

April 21, 1988

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: F [REDACTED] J [REDACTED] T [REDACTED] L [REDACTED], [REDACTED]

F [REDACTED] J [REDACTED] T [REDACTED] L [REDACTED], [REDACTED] wishes to take an appeal to the Board of Appellate Review from an administrative determination of the Department of State that he expatriated himself on August 29, 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 determined on September 18, 1973 that [REDACTED] expatriated himself. Fourteen years later he moved to recover his United States nationality. The delay between the date of approval of the certificate of loss of his nationality and submission of an appeal raises a threshold issue: whether the Board has jurisdiction to entertain an appeal so long delayed. For the reasons that follow, we hold that the Board lacks jurisdiction to entertain an appeal by [REDACTED]

1/ Section 349(a)(6) of the Immigration and Nationality Act, 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 --

. . .

(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 L. 95-432 (Oct 10, 1978) 92 Stat. 1046, repealed paragraph (5) of subsection 349 (a) of the Immigration and Nationality Act and redesignated paragraph (6) of subsection 349(a) as paragraph (5).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 (Nov. 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;".

I

I [redacted] was born on [redacted] [redacted] of a Mexican citizen father. Accordingly he became a national of both the United States and Mexico at birth. Immediately after birth he was taken to Mexico where he had most of his education. It appears that near the end of his studies in the Medical School of the University of Guadalajara, the University authorities demanded that he submit documentation to prove he was a Mexican citizen and thus legally entitled to be awarded a degree. Under the circumstances, [redacted] states,

...and the pressure applied by the laws of my profession, I found no other immediate option than that of given [sic] up my citizenship [sic] in order to obtain my professional degree and corresponding license to practice my profession, which by then was urgent for I had recently married and was in the necessity of working [sic] to fulfill my responsibilities [sic] as head of household.

The record shows that on August 29, 1973 [redacted] went to the United States Consulate at Tijuana to renounce his United States nationality. He executed a statement of understanding, attesting that he was acting voluntarily and understood the consequences of renunciation which had been explained to him by a consular officer. Then in the presence of the consular officer and two witnesses he made the oath of renunciation of United States nationality. Thereafter a consular officer executed a certificate of loss of nationality in petitioner's name. 2/ In it he certified that [redacted] acquired the nationality of both the United States and Mexico.

2/ 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

at birth; that he made a formal renunciation of United States nationality and thereby expatriated himself under the provision of section 349(a)(6) of the Immigration and Nationality Act.

The Department approved the certificate on September 1, 1973, approval being an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review.

Fourteen years later, on December 14, 1987, he requested that this Board accept his appeal from the Department's determination of loss of his nationality.

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 States, 365 U.S. 265 (1961). The limitation that we will apply in Tellez's 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. 3/

2/ Cont'd.

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.

3/ 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

What is reasonable time depends on the circumstances of the particular case. It is such time as an aggrieved party may fairly require to prepare a case showing wherein the Department erred in determining that he expatriated himself. The rule of reasonable time requires that a person exercise a right of action within a flexible, but not unlimited time, so that the opposing party - here the Department of State - has fair opportunity to defend. Reasonable time has been succinctly defined as follows:

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, 1067-68 (10th Cir. 1980).

Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981).

Asked by the Board to explain why he had delayed so long in seeking recovery of his citizenship, [REDACTED] replied:

The reason why I waited up to now to appeal is because it was until Dec. 13, 1978 when I finally obtained all my University documents and corresponding licenses, following which I entered a contest to take a professional speciality, which was accepted until 2 yrs. later (Dec. 1980), initiating such course on March 1981 with a duration of 3 yrs. terminating of Feb. 1984.

Please note then, that although I applied for the loss of Nationality since 1973, I continued my studies in Mexico up until

3/ Cont'd.

law of 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, 1967).

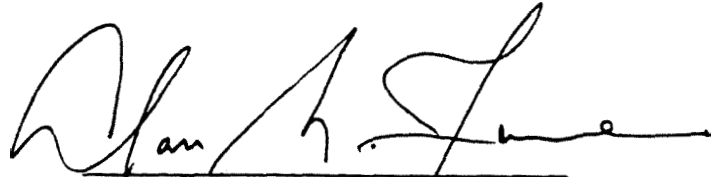
1984, and it was the following year, 1985 that I began to obtain information about the Immigration procedures and possibilities, trying to obtain my Immigration by means of my mother or brothers which are all American Citizens, [sic] ignoring up to now about the possibility of appealing my citizenship [sic] instead of immigrating.

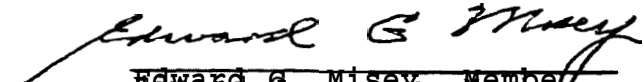
For this purpose in 1985 I write requesting Immigration information to the Dept. of Justice in San Diego, Ca. from whom I receive an application to fill and steps to follow.

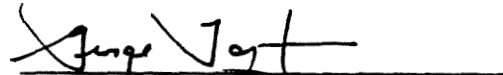
Seeking advice on this matter I am told that trying to Immigrate to the **U.S.A.** by means of a brother or sister would take from **7** to **8** yrs. which dissatisfied [sic] me. Still I continue to seek advice and reviewing through my Loss of Nationality documents, which I had filed since they had been given to me, I realize of the option I had to appeal, option which honestly up to now I had ignored because up to now I have been misinformed and I had never read the indications on this respect for I had filed all papers related to my Loss of Nationality due to the painful that this matter had meant to me.

The reasons [REDACTED] gives for his delay are not, in our opinion, legally sufficient to excuse such a long delay, for essentially he was the sole author of the delay. Furthermore for us to allow the appeal would be prejudicial to the Department, given the meager record in this case. Therefore, in the interests in the repose, stability and finality of prior decisions and taking into account [REDACTED] unreasonable an unexcused delay in seeking review of his [REDACTED] of nationality, we hold that the Board does not have jurisdiction.

to entertain the appeal. 4/


Alan G. James, Chairman


Edward G. Missey, Member


George Taft, Member

4/ 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.