March 28, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D[redacted] A[redacted] B[redacted]

This case is before the Board of Appellate Review on appeal from an administrative determination of the Department of State that appellant, D[redacted] B[redacted], expatriated himself on January 31, 1976, under the provisions of section 350 of the Immigration and Nationality Act. 1/

1/ Sec. 350. A person who acquired at birth the nationality of the United States and of a foreign state and who has voluntarily sought or claimed benefits of the nationality of any foreign state shall lose his United States nationality by hereafter having a continuous residence for three years in the foreign state of which he is a national by birth at any time after attaining the age of twenty-two years unless he shall --

(1) prior to the expiration of such three-year period, take an oath of allegiance to the United States before a United States diplomatic or consular officer in a manner prescribed by the Secretary of State; and

(2) have his residence outside the United States solely for one of the reasons set forth in paragraph (1), (2), (4), (5), (6), (7), or (8) of section 353, or paragraph (1) or (2) of section 354 of this title: Provided, however, That nothing contained in this section shall deprive any person of his United States nationality if his foreign residence shall begin after he shall have attained the age of sixty years and shall have had his residence in the United States for twenty-five years after having attained the age of eighteen years.

Section 350 was repealed by Pub. L. 95-432 (October 10, 1978, 92 Stat. 1046). The repeal operated prospectively, not retroactively.

Section 350 of the Act provided that a person, who, at birth, acquired the nationality of the United States and a foreign state, and sought the benefits of his foreign nationalit shall lose his United States citizenship if he resides for three years after the age of twenty-two years in that foreign state unless he takes an oath of allegiance to the United States. Appellant at birth was a citizen of the United States and of the United Kingdom and Colonies; he sought and obtained a passport of the United Kingdom of Great Britain and Northern Ireland; he resided continuously in the United Kingdom for a period of three years, from January 1973 through January 1976, after he attained the age of twenty-two years. Section 350 of the Act was repealed in 1978.

On August 4, 1977, the Department approved a certificate of loss of United States nationality that the American Embassy at London issued in appellant's name. Approximately six years late on May 26, 1983, appellant gave notice of appeal from that deter mination of loss of nationality. The first and basic issue thus presented is the timeliness of the appeal. It is our conclusion that the appeal was not taken within a reasonable time as pre- scribed by the governing limitation, and, accordingly, will dismiss it for lack of jurisdiction.

I

Appellant was born in [redacted] of British parents. He acquired at birth the nationality of the United States and of the United Kingdom of Great Britain and Northern Ireland. He resided in the United States until 1952, when his parents returned to Scotland to live.

In 1967, appellant obtained a British passport, later renewed to 1977, which he used for all his travels. In 1970, after completing his university studies in Scotland, appellant accepted an assignment as a nutrition survey leader in Zambia. He returned to England in January 1973, and resided there until he moved to Venezuela in 1977.

In February 1977, appellant visited the Embassy at London to clarify his United States citizenship status. At the request of the Embassy, he executed an application for registration as a citizen of the United States, a supplemental application state- ment, an affidavit of an expatriated person, an affidavit ex- plaining his situation, and two citizenship questionnaire forms assist the Department in making a citizenship determination in

his case. At the same time, the Embassy prepared a certificate of loss of nationality, as required by section 358 of the Immigration and Nationality Act, 2/ and referred the case to the Department for decision.

The certificate recited that appellant voluntarily sought and claimed the benefits of his British nationality by obtaining a British passport; that he resided in the United Kingdom for a period of three years from January 31, 1973, to the present time (February 14, 1977); and that he thereby expatriated himself on January 31, 1976, under the provisions of section 350 of the Immigration and Nationality Act.

The Department approved the certificate of loss of nationality on August 4, 1977, such approval constituting the Department's administrative determination of loss of nationality from which an appeal, properly and timely filed, may be taken to this Board. A copy of the approved certificate was sent to the Embassy for transmittal to appellant.

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.

It appears that sometime in 1982, on the occasion of a visi to the American Embassy at Caracas seeking a renewal of a touris visa to the United States, appellant was allegedly informed by a consular officer that he might be able to hold a U.S. passport. Subsequently, appellant submitted to the consular section of the Embassy, for consideration by the Department, an application for passport and registration as a United States citizen, a supplemental application statement, a completed citizenship informatic form dated January 14, 1983, and an affidavit of the same date explaining why he was applying for a passport. In forwarding appellant's submissions, the Embassy at Caracas requested the Department to vacate the 1977 certificate of loss of nationality and authorize the issuance of a U.S. passport. On April 21, 1983, the Department informed the Embassy that the certificate of loss of nationality could not be administratively vacated. If appellant wished to take an appeal from the Department's determination of loss of citizenship, the Department instructed he should follow the appeal procedures of the Board of Appellate Review.

On June 1, 1983, the Embassy at Caracas forwarded to the Department appellant's letter of May 26, 1983, with enclosures, giving notice of appeal. Appellant contended that, since section 350 of the Immigration and Nationality Act, the basis fo his expatriation, was repealed in 1978, his United States citizenship should be restored. The Board on August 17, 1983, asked appellant to elaborate on his appeal. By letter dated June 28, 1984, he informed the Board that he would not be submitting a legal brief, and offered the following explanation of the circumstances in 1977 which led to the issuance of his certifica of loss of United States nationality:

> The act of relinquishing my United States citizenship was conducted at the U.S. Embassy in London. I had orignally /sic/ gone to the Embassy Visa Section to request a visa for the United States. I was informed that this could not be granted as I was born in the United States. That same day I was asked to state the circumstances under which I was granted a United Kingdom passport. The official therefore concluded that I had automatically lost my United States citizenship. During that same day a statement was prepared which I signed. By this act it was possible for the Visa Authorities to issue me with a visa for the United States.

> I should add that at no time had I ever received any communication from any United States Department explaining the rules and regulations which related to retention of United States citizenship.
>
> I realise that I have been rather lax in pursuit of my lost citizenship but I want to assure you that the loss of citizenship was never deliberately made. As far as I was concerned the rules then in force had automatically excluded me from holding United States citizenship.

II

The first matter that the Board is confronted with in this case is whether the Board has jurisdiction to entertain the appeal. As the Chairman of the Board informed appellant on August 17, 1983, in order to determine whether the Board has jurisdiction, the Board must determine if the appeal was timely filed. Unless the appeal were filed within the prescribed limitation, the Board would lack authority to consider the case.

The current regulations of the Department prescribe that an appeal be made within one year after approval of the certificate of loss of nationality. 3/ The regulations further provide that an appeal filed after the one-year period shall be denied unless the Board for good cause shown determines that the appeal could not have been filed within that period. These regulations, however, were not in force in 1977, when the Department approved the certificate of loss that was issued in this case.

3/ Section 7.5, Title 22, Code of Federal Regulations, 22 CFR 7.5. The current 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. That regulation read:

> Sec. 50.60. 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 believe that the limitation of "within a reasonable time", rather than the current limitation of one year after approval of the certificate of loss of nationality, should govern here. It is generally recognized that a change in regulations shortening a limitation period is presumed to be prospective in operation, and not to operate retrospectively. Thus under the limitation that we find controlling, appellant was required to take an 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 barred and the Board would lack jurisdiction to entertain it.

The question of 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, a reasonable time means reasonable under the circumstances. It has been held to mean 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, that a party be allowed to determine "time suitable to himself." In re Roney, 139 F. 2nd 175, 177 (1943). 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

---

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

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. See also Appeal of Syby, 460 A. 2d 749 (1961); Ashford v. Steuart, 657 F. 2d 1053 (1981).

Here, as we have seen, appellant received a copy of the certificate of loss of nationality in 1977. Appellant, however, did not file an appeal with this Board until May 1983.

It can hardly be doubted that appellant was aware of his right to appeal. On the reverse side of the copy of the certificate of loss of nationality, which he received in 1977, there was a printed notice of a person's right to take an appeal if he or she believed that the holding of loss of nationality in his or her case was contrary to law or fact, and how to file an appeal. Moreover, if appellant entertained any doubts at all as to his loss of nationality, he could have easily discussed his case with U.S. consular officers in England and Venezuela and ascertained the procedure to follow. We are persuaded that appellant had ample time after receiving notice of his loss of United States citizenship to file a timely appeal from that adverse determination if he so desired.

It appears from the record that appellant gave no thought to reclaim his United States citizenship status until he was informed by a consular officer at the Embassy in Caracas in 1982 that section 350 of the Immigration and Nationality Act, under which he lost his citizenship, "has since been revoked." It was "at that point in time", according to appellant's letter of December 27, 1984, that he decided to appeal his loss of nationality. That was five years after the Department's holding of loss of citizenship. Prior to that time, appellant said that he considered taking an appeal, but believed that he had automatically lost his right to United States citizenship under section 350, and that an appeal would be a "fruitless endeavor."

The reason for the limitation of "within a reasonable time" is to afford an appellant sufficient time to assert his or her contentions that the Department's decision is contrary to law or fact and also 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 substantial period of time to elapse before taking an appeal. As noted above,

appellant admitted that he had been "rather lax" in pursuit of his "lost citizenship." The period "within a reasonable time" commences to run with appellant's notice of loss of nationality in 1977 and not several years thereafter when appellant discovers or considers he has grounds for an appeal. In our opinion, appellant's delay of approximately six years in taking an appeal was unreasonable in the circumstances of this case.

III

On consideration of the foregoing, we are of the view that the appeal was not taken within a reasonable time after appellant had notice of the Department's holding of loss of United States nationality. Accordingly, we find that the appeal is time barred and that this Board, therefore, lacks jurisdiction to consder the case. The appeal is hereby dismissed.

We find it unnecessary to make other determinations with respect to this case.

Alan G. James, Chairman

Edward G. Misey, Member

Peter A. Bernhardt, Member