August 12, 1985

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: E[redacted] M[redacted] S[redacted] d[redacted] d[redacted] l[redacted] M[redacted]

E[redacted] M[redacted] S[redacted] d[redacted] d[redacted] l[redacted] M[redacted] appeals from an administrative determination of the Department of State that she expatriated herself on June 27, 1974 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 on September 30, 1974. The appeal was entered on August 6, 1984. Initially, the Board must determine whether an appeal taken ten years after the Department determined that appellant had expatriated herself may be deemed to have been filed within the Limitation prescribed by the regulations governing this Board. It is our conclusion that the appeal is untimely and therefore barred. Accordingly, the appeal is denied.

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

Appellant acquired United States citizenship by birth at [redacted]. At an early age she was [redacted] has resided there since. She acquired Mexican citizenship, by operation of Mexican law, through her marriage to [redacted], a Mexican citizen. Appellant has never been issued a United States passport.

On June 27, 1974 appellant applied for a certificate of Mexican nationality, allegedly so that she might obtain a Mexican passport. On August 8, 1974 the Department of Foreign Relations issued a document attesting that in applying for a certificate of Mexican nationality on June 27, 1974 appellant expressly renounced United States nationality and all submission, obedience and allegiance to any foreign government, particularly the United States.

Although the record does not show the date of its issuance, we know that a Mexican passport was issued in the appellant's name. In her letter to the Board of November 11, 1984, appellant explained that she had applied for a certificate of Mexican nationality and made the oath of allegiance to Mexico so that she could "leave the country quickly because of my mother's illness, and who then lived in Brownsville, Texas." Appellant's submissions reveal that in April 1984 she was "obliged to obtain another temporary Mexican passport, once again to visit my mother, this time in Corpus Christi, Texas."

Although the appellant states, in referring to her Mexican passport, that she was "under the impression that it was only a temporary device," the record shows that on August 8, 1974 appellant appeared before a consular officer at the Embassy in Mexico City and executed an "Affidavit of Expatriated Person" in which she swore that she freely and voluntarily made a formal declaration of allegiance to Mexico on June 27, 1974 and that "it was done with the intention of relinquishing my United States citizenship." Appellant also completed a Questionnaire for Determining United States Citizenship, and in response to question three therein, asking why she made a declaration of allegiance to Mexico, answered: "It was my intention to abandon my U.S. citizenship."

In accordance with section 358 of the Immigration and ationality Act, the consular officer prepared a certificate of oss of nationality in appellant's name on August 8, 1974. 2/ he certified that appellant acquired United States citizenship t birth; that she made a formal declaration of allegiance to lexico; and thereby expatriated herself on June 27, 1974 pursuant o section 349(a)(2) of the Immigration and Nationality Act. 3/

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 Jnited States has reason to believe that a person while in a Eoreign 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.

3/ The consular officer should have indicated the date of appellant's expatriation as August 8, 1974, the apparent date of issue of the certificate of Mexican nationality, as indicated in the statement issued August 8, 1974 by the Department of Foreign Relations. The Department considers that the effective date of expatriation to be the date on which the certificate of Mexican nationality is issued, not the date on which a person makes application therefor. See Government's brief to the Supreme Court in Vance v. Terrazas, No. 78-1143, July 1979.

The Department approved the certificate on September 30, 1974, approval constituting an administrative determination of loss of nationality, from which an appeal, properly and timely filed, may be taken to this Board.

Appellant entered this appeal on August 6, 1984. In her submissions to the Board, appellant does not dispute that she voluntarily performed the potentially expatriative act. However, she implies that it was not her intention to forswear her United States citizenship.

II

At the outset, the ten year delay in the bringing of this appeal raises a jurisdictional issue. Timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). Thus, if an appellant, providing no compelling reason for the delay, fails to take his or her appeal within the prescribed limitation, the appeal must be dismissed for want of jurisdiction. Costello v. United states, 365 U.S. 265 (1961).

Under the 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). However, at the time the certificate of loss of nationality was issued in this case, the limitation on 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).

In the interest of fairness, the Board is of the view that the present regulations should apply prospectively, rather than retrospectively, and that therefore the present case should be governed by the limitation in force in 1974.

What is reasonable time depends on the facts of each case. Chesapeake and 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, 129 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 (4th Cir. 1981). To excuse an extended delay, a legally sufficient reason must be shown, Id.

In appellant's case there has been a delay of ten years in taking an appeal; she has submitted no compelling reason to justify such a delay. Rather, she states:

> I can only blame the circumstances and the fact that I was aware of no time limit, the absence of which was confirmed in your letter. These were the years that my children were small and it was not easy for me to go into Mexico City to take care of this matter, not having anyone to take over my domestic duties and transportation was also a problem.

22 CFR 50.60 makes clear that appellant's right of appeal accrued sometime after September 1974. And absent evidence to the contrary, we must assume that she received a copy of the approved certificate of loss of nationality sometime in the Fall of 1974, and was advised of her right of appeal at that time.

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 indicated, it would have been inconvenient for her to take an appeal prior to 1984. While this Board will not presume to judge whether the appellant rightly or wrongly placed other considerations above attempting to recover United States citizenship, there can be no doubt that she consciously chose to defer making an appeal.

Appellant also argues that she was not aware that there was a time limit on bringing an appeal to this Board.

However, on the reverse of the certificate of loss of nationality reference is made to the applicable regulations, 22 CFR 50.60-50.72. Appellant was thereby put on notice of the regulations governing this Board and where they could be found. We realize that appellant is not an attorney. However, the record discloses no reason which prevented her from consulting an attorney, or writing to the United States Embassy or to the Board, to ascertain the relevant information. Once put on notice, the responsibility fell on the appellant to inform herself of the rules governing this Board including the limit on appeal, in order that a properly, and timely filed appeal might be taken.

In sum, appellant has not shown that factors beyond her control prevented her from taking an earlier appeal. Whatever period of time is contemplated by the standard of feasonable time, the Board does not believe that it envisages a delay of ten years where the record shows no viable reason for the delay.

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

G. Jonathan Greenwald, Member

Frederick Smith, Jr. Member