June 22, 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 of the Department of State that he expatriated himself on July 9, 1975, under the provisions of section 349(a) (1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

The certificate of loss of nationality that the U.S. Consulate General at Toronto issued in this case was approved by the Department on March 31, 1978. The appeal here was taken through counsel on October 21, 1983, five years later. The initial question thus presented is whether the appeal has been timely filed. We conclude that the appeal was not timely taken and, accordingly, will dismiss it for lack of jurisdiction.

I

Appellant was born in Scotland, the United Kingdom on [redacted]. He immigrated to the United States in 1956, and, in 1962, acquired United States nationality through naturalization in the U.S. District Court at Minneapolis, Minnesota.

1/ Section 349(a)(1) 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 --

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

Appellant moved to Canada in 1965, and was naturalized as a citizen of Canada on July 9, 1975, upon his own application. According to appellant's counsel, appellant, a college professor, became a naturalized Canadian citizen solely for employment reasons. Appellant's counsel stated that employment opportunities were "severely restricted" for persons who were not Canadian citizens, and that appellant had neither job security nor opportunity for advancement because of the preference given to Canadians.

It appears that sometime in 1977 appellant visited the Consulate General at Toronto to renew his U.S. passport that was issued in 1972. After he informed the Consulate General that he had also acquired Canadian citizenship status, the Consulate General sought confirmation from the Canadian authorities. On July 26, 1977, the Canadian Citizenship Registration Eranch, Department of Secretary of State at Ottawa, confirmed appellant's naturalization in Canada on July 9, 1975.

Thereafter, the Consulate General invited appellant to submit any comments, information, or evidence for use by the Department in determining whether he lost his United States nationality as a consequence of his Canadian naturalization. Failing to receive any response from appellant, the Consulate General, on February 3, 1978, executed a certificate of loss of United States nationality, as required by section 358 of the Immigration and Nationality Act. 2/ The Consulate General certified that [redacted] acquired

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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 states 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.

United States citizenship by naturalization; that he acquired the nationality of Canada by virtue of his naturalization as a citizen of Canada on July 9, 1975; 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 on March 31, 1978. The Consulate General forwarded a copy of the certificate of loss of nationality to appellant under covering letter dated April 12, 1978.

Appellant filed this appeal through counsel on October 31, 1983.

Appellant's counsel contends that appellant was not apprised of his right to appeal the Department's determination of loss of nationality until "only recently." He further contends that appellant's acquisition of Canadian citizenship was not done voluntarily or with the intent to relinquish his United States citizenship.

II

We are confronted at the outset with the issue of the timeliness of the appeal taken here. Unless the appeal was timely filed, this Board would lack jurisdiction to consider the case.

Under the existing regulations of the Department, the time limitation for filing an appeal is one year after approval of the certificate of loss of nationality. 3/ The regulations further provide that an appeal filed after the tine limit shall be denied unless the Board for good cause shown determines that the appeal could not have been filed within the prescribed time. These regulations, however, were not in force at the time the Department approved the certificate of loss that was issued in this case in 1978.

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

The regulations that were then in effect prescribed that an appeal be taken within a reasonable time after receipt of notice of the Department's holding of loss of nationality. The regulations provided:

> 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. 4/

We consider the above limitation of "within a reasonable time," rather than the existing limitation of one year after approval of the certificate of loss of nationality, to govern this case. It is generally recognized that a change in regulations shortening a limitation period is presumed to operate prospectively, and not retrospectively. Thus, under the time limitation that we find applicable, 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 he failed to do so, the appeal would be barred by the passage of time, and the Board would lack jurisdiction to entertain it.

The Department here determined, in March 1978, that appellant expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada. On April 12, 1978, the Consulate General at Toronto forwarded to appellant a copy of the approved certificate of loss of nationality, which constituted the Department's determination of loss of nationality. On the reverse side of the certificate, there was printed information about procedures for taking an appeal to the Board of Appellate Review in the Department. Appellant's counsel gave this Board notice of appeal, accompanied by a brief, on October 21, 1983, five years after the Department's determination of loss of citizenship.

4/ Section 50.60, Title 22, Code of Federal Regulations (1967-1979), 22 CFR 50.60.

In his submissions, appellant's counsel contends that appellant was not informed of his right to appeal the Department's holding of loss of nationality. According to appellant's counsel, "it was only a few months ago" that appellant learned from a colleague that "he could have appealed the decision." It is argued, therefore, that in the absence of knowledge that the Department's determination of loss of nationality was appealable, appellant's delay in bringing this appeal is not unreasonable. We disagree.

What is a reasonable time depends, as the courts have enunciated, upon the circumstances in a particular case. Generally, a reasonable time means reasonable under the circumstances. It has been held to mean as soon as circumstances permit, and witn 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 a time suitable to himself. Nor should reasonable time be interpreted to permit a protracted delay which is prejudicial to either party. Reasonable time doubtless will vary with the circumstances, but 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 or her right to take an appeal. 5/

5/ See Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931); Ashford v. Steuart, 657 F. 2d 1053 (1981); In re Roney, 139 F. 2d 185 (1943); Appeal of Syby, 460 A. 2d 749 (1961).

In the instant case, it does not appear that appellant raised any question about his loss of United States nationality prior to the filing of an appeal in October of 1983. As we have seen, the Consulate General sent appellant, on April 12, 1978, a copy of the certificate of loss of nationality on the reverse side of which were instructions about appeal procedures. It was stated thereon that any holding of loss of United States nationality may be appealed to the Board of Appellate Review. There were also instructions as to the filing of an appeal and as to where additional information may be obtained. Appellant's counsel admitted in his reply brief that appellant received "notice of his loss of nationality," presumably referring to the approved certificate of loss of nationality.

Even if the Consulate General did not inform appellant specifically of his right to appeal or if appellant failed to read the information regarding appeal procedures on the reverse side of the certificate of loss of nationality, there is no reason why he could not have inquired at the Consulate General about contesting an adverse decision. He received a copy of the certificate of loss of nationality and was thus fully aware of the Department's determination of loss of nationality. We believe appellant had ample opportunity following his naturalization in Canada to take a timely appeal, if he believed that the Department's holding of loss of nationality was coatrary to law or fact.

The rationale for giving a reasonable time to appeal an adverse decision *is* to afford an appellant sufficient time to assert his or her contentions that the decision is contrary to law or fact and to compel appellant to take such action when the recollection of events upon which the appeal is grounded is fresh in the minds of the parties involved. Appellant here permitted a period of five years to elapse before taking an appeal in 1983. The period of "within a reasonable time" commences to run with appellant's notice of loss of nationality in *1978* and not several years thereafter when appellant, for whatever reason, considers it appropriate or when he belatedly discovers that he may file an appeal or when advised by counsel to take an appeal. In our opinion, appellant's delay *of* five years in taking an appeal was unreasonable in the circumstances of this case.

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. We find the appeal time barred, and, as a consequence, this 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 that may be presented.

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member