1884).

The Supreme Court's holding in a leading case on notice is apposite to appellant's contention that because she did not have actual notice of the repeal of the ordinance, she was justified in appealing five years later after her husband had fortuitously learned in Bern in 1981 that the ordinance had been repealed. In Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947), the court held:

> Just as everyone is charged with knowledge of United States Statutes at Large, Congress provided that appearance *of* rules and regulations in the Federal Register gives legal notice of their contents. Accordingly, the Wheat Crop Insurance Regulations were binding on all who sought *to* come within the Federal Crop Insurance Act, regardless of actual knowledge of what is in the regulations or of the harship resulting from actual ignorance. /Emphasis added./

The Swiss Government published an instrument repealing ordinance 94(55) and circulated it to Swiss diplomatic posts sometime prior to April 15, 1976. We accept appellant's allegation that she was not personally and directly informed of the impending repeal. Although appellant stated in her

reply brief, "while the Swiss Government went to great pains to inform us consistently of the regulations requesting renunciation, it did not call our attention to the repeal of the ordinance", she does not contend that the Swiss authorities were required under law to give her actual notice of the repeal of the ordinance. We consider that publication and circulation of the repeal ordinance to have been legally sufficient to give appellant notice of the change in the requirement for renunciation, and thus notice must be imputed to her although she did not have actual notice.

Furthermore, appellant does not appear to have exercised reasonable care to keep herself informed -- through her husband -- of the possibility of a change in the regulation. That the Administrative Officer at the Swiss Embassy at Rabat "was not aware that I had an interest in reacquiring my United States citizenship" was no one's fault but appellant's own. Had loss of her United States citizenship meant as much to her in 1976 as it evidently did in 1966 and 1967, appellant surely would have aprised the Administrative Officer, through her husband, of her continuing interest in knowing the prospects of repeal of the ordinance or its actual repeal. The burden of keeping posted on a possible change in the Swiss regulations which might facilitate her recovery of her native citizenship rested on appellant. And it is difficult to understand how, particularly in a relatively small institution like the Swiss diplomatic service, the prospects of repeal of the ordinance and its actual repeal would not have come to appellant's attention or her husband's, had they made a consistent effort to keep themselves informed.

We are of the view that appellant had constructive notice in 1976 of the repeal of ordinance 94(55) - notice which is imputed by law to one who should have knowledge of a fact that had or might have had legal consequences for the individual - and did not exercise reasonable care to inform herself of the actual change in the ordinance which had required her nine years earlier to renounce her United States citizenship.

In the circumstances of this case where there has been no showing of a requirement for an extended period of time to prepare an appeal or any obstacle beyond appellant's control to appeal expeditiously and where she must, as a matter of law, be deemed to have been on notice that an alleged prior bar to appeal had been removed, the norm of "reasonable time" cannot be considered to extend to a delay of five years. A fortiori, the delay of fourteen years is not reasonable.

III

Since the Board is of the view that the elapse of five years clearly constitutes an unreasonable delay in taking an appeal, we find that the appeal initiated in September 1981 was not filed within a reasonable time after appellant had reason to believe she was able to appeal, and therefore is time barred. As a consequence, the Board is without jurisdiction to entertain the appeal.

Given our disposition of the case, we do not reach the substantive issues therein presented.

Alan G. James, Chairman

George Taft, Member

Howard Meyers, Member