DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] E[redacted] G[redacted]

M[redacted] E[redacted] G[redacted] appeals an administrative determination of the Department of State that he expatriated himself on March 12, 1974 under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act by making a formal renunciation of his United States nationality before a consular officer of the United States at Tel Aviv, Israel. 1/

The certificate of loss of nationality that was issued in this case was approved by the Department on March 29, 1974. Notice of appeal was filed on April 15, 1985. Upon further review of the case, the Department now submits that appellant did not act voluntarily, and accordingly requests that this Board remand the case for the purpose of vacating the certificate of loss of nationality.

A threshold issue is presented: whether the Board may assert jurisdiction over this case. It is our judgment that the appeal was not timely filed and is therefore time-barred. The Board thus lacks jurisdiction to entertain the appeal, and hereby dismisses it. The fact that the Board has dismissed the appeal as untimely does not, however, bar the Department from taking such further administrative action as it may consider appropriate in the premises.

1/ Section 349(a)(6), now 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; . . .

Public Law 95-432, approved October 10, 1978, 92 Stat. 1046, repealed paragraph (5) of section 349(a) of the Immigration and Nationality Act, and redesignated paragraph (6) of section 349(a) as paragraph (5).

I

[redacted] ed States citizen by birth at [redacted]. He lived in the United States until **1973** when, according to his submissions, he went to Israel with the Original Hebrew Israelite Nation of Jerusalem (Black Hebrews). He states that he joined the cult in **1973** at a time of a great emotional crisis in his life, and "succumbed" to them. He states that he was ordered by the cult leadership in March **1974** to renounce his United States citizenship, and did so on March 12, 1974 at the United States Embassy at Tel Aviv. Before making the oath of renunciation, [redacted] executed a statement of understanding, stating, among other things that he was acting voluntarily, that the consequences of formal renunciation had been explained to him by the consular officer concerned, and that he understood them. He also executed an affidavit in which he stated that he did not wish to take more time to consult an attorney or adviser; that his decision to renounce was not based on the fact that the Israeli Government was considering deporting him, on his financial condition, or on personal/family problems; and that no coercion had been brought to bear on him. 2/

After the formalities of renunciation had been completed, the Embassy executed a certificate of loss of nationality in

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2/ In **1973** a number of Black Hebrews indicated to the Embassy that they wished to renounce their United States nationality. The Department accordingly sent instructions on September **26, 1973** to the Embassy to govern the processing of formal renunciation by Black Hebrews. The instructions read in pertinent part as follows:

> In view of the circumstances involved, Embassy must make certain that renunciation be voluntary and not performed under duress, coercion or influence. Request Black Hebrews who wish to renounce to answer following questions in supplemental affidavit:
>
> 1. Have you retained an attorney to represent you in this matter of renunciation? If not, why not? Do you want additional time to consult with an attorney, friends, or family advisors?
>
> 2. Is your decision to renounce in any part based:
>
> (A) On the fact that the GOI is considering deporting you? If so, explain.
>
> (B) On your present financial condition? If so, explain.
>
> (C) On personal or family problems and/or living conditions? If so, explain.

[redacted] name. 3/ The Embassy certified that appellant acquired United States citizenship by birth at Jackson, Tennessee on February 15, 1950; that he resided in the United States from birth until December 14, 1973; that he made a formal renunciation of his United States nationality on March 12, 1974; and thereby expatriated himself under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act. The Department of State approved the certificate on March 29, 1974, approval being an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review.

On June 23, 1980 [redacted] went to the United States Embassy at Tel Aviv where he exec[redacted]n affidavit in which he stated as follows:

2/ Cont'd.

(D) On influence, force and/or coercion that is being brought upon you by any person or persons? If *so,* explain.

If Consul believes that the renunciant may have any reservations, do not repeat do not administer the oath of renunciations, but send to the Department for decision all documents and **a** memorandum of conversation in the event **of** refusal to sign affidavits.

If no reservations are apparent, administer the oath of renunciation and send all documents to the Department.

3/ Sections 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.

I [redacted] am pleading to you for consideration. I left the U.S.A. December 4, 1973 to come to Israel. I was born February 14, 1950 in Jackson, Tennessee. I was married Aug. 1972 and divorced by my wife Aug. 1973. I was mix-up, /sic/ heart broken and very confused. I was easy bait for the Black Hebrew cult, well, I succombed. /sic/ I did whatever they told me. I sold everything I had or gave it to them, then they made all the arrangements for me to come to Israel. After I was here in Israel 3 months I was told that I had been chosen to be the first of everyone that came in the group with me to renounce my American citizenship obediently I complied and on March 12, 1974 I did renounce my United States of America citizenship. If I had not been in this group I would never had /sic/ done this. They have you siked /sic/ up *so,* you really don't know what you are doing, You think you are being smart and wise and you are out smarting the Israeli government. They have Idioms /sic/ and slogans that keep you siked /sic/ up. I have no family here in Israel, my parents and sisters are all in the U.S.A. I love my family and my country and I am ready to do whatever necessary to come home, please help me. I want to come home and start my life over again. Please reverse the decision of Renunciation of my U.S.A. citizenship. I was born an American, all of my family are Americans, I still feel like an American.

[redacted] affidavit was referred by the Department (its initial recipient) to the Board of Appellate Review. On August 7, 1980, the then-Chairman of the Board wrote to [redacted] in care of the United States Embassy informing him how to file a proper appeal. His attention was called to the fact that if he decided to appeal, the Board would have to determine as an initial matter whether his appeal had been filed within the limitation prescribed by the applicable regulations in order to establish whether the Board would have jurisdiction to consider his appeal.

[redacted] states that he never received the Chairman's letter, but it seems clear that he was aware of its existence. [redacted] apparently broke with the Black Hebrews in 1983 or 1984 and returned

to the United States. On August 19; 1985 he gave notice of appeal through counsel, arguing that his citizenship should be restored because he made a formal renunciation of it under duress:

> Mr. [redacted] asserts that he renounced his United States Citizenship under coercion and duress. He was one of more than eighty member /sic/ of the original Hebrew Israelite Nation of Jerusalem, who renounced United States Citizenship within a brief period of time. Mr. [redacted] asserts that he did not possess the requisite mental state to voluntarily relinquish his citizenship at the time of his renunciation and performed this act solely at the direction of the Original Hebrew Israelite Nation of Jerusalem without comprehension of its effect and consequences.

Attached to the notice of appeal was appellant's affidavit explaining how he became involved with the Black Hebrews, why he left the United States to go to Israel and the circumstances under which he renounced his United States nationality.

In response to appellant's brief, the Department took the following position in a memorandum to the Board dated January 7, 1986:

> The Gepartment has closely reviewed this case and has concluded that based on the submitted evidence, the appellant involuntarily relinquished his U.S. citizenship in Tel Aviv, Israel. 4/ The Department contends that although the timeliness of this appeal is questionable, based upon the uniqueness of the facts, as stated below, the issue is irrelevant.

4/ The Department in effect concedes that appellant has overcome the presumption of section 349(c) of the Immigration and Nationality Act, 8 U.S.C. 1481(c), that one who performs a statutory expatriating act does so voluntarily. Section 349(c) reads in pertinent part as follows:

> ...Except as otherwise provided in subsection (b), any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

The Department's memorandum draws heavily on the allegations in appellant's affidavit of June 24, 1985 to support its request for remand. 5/ It concluded with the following statement:

> Accordingly, it is requested that the case be remanded in order that the Certificate of Loss may be vacated. Should the Board find that the case is outside its jurisdiction and dismiss the appeal, the Department intends to vacate the Certificate of Loss.

5/ The Department's memorandum noted hat the Black Hebrews offered [redacted] emotional support at a time when he badly needed it, and that as his dependency on them increased so did their demands on him. The memorandum continued:

> ...Late in 1973 they convinced him that it was time to flee the United States. At their suggestion he had quit his job and had entered into criminal activities. Afraid and gullible, he went to Israel on a ticket purchased by the Black Hebrews.
>
> Once in Israel, his name and identity were changed, and he was ordered to stay only with the group. Contact with the outside was cut off, and his life became regulated to work and religion.
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> In 1974 the leaders instructed him that the only way to stay out of prison in either country was to renounce his United States citizenship. Since he now was totally dependent on the group for food, shelter, and safety, he had no choice and complied with their instruction....

II

At the outset, the Board must determine whether it has jurisdiction to consider this appeal. Our jurisdiction depends on whether we find the appeal to have been filed within the limitation prescribed by the applicable regulations, for timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). Thus, if we find that the appeal was not entered within the applicable limitation and no legally sufficient excuse therefor has been presented, the appeal must be dismissed for want of jurisdiction. Costello v. United States, 364 U.S. 265 (1961).

Consistently with the Board's practice, we will apply here not the present limitation on appeal but the one prescribed by regulations in effect at the time the Department approved the certificate of loss of nationality issued in [redacted] name, namely, section 50.60 of Title 22, Code of Federal Regulations (effective November 29, 1967 to November 30, 1979), 22 CFR 50.60. That section provided as follows:

> 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.

"Reasonable time" is to be determined in light of all the circumstances of the particular 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. Ashford v. Steuart, 657 F. 2d 1053, 1055 (1981). Similarly, Lairsey v. The Advance Abraisives Company, 542 F. 2d 928, 940, quoting 11 Wright & Miller, Federal Practice and Procedures, Sec. 3866, at-228-29:

> What constitutes reasonable time must of necessity depend upon the facts in each individual case. The courts consider whether the party opposing the motion has been prejudiced by the delay in seeking relief and they consider whether the moving party had some good reason for his failure to take appropriate action sooner.

The key issue for decision is whether [redacted] has shown good cause why he could not have acted sooner to contest his loss of nationality.

As we have seen, in 1980 appellant went to the Embassy at Tel Aviv to request reconsideration of his case. The Board of Appellate Review did not consider his affidavit/letter of June 23, 1980 to be a proper appeal and did not accept it. Five years later appellant presented what this Board deems a proper appeal.

For purposes of anlysis we will accept that [redacted] affidavit/letter of June 23, 1980 was notice of appeal, sufficient to toll the limitation on appeal. But, we must ask, was his six-year delay in taking action excusable in the circumstances of his case? He argues that it was, contending in his brief as follows:

> ...his failure to appeal between 1974 and 1980 is tied directly to his mental state, resulting from his membership in the Original Hebrew Nation. The same altered mental state which inhibited Mr. [redacted] judgement and self-contrdlwith regard to his renunciation prevented his seeking appeal from his loss of citizenship.
>
> Mr. [redacted] affidavit of June 23, 1980, was his own, pro se, attempt to appeal his loss of citizenship after he had regained some measure of independence from the cult. The cult's censorship of mail resulted in his never seeing Ms. [redacted]' reply. Mr. [redacted] belief that he had filed an appeal in 1980 and that his appeal had been rejected by the Board.
>
> If the Board accepts that Mr. [redacted] behavior was influenced by the cult, then both his oath of renunciation and delay in appealing his loss of citizenship are actions over which he did not have control.
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> The Petitioner asserts that his cult membership resulted in an impaired mental state. This mental state allowed him to be manipulated by the cult. When viewed from this prospecitive, neither his renunciation nor his delay in appealing his loss of citizenship were voluntary acts. The Petitioner therefore asserts that under these circumstances, his appeal be viewed as being made within a reasonable time.

There is no dispute that [redacted] received a copy of the certificate of loss of nationality that was approved in his name with information about appeal procedures printed on the reverse side. He was thus on notice (in the spring of 1974, we may fairly assume) of loss of his nationality, that an appeal procedure was open to him, and, constructively, that there was a time limit on appeal. He did not act on the foregoing information until six years later,

The general rule is that good cause for untimely filing of an appeal exists oniy where the faiiure to act sooner was prevented by some event beyond the immediate control of the litigant and which was to some extent unforeseen. See, for example, Manges v. First State Bank & Company, 572 S.W. 2d 104 (Civ. App. Tex. 1978) and Continental Oil Company v. Dobie, 552 S.W. 2d 183 (Civ. App. Tex. 1977).

[redacted] implies that he wanted to try to annul his renunciation of United States nationality much earlier than he did so, but was prevented from doing so by the Black Hebrew leadership, However, he has adduced no evidence to show that he was actually prevented from going to the Embassy before 1980 to lodge a request for reconsideration of his case. Indeed, his own words indicate that from the time he renounced his United States citizenship until 1980 when he finally expressed a wish to take an appeal he remained loyal to the Black Hebrews, and, we may assume, obedient to their rules and regulations. Note the following passage in his affidavit of June 24, 1985:

> I remained a committed member of the group until 1980. I had remained cut off from my family and friends in the States for all of these years. When I began to see the unfairness and corruption present in the upper ranks of the group, I realized that Ben-Amin Carter was a false prophet. I went to the Embassy in June of 1980 to explain to them how the group had used me and how I had not had any choice when I renounced my citizenship....

On the facts, it appears to us that any constraints [redacted] felt were subjective and self-generated. To judge from his own statements he joined the Black Hebrews of his own free will. He apparently found membership of the group emotionally nourishing for many years until 1980 when he concluded that the leaders of the cult had been using him for purposes inimical to his interests. In short, appellant has not proved that external forces over which he had no ccntroi prevented him from acting to enter an appeal long before he did so.

A limitation on appeal is designed not only to allow an aggrieved person sufficient time to prepare an appeal but also to compel the exercise of the right of recourse within a specified or more flexible period of time. Even though there may be no prejudice to the Department resulting from an appellant's protracted delay, respect for orderly appellate procedures requires that we insist on appeals being filed within the time prescribed by the applicable regulations, barring persuasive evidence of why an appeal could not have been filed sooner.

III

In the circumstances of this case, it is our conclusion that appellant's delay of a number of years in seeking to annul his formal renunciation of United States nationality was not reasonable. We find the appeal time-barred, and hereby dismiss it for lack of jurisdiction. 6/

Given our disposition of the case, we do not reach the substantive issues presented.

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Member

6/ The fact that the Board has determined that the appeal is time-barred and has dismissed it on the grounds that it lacks jurisdiction, does not in itself bar the Department from taking further administrative action as may seem appropriate in the circumstances, i.e., vacate the certificate of loss of nationality, as it informed the Board it proposed to do.

> ...where the Board of Appellate Review has dismissed an appeal in a citizenship case as time-barred, that fact standing alone does not preclude the Department from taking further administrative action to vacate a holding of loss of nationality. This continuing jurisdiction snouid be exercised, however, only under certain limited conditions to correct manifest errors of law or fact, where the circumstances favoring reconsideration ciearly outweigh the normal interests in the repose, stability and finality of prior decisions.

Opinion of Davis R. Robinson, Legal Adviser of the Department of State, December 27, 1982. Excerpted in American Journal of International Law, Vol. 77 No. 2, April 1983.