December 30, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: K[redacted] [redacted] J[redacted]

This case is before the Board of Appellate Review on an appeal taken by Mrs. K[redacted] J[redacted]-R[redacted] from an administrative holding of loss of United States nationality made by the Department of State on August 12, 1964. The Department determined that appellant expatriated herself on June 15, 1964, under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act by making a formal renunciation of her United States nationality at the American Consulate General at Jerusalem. 1/ Appellant's counsel gave notice of appeal to the Board of Appellate Review on September 2, 1982, seventeen years after appellant received notice of the Department's administrative holding of loss of nationality.

1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481, 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 --
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> . * .
>
> (5) 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; . . .

Public Law-95-432, approved October 10, 1978, 92 Stat. 1046, renumbered paragraph (6) of section 349(a) of the Immigration and Nationality Act as paragraph (5).

The threshold question that confronts the Board is whether the appeal was taken within a reasonable time. We are of the view that appellant's delay of seventeen years in taking an appeal was unreasonable and, therefore, conclude that the appeal was not timely filed. We find the appeal time barred and will dismiss it.

I

Appellant, *Mrs.* R[redacted], was born at [redacted], and acquired United States citizenship at birth.

Appellant was issued a U.S. passport in **1945,** at the age of two, in her own name to accompany her mother to join her father in Palestine. The Department renewed the passport in **1948.** Appellant obtained **a** new passport from the American Consular Service at Jerusalem in **1951.** It expired in **1953;** it was not renewed. According to her **1951** passport application, which was executed by her mother, appellant resided continuously in New York City from **1943** to **1948.** Since then she has resided in Israel. There is no evidence of record of her return to the United States until **1964,** when she traveled on an Israeli passport.

On June **15, 1964,** appellant made a formal renunciation of her United States citizenship before a consular officer at the Consulate General at Jerusalem. The oath of renunciation, which she executed, read as follows:

> **...**I desire to make a formal renunciation of my American nationality as provided by section 349(a) **(6)** of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely renounce my nationality in the United States and all rights and privileges thereunto pertaining and abjure all allegiance and fidelity to the United States of America.

Following her renunciation, the Consulate General issued, upon her request, a nonimmigrant visa in her Israeli passport for travel to the United States. Appellant departed from Israel for New York City on July 2, 1964, and returned to Israel five days thereafter on July **7, 1964.** It appears that the purpose of the visit was to participate in the ceremonies accompanying the transfer and reinterment of the remains of

her grandfather, Zeev Jabotinsky, in Israel. Zeev Jabotinsky, a Zionist leader and an Israeli national hero, had died in the United States in 1940.

As required by section 358 of the Immigration and Nationality Act, the Consulate General prepared a certificate of loss of United States nationality in the name of Karny Zeeva Jabotinsky, and forwarded it to the Department for approval. 2/ The Consulate General certified that appellant

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

Sec. 353. 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.

made a formal renunciation of her United States nationality on June 15, **1964**, and thereby expatriated herself under section **349** (a)**(6),** now section **349** (a)(5), of the Immigration and Nationality Act. The Department approved the certificate on August 12, 1964. The Consulate General provided appellant a copy of the approved certificate of loss of nationality by registered mail on January **13, 1965.**

On September **2**, 1982, appellant's counsel gave this Board notice of appeal from the Department's **1964** determination of loss of nationality. He explained the circumstances surrounding appellant's renunciation as follows:

> 1. On or about June 10, **1964**, my client was requested by the Rational Committee for Jabotinsky Memorial, headed by Phillip M. Klutznick, to participate in the funeral ceremonies attendant to the transfer and reburial of the remains of her late grandfather, Ze'ev Jabotinsky, in Israel, the said ceremonies to be initiated in New York on July **6, 1964.**
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> 2. On or about June 15, **1964**, my client appeared at the American Consulate General office in Jerusalem and requested a renewal of her U.S. Passport, which had expired in 1952 or 1953, and which her mother, for reasons unknown to my client, had failed to renew prior thereto. In 1952, Karny Ze'eva Jabotinsky was only nine years of age and, consequently, unable to act in her own behalf in renewing her U.S. Passport.
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> 3. At the aforementioned meeting on June 15, **1964**, my client **was** advised that the renewal of her U.S. Passport would necessitate review by the Department of State in Washington, D.C. and, very likely, would be delayed beyond her required date of departure to the U.S. to participate in the funeral ceremonies afore-described.
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> 4. The clerk in the American Consulate General office in Jerusalem, at that meeting, in attempting to solve the dilemma faced by my client, suggested that if the client would sign an Oath of Renunciation, then the U.S. Embassy in Tel Aviv would immediately issue the appropriate Visa enabling her to enter the U.S. without delay.
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> 5. The client, having just reached the age of majority and being unfamiliar with the possible permanent detrimental consequences of her act in signing such an

Oath, and being further influenced by her personal desire to attend the funeral ceremonies for her late grandfather in New York, as a representative of the National Committee, acceded to the suggestion of the Clerk in the Consulate office and executed the Oath of Renunciation which was prepared by and proffered to her by the said Clerk. In addition, the Clerk diligently "coached" the client as to what she should say in the presence of the American Consul when asked to execute the Oath, in order to assure the subsequent issuance of a Visa authorizing the client to enter the U.S. in time for the aforementioned funeral ceremony.

Appellant's counsel contends that in the circumstances of this case this Board has jurisdiction to entertain the appeal, that appellant's renunciation was an involuntary act, and that it was not done with the intent to relinquish her United States citizenship. He argues that her act of renunciation was "necessitated by family and government considerations and brought about by misinformation given her by United States Consulate representatives."

II

The basic issue presented at the outset is whether the appeal taken here eighteen years after appellant made a formal renunciation of her United States nationality and seventeen years after receipt of notice of the Department's holding of loss of nationality was timely filed. If the appeal is time barred, this Board would lack jurisdiction to consider it.

Under the current regulations of the Department, which were promulgated in 1979, the time limitation for filing an appeal from an administrative determination of loss of nationality is one year after approval of the certificate of loss of nationality. 3/ 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.

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

In **1964** when the Department of State approved the certificate of loss of nationality that was issued in this case, the Board of Appellate Review did not exist, There was then a Board of Review on Loss of Nationality in the Passport Division whose internal rules and procedures did not prescribe a time limit on appeal. 4/ In the absence of a specified limitation on appeal, it is-generally recognized that the common law rule of "reasonable time" governs. Therefore the limitation applicable to appeals brought to the Board of Review on Loss of Nationality was within a reasonable time after receipt of notice of the Department's holding of loss of nationality.

It is our view that the limitation of "reasonable time", rather than the existing limitation of one year after approval of the certificate of loss of nationality, should govern in this case. For it is generally recognized that a change in regulations shortening the limitation period is presumed to be prospective rather than retrospective in operation. To apply such change retrospectively would work an injustice and disturb a right acquired under former regulations or rules and procedures.

4/ Unpublished Circular, Passport Office, Department of State, August **6, 1963.**

On October 30, **1966,** regulations were promulgated for the Board of Review on Loss of Nationality prescribing that an appeal was required to be made within a reasonable time after receipt of notice of loss of nationality. Section **50.60,** Title 22, Code of Federal Regulations, **22** CFR **50.60, 31** Fed. Reg, **13539** (1966). In **1967** this "reasonable time'' limitation was incorporated in the Department's regulations for the then newly established Board of Appellate Review. The relevant section read 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 made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review. Section **50.60,** Title 22, Code of Federal Regulations (1967-1979), **22** CFR **50.60.**

Thus, under the time limitation governing in the instant case, if appellant did not initiate or file her appeal within a reasonable time, the appeal would be time barred and the Board would be without authority to entertain it.

The question whether an appeal is taken within a reasonable time depends upon the circumstances in an individual case. Generally, reasonable time means reasonable under the circumstances. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). It has been held to mean as soon as circumstances permit, and with such promptitude as the situation of the parties will allow. This does not mean, however, that a party 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 delay which is prejudicial to either party.

The rationale for giving a reasonable time to appeal an adverse decision is to allow an appellant sufficient time upon receipt of such decision to assert his or her contentions that the decision is contrary to law or fact, and to compel appellant to take such action within a reasonable time so as to protect the adverse party against a belated appeal 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. Unreasonable lapses of time cloud a person's recollection of events and also make it difficult for the trier of fact to determine the case, particularly where the record is incomplete or lost or obscured by the passage of time. Further, it should be noted that the period of a reasonable time begins to run with the receipt of notice of the Department's holding of loss of nationality, and not at some subsequent time, years later, when appellant for whatever reason, may seek to regain or re-establish his or her United States citizenship status.

In the instant case, it does not appear that appellant raised any question about her loss of nationality prior to her meeting with legal counsel in August of 1982. Appellant's counsel in his letter of September 2, 1982, to the Board attributed the delay of seventeen years to appellant's "lack of professional knowledge...of the procedural requirements incidental to such matters." He also stated that the importance of maintaining her U.S. passport "has now become evident as the client has completed her initial professional medical studies and periods of internship, and seeks to further her professional education in the speciality field of psychiatry."

Appellant's counsel maintained in his other submissions to the Board that the Consulate General did not inform appellant in 1965 of her right to appeal the Department's determination of loss of nationality and that appellant had no knowledge of her right to appeal. In the circumstances, he argued, the limitation of "within a reasonable time" must be construed in the light most favorable to appellant, that is, within a reasonable time after "being apprised of her right so to do" by her counsel in 1982. We disagree.

Although the record does not show whether the Consulate General informed appellant specifically of her right to appeal 5/, there is no reason why she could not have inquired at the Consulate General at Jerusalem or the Embassy at Tel Aviv about the matter. Her failure to take an appeal can scarcely be ascribed to her unawareness or doubt that she lost her United States citizenship. She received a copy of the certificate of loss of nationality and was thus fully aware of the Department's determination of loss of nationality. Furthermore, she performed the most unequivocal of expatriating acts, a formal renunciation of her citizenship before a consular officer of the United States, and was in no doubt as to her loss of citizenship. Appellant had ample opportunity following her renunciation to question her loss of United States nationality; and, assuming that she believed that the Department's holding of loss of nationality was contrary to law or fact, appellant could have easily ascertained from U.S. consular offices in Israel the procedures for taking an appeal.

5/ Internal departmental guidelines, in effect since at least 1954, provided that a person who was the subject of an adverse determination of nationality should be informed of the right of appeal to the Board of Review on Loss of Nationality at the time the certificate of loss of nationality was delivered to him or her. Section 238.1, chapter 2, Foreign Service Manual (1954). These guidelines did not have the force of law.

There was no legal requirement to inform an expatriate of the right of appeal until the current regulations of the Board of Appellate Review were promulgated on November 30, 1979. Section 50.52, Title 22, Code of Federal Regulations, 22 CFR 50.52.

It is clear that appellant permitted a substantial period of time to elapse before taking an appeal. There is no record that appellant showed any interest in the restoration of her United States citizenship prior to the submission of her appeal in 1982. We find her failure to take any action until then convincing evidence that her delay in seeking an appeal was unreasonable. Whatever interpretation may be given the term "within a reasonable time," as used in the Department's regulations, we do not believe that such language contemplated a delay of seventeen years in taking an appeal. The period of "within a reasonable time'' commences with the appellant's receipt of notice of the Department's holding of loss of nationality, and not when appellant considers it appropriate or when her counsel advises her of her right to take an appeal. In our opinion, appellant's delay of seventeen years in taking an appeal was unreasonable in the circumstances of this case.

It should also be noted that the delay here in taking an appeal prejudices the Department's ability to meet its burden of proof. The Department is not in a position at this late date to provide any information which would confirm or disprove appellant's recollection'of her discussions with consular personnel in 1964. There are no available official records or contemporaneous accounts of appellant's meetings with consular officers at the time of her renunciation. The record sheds no light on appellant's alleged conversation with the unidentified clerk at the Consulate General, who reportedly suggested renunciation so that appellant could obtain a visa enabling her to enter the United States without delay.

III

On consideration of the foregoing, 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 her United States citizenship, As a consequence, we find that the appeal is time barred and that the Board is without authority to consider the case. The appeal is hereby 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