December 30, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: R[redacted] I[redacted] E[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, R[redacted] I[redacted] E[redacted], formerly known as [redacted] expatriated himself on June 15, 1967, 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 his United States nationality at the American Consulate General at Jerusalem. 1/

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

Appellant was born R[redacted] I[redacted] at [redacted]. 2/ He resided in the United States until July 3, 1959, when he traveled to Israel with his mother on her United States passport. Appellant was registered at the Consulate General at Jerusalem on June 12, 1961. He obtained a United States passport in 1963, which the Consulate General later renewed to June 23, 1968.

In 1965, at the age of seventeen, appellant as a permanent resident in Israel and, purportedly, as required by law, registered for military service at his local draft board in Jerusalem. He also signed at the time a letter whereby he undertook "to be inducted into the regular army." Appellant obtained deferments from military service until after the so called Six Day War in June of 1967. According to appellant, "immediately" following the Six Day War, he presented himself to his local draft board and stated his preference "to be drafted then." He alleged that the Israeli military authorities "demanded" proof that he had given up his United States citizenship status before being inducted into the Israeli Army. The record, however, is void of any supporting evidence concerning the Israeli "demand" that he renounce his citizenship. Indeed, there is no evidence in the record (except appellant's own statement -- see below) with respect to appellant's actual military service in Israel.

2/ The record does not disclose when or under what legal authority appellant's name was changed from R[redacted] I[redacted] E[redacted] to R[redacted] I[redacted] E[redacted]. Appellant's formal oath of renunciation of United States nationality, subscribed and sworn to on June 15, 1967, is signed [redacted] the "Affidavit of Expatriated Person" of the same date is also signed [redacted]"; and the Certificate of Loss of Nationality of the United States, issued by the Consulate General at Jerusalem on June 15, 1967, and approved by the Department of State, is in the name of "R[redacted] I[redacted] E[redacted]." Appellant's first use of the name R[redacted] E[redacted] in the record before the Board of Appellate Review appears in his sworn statement, dated October 7, 1981, setting forth his appeal from the Department of State's administrative determination of loss of nationality in 1967.

In a sworn statment executed on October 7, 1981, at the American Embassy at London, appellant explained the circumstances leading up to his induction into military service as follows:

> The Six Day War had a most severe effect on those who experienced it in Israel. Realizing that I would eventually have to serve in the Israeli Army, and overcome with strong feelings of apathy and guilt that I had survived while friends and acquaintances lost their lives, I felt that now was as good a time as any to do something that was in any case inevitable. The Israeli Army demanded that I furnish them with proof that I had given up my American citizenship, whereupon I took the oath of renunciation. One week before my induction I was offered the post of flutist with the Israeli Radio Symphony Orchestra, and one year later was inducted into the Israeli Army.

In a submission to the Board, dated April 25, 1982, appellant pointed out that he "was not threatened with any punishment, specified or otherwise, by the Israeli Government" if he did not renounce his United States citizenship prior to serving in the Israeli Army. He added, however, that he "was demanded to do so" by the deputy commander of the draft board in Jerusalem.

On June 12, 1967, appellant visited the Consulate General to discuss renunciation of citizenship. The Consulate General subsequently reported to the Department that appellant was advised to think the matter over for a few days. Appellant also informed the Board on April 25, 1982, that he was told to reconsider the matter "for a week" and to consult his family about renunciation. Appellant, however, returned to the Consulate General "after three days, incapable of waiting a whole week", and made a formal renunciation of his United States citizenship. The oath of renunciation which he executed read 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 United States nationality together with all rights and privileges and all

duties of allegiance and fidelity thereunto pertaining.

Appellant also signed under oath an "Affidavit of Expatriated Person" averring that his renunciation was his free and voluntary act and that no influence, compulsion, force or duress was exerted upon him by any other person.

As required by section 358 of the Immigration and Nationality Act, the Consulate General prepared a certificate of loss of nationality and forwarded it to the Department for approval. 3/ The Consulate General certified that Ranan Israel Eller made a formal renunciation of nationality before a consular officer of the United States in a foreign state on June 15, 1967, and thereby

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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 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.

expatriated himself under section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act. The Department approved the certificate on August 1, 1967. The Consulate General provided a copy of the approved certificate of loss of nationality to appellant by registered mail on August 23, 1967. Approval of the certificate of loss of nationality constitutes the Department's administrative determination of loss of nationality from which an appeal, properly and timely filed, may be taken to this Board.

Appellant submitted his appeal in his sworn statement of October 7, 1981. He contended "that duress was involved" in his renunciation and that "until recently" it did not occur to him that anything could be done to reverse the consequences of his renunciation.

The initial question presented in this case is whether the appeal taken here fourteen years after receipt of notice of the Department's determination of loss of nationality was timely filed. 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, however, were not in force at the time the Department approved the certificate of loss of nationality that was issued in this case. It is generally recognized that a change in regulations shortening the limitation period is presumed to be prospective in operation, and not to operate retrospectively where a retrospective effect would work an injustice and disturb a right acquired under former regulations.

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

The Department's regulations, which were in effect on August 1, 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 shortening the limitation, 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, 177 (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 Cal. 393, 90 P. 934, 935 (1907).

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

The rationale for allowing a reasonable 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. 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.

The record before the Board shows that appellant received from the Consulate General a copy of the certificate of loss of nationality in August of 1967, and was thus fully aware in 1967 of the Department's determination of his loss of United States citizenship. In addition, it should be noted that appellant by formally renouncing his citizenship performed an unequivocal act of expatriation and was in no doubt as to his loss of citizenship.

It does not appear that appellant raised any question about his loss of citizenship until he submitted his appeal in 1981, fourteen years after the Department's determination of loss of nationality in 1967. It is beyond dispute that appellant permitted a substantial period of time before taking an appeal. Appellant, in our view, offered no valid justification for the delay, which he sought to explain as follows:

> It has always been obvious to me in the fourteen years that have lapsed since my U.S. citizenship was lost, that signing an oath of renunciation had irrevocable and irreversible consequences. Most of this time, I was completely oblivious to the existence of provisions for appeal. In addition, the increasing remoteness of the events did much to obscure the issue and the feeling of duress which played a key role in my actions, to such a degree, that I did not imagine it at all possible until

recently, to question the validity of the loss of my U.S. citizenship.

There is no record that appellant showed any interest in the restoration of his United States nationality prior to the submission of his appeal in 1981. During the period following his renunciation in 1967, he made several visits to the United States and, thus, had ample opportunity to question his loss of United States citizenship. Moreover, during this period he obtained immigrant and tourist visas from U.S. consular offices abroad. 6/ Appellant could have easily ascertained at those offices the procedures for taking an appeal, assuming that he believed that the Department's holding of loss of nationality was contrary to law or fact. We find his failure to take any action until 1981 convincing evidence that his delay in seeking an appeal was unreasonable. Whatever the meaning of the term "reasonable time", as used in the regulations, may be, we do not believe that such language meant a delay of fourteen years in taking an appeal. The period of a "reasonable time" commences with the receipt of the Department's holding of loss of nationality, and not at some subsequent time when appellant considers it appropriate or convenient to take an appeal. In our opinion, appellant's delay of fourteen years in taking an appeal was unreasonable in the circumstances of this case.

6/ In a submission to the Board, dated April 25, 1982, appellant stated that he acquired Israeli nationality on November 10, 1969, after the completion of his military service in Israel. Presumably, appellant traveled with an Israeli passport.

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. As a consequence, we find that the appeal is time barred and that the Board is without authority to entertain it.

Alan G. James, Chairman

Howard Meyers, Member

George Taft, Member