August 13, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M A G

This is an appeal to the Board of Appellate Review an administrative determination of the Department of State appellant, M A G, expatriated herself on A 22, 1953 under the provisions of section 349(a)(2) of Immigration and Nationality Act by making a formal declara of allegiance to Mexico. 1/

The Department determined in 1958 that appel expatriated herself. She initiated the appeal ne twenty-eight years later. No legally sufficient excuse ha been presented for appellant's long delay in appealing Department's decision, we find the appeal time-barred. Lac jurisdiction we dismiss it.

I

Ms. G was born on at thus acquiring United States citizenship. Since parents were citizens of Mexico, she also acquired Mex nationality at birth.

1/ Prior to November 1986, section 349(a)(2) of the Immigra and Nationality Act, 8 U.S.C. 1481(a)(2), read as follows:

Section 349. (a) From and after the effective dat this Act a person who is a national of the United States whe by birth or naturalization, shall lose his nationality by --

. . .

(2) taking an oath or making an affirmation or c formal declaration of allegiance to a foreign state political subdivision thereof;...

Public Law 99-953, November 14, 1986, 100 Stat. 3 amended subsection (a) of section 349 by inserting "volunta performing any of the following acts with the intentio relinquishing United States nationality:" after "shall lose nationality by;". It also amended paragraph (2) of sec 349(a) by inserting "after having attained the age of eigk years" "after "thereof".

Appellant states that she lived in San Francisco until she was 22 years old. At that time she made a trip to Mexico. "I arrived in Mexico on July 4, 1952," she informed the Board. "I met my husband the same day and we were engaged one month later."

The record shows that appellant signed an application for a certificate of Mexican nationality (CMN) on April 22, 1953. She explained the circumstances under which she made the application as follows:

> My future in-laws were very prominent people at the time especially politically wise. My father-in-law's brother was governor to the State of Guanajuato, later Attorney General and still later, runner up to the Presidency. Before I could marry into their family, I was pressured into giving up my United States Nationality. I never knew their true motive for this request. I gave into their demand, never dreaming I would regret it always. I admit I permitted them to dominate me in every way possible. I also confess I was naive and ignorant into believing I could trust their every move. Therefore, the only true reason for giving up my United States status was my youthful ignorance and a total insecurity in myself, since I had no inmediate [sic] family living with me at the time.

In the application appellant expressly renounced her United States nationality and all allegiance to the United States. She also declared submission and obedience to the laws and authorities of Mexico. A CMN was issued to appellant the same day.

Appellant was married in 1954 and was divorced in 1971.

It appears that in 1958 the United States Embassy at Mexico City learned (the record does not indicate from what source) that appellant had made a declaration of allegiance to Mexico and obtained a CMN. Presumably, the Embassy then investigated appellant's case; there is, however, no record of proceedings at the Embassy. In any event, on August 27, 1958,

as required by law, the Embassy executed a certificate of l of nationality (CLN) in appellant's name. 2/ There is no c of the CLN in the record, but a letter the Embassy sent appellant on October 14, 1958 informed her that: " Certificate of the Loss of the Nationality of the United Sta prepared in your case at this office on Aug. 27, 1958, has b approved by the Department of State. The Department directed that the enclosed copy be forwarded to you."

The Embassy's letter also informed appellant that she the right to appeal the Department's decision to the "Board Review of the Passport Office of the Department of State," explained the procedure to take an appeal. 3/

There is no record of further official dealing betw appellant and United States authorities until the summer of 1 when in July she applied at the Embassy in Mexico City foi passport. In response to the Embassy's inquiry, the Departm of Foreign Relations informed the Embassy in November 1985 t appellant made a declaration of allegiance to Mexico in 19 The Department enclosed a copy of her CMN application and CMN. Accordng to the informal notes of a consular offic after appellant had been informed of the report of Department of Foreign Relations, she visited the Embassy January 7, 1986 to discuss her case. At that time, completed questionnaires eliciting information upon which determination of her citizenship status could be made. 4/

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

Sec. 358. Whenever a diplomatic or consular officer the United States has reason to believe that a person while i foreign state has lost his United States nationality under provision of chapter 3 of this title, or under any provision chapter IV of the Nationality Act of 1940, as amended, he sh certify the facts upon which such belief is based to Department of State, in writing, under regulations prescribed the Secretary of State. If the report of the diplomatic consular officer is approved by the Secretary of State, a c of the certificate shall be forwarded to the Attorney Gener for his information, and the diplomatic or consular office which the report was made shall be directed to forward a copy the certificate to the person to whom it relates.

3/ The Board of Review on the Loss of Nationality of Passport Office ceased functioning in July 1967 when the Bo of Appellate Review was established.

4/ Apparently, the Embassy asked appellant to complete th questionnaires before it realized she had much earlier been subject of an approved certificate of loss of nationality.

In the questionnaires, appellant asserted that she made an oath of allegiance to Mexico "under pressure of my husband and father-in-law;" she did not know why they had insisted that she obtain a CMN. In reply to a question whether she knew she might lose her United States citizenship by performing the expatriating act in question, appellant gave the following answer:

> No, I did not think I would lose it, because I had no intention of taking an oath at the Embassy. The day I was called for my appointment [presumably at the Department of Foreign Relations], my husband and father-in-law insisted on accompanying me threatening me that if I didn't take the oath to lose my American citizenship, I would regret it always.

She denied that the aim of the renunciatory language in the CMN application was to cause the loss of her United States citizenship. "I was told that I had to be a Mexican citizen if I married here, among other things. I was ignorant of proceedings."

It appears that shortly after appellant's visit to the Embassy in January 1986, the Embassy discovered that she had been the subject of an approved certificate of loss of nationality in 1958, for on January 17, 1986 appellant wrote to the Board stating that a consular officer "suggested that I appeal my case before you." She contends that as a condition of marriage she was forced by her fiance's family to apply for a CMN and to renounce "my American nationality."

II

At the outset, we are confronted with the question of the timeliness of the appeal. If the appeal was not filed within the prescribed period of time, the Board would lack jurisdiction to consider the case, for the courts have consistently held that the taking of an appeal within the prescribed time limitation is mandatory and jurisdictional. 5/

Under existing regulations of the Department, the time limit for filing an appeal is one year after approval of the certificate of loss of nationality. 6/ The regulations require that an appeal filed after one year be denied unless the Board

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5/ See United States v. Robinson, 361 U.S. 220 (1960); Costello v. United States, 365 U.S. 265 (1961).

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

determines for good cause shown that the appeal could not been filed within one year after approval of the certificate.

In cases where an appeal is taken to the Board fr determination made by the Department prior to 1979, however is the practice of the Board to apply the limitation that wa effect prior to 1979. Under regulations in force prior to 1 a person who contends that the Department's administra holding of loss of nationality or expatriation in his cas contrary to law or fact shall be entitled, upon written req made within a reasonable time after receipt of notice of holding, to appeal to the Board of Appellate Review. 8/

It is generally recognized that a change in regulat shortening a limitation period, as existing regulat prescribe, operates prospectively, in the absence of expression of intent to the contrary. If **a** retrospective ef were given, an injustice might result or a right that validly acquired under former regulations might be distur In the circumstances, we consider that the limitation "reasonable time" should apply in this case.

Thus, a person, who contends that the Departme holding of loss of nationality is contrary to law or fact required to take an appeal from such holding within a reason time after receipt of notice of the holding. If the appea not initiated within a reasonable time, the appeal woul barred by the passage of time and the Board would hav alternative but to dismiss it for lack of jurisdiction. limitation of "within a reasonable time" is fundamental to Board's exercise of jurisdiction in this case. 9/

7/ Section 7.5(a) of Title 22, code of Federal Regulations CFR 7.5(a).

8/ Section 50.60 of Title 22, Code of Federal Regulati (1967-1979), **22** CFR 50.60.

9/ The Attorney General in an opinion rendered in citizenship case of Claude Cartier in 1973 stated:

> The Secretary of State did not confer upon the Board power ...to review actions taken long ago. 22 CFR 5C the jurisdictional basis of the Board, requ specifically that the appeal to the Board be made wi reasonable time after the receipt of a notice from State Department of an administrative holding of los nationality or expiration.

Office of Attorney General, Washington, D.C. File: Co-3 February 7, 1972.

The determination of what constitutes reasonable time depends on the facts and circumstances in a particiular case. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). Generally, reasonable time means reasonable under the circuimstances. It has been held to mean as soon as circumstances will permit, and with such promptitude as the situation of the parties and the circumstances of the case will allow. This does not mean, however, that a party may be allowed to determine "a time suitable to himself." In re Roney, 139 F.2d 175, 177 (5th Cir. 1943). What is a reasonable time also takes into account the reason for the delay, whether the delay is injurious to another party's interest, and the interest in the repose, stability, and finality of the prior decision. Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981). See also Lairsey v. Advance Abrasives Co., 542 F.2d 928, 940 (5th Cir. 1976), citing 11 Wright & Miller, Federal Practice and Procedure section 2866 228-229:

> '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.

In the case before us, appellant suggests that she did not appeal earlier for two main reasons. First, she contended in a letter to the Board dated February 25, 1986 that the letter the Embassy sent her in October 1958, enclosing the CLN that was approved in her name and advising her of appeal rights, "showed up not too long ago (some years too late) as all my important documents were kept in my husband's office and out of my reach." Second, she argues that she could not appeal earlier because after her divorce in 1971 "I was left with almost no financial security;" she "had neither the time nor opportunity to try to regain my American Nationality." Her children are now married. She is independent now and "I would like nothing more than to retrieve my American citizenship.

We must determine whether appellant's reasons for not appealing the Department's adverse decision in her case sooner are legally sufficient to excuse a delay of twenty-eight years. In our view, they are not.

As to appellant's intimation (and it is only that) that she was not aware of the Department's adverse determination until fairly recently, it is our opinion that the evidence presented to us is insufficient to support a contention that she was ignorant for many years that she expatriated herself. In the proceedings at the Embassy in 1985-1986 she indicated that she was aware in 1953 that renouncing United States citizenship in her application for a CMN could result in loss of her United States nationality. Her letter to the Board dated January 17, 1986 tends to support the foregoing reasoning:

> Before I could marry into his [her fiance family, I was pressured in different ways renounce my American Nationality....I was certai could have a dual citizenship, but I was told t according to Mexican laws, that was impossible.

Possibly appellant's ex-husband did withhold Embassy's letter until a few years ago. She has, howet submitted no evidence to substantiate such contention. It se to us that she had ample cause to believe she had probably l her United States nationality by making a declaration allegiance to Mexico. It was therefore incumbent upon her, she truly valued such citizenship, to act promptly to challe its loss.

With respect to appellant's second reason for not act sooner, we are of the view that if appellant was genuir concerned about her United States citizenship, she would h found an opportunity to inquire at the Embassy or write Department about what action she might take to recover Nothing that appellant has adduced suggests that she was improverished or borne down by family cares that she could at least make an inquiry about what she could do, Plainly, gave recovery of her United States nationality a low prior: She had every right to decide that other matters were r important to her, but under such circumstances, we see no except a self-imposed one to her availing herself of the app process in a timely manner. The rule on reasonaDle time c not permit a party to determine a time to appeal that convenient to him or herself. See In re Roney, supra at 177.

The essential purpose of a limitation on appeal is compel a party who considers him or herself aggrieved exercise the right of appeal while recollection of the eve surrounding the performance of an expatriatory act is fresh the minds of the parties. That is not the situation h Appellant has shown no requirement for an extended period time to prepare an appeal or any obstacle beyond her con. preventing her from appealing much sooner. Furtherm appellant's long delay in taking the appeal clearly w prejudice the Department in the presentation of its case, we to allow the appeal. Accordingly, we conclude that appel did not enter her appeal within a reasonable time after she be deemed to have notice that the Department determined expatriated herself.

III

Upon consideration of the foregoing, we conclude that the appeal is time-barred and not properly before the Board. It is accordingly hereby dismissed.

Alan G. James, Chairman

Gerald A. Rosen, Member

Frederick Smith, Jr., Member