

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C [REDACTED] F [REDACTED] D [REDACTED] E [REDACTED]

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

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

I

E [REDACTED] was born on [REDACTED] at [REDACTED]. His mother was a United States mother. He [REDACTED] acquired the nationality of both the United States and the United Kingdom at birth. His birth as a United States citizen was registered by

1/ When [REDACTED] made a formal renunciation of his nationality under 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 of this Act a person who is a national of the United States, whether by birth or naturalization, shall lose his nationality by --

. . .

(5) 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; . . .

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 United States 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 between 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 me- regretably adhered to the erroneous idea of being able to retain one nationality only, which I had been persuaded to by parents, and renounced my United States citizenship." According to his parents, [REDACTED] was informed at the interview of enactment of Public Law 95-432. They and he therefore implicitly concede that it was made clear to him that there was no legal requirement that he choose between his United States and British nationalities, but they seem to argue that he was confused and, being aware of his parents wishes, insisted that he be allowed to renounce his citizenship. (We can only speculate on the foregoing, however, for appellant has presented a cryptic account of what occurred at the Embassy, and the consular officer who presided at his renunciation left no recorded comments about it.)

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

The consular officer who administered the oath of renunciation to [REDACTED] executed a certificate of loss of United States nationality on July 15, 1980, as required by law. <sup>2/</sup> Therein he certified that [REDACTED] acquired the nationality of both the United States and the United Kingdom at birth; that he made a

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<sup>2/</sup> 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 issued in this case on January 13, 1981. The appeal was not entered until September 11, 1986, four and one-half years over the allowable time for appeal. We must therefore determine whether appellant has shown good cause why he could not have taken the appeal within the limitation prescribed by the applicable regulations.

"Good cause" is a term of settled import. It means substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th Ed. (1979). Generally, to meet the standard of good cause, a litigant must show that the failure to file an appeal or brief in timely fashion was the result of some event beyond his immediate control and which to some extent was unforeseeable. Manges v. First State Bank, 51 S.W. 2d 104 (Civ. App. Tex. 1978), Continental Oil Co. v. Dobbie, 552 S.W. 2d 193 (Civ. App. Tex. 1977). Mere convenience of a party is not good cause under a statute for extending the time within which an act must be performed. Becker v. Smith, 29 N.W. 620, 621, 237 Wis. 322.

Appellant submits that although his appeal was filed after the limitation, it should be allowed for what he contends 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. citizenship 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

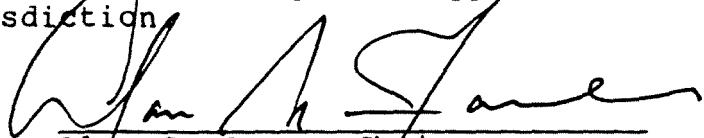
present appeal is taken after the time prescribed at 20 CFR sec. 7.5(b).

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 with 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.

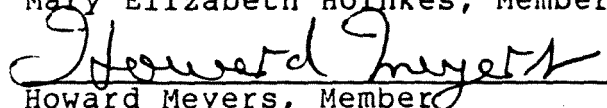
Not having found any good cause for appellant's failure to respect the prescribed limitation on appeal, we conclude that the appeal is time-barred. Accordingly the appeal is hereby dismissed for lack of jurisdiction.



Alan G. James, Chairman



Mary Elizabeth Hoinkes, Member



Howard Meyers, Member