April 12, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: L[redacted] C[redacted] W[redacted]

This case is before the Board of Appellate Review on an appeal brought by L[redacted] C[redacted] W[redacted] from an administrative determination of the Department of State that he expatriated himself on June 14, 1967, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization as a citizen of the United Kingdom and Colonies upon his own application.

Appellant filed this appeal through counsel on June 14 1982, twelve years after the Department had approved the certificate of loss of nationality that was issued in appellant's name.

The threshold issue in this case is whether the appeal was filed within the time limit prescribed by the applicable regulations. We find that the appeal was not timely filed and is therefore barred. The appeal will be dismissed.

I

Appellant was born at [redacted], on [redacted], thus acquiring United States nationality at birth. Appellant enlisted in the United States Army in 1940. While serving in the United Kingdom during World War II, he married a British citizen. Following an honorable discharge from the Army in 1945, appellant and his wife resided in the United States. En 1950 appellant's wife informed him that she wished to return to the United Kingdc

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1/ Section 349(a)(1) of the Immigration and Nationality Ac 8 U.S.C. 1481(a)(1), reads:

See. 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, . . .

with their two children. Appellant accompanied his family, travelling on a passport issued in November 1950. Since the jurisdiction in which appellant's parents lived did not in 1921 issue certificates of birth, appellant states that he obtained his passport on the strength of the information in his Army discharge certificate and an affidavit executed by his mother. Appellant has resided in the United Kingdom since 1950. According to his submissions, he purchased a restaurant near Bristol, England which he managed for a number of years.

Appellant states that toward the end of 1966 he visited the United States Embassy at London to inquire about renewing his 1950 passport. According to appellant, (there is no account by the Embassy of this visit in the record) the Embassy informed him that his passport could not be renewed because he had submitted insufficient evidence of his birth in the United States. Since appellant allegedly required a passport, he applied for naturalization in the United Kingdom, having learned from a police officer that he would be entitled to a British passport if he were to become a British citizen. He applied for.naturalization, and on June 14, 1967, was issued a certificate of citizenship of the United Kingdom and Colonies. He subsequently obtained and travelled on a United Kingdom passport.

At the request of the Embassy, appellant appeared there early in 1968 to discuss his naturalization. On February 26, 1968, he executed an affidavit of expatriated person and a supplementary affidavit. In the affidavit of expatriated person, appellant swore that his naturalization had been his own free and voluntary act. In the supplementary affidavit, he stated in part:

> I was naturalized as a British subject on June 14, 1967. I was fully aware when I applied for naturalization as a British subject that I would lose my United States citizenship, but all my ties are now here in England, my wife and children also wish to be British, and remain here in England.

As required by section 358 of the Immigration and Nationality Act, the Embassy on March 28, 1968, prepared a

certificate of loss of nationality in appellant's name. 2/ The Embassy certified that appellant acquired the nationali of the United States at birth; that he obtained naturalization in the United Kingdom upon his own application; and ha thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on December 19, 1969, approval constituting an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be taken to this Board. On January 26, 1970, the Embassy forwarded a copy of the approved certificate to appellant. The Embassy's transmittal letter stated in part:

> This certificate has now been approved by the Department of State and should be retained as evidence that you ceased to be an American citizen as of the above date /June 14, 1962/.
>
> There is also enclosed an information sheet showing the procedure to be followed should you wish to appeal

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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 suck 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.

> against the above decision and the grounds on which an appeal may be made.

Twelve years later, on June 14, 1982, counsel for appellant gave notice of appeal on behalf of his client, and subsequently requested a hearing which was held on March 19, 1983.

In his brief, counsel for appellant contends that his client's appeal was brought within a reasonable time as prescribed by section 50.60 of Title 22, Code of Federal Regulations. 3/ Specifically, counsel argues that when appellant received the Embassy's letter of January 26, 1970, he

> ...did not believe that the Certificate went to the substance of his United States citizenship status. He believed rather that the Certificate was of an administrative nature, and that appropriate administrative steps could be taken to confirm his United States citizenship status at a future date.

Counsel adds:

> In view of the Appellant's age, rural background, elementary education and

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3/ Section 50.60 of Title 22, Code of Federal Regulations (1970) 22 CFR 50.60, reads:

A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contary 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.

situation, and in view of the circumstances of the case as a whole, the appellant's belief that his U.S. citizenship status was not jeopardized by naturalization in the United Kingdom should be construed as a reasonable one.

As to merits of the appeal, counsel contends that appellant did not understand the implications of the two affidavits he signed at the Embassy on February 26, 1968, a that appellant did not intend to relinquish his United Stat citizenship by obtaining naturalization in the United Kingd

II

Before proceeding we must determine whether the appeal filed within the prescribed time period. If the appeal was not timely filed, the Board would lack jurisdiction to cons the case. As the Chairman of the Board informed appellant' counsel on July 2, 1982, the Board, in order to determine i jurisdiction to hear the appeal, must first determine wheth the appeal has been timely filed.

Under the current regulations of the Department the time limitation for filing an appeal is one year after approval of the certificate of loss of nationality. 4/ An appeal filed after the time limit shall be denied unless %% Board, for good cause shown, determines that the appeal cox not have been filed within the prescribed time. The curren regulations were promulgated on November 30, 1979, and ther fore were not in force in 1969 at the time the Department approved the certificate of loss of nationality that was issued in appellant's name. It is generally recognized tha change in regulations shortening a limitation period is pre sumed to be prospective in operation, and not to operate re trospectively where a retrospective effect would work an injustice and disturb a right acquired under former regulat

As previously stated, (note 3, supra), the regulations which were in effect on December 19, 1969, the date the Department approved the certificate of loss of nationality issued in appellant's name, provided that an appeal should be taken within a reasonable time after the person received notice of the Department's determination of the loss of his nationality. We consider this time limitation applicable i the appeal before us.

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

The rule on what constitutes reasonable time is well settled. 5/ Whether an appeal was taken within a reasonable time depends on the facts of the particular case. It has been held to mean as soon as the circumstances and with such promptitude as the situation of the parties will permit. A party may not be allowed to determine a time suitable to himself, Further, the rule presumes that an appellant will prosecute his appeal with the diligence of an ordinary prudent person. A protracted and unexplained delay which is prejudicial to either party cannot be permitted. Where an appeal has been long delayed the appellant is required to show a valid excuse. Reasonable time begins to run with receipt of notice of the Department's holding of loss of nationality not at some later time when appellant for whatever reason may seek to restore his citizenship.

Here, as we have seen, the Embassy at London on January 26, 1970, sent appellant a copy of the approved certificate of loss of his nationality, and simultaneously informed him of his right to appeal to the Board of Appellate Review within a reasonable time. Appellant did not take an appeal to this Board until June 1982.

At a hearing before the Board on March 10, 1983, appellant was closely examined about the reasons for his delay in taking an appeal. Asked what was his reaction when he saw the

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5/ See, for example, Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931); In re Roney, 139 F. 2d 175 (1943); Smith v. Pelton Water Wheel Co., 151 Ca. 393 (1907); Dietrich v. U.S. Shipping Board Emergency Fleet Corp., 9 F. 2d 733 (1926); Appeal of Syby, 66 N.J. Super. 460, 169 A. 2d 749 (1961).

certificate, appellant replied:

> I thought it was just a piece of scrap paper. It had no meaning to me whatsoever. It was just for, I thought, well, I did my time for this country...during the war....I thought 'I can go back to the states.' 6/

He professed that he had not been aware the certificate ha come from the State Department and was not aware that he h lost his citizenship. 7/ Appellant acknowledged that he received and seen the information about appeal procedures, but he "just discarded them. I thought nothing about it." He added that he did not have a clear idea what the information meant. 9/ Nor did he consider it necessary at tha time to take any action, since he believed it was a minor detail, that things could be worked out at anytime. 10/ "I thought I could appeal anytime I wished to." 11/ Appellant made clear that he had not intended to appeal until it was convenient for him to do so, specifically, until he could freely transfer his capital out of the Unit Kingdom to the United States. 12/ As he put it:

6/ Transcript of Proceedings In the Matter of L [redacted] C [redacted] W [redacted] (hereinafter cited as TR) p. 41.

7/ TR p. 52.

8/ TR p. 42.

9/ Id.

10/ TR pp. 42, 43.

11/ TR p. 57.

12/ Id.

> ....it was irrelevant to me to make an appeal, you know, until my whole situation was ready for me and my children to support their ownselves, and I was ready to come back to the United States. 13/

The rationale for giving a reasonable time to appeal an adverse decision is to allow an appellant sufficient time upon receipt of notice of such decision to prepare a case in support of his contention that the Department's holding of loss of nationality was contrary to law or fact.

By any standard, appellant had ample time to prepare and file an appeal. Even if we were to accept his contention that he did not understand the meaning of the certificate of loss of nationality, he could not have been in any doubt that he had lost his citizenship after reading the unadorned language of the Embassy's letter; "This certificate has now been approved by the Department of State and should be retained as evidence that you ceased to be an American citizen as of the above date." Reasonable time for him to take an appeal ran from the date of his receipt of the Embassy's letter, not years later after he consulted counsel in 1982.

We may sympathize with appellant when he states that he could not believe he had performed an expatriating act, and that he was so confused by his interviews at the Embassy in February 1968 that he could not understand the meaning of the two affidavits he executed. Nevertheless, when he received the Embassy's letter of January 26, 1970, appellant cannot possibly have been in doubt that he had lost his citizenship; he then had clear and present reason to act.

As his testimony at the hearing brought out; appellant is a successful restauranteur; his business required him to seek and reply on the advice of a tax accountant and a solicitor. In our opinion, he cannot be said to fall below the standard of the ordinary prudent person. But he did not in

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13/ TR p. 59.

1970, or for years later, seek professional advice about hot he might assert a claim to recover the citizenship which we believe he knew in 1970 he had lost. Ordinary prudence should have led him to act well before twelve years had passed.

It is generally recognized that the rationale for a limitation provision on asserting a right is to compel the exercise of that right within a reasonable time so that the adverse party may be protected against stale and belated claims which could have been more easily resolved when the recollection of events is fresh in the minds of both parties and the full records are available. In the case before the Board, recollections of the events of fifteen to twelve year ago are hazy and the record is far from complete.

There is no evidence that circumstances beyond appellar control prevented him from taking a timely appeal. His explanation why he did not proceed long before he did so is unconvincing, and therefore insufficient to permit the Board to excuse a delay of twelve years in taking this appeal. By any objective standard such a delay is not reasonable.

III

On consideration of the .foregoing and the entire record before us, we are unable to conclude that the appeal was taken within a reasonable time after appellant had notice of the Department's holding of loss of his nationality, as prescribed by the regulations on limitations then in effect. Accordingly, we find the appeal time Barred and %hat the Board is without jurisdiction to entertain it. The appeal i dismissed.

Given our disposition of the case, it is unnecessary fc us to make determinations with respect to the other issues presented.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member