April 4, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: B[redacted] L[redacted]

B[redacted] L[redacted] appeals from an administrative determination of the Department of State that she expatriated herself on June 19, 1970, under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

The Department approved the certificate of loss of nationality issued in this case on July 29, 1975. As a preliminary matter, we are confronted with the issue of whether an appeal taken nine years after the Department determined that appellant had expatriated herself may be deemed to have been filed within the limitation prescribed by the applicable regulations. It is our conclusion that the appeal is not timely and is therefore barred. Accordingly, the appeal is dismissed.

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

. . .

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

I

Appellant acquired United States citizenship by birth at [redacted] She married a Mexican citizen, one Paredes, in 1962 and went to Mexico to live. Through her marriage she also acquired Mexican nationality by operation of Mexican law. She obtained United States passports from the Embassy at Mexico City in 1965, and in 1968, and registered her daughters as United States citizens.

In June 1970, appellant applied for a certificate of Mexican nationality, which was issued to her on August 10, 1970. As stated in the certificate, appellant had declared her allegiance to Mexico and expressly renounced any other nationality she might have and all allegiance to any foreign government.

Five years later in the summer of 1975, appellant applied for a visa at the Embassy at Mexico City. At that time the fact that she had made a formal declaration of allegiance to Mexico came to the attention of the United States authorities. At the request of the Embassy, she completed a questionnaire to facilitate determination of her citizenship status and, for information purposes, an application for registration as a United States citizen.

In the questionnaire, appellant explained why she had applied for a certificate of Mexican nationality and made the declaration of allegiance to Mexico required of an applicant therefor:

> As the wife and mother of Mexican citizens, residing in Mexico, and desirous of possessing complete rights to work, etc., I was required to pledge allegiance and thus renounce previous rights...It was necessary for me to enjoy full rights of the country in which I was residing and from which I foresaw no departure. I was conscious of the fact that I was relinquishing my rights as an American citizen...If I did not take the oath, I would have placed my right to employment, etc., in jeopardy.

In addition, appellant executed an affidavit of expatriated person in which she swore that she had made a formal declaration of allegiance to Mexico voluntarily and with the intention of relinquishing her United States citizenship.

As required by section 358 of the Immigration and Nationality Act, the consular officer who handled appellant's case prepared a certificate of loss of nationality in the name of Barbara Paredes on July 1, 1975. 2/ The consular

---

2/ Section 358 of the Immigration and Nationality Act, 8 U.S.C., 1501, provides:

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.

officer certified that appellant was a United States citizen from birth; that she made a formal declaration of allegiance to Mexico; and thereby expatriated herself on June 19, 1970, under the provisions of section 349(a)(2) of the Immigration and Nationality Act. 3/ The Department approved the certificate on July 29, 1975, such approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to this Board.

Appellant and her husband were divorced in 1976. She entered this appeal in 1984. In her appeal statement, appellant conceded on the one hand that she voluntarily made a formal declaration of allegiance to Mexico, but on the other argued that she was forced to perform the expatriating act because she needed to be able to work legally in Mexico. She intimates, but does not develop the issue, that she did not intend to relinquish her United States citizenship.

3/ The consular officer erred in recording the date of appellant's expatriation as June 19; the correct date is August 10, 1970, the date the certificate of Mexican nationality was issued.

The Mexican Government considers the declaration of allegiance to Mexico executed in connection with an application for a Certificate of Mexican Nationality to be effective upon issuance of the Certificate, which constitutes full proof of Mexican nationality. The Department of State accordingly regards the declaration of allegiance to Mexico to affect United States nationality when the certificate of Mexican nationality is issued, not when the declaration is made. See appellant's brief in Vance v. Terrazas, 444 U.S. 252 (1980).

II

Appellant's delay in taking the appeal presents a jurisdictional issue that must be resolved at the outset. Timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). Thus, if an appellant fails to comply with a condition precedent to the Board's going foward to determine the merits of his claim, i.e., does not bring the appeal within the applicable limitation and adduces no legally sufficient excuse therefor, the appeal must be dismissed for want of jurisdiction. Costello v. United States, 365 U.S. 265 (1961).

Under the federal regulations presently in effect, an appeal must be taken within one year after approval of the certificate of loss of nationality. 22 CFR 7.5(b). In 1975, when the certificate was approved in the case before us, however, the limitation of appeal was "within a reasonable time" after the affected person received notice of the Department's holding of loss of nationality. 22 CFR 50.60 (1967-1979).

Since a change in regulations shortening the period of time allowed for appeal customarily is intended to operate prospectively, we believe it fair to apply the limitation in effect in 1975, not the present one.

What is reasonable time depends on the facts of each case. Chesapeake & Ohio Railway v. Martin, 283 U.S. 209 (1931). Generally, "reasonable" means reasonable under the circumstances. It is such period of time as an appellant may fairly require to prepare a case showing that the Department erred in making a determination of loss of nationality. It does not mean, however, that a party will be allowed to determine a "time suitable to himself." In re Roney, 139 F. 2d 175, 177 (7th Cir. 1943). Nor should reasonable time be interpreted to permit a protracted delay which is prejudicial to either party. Ashford v. Steuart, 657 F. 2d 1053 (9th Cir. 1981). To excuse an extended delay, a legally sufficient reason must also be shown. Id.

In the instant case there has been a delay of nine years in taking an appeal, for which appellant submits the following explanation:

> I did not appeal, at the time of my expatriation, for fear of jeopardizing my employment. I began to work immediately after being nationalized.

> Before and since my divorce, I have been the principal support of my two daughters.
>
> It is not until now, when my younger daugher is about to reach the age of 18, that I contemplate returning to the United States. Since my divorce, I have shared legal authority over my two daughters with their father. I did not wish to involve them in the legal battle that might ensue as a result of any attempt on my part to take them out of Mexico before they were 18.
>
> ...
>
> At the time of my expatriation, I was informed by the Vice Consul that this appeal was possible, but I was not aware of any time limit until I was given a copy of the Rules and Regulations governing appeals published in the Federal Register on Friday, November 30, 1979.

The applicable regulations (22 CFR 50.60) make clear that appellant's right of appeal began to accrue in the summer or early autumn of 1975. She concedes that she received the certificate of loss of her nationality around that time and that she was advised of her right of appeal.

In deciding that 1984 was an appropriate time to take an appeal, appellant in effect determined a time suitable to herself, something that is plainly not contemplated by the rule of reasonable time.

As she herself has unmistakably indicated, she decided in 1975, following receipt of the Department's holding of loss of nationality, that taking an appeal would jeopardize her employment and could have an adverse effect on the custody arrangements for her daughters. It would be inappropriate for the Board to pass judgment on whether appellant rightly or wrongly placed other considerations above attempting to recover her United States citizenship. That was a matter she alone had a right to determine. But obviously she was aware of the necessity for

choice, and consciously decided to defer making an appeal. She may not therefore be heard to argue that constraints beyond her control prevented the taking of a timely appeal.

Further, the delay of nine years entailed in this appeal prejudices the ability of the Department to challenge appellant's allegation that she was "forced" to perform the expatriating act. It would be extremely difficult for the Department nine years after the event to acquire information that would confirm or disprove the allegation of duress.

In sum, appellant has not demonstrated that her case meets the criteria for determining whether an appeal was filed within a reasonable time. Whatever period of time is contemplated by the standard of reasonable time, we do not think it envisages a delay of nine years where the record shows no viable reason for the delay and there is arguably prejudice to the opposing party - the Department of State.

III

Upon consideration of the foregoing, it is our conclusion that the appeal was not filed within a reasonable time after appellant received notice that the Department had determined that she had expatriated herself. The appeal is time barred, and the Board is without jurisdiction to entertain it. The appeal is hereby dismissed.

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

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Member