October 1, 1987

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: A[redacted] E[redacted] D[redacted]

This case is before the Board of Appellate Review appeal by A[redacted] E[redacted] D[redacted] from an administrat determination of the Department of State that she expatria herself on October 4, 1967 under the provisions of sect 349(a)(6), now section 349(a)(5), of the Immigration Nationality Act by making a formal renunciation of her Uni States nationality before a consular officer of the Uni States at Nicosia, Cyprus. 1/

The Department of State determined in 1967 that appell expatriated herself. She entered an appeal from tl determination in 1986. The passage of so much time between Department's decision that appellant expatriated herself and appeal therefrom raises a threshold issue: whether the Bo may exercise jurisdiction to hear and decide an appeal so l delayed. This we may do only if we find that the appeal was

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1/ Section 349(a)(6) of the Immigration and Nationality Act, U.S.C. 1481(a)(6), read as follows:

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

. . .

(6) making a formal renunciation of nationality before a diplomatic or consular officer of the Unit States in a foreign state, in such form as may prescribed by the Secretary of State; ...

Public Law 95-432, approved October 10, 1978, 92 Sta 1046, repealed paragraph (5) of subsection 349(a) of t Immigration and Nationality Act, and redesignated paragraph (of subsection 349(a) as paragraph (5).

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

filed within the time prescribed by the applicable regulations. For the reasons that follow, we conclude that the appeal is untimely and accordingly dismiss it for want of jurisdiction.

I

Appellant acquired United States citizenship pursuant to section 1993 of the revised statutes of the United States by virtue of her birth on March 19, 1928 at Antwerp, Belgium of a United States citizen father. A report of her birth as a United States citizen was issued by the United States Consulate at Antwerp. According to appellant, she lived in Belgium until 1933 when her parents returned to the United States. She resided in Troy, New York until 1956, when she went to Cyprus as a tourist. Appellant renewed her U.S. passport in 1960 and 1963 at the Embassy there. Appellant states that she decided to remain in Cyprus, and, after obtaining a work permit, was employed by a pharmaceutical importing firm. She further states that she is a free-lance journalist and a published author.

In 1967 after hostilities had broken out between the Greek and Turkish communities, truck drivers were conscripted to form a transport corps in the Greek Cypriot National Guard, appellant states. Since she drove a truck for her employer, she was called up. She allegedly considered seeking an exemption, but concluded that "I should serve with my comrades." This decision ultimately led appellant to renounce her United States nationality, as she explained in an affidavit executed December 10, 1986.

> ...I have been brought up in the New York State Public School system, and my teachers had taught me that if an American citizen had borne arms for a foreign country he or she would no longer be entitled to U.S. citizenship and they were laying great emphasis on this point. I sincerely felt that I had no right, either legal or moral, to be an American citizen and that the loyal thing for me to do was to renounce my nationality. I did not want to do it. I just felt it was my duty to the United States to do it. I just felt that I ought to respect its laws.

According to the record the Department submitted to the Board, appellant contemplated renouncing her United States nationality in 1966. In a report sent to the Department after appellant renounced her citizenship, a consular officer stated that appellant wrote to the Embassy on September 29. 1966 to state that she wished to renounce her nationality. A consular officer replied, explaining the seriousness of her contemplated act, and suggested that she not act until she had had an opportunity to reflect on the consequences of renunciation.

The record also shows that one year later (October 19 appellant visited the Embassy and stated that after f consideration, she still wished to renounce her nationali The officer who administered the oath of renunciation infor the Department that prior to doing so he again explained serious consequences of renunciation to appellant. The rep added that she "simply stated she had resided in Cyprus for years, felt herself to be a Cypriot and wished to become Cypriot citizen. For rather unclear reasons, she said wished to rid herself of her American nationality bef applying for Cypriot citizenship."

On October 4, 1967, before a consular officer in United States Embassy, Nicosia, in the form prescribed by Secretary of State, appellant made the oath of renunciati stating in pertinent part that:

> That I desire to make a formal renunciation of American nationality, as provided by sect 349(a)(6) of the Immigration and Nationality and pursuant thereto I hereby absolutely entirely renounce my United States national together with all rights and privileges and duties of allegiance and fidelity thereu pertaining.

As required by law, 2/ the consular officer t executed a certificate of loss of nationality in appellan name, certifying that she acquired United States nationality virtue of her birth therein abroad of a United States citi father; that she made a formal renunciation of United Sta nationality; and thereby expatriated herself under provisions of section 349(a)(6) of the Immigration Nationality Act. The Department approved the certificate October 17, 1967, approval constituting an administrative

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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.

determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. Appellant's act left her stateless. In 1975 she obtained naturalization as a citizen of Cyprus.

In June 1986, appellant visited the United States Embassy at Nicosia. According to the Embassy, she stated that she had voluntarily relinquished her United States nationality in 1967, but claimed to have no documentation regarding the matter. The Embassy asked the Department to review its records and inform the Embassy of appellant's citizenship status. The Department replied that appellant was found to have expatriated herself in 1967 under then-section 349(a)(6) of the Immigration and Nationality Act. In August 1986 appellant gave notice of appeal from the Department's 1967 determination of loss of her nationality. She retained counsel who filed a brief in support of the appeal in December 1986 in which he argued that his client's renunciation was neither voluntary nor performed with the intention of relinquishing United States nationality.

Oral argument was heard on August 26, 1987, appellant appearing pro se.

II

A threshold issue is presented here: whether the Board may entertain an appeal entered nineteen years after the Department of State determined that appellant lost her United States nationality. The passage of *so* many years might, of itself, warrant dismissal of the appeal as untimely. Nonetheless, we are prepared to consider whether there are any extenuating circumstances that would warrant our entertaining the appeal.

The Board's jurisdiction is dependent upon a finding that the appeal was filed within the limitation prescribed by the applicable regulations. This is so because timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). Thus, if an appellant, providing no legally sufficient excuse, fails to take an appeal within the prescribed limitation, the appeal must be dismissed for want of jurisdiction. See Costello v. United States, 365 U.S. 265 (1961).

In October 1967 when the Department determined that appellant expatriated herself, the limitation on appeal to the Board of Appellate Review was "within a reasonable time" after the adversely affected person received notice of the

Department's determination of loss of citizenship. 3/

Consistently with the Board's practice in cases where the determination of loss of nationality was made prior to November 30, 1979 (the effective date of the present regulations we will apply the norm of reasonable time in this case.

What is reasonable time depends on the facts of each case, taking into account a number of considerations: the interest in finality, the reason for the delay, and prejudice to other parties. Ashford V. Steuart, 657 F.2d 1053, 1055 (9th Cir. 198 See also Lairsey V. Advance Abrasives Co., 542 F.2d 928, 940 (5 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.

Appellant maintains that on the specific facts in her case her appeal should be considered timely. First, she was told by the consular officer after he administered the oath of renunciation to her that her renunciation was "irrevocable." That statement, counsel for appellant submits, is one "exclusive of any notion of appeal."

Counsel continues:

> The only reasonable conclusion to be drawn from the notion of "irrevocability" conveyed to Ms. [redacted] by the consul, was that there was nothing she could

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3/ Section 50.60 of Title 22, Code of Federal Regulations, 22 CFR 50.60 (1966). These regulations were promulgated in 1966 for the predecessor of the Board of Appellate Review, the Board of Review on the Loss of Nationality of the Passport Office. The Board of Review on the Loss of Nationality ceased functionin in July 1967 when the Board of Appellate Review was established.

On November 29, 1967 federal regulations governing the Board of Appellate Review were promulgated. The limitation on appeal of the 1966 regulations was incorporated into the 1967 regulatio 22 CFR 50.60 (1967-1979).

4/ The present federal regulations promulgated on November 30, 1979, prescribe a limitation of one year after approval of a certificate of loss of nationality. 22 CFR 7.5(b)(1).

> do thereafter, either by way of appeal or otherwise to reverse the loss of nationality. It was only reasonable that Ms. [redacted] should resign herself to this and live for so many years with the belief that she had no remedy.

Second, appellant alleges she was never told that she had the right to appeal. According to appellant, she only learned in 1986 that there was a possiblity her case might be reviewed when she discussed the matter with a friend, the defense attache of the United States Embassy in Nicosia. Appellant acknowledges through counsel that in 1967 Departmental guidelines required that consular officers inform an expatriate in writing of the right of appeal at the time the certificate of loss of nationality was sent to him or her. In appellant's case, however, no such information was given her by the Embassy, either orally or in writing, she asserts. Through counsel she concedes that the right of appeal is not contemplated by due process, but submits that "the omission to inform is a very material consideration...on the question of whether the right has been exercised within reasonable time. Ex hypothesi only time after one has had knowledge of the right can be taken into account" in determining whether a delay was or was not reasonable.

Appellant's excuses for not appealing sooner are essentially two sides of the same coin: She remained passive (a) because she was not informed she had a right to appeal and (b) because she was led to believe that even if in some circumstances an expatriate might have recourse, she did not, renunciation being an act that is beyond recall.

With respect to appellant's contention that she was never informed she might take an appeal, we noted above that the Department's internal instructions in force in 1967 required that consular officers inform an expatriate of the right to seek appellate review of his or her case. In the absence of evidence to the contrary, it may therefore be presumed that an official of the Embassy sent appellant information about how to take an appeal when the certificate of loss of nationality was sent to her. See Boissonnas v. Acheson, 101 F.Supp. 138 (S.D.N.Y. 1951). (Public officials are presumed to execute their official duties faithfully and correctly, absent evidence to the contrary.) Twenty years later, however, there is no apparent way to confirm appellant's contention that she received no information about appeals. Nonetheless, let us assume, arguendo, that the consular officer complied with the Department's guidelines, but that appellant did not receive

information about making an appeal. Would that fact, if pro warrant our allowing the appeal? In our judgment, it would n

First, due process does not contemplate the right appeal. District of Columbia v. Calwans, 300 U.S. 617 (19 Second, in 1967 the Department's instructions regarding ad about making appeals did not have the force of law. (Pre federal regulations, promulgated in 1979, do have the force law and provide that an expatriate must be informed of the r to take an appeal within one year after approval of certificate of loss of nationality. Section 50.52, Title Code of Federal Regulations, 22 CFR 50.52). Fairness, of co would dictate that appellant be informed of the right appeal. But it would be frivolous to accept that appellant, alleges she believed her renunciation was flawed, was justi in sitting passively for nearly twenty years, making not inquiry about what recourse she might have. Plainly, she hi modicum of responsibility to act, even if she was never g appeal information. In our view, she may not shelter behin ostensibly sincere but unproved allegation that before 198 American official told her her case might be revie Appellant concedes that she received a copy of the certifi of loss of nationality that was approved in her name. performed an unambiguous act of expatriation. So she had fa which should have led her to make inquiries about poss relief, assuming, of course, she really wanted to overturn Department's decision. Furthermore, information about how might seek relief could be obtained simply by walking into United States Embassy at Nicosia. It is settled that the will impute knowledge where opportunity and interest cou with reasonable care would necessarily impart it. United Sta v. Shelby Iron Co., 273 U.S. 571 (1926); Nettles v. Childs, F.2d 952 (4th Cir. 1939). Knowledge of facts putting a per of ordinary knowledge on inquiry notice is the equivalent actual knowledge, and if one has sufficient information to 1 him to a fact, he is deemed to be conversant therewith laches is chargeable to him if he fails to use the facts putt him on notice. McDonald v. Robertson, 104 F.2d 945 (6th C 1939).

Appellant did nothing until 1986 to ascertain how might contest the Department's decision that she expatria herself. When asked whether she ever returned to the Embassy ask for assistance she replied: "No. I would have liked to I had this feeling that I had cut myself off from the Uni States. It was a matter of great mental anguish to me, bu had this feeling that it was just something that was possible." 5/ To this statement one can simply say that

5/ Transcript of Hearing in the Matter of A [redacted] E [redacted] D [redacted] before the Board of Appellate Review, Department of State, August 26, 1987 (hereafter referred to as "TR"). 23, 24.

appellant's unwillingness to overcome her reticence to deal with the Embassy, until she finally met an official in whom she believed she could confide, is an insufficient reason not to pursue every avenue to find out how she might recover her United States citizenship.

We turn to appellant's allegation that she believed for many years her renunciation was irrevocable. We accept that the consular officer who administered the oath of renunciation to appellant said her act was irrevocable. Indeed, he was required to make clear to appellant that she might not renounce her citizenship one day then later recover it simply by recanting. We have no way of knowing whether the consular officer also intended to convey to appellant that she had no right of appeal, but we cannot believe that was his purpose. As a matter of fact a right of appeal existed in 1967, and, as we have stated, appellant could have so ascertained had she exercised reasonable diligence. From the record, it seems clear that in 1967 appellant intended to terminate her United States citizenship, whatever she may now say to the contrary. Assume, however, that after a reasonable period of reflection she believed her renunciation was flawed. Is it credible that a mature, evidently competent and self-reliant person who regretted the loss of her citizenship would feel herself barred from pursuing the matter simply because a consular officer said that formal renunciation of United States nationality is irrevocable? She was asked at the hearing whether it had not occurred to her to find someone to talk with at the Embassy, if not the consular officer who administered the oath of renunciation (she seems to have considered that he handled her case frivolously), then someone else. She replied: "NO, sir, it did not occur to me not to take the word of a State Deprtment official. I took Mr. Peck's word.' 6/ She indicated that not until she met the Embassy's defense attache did she find any American official with whom she felt she could confide. 7/ Such deference to the opinion of a junior official (Nicosia—was his second overseas posting) seems to us strange. We can only assume, as the Department put it in its brief, that: "Her reasons [for renouncing] satisfied her for a time and now there has been a change of heart."

Not only do we find appellant's failure to take any action for nearly twenty years inadequately justified, but we are also of the view that if we were to allow the appeal the Department would be prejudiced in bearing its burden of proof. The Department's agent in this matter, the consular officer who

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6/ TR 32.

7/ Id.

I 2/

Appellant acquired United States citizenship by birth Brownsville, Texas on October 4, 1924. Since her parents w Mexican citizens, she acquired the nationality of that state birth as well. When appellant was ten years old her pare took her to Mexico and there she has since resided. She mar Eduardo Turnbull, a Mexican citizen, in 1947. Twelve ye later on October 27, 1959 appellant applied for a certificate Mexican nationality (CMN). Many years later she recounted reasons for making the application and the circumstances ur which she did so:

> ...First, my husband was putting a lot of press on me to do *so.* Second, my husband and I w wanting to take my daughter to Europe for birthday. But I needed a passport immediately order to leave. I had never obtained a Uni States passport. My husband strongly encouraged to get a Mexican passport because it would quicker and easier than getting a United Sta passport. I went to see a lawyer about gettin Mexican passport. In order to get the Mexi passport he had me sign a lot of papers. I ne read the papers. I just signed them where he t me to sign. The lawyer never explained to me t I was signing documents that might take away United States citizenship. By signing the pape I realized that I was applying for a Mexi passport and acknowledging my Mexican citizensh but I never intended to relinquish my United Sta citizenship....I signed the papers simply becaus wanted to obtain a Mexican passport. Also husband pressured me to get a certific reflecting my Mexican citizenship so that it wo make some of his financial transactions easier.

2/ The Department informed the Board that it could not *loci* its record of appellant's case. The record upon which the Boa decided the case consists of documents submitted by appellant counsel and by the Immigration and Naturalization Service; t latter agency furnished a copy of the key document, the appro certificate of loss of nationality that was executed appellant's name.

3/ Appellant's affidavit of uncertain date in August 198 purportedly executed in connection with her application for U.S. passport dated August 13, 1986.

According to the certificate of Mexican nationality that was subsequently issued to appellant, she declared in the application adherence and obedience to the Government of Mexico and renounced any rights of United States nationality. A certificate of Mexican nationality was issued in appellant's name on February 1, 1960.

On September 7, 1960 appellant communicated with the Department of Foreign Relations stating that in order to obtain a United States visa she was required to present a document attesting that she had renounced her United States citizenship which she acquired at birth in Texas. The next day the Department of Foreign Relations issued appellant such a statement, 4/. It seems that appellant presented the statement of the Department of Foreign Relations to the visa section of the Embassy in September 1960 and that the latter office referred it to the citizenship section; the fact that she had performed an expatriating act thus was brought to light. On September 8th appellant also executed an affidavit of expatriated person at the Embassy in which she acknowledged that she made a declaration of allegiance to Mexico in connection with her application for a CMN, and that she had done so freely and voluntarily, and that no 'influence, compulsion, force or duress' had been exerted on her. On September 12,

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4/ It is not apparent why appellant requested a statement from the Department of Foreign Relations with respect to renunciation of her United States citizenship, since, as noted above, a CMN stating that fact had been issued in her name some months before. Possibly, although dated February 1, 1960, the certificate had not yet been prepared and mailed to her; this is, however, only speculation.

1960 a consular officer executed a certificate of loss nationality in appellant's name, as required by law. 5/ officer certified that appellant acquired United St citizenship by virtue of her birth therein; that she ma formal declaration of allegiance to Mexico; and the expatriated herself under the provisions of section 349(a)(2 the Immigration and Nationality Act. The Department appr the certificate on February 17, 1961. The is no record of further official business between appellant and United St authorities until 1986 when on August 13 appellant app for a United States passport. Her application was denied on grounds of non-citizenship in November 1986. Counsel appellant entered an appeal on her behalf on March 18, 1987.

II

A tnreshold issue is presented here: whether the E may entertain an appeal entered twenty-seven years after Department of State determined that appellant expatri herself. The passage of so many years might, of itself, war dismissal of the appeal as untimely. Nonetheless, we prepared to consider whether there might be extenua circumstances that would warrant our entertaining the appeal.

The Board's jurisdiction is dependent upon a finding the appeal was filed within the limitation prescribed by applicable regulations. This is so because timely filin mandatory and jurisdictional. United States v. Robinson, U.S. 220 (1960). Thus, if an appellant, providing no leg sufficient excuse, fails to take an appeal within the prescr limitation, the appeal must be dismissed for want jurisdiction. See Costello v. United States, 365 U.S. (1961).

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

Sec. 358. Whenever a diplomatic or consular office] the United States has reason to believe that a person while foreign state has lost his United States nationality under provision of chapter 3 of this title, or under any provisio chapter IV of the Nationality Act of 1940, as amended, he s certify the facts upon which such belief is based to Department of State, in writing, under regulations prescribe the Secretary of State. If the report of the diplomatic consular officer is approved by the Secretary of State, a of the certificate shall be forwarded to the Attorney Gene 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.

Under current federal regulations (promulgated in 1979), the time limitation for filing an appeal from an administrative determination of loss of nationality is one year after approval of the certificate of loss of nationality. 6/ The regulations further provide that an appeal filed after the-time limit shall be denied unless the Board for good cause shown determines that the appeal could not have been filed within the prescribed time.

In 1961 when the Department of State approved the certificate of loss of nationality that was issued in this case, the Board of Appellate Review did not exist. There was then a Board of Review on the Loss of Nationality in the Passport Divsion whose internal rules and procedures did not prescribe a time limit on appeal. 7/ In the absence of a specified limitation on appeal, it is generally recognized that the common law rule of "reasonable time" governs. Therefore the limitation applicable to appeals brought to the Board of Review on the Loss of Nationality was within a reasonable time after receipt of notice of the Department's holding of loss of nationality. In conformity with the Board's practice in cases where the certificate of loss of nationality was approved prior to 1979, we will apply the limitation of "reasonable time" to the appeal now before us.

6/ Section 7.5(b) of Title 22, Code of Federal Regulations, 22 CFR 7.5 (b) (1987).

7/ Unpublished Circular, Passport Office, Department of State, October 29, 1958.

On October 30, 1966, regulations were promulgated for the Board of Review on the Loss of Nationality prescribing that an appeal was required to be made within a reasonable time after receipt of notice of loss of nationality. Section 50.60, Title 22, code of Federal Regulations, 22 CFR 50.60, 31 Fed. Reg. 13539 (1966). In 1967 this "reasonable time" limitation was incorporated in the Department's regulations for the then newly established Board of Appellate Review. The relevant section read 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 reasonabletime after receipt of notice of such holding, to appeal to the Board of Appellate Review. Section 50.60, Title 22, Code of Federal Regulations (1967-1979), 22 CFR 50.60.

Thus, under the time limitation governing in the ins case, if we conclude that appellant did not initiate her ap within a reasonable time, the appeal would be time barred the Board would lack authority to entertain it.

The question whether an appeal is taken within reasonable time depends upon the circumstances in individual case. Generally, reasonable time means reason under the circumstances. Chesapeake and Ohio Railway v. Mar 283 U.S. 209 (1931). Courts take into account a number considerations in determining whether the facts of a partic case indicate that the affected party moved within a reason, time including the interest in finality, the reason for de tne practical ability of the litigant to learn earlier of grounds relied upon, and prejudice to the other party. Ash v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981). See Security Mutual Casualty Co. v. Century Casualty Co., 621 1062, 1067-68 (10th Cir. 1980); and Lairsey v. Advance Abras Co., 542 F.2d 928, 930-31 (5th Cir. 1976). 8/

The rationale for giving a reasonable time to appeal adverse decision is to allow an appellant sufficient time u receipt of such decision to assert his or her contentions t the decision is contrary to law or fact, and to compel appel to take such action within a reasonable time so as to prot the adverse party against a belated appeal that could r easily have been resolved when the recollection of events u which the appeal is based is fresh in the minds of the part involved. Unreasonable lapses of time cloud a perso recollection of events and also make it difficult for the tr of fact to determine the case, particularly where the record incomplete or lost or obscured by the passage of time. Furth it should be noted that the period of a reasonable time beg to run with the receipt of notice of the Department's hold of loss of nationality, and not at some subsequent time, ye later when an appellant, for whatever reason, may seek to regain re-establish his or her United States citizenship status.

8/ In Lairsey v. Advance Abrasives Co., the court quoted Wright & Miller, Federal Practice & Procedure, section 2866 228-229:

> 'What constitutes reasonable time must of necess depend upon the facts in each individual case The courts consider whether the party opposing motion has been prejudiced by the delay in seek relief and they consider whether the moving pa had some good reason for his failure to t appropriate action sooner.

542 F.2d at 930-31.

Appellant, through counsel, declares that the Board should find her appeal timely, She did not appeal earlier, she asserts, because she was not aware of the legal significance of the documents she signed to obtain a certificate of Mexican nationality; and because she was never informed of the right of appeal. Futhermore, appellant argues, even if she had known of the right of appeal and appealed in 1961, she would have been unsuccessful, for it was not until 1967 in Afroyim v. Rusk, 387 U.S. 253 (1967) that the Supreme Court declared that the government must prove the intent of the citizen to relinquish citizenship.

We find the reasons appellant gives for her delay unpersuasive.

First, the record does not bear out appellant on her contention that she did not understand the legal significance of the application she made for a certificate of Mexican nationality (CMN). Although there is no independent confirmation of her assertion, we will accept that appellant consulted an attorney in 1960 about obtaining a Mexican passport and that he may not have explained to her that by signing an application for a CMN she would jeopardize her United States citizenship. But her subsequent actions indicate that after she was issued a CMN she clearly understood the legal import of what she had done. Note that a few months after she had been issued a CMN, she asked the Department of Foreign Relations for a document attesting that she renounced "my American nationality" so that she might be issued a visa by the United States Embassy. Furthermore, the day she received the attestation from the Department of Foreign Relations she appeared at the United States Embassy where she signed a document stating that she had made an oath of allegiance to Mexico and had done so voluntarily.

Second, the record does not indicate whether a copy of the approved certificate of loss of appellant's nationality was forwarded to her and whether she received it; or whether, in conformity with standing departmental guidelines, 8 Foreign Affairs Manual 224.21(a), "Advice on Making of Appeals," 9/ the Embassy informed appellant in writing of her right to take an appeal to the Board of Review on the Loss of Nationality.

9/ These guidelines did not have the force of law. There was no legal requirement to inform an expatriate of the right of appeal until the promulgation of the current regulations on November 30, 1979. Section 50.52, Title 22, Code of Federal Regulations, 22 CFR 50.52.

However, in the absence of contrary evidence (appel has presented none), it may be presumed that an official of Embassy sent appellant a copy of the approved certificat loss of her nationality and informed her of the right of app for there is a well-settled presumption that public offic execute their assigned duties faithfully and accurately, ab evidence to the contrary. Boissonnas v. Acheson, 101 F.S 138 (S.D.N.Y. 1951.) So many years have passed, however, it is now virtually impossible to determine whether appel received the certificate of loss of nationality and informa about making an appeal. But even if it did not reach her, fact would not constitute denial of due process. Due pro does not contemplate the right of appeal. District of Colu v. Calwans, 300 U.S. 617 (1936). While a statutory revie important and must be exercised without discrimination, su review is not a requirement of due process. National Unio Cooks and Stewards v. Arnold, 348 U.S. 37 (1954).

A right of appeal existed in 1961. That appellant not have been informed of the right cannot be determinativ the issue of timely filing. The cases make clear that in circumstances she found herself appellant had responsibility to take some initiative to get the facts a possible recourse, As we pointed out above, appellant kne the very least that she had put her citizenship in peril. therefore had facts which should have led her to appropriate inquiries. It is well established that what puts, or should put, a party upon inquiry is sufficient no of a right of redress where the means of ascertaining existence of such redress is at hand. The law imputes knowl where opportunity and interest coupled with reasonable would necessarily impart it. United States v. Shelby Iron 273 U.S. 571 (1926); Nettles v. Childs, 100 F.2d 952 (4th 1939). Knowledge of facts putting a person of ordi knowledge on inquiry notice is the equivalent of ac knowledge, and if one has sufficient information to lead hi a fact, he is deemed to be conversant therewith and laches chargeable to him if he fails to use the facts putting hi notice. McDonald v. Robertson, 104 F.2d 945 (6th Cir. 1939).

Appellant did nothing for twenty-six years to chall the decision of the Department that she expatriated herself. perceive in the record no obstacle to her moving much earl save her own passivity - arguably, indifference to loss of United States citizenship. Had she been so moved, she c have inquired at the Embassy in Mexico City whether any reco was open to her. Access to official information was readil hand.

Finally, we cannot agree with appellant that her dela excusable because an adverse decision was rendered in her before the decision of the Supreme Court in Afroyim v. R

supra, and thus if she had appealed in 1961 her case would have been without legal merit.

In January 1969, the Attorney General issued a statement of interpretation of Afroyim. He noted that the rule laid down in Afroyim is that a United States citizen has a constitutional right to remain a United States citizen "unless he voluntarily relinquishes that right." Therefore loss of citizenship can only result if the citizen voluntarily relinquishes that citizenship by conduct that manifests an intention to abandon allegiance to the United States. Afroyim leaves it open to the citizen, the Attorney General said, to raise the issue of his intent when he performed a statutory expatriating act. 42 Op. Atty. Gen. 397 (1969). In the spring of 1969 the Department of State sent instructions to all diplomatic and consular posts regarding the processing of potential loss of nationality cases in light of Afroyim. 10/ With respect to cases in which an adverse determination of citizenship had been made prior to the Supreme Court's decision in Afroyim, the Department's instructions read as follows:

> 4. Reconsideration of Previous Adverse Determinations
>
> Initiation of reconsideration of previous determinations of loss of nationality may be made by the person against whom the previous determination was made or any person claiming United States citizenship through him by filing the FS-176 form as noted above. It is not considered feasible to give individual notice to each person who is recorded at each post as the subject of a prior determination of loss of nationality. In view of the enormous number of cases that are involved, the only practical means of informing the potential citizenship claimants is through extensive public notice.

All posts were given the following instructions regarding dissemination of the circular instruction:

10/ Circular Airgram to all Diplomatic and Consular Posts, CA-2855, May 16, 1969.

5. PUBLICITY

Each post is requested to give the most exte publicity to this instruction appropriate for consular district. Publicity should be give newspapers or other mass media unless publication is not possible or politically fea for a particular country or consular district. substance of the public statement in whatever it is given should be as follows:

'A recent Statement of Interpretation of Attorney General of the United States may resu the reversal of many previous determination loss of United States citizenship. Any person was the subject of such a determination or person who may have a claim to United St citizenship through such person should commun with this office.'

We may reasonably assume that the United St representatives in Mexico executed the foregoing direc promptly and conscientiously. Constructive notice may there be imputed to appellant that she might request that her cas reopened. That she may not have read or learned about Department's advice to persons who were the subject of adv determinations of nationality prior to **1967** does not excuse from not seeking redress at least in **1969** or a reasonable thereafter from the Department's **1961** adverse decision in case. Accordingly, she may not be heard to claim that she justified in not appealing earlier since, with reason diligence, she could have ascertained long before then that might have grounds to have her case reopened.

To allow the appeal plainly would prejudice Department's ability to undertake its burden of proof. appears that the consular officer who processed appellant's is no longer in the Service. Even if she were available to evidence, it is highly doubtful that she would be able, at distance from **1960/1961,** to remember any of the circumstance: appellant's case. The Department's ability to gather evid to supplement the sparse record in this case would therefore severely limited.

No legally sufficient excuse having been presented appellant and the potential prejudice to the Department being obvious, the interest in repose, finality and stability must served in this case.

III

Upon consideration of the foregoing, 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 her United States citizenship. As a consequence, we find that the appeal is time barred and that the Board is without authority to consider the case. The appeal is hereby dismissed.

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

Alan G. James, Chairman

Warren E. Hewitt, Member

George Taft, Member