September 26, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

D[redacted] A[redacted] M[redacted] appeals an administrative determination of the Department of State that he expatriated himself on April 29, 1980 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Venezuela upon his own application. 1/

The Department determined on March 6, 1982 that appellant expatriated himself, The appeal was entered on September 5, 1984, one year and six months over the limit on appeal prescribed by the applicable regulations. A threshold question is thus presented: whether the Board may assert jurisdiction over an appeal so delayed. It is our conclusion that in the absence of a showing of good cause for the delay, the appeal is time-barred. Lacking jurisdiction to consider the appeal, we dismiss it,

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), 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 loss his nationality by --
>
> (I) obtaining naturalization in a foreign state upon his own application, . . .

I

Appellant was born on [redacted], and so became a United States citizen. He attended high school in St. Louis. At the age of 17 he enlisted in the United States Navy and was honorably discharged in 1947. He later obtained B.S. and M.S. degrees in chemical engineering. From 1966 to 1968 appellant worked in Canada for the Bechtel Corporation. He obtained a United States passport in 1970, and from 1970 to 1972 worked for the Arthur G. McKee Corporation in Belgium. He returned to the United States in 1972, and in 1974 was transferred by the McKee Corporation to Venezuela. He renewed his passport in 1975 at the Embassy in Caracas. Appellant's contract with McKee terminated in 1976 at which time he started his own company. He also acquired an interest in a joint venture, a subsidiary of a company with its head office in Kansas.

Appellant in 1979 reported the loss of the passport that had been issued to him in 1975, and was issued a new passport, valid until 1984.

On an unspecified date, appellant applied for naturalization in Venezuela. As required by Venezuelan law, appellant at that time signed an oath of allegiance to Venezuela. On April 29, 1980 the Gaceta Oficial Extraordinario No, 2,604 reported that appellant had been granted Venezuelan citizenship.

As required by Venezuelan law, appellant surrendered his United States passport at the time of his naturalization. He was issued a Venezuelan passport on May 28, 1980, and on June 6, 1980 applied for and received a four-year multiple entry B-2 visa from the Embassy, As the Embassy later informed the Department, appellant travelled to the United States many times since May 1980 using a Venezuelan passport.

In November 1981 appellant's wife applied at the Embassy for renewal of their daughter's passport, indicating on the application that appellant was a Venezuelan citizen, His naturalization thus came to the attention of the Embassy. Appellant requested an appointment with a consular officer and was interviewed in December 1981.

Appellant completed a questionnaire for determining United States citizenship and, for information purposes, an application for a passport. In the questionnaire, appellant conceded that he had obtained naturalization and taken an oath of allegiance to Venezuela. In a sworn statement appended to the questionnaire, appellant explained why he had obtained Venezuelan citizenship:

> BB: I took the decision to become a Venezuelan citizen because I was living on a permanent basis in Venezuela and found it difficult if not impossible to' paticipate /sic/ in business activities without becoming a Venezuelan. First, I had the opportunity to hold stock in a Venezuelan company that was only possible if I were Venezuelan. Second, I am a Chemical Engineer and was not allowed to legally practice my profession without becoming-a Venezuelan. Thus I felt compelled- /sic/ or forced, about 2 1/2 years ago, to apply for Venezuelan citizenship.
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> CC: When I applied for Venezuelan citizenship, I was forced to surrender my current U.S. passport and as a result no longer have one.

The consular officer who interviewed appellant reported to the Department that he had told her that after his contract with McKee terminated in 1976 he decided to do what he always wanted to do, namely, start his own company and work for himself. He remained in Venezuela, he said, because he felt that the oil industry there created a market for his special talents as an engineer with oil refining experience. The consular officer's report continued:

> He discovered that he must have his professional degree transcribed into the Venezuelan list of engineers and to do this he must become Venezuelan. He also wished to own stock in the joint venture mentioned above and was told he could participate only by becoming a Venezuelan.

The consular officer further stated that appellant told her that he felt a United States passport would be more convenient for him than his Venezuelan passport because of his business travels.

On December 17, 1981, the consular officer executed a certificate of loss of nationality in appellant's name. 2/ She certified that appellant acquired United States nationality by birth therein; that he obtained naturalization in Venezuela upon his own application; and thereby expatriated himself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department agreed with the consular officer that appellant had expatriated himself, In a telegram to the Embassy dated March 6, 1982, the Department gave the following grounds for its decision:

> ...
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> 3. It is considered that his obtention of Venezuelan citizenship was performed with the intent to relinquish his U.S. citizenship, It is noted that on May 2, 1980 subject applied for a Venezuelan passport and on June 6, 1980 he obtained a B-2 visa. In addition the record shows that he has considered himself a citizen of that country, has filed no U.S. income tax returns since 1978; has not voted in recent U.S. elections, and maintains no residence in the

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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.

United States. Further it is noted that Mr. M[redacted] failed to visit the Embassy prior to becoming naturalized as a Venezuelan citizen in order to determine what effect his contempated /sic/ naturalization might have on his U.S. citizenship. *Also* in his affidavit dated December 7, 1981, subject stated "when I became a Venezuelan citizen, I assumed I would run the risk of losing my U.S. citizenship." This indicates that the subject was conizant /sic/ of what he was doing and that his action was not predicated on a spur of the moment decision.

4, It is apparent that Mr. M[redacted] obtention of Venezuelan citiz[redacted] as for the purpose of business convenience and specifically to further his engineering interests.. ..

The Department accordingly approved the certificate on March 6, 1982, approval constituting an administrative determination of expatriation from which a timely and properly filed appeal may be taken to the Board of Appellate Review. A copy of the approved certificate was sent to the Embassy at Caracas on March 6th to be forwarded to appellant, By letter dated May 26, 1982 the Embassy sent appellant a copy of the approved certificate,

On September 5, 1984 an appeal was entered through counsel.

Appellant maintains that he was forced to obtain Venezuelan citizenship in order to assure the financial and emotional survival of his family. He further asserts that it was never his desire or intention to relinquish United States citizenship,

II

Before proceeding, we must determine the Board's jurisdiction to consider this appeal, Since timely filing is a jurisdictional issue, U.S. v. Robinson, 361 U.S. 220 (1960), the Board's authority to consider the merits of the case depends on whether the appeal was timely filed,

Section 7.5(b) of Title 22, Code of Federal Regulations, 22 CFR 7.5 (b) , reads as follows:

(b) Time Limit on Appeal.

> 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.

22 CFR 7.5(a) provides that:

> (a) Filing of Appeal. A person who has been the subject of an adverse decision in a case falling within the purview of section 7.3 shall be entitled upon written request made within the prescribed time to appeal the decision to the Board. The appeal shall be in writing and shall state with particularity the reasons for the appeal. The appeal may be accompanied by a legal brief. 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.

The Department approved the certificate of loss of nationality that was issued in this case on March 6, 1982. The appeal was entered two and one half years later on September 5, 1984, one year and six months over the allowable time.

As the above-cited provisions of the applicable regulations make clear, the sole issue for the Board to determine is whether good cause has been shown why the appeal could not have been filed within the prescribed limit.

It is settled that good cause means a substantial reason, one that affords a legally sufficient excuse. See Black's Law Dictionary, 5th Ed. (1979). Good cause depends on the circum-

stances of each particular case, and the finding of its existence lies largely within the discretion of the judicial or administrative body before which the cause is brought. Wilson v. Morris, 369 S.W. 2d 402, 407 (Mo. 1963). Generally, to meet the standard of good cause, a litigant must show that failure to file an appeal or brief in timely fashion was the result of some event beyond his immediate control and which was to some extent unforseeable. Manges v. First State Bank, 572 S.W. 2d 104 (Civ. App. Tex. 1978); and Continental Oil Co. v. Dobie, 552 S.W. 2d 193 (Civ. App. Tex 1977). Good cause for failing to make a timely filing requires a valid excuse as well as a meritorious cause. Appeal of Syby, 66 N.J. Supp. 460, 167 A 2d 479 (1961). See also Wray v. Folson, 166 F. Supp. 390 (D.C. Ark. 1958).

Appellant asserts that he was unable to file an appeal within the prescribed limit because of financial, emotional and physical stress and trauma that extended from May 1982 to early in 1984 when the appeal was finally entered. He had been hospitalized in 1982 as a result of two automobile accidents. In 1982 his own business was disintegrating, and the firm of which he was general manager had discharged him. His marriage was under strain; his wife filed for divorce in 1982, but finally agreed to a trial separation. From 1981 until late 1983 he was under the care of a psychiatrist who treated him for anxiety and stress. He sold his business, and went to Saudi Arabia in 1983 where he found employment which ended in April 1984. He then went to the Netherlands to attempt reconciliation with his wife.

Appellant also attempts to justify his tardy filing on the grounds that he was in no condition to scrutinize and/or understand the appeal procedures set out on the reverse of the certificate of loss of nationality sent to him in May 1982. As stated in his reply brief:

> Next, and most importantly, is the issue of the clarity of the appeal procedures. The Department's contention that "if the loss of citizenship was a serious concern of Mr. M[redacted] he would have carefully read and reread the document scrutinizing every word and every side of the document" is without merit.
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> Mr. Me[redacted] has already demonstrated by numerous affidavits by himself, his wife and his psychiatrist that he was under extreme emotional, physical and financial stress and, under such circumstances, was not in a condition to scrutinize and/or

> understand the significance of every document which he received during that time period. In view of the fact that the word "unclassified" was stamped over' the words "See Reverse for Appeal Procedures", it was not at all clear what his appeal rights were or were not. Since the Government sought to inform appellant of his appeal rights and since that information was not clearly presented, coupled with appellant's personal stress at that time in his l[redacted]e strenuously argue that Mr. M[redacted] was in fact not clearly advised of [redacted]peal rights until the time that he eliminated the severe stress and trauma in his life and clearly read at that time every word contained in the Certi[redacted]e of Loss of Nationality. As Mr. M[redacted] states that this occurred approxim[redacted]early 1984, his appeal of 9.84 was filed within one year after an understanding of his appeal rights.

Appellant has established that the period May 1982 to early 1984 was a troubled one for him personally and financially. It seems clear that he was preoccupied with difficult problems the resolution of which required his close attention and concern. Nonetheless, the salient fact that emerges from the recitation of his travails is that he was able to cope at least to some extent with them. He was able to avoid divorce and work out a separation from his wife; he was able to sell his business; he was competent to organize a trip to Saudi Arabia and find employment there if only for a short period of time, and afterwards to go to the Netherlands to join his wife. One receives the picture of a harried, harrassed man but not of one who lacked the mental or physical capacity to attend to the urgent problems of his life. If he could make decisions about some matters ("I felt incompetent to make any decisions or concentrate on any matters other than those concerning my wife, family and economic survival"), why, one might ask, could he not take a moment to assert a timely claim to United States citizenship? As the procedures set out on the reverse of the certificate of loss of nationality sent to appellant make clear, entering an appeal is not a complicated procedure; he was advised that he had one year to appeal and could get any information he needed simply by writing to this Board.

His contention that the appeal procedures were not clearly communicated to him lacks merit. That the words "See Reverse for Appeal Procedures" were overstamped with "Unclassified" did not in

any way negate the procedures, He was plainly imprudent in June 1982 (he said he received the certificate in that month) in not reading the straight-forward two-sided document that informed him of his loss of citizenship and how he could appeal that loss. If he was competent to do the things he concedes he had to do from 1982 to 1984, he must be adjudged to have been competent to inform himself of the way to seek timely restoration of his citizenship.

In the circumstances of this case, appellant has not shown that an event or events beyond his control prevented the timely filing of an appeal, On the contrary, he has shown that he was not totally powerless in adversity. It would appear that it was for him a question of priorities; we do not presume to criticize him for placing his family and economic matters at the top of his agenda, but it is evident that he could also have taken the modest steps necessary to request a review of his case within the allotted time.

The Board has no discretion to waive the limitation on appeal, save for a showing of good cause, as the regulations cited above make clear, The integrity of the appellate process depends on the Board's insisting on timely filing of a claim for review of a determination of loss of nationality, for the evident intent of the present limitation on appeal is to ensure finality of administrative determinations after the elapse of a specific period of time within which an aggrieved party may move to overturn an adverse determination on his nationality. In this case, the interest of finality must be given substantial weight,

III

Upon consideration of the foregoing, it is our conclusion that appellant has failed to show good cause why he could not have appealed the Department's March 6, 1982 determination of loss of appellant's nationality within one year after the Department made such determination, Accordingly, we find the appeal time-barred and that we lack jurisdiction to consider it. The appeal is therefore denied.

Given our disposition of the appeal, we are unable to reach the other issues *presented,

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member