DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: V[redacted] J[redacted] L[redacted]

This case is before the Board of Appellate Review on an appeal taken by V[redacted] J[redacted] L[redacted] from an administrative determination of the Department of State that she expatriated herself on January 23, 1975 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/

The Department approved the certificate of loss of nationality issued in this case on November 19, 1980. The appeal was entered on June 23, 1983. The threshold issue presented is whether the Board has jurisdiction to consider an appeal filed more than two years after the Department approved the certificate of loss of appellant's nationality. It is our conclusion that since no legally sufficient justification for the delay has been presented, the Board may not exercise its authority to enlarge the one-year limitation on appeal prescribed by the applicable regulations. The appeal is barred and will be dismissed.

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, . . .

I

Appellant became a citizen of the United States by birth at [redacted] She lived in Wisconsin until 1963 when she married a Canadian citizen and later that year moved with him to Canada. Appellant has two children born in Canada before the date of her expatriation. Both are nationals of the United States and Canada.

She informed the Board that "in 1974 due to economic necessity, I was forced to look for employment and was strongly advised to take out Canadian citizenship since priority would be given to Canadians looking for work." On January 23, 1975 appellant obtained a certificate of Canadian citizenship after swearing the prescribed oath of allegiance to the British Crown.

Since June 1975 appellant has been employed by a firm of barristers and solicitors in Ontario.

Appellant states that in 1980 her husband was offered a position at an American university. When they went to the Consulate General at Toronto to arrange for his entry into the United States, appellant disclosed that she had obtained naturalization as a Canadian citizen. She was interviewed by a consular officer, and completed a questionnaire on September 29, 1980 to facilitate the determination of her citizenship status.

In addressing the questionnaire, appellant completed and signed the following statement:

STATEMENT OF VOLUNTARY RELINQUISHMENT OF UNITED STATES NATIONALITY

"I, [redacted] **(Name) performed the act of expatriation indicated in Item 7** /took an oath of allegiance to a foreign state/ **(a,b,c,d, or e) voluntarily and with the intention of relinquishing my United States nationality."**

Signature [redacted] **Date** Sept. 29, 1980

She further stated:

> We felt that we would be living in Canada for the rest of our lives and it seemed a practical thing to apply for Canadian citizenship in order to vote in elections, etc. I performed

> this act voluntarily; however, if I had known that there was even the remotest possibility that my husband would eventually be offered employment back in the United States, I would not have applied for Canadian citizenship.

With respect to her intent in performing the expatriating act, appellant asserted:

> I did not renounce my United States citizenship but in acquiring Canadian citizenship, I did believe that I could not have dual citizenship and unfortunately, would have to relinquish my rights as an American.

In an affidavit executed August 12, 1983 appellant asserted that her visits to the Consulate General "proved to be a very traumatic experience for us particularly me." She alleged that she and her husband had been treated rudely; "we were made to feel like criminals which left me just devastated."

The Consulate General prepared a certificate of loss of nationality in appellant's name on October 29, 1980, in compliance with section 358 of the Immigration and Nationality Act. 2/

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.

The Consulate General certified that appellant acquired United States nationality at birth; that she obtained naturalization in Canada upon her own application; and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on November 19, 1980, approval being an administrative determination of loss of nationality from which a properly filed and timely appeal may be taken to this Board. The Consulate General sent a copy of the approved certificate to appellant who acknowledged its receipt on December 9, 1980. And, since appellant's husband had decided not to accept the university position in the United States, the Consulate General also forwarded to appellant and her husband the documents they had submitted for entry into the United States.

On June 23, 1983, appellant wrote to the Board to enter this appeal, giving the following grounds.

> All my family, excluding my husband, are American citizens and live in the United States. Over the past 8 years, it has caused me considerable distress to no longer be able to have American citizenship as I realize now it was truly my most precious possession. I appeal to you for whatever assistance you may be able to give me to rectify this situation.

II

The initial question the Board must decide is whether we have jurisdiction to entertain an appeal brought two and one half years after the Department approved the certificate of loss of nationality in appellant's name.

With respect to the time limit on appeal, Federal regulations provide as follows:

> A person who contends that the Department's administrative determination of loss of nationality or expatriation under subpart C of Part 50 of this Chapter is contrary to law or fact, shall be entitled to appeal such determination to the Board upon written request made within one year

> after approval by the Department of the certificate of loss of nationality or a certificate of expatriation. 3/

The regulations further provide that:

> An appeal filed after the prescribed time shall be denied unless the Board determines for good cause shown that the appeal could not have been filed within the prescribed time. 4/

Although the appeal was taken outside the governing limitation, the delay would not be fatal if she were able to show good cause why she could not have appealed within one year.

Appellant maintains that after the "ordeal" of her visits to the Consulate General and when she received a copy of the approved certificate of loss of nationality she became very depressed and she could not bear to look at the certificate. "I just filed /it/ away in our safety deposit box. I did not read the certificate or look at it or any of the other documents and thus, did not know that there was the possibility of an appeal." She was not, she further stated, "emotionally capable of dealing with it at that time had I read it."

3/ Section 7.5(b), Title 22, Code of Federal Regulations, 22 CFR 7.5(b).

4/ Section 7.5(a), Title 22, Code of Federal Regulations, 22 CFR 7.5(a).

The events of June-December 1980 left appellant, in her words, "considerably distressed, resulting in loss of sleep, loss of weight, extreme nervous tension and the inability to cope with the final matter which was the return of all documents."

The attorney who employs appellant submitted a statement dated August 29, 1983 in support of her allegations of emotional distress in 1980 and the ensuing two years.

Noting that appellant had worked for him since 1975, the attorney said she had shown herself to be meticulous, competent and hard working. Following appellant's visits to the Consulate General in 1980, the attorney stated that she appeared very upset, alternatively depressed and agitated. "She seemed confused by all the problems that were being created." He "could see her becoming more and more nervous, easily agitated, short tempered and forgetful." In early December 1980, deponent continued, after her husband turned down the position in the United States, appellant seemed very depressed and withdrawn, and although she managed to get through her daily work, it was done much more slowly and at time /sic/ done absent-mindedly."

He concluded:

> It is my feeling that this ordeal not only caused problems in her daily work but severe strain on her marriage as well....
>
> It is my belief that this experience caused her considerable anxiety and stress which affected her ability to function in the manner that she had previously done. This was a long-lasting condition of about 2 years which seems to have been overcome only with the passage of time.

The dispositive issue is whether appellant's alleged inability to take a timely appeal, supported by the statement of her employer, is legally sufficient to excuse her delay in coming to this Board. For the reasons given below we are not persuaded that it is.

We do not doubt that appellant may have been distressed by the events leading up to the Department's holding of loss of her nationality; that when she received a copy of the approved certificate of loss of nationality her emotional state was such that she wanted to put the whole distressing business out of her mind; and that over an extended period of time she felt unable to think purposefully about her possible right of redress.

She has not, however, demonstrated, as it is her burden to do, that because of mental anguish, she could not conduct the ordinary business of life and make rational decisions about her affairs. Indeed, as her employer observed in his statement, she got through her work, albeit performing below her capabilities. When asked by the Board whether she had been under a doctor's care in 1980 and afterwards appellant informed the Board that she had undergone major surgery in April 1980, but that "although I was under a doctor's care during the period from June to December 1980, it was due to the surgery not to my emotional state."

We must therefore inquire whether appellant was well enough to make a rational decision about bringing an appeal. The law presumes competency, rather than incompency, until satisfactory proof of the contrary is presented. Here, there is no medical evidence of appellant's capacity or incapacity to protest loss of her citizenship in a timely manner. In the absence of competent medical evidence, the Board is unqualified to accept appellant's contention that her evident emotional distress effectively barred her from taking an appeal within the prescribed limitation.

The Board is not indifferent to appellant's plight and her evidently sincere wish to recover her American citizenship. But we are constrained by the specific limitation of the regulations on appeal where there has been no persuasive showing of good cause why appellant could not have taken an appeal within the period allowed. She may not, as she has stated, have been aware that the limit on appeal was one year from the date of approval of the certificate of loss of nationality issued in her name. But the relevant information about appeals is set forth on the reverse side of the certificate of loss of nationality which she duly received. Thus, she had due and proper notice of the right of appeal.

Considering all the circumstances in this case, the Board concludes that appellant was legally on notice of her right of appeal within the limitation prescribed by regulations and that she must be presumed to have been competent to take the prescribed steps to make a timely challenge to the Department's holding of loss of her nationality.

III

The appeal having been taken outside the prescribed limitation and no good cause having been shown why it could not have

been taken within that limitation, it is barred. Lacking jurisdiction to consider the appeal, the Board hereby dismisses it.

Given our disposition of the case, we are unable to reach the other issues presented.

Alan G. James, Chairman

Warren E. Hewitt, Member

George Taft, Member