April 21, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

[redacted] wishes to take an appe to the Board of Appellate Review from an administrati determination of the Department of State that he expatriat himself on August 29, 1973 under the provisions of secti 349(a)(6), now section 349(a)(5), of the Immigration a Nationality Act by making a formal renunciation of his Unit States nationality before a consular officer of the Unit States at Tijuana, Mexico. 1/

The Department determined on September 18, 1973 th [redacted] expatriated himself. Fourteen years later he moved recover his United States nationality. The delay between t date of approval of the certificate of loss of his nationali and submission of an appeal raises a threshold issue: wheth the Board has jurisdiction to entertain an appeal so lo delayed. For the reasons that follow, we hold that the Boa 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 c this Act a person who is a national of the United State whether by birth or naturalization, shall lose h: nationality by --
>
> . . .
>
> (6) making a formal renunciation c nationality before a diplomatic or consular office of the United States in a foreign state, in suc form as may be prescribed by the Secretary c State: . . .

Pub. L. 95-432 (Oct 10, 1978) 92 Stat. 1046, repeale paragraph (5) of subsection 349 (a) of the Immigration an Nationality Act and redesignated paragraph (6) of subsectio 349(a) as paragraph (5).

Pub. L. 99-653 (Nov. 14, 1986) 100 Stat. 3655 amende subsection 349(a) by inserting "voluntarily performing any o the following acts with the intention of relinquishing Unite States nationality:" after "shall lose his nationality by;".

I

T[redacted] was born on [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 citezenship [sicl 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 workiig [sicl to fulfill my responsabilities [sic] as head of household.

The record shows that on August 29, 1973 [redacted] went to the United States Consulate at Tijuana to renoun[redacted]s 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 a[redacted]ico

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 whicn 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 Stat nationality and thereby expatriated himself under the provisio 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 nationality from which a timely and properly filed appeal may taken to the Board of Appellate Review.

Fourteen years later, on December **14, 1987,** he request that this Board accept his appeal from the Department 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 nc filed within the applicable limitation and no legally sufficier reason is prese'nted to excuse the delay, the appeal must b dismissed. Costello v. United States, **365 U.S. 265** (1961). Th limitation that we will apply in Tellez's case is the or in effect prior to November **30, 1979,** the date on which th present regulations were promulgated. Under the previou regulations, a person who contended that the Department' determination of loss of his nationality was contrary to law c fact might take an appeal to the Board of Appellate Revie within a reasonable time after receipt of notice of th 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 2 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

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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.
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> (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 Citezens, [sic] ignoring up to now about the possibility of appealing my citezenship [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 dissapointed [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 ou opinion, legally sufficient to excuse such a long delay, fc essentially he was the sole author of the delay. Furthermore for us to allow the appeal would be prejudicial to th Department, given the meager record in this case. Therefore, i the interests in the repose, stability and finality of prio decisions and taking into account [redacted] unreasonable an unexcused delay in seeking review of his [redacted] of nationality, w hold that the Board does not have jurisdic n

to entertain the appeal. 4/

Alan G. James, Chairman

Edward G. Misey, 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.