

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [REDACTED]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, [REDACTED], expatriated herself on April 2, 1973, under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization as a citizen of the United Kingdom and Colonies upon her own application. ^{1/} The Department approved the certificate of loss of nationality that was issued in this case on December 12, 1974. Nine years later, on January 3, 1984, an appeal was filed.

The initial issue presented is whether the appeal was filed within the limitation prescribed by the applicable regulations, namely, within a reasonable time after appellant received notice of the Department's holding of loss of her nationality. It is our conclusion that appellant's delay in bringing an appeal was unreasonable in the circumstances of her case. The appeal is therefore time barred. Lacking

^{1/} Section 349(a)(1) 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 --

(1) obtaining naturalization in a foreign state upon his own application, . . .

- 2 -

jurisdiction, we dismiss the appeal. 2/

I

Appellant became a United States citizen by birth at [REDACTED] on [REDACTED]. She married a British citizen there in 1959. In 1960 she moved with him and their child, who had been born in the United States, to the United Kingdom. Three more children were born of the marriage in the United Kingdom; their births were registered by appellant at the United States Embassy, London.

On April 2, 1973, appellant was registered as a British citizen, having made application therefor, under the provisions of section 6(2) of the British Nationality Act of 1948, which entitled a woman married to a British citizen to be registered as a citizen of the United Kingdom and Colonies. 3/

2/ Dismissal does not in itself bar the Department from taking such further administrative action in appellant's case as may appear appropriate in the circumstances.

3/ Registration by an American national as a citizen of a foreign country constitutes obtaining naturalization in a foreign state. Section 101(a)(23) of the Immigration and Nationality Act, 8 U.S.C. 1101, defines "naturalization" as "the conferring of nationality of a state upon a person after birth, by any means whatsoever."

- 3 -

After being informed by the Home Office of appellant's registration, the Embassy advised her in January 1974 that she might thereby have lost her United States citizenship. She filled out the short questionnaire enclosed in the Embassy's letter, indicating by checking a box in the form that she had acted voluntarily and with the intention of relinquishing her United States citizenship. Under "remarks", however, she made the following statement:

As I was getting a divorce and moving to France I thought it in my interests to become a citizen of an EEC /European Economic Community/ country: particularly for work purposes. I do not wish to relinquish my citizenship, particularly as all my four children are dual citizens and we do travel to and fro /sic/ the USA.

Appellant's case was transferred to the Embassy at Paris after she moved there. After she submitted further information regarding her registration in the United Kingdom, the Embassy at Paris prepared a certificate of loss of nationality in appellant's name on November 7, 1974, in accordance with the provisions of section 358 of the Immigration and Nationality Act. 4/

4/ 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.

- 4 -

The Embassy certified that appellant acquired United States nationality at birth; that she obtained naturalization as a citizen of the United Kingdom and Colonies upon her own application; and concluded that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on December 12, 1974, approval constituting an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board.

In June 1976, after returning to London from Paris, appellant visited the Embassy to "appeal against my denaturalization," as she put it. She submitted further evidence which she maintained showed lack of intent to relinquish her United States citizenship. The Department reviewed her case, and on June 7, 1977, concluded that original determination of loss of nationality should stand. Embassy London was instructed so to inform appellant and advise her of the appeal procedures.

On January 3, 1984, appellant initiated this appeal. She stated in her letter to the Board that:

I did not commit an act of expatriation with intent to deprive myself of my United States citizenship and secondly, ... I was denied due process when the Department of State removed my citizenship.

After she had filed her appeal, appellant asked the Department to send her a copy of the administrative record in her case. Before forwarding a copy to appellant, the Department reviewed her case. By memorandum dated March 14, 1984, the Department advised the Board that in its opinion the appeal was time barred. The Department, however, was of the view that it could not sustain its burden of proving by a preponderance of the evidence that appellant intended to relinquish her United States citizenship when she registered as a citizen of the United Kingdom and Colonies. Accordingly the Department stated:

If the Board finds it has jurisdiction, we request that the case be remanded for cancellation of the Certificate of Loss of Nationality. If the Board finds that the case is outside its juris-

diction and dismisses the appeal, the Department intends to vacate the certificate.

II

Before the Board may properly proceed, we must determine whether the Board has jurisdiction to consider this appeal. The Chairman of the Board so informed appellant by letter on January 25, 1984.

Under the Department's current regulations, the time limitation for filing an appeal is one year after approval of the certificate of *loss* of nationality. 5/ 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. The current regulations, however, did not come into force until November 30, 1979.

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

- 6 -

The regulations in effect on December 12, 1974, the date the Department approved the certificate of loss of nationality in this case, 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 the above time limitation applicable in the circumstances of this case. 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.

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, 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. 2d 175, 177 (1943).

6/ Section 50.60 of Title 22, Code of Federal Regulations (1974), 22 CFR 50.60.

- 7 -

The rationale for giving a reasonable time to appeal an adverse decision is that an appellant should be allowed 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. Further, **it** should be noted that the period of a "reasonable time" begins to run with the receipt of the Department's holding of loss of nationality, and not at some subsequent time, years later, when appellant, for whatever reason, may seek belatedly to restore his or her United States citizenship status.

Here, the Department sent a copy of the approved certificate of loss of nationality to the Embassy at Paris on December 12, 1974, to forward to appellant. On the reverse side of the certificate the procedures for taking an appeal to this Board were clearly spelled out. Appellant did not protest her loss of nationality until 1976 when she called at the Embassy at London to "appeal against my "denaturalization." When the Department concluded in 1977 that the original holding of loss of nationality should be sustained, **it** instructed Embassy London to inform appellant of the procedures for bringing an appeal to this Board. Seven more years passed until 1984 when appellant lodged an appeal with this Board.

Appellant has offered no legally sufficient reason for her delay in filing an appeal. Whatever the reason, **it** is beyond dispute that she had ample opportunity to take an appeal to the Board long before 1984.

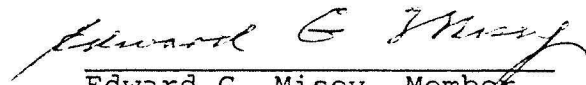
- 8 -

III

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 limitation then in effect. Accordingly, we find the appeal is time barred and that the Board is without authority to consider the case. The appeal is dismissed. 7/

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


 George T. [unclear], Member

7/ Even though the Board has dismissed the appeal for lack of jurisdiction, that fact does not in itself bar the Department from taking further administrative action as may appear appropriate, including cancellation of the certificate of loss of nationality. Opinion of David R. Robinson, Legal Adviser, Department of State, December 27, 1982.