

January 24, 1983

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

CASE OF: G [REDACTED] S [REDACTED]

[REDACTED] motion dated August 3, 1982, counsel for G [REDACTED] S [REDACTED] requested that the Board of Appellate Review reconsider its decision on the appeal taken by S [REDACTED] from an administrative determination of the Department of State that he 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.

In its decision of March 26, 1982, the Board found that the appeal was not taken within a reasonable time after receipt of notice of the Department's administrative determination of loss of nationality, as prescribed in the regulations on limitations then in effect. Accordingly, the Board concluded that the appeal was time barred and that the Board was without authority to consider the case. The Board thus did not agree to the Department's request that the case be remanded for the purpose of vacating the certificate of loss of nationality on the grounds that the Department could not sustain its burden of proving by a preponderance of the evidence that S [REDACTED] intended to relinquish his United States citizenship when he entered and served in the Greek Navy.

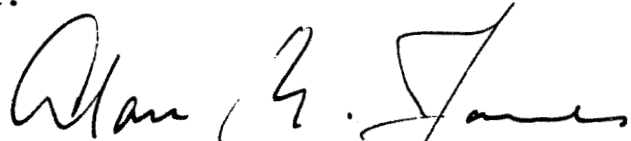
By letter dated March 29, 1982, the Board sent counsel for appellant a copy of the Board's decision of March 26, 1982. There is no question that counsel received the Board letter, for he sent a copy of it to the Board when he filed the motion to reconsider. **And** it is reasonable to assume that appellant's counsel received the Board letter within a reasonable delay after dispatch.

Counsel for appellant filed the motion to reconsider on August 3, 1982, four months after the date of his presumed receipt of a copy of the Board's decision.

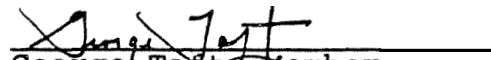
By letter dated August 9, 1982, the Chairman of the Board acknowledged receipt of counsel's motion. The Chairman pointed out that the relevant section of the Department's regulations (22 Code of Federal Regulations, section 7.9) stipulates that a motion to reconsider shall be filed within 30 days from receipt of a copy of the Board's decision by the party filing the motion. The Chairman requested that counsel explain why he did not, or could not, comply with the limitation on filing a motion to reconsider. Counsel did not respond to that letter. Accordingly, the Chairman wrote counsel again on October 7, 1982, requesting that he explain why the motion to reconsider was filed so long after the expiry of the permissible time to file. The Chairman added that if no reply were received within fifteen days from receipt of his letter, the Board would take such action on the motion as it deemed appropriate. No reply was received to the Chairman's second letter, although someone signing a postal receipt therefor, presumably on behalf of counsel for appellant, acknowledged receipt on October 12, 1982.

The Department's regulations (22 Code of Federal Regulations, section 7.10) provide that the Board, for good cause shown, may in its discretion enlarge the time for taking any action. Although twice invited to do so, counsel for appellant has failed to show cause why the time for filing his motion, _____ co _____ the Board's decision on the appeal of G _____ S _____ should be enlarged. The Board therefore has no basis for exercising its discretion in this regard. Accordingly, the motion for

reconsideration is time barred and the Board is without authority to entertain it. *


Alan G. James, Chairman


Edward G. Misesy, Member


George Taft, Member

* Whether, in the circumstances, further administrative action may be taken in this case is a matter that rests within the competence of the appropriate authorities of the Department. As the Legal Adviser of the State Department stated in a recent opinion:

...where the Board of Appellate Review has dismissed an appeal in a citizenship case as time barred, that fact standing alone does not preclude the Department from taking further administrative action to vacate a holding of loss of nationality. This continuing jurisdiction should be exercised, however, only under certain limited conditions to correct manifest errors of law or fact, where the circumstances favoring reconsideration clearly outweigh the normal interests in the repose, stability and dignity of prior decisions. Such circumstances usually would involve cases where the Supreme Court has declared unconstitutional the particular section of law under which a loss was thought to have occurred. In other circumstances, where evidentiary questions of "voluntariness" or "intent" are raised, an applicant's unreasonable delay in seeking relief generally will impair the Department's ability clearly to establish the facts and circumstances necessary to resolve those questions. In such cases, further administrative consideration should be denied under the doctrine of laches.

(Memorandum of Davis R. Robinson to the Chairman of the Board of Appellate Review, "Requests for Remand by the Department of Cases Before the Board of Appellate Review", December 27, 1982.)