January 22, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D[redacted] A[redacted] V[redacted] P[redacted]

This is an appeal from an administrative determination of the Department of State, dated December 10, 1971, that appellant, D[redacted] A[redacted] V[redacted] [redacted] himself on November 24, 1971 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 Mexicali, Mexico. 1/

The initial issue to be decided here is whether the appeal may be considered timely filed. For the reasons that follow, it is our conclusion that the appeal is time-barred. It is therefore dismissed for want of jurisdiction.

1/ Section 349(a)(6) of the Immigration and Nationality Act, 8 U.S.C. 1481, read 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 --
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> . . .
>
> (6) 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; . . .

Pub. L. 95-432, 92 Stat. 1046 (19781, repealed paragraph (5) of subsection 349(a) of the Immigration and Nationality Act, and redesignated paragraph (6) of subsection 349(a) as paragraph (5).

Pub. L. 99-653, 100 Stat. 3655 (November 14, 1986), 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;".

I

Appellant was born on [redacted], and thus acquired United States nationality. As his father was a Mexican citizen, he acquired Mexican nationality as well. His mother is a U.S. citizen.

According to appellant, his father was "a very important government figure" in the Mexican state of Baja California. It was embarrassing and potentially detrimental to his father's career for his son to hold foreign nationality, appellant wrote the Board. After appellant's 17th birthday, his father reportedly began to express the wish that appellant acquire Mexican citizenship. (Presumbably appellant means that his father wanted him to be solely a Mexican national, for clearly appellant enjoyed dual nationality.) The father was adamant that his son relinquish United States nationality, despite his son's professed preference for an American way of life, appellant stated.

Appellant formally renounced his United States nationality at the Consulate in Mexicali on November 24, 1971. In his initial submission to the Board he described that event as follows:

> 5 days after my 18th. birthday my father took me to the U.S. consulate where the consular officer greeted us and immediately led us to his office. [In the same submission appellant alleged that his father and the consular officer who handled his case were very good friends "so a lot of 'red tape' and/or standard formalities were excluded from the renunciation procedures."] There he handed me some papers to sign and before I began to read them, my father told me to just sign where indicated and hand them in.
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> After brief conversation between my father and the consular officer, we left. The whole thing lasted about 5 minutes. There was no oath taken, no warnings of the implications of the renunciation, no brienfing [sic] as to how it could affect me in the future, no time given to me to read what I should or should not sign, no time to ponder my decision. 2/

2/ After the appeal was filed, the Department informed the Board that it was unable to locate its file relating to

Although the Department's file on appellant's case was not presented to the Board because it could not be located (see note 2, supra), we have no reason to doubt that the consular officer concerned duly executed a certificate of loss of nationality, as required by law, certifying the facts relating to appellant's acquisition of United States nationality and his formal renunciation thereof. 3/ The Department approved the certificate on December 10, 1971, 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. Presuming, as we may also do, that the Department followed established procedure, it sent a copy of the approved certificate to the Consulate at Mexicali to forward to appellant.

The next recorded event in this case is appellant's application for a United States passport at El Centro, California on August 29, 1986. On September 25, 1986 the Passport Agency at Los Angeles sent him a communication stating that it had learned he might have expatriated himself, and that it would be helpful in determining his citizenship status if he would complete the enclosed citizenship questionnaire.

2/ Cont'd.

appellant's citizenship case. It confirmed on January 11, 1988 that after nine months of searching it was still unable to locate the case record. No official record of the renunciation proceedings therefore was available to the Board. The fact that appellant made a formal renunciation of his United States nationality and is the subject of an approved certificate of loss of nationality is documented by a letter to appellant from the Los Angeles Passport Agenzy, dated March 27, 1987, denying his application for a passport on the grounds that he expatriated himself by renouncing his citizenship.

3/ Section 358 of the Immigration and Nationality Act, 8 U.S.C. 1501, prescribes that:

> 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

Appellant alleges that he promptly completed the form and returned it to the Passport Agency. On March 27, 1987 the Passport Agency wrote to appellant to inform him that since the Department determined in 1971 that he expatriated himself under the provisions of section 349(a)(6) of the Immigration and Nationality Act, he was no longer a United States citizen and thus ineligible to receive a passport. If he believed that the Department's holding of loss of his nationality was incorrect, the letter stated, he might wish to communicate with the Board of Appellate Review. "You should be aware," the Passport Agency's letter continued, "that the Board will consider your appeal only if it is filed within the time prescribed by the Board's regulations."

On April 27, 1987 appellant entered this appeal pro se. He submits that he was not properly informed of the ramifications of renunciation of his citizenship and accordingly that his renunciation was invalid. He also argues that his renunciation was involuntary because it was coerced by his father. 4/

3/ Cont'd.

> 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.

4/ Appellant's mother submitted a declaration in support of her son's appeal which reads in part as follows:

> ...Since D[redacted] was our only male offspring and therefore the only one to carry on the family name, my husband wanted him to follow in his footsteps as well as his father before him and fullfill (sic) his destiny as a Mexican. My husband disliked intensely the american culture and traditions I bestowed upon our children,...He never lost a chance to point out to our son that his life and future were in Mexico and that he shouldn't be ungrateful or selfish and respect his father's wishes which were that he become a Mexican. He also pointed out to him constantly that it was embarrasing [sic] and detrimental to his career to be a Mexican government official with a high

II

A threshold issue is presented here: whether the Board may entertain an appeal entered more than fifteen years after the Department of State determined that appellant lost his 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 anv extenuating circumstances her? that might warrant our allowing 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 December 1971 when the Department determined that appellant expatriated himself, the limitation on appeal to the Board of Appellate Review was "within a reasonable time" after the affected person received notice of the Department's

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4/ Cont'd.

> political visibility and have his family be U.S. nationality, furthermore Mexico being a male-oriented society, it wasn't so bad for my daughter or myself but having a son, the proverbial chip of the old block, of a foreign nationality was to [sic] much for my husband to endure.
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> So upon my son's 18th. birthday, he truly felt an obligation, sentimental or maybe guilt-ridden since my husband had given him everything a son could ever ask or hope for from a father, to respect my husband's wishes. I was not present when the renunciation took place, but from what my son told me, it all seemed very irregular.

determination of loss of citizenship. 5/ Consistently with the Board's practice in cases where the certificate of loss of nationality was approved prior to the effective date of the present regulations (November 30, 1979), the norm of "reasonable time" will be applicable in the case before us.

Whether an appeal has been taken within a reasonable time depends upon the circumstances of the case. "Reasonable time" means reasonable under the circumstances. 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 circmstances of the case allow. Reasonable time begins to run from tne 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. A protracted delay that is prejudicial to the opposing party is fatal. 6/ Limitatians on appeal are designed to encourage the prompt ascertainment of legal rights and to afford protection to the opposing party (here the Department of State) against stale actions as a consequence of an unreasonable delay.

Had he been aware, appellant informed the Board, that he had lost his United States citizenship, he would have appealed earlier. He did not think he had lost his citizenship and had only learned that he had done so when his application for a passport was denied in 1987. "If this seems strange I'm sorry," appellant wrote, "but as they say truth is stranger than fiction." The Board should understand, he stated, that "I didn't take fifteen years pondering or weighing my loss of citizenship, I simply did not believe I lost it." He knew he

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5/ Section 50.60 of Title 22, Code of Federal Regulations, 22 CFR 50.60. These regulations were in force from November 1967 to November 1979, when the limitation on appeal was revised. It now is "within one year after approval by the Department of the certificate of loss of nationality." 22 CFR 7.5(b)(1).

6/ See Chesapeake and Ohio Railway V. Martin, 283 U.S. 209 (1931); In re Roney, 139 F.2nd 175 (7th Cir. 1943); Appeal of Syby, 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,

had gone through "an irregular (in my opinion) process not that I'd lost my citizenship," Furthermore, he alleged that he did not receive notice of the Department's holding of loss of his nationality and the applicable appeal procedures.

If the Department followed standard operating procedures (and we have no reason to doubt that it did so), it sent a copy of the approved certificate of loss of appellant's nationality to the Consulate at Mexicali in December 1371 to forward to appellant. We may presume that the certificate reached the consulate and that that office duly forwarded it to appellant and informed him how he might appeal. This presumption is warranted because there is a legal presumption that public officials perform their assigned duties correctly and in the manner prescribed by law and regulation, absent evidence to the contrary. See Boissonnas V. Acheson, 101 F.Supp. 138 (S.D.N.Y. 1954). Given the many years that have passed since 1971, however, it is probably impossible to know whether or not the certificate reached appellant.

The question thus arises whether appellant had sufficient reason to make an early inquiry about his citizenship status subsequent to the proceedings that took place on November 24, 1971 at the Consulate in Mexicali. The answer to that question depends in turn on whether we are able to accept his contention that he had no reason 'to believe that he had lost his United States citizenship as a consequence of the act he performed on November 24, 1971.

We find it difficult to accept appellant's contention that the renunciation proceedings left him with the impression that he had not lost his citizenship. For one thing, his later submissions on the issue are at variance with his initial submission. Upon entering the appeal, appellant pictured his father as overbearing, and jingoistic, a man who was

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6/ Cont'd.

> 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.

single-minded in wanting his son to sever all ties with the United States, and to be solely Mexican in mind and action. Appellant's mother confirms her son's picture of his father. (See note 4, supra.) Appellant's mother's declaration focuses only on the pressure appellant's father exerted upon him to renounce his United States citizenship; clearly she accepts that on November 24, 1971 appellant made a formal renunciation of his United States citizenship, albeit under alleged duress. Furthermore, without more than appellant's allegations and his mother's hearsay testimony that the proceedings at the Consulate were "irregular," we cannot accept that the consular officer who administered the oath of renunciation was derelict in his duty and did not explain carefully to appellant the serious consequences and finality of formal renunciation of United States nationality, and thus made clear to appellant that he had definitely terminated his citizenship,

It therefore seems to us that at the very least appellant had cause to doubt that he was still a United States citizen after the renunciation proceedings were completed. In our opinion, the natural reaction of one in appellant's shoes to the act he says his father forced him to perform would be to make appropriate inquiries long before he did so to ascertain whether he had really forfeited his United States citizenship. Since there is no evidence that the Department and the Consulate at Mexicali failed to comply with the law and regulations, we believe that it was incumbent upon appellant to take an initiative at an early date to clarify his citizenship status. He had knowledge of facts that should have put him on inquiry, yet he did not act until fifteen years had passed. It is settled that the law imputes knowledge where opportunity and interest coupled with reasonable care would necessarily impart it. United States v. Shelby Iron Co., 273 U.S. 571 (1926); Nettles v. Childs, 100 F.2d 952 (4th Cir. 1939). Knowledge of facts putting a person of ordinary knowledge on inquiry notice is the equivalent of actual knowledge, and if one has sufficient information to lead him to a fact, he is deemed to be conversant therewith and laches is chargeable to him if he fails to use the facts putting him on notice. McDonald v. Robertson, 104 F.2d 945 (6th Cir. 1939).

In brief, we are of the view that appellant has not adduced any persuasive reason why he could not take this appeal much earlier.

Finally, if we were to allow the appeal, the Department would plainly be prejudiced in its ability to undertake its burden of proof, After the passage of fifteen years, how can the Department be expected to refute appellant's and his

mother's allegations that his father coerced him into performing an expatriative act and that the proceedings on the day of his formal renunciation of United States nationality were irregular and prejudicial to his interests? The Board's experience has shown that the Department has very limited capacity to reconstruct the events of long ago.

In the circumstances, we believe the interest in finality and stability of administrative determinations is very strong here and must be served.

III

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

Alan G. James, Chairman

Edward G. Misey, Member

George Taft, Member