July 24, 1984

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: S[redacted] M[redacted]

This case is before the Board of Appellate Review on an appeal brought by S[redacted] M[redacted] from an administrative determination of the Department of State that she expatriated herself in May 1960 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Israel upon her own application. 1/

The certificate of loss of nationality issued in this case was approved by the Department on August 12, 1971. 2/ The appeal

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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/ The date of approval of the certificate of loss of nationality was supplied by appellant. No copy of the certificate was submitte by either appellant or the Department, which certified to the Board on March 8, 1984 that it had been unable to locate the administrative record in Mrs. M[redacted] case.

The Board finds it inexcusable that a dossier containing information about such an important matter as United States citizenship could disappear, despite apparently bona fide efforts to locate the file. Nevertheless, inasmuch as appellant has admitted that she performed the expatriating act in question; that she duly received notice of the Departments holding of loss of her nationality; and did not appeal until many years later, the absence of the administrative record is not fatal. The essential elements are thus at hand to enable the Board fairly to adjudicate the jurisdictional issue presented.

was entered in June 1983. The initial issue to be determined is whether the appeal was filed within the limitation prescribe by the applicable regulations. It is our conclusion that the appeal was not timely filed and is therefore barred. Lacking jurisdiction, we will dismiss the appeal.

I *

Certified documents submitted by appellant show that she was born on November 19, 1927. Inasmuch as nothing appears in her submissions to the contrary, it is presumed that she was bo in the United States, and so acquired United States nationality at birth. She graduated from the School of Nursing of the Jewish Hospital Association of Philadelphia on May 31, 1948.

According to a statement of the Israeli Ministry of Health dated June 9, 1983, appellant became a permanent employee of th Israeli Civil Service in 1957, as a nurse.

It appears that appellant "opted out" of Israeli citizensh which she presumably acquired automatically upon her arrival in Israel under the provisions of the Nationality Law of 1952.

On November 13, 1959 appellant executed a sworn statement declaring that she was a United States citizen; that she under-took to inform her superiors about any change in her citizenshi and acknowledged her understanding that, in accordance with the State Service Law of 1959, a State employee who was not presently an Israeli citizen and did not acquire Israeli citizenship before July 15, 1960, would be dismissed from the public service.

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* Virtually all the statements of fact in this part of the Bo decision are drawn from appellant's submissions in the absence the Department's administrative record.

In response to the foregoing statement, the Ministry of Health informed appellant on March 13, 1960 that she would have to obtain Israeli citizenship by July 15, 1960 or face dismissal.

Sometime in 1960 appellant applied for naturalization, and in May of that year became a citizen of Israel. According to the statement she filed with the Board, she visited the United States Embassy at Tel Aviv in 1971:

> ...in order to regain (I thought) my citizenship under the rules of dual nationality. In the statements made before the consul and the questionairre /sic/, I filled out at the time, I did not, nor was I encouraged to gather evidence, relating to the events around 1959-1960. As a result, errors occurred, which I consider detrimental regarding the decision to cancel my born right to American nationality.

Appellant states that the Embassy prepared a certificate of loss of nationality in her name on June 30, 1971, 3/ and that the Department approved the certificate on August 12, 1971. There is no dispute that appellant received a copy of the approved certificate in due course. Approval of the certificate constitutes an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be brought to this Board

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3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, in compliance with which the Embassy would have prepared the certificate of loss of nationality, reads as follows:

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 1950, 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.

Eleven years later, possibly early in 1982, it seems that appellant asked the Department to review her case. On February 26, 1982 the Department's administrative record on appellant was sent to the Office of Citizens Consular Services where it was reviewed. According to a memorandum the Departmen sent to the Board on March 8, 1984:

> The Board should take note, however, that in 1982 upon the request of Mrs. M[redacted], the Office of Citizens Consular Services made a reconsideration of the holding of loss and determined that there was no basis for reversing its original decision. It was after that reconsideration that the file was misplaced. However, the denial to reverse was based in part on the renunciatory oath required by Israel of all applicants for naturalization.

Appellant indicates that the Embassy at Tel Aviv informed her in March 1982 of the Department's refusal to reverse its adverse holding in her case, and suggested that she consider taking an appeal to this Board.

The appeal was initiated in June 1983.

Appellant contends that she was forced against her will t become an Israeli citizen in order to protect her employment a continue to contribute to the support of her family. She also asserts that she had no intention of relinquishing her United States citizenship when she obtained Israeli naturalization.

The Department's position on the appeal as set forth in i March 8, 1984 memorandum to the Board is that:

> ...Mrs. M[redacted] naturalized in 1960 and was held by the Department to have relinquished her citizenship thereby in 1971. Her appeal was made in 1983, twelve years later. We believe that her appeal is barred by the reasonable time requirement of the Board's regulations: 22 C.F.R. 50.60 (1967). She has not provided any compelling reason for bringing her appeal twelve years after the holding of loss that would excuse such an unreasonable delay.

II

The basic issue presented at the outset is whether the appeal taken here, twenty-three years after appellant obtained naturalization in Israel and twelve years after her presumed receipt of notice of the Department's holding of loss of nationality, was timely filed.

Under the current regulations of the Department, which were promulgated in 1979, the time limitation for filing an appeal from an administrative determination of loss of nationality is one year after approval of the certificate of loss of nationality. 4/ 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.

In 1971, however, when the Department approved the certificate of loss of nationality that was issued in this case, the regulations governing appeals to this Board provided that a person contending that the Department's holding of loss of nationality in his case was contrary to law or fact might appeal to the Board of Appellate Review within a reasonable time after receipt of notice of the Department's holding. 5/

4/ Section 7.5, Title 22, Code of Federal Regulations, 22 CFR 7.5

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

It is our view that the limitation of "reasonable time," rather than the existing limitation of one year after approval of the certificate of loss of nationality, should govern in this case. For it is generally recognized that a change in regulations shortening the limitation period is presumed to be prospective, rather than retrospective, in operation. To apply such change retrospectively would work an injustice and disturb a right acquired under former regulations.

Thus, under the time limitation governing in the instant case, if appellant did not initiate or file her appeal within a reasonable time, the appeal would be time barred and the Board would be without authority to entertain it.

Whether an appeal is taken within a reasonable time depends upon the circumstances in an individual case. Generally, reasonable time means reasonable under the circumstances. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). It has been held to mean as soon as circumstances permit, and with such promptitude as the situation of the parties will allow. This does not mean, however, that a party be allowed to determi a "time suitable to himself." In re Roney, 139 F. 2d 175, 177 (1943). Nor should reasonable time be interpreted to permit a protracted delay which is prejudicial to either party.

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 that the decision is contrary to law or fact. The limitation is designed to compel appellant to take such action within a reaso able time so as to protect the adverse party against a belated appeal that could more easily have been resolved when the recollection of events upon which the appeal is based is fresh in the minds of the parties involved. Unreasonable lapses of time cloud a person's recollection of events and also make it difficult for the trier of fact to determine the case, particularly where the record is incomplete or lost or obscured by the passage of time. Moreover, there must be an end to litigation at some point. It should also be noted that the period of a reasonable time begins to run with the receipt of notice of the Department's holding of loss of nationality, and not at some su sequent time, years later, when appellant for whatever reason, seek to regain or re-establish his or her United States citizen ship status.

Appellant has offered the following explanation of her delay in bringing her appeal:

> ...I am still an Israeli government employee at the Beersheba ministry of health. As such, procedures, regulations and restrictions regarding obtaining material, which could be used to base a proper appeal are contained in...the Civil Service regulations. This section when translated states that it is forbidden for me to have any knowledge of or access to information in my personal file, and that only unclassified or unrestricted material should be copied for me on my request.... I had strong reason to doubt that any request by me for material which would help me regain my American citizenship would be granted. Furthermore this was the sole source of information to relevant documents and one untimely request would squash any further attempts on my part to obtain information from my personal file.
>
> The source of my doubts relate to events in 1960 at which time I had to surrender my American passport to the Israeli government authorities prior to becoming a naturalized Israeli citizen. This surrender was not only a symbolic act but to the best of my knowledge done in accordance with Israeli law...At the time I was a member probably of a minority of Americans who had consistently refused when given a voluntary and free choice to passively become Isreali citizens according to the Nationality Law of 1952. The Israeli Ministry of Interior must have known this fact.
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> I interpreted the surrender of my American passport as a method to discourage me at the time and in the future from any efforts on my part to regain my American citizenship....
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> I reported the above surrender in 1971 to the investigating officer at the American Embassy in Tel Aviv. To the best of my recall he stated that my passport was never returned to them, nor had they any record that it had been taken away from me. In spite of the allowances for dual citizenship, to date, my American passport was never returned nor have I have /sic/ ever received notification that it is now permissable /sic/ for me to be /sic/ my American citizenship back from any Israel authority.

> ...My doubts as well as the psychological effects of surrendering my identiy by giving up its symbolic representation in the form of my American passport paralyzed me from acting within the Israeli context to regain my American citizenship. All I could do was to wait and hope that attitudes would slowly change....

We are unable to deem appellant's explanation for her long delay in bringing an appeal sufficient, as a matter of law, to excuse such a delay.

Appellant's key point is that she doubted she could get the cooperation of the Israeli authorities to release documents to her that might assist her in an appeal, and that under Israe law she could get access only to documents that were unclassifi

Appellant does not support with any persuasive evidence he doubts that she might be able to obtain copies of relevant docu ments; her flat statement will not suffice to prove her content

Appellant seems to argue that inasmuch as evidence relevar to her case against expatriation would be difficult or impossil to obtain, she could not have appealed earlier. To this, we can only state that had she believed she had good cause to protest the Department's holding of loss of her nationality, she should have pressed it by entering a timely appeal, explaining the problems she had or expected to have in obtaining evidence and asking the Board for a continuance until she could assembl credible evidence.

Nor are we persuaded, without more, that the requirement Israeli law that passports of naturalized applicants be surren to the Israeli authorities was sufficient grounds for appellan believe that the Israeli authorities would have refused to coo ate with appellant to assert a claim to her lost United States citizenship.

Appellant has stated that as of the date of this appeal s was still employed by the Israeli Government. It seems possib that one reason for her delay in appealing may have been conce that by so doing she could jeopardize her position in the civi service. That may indeed have been a legitimate concern, but is insufficient to excuse a tardy appeal. It would, therefore appear that appellant exercised a high degree of choice in deciding when to appeal the Department's holding of loss of he nationality.

As noted above, a person may not choose a time convenient to him or herself to enter an appeal. Here, reasonable time began to run from her receipt of notice of the Department's holding of loss of her citizenship, sometime in 1971. She did not assert a claim to United States citizenship until 1982 when she moved for reconsideration of the Department's decision through an administrative review of her case.

It is clear that appellant permitted a substantial period of time to elapse before taking an appeal. There is no record that appellant showed any interest in the restoration of her United States citizenship prior to her request for reconsideration of her case in 1982. We find her failure to take any action until then convincing evidence that her delay in seeking an appeal was unreasonable. Whatever interpretation may be given the term "within a reasonable time," as used in the Department's regulations, we do not believe that such language contemplated a delay of twelve years in taking an appeal. The period of "within a reasonable time" commences with the appellant's receipt of notice of the Department's holding of loss of nationality, and not when appellant considers it appropriate 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 taken within a reasonable time after appellant had notice of the Department's holding of loss of her United States citizenship. As a consequence, we find that the appeal is time barred and that the 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 presented.

Alan G. James, Chairman

Warren E. Hewitt, Member

George Taft, Member