July 17, 1986

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

This is an appeal from an administrative determination of the Department of State that appellant, R[redacted] V[redacted], expatriated himself on June 4, 1971 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 certificate of loss of nationality that was issued in this case was approved by the Department of State on February 8, 1974. V[redacted] entered an appeal therefrom on November 4, 1984. A threshold issue is thus presented: whether in the circumstances of this case the Board may entertain an appeal taken ten years after the Department determined that the citizen expatriated himself. For the reasons stated below, it is our conclusion that the appeal is untimely and should be dismissed for lack of jurisdiction.

I

V[redacted] became a [redacted]ited States citizen upon his birth at [redacted]. Through his Mexican [redacted] a [redacted]uired the nationality of Mexico. He lived in the United States until 1933 when he was taken to Mexico by his parents. In 1949 V[redacted] was registered as a United

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1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), provides that:

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;...

States citizen by the Embassy in Mexico City and was issued an identity card "to facilitate entry into U.S. for permanent residence."

V[redacted] volunteered for the United States Army in **1951** and served as a paratrooper in Korea. He was honorably discharged from the Army in 1954. According to his own statement, he worked thereafter in California, and returned to Mexico in **1960.**

On June **4, 1971** he applied for a certificate of Mexican nationality. As stated in the certificate of Mexican nationality that was issued to him on the day he applied for it (June 4, **1971** he expressly renounced United States nationality and all allegian to the United States, and also declared submission, obedience and loyalty to the laws and authorities of Mexico.

Two years later, the United States Embassy at Mexico City learned that V[redacted] had performed the foregoing statutory expatriating act; the record does not, h[redacted] disclose how the fact came to the Embassy's attention. V[redacted] called at the Embassy in September1973 where he executed an affidavit of an expatriated person. In the affidavit he acknowledged that he had made a formal declaration of allegiance to Mexico, and had done so voluntarily. He also completed a form for determining United States citizenship in which he stated that he had applied for a certificate of Mexican nationality for "financial purposes and also because I own properties in Mexico and I cannot have allegia to two countries."

In a submission to the Board dated August **16, 1985,** Velazque described as follows the circumstances under which he applied fox a certificate of Mexican nationality and later signed the affida of expatriated person.

> In fact, at the time I renounce /sic/ my citizenship I was under considerable-strain. The circumstances were as follows. In **1965** I was divorced from my first wife. 1 was living in Mexico as a U.S. citizen and managing my father's plastics factory. My ex-wife threatered /sic/ to denounce me to the Mexican authorities and cause problems for me. I was advised by friends to apply for Mexican citizenship as the son of Mexican parents. I did this in **1970,** not realizing first that I could have continued working in Mexico as a U.S. citizen, and second that on receiving Mexican citizenship I

> would be required to renounce my U.S. citizenship. The form renouncing my U.S. citizenship was presented to me on june 4, 1971, [sic] and since no time was given to me to recapacitate, and as I said before I was under strain and in ignorance as to the serious consequences, I signed. I regretted this almost immediately, and as a result of this and other circumstances was victim of a serious attack of asthma. When I signed the Affidavit of Expatriated Person before the Consul of the U.S.A. on September 4, 1973, I was in a state of some depression, feeling that things had gone so far that I had no option.

In accordance with the provisions of section 358 of the Immigration and Nationality Act, the consular officer who handled V[redacted]' case executed a certificate of loss of nationality in his name on September 4, 1973. 2/ The consular officer certified that V[redacted] acquired the nationality of the United States at birth; that he made a formal declaration of allegiance to Mexico and thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

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

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.

The Department informed the Embassy in November 1973 that it would not act in V[redacted]' case because the affidavit of expatriated person he executed did not conform to the form of affidavit prescribed by the Foreign Affairs Manual. Department accordingly instructed the Embassy to ask V[redacted] to re-execute the affidavit. Pending submission of a new affidavit, his case would be held in suspense, the Department stated. V[redacted] re-executed the affidavit on January 22, 1974, the operative language of which then read as follows:

> I further swear that the act mentioned above was my free and voluntary act and that no influence, compulsion, force, or duress was exerted upon me by any other person, and that it was done with the intention of relinquishing my United States citizenship. /Emphasis added./

On February 8, 1974 the Department approved the certificate the Embassy had executed, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. A copy of the approved certificate was sent to the Embassy to forward to appellant.

There is no record of any further dealings between V[redacted] and United States authorities until November 4, 1984 when he wrote to the Board of Appellate Review to give notice of appeal.

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 appellant's 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 Abrasives 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.

V[redacted] acknowledges that he received a copy of the approved certificate of loss of his nationality and that information about the right of appeal the Department's determination was set out on the reverse of the certificate.

Explaining why he did not act sooner, V[redacted] stated:

> **...**I did not appeal initially because of my lack of knowledge of Mexican and U.S. laws, my state of health 3/ and my fear of the

3/ [redacted] submitted a declaration concerning the state of his health in the period 1970-1973 by a psychiatrist, Dr. [redacted] of [redacted]. The declaration which is dated August **16**, 1985 certified in pertinent part as follows:

> That in 1970 he treated Mr. R[redacted] V[redacted] M[redacted] for stress, after which his condition improved. Subsequently, this patient was treated for agitated reactive depression with physiological disturbances (pseudoasthma), for which he had to be admitted to a health facility for **15** days. His bronchial problems improved, but the symptoms of reactive depression continued. This was in tne last two weeks of

consequences for a property-holder and businessman in Mexico. With the passing of time I gave the case up as lost (in spite of the fact that the Appeals Procedure printed on the back of the C.L.N., makes no mention of a time limit) and was advised by Mexican lawyers that there was little hope for an appeal when Ipreviously /sic/ considered one. I finally began my appeai in 1984 when my children decided to apply for U.S. citizenship, and I saw that my family was becoming more American than Mexican. At the same time, my business interests had settled down, my knowledge of the status of U.S. citizens in Mexico had improved,...

3/ Cont'd.

August 1973, and he remained in this state during the months of September and October of that year.

With the clinical profile indicated above, it is common for individuals to make inappropriate decisions, inasmuch as their emotional state (low spirits) significantly affects their judgment. This considerable emotional change interferes with their mental capacity. Persons under the influence of this change may become *so* disturbed that they behave in an unsuitable manner (and may reach the extreme of suicide).

We find appellant's reasons legally insufficient to excuse his delay in appealing. He was on notice from the first that the Department had determined he expatriated himself and that he might avail himself of a procedure to appeal that determination. There is no evidence of record that [redacted] was prevented by any event or factor beyond his immediate control and which was to some extent unforseen from acting long before he did so to contest the loss of his nationality. If he was unfamiliar with applicable Mexican or United States law, he could have ascertained the facts by consulting counsel or inquiring at the United States Embassy. Nothing of record indicates that he was mentally or physically incapable of attending to his regular business affairs. Whatever the condition described by his doctor in note 3, supra, it must therefore be assumed that he was able to pursue an appeal had he really wished to do so. Particularly revealing is his admission that he was fearful for the consequences for his business interests in Mexico were he to have appealed before he did so. It clearly seems that he made a conscious decision not to appeal before 1984 because it might have been economically disadvantageous for him to have done so. In effect, he determined a time convenient for himself to take this appeal, something plainly not contemplated or allowed by the rule on reasonable time. See In re Roney, 139 F. 2d 175, 177 (7th Cir. 1943).

Not only has appellant failed to satisfy his burden of proving that he was justified in not appealing until eleven years after the Department determined he expatriated himself. But also there must be an end to litigation at some point. In this case where on its face the Department's determination appears to have been fairly reached, the interest in finality and stability of administrative determinations is entitled to great weight.

Appellant, however, submits that his honorable military service to the United States in wartime and the fact that his four children are United States citizens entitle him to special consideration and warrant restoration of his citizenship. The Board is sympathetic, but appellant's character or accomplishments, however praiseworthy, are not relevant to the determination of our jurisdiction.

In sum, there is no evidence that circumstances beyond appellant's control prevented him from taking a timely appeal. His explanation why he did not proceed long before he did so is unconvincing, and therefore insufficient to permit the Board to excuse a delay of nearly eleven years in taking this appeal. By any objective standard such a delay is not reasonable.

III

On consideration of the foregoing and the entire record before us, we are unable to conclude that the appeal was taken within a reasonable time after appellant had notice of the Department's holding of loss of his nationality, as prescribed by the regulations on limitations then in effect. Accordingly, we find the appeal time-barred and that the Board is without jurisdiction to entertain it. The appeal is dismissed.

Alan G. James, Chairman

J. Peter A. Bernhardt, Member

George Taft, Member