May 18, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J[redacted] E[redacted] B[redacted]-V[redacted]

This is an appeal from an administrative determination of the Department of State holding that appellant, J[redacted] E[redacted] B[redacted]-V[redacted], expatriated himself on January 5, 1973 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 Tijuana, Mexico. 1/

The Department made its determination of appellant's expatriation on February 13, 1973. An appeal therefrom was entered on October 28, 1986. A threshold question is presented: whether in the circumstances of this case the Board may hear and decide an appel taken

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1/ Section 349(a)(5), formerly section 349(a)(6), of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), reads as follows:

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Public Law 95-432, approved October 10, 1978, 92 Stat. 1046, repealed paragraph (5) of subsection 349(a) of the Immigration and Nationalitiy Act, and redesignated paragraph (6) of subsection 349(a) as paragraph (5).

Public Law 99-653, approved November 14, 1986, 100 Stat. 3655, amended subsection 349(a) by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by;".

over thirteen years after appellant performed and knew he performed a statutory expatriating act. For the reasons that follow, we find the appeal time-barred and accordingly dismiss it.

I

Appellant was born at [redacted] on [redacted], and so acquired United States nationality. Through his parents he derived Mexican nationality as well. He apparently never resided in the United States, but has lived all his life in Mexico.

On January 5, 1973, when appellant was nineteen years of age, he made a formal renunciation of his United States nationality at the United States Consulate General ("the Consulate") in Tijuana. The record shows that before making the oath he signed a statement of understanding in Spanish, setting forth inter alia that he had decided voluntarily to exercise his right to renounce United States citizenship; that upon renouncing his citizenship he would become an alien in relation to the United States; had been afforded an opportunity to make a separate written explanation of the reasons for renouncing his citizenship, but did not choose to do so; and that the extremely serious consequences of renunciation had been explained to him by the consular officer concerned, and that he fully understood those consequences. Appellant's execution of the statement of understanding and the oath of renunciation was attested by two witnesses - appellant's mother and sister.

In an affidavit executed July 9, 1986, appellant gave the following account of the circumstances surrounding his renunciation:

> I, [redacted], 32 years of age and with address in Tijuana, B.C., Mexico, Dental Surgeon, graduated from the Autonomous Univesity of Guadalajara, Mexico, would like to confess that I was forced to renounce my citizenship of the United States at the American Consulate in Tijuana, B.C. Mexico when I was 19 years old. Further I would like to state that:

> My father Mr. P[redacted] B[redacted] C[redacted] morally and with threats forced me to give up my American citizenship because it would be easier to educate myself without problematic legal entanglements.
>
> On the day before my father took me to the Consulate, I went by myself to the American Consulate to ask what would happen if I gave up my citizenship, and the secretary who received me asked if I had done my military service in Mexico and I answered yes, and she said that I had already given up my citizenship and that it would be best if I renounced my American citizenship. I have no witnesses to this because I went alone, but I did tell my father and sister. My father was *so* angry that he told me that he would take me to the Consulate the next day to sign my papers and for me not to open my mouth, and *so* we did go and very dutifully I renounced my citizenship. 2/

2/ Appellant's mother and sister executed affidavits on October 10, 1986 in which they corroborated appellant's statements about the circumstances of his renunciation. The mother's affidavit reads in part as follows:

> My son was forced by my husband Mr. **P**[redacted] **B**[redacted] **C**[redacted] to renounce his American citizenship, either by stubborness or for reason that only he knows, claiming that it was better for **J**[redacted] **E**[redacted] to renounce his citisenzhip [sic] *so* that he would not have any legal problems in Mexico.
>
> Mr. **P**[redacted] B[redacted] C[redacted] was during our married life **a** very dominating person with myself and the children and his was always the last word.

As required by law, the officer who administered the oath executed a certificate of loss of nationality in appellant's name on January 5, 1973. 3/ Therein she certified that he acquired the nationality of both the United States and Mexico at birth; that he made a Eormal renunciation of United States nationality; and thereby expatriated himself under the provisions of section 349(a)(6) now section 349(a)(5), of the Immigration and Nationa1ity Act. The consular officer forwarded the certificate to the Department under cover of a transmittal memorandum that merely recited that she was satisfied appellant was a United States citizen; she reported nothing about the circumstances surrounding his renunciation.

2/ Cont'd.

> Mr. P[redacted] B[redacted] C[redacted] was so imposing on our son that he would vilently [sic] beat him up and told him that he was going to take him to the consulate to renounce his American citizenship. My son went before his father would take him to ask information at the consulate about his rights in case of a renunciation. He came back very sad and told his father that they had told him that he had already lost his citizenship because he had given his military service while going to school, this got his father furios [sic] and scolded him for not asking him for permission to go to the consulate and the next day his father took him to sign his renounciation [sic] under threat that if he opened his mouth he would be sorry; this was how J[redacted] E[redacted] renounce [sic] to his citizeship.

The sister's affidavit is generally in the same vein.

3/ 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 Stte, 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 approved tie certificate of loss of nationality on February 13, 1973, and sent a copy of the approved certificate to the Consulate to forward to appellant. This the Consulate did by registered mail.

After renouncing his citizenship, appellant applied for a certificate of Mexican nationality in April 1973. Such a certificate was issued to him in February 1974, according to a diplomatic note sent by the Department of Foreign Relations to the United States Embassy. He pursued his studies in Yexico and graduated from the Autonomous University of Guadalajara. He is now a dental surgeon.

In October 1986, [redacted] gave notice of appeal from the Department's holding of loss of his nationality. He gave the following grounds for his appeal:

> FIRST - I have been subject to an adverse decision, not of my choice and desire;
>
> SECOND - I have been denied due process of law, the U.S. Consul at Tijuana, B.C., Mexico discriminated against me and did not allow me to enter the premises within the prescribed time.
>
> THIRD - I could not commit an act of expatriation due to my underage of 21, the age of maturity in relation to such acts of expatriation which generally continues to be the common law standard of 21 years.

II

Before proceeding, we must determine whether the Board has jurisdiction to hear and decide this appeal which was entered thirteen years after the Department approved the certificate of loss of nationality that was issued in this case Timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). If an appellant fails to comply with a condition precedent to the Board's going forward to determine the merits of his claim, i.e., does not bring the appeal within the applicable limitation and adduces no legally sufficient excuse therefor, the appeal must be dismissed for want of jurisdiction. See Costello v. United States, 365 U.S. 265 (1961).

In January 1973 when the Department approved the certificate of loss of nationality that was executed 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. 4/ Consistently with the Board's practice in cases similar to the one now before us, the standard of "reasonable time" will govern in this case, rather than the present limitation of one year after approval of the certificate of loss of nationality which became effective in November 1979. 5/

Thus, under the time limitation that we find controlling, appellant was required to initiate an appeal within a reasonable time after receipt of notice of the Department's holding of loss of nationality. If it be found that appellant failed to take an appeal within a reasonable time, the appeal would be time-barred and the Board would lack jurisdiction to consider and determine it.

4/ Section 50.60 of Title 22, Code of Federal Regulations, 22 CFR 50.60, 1967-1979, 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 he 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)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1), November 30, 1979, provides as follows:

> (b) Time limit on appeal. (1) 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 nationalitiy or a certificate of expatriation.

Whether an appeal was taken within a reasonable time depends upon the circumstances in a particular case. A reasonable time means reasonable under the circamstances. Courts have held that a reasonable time means as soon as circumstances permit and with such promptitude as the situation of the parties and the circumstances of the case allow. This does not mean, however, that a party will *be* allowed to appeal at a time of his or her own choosing. A protracted delay that is prejudicial to the opposing party is fatal. Seasonable time begins to run from the date an expatriate received the certificate of loss of nationality, not sometime later when 'it becomes convenient to appeal. Although the question of a reasonable time will vary with the Circumstances, it is clear that it is not determined by a party to suit his or her own purpose and convenience or when a party, for whatever reason, takes an appeal several years later after notice of his right to take an appeal. 6/ Limitations are designed to encourage the prompt ascertainment of legal rights and to afford protection against stale actions as a consequence of an unreasonable delay.

In acknowledging receipt of the appeal, the Chairman of the Board observed to appellant that:

6/ See Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931); In re Roney, 139 F.29 175 (7th Cir. 1943); Appeal of Sykes, 460 A.2d 749 (1961). See also Ashford v. Steuart. 657 F.2d 1053 (9th Cir. 1981):

> What constitutes reasonable time depends upon the facts of each case, taking into consideration the interest in finality, the reason for the 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, 1967-68 (10th Cir. 1980)..

657 F.2d at 1055.

> You lost your citizenship in **1973,** 13 years ago. The question thus arises whether the Board may assert jurisdiction over an appeal so long delayed. If we find that we lack jurisdiction, we will have no alternative but to dismiss your appeal without reaching the substantive issues presented. If you wish to pursue an appeal it is, therefore, very much in your interest to explain fully why you waited so long to come before the Board and to back up any statements you make with concrete evidence.

Appellant has not directly addressed the question of his long delay in contesting the Department's decision in his case. But in an affidavit executed **July** 9, 1986, he alleged that he made some efforts in that direction:

> After a few years I felt that I had done the wrong thing and went to the Consulate on several occasions to see what I could do, but they would not let [sic] talk to the Consul because at the citizenship department they would tell me I had nothing to do there.

The Board requested that the Department ascertain whether the Consulate held any information relevant to the foregoing claim of appellant. The Consulate records are silent on this aspect of the case.

Appellant's mother and sister suggest that appellant's delay **was** attributable to the refusal of appellant's father for many years to give him the certificate of loss of nationality and presumably the accompanying information about his right to appeal to this Board. In an affidavit executed October 10, 1986 appellant's sister declared:

> At the present time our parents are divorced and for the last nine years our father has not spoken to anyone of us, and that is the reason why we could not ask him for anything, until just lately, about six months ago when my brother asked for the papers from the Consulate and my father finally gave them to him.

Appellant's mother has stated substantially the same thing as his sister.

Even if appellant's father received but withheld from appellant the certificate of loss of nationality and appeal information until recently, such action is insufficient to excuse so long a delay in taking the appeal. [redacted] performed the most unambiguous of the enumerated statutory expatriating acts. He knew he had effectively surrendered his United States nationality. With that knowledge he should have acted sooner if loss of his United States nationality. was important to him. Perhaps he was cowed by his father from coming to the Board; we simply do not know, for appellant has not alleged and proved that he was so deterred.

In cases like this one where the ex-citizen alleges a parent coerced him into renouncing his citizenship, a long delay inevitably prejudices the Department in its effort to carry its burden of proof. How, after *so* many. years have passed, can the Department be expected to address the issue of coercion? It appears that the consular officer who administered the oath of renunciation to appellant is no longer in the Foreign Service; experience indicates that even if she were available, it is most unlikely that after so many years she would be able to collect clearly all the facts and circumstances surrounding appellant's renunciation.

Surveying the scanty record, we perceive no factor that constrained appellant from acting in timely fashion. The interest in finality is very strong here and must be served. We conclude that the appeal is time-barred and not properly before the Board.

III

Upon consideration of the foregoing, we hereby dismiss the appeal. Given our disposition of the case, we do not reach such substantive issues as may be presented.

Alan G. James, Chairman

Howard Meyers, Member

George Taft, Member