April 12, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This case is before the Board of Appellate Review on an appeal taken by [redacted] from an administrative determination made by the Department of State in 1967 that he expatriated himself on October 19, 1965, under the provisions of section 349(a)(2) of the Immigration and Nationality Act, by making a declaration of allegiance to a foreign state at the time he was granted Canadian citizenship. &/

The appeal was brought through counsel on April 18, 1983, sixteen years after the Department's determination of loss of nationality. The threshold question thus presented is whether the appeal has been timely filed. We conclude that the appeal was not timely taken and, accordingly, will dismiss the appeal.

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481, provides:

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 --

. . .

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

I

Appellant was born in [redacted], Maryland on [redacted], and acquired United States citizenship at birth. His mother was a United States citizen by birth, his father was a naturalized citizen. Appellant's father, who was born in Canada, had lost his Canadian citizenship upon his naturalization in the United States in 1940.

Appellant moved with his parents to Canada a year after his birth. He received his elementary and high school education in Toronto, excepting two years when attending a private school in the United States from 1954 to 1956. He attended the University of Toronto, receiving undergraduate and graduate degrees in electrical engineering. He was awarded a doctorate in 1973.

On January 19, 1963, appellant registered for Selective Service at the Consulate General in Toronto. He also obtained a United States passport on March 19, 1964.

According to Canadian authorities, appellant acquired Canadian citizenship on October 19, 1965, as a result of an application filed by his father, who had been readmitted to Canadian citizenship in 1951. In that connection, appellant took the oath of allegiance required by Canadian law. He wa twenty years of age at the time.

In March of 1966, appellant, accompanied by his parent: visited the Consulate General at Toronto to discuss his new: acquired citizenship status. Thereafter, he formally renounced his United States nationality. In an affidavit executed at the same time, he gave the following reasons for his renunciation.

> ...I have been a resident of Canada since 1946. Because of such residence, my father's reacquisition of Canadian citizenship, I decided to become a naturalized Canadian citizen. However, since I am informed I did not thereby lose my American citizenship because my Canadian naturalization occurred when I was under twenty-one years of age, I find it necessary to renounce my American citizenship.

On March 12, 1966, the day following his renunciation, appellant wrote to the Selective Service Local Board No. 10 (Foreign) in Washington, D.C. He informed the local board that he acquired Canadian citizenship on October 19, 1965,

and formally renounced his United States citizenship on March 11, 1966. Appellant requested the Selective Service board to record his change of nationality.

On March 15, 1966, the Consulate General at Toronto, as required by section 358 of the Immigration and Nationality Act, executed a certificate of loss of nationality in appellant's name. 2/ The Consulate General certified that

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2/ 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.

appellant acquired United States citizenship by virtue of his birth in the United States; that he formally renounced his United States nationality before a consular officer of the United States on March 11, 1966; and, that he thereby expatriated himself under the provisions of section 349(a)(6) now section 349(a)(5), of the Immigration and Nationality Act. 3/ The Department of State approved the certificate on April 6, 1966.

3/ 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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> . . .
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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 redesignated paragraph (6) of section 349(a) of the Immigration and Nationality Act as paragraph (5).

In the interim, the local Selective Service board sought from the Department a determination of appellant's citizenship status in light of appellant's letter of March 12, 1966. The Department discovered then that appellant obtained Canadian citizenship in 1965. Upon receipt of confirmation of appellant's acquisition of Canadian citizenship from Canadian authorities, the Department was of the view that appellant might have lost his United States Citizenship under section 349(a)(2). of the Immigration and Nationality Act by taking an oath of allegiance to a foreign state, and instructed the Consulate General at Toronto to submit a new certificate of loss of nationality on that basis.

Accordingly, on October 26, 1966, the Consulate General issued a second certificate of loss of nationality and certified that appellant "expatriated himself by subscribing to an Oath of Allegiance to the British Crown in connection with his naturalization as a Canadian citizen on October 19, 1965." The Department approved the new certificate of loss of nationality on February 7, 1967, and vacated the certificate of loss of nationality issued in March 1966 based on appellant's formal renunciation of United States citizenship. The Department took this action on the ground that appellant had lost his United States citizenship prior to subscribing to the oath of renunciation and, therefore, was not a United States citizen at the time of his renunciation.

Appellant filed this appeal on April 18, 1983, sixteen years after the Department's determination of loss of nationality. A hearing, at appellant's request, was held before the Board on January 13, 1984.

Appellant contends that, notwithstanding the lapse of time, the Board should entertain the appeal because he was never aware of his rights at the time of his loss of nationality, and because his failure to appeal was due to misinformation provided by the Consulate General "where party or parties unknown advised that any appeal at that time would have little merit." Appellant further contends that his acquisition of Canadian citizenship and declaration of allegiance to the British Crown were not done voluntarily, and that he did not intend to terminate his United States citizenship.

II

Under the existing regulations of the Department, the time limitation for filing an appeal to the Board of Appellate Review is one year after approval of the certificate of loss of nationality, unless the Board for good caus shown determines that the appeal could not have been filed within the prescribed time. 4/ These regulations, however were not in force in 1967 when the Department approved the certificate of loss of nationality issued here.

The regulations that were in effect prior to the curre regulations required that an appeal be filed within a reasonable time after receipt of notice of the Department's holding of loss of nationality. 5/ We are of the view tha

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4/ Section 7.5 of Title 22, Code of Federal Regulations, 2 CFR 7.5. The existing regulations relating to the Board of Appellate Review were promulgated on November 30, 1979 (22 CFR, Part 7; 44 FR 68825, November 30, 1979).

5/ Section 50.60, Title 22, Code of Federal Regulations (1967-1979), 22 CFR 50.60, reads:

> 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.

this time limitation of "within a reasonable time" rather than the existing time limitation of one year after approval of the certificate of loss of nationality should govern in this case. As a general rule, in the absence of a clearly manifested intention to the contrary, a change in regulations shortening a limitation period is construed as operating prospectively and not retroactively.

Thus, under the time limitation that we find controlling, appellant was required to initiate his appeal within a reasonable time after receipt of notice of the Department's holding of loss of nationality. If appellant failed to take an appeal within a reasonable time, the appeal would be time barred and the Board would lack jurisdiction to consider and determine it..

Whether an appeal was taken within a reasonable time, depends upon the circumstances in a particular case. A reasonable time means reasonable under the Circumstances. Courts have held that a reasonable time means as soon as circumstances permit and with such promptitude as the situation of the parties and the circumstances of the case allow. This does not mean, however, as the courts have stated, that a party be allowed a time of his or her own choosing or a protracted delay that is prejudicial to each party. Although the question of a reasonable time will vary with the circumstances, it is clear that it is not determined by a party to suit his or her own purpose and convenience or when a party, for whatever reason, takes an appeal several years after notice of his right to take an appeal. 6/ Limitations are designed to encourage the prompt ascertainment of legal rights and to afford protection against stale actions as a consequence of an unreasonable delay.

6/ See Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931); In re Roney, 139 F. 2d 175 (1943); Appeal of Syby, 460 A. 2d 749 (1961); Ashford v. Steuart 657 F. 2d 1053 (1981).

In the instant case, the Department determined in February 1967, that appellant expatriated himself in 1965, under the provisions of section 349(a)(2) of the Immigration and Nationality Act by subscribing to a declaration of allegiance required by Canadian law. Appellant does not dispute that he had notice of the Department's holding of loss of citizenship. It does not appear, however, from the record that he took any action or evinced any interest to question or controvert that holding until, following consultation with his counsel, he filed this appeal in April 1983, sixteen years later. When asked by his counsel at the hearing why he waited "some 15 or 16 years" before seeking legal advice about his citizenship status, appellant responded that he was offered a position in Cambridge, Massachusetts, and considered that occasion his first real opportunity. 7/

Appellant's counsel argued that appellant was never aware of his rights and privileges at the time of the Department's holding of loss of citizenship, presumably referring to his right to take an appeal. We reject this contention. Although the record does not show whether the Consulate General informed appellant specifically of his right to appeal, appellant could have easily ascertained from the Consulate General the procedure for taking an appeal if he believed that the holding of loss of nationality

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7/ Transcript of Proceedings In The Matter of [redacted] [redacted], Department of State, Board of Appellate Review, January 13, 1984, (hereafter cited as TR), at 48.

was erroneous. 8/ His lack of diligence in taking an appeal can hardly be attributed to any unawareness or doubt that he had committed an act of expatriation. The record also shows that the Selective Service System in March 1967, informed appellant that, according to the Department of State, his status as a citizen of the United States "has been revoked", and that, accordingly, both his registration under Selective Service and record in the local board were cancelled.

The long delay here in taking an appeal places the Department at a disadvantage with respect to appellant's allegation that he was misinformed by a "party or parties unknown" at the Consulate General to the effect that any appeal at that time would have little merit. There is no record or contemporaneous account of any meetings that appellant may have had with consular officers at the time. Nor is there any information in the record that would shed light on the alleged proffered misinformation or on the identity of the party or parties unknown.

It is difficult for a trier of facts, after a lapse of sixteen years, to determine a case, particularly where the record is incomplete or obscured by the passage of time. Moreover, a lapse of time of that duration tends to cloud a persons's recollection of events. Appellant here, for example, stated at the hearing that his recollection "is very fuzzy" with respect to his acquisition of Canadian citi-

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8/ Until the current regulations of the Board of Appellate Review were promulgated on November 30, 1979, the Department of State was not required to inform an expatriate of the right of appeal. In fact, however, the Department under internal guidelines in force since at least 1954, and certainly since the inception of this Board in 1967, provided that a person who was the subject of an adverse determination of nationality should be informed of the right of appeal. These internal guidelines do not have the force of law.

zenship in 1965 and the attendant declaration of allegiance. He recalls visiting the Canadian citizenship authorities with his father, "going through a procedure", and "coming out with my Canadian citizenship." Appellant further stated that he did not recall the "specific conversation" he had with the consular officer in March of 1966 about his citizenship status, 10/ or subscribing to a declaration of renunciation of United States nationality, 11/ or "the specificity of the details" surrounding his visit to the Consulate General and renunciation in 1966. 12/

Appellant permitted sixteen years to elapse before filing an appeal in 1983. His failure to take any action until then persuades us that his long delay was unreasonable. The principal reasons for granting a reasonable time within which to appeal a Department's holding of loss of nationality was to afford an appellant sufficient time to assert his or her contentions that the decision is contrary to law or fact, and to compel an appellant to take such action when the recollecti of events upon which the appeal is grounded is fresh in the minds of the parties involved. The limitation period of "within a reasonable time" commences to run with appellant's notice of the Department's holding of loss of nationality in 1967, and not several years thereafter when appellant is offer employment in the United States and then considers it propitious to take an appeal. In our opinion, appellant's delay of sixteen years in taking an appeal was clearly unreaso able.

9/ TR at 42.

10/ TR at 52.

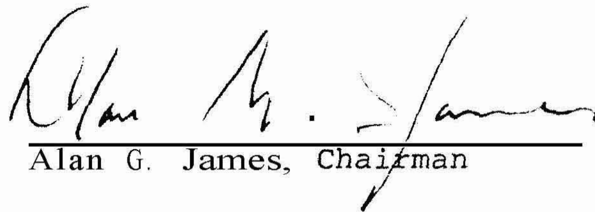
11/ TR at 53.

12/ TR at 55.

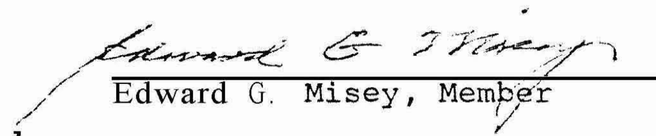
III

On consideration of the foregoing, we conclude that the appeal was not taken within a reasonable time after appellant had notice of the Department's holding of loss of United States citizenship. Accordingly, we find the appeal barred by the passage of time. This Board, therefore, lacks jurisdiction to consider the case. The appeal is hereby dismissed.

Given our disposition of the case, we do not reach the other issues that may be presented.



Alan G. James, Chairman



Edward G. Misey, Member

J. Peter A. Bernhardt, Member