

June 16, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C [REDACTED] d [REDACTED] G [REDACTED] d [REDACTED] T [REDACTED] -I [REDACTED]

This is an appeal from an administrative determination of the Department of State that appellant, C [REDACTED] [REDACTED] G [REDACTED] [REDACTED] T [REDACTED] -I [REDACTED], expatriated himself on S [REDACTED] b [REDACTED] l [REDACTED], under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in the United Kingdom, while a minor, upon his mother's application, and then failing to establish a permanent residence in the United States prior to his twenty-fifth birthday. 1/

This appeal was filed on August 11, 1982, approximately eight years after appellant was notified of the Department's holding of **loss** of his United States citizenship. Thus, the initial issue presented for determination is whether the appeal was filed within the time limitation prescribed by applicable regulations. We find that since the appeal was not filed within the applicable limitation, it is barred by time. Thus lacking jurisdiction to entertain the appeal, we will dismiss it,

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), 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 an application filed in his behalf by a parent... Provided, That nationality shall not be lost by any person under this section as the result of the naturalization of a parent or parents while such person is under the age of twenty-one years, or **as** the result of a naturalization obtained on behalf of a person under twenty-one years of age by a parent, guardian, or duly authorized agent, unless such person shall fail to enter the United States to establish a permanent residence prior to his twenty-fifth birthday. . .

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## I

Appellant a [REDACTED] d States  
 by his birth at [REDACTED] Accord-  
 ing to appellant, he lived in the United States until 1950  
 when he went to England with his mother following his parents'  
 divorce, and where he has since resided. On January 12, 1953,  
 appellant was registered as a citizen of the United Kingdom  
 u [REDACTED] e application of his mother. His surname at birth,  
 I [REDACTED], was changed by his mother to [REDACTED]-  
 [REDACTED] on February 26, 1958.

In April 1962, appellant appeared at the American Embassy  
 at London to obtain a visa on his British passport. He was  
 advised of his American nationality and the requirement to use  
 a United States passport to enter the United States. On  
 April 18, 1962, he was issued a United States passport to  
 expire on April 18, 1965. Appellant visited the consular  
 offices of the Embassy on June 25, 1963, to make inquiries  
 regarding his citizenship status and to register for the  
 draft. He registered for the draft on that date. He was also  
 informed at the time that in order to retain his United States  
 citizenship it would be necessary to establish a permanent  
 residence in the United States before his twenty-fifth  
 birthday. Appellant's passport was extended to April 17, 1967. 2/

Appellant states that he was not able to take up residence  
 in the United States before his twenty-fifth birthday "because  
 my financial position would not allow it. I did not contact  
 the Embassy because I was under the impression that my loss  
 would be 'cut and dried' and I would have no grounds for appeal."  
 In 1968, after appellant's United States passport expired, he  
 obtained a British passport to work for short periods in Europe  
 and Morocco. In April 1974, appellant visited the American Embassy,  
 London, with a view to obtaining a visa. He executed an  
 Affidavit of Expatriated Person wherein he declared under oath  
 that he acquired the nationality of the United Kingdom, that the  
 act "was my free and voluntary act and that no influence, com-  
 pulsion, force, or duress was exerted upon me by any other

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2/ Appellant points out that his passport expired on April 17,  
 1967, five months before his twenty-fifth birthday, and maintains  
 that he "was denied any possibility of establishing residence  
 /in the United States/ by the U.S. Embassy at London." While it  
 is not clear why appellant could not have obtained a United  
 States passport valid until his twenty-fifth birthday, this  
 possible error is not fatal to the position of the Department of  
 State as explained infra, page 7. There was nothing to prevent  
 appellant from applying for a renewal or a new passport for the  
 period from April 17, 1967, until September 16, 1967, his twenty-  
 fifth birthday.

person, and that it was done with the intention of relinquishin my United States citizenship."

As required by section 358 of the Immigration and Nationality Act, the Embassy prepared a certificate of **loss** of nationality in appellant's name on April 29, 1974. 3/

The Embassy certified that appellant acquired the nationality of the United States at birth; that he obtained naturalization in the United Kingdom, as a minor, upon application by his mother, that he failed to establish permanent residence in the United States prior to his twenty-fifth birthday; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate of loss of nationality on June 13, 1974 and sent a copy to the Embassy to deliver to appellant. This the Embassy did on October 9, 1974.

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3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C 1501, reads:

Section 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.

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Appellant initiated this appeal in August 1982.

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Before proceeding we must determine whether the Board has jurisdiction to consider the appeal. Our jurisdiction is dependent upon a finding that the appeal was filed within the limit prescribed by the applicable regulations. If we find that the appeal was not timely filed, we would lack jurisdiction and would have no alternative but to dismiss the appeal.

Under the current regulations of the Department the time limitation on appeal is one year after approval of the certificate of **loss** of nationality. <sup>4/</sup> 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 were, however, promulgated on November 30, 1979, more than five years after the certificate of loss of nationality had been approved in appellant's name. In June 1974, when the Department approved the certificate that was issued in this case, the regulations 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 within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review. <sup>5/</sup>

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4/ Section 7.5(a) of Title 22, Code of Federal Regulations, 72 CFR 7.5(a).

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

It is generally recognized that a change in regulations shortening a limitation period is presumed to be prospective, not retrospective, in operation, since retrospective application would disturb a right acquired under former regulations. We are therefore of the view that the limitation in effect in June 1974 should apply in the appeal before us.

The rule on reasonable time is well settled. <sup>6/</sup> Whether an appeal was taken within a reasonable time depends on the circumstances 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 him or herself. Further, the rule presumes that an appellant will pursue an appeal with the diligence of an ordinary prudent person. A protracted and unexplained delay, particularly one which is prejudicial to the interests of either party, generally is fatal. Where an appeal has been long delayed it has been held that the appellant must show a valid excuse. Reasonable time begins to run with receipt of notice of the Department's holding of loss of citizenship, not at some later date when the appellant for whatever reason may seek to restore his or her citizenship.

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<sup>6/</sup> See, for example, Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931); In re Roney, 139 F. 2d 175 (1943); Dietrich v. U.S. Shipping Board Emergency Fleet Corp., 9 F. 2d 733 (1926); Smith v. Pelton Water Wheel Co., 151 Ca. 393 (1907); Appeal of Syby, 66 N.J. Super. 460, 169 A. 2d 749 (1961).

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In the case before the Board the Department approved the certificate of **loss** of nationality on June 13, 1974. Appellant brought his appeal more than eight years later.

The record shows that the Embassy sent a copy of the approved certificate to appellant on October 9, 1974, noting in the covering letter that "there are instructions on the reverse side of the certificate showing the procedure to be followed should you wish to appeal against the above decision and the grounds on which an appeal may be based." Appellant has not contended that he did not receive a copy of the certificate, or that he **was** not on notice from some time close to October 9, 1974, that the Department had determined that he had expatriated himself. Indeed, in his letter of December 16, 1982, to the Board, appellant states that he was informed in 1974 "of the decision regarding my citizenship...." Furthermore, appellant, in his affidavit of August 11, 1982, states that:

Since 1974 I have visited the United States regularly. During these visits I have spoken to Immigration Officers and friends, they have all told me that I should appeal against my **loss** of United States citizenship.

Appellant maintains that when he contacted the Embassy following approval of his **loss** of citizenship he "was told that I had no grounds for appeal, so I presumed that that was the end of the matter." However, the Embassy's transmittal letter of October 9, 1974, and the information regarding appeals procedures on the reverse side of the certificate of loss of nationality clearly invited appellant to further pursue the question of an appeal should he so desire. Moreover, he states: "I did, though, seek legal advice in 1976 when visiting the U.S....I regret to say that I was unable to pursue the matter, as the costs of doing so...were prohibitive." In this regard, Arthur Stanley Katz and Richard A. Hernandez, attorneys at law, in a letter to appellant dated September 27, 1976, indicated to appellant that there might be grounds for appeal. Furthermore, appellant admits he was told by various individuals, subsequent to 1974, to appeal. In these circumstances, it cannot be maintained that appellant could have been justified in waiting approximately eight years after receipt of the certificate of loss to lodge an appeal or to have placed any lasting reliance on what the consular officer allegedly told him.

Appellant further maintains in his reply brief under the rubric "Reasonable time" that his United States passport was prematurely "removed", i.e., it was issued to expire five months before his twenty-fifth birthday and that the Affidavit of Expatriated Person was incorrectly formulated. In our view these matters address the merits of the appeal and given our disposition of the case we do not reach them.

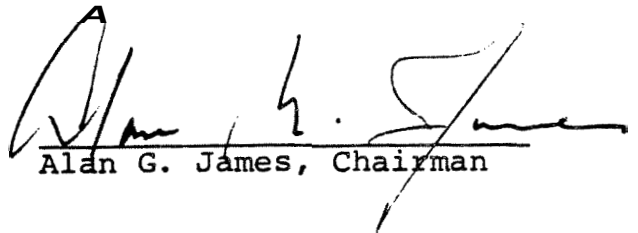
The rationale for allowing appellant a reasonable time to take an appeal is to permit him an adequate period within which to prepare a case to support his contention that the Department's holding of **loss** of citizenship was contrary to law or fact.

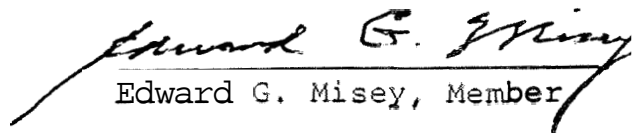
In our view appellant had ample time to prepare an appeal. Nothing in the record indicates that appellant was prevented by forces beyond his control from taking a timely appeal. The Board is therefore of the opinion that appellant's delay of nearly eight years in bringing this appeal to the Board is unreasonable.

### III

On consideration of the foregoing and our review of the entire record, we are unable to conclude that the appeal was filed within the time limitation of the applicable regulations. Accordingly, we find it barred, and the Board lacks jurisdiction to consider it. The appeal is dismissed.

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

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
George Taft, Member