

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: Rosa Ma [REDACTED] Va [REDACTED]

This is an appeal from an administrative determination of the Department of State that appellant, Rosa Ma [REDACTED] Va [REDACTED], expatriated herself on July 7, 1980 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 September 14, 1981. The appeal was entered on February 20, 1984. The initial issue presented on appeal is whether the appeal was filed within the limitation prescribed by the applicable regulations. It is the Board's conclusion that the appeal is untimely and therefore will be denied.

I

Appellant was born at [REDACTED] [REDACTED]. Through her father, a United States citizen, she acquired the nationality of the United States. She also acquired the nationality of Mexico by virtue of her birth in Mexico where she has always resided. Appellant has been registered as a United States citizen at the United States Embassy since 1975.

On June 16, 1980 appellant applied for a certificate of Mexican nationality. In her application appellant made the following declaration as prescribed by Mexican law:

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

Section 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 or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof....

I hereby expressly renounce United States citizenship as well as all submission, obedience, and allegiance to any foreign government, especially that of the United States of America, of which I may have been a national, any protection other than that of the laws and authorities of Mexico, and any right that treaties and international law grant to aliens. In addition, I profess adherence, obedience, and submission to the laws and authorities of the Mexican Republic. 2/

The Department of Foreign Relations issued a certificate of Mexican nationality to appellant on July 7, 1980, and shortly thereafter formally notified the United States Embassy of that fact. 3/

On October 17, 1980 the Embassy wrote to appellant to inform her that by making a formal declaration of allegiance to Mexico she might have expatriated herself. She was asked to complete a form to assist the Department to make a determination of her citizenship, and invited to call at the Embassy to discuss her case. Appellant did not reply to the Embassy's letter. Accordingly, the Embassy again wrote to appellant on June 19, 1981. Appellant went to the Embassy on August 17, 1981 where she was interviewed by a consular officer, completed a form for determining United States citizenship and an application for registration as a United States citizen.

In the form for determining United States citizenship, appellant explained why she had performed the proscribed act.

I am studying in Mexico City. There had been no problem with my United States citizenship and Mexican citizenship until I entered the University and applied for a scholarship. They asked me a document /sic/ to certify my Mexican citizenship so I had no alternative and went to ask for it.... But I didn't intend to relinquish my US citizenship.

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2/ Request for Certificate of Mexican Nationality by Birth, June 16, 1980, English translation, Division of Language Services, Department of State, no. 113185-C, Spanish (1984).

3/ Diplomatic Note no. 1125, September 12, 1980.

On August 17, 1981 the Embassy prepared a certificate of loss of nationality in appellant's name. 4/ The Embassy certified that appellant acquired the nationality of the United States by birth to a United States citizen father; that she acquired the nationality of Mexico by birth therein; that she made a formal declaration of allegiance to Mexico; and thereby expatriated herself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on September 14, 1981, approval being an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be taken to this Board. On September 30, 1981 the Embassy forwarded a copy of the approved certificate to appellant who acknowledges that she received it.

The appeal was entered on February 30, 1984. Appellant argues, in effect, that economic circumstances compelled her to perform the expatriative act, and maintains that she did not intend to relinquish her United States citizenship.

II

The initial question for decision is whether the Board has jurisdiction to entertain an appeal brought one and a half years after expiry of the limitation prescribed by regulation.

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

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

Section 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.

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. 5/

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. 6/

In acknowledging receipt of appellant's appeal, the Chairman of the Board called the foregoing provisions of the regulations to appellant's attention, adding: "It is therefore very important that you spell out fully why you did not, or could not, bring your appeal until more than two years after the Department approved your certificate of loss of nationality."

Although the appeal before the Board was taken after the time limit expired, the delay would not be fatal if appellant were able to show good cause why she could not have appealed within one year.

Appellant has stated that shortly after she received a copy of the approved certificate of loss of nationality:

...I presented myself before the offices at the American Embassy in Mexico in order to ask for a reconsideration of my case. I was advised there to try to obtain the Immigrant Visa instead of trying to regain the United States Nationality that "had been revoked". I kept on with my hard full time duties at the University in order to keep my scholarship and to fulfill all the requisites to become a Surgeon Dentist.

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

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

- 5 -

As instructed I obtained the necessary documents (4) to apply for an Immigrant Status which I am not completely in accordance with.

As I am entering a new professional status I am more in need of my original citizenship in order to pursue on further my preparation to become a full practitioner of my professional speciality which I am very much aware I will be able to realize in the United States of America.


There is no evidence of record that anyone at the Embassy discouraged appellant from seeking reconsideration of her case but instead advised her to apply for an immigration visa. The record does show, however, that appellant applied for an immigration visa and that the competent Embassy office wrote to appellant on November 19, 1981 to send her information about immigration and to inform her that an approved petition had been filed on her behalf that accorded her P 1 visa status. It does not appear that appellant pursued an immigrant visa, but rather that for the next three years applied herself to her dental studies; she completed them in 1984.


As far as can be ascertained from the record, appellant gave no thought to taking an appeal to this Board until early 1984, although she had been on notice from the fall of 1981 that she had the right of appeal. The appeal procedures are set forth on the reverse side of the certificate of loss of nationality and the limitation on appeal is specifically stated. As appellant's university transcripts show, she was an honor student; it would therefore seem most unlikely that she was unable to understand the information about appeals given on the certificate.

One may speculate why appellant did not take an appeal in 1981 or 1982. Her only excuse seems to be that she was too preoccupied with her university studies to address the matter. That is clearly an insufficient reason for her delay. It is inconceivable that she could not have found a moment to register her dissent from the Department's holding of loss of her nationality promptly. And it would not, in the circumstances of this case, be unfair to conclude that only when she had approached the end of her university course did she reckon that restoration of her United States citizenship would be advantageous to her professional career.

Under the regulations, the Board has no discretion to enlarge the time for taking an appeal unless good cause has been shown why the appeal could not have been taken within the prescribed limitation. Since appellant has offered no legally sufficient explanation for her delay in taking an appeal, we find that her appeal is barred. It is accordingly hereby denied.

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

  
Alan G. James, Chairman

  
Edward G. Misey, Member

  
George Taft, Member

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