April 28, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: [redacted]

This is an appeal from an administrative determination the Department of State, dated January 13, 1981, that appellan [redacted], expatriated himself on July 15, 19 under the provisions of 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 London, England. 1/

The appeal was entered in September 1986, more than fo years after expiration of the one-year period within which a appeal may be taken from approval of a certificate of loss c appellant's nationality. Since appellant has not shown goc cause why he could not have taken the appeal within th applicable limitation, we conclude that the appeal i time-barred. Accordingly, it is dismissed for lack c jurisdiction.

I

[redacted] was born on [redacted] at [redacted]. His mothe was a U d States moth He acquired th nationality of both the United States and the United Kingdom a birth. His birth as a United States citizen was registered by

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1/ When [redacted] made a formal renunciation of his nationality section 349(a)(5) of the Immigration and Nationality Act, U.S.C. 1481(a)(5), read as follows:

> Sec. 349. (a) From and after the effective date o this Act a person who is a national of the United State, whether by birth or naturalization, shall lose hi nationality by --
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> . . .
>
> (5) making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in suck form as may be prescribed by the Secretary of State; . . .

The Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653 (approved November 14, 1986), 100 Stat. 3655,

the Embassy in 1961. [redacted] grew up and was educated in England. In 1978 the Unit[redacted]ates Embassy at London issued him a passport.

In a letter to the Embassy dated September 11, 1986 initiating the appeal, [redacted] stated that in 1980 (he was then nearly 20 years old) he had long discussions with his parents about his nationality. "We concluded (wrongly)," he wrote, "that I would have to make a choice for one or the other nationality and that I could not retain both." His parents amplified appellant's statement in a letter they wrote to the Embassy also dated September 11, 1986. Knowing that American citizens were required to register for selective service, "we considered that as Charles was born and brought up in England, it would have been more natural for him to join the British rather than the United States Army, and we believed that, if in obedience of the U.S. law, he registered for the draft and if there were a subsequent call-up, he would at that point have lost his British nationality." Their son's immaturity and unfamiliarity with American culture "caused us to do what we felt best for Charles." They therefore insisted that he renounce his United States citizenship in the belief that he was required by law to make a choice of nationality.

It may be that [redacted] parents were under the impression that in 1980 their son was subject to the provisions of section 350 of the Immigration and Nationality Act. Section 350 provided that a person who acquired the nationality of the United States and of another state at birth and who sought the benefits of his foreign nationality would lose his United States nationality if he resided for three years in the foreign state after his 22nd birthday. It is also possible that his parents believed [redacted] was then subject to the provisions of section 301(b) of the Immigration and Nationality Act pursuant to which a person situated as [redacted] in order to retain United States citizenship, would have to be physically present in the United States for two years betw[redacted] the ages of 14 and 28. Neither section was applicable to [redacted] at that date. Both section 350 and section 301(b) were repealed, with prospective effect, by Public Law 95-432 (approved Oct. 10, 1978) 92 Stat. 1046.

In July 1980 [redacted] went to the United States Embassy in London where he states he was interviewed. "During the

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1/ Cont'd.

amended subsection (a) of section 349 by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

interview I was presented with a different solution and being somewhat intimidated by the 'officialdom' around me, I m regrettably adhered to the erroneous idea of being able to reta one nationality only, which I had been persuaded to by parents, and ren d my United States citizenship." Accordi to his parents, [redacted] was informed at the interview of enactment of Public Law 95-432. They and he therefc implicitly concede that it was made clear to him that there w no legal requirement that he choose between his United Stat and British nationalities, but they seem to argue that he w confused and, being aware of his parents wishes, insisted th he be allowed to renounce his citizenship. (We can on speculate on the foregoing, however, for appellant has present a cryptic account of what occurred at the Embassy, and t consular officer who presided at his renunciation left recorded comments about it.)

The case record that the Department submitted to t Board shows that [redacted] made a formal renunciation of his Unit States nationality July 15, 1980. Before taking the oath renunciation, appellant executed a statement of understanding the presence of a consular officer and two witnesses. In it stated, inter alia, that: he wished to exercise his right renounce his United States nationality and did so voluntaril realized that he would become an alien toward the United State, had been afforded an opportunity to make a written stateme explaining the reasons for his renunciation but chose not to so; and fully understood the contents of the statement and t extremely serious nature of the act he was about to perform ti consequences of which had been explained to him by the consul; officer. After he signed the statement of understanding, Brue took the oath of renunciation and surrendered his United State passport.

The consular officer who administered the oath c renunciation to [redacted] executed a certificate of loss c nationality on July 1980, as required by law. 2/ Therein he certified that [redacted] acquired the nationality of both th United States and the United Kingdom at birth; that he made a

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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

formal renunciation of his United States nationality; and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act. The Department approved the certificate on January 13, 1981, 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,

Appellant entered the appeal pro se in September 1986 and later retained counsel.

II

As an initial matter, the Board must determine whether it has jurisdiction to entertain this' appeal. The Board's jurisdiction depends on whether the appeal was filed within the applicable limitation, for timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1961). With respect to the limit on appeal to the Board of Appellate Review, section 7.5(b)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1), provides that:

> A person who contends that the Department's administrative holding of loss of nationality or expatriation under subpart c of Part 50 of this Chapter is contrary to law or fact shall be entitled to appeal such determination to the Board upon written request made within one year after approval of the Department of the certificate of loss of nationality or a certificate of expatriation.

22 CFR 7.5(a) provides in pertinent part that:

> ...An appeal filed after the prescribed time shall be denied unless the Board determines

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2/ Cont'd.

> 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 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.

> for good cause shown that the appeal could not have been filed within the prescribed time.

The Department approved the certificate that was issu in this case on January 13, 1981. The appeal was not entered until September 11, 1986, four and one-half years over t allowable time for appeal. We must therefore determine whether appellant has shown good cause why he could not have taken t appeal within the limitation prescribed by the applicab regulations.

"Good cause" is a term of settled import. It means substantial reason, one that affords a legally sufficie excuse. Black's Law Dictionary, 5th Ed. (1979). Generally, meet the standard of good cause, a litigant must show th failure to file an appeal or brief in timely fashion was t result of some event beyond his immediate control and which some extend was unforeseeable. Manges v. First State Bank, 5' S.W. 2d 104 (Civ. App. Tex. 1978), Continental Oil Co. V. Dobie 552 S.W. 2d 193 (Civ. App. Tex. 1977). Mere convenience of party is not good cause under a statute for extending the time within which an act must be performed. Becker v. Smith, 2 N.W. 620, 621, 237 Wis. 322.

Appellant submits that although his appeal was file after the limitation, it should be allowed for what he contend is good cause. Appellant's position on the issue of timelines is set forth in his brief as follows:

> In the time subsequent to this event [approval of the certificate of loss of his nationality] Mr. [redacted] has become more familiar with what his options had been under the laws of the United States. In August 1985, some five years after Charles took his oath of renunciation, his brother, George, also went to the U.S. Embassy in London to take the acts his parents believed were required by law and necessary to preserve his British citizenship. At the time of George's visit, embassy personnel provided him with a packet of literature which explained U.S. citizen-ship law. See Exhibit C, Recent Changes to U.S. Law Affecting Loss of Nationality. When the [redacted] reviewed this information they realized that George's renunciation of his U.S. citizenship was not required and that they had made a terrible mistake in requiring Charles to renounce his citizenship. Until this information was obtained, the [redacted] believed that Charles' act had been required and that therefore, there was no question of appealing its effect. Accordingly, the

present appeal is taken after the time prescribed at 20 CFR sec. 7.5(b).

The reason appellant gives for his failure to make a timely filing is neither substantial nor legally sufficient to excuse such a long delay.

The time limit on appeal (one year after approval of the certificate of loss of nationality) and information about how to enter an appeal are set forth on the reverse of certificates of loss of nationality. [redacted] does not dispute that he received a copy of the certificate of loss of his nationality. We may therefore presume that he had been given actual notice that he had one year from January 13, 1981 to take an appeal. Yet, he did not move until more than four years after the allowable time. He may not fairly fault anyone but himself for not ascertaining long before he learned by chance that renunciation of his nationality for the reason he alleges he did so was not necessary. He suggests that he was told on July 15, 1980 he did not have to choose one of his nationalities over the other, but that he was *so* confused he would not be deflected from his avowed purpose of doing what his parents wanted him to do - relinquish his United States nationality. If the circumstances on the day he renounced his United States nationality were as outlined above, appellant had every reason after he received the certificate of loss of nationality to make an appeal on the grounds, for example, that he had not really understood what he was doing. Yet he took no action until his younger brother allegedly came upon the information sometime later that as a dual national of the United States and the United Kingdom he was not required by United States law to make an election between them. [redacted] knew there was a Board of Appellate Review and how to communicate witn it. A letter written within the year after approval of the certificate of loss of nationality stating even general grounds of appeal would have preserved his rights.

We do not doubt that appellant sincerely regrets the loss of his nationality, but we perceive no unforeseen circumstances that prevented him from acting sooner. Plainly, he himself was the cause of the delay.

Not having found any good cause for appellant's failure to respect the prescribed limitation on appeal, we conclude that the appeal is time-barred. Accordingly the appeal is hereby dismissed for lack of jurisdiction.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Howard Meyers, Member