May 23, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: F[redacted] R[redacted] d[redacted] V[redacted]

This is an appeal to the Board of Appellate Review from an administrative determination of the Department of State that appellant, [redacted] expatriated himself on October 19, 1951 under the provisions of section 401(f) of the Nationality Act of 1940 by making a formal renunciation of his United States nationality before a consular officer of the United States at Nuevo Laredo, Mexico. 1/

The Department on October 6, 1953 approved the certificate of loss of nationality that was executed in appellant's name. Dr. del V[redacted] entered the appeal on July 19, 1985. The extraordinary interval between approval of the certificate of loss of nationality and initiation of the appeal raises an inevitable threshold issue: whether the Board may entertain an appeal so long delayed. For the reasons stated below, it is our judgment that the appeal is barred by the passage of time and not properly before the Board. It will therefore be denied.

I

Dr. d[redacted] Va[redacted] became a United States citizen by birth at [redacted]. By virtue of his birth abroad to a Mexican citizen father, he also acquired Mexican citizenship. He attended elementary and secondary schools in the United States, and in 1950 entered the Massachusetts Institute of Technology.

According to appellant, his father ordered him to leave Cambridge in October 1951 and return to Nuevo Laredo, Mexico. Once

---

1/ Section 401(f) of Chapter IV of the Nationality Act of 1940, 8 U.S.C. 801, read as follows:

> Section 401. A person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by:
>
> . . .
>
> (f) 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;...

there, appellant, allegedly accompanied by his father and at the latter's insistence, went to the United States Consulate on October 19, 1951, appellant's 18th birthday. There, as the record shows, appellant made a formal renunciation of his United States nationality before a consular officer in the form prescribed by the Secretary of State. In the oath, appellant stated that he was temporarily living in the United States as a student. He further stated that:

> ...I desire to make a formal renunciation of my American nationality, as provided by Section 401(f) of the Nationality Act of 1940, and pursuant thereto I hereby absolutely and entirely renounce my nationality in the United States and all rights and privileges thereunto pertaining and abjure all allegiance and fidelity to the United States of America.

The formalities of renunciation having been completed, the consular officer who administered the oath of renunciation to Dr. d[redacted] Va[redacted]e executed a certificate of loss of nationality on October 19th. 2/ He certified that the renunciant had been born a United States citizen; had made a formal renunciation of his United States nationality; and thereby expatriated himself under the provisions of section 401(f) of the Nationality Act of 1940. The consular officer forwarded the certificate to the Department by despatch dated October 19, 1951. In the despatch he attested that appellant had been born a United States citizen, and enclosed copies of the oath of renunciation and the certificate of loss of nationality. The consular officer, however, made no comment about the circumstances surrounding appellant's renunciation, nor did he indicate whether anyone had accompanied appellant.

2/ Section 501 of Chapter V of the Nationality Act of 1940, 8 U.S.C. 901, provided that:

Sec. 501. 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 American nationality under any provision of chapter IV of this Act, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations to be 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 Department of Justice, for its 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.

The Department received the Consulate's despatch on October 22, 1951, but two years passed before the Department approved the certificate on October 6, 1953. The record discloses no reason for the delay. A copy of the approved certificate was sent to the Consulate on October 7, 1953 to forward to appellant. The record does not show what disposition was made of the certificate after it left the Department. According to appellant, after he renounced his nationality he returned to MIT to complete his studies. Between 1954 and 1965 MIT conferred on him the degrees of B.Sc., M.Sc. (two) and Ph.D.

Thirty-two years elapsed before there were any further recorded proceedings between appellant and the United States Government. On July 19, 1985 counsel for Dr. d[redacted] V[redacted] filed notice of appeal from the Department's 1953 decision that he had expatriated himself.

Appellant maintains that his formal renunciation of United States nationality was void because it was forced on him by his father, a domineering personality who demanded and received absolute obedience. Allegedly an extremely patriotic Mexican and desirous that his son be solely a Mexican citizen, the senior d[redacted] V[redacted] ordered his son on October 19, 1951 to renounce his United States nationality. Appellant alleges that his father had arranged for the renunciation papers to be prepared in advance of his appearance at the Consulate on October 19, 1951; that when the papers were presented to him his father ordered him to sign.

Appellant requested oral argument which the Board heard on December 20, 1985. The Department submitted a post-hearing brief to which appellant responded.

II

We confront a threshold issue: whether the Board may assert jurisdiction over a case where an expatriate has waited thirty-two years before seeking relief. Since timely filing is mandatory and jurisdictional United States v. Robinson, 361 U.S. 220 (1960), the Board may only consider the merits of the cause if we determine that the appeal was taken within the limitation prescribed by the applicable regulations. If we find that the appeal was not timely, we must dismiss it.

In 1953 when the Department approved the certificate of loss of nationality executed in this appellant's name, the Board of Appellate Review did not exist. There was, however, a Board of Review on the Loss of Nationality, an entity of the Passport Division of the Department, to which persons who had been found to have expatriated themselves might address an appeal. In 1953 consular officers were under standing instructions to inform expatriates in writing

at the time of sending them a copy of the certificate of loss of nationality of the right to take an appeal to the Board of Review on the Loss of Nationality. 2 Foreign Service Manual, 238.1 (1951).

Prior to 1966 there was no specified time limit on appeal to the Board of Review on the Loss of Nationality. In 1966 federal regulations were promulgated prescribing that an appeal to the Board of Review on Loss of Nationality be made "within a reasonable time. 3/ When the Board of Appellate Review was established in 1967, regulations promulgated at that time adopted the "reasonable time" limitation. 4/ The regulations of the Board of Appellate Review were further revised in November 1979. They prescribe that an appeal be filed within one year of approval of the certificate of loss of nationality. 5/ Believing that the current regulations as to the time limit on appeal should not apply retroactively, we are of the view that the standard of "reasonable time" should apply in the case now before the Board.

"What constitutes reasonable time," the 9th Circuit said in Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981),

> depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties. See Lairsey v. Advance Abrasives Co., 542 F.2d 928, 930-31 (5th Cir. 1976); Security Mutual Casualty Co. v. Century Casualty Co., 621 F.2d 1062, 1067-68 (10th Cir. 1980).

3/ Section 50.60, Title 22, Code of Federal Regulations (1966), 22 CFR 50.60, 31 Fed. Reg. 13539 (1966).

4/ Section 50.60 of Title 22, Code of Federal Regulations (1967-1979), 22 CFR 50.60, provided:

> 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.

5/ Section 7.5(b), Title 22, Code of Federal Regulations 22 CFR 7.5(b).

Although appellant concedes that his appeal was entered after the passage of a very long period of time, he argues that it should be considered timely mainly on the following grounds:

1) He never received notice of the Department's holding of loss of his nationality or of his right of appeal.

2) As a young man and even as an adult, his life was to a large extent controlled by his father who remained determined that his son be a Mexican citizen only.

3) After his father's death in 1978, the senior del V[redacted]'s psychological domination over his son continued, and the latter felt he should be even more submissive to his father's will. This perception dominated appellant's thinking until, through psychotherapy, he was able to liberate himself from his life long psychological dependence on his father.

As we have seen, the certificate of loss of nationality was sent to the Consulate at Nuevo Laredo immediately after it had been approved in the Department. We have also noted that consular officers at that time were under Departmental instructions to inform expatriates of the right of appeal to the Board of Review on the Loss of Nationality. In the absence of evidence to the contrary (and it is appellant's burden to produce such evidence) it is reasonable to presume that the certificate reached the Consulate and that that office forwarded it to appellant at his last known address, along with information about how to take an appeal. 6/

What actually occured, however, is probably unknowable in view of the passage of so much time. The relevant inquiry is whether appellant had reason to believe that he had lost his citizenship. It is obvious that he did, for he had performed the most unambiguous of all expatriating acts. With such knowledge, he was armed with facts he could have used to ascertain whether there was an appeal process. It is a well-established principle that whatever fairly puts a person upon inquiry is sufficient notice of a fact, where the means of knowledge are at hand, and if he omits to inquire, he is then chargeable with all the facts which by proper inquiry he might have ascertained. See, for example, Hux v. Butler, 339 F.2d 696 (6th Cir. 1964). As a matter of law, del Valle had due notice both of the loss of his nationality and of his right of appeal.

6/ We take note that appellant concedes that the certificate and notice of appeal rights might have reached his home, but if they did, that his father did not forward them to him. For reasons set out below, we do not consider that if what appellant said happened, he may be excused from failure to take an earlier appeal.

Appellant's contention that his father prevented him from taking any action during the father's lifetime to try to recover his United States citizenship merits close scrutiny.

In his submissions and especially during oral argument, appellant portrayed his father as domineering, inflexible, repressive. Appellant, his twin sisters (both United States citizens) and his mother have filed sworn statements attesting to the senior del V[redacted]'s authoritarian personality. From youth into manhood and marriage, appellant's father attempted to control every phase of his life. Appellant stated at the hearing that he never asked his father, after his renunciation, whether he might attempt to regain his United States citizenship. "I never asked him," appellant stated, "because his orders were irrevocable. They couldn't be contradicted. As long as he said that, that was it. There was nothing I could do, again, going against his will." 7/ According to appellant, one of his sisters did ask their father in 1965 whether it might be possible for the younger d[redacted] V[redacted] to regain his citizenship. The father reportedly answered: "No. I am a Mexican; he is Mexican. And there is no way he can regain his citizenship." TR 23. Throughout his life, appellant said his father was adamant that he remain a Mexican citizen. Id. (See also affidavit of M[redacted] d[redacted] V[redacted], appellant's sister, Nov. 18, 1985.)

We will not dispute that appellant's father was authoritarian and may have attempted to dominate and guide his son's life. The dispositive question is whether appellant has established that his father so dominated him that he was prevented by a force he objectively could not control from taking early action to try to regain his citizenship.

Appellant says that his father's dominance amounted to legal duress, thus excusing his not moving sooner. Aside from the statements of appellant, his sisters and mother which must be accepted with some reservations, there is no direct evidence that appellant's father stood in his way to take an appeal. The father died in 1978. No evidence has been adduced that he threatened or would have threatened sanctions (disinheritance, expulsion from the family) if appellant had gone against his will and tried to appeal. Filial piety has been held to excuse performance of an expatriative act. See Ryckman v. Acheson, 106 F. Supp. 739 (S.D.Tex. 1952). There, plaintiff lost her United States citizenship because she felt she had to risk citizenship to care for a dying mother; the court found duress because her filial duty was as coercive as

---

7/ Transcript of Hearing in the Matter of F[redacted] R[redacted] d[redacted] V[redacted], Board of Appellate Review, December 20, 1985 (hereafter referred to as "TR".) pp. 22, 23.

physical restraint. In the case before us, appellant might have disappointed, even hurt, his father by defying him. But we find it difficult to conclude that appellant would have been unable to live with himself had he defied his father or that his father would have been dealt a mortal blow. If he sincerely valued his lost United States citizenship appellant would, it seems to us, have moved much sooner.

Furthermore, the probative value of appellant's statements and those of his sisters and his mother must be tested against some objective facts.

By 1957 appellant was supporting himself. In 1961 he married and apparently did not thereafter live in his parents' home. After receiving his Ph.D. in 1965 appellant's career seems to have blossomed, and before long he became internationally recognized as an authority in food engineering, winning honors in Mexico and the United States. He says that even after he had gained maturity and professional competence his innate deference to his father remained so strong that he could not overcome it. Perhaps, but we are not so persuaded.

Appellant contends that his further delay - from his father's death in 1978 to 1985 - should be excused because even in death his father exercised a tight hold on him; he thus felt constrained not to do after his father's death what he had felt he ought not do in his lifetime. His point is irrelevant. By 1978 twenty-five years had passed from the time the Department approved the certificate of loss of nationality issued in appellant's name. Since we have concluded that appellant was not justified in not taking an appeal well before his father died, no conceivable excuse for his further delay can alter our conclusion that the appeal is barred.

Our conclusion that the appeal is untimely is reinforced by our opinion that there is clear prejudice to the interests of the Department of State by appellant's having delayed taking an appeal without legally sufficient excuse. His case for reversal of the Department's decision rests on his allegations that in 1951 his father forced him against his true will and intent to renounce his United States nationality. He has submitted testimony from his twin sisters (in 1951 they were aged 15) and his mother that his father forced him to relinquish his citizenship. And he has offered affidavits (whose conclusions are based solely on facts given them by appellant) that it is quite probable that appellant renounced his nationality under parental pressure. Appellant and his witnesses may remember well the events of 1951, although memory can be a self-serving instrument.

The Department, however, has no present capability to prove precisely what occurred on October 19, 1951. Legally, the Department must prove that appellant acted voluntarily; he states that he did not. What resources does the Department have at this remove from 1951 to contest appellant's allegations? None. There is not one shred of evidence dating from 1951, save appellant's oath of renunciation, that is relevant to the issue of voluntariness. Perhaps the consular officer involved should have made a detailed record of the proceedings of October 19, 1951; he did not. But this is not error because the statute requires no more of him than he did. Then, too, there must be an end to litigation at some point. The interest in finality and stability of administrative decisions is clearly substantial here.

Appellant seems to be serious and conscientious, a person of considerable attainment. But an appellant's character, admirable or not, is irrelevant. The Board's sole responsibility is to decide the issues of fact and law that are presented in each case and not to pass judgment on the worthiness of the party who comes before us.

Taking into consideration all the elements that constitute "reasonable time," it is our conclusion that the appeal is time-barred.

III

On the basis of the foregoing, we dismiss the appeal for want of jurisdiction, thus not reaching any of the substantive issues presented.

Alan G. James, Chairman

James G. Sampas, Member

Frederick Smith, Jr., Member