March 26, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] Mi[redacted] B[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, M[redacted] M[redacted] B[redacted] expatriated herself on November 7, 1979 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Vancouver, Canada. 1/

The Department approved the certificate of loss of nationality in this case on April 8, 1980, Over five years later, Mrs. B[redacted] entered an appeal from that decision. It is our conclusion that since the appeal was not entered within the time allowed by the applicable regulations and no good cause has been shown why it could not have been timely filed, the appeal is time-barred. Lacking jurisdiction, we deny the appeal.

I

Mrs. B[redacted] was born in the [redacted] [redacted] [redacted] [redacted] She married [redacted] [redacted] in 1947, From 1953 to 1954 she lived in Washington, D.C. In 1954 she moved to Riverside, California where she lived for the next 24 years. She was naturalized before the Superior Court of California at Riverside on February 20, 1959. Mrs. B[redacted] states that her husband divorced her in 1975. Three years later she moved to Canada. As she put it in her initial letter to the Board: "Afraid and wrong adviced /sic/ I left for Canada, and was told I will lose my U.S. nationality, so I gave it up on November 7, 1979."

1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5) 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 --
>
> . . . .
>
> (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State;...

The record shows that on November 7, 1979 Mrs. B appeared before a consular officer of the United States at the Consulate General at Vancouver where she made an oath of renunciation of United States nationality in the form prescribed by the Secretary of State. Before executing the oath of renunciation, Mrs. B signed a statement of understanding in which, *inter alia*, she stated that she was acting voluntarily; that she recognized that as a consequence of renunciation she would become an alien in relation to the United States; that the serious consequences of renunciation had been explained to her by the consular officer concerned; and that she understood those consequences. She also completed under oath a questionnaire to facilitate determination of her citizenship status. Therein she stated that she was "working now in Mission /Canada/ and would like to become independent and would like to relinquish my U.S.A. citizenship."

In compliance with the provisions of the Statute the consular officer who administered the oath of renunciation to Mrs. B executed a certificate of loss of nationality on November 8, 1979. The certificate recited that Mrs. B, who became a United States citizen by naturalization, made a formal renunciation of that citizenship and thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

The Department approved the certificate on April 18, 1980, approval being an administrative determination of loss of nationality from which an appeal, properly and timely filed, may be taken to the Board of Appellate Review. A copy of the approved certificate was sent to the Consulate at Vancouver on the day it was approved for forwarding to appellant, who filed this appeal on September 12, 1985. She concedes that she acted voluntarily but maintains that it was not her true intent to relinquish her American nationality.

2/ 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.

II

Appellant's delay in taking an appeal presents a jurisdictional issue that must be resolved at the outset: whether the Board may entertain an appeal so long delayed.

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

> 22 CFR 7.5(b)
>
> 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.
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> 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 failing 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 in this case on April 8, 1980. The appeal was entered more than five years later, four years beyond the ailowable limit,

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 one year after the Department's approval of the certificate of loss of nationality.

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 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, (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. Folsom, 166 F. Supp. 390 (D.C. Ark. 1958).

In her letter to the Board of September 23, 1985 she wrote: "I was not told I could appeal, I would have done so my regrets, are very real and painful to me." And on September 30, 1985 she wrote the Board that: "I really and truly dont /sic7 know why I waited 6 years, but I always felt that this is my home."

We note that information about taking an appeal within one year after approval of the certificate of loss of nationality is set forth on the reverse of the certificate. Appellant does not dispute that she received a copy of the approved certificate, and in the absence of any evidence to the contrary, we must presume that the copy she received carried the pertinent appeal information. She was thus legally on notice of her right of appeal and the limitation on appeal.

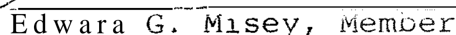
Having been put on notice of the right of appeal, Mrs. B[redacted] should have acted within the prescribed limit unless she was prevented from doing so by forces beyond her control; she has not alleged that such was the case,

Although we approach Mrs. B[redacted] case with sympathy (her children live in the United States and she would like to be united with them), we are unable to find the slightest justification for her delay and must therefore deem the appeal time-barred.

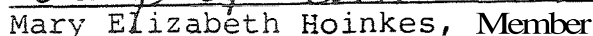
111

Upon consideration of the foregoing the Board hereby denies Mrs. Baumert's appeal.

Alan G. James, Chairman



Edward G. Misey, Member



Mary Elizabeth Hoinkes, Member