

January 25, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J [REDACTED] R [REDACTED] D [REDACTED]

This is an appeal taken by J [REDACTED] R [REDACTED] D [REDACTED] from an administrative determination made by the Department of State in 1975 that she expatriated herself on February 11, 1974, under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining registration as a citizen of the United Kingdom and Colonies upon her own application. 1/

The appeal was taken on October 25, 1983, more than eight years after the Department's holding of loss of nationality. The initial question confronting the Board is whether the appeal was taken within a reasonable time. We find that the appeal was not timely filed, and, accordingly, will dismiss it.

I

Appellant, J [REDACTED] R [REDACTED] D [REDACTED] was born in [REDACTED] [REDACTED], and acquired United States nationality by virtue of her birth of parents who were citizens of the United States.

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, . . .

Section 101(23) of the Act, 8 U.S.C. 1101, defines the term "naturalization" to mean the conferring of nationality of a state upon a person after birth, "by any means whatsoever."

Appellant moved to England and has been residing in that country since 1966. In July 1969, she married Barkat Hussein Chida, a citizen of the United Kingdom and Colonies. Subsequently, appellant applied for registration as a citizen of the United Kingdom and Colonies pursuant to section 6(2) of the British Nationality Act of 1948. She was granted a certificate of registration on February 11, 1974, in the name of Jane Romilly Chida. 2/

In a sworn statement which she executed at the American Embassy in London on June 15, 1979, appellant explained why she acquired United Kingdom citizenship status:

I became a British citizen in 1974, primarily because I wished to make a career at the British Council, where British nationality is a prerequisite for Established Service and for promotion to the higher grades. I also became a British national for reasons of convenience. I had made a home in this country, and had lived here since 1966. I wished my stay here to be guaranteed.

2/ Section 6(2) of the British Nationality Act of 1948 read:

(2) Subject to the provisions of subsection (3) of this section, a woman who has been married to a citizen of the United Kingdom and Colonies shall be entitled, on making application therefor to the Secretary of State in the prescribed manner, and, if she is a British protected person or an alien, on taking an oath of allegiance in the form specified in the First Schedule to this Act, to be registered as a citizen of the United Kingdom and Colonies, whether or not she is of full age and capacity.

The oath of allegiance specified in the First Schedule, as mentioned above, read:

I, A.B., swear by Almighty God that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His Heirs and Successors according to law.

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Upon being informed by the British Home Office of appellant's registration as a citizen of the United Kingdom and Colonies, the American Consul at the Embassy wrote to appellant on April 30, 1974, about her new citizenship. He offered appellant the opportunity to submit any comments and evidence that she might wish the Department of State to consider in determining her citizenship status. He also offered to arrange an appointment for her with the consular staff to discuss her newly acquired United Kingdom citizenship. Appellant did not respond.

On November 1, 1974, the Embassy, as required by section 358 of the Immigration and Nationality Act, prepared a certificate of loss of nationality. 3/ The Embassy certified that Jane Romilly Chida acquired the nationality of Great Britain by virtue of her

3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. I501, 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.

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registration as a citizen of the United Kingdom and Colonies; that she obtained on February 11, 1974, registration as a citizen of the United Kingdom and Colonies upon her own application; and that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

After reviewing the certificate of loss of nationality, the Department in February 1975 requested the Embassy to ascertain from appellant how she had acquired her United States citizenship status. The Embassy's efforts were unavailing as the Embassy's letters to appellant went unanswered. However, upon learning from the British Home Office the number of appellant's U.S. passport that had been issued in London in 1968 under her maiden name, Duran, the Embassy was then able to establish from its records that appellant acquired United States nationality through her parents who were citizens of the United States. The Department approved the certificate of loss of nationality on August 1, 1975 a copy of which the Embassy forwarded to appellant. Such approval constitutes the Department's administrative determination from which an appeal, properly and timely filed, may be taken to this Board.

Appellant obtained a British passport in 1974 which she appears to have used extensively. The passport was later amended to reflect her maiden name, Duran. Her marriage to Chida was terminated by divorce on August 3, 1977.

In June 1979, approximately four years after appellant had received notice of the Department's holding of loss of nationality appellant visited the Embassy at London to apply for a visa to visit the United States. The consular officer allegedly is said to have told her at the time that her United States citizenship was not clear, and therefore asked her to submit an application for registration as a United States citizen, and to complete a citizenship questionnaire and a questionnaire concerning her intent with respect to her United States citizenship status. Appellant submitted the requested forms and a sworn statement in which she explained the circumstances surrounding her acquisition of United Kingdom citizenship.

In her questionnaire concerning intent, appellant acknowledged that she received "some" letters from the Embassy after she obtained British nationality. She said that she did not reply to these mainly because she believed that she "had now lost in any case...U.S. nationality so there would be little point in entering into a correspondence about it."

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The Department disapproved appellant's application for registration as a United States citizen on December 14, 1979. The Department considered that appellant failed to "overcome the highly persuasive act of becoming naturalized in the United Kingdom". The Embassy was instructed to inform appellant of the disapproval and of the procedures for taking an appeal to the Board of Appellate Review from the Department's 1975 determination of loss of nationality. No appeal was taken at the time.

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In August 1983, appellant through her attorney sought an administrative review of the Department's holding of loss of nationality. When informed by the Department that the evidence of record was sufficient to support its earlier holding of loss of citizenship, appellant then through her attorney entered an appeal to this Board on October 25, 1983. Hearings were held on November 16 and 27, 1984. 4/ Appellant was not present but was represented by her attorney.

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4/ Counsel for appellant failed to appear at the initial hearing set for November 16, 1984. However, upon showing good cause for his nonappearance, the Board rescheduled the hearing for November 27, 1984.

Appellant questions the constitutionality and legality of the Department's regulations on time limitations for taking an appeal from a determination of loss of nationality. She also contends that at the time the Department issued the certificate of loss of nationality there was insufficient evidence to establish her intent to relinquish United States citizenship when she became naturalized in the United Kingdom. She further contends that the review of that certificate in 1979 "by non-legally trained officers", in connection with her application for registration as a United States citizen, did not cure or correct the insufficiency of the Department's evidence on intent. At the hearing, appellant's counsel argued that the certificate of loss of nationality was issued in the absence of any clear evidence with respect to appellant's intent. 5/. The consequence of that action, he maintained, "shifts the burden of proof in all subsequent proceedings" to appellant without her "ability to present her side of the story." 6/

5/ Transcript of Proceedings In The Matter of Jane R. Duran, Department of State, Board of Appellate Review, November 27, 1984 (hereafter cited as TR), at 9.

6/ Id.

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II

The initial and basic issue is whether the Board has jurisdiction to entertain this appeal. Unless the appeal were filed within the prescribed time limitation, the Board would lack authority to consider the case.

Under the existing regulations of the Department the time limitation for filing an appeal is one year after approval of the certificate of loss of nationality. 7/ 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 on August 1, 1975, the date the Department approved the certificate of loss that was issued in this case.

The regulations that were in effect in 1975 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. 8/

7/ Section 7.5, Title 22, Code of Federal Regulations, 22 CFR 7.5. The existing regulations relating to the Board of Appellate Review were promulgated on November 30, 1979 (22 CFR Part 7; 44 F.R. 68825, November 30, 1975).

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

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We consider that this time 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 operate prospectively and not retroactively. Thus under the time 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.

What is a reasonable time depends, as the courts have enunciated, upon the circumstances in a particular case. 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 will allow. This does not mean, however, as the courts have stated, that a party be allowed to determine the time suitable to himself. 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 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. 9/

It appears from the record that appellant gave no thought to re-establishing her United States citizenship until she was informed by an American consular officer at the Embassy in 1979 that her citizenship status was unclear. Prior to that time, she believed and acted on the assumption that she had automatically lost her United States citizenship by virtue of her acquisition of United Kingdom citizenship. She stated in the Embassy's citizenship questionnaire on intent at that time (1979) that she did not respond to the Embassy's earlier correspondence about her new citizenship because she thought she had lost her United States citizenship and that no useful purpose would be served.

Appellant's next effort to regain her United States citizenship, according to the record, occurred two years later in 1983, when her attorney requested the Department to review "the circumstances surrounding her loss of United States nationality in 1975. When the Department, after a review of the record, affirmed its previous holding of loss of nationality, appellant only then

9/ See Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931); In re Roney, 139 F. 2d 135 (1943); Appeal of Syby, 460 A. 2d 749 (1961); Ashford v. Stewart, 637 F. 2d 1111 (1980).

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though her attorney filed an appeal with this Board. This was more than eight years after the Department's holding of loss of nationality.

It is clear from the record that appellant was at all times aware of her right to take an appeal to this Board. On the reverse side of the copy of the Department's certificate of loss of nationality, which she received in 1975, 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. Also, in 1979, pursuant to instructions of the Department, the Embassy doubtless informed appellant of the appeal procedures. Appellant, however, did not elect to take an appeal until 1983.

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Appellant's counsel at the hearing suggested that appellant did not go forward with an appeal because, in his opinion, "she did not feel herself competent to represent herself in such a proceeding" and "only upon actually satisfying herself that she had found counsel who at least understood the concepts of citizenship to her satisfaction that she went forward formally". ^{10/} Appellant's counsel argued that the language "within a reasonable time" means under the circumstances "reasonable in her mind that she could pursue the claim adequately"; ^{11/} that "she would challenge only when she felt she could competently challenge." ^{12/} This interpretation of "within a reasonable time" is, in our view, totally lacking in merit. If such an interpretation were to be adopted, it would lead to the anomalous result of an appellant determining the time limit for filing an appeal to suit himself without regard to the passage of time.

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^{10/} TR at 51.

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Appellant's counsel also asserted for the record that there is no "statutory justification for an administratively imposed statute of limitation for review of determinations of loss of nationality." 13/ There is no need, however, to respond to appellant's argument. Counsel admitted that he was aware of the Department's regulations, which expressly state that the Board "shall not consider argument challenging the constitutionality of any law or of any regulation of the Department of State." 14/

As noted above, appellant had notice of her loss of United States nationality in 1975. If she had any doubts as to her loss of nationality or believed thereafter that the Department's holding of loss of nationality was contrary to law or fact, she could have easily discussed her case with U.S. consular officers in England and ascertained the procedure to follow for taking an appeal. She had ample time following her acquisition of United Kingdom and Colonies citizenship to take an appeal if she so desired to challenge her loss of United States nationality.

The rationale for giving a reasonable time to appeal an adverse decision is to afford an appellant sufficient time to assert his or her contentions that the decision is contrary to law or fact and 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. The period of "within a reasonable time" commences to run with appellant's notice of loss of nationality in 1975 and not several years thereafter when appellant belatedly discovers that she may have grounds for an appeal or when she believes she can "pursue the claim adequately" or when advised by counsel to take an appeal. In our opinion, appellant's delay of more than eight years in taking an appeal was unreasonable in the circumstances of this case.

13/ TR at 6.

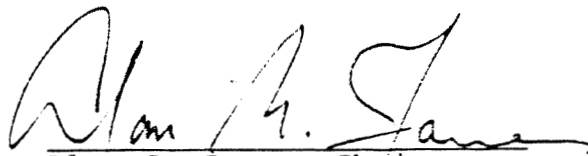
14/ Section 7.5(j), Title 22, Code of Federal Regulations, 22 CFR 7.5(j).

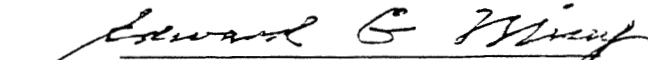
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III

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 consider 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


James G. Sampas, Member