October 6, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: E[redacted] L[redacted]

This case is before the Board of Appellate Review on an appeal taken by E[redacted] L[redacted] from an administrative determination of the Department of State that he expatriated himself on July 14, 1941, under the provisions of section 401(a) of Chapter IV of the Nationality Act of 1940, by obtaining naturali[redacted]on in Palestine upon his own application. 1/ L[redacted] gave notice of appeal to the Board of Appellate Rev[redacted] on December 10, 1980, nearly forty years after he performed the statutory act of expatriation.

I

[redacted], was born at [redacted] on [redacted] He lived in [redacted] until 1937. Upon his graduation from Harvard University that year, L[redacted] traveled to Palestine to pursue his studies at the American School of Oriental Research at Jerusalem. In 1939, he moved to Kfar Vitkin, Palestine, now Israel, where he has since resided. Palestine was under British mandate at that time.

On May 6, 1941, L[redacted] applied for naturalization in Palestine, He stat[redacted]n an affidavit dated September 9, 1981, that he wanted to fight against Nazi Germany but the United States was not at war with Germany in the spring of 1941; as a Jew, he could not enlist in the Palestinian section of the British Armed Forces unless he became a Palestinian national. Following his application for naturalization, L[redacted] enlisted in the Royal Artillery (Palestinian Sect[redacted] of the British

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1/ Section 401(a) of Chapter IV of the Nationality Act of 1940 read:

> Sec. 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> (a) Obtaining naturalization in a Eoreign state, either upon his own application or through the naturalization of a parent having legal custody of such person: ....(54 Stat. 1168-1169; 8 U.S.C. 801.)

Army. On September 1, 1941, the Department of Migration of the Government of Palestine informed the American consular officer at Jerusalem that L[redacted] acquired Palestine citizenship by naturalization on July 14, 1941.

On October 16, 1941, the consular officer prepared a certificate of loss of United States nationality in accordance with section 501 of the Nationality Act of 1940. 2/ He certified that L[redacted] acquired United States nationality by virtue of his birth at Boston, Massachusetts on December 13, 1915, and that he expatriated himself under the provisions of section 401(a) of Chapter IV of the Nationality Act of 1940 by having been naturalized as a citizen of Palestine. Attached to the certificate of loss of nationality was a signed statement of L[redacted] in which he affirmed that he "voluntarily acquired [redacted]estinian citizenship on July 14, 1941, in order to serve in the armed forces of Great Britain" and that he "voluntarily abandoned permanent residence in the United States." The consular officer certified that L[redacted] voluntarily signed the statement.

2/ Section 501 of Chapter V of the Nationality Act of 1940 read:

> Sec. 501. 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 American nationality under any provision of chapter IV of this Act, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations to be 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 Department of Justice, for its 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. (54 Stat. 1171; 8 U.S.C. 901.)

On April 4, 1942, a three-member Board of Review in the then Passport Division of the Department of State approved the certificate of loss of nationality. The Department, shortly thereafter, on April 17, 1942, informed the consular officer in charge at Jerusalem that his action in submitting the certificate had been approved, and requested him "to deliver one copy to the expatriate". There is a gap in the official record of the Department before us from 1942 to 1979, a period of thirty-seven years. We do not know, therefore, whether or not the consular officer actually received the Department's instruction.

On November 7, 1979, the Ame[redacted]n Embassy at Tel Aviv reported to the Department that L[redacted] had visited the Embassy in September 1979, to clarify his United States citizenship status and to apply for a passport. In that connection, appellant submitted on October 24, 1979, a passport application, a supplemental application statement, a completed citizenship questionnaire to assist the Department of State in determining his status, and a sworn statement with supporting evidence. It appears from the submitted material that L[redacted] was discharged from the British Army on September 25, [redacted], that he later acquired Israeli citizenship automatically by operation of Israeli law, that he served in the Israeli Defense Forces from May 1948 to September 1949, and that he obtained an Israeli passport in 1965.

According to the citizenship questionnaire, of October 24, 1979, L[redacted], after his naturalization in Palestine in 1941, [redacted]endered his American passport to the American consular office at Jerusalem, "at the demand of the British Army (Palestine Sec.) authorities and showed them the'receipt. They were unwilling to have a bearer of an American passport serving in their forces," as he put it. In December 1946, he obtained a visa to visit the United States on a Palestine passport which, he stated, he had obtained as a naturalized Palestine citizen. He said in the 1979 questionnaire that he did not attempt to "regain" his American passport in 1946 because his visit to the United States was of "a very pressing nature" and Palestine was "in a state of turmoil." The questionnaire also discloses that in 1968 L[redacted] obtained a visa on his Israeli passport to travel t[redacted]e United States. (The admission stamps in his Israeli passport show that he visited the United States and [redacted]da in the summer of that year.) In the questionnaire L[redacted] stated that he had asked

the Embassy at Tel Aviv in 1968 when he obtained the visa whether he could "reinstate my American citizenship and visit the United States on an American passport but was given to understand that it could not be done. I therefore applied for a visa."

In another section of the questionnaire L[redacted] slightly amplified the foregoing statement as [redacted]ows:

> I was given to understand by the Consular Officer at Tel Aviv that I could not regain my American passport and therefor visited the United States on an Israeli passport. Had I been able to regain my American passport before making my trip I should certainly have done so.

The record does not in[redacted]te on what grounds the consular officer informed L[redacted] that he might not receive an American passport; the Embassy's records of the year 1968 have apparently not been preserved.

Nor is there a record in the documentation before us of any further appearance by L[redacted] at a consular office in Israel until the above mention[redacted]isit in September 1979, when he sought to reinstate his United States citizenship.'

By memorandum of November 7, 1979, the [redacted]ssy requested the Department's opinion whether L[redacted] "should be expatriated" in light of the circumstances disclosed in his submissions to the Embassy in connection with his passport application. Apparently, the Embassy was unaware at the time that the Department had approved a certificate of loss of nationality in 1942 arising out of his naturalization as a citizen of Palestine.

After reviewing the case, the Department informed the Embassy on October 2, 1980, that L[redacted] had expatriated himself on July 14, 1941, under the pr[redacted]ions of section 401(a) of the Nationality Act of 1940 by having been naturalized as a citizen of Palestine. The Department also informed the Embassy that it disapproved his passport application as "it appears that a preponderance of the evidence supports the finding of loss of [redacted]onality made in 1942." The Embassy in turn informed L[redacted] on October 10, 1980, of the Department's position and ad[redacted]d him that he might wish to file an appeal with the Board of Appellate

Review "within one year of the date of this letter", if he believed that the Department's finding of loss of nationality was contrary to fact or law. The Embassy's advice on the matter of filing an appeal within one year of the date of the letter of October 10, 1980, was clearly in error, and without authority. In our view, the letter, although misleading on the time limit on appeal, did not prejudice L[redacted]

On December 8, 1980, L[redacted] gave this Board notice of appeal. He stated that [redacted]id not intend to relinquish his United States citizenship by acquiring the citizenship of Palestine in 1941, and requested the Board to void the certificate of loss of nationality. He also stated that he had "never in all the years been informed that he was an expatriate" until he received the Embassy's letter of October 10, 1980.

Counsel for appellant submitted appellant's appeal and brief on October 8, 1981. Counsel argues that the 1942 certificate of loss of nationality is void because its issuance violated the procedural provisions of section 501 of the Nationality Act of 1940 in that the Department did not then (1942) inform appellant of the approval of the certificate or "issue a copy of the certificate to him." Counsel further contends that the Department has failed to meet its burden of proving by a preponderance of the evidence that appellant intended to relinquish his United States citizenship when he sought and acquired Palestinian nationality in 1941.

The basic issue confronting us at the outset is whether this Board may consider an appeal entered nearly forty years after a statutory act of expatriation occurred and more than thirty-eight years after the right to appeal the Department's determination of loss of nationality may have accrued.

II

At the time the Department approved the certificate of loss of nationality in 1942, the Board of Appellate Review did not exist. There was in existence then a so-called Board of Review in the Passport Division, established on November 1, 1941, to review "all cases" involving the loss of nationality under the nationality laws of the United States. The Board of Review provided "a forum for hearings and discussions in order to obviate as far as may be practicable hardships and inequities in the application of the new Nationality Act of 1940...." 3/

3/ Departmental Order 994, Department of State, October 31, 1941.

It was not strictly an appellate review body to hear and decide appeals. Relatively little information is available regarding the early functioning of the Board of Review, and apparently no formal rules or procedures were ever published by the Department,

The first formal procedures of the Board of Review were set forth in an intra-Department communication in 1949. 4/ The document simply stated that persons, who did not accept a Department's holding of loss of nationality, "may be informed that appeal may be made to the Board of Review of the Passport Division." No formal application or petition for reconsideration of a case was required to be made; an appellant, however, was required to submit at least a statement indicating the grounds of appeal. There was no prescribed time limitation,

The first mention of a time limitation on entering an appeal from a holding of loss of nationality appeared in the regulations of the Department promulgated on October 30, 1966, with respect to the Board of Review on Loss of Nationality within the Passport Office, The regulations provided that an appeal to the Board of Review on Loss of Nationality be made "within a reasonable time." 5/ This "reasonable time" provision was adopted in the Department's regulations 6/ promulgated in 1967 for the then newly established Board of Appellate Review and remained in effect until the regulations were revised and amended on November 30, 1979.

4/ Foreign Service Serial No. 1019, September 13, 1949, Department of State.

5/ Section 50.60, Title 22, Code of Federal Regulations (1966), 22 CFK 50.60, 31 Fed. Reg. 13539 (1966).

6/ Section 50.60 of Title 22, Code of Federal Regulations (1967-1979), 22 C.F.R. 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.

The revised regulations, which require that an appeal be filed within one year after approval of the certificate of loss of nationality, were obviously not in force at the time the Department approved the certificate in this case in 1942. Believing that the current regulation as to the time limit on appeal should not apply retrospectively, we are of the view that the Department's regulations on time limitation which were in effect prior to November 30, 1979, should govern in this case.

The Department's regulations since the creation of this Board in 1967, until revised and amended in 1979, required that an appeal be filed within a reasonable time. Under this time limitation, a person who contends that the Department's determination of loss of nationality is contrary to law or fact must file his request for review within a reasonable time after notice of such determination. Accordingly, if a person did not initiate his or her appeal to the Board within a reasonable time after notice of the Department's determination of loss of nationality, the appeal would be time barred and the Board would lack jurisdiction to consider it. We consider the reasonable time provision is jurisdictional. 7/

7/ The Attorney General in an opinion rendered in the citizenship case of Claude Cartier in 1973 stated:

> The Secretary of State did not confer upon the Board the power to adjudicate collateral attacks nor to review actions taken long ago. 22 C.F.R. 50.60, the jurisdictional basis of the Board, requires specifically that the appeal to the Board be made within a reasonable time after the receipt of a notice from the State Department of an administrative holding of loss of nationality or expatriation.

Office of Attorney General, Washington, D.C. File: CO-349-P, February 7, 1972.

Appellant's counsel argues that the Board has jurisdiction over this appeal pursuant to the current regulations of the Department, which came into effect in 1979. 8/ The regulations provide that 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 of the certificate of loss of nationality. 9/ The regulations further provide that 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. 10/ The Board may, also for good cause shown, in its discretion enlarge the time prescribed by the regulations for the taking of any action. 11/

Appellant's counsel contends that there is good cause in this case why the Board should exercise its discretion to enlarge the time for taking an appeal. He alleges that the Department failed to notify appellant in 1942 of the issuance of the certificate of loss of nationality, that appellant was unaware of the Department's determination of loss of nationality in his case prior to the Embassy's letter of October 10, 1980, that the appeal is made "within one year of October 10, 1980", and also that the appeal "is made within a reasonable time of the Department's 1942 action under the circumstances of this case."

8/ Part 7 of Title 22, Code of Federal Regulations (1981), 22 CFR Part 7. The regulations were promulgated on November 30, 1979 (44 Fed. Reg. 68825).

9/ Section 7.5(a) of Title 22, Code of Federal Regulations (1981), 22 CFR 7.5(a) and (b).

10/ 22 CFR 7.5(b).

11/ 22 CFR 7.10.

III

Because of the passage of time and the absence of contemporaneous records at the American consular office in Jerusalem relating to appellant's naturalization in Palestine and the approved certificate of loss of nationality, there is no way of knowing with certainty what actually transpired in the wartime conditions of 1942. There is no evidence of record that would show whether the consular officer received the instruction, or, if received, forwarded a copy of the certificate to appellant, or, if forwarded, whether appellant received it.

It should be noted, however, that consular posts were required by section 501 of the Nationality Act of 1940 to forward a copy of the approved certificate to the person to whom it related, following approval by the Department. Here, the Department instructed the consular officer to forward a copy of the approved certificate to appellant. As the Department argued in its brief, it is reasonable to assume, as there is no evidence to the contrary, that the consular officer received the Department's instruction and that he complied with it by sending a copy of the certificate to appellant. A presumption of regularity has long attached to the actions and procedures of the Government and its agencies in the daily conduct of public business. Boissonas v. Acheson, 101 F. Supp. 138 (1951).

Appellant alleges, however, that he never received a copy of the approved certificate; Absent the relevant records, the allegation is not susceptible of proof. The disposition of the certificate in 1942 rests in a penumbra of uncertainty.

In the circumstances of this case, the meaningful inquiry is whether appellant had any kind of notice of the loss of his citizenship before 1980, and, if so, when. Appellant's bare allegation that he never had notice of the Department's determination of loss of citizenship until he received the October 18, 1980 letter of the

Embassy at Tel Aviv, may not excuse him from failing to take a timely appeal if he was, or should be deemed to have been, aware well before then that he was an expatriate, of that at least there existed a substantial question about his citizenship status.

If we find that L[redacted] had no notice at all of his loss of citizenship before , his appeal may be deemed to have been timely filed, and the Board will have jurisdiction t nsider it on the merits. If, however, we conclude that L[redacted] had adequate notice of loss of citizenship sometime p to 1980, we must determine whether his delay in taking an appeal from that date until 1980 was or was not unreasonable in the circumstances of this case.

It is well established that implied notice of a fact is legally sufficient to impute actual notice to a party, provided certain conditions are present.

Implied notice is a presumption of fact relating to what one can learn by reasonable inquiry and arises from actual notice of circumstances. It exists where the fact in question lies open to the knowledge of the party so that the exercise of reasonable observation and watchfulness would not fail to apprise him of it, although no one has told him in so many words. Black's Law Dictionary, 5th Ed. (1979).

The law imputes knowledge when opportunity and interest coupled with reasonable care would necessarily impart it. U.S. v. Shelby Iron Co., 273 U.S. 571 (1926). In Nettles v. Childs, 100 F. 2d 952 (1939), the court, cited the holding in U.S. v. Shelby Iron Co., and added

> and if a person has actual knowledge of facts which would lead an ordinarily prudent man to make further investigation, the duty to make inquiry arises and the person is charged with knowledge of the facts which inquiry would have disclosed.

Notice of a fact may exist without actual notice thereof and may be imputed by reason of knowledge of facts or circumstances which place the person having such knowledge upon inquiry which if pursued would have led to knowledge of the ultimate fact in question. Mossler Acceptance Co. v. Johnson, 109 F. Supp. 157 (1952).

Similarly in McDonald v. Robertson, 104 F. 2d 845 (1939): "Knowledge of facts putting a person of ordinary knowledge on inquiry is the equivalent of actual knowledge, and if one has sufficient information to lead him to a fact, he is deemed conversant therewith and laches is chargeable to him if he fails to use the facts putting him on notice." See also American Insurance Co., v. Lucas, 387 F. Supp. 896 (1941): "The doctrine of implied notice or knowledge charges a person with notice of everything that he could have learned by inquiry, if there is sufficient notice to put him on guard and excite attention."

The question therefore arises whether in the instant case appellant had sufficient notice or cause during the years from 1941 to 1979 to be put on his guard -- his attention excited -- so that ordinary prudence would have stimulated him to inquire about his actual citizenship status.

It can hardly be doubted that L[redacted] was aware, or on notice, in 1941 of his likely loss of United States citizenship status. Appellant executed a written statement before the consul at Jerusalem in 1941, declaring that he voluntarily acquired Palestine citizenship on July 14, 1941, that he voluntarily abandoned permanent residence in the United States, and that he did not intend to resume residence in the United States in the immediate or near future. It is not unreasonable to assume, since there is no evidence to the contrary, that on that occasion the consular officer informed L[redacted] that his obtaining naturalization in Palestine was a statutory expatriating act and that he [redacted]d submit a certificate of loss of nationality in L[redacted]' name to the Department for determination.

Appellant, according to his 1979 citizenship questionnaire, also surrendered his United States passport to the Consulate in Jerusalem in the summer of 1941. (He stated in his affidavit of September 9, 1981, however, that he surrendered his passport one year after his naturalization, in the spring of 1942.) The surrender of his U.S. passport, a symbolic act [redacted]everance of allegiance, should at least have borne in on L[redacted] that his naturalization in Palestine might not be without [redacted]udice to his retention of United States citizenship.

In 1946 L[redacted] applied for and obtained a United States visa in his Palestine passport to make an urgent trip [redacted]he United States. According to the 1979 questionnaire, L[redacted] did not attempt to regain his United States passport at th time because of the urgency of his trip and Palastine was "in a state of turmoil." Instead, he traveled to the United States as a Palestine citizen, suggesting in the process that he no longer considere[redacted]mself a United States citizen. There is no evidence that L[redacted] endeavored to clarify his United States citizensh[redacted]tatus when he applied for the visa in 1946 or after his return from the United States. He has not told us why he did not or could not do so, and the contemporary records of the Embassy at Tel Aviv and the Consulate General at Jerusalem are no longer available to shed light on what actually transpired when he sought his visa in 1946.

L[redacted] stated in the 1979 questionnaire "I wished to visit the United States urgently in 1965 and therefore obtained an Israeli passport. However, the reason for my trip was suddenly cancelled and I did not carry out my intention until the summer of 1969 /sic/..." He does not explain why he sought only an Israeli passport to make the trip. Had he been so certain that he remained a United States citizen, it would have been logical for him to have sought a United States passport, particularly for travel to the United States. He has not explained why after his trip had been cancelled, he did not or could not assert a claim to United States citizenship. His conduct was not that of a person who was convinced that his U.S. citizenship was intact.

We now turn to the Spring of 1968 when L[redacted] again applied for and obtained a United States visa for travel to the United States.

L[redacted]' account of what transpired in 1968 when he visited the Embassy at Tel Aviv must be recorded precisely, for it is particularly important to determining whether by that time, at the latest, he had legally sufficient notice of his actual or possible expatriation.

In the 1979 questionnaire, L[redacted] twice describes his 1968 visit to the Embassy. In answer to the question: "Have you previously appeared at a [redacted]sular office of the United States for any purpose?", L[redacted] replied:

> 3. In the spring of 1969 /sic - actually, 1968/ I asked at the Tel Aviv Consulate whether I could reinstate my American citizenship and visit the United States on an American passport, but was given to understand by the Consular Officer that it could not be done. I therefore applied for a visa (which was granted to me and my wife) for visiting the United States on an Israeli passport.

In another part of the questionnaire -- item no. 6, concerning his use of a foreign passport -- L[redacted] wrote:

> I wished to visit the United States urgently in 1965 and therefore obtained an Israeli passport...however the reason for my visit was suddenly cancelled, and I did not carry out my intention until the summer of 1969 /sic - actually 19687 when, as stated in answer to question no. 1(a), I was given to understand by the Consular Officer at Tel Aviv that I could not regain my American passport, and therefore visited the United States on an Israeli passport. Had I been able to regain my American passport before making the trip I should have certainly done so. ...

Counsel for appellant contends in his reply brief that L[redacted] was given to understand in 1968 that he would not be able to be issued a United States passport "in enough time to accommodate his [redacted]ns to travel to the United States." That is not what L[redacted] wrote. He did not indicate that a mere administrative technicality prevented the issuance of a passport before he intended to depart for the United States. Since the records of his 1968 visit to the Embassy

are no longer available, we do not know what the consular officer told L[redacted]. But if a mere procedural reason was given for the consular officer's inability to issue a passport promptly it would not be unreasonable to have expected that L[redacted] would have so noted in the questionnaire. It therefore seems inescapable that L[redacted] had definitively been put on notice in 1968 that there was a substantial question about his retention of his native citizenship.

The evidence -- supplied by L[redacted] himself -- supports the conclusion that he was aware in 1968 that there was at the absolute minimum a reasonable doubt that he was still a United States citizen. This conclusion is reinforced by the fact that several years later in 1979, L[redacted] again sought to "reinstate" his American citizenship. In his October 24, 1979, statement accompanying his citizenship questionnaire, he stated that, although a resident and citizen of Israel and a bearer of an Israeli passport, he felt "that the time had come for the reinstatement" of his citizenship of the United States, "to which I have been consistently loyal, and to which I have many ties." Had he in 1968 felt as strongly about his allegiance to the United States as he professed in 1979, one might expect that he would have taken steps no later than 1968 to assert his claim to United States citizenship. We conclude that L[redacted] had notice of his loss or likely loss of United States citizenship at least in 1968. His right of appeal therefore accrued from that date at the latest.

We do not consider that the circumstances of this case support appellant's averment that he was denied due process because he did not receive actual notice that the Department had approved a certificate of loss of nationality in his name -- an issue which, in our opinion, is at best moot. Appellant's situation is not that of one who unwittingly performed a statutory expatriating act, as a consequence of which, unbeknownst to him, official action had been taken resulting in his expatriation. We cannot believe that appellant had not been alerted at anytime during the thirty-nine years from 1941 to 1980 that he had prejudiced his United States citizenship in 1941 by becoming naturalized in Palestine.

If, in spite of good faith efforts by the Department to ensure, as required by law, that L[redacted] received actual notice but he did not, he nevertheless had a responsibility to

ascertain his actual citizenship status, given facts to which he had been alerted as early as 1941 and as late as 1968. The record shows no such effort on his part. Furthermore, his twice obtaining U.S. visas to visit the United States and applying for an Israeli passport in 1965, instead of seeking documentation as a United States citizen, are not the actions of one who entertains no doubt that he holds United States citizenship. Appellant's submissions do not explain convincingly why he did not or could not use the care of an ordinarily prudent person to assert a timely claim to United States citizenship. Although he had the opportunity and means to ascertain the true facts, he failed to assert such a claim until 1979. In our view, appellant may not now shelter behind an unproved (and at this late date probably unprovable) allegation that he never received actual notice that he had lost his United States citizenship.

Having determined that appellant must be deemed to have been on notice no later than 1968 that he had lost, or might have lost, his United States citizenship, and that he failed to act on the basis of that notic[redacted]ere remains for consideration the question whether [redacted] appeal initiated in December 1980, over twelve years after he assuredly had implied notice of his loss of nationality, can be considered to have been taken within a reasonable time.

The question of reasonable time depends, of course, on the facts in the case. Unlike a fixed determinate limitation, it would not depend upon the fact that a certain period of time has elapsed. As the Department pointed out in its brief, "reasonable time" has been held to mean as soon as circumstances will permit, and with such promptitude as the situation of the parties and the circumstances of the case will allow. In the case of Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931), the Supreme Court said, "what constitutes a reasonable time depends upon the circumstances of a particular case." "Reasonable" means reasonable under the circumstances, and that unnecessary delay, or lengthy delay, should not be tolerated. It does not mean that a party be allowed to determine a time suitable to himself. ~~In re~~ Roney, 139 F. 2d 175, 177 (1943). Nor, as the Department observes, should the term "reasonable time" be interpreted to permit a protracted and unexplained delay which is injurious to another party's rights.

It can hardly be denied that appellant permitted a substantial period of time to elapse before taking an appeal. We are persuaded that at least in **1968** he definitely knew (or was on notice) of the Department's holding of **loss** of nationality. Appellant has not explained why he did not take an appeal in 1968, and there is no record that he showed any further interest in re-establishing his claim to United States citizenship until 1979, on the occasion of his visit to the Embassy eleven years later to endeavor to "reinstate" his citizenship.

Appellant did not dispute his loss of United States nationality until he gave notice of appeal before this Board on December **1980**, thirty-nine years after he acquired Palestinian citizenship by naturalization on his own application. Even assuming that he first had notice in 1968 of the Department's holding of **loss** of nationality, and that the reasonable time limitation commenced to run from that date, more than twelve years elapsed before the appeal was taken. Whatever interpretation may be given to the term "reasonable time", as used in the regulations, we do not believe that such language contemplated a delay of twelve years after appellant's visit to the Embassy in **1968**, much less a delay of thirty-eight years after the certificate of **loss** of nationality had been approved by the Department.

Furthermore, the passage of time in taking an appeal in this case prejudices the Department's ability to meet its burden of proof. There are no available official records or contemporaneous accounts of appellant's visits or discussions with American consular officers in Jerusalem or Tel Aviv during the Period from 1942 to 1979, a period of thirty-seven years. In addition, after so long a time facts have become clouded and memories hazy.

As the Court stated in McDonald v. Robertson, 104 F. 2d **945** (19393,

> We do not rest our judgment upon the presumption of payment, for it is not merely in this or in analogy to the statute of limitations that a court of chancery refuses to lend its aid to stale demands. There must be

> conscience, good faith and reasonable diligence to call into action the powers of the court. In matters of account where the bar of the statute of limitations has not fallen, courts of equity refuse to interfere after a considerable lapse of time from a consideration of public policy and from the difficulty of doing justice when the original transactions have become obscure by time and the evidence lost.

It is generally recognized that the principal purpose of a limitation provision is to compel the exercise of a right of action within a reasonable time so as to protect the adverse party against stale and belated appeals that could more easily have been resolved when the recollection of events upon which the appeals is based is fresh in the minds of the parties involved and records are available. This is not the situation here. No good cause having been shown, the Board may not exercise the discretion granted to it by section 7.10 of 22 CFR to enlarge the time for the taking of this appeal,

IV

On consideration of the foregoing, we are unable to conclude that the appeal was taken within a reasonable time, as prescribed in the Department's regulations in effect from the inception of this Board in 1967 until revised and amended in November of 1979, or within one year after approval of the certificate of loss of nationality, as prescribed in the current regulations. Accordingly, we find the appeal barred by the lapse of time and not properly before the Board. The appeal is hereby denied.

Alan G. James, Chairman

Gerald A. Rosen, Member

George Taft, Member