October 26, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] S[redacted] D[redacted]

This is an appeal from an administra[redacted] h[redacted] f[redacted] the Department of State that appellant, C[redacted] S[redacted] D[redacted], expatriated himself on April 25, 1947, under the provisions of section 401(f) of the Nationality Act of 1940, by making a formal renunciation of his United States nationality before a consular officer of the United States at Manila, The Philippines. 1/

The initial issue presented by this case is whether the Board of Appellate Review has jurisdiction to entertain an appeal brought thirty-five years after the Department approved the certificate of loss of nationality that was issued in appellant's name. We conclude that the appeal is time barred and not properly before this Board, We will, accordingly, dismiss it.

1/ Section 401(f) of Chapter IV of the Nationality Act of 1940, 8 U.S.C. 801, reads:

> Section 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> . . .
>
> (f) 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; . . .

I

[redacted] in [redacted]. I
United States in 1932 and was inducted into the United States Army in 1942. He was commissioned on February 19, 1943, and the next day was naturalized by a United States District Court at Camp Beale, California. Appellant served overseas in the Pacific Theater. In January 1945 his unit was shipped to the Philippines where appellant was honorably discharged in June 1946.

According to his affidavit of January 12, 1982,

> I stayed in Manila after my discharge to settle family matters before returning to the United States:
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> I was notified to call at the United States Embassy which I did on April 25, 1947;
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> At the Embassy I was informed by Consul W. Garland Richardson that I would have to return to the United States to comply with the residence requirement for naturalized citizens like me:
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> I pleaded with Mr. Richardson to give me more time to settle my family matters in the Philippines but he refused;
>
> Consul Richardson then prepared an affidavit ... which I signed under pressure; ...

The "affidavit" to which appellant refers is the oath of renunciation of the nationality of the United States that he executed before the Consul on April 25, 1947. On the same day, as required by section 501 of the Nationality Act of 1940,

the Consul prepared a Certificate of loss of nationality in appellant's name, and forwarded it to the Department for approval. 2/ The Consul certified that appellant acquired the nationality of the United States by virtue of his naturalization at Camp Beale, California on February 20, 1943; and that he expatriated himself under the provisions of section 401(f) of the Nationality Act of 1940 by executing an oath of renunciation of the nationality of the United States.

On June 5, 1947, a three-member Board of Review in the Passport Division of the Department of State approved the certificate of loss of nationality. On June 23, 1947, the Department informed the American Consular Officer in Charge at Manila that the certificate of loss of nationality had been approved, and directed the Consul to deliver a copy to appellant,

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2/ Section 501 of Chapter V of the Nationality Act of 1940, 8 U.S.C. 901, provided:

Sec. 501. 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 American nationality under any provision of chapter IV of this Act, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations to be 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 Department of Justice, for its 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.

The record does not show whether appellant received a copy of the approved certificate of loss of his nationality. The latter claimed in his affidavit of January 12, 1982, however, that "I was not issued a certificate of loss of nationality."

At this remove it is virtually impossible to establish whether the Consul received the Department's instructions to deliver a copy of the Certificate to appellant, and if so, whether the Consul delivered or attempted to deliver it. In the absence of evidence to the contrary, it may be assumed that the Department's instructions reached Manila and that the Consul discharged his legal responsibilities by sending a copy to appellant. A presumption of regularity attaches to the performance of the official acts of Government officers. Webster v. Estelle, 505 F. 2d 926 (1974).

Whether appellant received a copy of the certificate of loss of nationality or not is, in our view, moot. Formal renunciation of United States nationality is an explicit, unambiguous act and is essentially self-executing; approval of the certificate of loss of nationality for performance of such an act is largely a ministerial function. Whether appellant received or did not receive a copy of the certificate of loss of his nationality, he was on notice as of the day he renounced his citizenship that he had, or probably had, lost his citizenship. His right of appeal may therefore be deemed to have accrued in 1947.

There is no record of any further official dealings between appellant and the United States Government until January 1982 when he was invited to call at the United States Embassy at Manila after the Embassy's attention had been called to a letter appellant wrote to President Reagan in September 1981 about his wish to regain his citizenship. In January 1982, appellant applied to the Embassy to be registered as a United States citizen. In forwarding appellant's registration application to the Department on January 25, 1982, the Embassy stated that appellant wished to "appeal" his loss of United States nationality on the grounds that he had signed the oath of renunciation "under pressure." The Embassy's communication was addressed to the Office of Citizens Consular Affairs, and was treated by that office as a request for an administrative review of the Department's 1949 determination of loss of his nationality.

After reviewing appellant's file, the Department informed the Embassy in September 1982 that there appeared to be no legal basis for concluding that appellant's renunciation was invalid. Appellant's application for registration was denied. The Department observed that appellant's failure over an extended period of time to raise his claim had further weakened his case; appellant was, however, free to write to the Board of Appellate Review about his case.

Despite the Department's rejection of appellant's claim, the Embassy suggested that if appellant's allegations were true, and if, as appeared possible, the consular officer who took appellant's renunciation in 1947 erred in his interpretation of the provisions of the Nationality Act which he deemed required that appellant return at once to the United States, and in urging appellant to sign the oath of renunciation, then vacating the certificate of Loss of nationality might be in order.

In reply, the Department stated that in the absence of very clear evidence from appellant that he had been asked by a consular officer to renounce his citizenship, the possibility of vacating the certificate of loss of nationality could not be considered. If appellant had such evidence, the Department added, appellant might present an appeal to the Board of Appellate Review.

Meanwhile, appellant had written to the Board on November 9, 1982, to enter an appeal from the Department's 1947 administrative determination of loss of his nationality.

Appellant contends that his renunciation was the result of pressure put on him by the consul involved and therefore involuntary. He also maintains that he signed the oath of renunciation without an intention of relinquishing his United States citizenship,

II

The first question the Board must address is whether we have Jurisdiction to entertain an appeal brought thirty-five years after a right to appeal may be considered to have accrued.

The Board's jurisdiction to entertain an appeal from a determination of loss of nationality is dependent upon whether an appeal was filed within the time limit prescribed

by the applicable regulations. In **1947** when appellant renounced his United States citizenship the Board of Appellate Review did not exist. A body to review holdings of **loss** of nationality, however, had been in continuous existence since **1941** in the Passport Division of the Department of State. There was no specified time limitation on the bringing of appeals, 3/

In **1966** regulations were promulgated specifying that an appeal to the competent review body of the Department of State be made "within a reasonable" time after receipt of notice of the Department's holding of loss of nationality. 4/ In **1967** when the Board of Appellate Review was established, the "reasonable time limitation" was adopted in the regulations promulgated for the Board at that time. 5/

3/ Where no time limit on asserting a right or claim is specified, the'rule is that the time for asserting that right or claim is a reasonable time after denial of such right or claim, Black's Law Dictionary, 5th Ed.

4/ **22** CFR **50.60** (1966).

5/ **22** CFR **50.60** (1967-1969).

In 1979 the regulations of the Board were further amended and revised. They require that an appeal be filed within. one year of approval of a certificate of loss of nationality, 6/

Believing that the current limitation of one year should not be applied retrospectively, we are of the view that the standard of "reasonable time" should apply in the case now before us.

Under the limitation of "reasonable time" a person who contends that the Department's determination of loss of his citizenship is contrary to law or fact must file his request for review within a reasonable time after receipt of notice of such determination. If a person did not file an appeal within a reasonable time after receipt of notice of the Department's determination of loss of his nationality, the appeal would be barred and the Board would lack jurisdiction to consider it. The reasonable time provision is mandatory and jurisdictional, 7/

6/ 22 CFR 7.5(b).

7/ United States v. Robinson, 361 U.S. 220 (1960).

The Attorney General in an opinion rendered in the citizenship case of Claude Cartier in 1973 stated:

> The Secretary of State did not confer upon the Board /of Appellate Review/ the power to...review actions taken long ago, 22 C.F.R. 50.60, the jurisdiction basis of the Board, requires specifically that the appeal to the Board be made within a reasonable time after the receipt of a notice from the State Department of an administrative holding of loss of nationality or expatriation.

Office of attorney General, Washington, D.C. File: CO-340-P, February 7, 1973.

The Chairman of the Board of Appellate Review explained the foregoing considerations to appellant after the latter had filed his appeal, and invited appellant to explain why he had delayed so long in bring an appeal.

In a letter to the Board dated May 28, 1983, appellant explained the reasons for his delay as follows:

> While it is true that I executed by affidavit renouncing my American citizenship in **1947** and it was only in 1982 that I finally sought restoration of my citizenship, I wish to inform you that the delay for many years was due to my impression that I had to go to the USA and reside therein for sometime as a precondition to the restoration of my citizenship. During the period from 1947 to 1982, I was not really in a position to leave the Philippines leaving my family and properties behind nor resettle my family in the USA....
>
> Whether my impressions were correct or otherwise, the fact remains that they constituted the basis of my inaction for more than 30 years.
>
> ....
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> My appeal therefore for restoration of my American citizenship is not strictly based upon the law..,but upon the general and paramount principle of equity.

The rule on reasonable time has been extensively defined. 8/

How long is a "reasonable time" depends on the facts of each case. It is such length of time as may fairly be properly

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8/ See generally Black's Law Dictionary, 5th Ed.; 36 Words and Phrases (1962); Chesapeake and Ohio Railway v. Martin 283 U.S. 209 (1931); Ashford v. Steuart, 657 F. 2d 1053 (1981); 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, 460 A. 2d 749 (1961).

and reasonably be allowed or required, having regard €or the nature of the act or duty, or the subject matter, and the attending circumstances. It **has** been held to mean as soon as the circumstances of the parties will permit, but a person may not determine a time suitable to himself. Whether an appeal has been filed within a reasonable time depends, among other things, on whether a legally sufficient reason has been presented for any delay. A protracted and unexplained delay, particularly one that is prejudicial to the interests of the opposing party, is generally fatal,

The rationale for allowing a reasonable time to bring an appeal is that one should be permitted sufficient time to prepare a case showing that the Department's holding of loss of nationality is contrary to law or fact. At the same time, the rule presumes that one will prosecute an appeal with the diligence of **a** reasonably prudent person. Reasonable time begins to run from the time an appellant received notice (or may be presumed to have received notice) of the Department's holding of **loss** of nationality -- not sometime later when for whatever reason the person is moved to seek restoration of his or her citizenship.

In the case before the Board, appellant explains his delay of thirty-five years in bringing an appeal by asserting that he had been under the impression he would have had to return to the United. States in order to establish a claim to United States citizenship. He could not, however he maintains, have left the Philippines before 1982 because of family and business considerations, If appellant believed that the only way he could assert a claim to United States citizenship was to go to the United States, he was deplorably ill-informed, as he could have ascertained by inquiring at any United States diplomatic or consular establishment in the Philippines. Had he made inquiries he would have learned that a review process **was** available to him.

In his affidavit of January 12, 1982, appellant stated that "six or seven years ago I called at the Embassy in Manila regarding possible restoration of my citizenship but I was told that this was not possible." The documentation before us records no such inquiry. Nor is there any indication that appellant made any inquiries until $982 about how he might seek restoration of his citizenship.

In our view, the reasons appellant has presented for a delay of thirty-five years in bringing this appeal are insufficient to excuse it.

Given the mandatory and jurisdictional character of the time limitation on appeal, the Board is without authority to proceed to the merits of appellant's case, as appellant would have *us* do. The authority given the Board to take such action as may be appropriate and necessary to the disposition of appeals may not be construed to nullify other preconditions established by the same regulations for the Board to exercise jurisdiction over the merits of an appeal, including the requirement that an appeal be timely filed under section 7.5(b), or comparable provisions of predecessor regulations, i.e., 22 CFR 50.60. 9/

Appellant's long delay prejudices the Department's ability to meet his allegations that the consular officer who took his oath of renunciation of United States nationality pressured him into renouncing. At this distance from 1947 the Department is most unlikely to be able to bear its burden of proof; the record is barren of any evidence to confirm or rebut appellant's allegations, and he has submitted no evidence to support them.

The principal purpose of a limitation provision is to compel the exercise of a right of action within a reasonable time so as to protect the adverse party against stale and belated appeals that could more easily have been resolved when the recollection of events upon which the appeal is based is fresh in the minds of the parties involved and records are available. That is not the situation here.

In the circumstances of this case where there has been no showing of a requirement for an extended period of time to prepare his case, or any obstacle beyond appellant's control in taking a timely appeal, it is obvious that the norm of "reasonable time" cannot extend to a delay of thirty-five years.

IV

Upon consideration of the foregoing, we conclude that the appeal was not brought within a reasonable time after appellant may be presumed to have had notice of the Depart-

9/ Section 7.2, Title 22, Code of Federal Regulations, 22 CFR 7.2, provides in part:

...The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.

ment's holding of loss of his United States citizenship. Accordingly, we find the appeal barred by the passage of time and not properly before the Board. The appeal is hereby denied.

Given our disposition of the case, we do not reach the other issues presented. 10/

Alan G. James, Chairman

Howard Meyers, Member

James G. Sampas, Member

10/ Since the threshold issue posed in this case is whether the Board has jurisdiction to entertain the appeal, the Board proceeded on the basis of appellant's submissions and the Department's case record. Had we found that we had jurisdiction, and thus reached the substantive issues presented, we would have asked the Department to file an appeal brief to which appellant might have replied.