

February 23, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: G [REDACTED] R [REDACTED]

R [REDACTED] wrote to the Board of Appellate Review on March 12, 1987 to inquire how he might recover his United States nationality which he formally renounced on or about April 30, 1943 before a consular officer of the United States at Mexicali, Mexico. 1/ The only available record of the State Department indicates that a determination of the loss of appellant's nationality was made around June 1943.

In his letter R [REDACTED] stated that: He was born on January 2, 1922 at Calipatria, California. (He probably also acquired Mexican citizenship at birth since his father apparently was a Mexican citizen.) In 1927 his parents took him to Mexico. His father deserted the family while R [REDACTED] was very young. He had to leave school and go to work in the fields to support his mother and sisters. In 1943 his mother "insisted I renounce my citizenship because World War II was on and she was afraid I would be called to the service and she had no one to help her financially. I had no other choice but to renounce my citizenship...."

Acknowledging R [REDACTED] letter, the Board wrote him on April 14, 1987 as follows:

The Board may hear and decide appeals from determinations of loss of nationality made by the Department of State, but the Board's jurisdiction to do so depends on whether an appeal may be considered timely. You wish

1/ R [REDACTED] lost his United States nationality under the provisions of section 401(f) of Chapter IV of the Nationality Act of 1940, 8 U.S.C. 801, which read as follows:

Sec. 401. A person who is a national of the United States, whether by birth or naturalization shall lose his nationality by:

...

(f) 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 (54 Stat. 1169; 8 U.S.C. 801): . . .

to contest the Department's decision 43 years after it was made. The passage of so much time makes it extremely unlikely that the Board would be able to entertain an appeal from you, unless you are able to establish that circumstances over which you had no control prevented you from acting until now.

If you believe there is good reason for such a long delay, please tell the Board what that reason is, and support any statements you make with the best sworn evidence you have or are able to obtain.

When the Board has received your statement of the reasons for your delay in taking an appeal, we will decide whether the Board is able to proceed in your case.

In a letter to the Board dated April 22, 1987, [REDACTED] offered the following explanation for his delay in taking an appeal:

At your request, I'm sending information and a copy of my first declaration about my problems and main reasons, why after 43 years I'm trying to gain my citizenship back.

I'm aware that time passed by, but I want to let you know, ever since 1949 I've been married to A [REDACTED] G [REDACTED] J [REDACTED] and from our marriage, 10 children were born who studied their primary school in Calexico, California.

Up to this date, job proposals in the United States have failed for them due to my renunciation. That is the main reason I want to make everything possible so I can obtain my legal documents.

In a letter dated October 5, 1987, [REDACTED] stated:

I am writing to you regarding the question you requested concerning to gain my Citizenship back, and why am I requesting after 43 years my American Citizenship.

The main reason is because of my ignorance. As I told you in first declaration, I only obeyed my mother with the understanding that I was resigning my American Citizenship without knowing the legal consequences.

Now, I regreted because of my children; otherwise, they'll be live in the United States to grow as a good citizen.

Thereafter the Board advised R [REDACTED] that unless he could justify why he waited so long to appeal the Department's 1943 determination of loss of his nationality, it would not be able to entertain his appeal. The Board also requested that the Department forward the administrative record upon which its finding of loss of nationality was based so that the Board might be able to gain a comprehensive view of the case. Meanwhile on January 5, 1988, R [REDACTED] sent the Board a copy of an affidavit he had executed on April 30, 1943 at the Consulate in Mexicali. The affidavit, which is not a certified true copy but appears to be genuine, is headed: "AFFIDAVIT OF G [REDACTED] R [REDACTED] TO BE ATTACHED TO CONSULAR CERTIFICATE OF THE LOSS BY HIM OF THE NATIONALITY OF THE UNITED STATES." It reads in pertinent part as follows:

I, G [REDACTED] R [REDACTED], who have already executed an oath of renunciation of the nationality of the United States at the American Consulate in Mexicali, D.C., Mexico, further declare :

That I have voluntarily taken the oath of renunciation of all claims to the nationality of the United States acquired by my birth in that country, and that the provisions of conditions specified in Chapter IV of the Nationality Act of 1940 obtain;

That I have voluntarily abandoned any residence or claim to residence in the United States which I may have had, and that I neither intend or desire to resume residence in the United States in the near future;

That I do not intend or desire to preserve my allegiance to the United States of America, and that I intend and desire to preserve my allegiance to the Republic of Mexico.

After the Department certified on February 12, 1988 that it had not been able to locate the Department's case record on ██████ the Board decided that it should proceed to determine whether it might properly entertain the appeal.

II

Timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220- (1960). If an appeal is not filed within the applicable limitation and no legally sufficient reason is presented to excuse the delay, the appeal must *be* dismissed. Costello v. United ██████ 65 U.S. 265 (1961). The limitation that we will apply in ██████ case is the one in effect prior to November 30, 1979, the date on which the present regulations were promulgated. Under the previous regulations, a person who contended that the Department's determination of loss of his nationality was contrary to law or fact might take an appeal to the Board of Appellate Review within a reasonable time after receipt of notice of the Department's decision. 2/

The reasons ██████ has presented for not taking an earlier appeal are plainly insufficient to excuse such a long delay. Under any fair interpretation of the term "reasonable time," his delay of more than forty years is manifestly unreasonable.

III

Despite the failure of the Department to submit the record upon which its 1943 holding of **loss** of ██████ nationality was based, it is beyond dispute that ██████ permitted a substantial period of time to elapse before taking an appeal.

2/ Section 50.60 of Title 22, Code of Federal Regulations, 22 CFR 50.60 (1967-1979) provided as follows:


Subpart D -- Procedures for Review of Loss of
Nationality

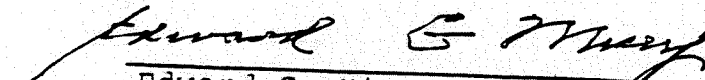
50.60 **Appeal** by nationality claimant.

A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review.

[Dept. Reg. 108.574, 32 F.R. 16259, Nov. 29, 19671.

In the interests in the repose, stability and finality of prior decisions and taking into account his unreasonable and unexcused delay in seeking review of his loss of nationality, we find that the appeal is time-barred and the Board lacks jurisdiction to consider the case. 3/


Alan G. James, Chairman


Edward G. Misesy, Member


George Taft, Member

3/ Section 7.2(a) of Title 22, Code of Federal Regulations (1987), 22 CFR 7.2(a), provides in part that:

...The Board shall take any action it considers appropriate and necessary to the disposition of cases appealed to it.