May 21, 1982

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: E[redacted] T[redacted] G[redacted]

This is an appeal from an administrative holding of t[redacted]partment of State that appellant, E[redacted] T[redacted] G[redacted], expatriated herself on April 19, [redacted] de provisions of section 349(a) (1) of the Immigration and Nationality Act by obtaining naturalization as a citizen of Liberia upon her own application. 1/

I

Appellant, E[redacted] T[redacted] G[redacted], was born on [redacted], thus acquiring une 22, 1958, she married E[redacted] G[redacted], a citizen of Liberia, who was a third cousi[redacted]he [redacted]sident Tubman of Liberia and an employee of the Liberian Government. Appellant obtained her first and only United States passport on August 11, 1959, in order to travel with her husband to

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1/ Section 349(a) (1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a) (lj, 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 --
>
> (1) obtaining naturalization in a foreign state upon his own application, . . .

Liberia to reside for an extended period of time. On December 23, 1959, appellant moved with her husband to Liberia where she resided continuously until sometime in late 1980. On August 11, 1961, appellant renewed her passport for a two-year period at the American Embassy in Monrovia. On December 25, 1962, a daughter was born to appellant in Monrovia and documented as a United States citizen at the United States Embassy. In January 1963, appellant became employed as a secretary at the Executive Mansion of then President Tubman, a position she held until 1975.

Appellant avers that in late 1962 or early 1963, President Tubman told her that people had complained to him that her husband should have married a Liberian woman. She further avers that the President said he would arrange for the situation to be corrected *so* that her husband could continue to hold jobs with the Liberian Government without public disapproval. Appellant maintains that she asked nothing of the President and did not authorize him to take steps on her behalf. In April 1963 President Tubman gave appellant a "Certificate of Citizenship" dated April 19, 1963, which conferred on her citizenship of the Republic of Liberia. The certificate states, inter alia, that she "renounce/d/ and adjure/d/ all allegiance and fidelit[redacted]l f[redacted]n powers and particularly to the said Mrs. E[redacted]h G[redacted] (sic) being the foreign power to which sh[redacted]rly[redacted] allegiance." Appellant variously maintains that the certificate was an unsolicited gift and she took no affirmative action to obtain Liberian citizenship.

However, on March 26, 1963, appellant executed an Application for a Declaration of Intention to become a Liberian citizen before an Assistant Commissioner of Immigration for Naturalization and Citizenship. On her application she stated that:

> Having resided in the Republic of Liberia for three and one half years, I find myself desirous of becoming a Liberian citizen because I like the country and its people and I feel quite certain that I will be a good and desirable citizen. Therefore I have no alternative but to denounce my present to that of a Liberian (sic). Besides my husband is a Liberian.

The U.S. Embassy advised appellant on October 2, 1963 and December 17, 1963, that her U.S. passport had expired. She notified the Embassy by letter dated February 3, 1964, that she had become a naturalized Liberian citizen. On February 5, 1964, in response to the aforementioned letter, the Embassy asked appeilant to call so that a certificate of loss of nationality might be prepared. On February 6, 1964, appellant appeared at the Embassy and executed an affidavit of expatriated person in which she stated that she acquired Liberian citizenship through the process of naturalization on April 19, 1963, and that the act "was my free and voluntary act and that no undue influence, compulsion, force or duress was exerted upon me from any source whatever." Thereafter, on February 6, 1964, the Embassy, in accordance with section 358 of the Immigration and Nationality Act, 2/ prepared a Certificate of Loss of Nationality of the United States

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2/ 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.

and forwarded it to the Department of State. On April 2, 1964, the Department approved the certificate and sent a copy to the Embassy, which the Embassy forwarded to appellant on April 20, 1964. The certificate was returned to the Embassy as undeliverable on October 28, 1964. The Embassy was, however, able to deliver it to appellant on January 21, 1965. Appellant did not contact the Embassy thereafter until April 1980 at which time she applied for a U.S. passport, which passport was denied on the basis of her loss of nationality.

In May 1980, appellant made a sworn statement at the Embassy in which she said that on April 19, 1963, she was told that she had been expeditiously made a citizen of Liberia; she was shocked; she notified the Embassy; she was told that things were done a little differently in Liberia than in America; she did not receive a Liberian naturalization certificate; she did not approve of the way this was done; she held on to her U.S. passport; and a U.S. consular official agreed with her.

On June 20, 1980, over fifteen years after appellant received a copy of [redacted]ertificate of loss of U.S. nationality, Mrs. G[redacted] took this appeal to the Board of Appellate Review. Appellant's affidavit of November 3, 1980, constituted her brief. Appellant contends that she performed no expatriating act; that if her affidavit of February 1964 be considered an expatriating act, it was signed under duress, pressure and incorrect advice; and that she never intended to relinquish her United States citizenship.

II

Before the Board may properly act on this appeal, we are of the view that the Board, in the first instance, must determine whether it has jurisdiction to consider this appeal. The first issue before us, therefore, is whether the appeal has been timely filed. If the appeal has not been 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. 3/ The regulations

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3/ Section 7.5(b) (1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b) (1).

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 were not, of course, in force at the time the Department approved the certificate of loss of nationality which was issued in this case.

The Department's procedures which were in effect on April 2, 1964, the date the Department approved Mrs. G[redacted] certificate of loss of nationality, contained no provision for a time limit within which to appeal loss of nationality to the Board of Review of Loss of Nationality, the predecessor of the Board of Appellate Review. 4/ However, the Department's regulations which were promulgated and published in 1966 in the Code of Federal Regulations provided that an appeal from the Department's administrative determination of loss nationality might be taken to the Board of Review of Loss of Nationality within a reasonable time after receipt of notice of such holding. The time for filing appeals set forth in the 1966 regulations was incorporated into the Department's regulations which took effect on November 29, 1967, shortly after the establishment of the Board of Appellate Review. These latter regulations provided as follows:

4/ A Board of Review had been established on November 1, 1941, in the Passport Division to receive and consider appeals from administrative holdings of loss of nationality. The Board of Review was later reconstituted as an autonomous Board of Review on the Loss of Nationality within the Passport Office. On July 28, 1967, the Board was abolished and its functions transferred to a newly created Board, the present Board of Appellate Review. Section 7.1 of Title 22, Code of Federal Regulations, 22 CFR 7.1 (1967).

> 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 period of time after receipt of notice of such holding, to appeal to the Board of Appellate Review. 5/

We consider the latter time limitation is applicable in the circumstances of this case. Thus, under the governing time limitation, a person who contends that an administrative determination by the Department of loss of nationality is contrary to law or fact is required to appeal such holding to the Board within a reasonable period of time after receipt of notice of the holding. If a person does not initiate his or her appeal within a reasonable time, the appeal would be barred.

The question of whether an appeal was taken within a reasonable time depends on 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 the 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 may 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. Smith v. Pelton Water Wheel Co., 151 Cal. 393 (1907).

The criterion of "reasonable time" is therefore considered to allow, inter alia, sufficient time to prepare an appeal. The tolling of "reasonable time" commences with the receipt of the Department's holding of loss, and not at the moment when an appellant may decide it is convenient or desirable to take action.

5/ Section 50.60 of Title 22, Code of Federal Regulations, (1967-1979), 22 CFR 50.60.

In this case the United States Embassy at Monrovia delivered to appellant a copy of the certificate of loss of nationality on January 21, 1965. It does not appear 'from the record that appellant took any meaningful action to challenge her loss of nationality until she appealed to the Board on July 20, 1980. Nor has she offered any convincing explanation for such delay. Appellant did allege that when she appeared at the Embassy on February 6, 1964, to execute an Affidavit of Expatriated Person that "the Embassy official did not explain to me the meaning or possible effect of the affidavit" and indeed the official "assured me that I could get a new passport from the United States Embassy at a later date." That, of course, was before the Certificate of Loss of Nationality of the United States was delivered to appellant on January 21, 1965. Moreover, on October 5, 1966, a son was born to appellant in Monrovia, and, unlike the case of her elder child who was born in Monrovia, no apparent attempt was made to have the second child documented as a U.S. citizen.

Appellant's counsel in her reply brief states that Mrs. G[redacted] was apparently never notified of her right to appeal before May 6, 1980, thus was denied due process of law. It may be observed, however, in this connection that regulations of the Department in effect in 1965 did not specifically require that a diplomatic or consular post inform a person in whose case a certificate of loss of nationality had been issued that he or she had the right of appeal. It was not until 1979 that the Department's regulations required that when an approved certificate of loss of nationality is forwarded to the person to whom it relates, such person shall be informed of the right to appeal the Department's determination to the Board of Appellate Review. 6/ As noted above, (note 4 supra) an appeal process, however, was in existence in 1965.

6/ Section 50.52, Title 22, Code of Federal Regulations, 22 CFR 50.52, reads as follows:

> When an approved certificate of loss of nationality or certificate of expatriation is forwarded to the person to whom it relates or his or her representative, such person or representative shall be informed of the right to appeal the Department's determination to the Board of Appellate Review (Part 7 of this Chapter) within one year after approval of the certificate of loss of nationality or the certificate of expatriation.

We do not consider that the fact that appellant did not receive notice in 1965 of her right of appeal constitutes denial of due process. It is well established that whatever puts or should put a party upon inquiry is sufficient notice where the means of knowledge is at hand. Here appellant was duly put on notice of her loss of nationality on January 21, 1965, and consequently was or should have been put upon inquiry at that time. And the means of knowledge were at hand through the United States Embassy at Monrovia. Had she exercised a modicum of diligence in protesting her loss of citizenship she could thus have readily ascertained that she did have a means of redress.

As to appellant's contention in her reply brief that a showing of good cause for delay in appealing requires demonstration of a substantial and meritorious question on appeal, the Board notes that the case cited by the Department Appeal of Syby, 169 A.2d 479 (1961), enunciates the proposition that "good cause" to extend time for taking an appeal requires not only a demonstration that there is a substantial meritorious question involved in the appeal, but also showing a valid excuse for a delay in filing appeal. However, as the Board is of the view that appellant has not presented a valid excuse for delay, we need go any further.

In light of the current and more exacting standard of one year's time for taking an appeal and 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 in taking one, it is apparent to us that the norm of "reasonable time" would not have extended to a delay of over fifteen years.

Since the Board is of the view that the elapse of over fifteen years clearly constitutes an unreasonable delay in taking the appeal, we find that the appeal taken on June 20, 1980, was not made within a reasonable time after receipt by appellant of notice of the Department's holding of loss of nationality, and therefore is time barred. As a consequence, the Board is without jurisdiction to entertain the appeal.

Given our disposition of this case, we do not reach the other issues presented.

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member