March 31, 1983

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] V[redacted] R[redacted]

This case is before the Board of Appellate Review on appeal from an administrative determination of the Department of State that appellant, R[redacted] V[redacted] R[redacted] expatriated himself on November 29, 1965, under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining naturalization in the Philippines upon his own application. 1/ R[redacted] gave notice of appeal to the Board of Appellate Review on April 9, 1982.

The question presented at the outset is whether the appeal taken here was made within a reasonable time after appellant received notice of the Department's holding of loss of nationality. We find that the appeal was not timely filed, and that the Board lacks authority to consider it. The appeal is dismissed.

I

Appellant, R[redacted], was born in [redacted] on [redacted], and acquired Philippine citizenship at birth. He immigrated to the United States on November 19, 1953, and resided in San Francisco with his parents and other members of his family. He enlisted in the United States Air Force in 195 and served until his honorable discharge on April 3, 1958.

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 his own application, . . .

While R[redacted] was on overseas duty in England in January 1958, his father died. He returned to the United States to tend to family affairs and to arrange an earl[redacted]scharge. Following his discharge from the Air Force, R[redacted] was naturalized as a citizen of the United States August 19, 1958, before the United States District Court at San Francisco. In the process, he gave up his Philippine citizenship.

On September 29, 1958, R[redacted] returned to the Philippines. According to R[redacted], he succumbed to family pressures to return to the Philippines to visit his family and friends and also to rest and recuperate. He stated that he had severe emotional problems, suffered a mild mental breakdown, and was admitted to the Veterans Memorial Hospital in Oakland, Californ[redacted]nder the care of a psychiatrist in the summer of 1958. R[redacted] attributed his emotional and mental problems to the deat[redacted] his father, many sudden changes in life style, and the prospect of being unable to complete his education in the United States.

In October 1958, Reyes enrolled at the University of the Philippines. He was unable, however, to continue his studies without interruption. On April 23, 1959, he was admitted to the Veterans Memorial Hospital in Quezon City with a diagnosis of schizophrenic reaction, paranoid type, and remained there until May 7, 1960, when he was discharged. He was again admitted to the Veterans Memorial Hospital from November 1 to 7, 1961, and from December 9, 1964, to January 15, 1965. His final diagnosis upon his release in January 1965 was that his schizophrenic reaction was in partial remission and that he was competent.

Reyes had been registered as a United States citizen at the Embassy at Manila from July 8, 1960 through December 8, 1964. He reacquired Philippine citizenship on November 29, 1965, in accordance with the provisions of Republic Act No. 2630 by taking an oath of allegiance to the Republic of the Philippines and by registering the oath with the Local Civil Regi[redacted]r of Quezon City. 2/ The oath of allegiance taken by R[redacted] read as follows:

2/ Section 1 of the Republic Act No. 2630 of the Republic of the Philippines, approved June 18, 1960, provided:

Section 1. Any person who had lost his Philippine citizenship by rendering service to, or accepting commission in, the Armed Forces of the United States, or after separation from the Armed Forces of the United States, acquired United States citizenship, may reacquire Philippine citizenship by taking an oath of allegiance to the Republic of the Philippines and registering the same with the Local Civil Registry in the place where he resides or last resided in the Philippines. The said oath of allegiance shall contain a renunciation of any other citizenship.

> I, [redacted] V[redacted] R[redacted], solemnly swear that I renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the United States of America, of which at this time I am a citizen; that I will support and defend the Constitution of the Philippines and that I will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; and I hereby declare that I recognize and accept the supreme authority of the Philippines and I will maintain true faith and allegiance thereto and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion.
>
> **SO HELP ME GOD.**

In an affidavit executed on December 11, 1978, thirteen years after the event, R[redacted] explained the circumstances of his reacquisition of Phi[redacted]ine citizenship as follows:

> Specifically, the Philippine Government was pressuring me concerning my continued presence in the Philippines. I was informed that under a provisions of Philippine Paw I could regain Philippine citizenship, It was my understanding that the provision did not involve boss of U.S. citizenship. I specifically never intended to renounce my U.S. citizenship. On the contrary, I had always been careful to preserve my citizenship, I would never have consented to reacquisition of Philippine citizenship if I had thought it would have resulted in a loss of my U.S. citizenship.
>
> In addition, at the time that I applied for the reacquisition of Philippine citizenship in November 1965, I was experiencing a period of severe depression and emotional orientation, as already mentioned. And, my family was exerting pressures upon me to reacquire Philippine citizenship for the purpose of clarifying my Philippine Immigration status. I was really in no condition to resist these pressures and certainly would have resisted them had I not been suffering from my mental illness.

R[redacted] resumed his studies at the University of the East in Manila and graduated in May 1968. In December 1969, he visited the Embassy and sought to register as a United States citizen and obtain a passport. The Embassy referred his application and a citizenship questionnaire that he was asked to complete to the Department of State for decision. Upon review of the case, the Department instructed the Embassy to submit a certificate of loss of nationality.

Accordingly, on April 13, 1970, the Embassy prepared a certificate of loss of nationality, as required by section 358 of the Immig[redacted]on and Nationality Act. 3/ The Embassy certified that R[redacted] acquired United States nationality by virtue of his naturalization at San Francisco on August 19, 1958; that he obtained naturalization in the Philippines upon his own application on November 29, 1965; and that he thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department approved the certificate of loss on May 19, 1970. Thereafter, the Embassy sent R[redacted] a copy of the certificate of loss of nationality on June 24, 1970, and informed him of his right to take an appeal to the Board of Appellate Review from the Department's decision of loss of nationality. He was also informed that the appeal must be made in writing within a reasonable time after receiving notice of the Department's holding of loss of nationality.

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

Sec. 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.

It does not appear that R[redacted] raised any question about his loss of United States citizenship until November 3, 1977, when he endeavored again to apply for registration as a citizen of the United States at the Embassy in Manila. He submitted a joint affidavit of his mother and brother, Manuel, executed on October 26, 1977, in support of his application. R[redacted] also executed on December 11, 1978, an affidavit "for th[redacted]rpose o[redacted] explaining my claim to continuing U.S. citizenship." He subsequently retained counsel in the United States, who asked the Department to defer consideration of the application for registration pending the submission of a legal memorandum. On February 6, 1979, appellant's counsel submitted the memorandum Additional supplementary documents were submitted by appellant counsel on October 7, 1980, October 30, 1980 and March 16, 198

After reviewing the material submitted in support of appellant's application for registration as a United States citizen, the Department informed appellant's counsel on April 1981, that it would not approve the application for registrati that appellant filed on November 3, 1[redacted] The Department stat that it was unable to conclude that R[redacted] was unaware of the nature and consequences of his action in acquiring Philippine citizenship in 1965, or that he lacked an intention to relinquish his United States nationality when he obtained naturaliz tion in the Philippines.

On April 9, 1982, appellant's counsel gave formal notice of appeal from t[redacted]partm[redacted] decision of April 14, 1981, "not to approve [redacted] R[redacted] application for registration as a U.S. citize[redacted]nd su[redacted]ed a brief. In acknowledging receipt of the appeal, the Chairman of the Board of Appellate Review pointed out to appellant's counsel that the appeal in the instant case lies from the Department's administrative determination of loss of nationality made in 1970, and not from the Department's letter of April 14, 1981, disapproving appellant's application for registration. The certificate of loss of nationality, approved by the Department on May 19, 1970, constitutes the Department's administrative determination that appellant expatriated himself on November 29, 1965, by obtaining naturalization in the Philippines, It is from this administrative determination that an appeal, properly and timely filed, may be taken to the Board of Appellate Revie

Appellant's counsel argued that appellant did not expatriate himself when he reacquired Philippine citizenship becaus he "never" understood that he was expatriating himself when he signed the oath of allegiance to the Philippines and the declaration of renunciation of United States citizenship. Counsel contended that Reyes "did not voluntarily, knowingly or intelligently commit an act of expatriation". It is said

that what Reyes did, "was done under duress, under mistaken impression, and while he was not yet fully recovered from a severe mental illness."

On June 16, **1982**, the Deputy Assistant Secretary of State for Passport Services submitted the record on which the Department's determination of loss of nationality in **1970** was based, accompanied by memorandum, in lieu of a brief as required by the regulations, setting forth the position of the Department on the appeal. The memorandum requested the Board to remand appellant's case for the purpose of vacating the certificate of **loss** of nationality. The memorandum stated:

> The Department believes that the record supports the statutory presumption that Mr. R[redacted]' acquisition of Philippine nationality by naturalization was voluntary. However, we do not believe that the record supports a finding that Mr. R[redacted] had the requisite intent to relinquish his U.S. nationality. The Department's original decision therefore should be reversed. The Board is requested to remand this case for cancellation of the Certificate of Loss of Nationality. 4/

4/ It is interesting to note that on April 14, **1981**, the Department had informed appellant's counsel that the evidence of record did not support a lack of intention to relinquish United States citizenship when Reyes obtained naturalization in the Philippines.

II

Before the Board may properly act on the Department's request for remand, whether or not the circumstances warrant such request, we must at the outset determine if the appeal was filed within the prescribed period of time. If the appeal was not timely filed, the Board would lack jurisdiction to consider the case. As the Chairman of the Board informed appellant's counsel on April 16, 1982, the Board, in order to determine its jurisdiction to hear the appeal, must first determine whether the appeal has been timely filed before proceeding with its Consideration of the case. The appellant and the Department did not address this essential matter in their submissions to the Board, even though on notice of the issue.

Under the current regulations of the Department the time limitation for filing an appeal is one year after approval of the certificate of loss of nationality. 5/ An appeal filed after the time limit shall be denied unless the Board for good causeashown determines that the appeal could not have been filed within the prescribed time. The current regulations were promulgated on November 30, 1979, and therefore were not in force in 1970 at the time the Department approved the certificate of loss of nationality that was issued in this case. It is generally recognized that a change in regulations shortening a limitation period is presumed to be prospective in operation, and not to operate retrospectively where a retrospective effect would work an injustice and disturb a right acquired under former regulations.

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

The regulations in effect on May 19, 1970, the date the Department approved the certificate of loss of nationality, 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 made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review. 6/

We consider this time limitation applicable here.

Thus, under the governing time limitation, a person who contends that a Department's holding of loss of nationality is contrary to law or fact is required to appeal such holding to the Board within a reasonable time after receipt of notice of the holding of loss of nationality. If a person does not initiate his or her appeal to the Board within a reasonable time, the appeal would be barred and the Board would be without authority to entertain it.

The question of whether an appeal was taken within a reasonable time depends upon the circumstances in a particular case. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). Generally, a reasonable time means reasonable under the circumstances. It has been held to mean as soon as circumstances will permit, and with such promptitude as the situation of the parties and the circumstances of the case will allow. This does not mean, however, that a party be allowed to determine "time suitable to himself." In re Roney, 139 F. 2nd 175, 177 (1943).

6/ Section 50.60 of Title 22, Code of Federal Regulations (1970), 22 CFR 50.60.

Here, as we have seen, the Embassy forwarded to appellant on June 24, 1970, a copy of the certificate of loss of nationality, and informed him explicitly of his right to take an appeal to the Board of Appellate Review within a reasonable time. Appellant, however, did not take an appeal to this Board until April 1982.

In November of 1977, as previously noted, appellant sought to restore his United States citizenship status by executing ar application for registration as a United States citizen at the Embassy. When advised on April 14, 1981, that the Department would not approve his application for registration, appellant's counsel first undertook to take an appeal and gave notice to th Board on April 19, 1982, twelve years after appellant's receipt of the certificate of loss of nationality. Appellant's counsel offered no good cause why the appeal could not have been filed before then.

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 of law or fact against the Department's holding of loss of nationality. Whatever the reason, it is clear that appellant had ample opportunity to take an appeal prior to 1982. The period of "reasonable time" commences to run with receipt of notice of the Department's holding of loss of nationality, and not at some later date when appellant elects to take an appeal. In our opinion, appellant's delay of twelve years in taking an appeal was unreasonable in the circumstances of this case.

III

On consideration of the foregoing, we are unable to conclude that the appeal was made within a reasonable time after receipt of the Department's administrative holding of loss of nationality, as prescribed in the regulations on limitations then in effect. Accordingly, we find the appeal

time barred and that the Board is without authority to consider the case. The appeal is dismissed. 7/

7/ With respect to possible further administrative review, the Legal Adviser of the Department of State held in an opinion dated December 27, 1982:

> ...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 unconsitutional 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 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.

Given our disposition of the case, we find it unnecessary to make other determinations with respect to this case.

Alan G. James, Chairman

Edward G. Misey, Member

Concurring Opinion

I concur in the conclusion reached by the Board in the above opinion that an appeal from the Department of State's 1970 determination that Mr. R[redacted] R[redacted] lost his U.S. citizenship on November 29, 1965, is barred by time, However, in light of the Board's rejection of appellant's characterization of the issue, I believe a further analysis of the applicable regulations and history of the case may be appropriate.

The case came to the Board of Appellate Review couched as an appeal from the April 14, 1981 determination of the Department of State not to approve [redacted] application for registration as a United States citizen. [redacted] counsel gave notice of appeal to the Board of Appellate Review on April 9, 1982, and in his accompanying brief described the issue for review as whether [redacted] had expatriated himself, pursuant to section 349 (a)(2) of the Immigration and Nationality Act, 1/ when he signed an oath of allegiance to the Republic of the Philippines. This was not a proper description of the issue presented, and the Board has concluded that an appeal by [redacted] from the Department of State's 1970 determination that [redacted] had expatriated himself, is barred by time.2/

[redacted] a Philippine citizen by birth, was naturalized as a citizen of the United States on August 19, 1958. However, on November 29, 1965, he reacquired Philippine citizenship, in accordance with the provisions of Republic

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1/ Section 349(a)(2) of the Immigration and Nationality Act reads:

(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 --

(2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof..,

2/ The 1970 decision was made pursuant to section 349(a)(1), not section 349(a)(2) of the Immigration and Nationality Act, as appellant's counsel seems to suggest. Section 349(a)(1) reads:

(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 his own application, ...

Act No. 2630, by taking an oath of allegiance to the Republic of the Philippines. The oath of allegiance contained a specific renunciation of United States citizenship.

In December, 1969, [redacted] sought to register as a United States citizen and obtain a passport. The Embassy referred his application to the Department of State for decision. Following a review of the case a Certificate of Loss of Nationality was approved by the Department of State on May 19, 1970 and forwarded to [redacted] on June 24, 1970. Reyes was expressly informed of his [redacted]t to take an appeal to the Board of Appellate Review and was also expressly informed that the appeal must be made in writing within a reasonable time.

Despite this he did not raise any question about his loss of United States citizenship for more than seven years. Then, on November 3, 1977, without having attempted to appeal the 1970 decision to the Board, [redacted] applied for registration as a U.S. citizen at the United States Embassy in Manila. He retained counsel, and through counsel requested that the Department of State defer consideration of the application pending the submission of a legal memorandum. Such a memorandum was submitted to the Department on February 6, 1979; additional documents were submitted on October 7, 1980, October 30, 1980 and March 16, 1981.

After reviewing the material, the Department informed appellant's counsel on April 14, 1981, that it would not approve the application for registration filed on November 3, 1977. The Department stated that it was unable to conclude that [redacted] was unaware of the nature and consequences of his action when he acquired Philippine citizenship in 1965, or that he lacked an intention to relinquish his United States nationality when he obtained naturalization in the Philippines.

On April 9, 1982, appellant's counsel gave formal notice of appeal to the Board of Appellate Review from the Department decision of April 14, 1981. In acknowledging receipt of appellant's notice of appeal, the Chairman of the Board of Appellate Review pointed out that the question of reasonablene of time would be an issue in the case of an appeal taken from a determination of loss of nationality made in 1970.

However, in neither appellant's brief to the Board nor the memorandum accompanying the record submitted by the Department of State, was the issue of timeliness of appeal addressed. Rather, describing the issue for review as whether [redacted] expatriated himself pursuant to Section 349(a)(2) of

the Immigration and Nationality Act, appellant's counsel argued that [redacted] "did not voluntarily, knowingly or intelligently commit an act of expatriation". What [redacted] did, counsel argued, "was done under duress, under [redacted]aken impression, and while he was not yet fully recovered from a severe mental illness."

On June 16, 1982, little more than a year after its determination not to approve Reyes' **1977** application for registration, the Deputy Assistant Secretary of State for Passport Services submitted a memorandum to the Board of Appeals requesting that the Board remand appellant's case to the Department in order that it might vacate the **1970** Certificate of **Loss** of Nationality,

The Board's ability to address appellant's contentions, or the Department's request for remand, is of course dependent upon its jurisdiction to hear the appeal. Two questions are presented. First, whether an appeal to the Board can be taken from the **1981** denial of application for registration as a U.S. citizen, and second? whether an appeal filed in 1982 from a **1970** holding of **loss** of nationality is barred by time.

The Board of Appellate Review has jurisdiction to consider and determine appeals from decisions in cases involving: (a) determinations of loss of nationality; (b) denial, revocation, restriction or invalidation of a passport; (c) contracts or grants of the Department of State or (d) other matters, as authorized by the Secretary of State. 3/ Thus, in order for the Board to entertain Mr. Reyes' appeal, it must fall within one of these categories.

A determination of loss of U.S. nationality is evidenced by the Department of State's approval of a Certificate of Loss of Nationality. When so approved, a copy of the Certificate of Loss of Nationality is forwarded to the person to whom it relates.

In the case of Mr. [redacted] a Certificate of Loss of Nationality was approved by the Department of State on May 19, 1970. On June 24, **1970** a copy of the certificate was forwarded to Mr. Reyes and he was informed explicitly of his right to take an appeal to the Board of Appellate Review within a resonable time.

3/ Section **7.3.** of Title **22**, Code of Federal Regulations, 22 CFR **7.3.**

Nothing in applicable law or regulations suggests that Mr. [redacted] exclusive recourse from this determination lies with the Board of Appellate Review. In a number of cases, and indeed in this case, persons determined to have lost U.S. nationality have sought and obtained a review by the functiona office of the Department of State which made the original determination. Such an administrative review, however, has no bearing on the jurisdiction of the Board of Appellate Revie

Mr. [redacted] instigated an administrative review of the determination of his loss of U.S. nationality when he applied for registration as a U.S. citizen in 1977. Following a protracted review, the Department of State announced on April 14, 1981 that it would not grant his application. To the extent that this decision was based on a reaffirmation of the 1970 decision, it does not constitute a determination of loss of nationality appealable to the Board of Appellate Review under Section 7.3(a), noted above. The "determination remains the 1970 decision, evidenced [redacted]he Certificate of Loss of Nationality forwarded to Mr. [redacted] on June 24, 1970.

It thus remains to be decided whether the April 14, 1981 decision, not appealable to the Board under Section 7.3(a), i otherwise appealable. It is not. The denial of Mr. Reyes' application for registration as a U.S. citizen is not a denial, revocation, restriction or invalidation of a passport nor is it a matter of contract or grant -- these being the only other categories of decisions of the Department of State which are, in accordance with applicable regulations, appealable to the Board. As a consequence, Mr. Reyes appeal, if any, must be from the 1970 determination of loss of U.S. nationality as a result of the expatriating act performed in 1965.

The Board has jurisdiction to hear appeals from such determinations, provided the request is made, in writing, within the prescribed time. As noted in the above opinion, while the current regulations of the Department provide that the appeal may be taken to the Board within one year after approval of the Certificate of boss of Nationality, the regulations in effect on May 19, 1970, the date the Department approved the Certificate of Loss of Nationality, provided that an appeal must be made within a "reasonable time". There is nothing in the record before the Board to substantiate a finding that appellant's delay of twelve years in taking an appeal was reasonable in the circumstances of this ease.

The appeal is consequently time barred and must be dismissed.

Mary Elizabeth Hoinkes