September 26, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C[redacted] A[redacted] A[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, C[redacted] A[redacted] A[redacted], expatriated herself on September 3, 1980 under th ov ions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in the United Kingdom upon her own application. 1/

The Department approved the certificate of loss of nationality that was executed in this case on June 30, 1981. Over three years later appellant entered an appeal. An initial -jurisdictional - question is raised by appellant's delay in taking an appeal: whether in the circumstances of her case such delay is excusable under the applicable regulations. It is our conclusion that the appeal is time-barred. Lacking jurisdiction, we deny it.

I

Appellant was born at [redacted], and so became a United States c Tex nd is a teacher of music.

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 lose his nationality by --
>
> (1) obtaining naturalization in a foreign state upon his own naturalization,...

Appellant obtained a United States passport in 1959 and went abroad. Since 1959 she has lived and taught in a number of countries, In 1964 she settled in the United Kingdom and obtained a United States passport in 1969. She presently teaches music in a girl's school.

In a statement executed in August 1984 appellant declared that:

> In 1979, because of the British political climate at the time and subsequent discussions in government about rethinking the rights and claims of aliens in the United Kingdon, [sic] I became uneasy and concerned in the extreme about my status as a permanent resident, and further, about the security of my post with such a status. I then applied for British naturalization and it was granted to me in 1980....

The record shows that on September 3, 1980 a certificate of naturalization was issued to appellant by the Home Office. She took the prescribed oath of allegiance to the British Crown shortly thereafter. The Home Office informed the Embassy on October 20, 1980 that appellant had been naturalized as a citizen of the United Kingdom and Colonies.

The Embassy wrote to appellant by registered mail on January 14, 1981 to inform her that by obtaining naturalization in the United Kingdom she might have lost her United States nationality. She was invited to complete a form to facilitate determination of her citizenship status. She did not respond to the Embassy's letter; nor did she reply to a second, also sent by registered mail on March 3, 1981. She did, however, sign the postal receipt accompanying both letters, and has conceded that she received them.

Accordingly, on May 27, 1981 the Embassy executed and forwarded to the Department for approval a certificate of loss of nationality in appellant's name. 2/ The Embassy certified that appellant acquired United States nationality at birth; that she obtained naturalization as a citizen of the United Kingdom and Colonies on September 3, 1980; and concluded that she thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act.

The Department approved the certificate on June 30, 1981, thus making a determination of loss of appellant's nationality from which a timely and properly filed appeal may be taken to this Board. Appellant has acknowledged that she received a copy of the approved certificate that the Department sent to the Embassy to forward to her. She obtained a British passport in November 1981, and used it to travel abroad.

In August 1984 appellant visited the United States Embassy to state that she wished to take an appeal from the Department's 1981 determination of loss of her nationality. As she explained, in

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

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.

1983 she had become acquainted with some American school teachers who strongly recommended that she pursue an appeal, as they were "optimistic about my chances." "With this encouragement," appellant stated, "I made initial enquiries and filed formal application." In 1984 she went to the Embassy, where she completed a form for registration as a United States citizen and forms for determining United States citizenship. In the forms she explained as follows why she had sought British citizenship:

> It was a matter of convenience that I took U.K. citizenship; for reasons of security of residence and security of employment. I did this voluntarily, but without the intention of losing my American citizenship.

Appellant executed a sworn statement on August 29, 1984, requesting that her citizenship be restored, and apparently was interviewed by a consular officer. It was not until November of 1984, however, that the Embassy forwarded to the Department what appellant called her "Appeal against loss of American citizenship." The "appeal" was directed to the attention of the Office of Citizens Consular Services, not the Board of Appellate Review. In March 1985 the latter office referred the case to the Board of Appellate Review. Appellant wrote directly to the Board in April 1985 after having been advised how to file a proper appeal, She contends that she "did not take British naturalization with the deliberate intent of relinquishing my American citizenship."

11

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 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 June 30, 1981. The appeal was entered more than three years later, two years over the allowable time. 3/

As the above-cited provisions of the applicable regulations indicate, 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 time.

3/ Strictly speaking, the appeal was not entered until April 22, 1985 when appellant wrote directly to the Board, enclosing a sworn statement regarding her naturalization and statements from three acquaintances who knew her when she became a British citizen. Even if the appeal were deemed to have been initiated in August 1984 when appellant visited the Embassy to give notice of her wish to appeal, the delay involved is still more than two years beyond the permissible period.

It is settled that good cause means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th Ed. **(1979).** Good cause depends on the circumstances 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 an event beyond his immediate control 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 183** (Civ. App. Tex. **1977).** See also Wray v. Folsom, **166 F.** Supp. **390** (D.C. Ark. **1958).** Good cause for not making a timely filing requires a valid excuse as well as a meritorious cause. Appeai of-Syby, **66** N.J. Supp. **460, 167 A** 2d **479 (1961).**

Asked by the Board to explain why she had delayed in taking an appeal, appellant replied in a statement dated April **19, 1985,** in pertinent part as follows:

> When my British naturalisation was completed I was relieved that I could keep my employment, but still upset to no longer be American. It was several months later that I received notification of loss of citizenship from the American Embassy in London, and I didn't read these forms carefully enough to understand that I stood any chance of appealing to keep it. All that I understood was that the procedure would involve a legal brief and would be unlikely to be successful. My understanding was that to regain American citizenship I would have to renounce British citizenship.
>
> It wasn't until I went to Lebanon that I happended to meet someone (a Dual-National) who had ever heard of the possibility of dual citizenship for an American. 4/

4/ The statements referred to in note 3, supra, generally attest that appellant believed she had no recourse because it was her understanding that it was impossible to hold dual nationality-.

> In the light of that information I see that the recorded delivery letters from the embassy were subtle indications that retaining American citizenship even under'the then prevailing circumstances might have been possible. At the time I simply did not understand that,
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> Last summer I became acquainted with some American school teachers who strongly recommended my pursuing the matter, as they felt optimistic about my chances, With this encouragement I made initial enquiries and filed formal application.
>
> I did not reply or accept the invitation to come to the embassy (1981) to discuss my status because I expected that the embassy officials wanted to make it clear to me what I was losing. I understood this well enough already and found the experience very painful.
>
> I appreciate now that the embassy was trying /sic/ inform me of my right of appeal. At the time I thought I had none, My negligent reading of the CLN, a document I never wanted to possess, failed to correct my misunderstanding.

We are unable to consider that appellant has presented a legally sufficient excuse for her delay in taking the appeal.

Unquestionably she was on notice in the summer of 1981 that she had a right of appeal; the reverse of the certificate of loss of nationality sets forth plainly that the limit on appeal is one year after approval of the certificate, and outlines the procedures for taking an appeal; As she admitted, she was negligent in not reading the instructions carefully. She might have been distressed to receive the certificate, but it was nonetheless incumbent on her to take prompt action to contest the Department's holding if she felt strongly about loss of United States citizenship. Had she had questions about how to proceed, was uncertain about whether a brief was required or had been told that her chances of succeeding were minimal, or had she believed that dual nationality was not possible, she could have written directly to the Board to get the facts, as the appeal procedures invited her to do. No apparent obstacle stood

in her way, save, perhaps, her own reticence or feelings of helplessness, to asking this Board to review the decision of loss of her nationality.

Appellant's failure to take an earlier appeal must, regretably, be laid at her own doorstep. She has shown no factors that prevented her from doing so well before 1985. We therefore must deem the appeal untimely.

III

Upon consideration of the foregoing, we hold that the appeal is time-barred. The Board therefore lacks jurisdiction to consider it. The appeal is hereby denied.

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

Alan G. James, Chairman

G. Jonathan Greenwald, Member

George Taft, Member