

January 24, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

CASE OF: L [REDACTED] P [REDACTED] H [REDACTED]

Passport Services, on behalf of the Department of State, on April 30, 1982, moved that the board of Appellate Review reconsider its decision of April 1, 1982, on the appeal of L [REDACTED] P [REDACTED] M [REDACTED] from an administrative determination of the Department that she expatriated herself on October 28, 1961, under the provisions of section 349(a) (1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application.

In its decision the Board found that appellant's unexplained delay of sixteen years in taking an appeal was unreasonable. Her appeal was therefore time barred and the Board lacked jurisdiction to consider it. Accordingly, the Board did not agree to the Department's request that the case be remanded for the purpose of vacating the certificate of loss of nationality issued in appellant's name.

In transmitting the Board's decision to the Deputy Assistant Secretary for Passport Services on April 1, 1982, the Chairman of the Board stated:

The Board did not therefore reach the substantive issues raised in the Department's memorandum of February 1, 1982. It is our feeling nevertheless that this fact does not preclude the Department from giving further consideration to this case... Emphasis in original.

Passport Services, by memorandum to the Board dated April 30, 1982, transmitted the Department's motion for reconsideration and set forth the following position on the view expressed by the Board:

Because it does not believe that applicable laws and regulations would support the procedure suggested by the Board in its memorandum, the Department would require guidance concerning the specific authority,

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circumstances and conditions under which such further action might be taken....

The motion of Passport Services for reconsideration stated in part:

....the appellant is deemed, under the Board's decision, to have exhausted remedies within the administrative process and the determination of loss must stand unless and until relief is granted outside the Department.

. . .

The Department moves that the Board reconsider its decision under Section 7.9 ^{1/} of its regulations, and on equitable grounds take the "appropriate and necessary" action under section 7.2(a) to permit the Department to vacate the Certificate of Loss. ^{2/}

^{1/} Section 7.9 of Title 22, Code of Federal Regulations, provides that:

The Board may entertain a motion for reconsideration of a Board's decision.... The motion shall state with particularity the grounds for the motion, including any facts or points of law which the filing claims the Board has overlooked or misapprehended.

^{2/} Section 7.2(a) of Title 22, Code of Federal Regulations, reads:

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

The Board does not have 'authority under section 7.2(a) to disregard 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 similar provisions of previous regulations. 3/ The Board retains authority to reconsider an appeal, and to determine that the appeal was, after all, timely filed or that good cause has been shown that the appeal could not have been filed within the prescribed time. Once the Board has determined that it lacks jurisdiction over an appeal, however, we have no alternative but to dismiss or deny it. It would be inconsistent to hold an appeal time barred and at the same time remand it to the Department for further consideration. 4/

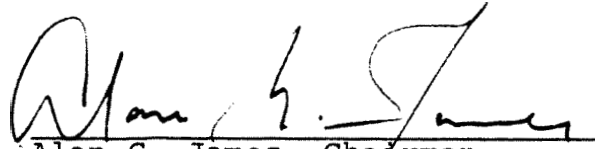
The sole ground on which the Department bases its motion for reconsideration is that it would be equitable for the Board to exercise its discretion under section 7.2(a) of the Department's regulations and remand the case for the purpose of vacating the certificate of loss of nationality. The Department does not adduce any facts or points of law which the Board has overlooked or misapprehended. Nor does the Department show any good cause why the Board should, on reconsideration, enlarge the time for the taking of this appeal.

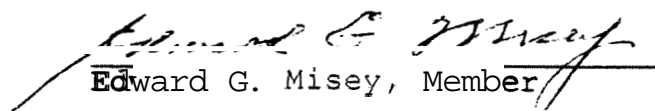
3/ Memorandum of the Legal Adviser of the Department of State, Davis R. Robinson, to the Chairman of the Board of Appellate Review, "Requests for Remand by the Department of Cases Before the Board of Appellate Review", December 27, 1982.

4/ Id.

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We therefore deny the Department's motion for reconsideration of the decision of the Board of Appellate Review of April 1, 1982, on the appeal of [REDACTED] P. [REDACTED] H. [REDACTED]. 5/


 Alan G. James, Chairman


 Edward G. Misey, Member


 Warren E. Hewitt, Member

d. 5/ Whether, in the premises, further administrative consideration is given to a citizenship case after the Board has found the appeal time barred, is a matter beyond the competence of the Board. It is for the appropriate authorities of the Department to decide that question. In that regard, the opinion of the Legal Adviser (note 3) concluded that:

...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 finality 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.