

March 26, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: G [REDACTED] S [REDACTED]

This case is before the Board of Appellate Review on appeal from an administrative holding of the Department of State that appellant, G [REDACTED] S [REDACTED], expatriated himself on April 7, 1952, under the provisions of section 401(c) of the Nationality Act of 1940, by entering and serving in the Greek Navy. 1/

Appellant, S [REDACTED], was born in [REDACTED], G [REDACTED] on [REDACTED] [REDACTED] [REDACTED]. His father, G [REDACTED] S [REDACTED], who was born in Greece, was naturalized as a United States citizen on April 15, 1927, at Chicago, Illinois. Appellant's mother was a Greek national. Appellant thus was a dual national, a citizen of Greece and of the United States. He acquired United States citizenship under section 1993 of the Revised Statutes of the United States then in effect. Under that section, a person born outside the United States before May 24, 1934, whose father at the time of such birth was a United States citizen and had previously resided in the United States, became a citizen of the United States at birth. 2/

1/ Section 401(c) of the Nationality Act of 1940, 8 U.S.C. 801, reads:

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

. . .

(c) Entering, or serving, in the armed forces of a foreign state unless expressly authorized by the laws of the United States, if he has or acquires the nationality of such foreign state. . . .

2/ Section 1993 (1879) was revised from earlier legislation, **The** Act of April 14, 1802 (2 Stat. 153) and the Act of February 10, 1855 (10 Stat. 604). Section 1993 was amended by the Act of May 24, 1934 (48 Stat. 797), which imposed U.S. residence requirements to certain persons who are United States citizens at birth who are born abroad of one alien parent and one United States citizen parent.

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Appellant has resided in Greece since his birth. He enrolled in the Greek Naval Academy as a cadet in September 1948, and, upon graduation, was appointed an officer on April 7, 1952. On that occasion, appellant took an oath of allegiance to Greece. He served in the Greek Navy as a career officer until his discharge on January 29, 1969, upon his own application, having attained retirement age. Appellant subsequently attended a graduate school of economics and commercial sciences at Athens and was granted a degree in economics in June of 1973.

Appellant apparently was aware of his possible claim to United States citizenship from his earliest recollections. In a citizenship questionnaire of the American Embassy at Athens, which he executed on August 30, 1974, he stated that his father "has always informed" him of his claim to American citizenship and that during World War II he knew that he had a claim to American citizenship but that it was not possible for him to pursue the matter.

It also appears from the citizenship questionnaire that S [REDACTED], sometime in 1969, after his discharge from the Greek Navy visited the Embassy and, allegedly, was told that he "could be registered as an American citizen." He further stated in the questionnaire that he did not pursue the matter then "because of family complications."

In August of 1974, S [REDACTED] appeared at the Embassy to assert his claim to American citizenship. He executed an application for registration and a citizenship questionnaire to assist the Department of State in determining his citizenship status. Subsequently, he provided an affidavit dated April 2, 1975, explaining his service in the Greek Navy and claim to United States citizenship. Also, on August 25, 1975, at the request of the Embassy, pursuant to instructions from the Department, S [REDACTED] executed an "Affidavit of Expatriated Person" in which he declared that his service in the Greek Navy was a free and voluntary act, that no influence, compulsion, force, or duress was exerted upon him by any person, and that it was done with the intention of relinquishing his United States citizenship.

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On April 8, 1975, the Embassy prepared a certificate of loss of United States nationality, as required by section 358 of the Immigration and Nationality Act. 3/ The Embassy certified that appellant never resided in the United States: that he acquired United States nationality by virtue of his birth in Greece on October 6, 1932, of an American naturalized father: that he acquired the nationality of Greece by virtue of his birth of a Greek father; that he entered the Greek Navy on April 7, 1952, and served until January 29, 1969: and, that he thereby expatriated himself under the provisions of section 401(c) of the Nationality Act of 1940. The Department approved the certificate of loss of United States nationality on September 23, 1975. Thereafter, the Embassy sent S [REDACTED] a copy of the certificate of loss of nationality and informed him of his right to take an appeal to the Board of Appellate Review. 4/ On June 24, 1980, approximately five years later, Stavrou requested this Board to reexamine and review the Department's holding of loss of nationality. Appellant's counsel submitted a brief dated August 21, 1981, in support of the appeal.

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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.

4/ Letter of American Embassy, Athens, Greece, to Mr. G [REDACTED] S [REDACTED], November 7, 1975.

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Upon receipt of appellant's brief, the Board requested Passport Services to submit the Department's brief of the appeal and the record on which the Department's determination of loss of nationality was based. On December-15, 1981, the Deputy Assistant Secretary for Passport Services submitted the record, accompanied by a memorandum, in lieu of a brief, setting forth the position of the Department on the appeal. The memorandum requested the Board to remand appellant's case to Passport Services for the purpose of vacating the certificate of loss of nationality. The memorandum stated:

The Department believes, after reviewing the record, that it cannot sustain its burden of showing, by a preponderance of the evidence, that Mr. S [REDACTED] intended to relinquish his United States nationality by entering or continuing to serve in the Greek Navy. Therefore, we request the Board of Appellate Review to remand this case for vacation of the Certificate of Loss.

Before the Board can properly act on the request for remand, we are of the view that the Board in the first instance must determine whether it has jurisdiction to consider this appeal. As the Chairman of the Board stated in her letter of July 16, 1980, to the appellant, the Board must first determine whether the appeal has been timely filed before proceeding with its consideration of the case. If the appeal was not filed within the prescribed period of time, the Board would lack jurisdiction over the case. The Department's memorandum on the appeal does not address this essential issue.

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. 5/ 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.

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

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The Department's regulations, which were in effect on September 23, 1975, 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. 6/

We consider the above time limitation applicable in the circumstances of this case. Thus, under the governing time limitation, a person who contends that a 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 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). Generally, reasonable time means reasonable under the circumstances. It 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. 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).

The rationale for giving a reasonable time to appeal an adverse decision is to allow an appellant sufficient time upon receipt of such decision to assert his or her contentions of law or fact against the Department's holding of loss of nationality. Further, it should be noted that the period of a "reasonable time" begins to run with the receipt of the Department's holding of loss of nationality, and not at some subsequent time, years later, when appellant, for whatever reason, may seek belatedly to restore his United States citizenship status.

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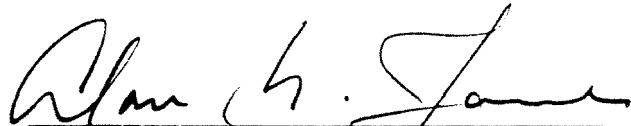
6/ Section 50.60 of Title 22, Code of Federal Regulations (1975), 22 CFR 50.60.

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Here, as we have seen, the Embassy at Athens forwarded appellant in November 1975, a copy of the certificate of loss of nationality, and informed him specifically that he might file an appeal with the Board of Appellate Review. Appellant, however, did not dispute the finding of loss of nationality at that time. It appears from the record that appellant did not in fact at any time question the loss of his United States nationality until his letter to the Board of June 24, 1980, requesting a review of his citizenship case. Appellant offered no good cause why the appeal could not have been filed before then. Whatever, the reason, it is beyond dispute that appellant had ample opportunity to take an appeal to the Board prior to that time. In our view, appellant's delay of five years in taking an appeal was unreasonable in the circumstances of this case.

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 on limitations then in effect. Accordingly, we find the appeal is time barred and that the Board is without authority to consider the case. The appeal is denied.

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

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
G. Jonathan Greenwald, Member