

December 22, 1988

DEPARTMENT OF STATE  
BOARD OF APPELLATE REVIEW

IN THE MATTER OF: E [REDACTED] R [REDACTED] z

This case is before the Board of Appellate Review on appeal from an administrative determination of the Department of State that appellant, [REDACTED], expatriated herself on March 2, 1978, under the provisions of section 349(a)(1) of the Immigration and Nationality Act, by obtaining naturalization in the Netherlands, upon her own application. 1/

The Department of State ("Department") made its determination of loss of nationality on July 27, 1979; appellant gave notice of her appeal on February 25, 1988, almost nine years later.

The question presented at the outset is whether the appeal was timely filed under governing limitations. We find that the appeal was not taken within a reasonable time after appellant received notice of the Department's holding of loss of nationality. We dismiss it for want of jurisdiction.

I

Appellant was born in [REDACTED] on [REDACTED], and acquired United States citizenship at birth.

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1/ Prior to November 14, 1986, section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), 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 --

(1) obtaining naturalization in a foreign state upon his own application, ...

Pub. L. 99-653, 100 Stat. 3655 (1986), amended subsection (a) of section 349 (8 U.S.C. 1481) by inserting "voluntarily performing any of the following acts with the intention of relinquishing United States nationality:" after "shall lose his nationality by".

- 2 -

On March 2, 1978, appellant married Robert E. Lankamp, a Netherlands national, at Delft. On the same date, she acquired Netherlands citizenship upon her own application to the mayor of Delft. Appellant obtained a Netherlands passport on March 3, 1978. In the process, she surrendered her United States passport, which the local authorities subsequently returned to the American Consulate General at Rotterdam ("Consulate"). 2/

Appellant applied at the Consulate on March 13, 1978, for a tourist visa to visit her parents in the United States. In her application, she gave her nationality status as Dutch; she also submitted her Netherlands passport. A consular officer explained to her the possible loss of her United States citizenship as a consequence of having obtained naturalization in the Netherlands upon her own application. She was also given a letter, dated March 13, 1978, informing her of her possible loss of citizenship and inviting her to submit to the Consulate any information or evidence for consideration by the Department in making a decision regarding her United States nationality. Pending development of her case, and in order not to delay her travel to the United States, the consular officer issued appellant a tourist visa, valid for one entry within six months.

Having received no response to its letter of March 13, 1978, the Consulate sent appellant on May 25, 1978, registration forms and two citizenship questionnaires to complete to assist the Department in deciding her case. She completed the citizenship questionnaires during her visit to the United States in August 1978.

In the citizenship questionnaires, appellant offered the following explanation of her actions in obtaining naturalization in the Netherlands and a Netherlands passport:

I was married to a Dutch National on March 2, 1978 in Delft, Holland, and  
— on that day and at that time I was asked matter-of-factly if I would like to take Dutch Citizenship and receive a Dutch passport, that my American passport would be taken

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2/ Appellant's U.S. passport was returned to the Consulate General at Rotterdam on September 5, 1978.

- 3 -

away from me temporarily, and that I could retrieve it in a few days from the American Consulate Office in Rotterdam. I responded affirmatively and signed a paper written in Dutch which I could not read. When I attempted to retrieve my American passport, on each occasion the American Consulate Office in Rotterdam told me they never received it. Finally, I received this questionnaire [sic] and other papers from Mr. Ness, Vice-Consul, which was the first indication I received that someone was questioning my United States citizenship,

I wish to state emphatically that I had no intention then, and have no intention now, to give up my American Citizenship, that I was taking Dutch citizenship **as** an additional citizenship to the one I held out of respect to my husband, that I assumed I received automatic dual citizenship, and that I received no advice to the contrary. The fact that the Dutch authorities indicated that it was a mere formality and that I would receive my American passport back shortly, was something I took at face value.

I have not sworn formal allegiance [sic] to the Netherlands and consider myself an American citizen with allegiances [sic] to the United States of America.

Pursuant to instructions from the Department, the Consulate on November 8, 1978, informed appellant of a preliminary finding of loss of United States citizenship on the basis of the evidence already available and stated that she was free to submit any additional information or evidence which she believed should be considered before a final decision is reached. Thereafter, the Consulate received six identical affidavits, executed in December 1978 and January 1979, of Netherlands citizens who have known appellant. Affiants stated that they were present

- 4 -

when appellant's husband, Robert Lankamp, asked her to take Dutch citizenship, that appellant "pursued dual citizenship as the result of persistent requests by her husband, out of respect to him" and that she "never intended at any time to relinquish her United States citizenship." Appellant's husband, Robert Lankamp, also executed an affidavit on January 22, 1979, declaring that he asked appellant to become a Dutch citizen and that he did not realize that her acceptance of such citizenship would entail loss of her United States citizenship.

The Consulate on March 14, 1979, sought further clarification from appellant of certain statements she made regarding her acquisition of Netherlands citizenship and efforts to retrieve her United States passport. In response, appellant submitted an affidavit of a Netherlands citizen, executed on May 18, 1979, attesting that he was present at the time appellant obtained a Netherlands passport in Delft, Holland, and that the local authorities told her "that she could get back" her surrendered United States passport at the Consulate. Appellant also submitted her own affidavit, executed on May 18, 1979, regarding the circumstances surrounding her naturalization and acquisition of a Netherlands passport.

On June 1, 1979, the Consulate prepared a certificate of loss of United States nationality in appellant's name, in compliance with section 358 of the Immigration and Nationality Act. 3/ The consular officer

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3/ 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 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.

- 5 -

certified that appellant acquired the nationality of the United States by virtue of her birth in New York, acquired the nationality of the Netherlands by naturalization upon her own application, and thereby expatriated herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Department approved the certificate of loss of nationality on July 27, 1979, approval constituting an administrative holding or determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review. The Consulate forwarded a copy of the certificate to appellant on August 9, 1979.

On February 25, 1988, approximately nine years later, appellant, through counsel, submitted to the Consulate General at Amsterdam a letter of appeal addressed to this Board. She contends that she did not intend to relinquish her United States citizenship when she obtained naturalization in the Netherlands. In forwarding the letter of appeal to the Department, the consular officer expressed the view that appellant acquired Netherlands nationality in ignorance of the consequences and had not performed the act with the necessary intent to relinquish citizenship. The consular officer suggested that the Department review appellant's case and overturn its previous decision of loss of nationality if it concurred with the consular officer's opinion. By memorandum dated May 17, 1988, the Consulate at Amsterdam transmitted to the Board appellant's appeal, dated May 9, 1988.

## II

The initial issue presented to the Board is whether we may consider and determine an appeal entered nearly nine years after appellant received notice of the Department's administrative determination of loss of nationality. To exercise jurisdiction, the Board must conclude that the appeal was filed within the limitation prescribed by the governing regulations. The courts have generally held that timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960), Costello v. United States, 365 U.S. 265 (1961). If an appellant does not enter an appeal within the applicable limitation and does not show good cause for filing after the prescribed time, the Board would lack jurisdiction to consider and determine the appeal.

Under existing regulations, the time limit for filing an appeal from the Department's administrative determination of loss of nationality is one year "after approval by the Department of the certificate of loss of

- 6 -

nationality or a certificate of expatriation." 4/ The regulations require that an appeal filed after one year be denied unless the Board determines for good cause shown that the appeal could not have been filed within one year after approval of the certificate. 5/ These regulations, however, were not in force on July 27, 1979, when the Department approved the certificate of loss of nationality that was issued in appellant's case.

The regulations in effect in July 1979, with respect to the limitation on filing an appeal, prescribed that an appeal be taken "within a reasonable time" after receipt of notice of the Department's administrative holding of loss of nationality. 6/ We consider this reasonable time limitation to govern in appellant's case, rather than the limitation of one year after approval of the certificate of loss of nationality under existing regulations. It is generally accepted that a change in regulations shortening a limitation period operates prospectively, in the absence of an expression of a contrary intent to operate retrospectively. In cases where a certificate of loss of nationality was approved prior to November 30, 1979, the effective date of the present regulations, this Board has consistently applied the limitation of "within a reasonable time" after receipt of notice of the Department's holding of loss of nationality.

Whether an appeal has been taken within a reasonable time depends on the facts and circumstances in a particular case. Chesapeake and Ohio Railway v. Martin, 283 U.S. 209 (1931). It has been held to mean as soon as circumstances will permit and with such promptitude as the situation of the parties will allow. This does not mean,

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4/ 22 CFR 7.5(b) (1988).

5/ 22 ~~CFR~~ 7.5(a) (1988).

6/ 22 CFR 50.60 (1979), which was in effect until revised on November 30, 1979, provided:

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.

- 7 -

however, that a party be allowed to determine "a time suitable to himself." In re Roney, 139 F.2d 175, 177 (1943). In loss of nationality proceedings, the limitation begins to run when the citizen claimant receives notice of the Department's holding of loss of nationality in his or her case. What is a reasonable time also takes into account the reason for the delay, whether the delay is injurious to another party's interest, and the interests in the repose, stability, and finality of the prior decision. Ashford v. Steuart, 657 F.2d 1053, 1055 (9th Cir. 1981); Lairsey v. Advance Abrasives Co., 542 F.2d 928, 940 (5th Cir. 1976). The reasonable time limitation thus makes allowance for the intervention of unforeseen circumstances beyond a person's control that might prevent him or her from taking a timely appeal.

Here, as we have seen, the Consulate at Rotterdam forwarded to appellant in August 1979, a copy of the certificate of loss of nationality. On the reverse of the certificate was also printed information about procedures for taking an appeal to this Board. Appellant first gave notice of her appeal by letter dated February 25, 1988, approximately nine years after receiving notice of the Department's holding of loss of nationality.

In her letter of appeal, appellant offered no explanation for the delay of approximately nine years in taking an appeal. In response to the Board's request to explain fully all the considerations involved in her not taking an earlier appeal and to support her statements with the best sworn evidence available, appellant stated in her appeal dated May 9, 1988, that she "did in fact take steps several times during this period" before filing her present appeal, but "each time I lost the courage to tackle the formalities in the end," It was due to the assistance of a Dutch lawyer, she said, that she was finally able to file the appeal.

In her submission of October 2, 1988, appellant recognized the delay of almost nine years in filing an appeal. She maintained, however, that the delay should be considered reasonable in the circumstances of her case. She stated:

...all through these nine years from the very beginning till now, I did, in trying to get my case solved, take various concrete steps on all of which there are written records. Unfortunately out of lack of experience and opportunity to get the right help and this hampered by the fact of not residing in the U.S.A., these steps proved - in a juridical-

- 8 -

technical sense - apparently to be inadequate.

These steps, she asserted, manifested her "strong intention" to appeal her loss of citizenship from the beginning, "although it took till now to get its technical adequate form." She also argued that the facts in her citizenship case have not become obscure or unclear because there are "many written records of both parties on the case throughout the nine years."

We are not persuaded that the appeal was taken within a reasonable time. The record shows, as noted above, that the Consulate sent appellant in August 1979 a certificate of loss of United States nationality. The reverse of the certificate contained printed instructions relating to appeal procedures. The instructions stated clearly that any holding of loss of citizenship might be appealed to the Board of Appellate Review. The instructions further cited the governing federal regulations, pointed out how and where an appeal should be submitted, and stated that additional information about appeal procedures could be obtained at the nearest embassy or consulate or the Board of Appellate Review. Appellant first gave notice of appeal to this Board in February 1988.

The record discloses that appellant visited the Consulate General at Zurich, Switzerland in 1986 to inquire about the possibility of regaining her United States passport. During the interview, appellant acknowledged that she received notice of her loss of United States nationality from the Consulate General at Rotterdam in 1979. She also reportedly claimed at the interview that she had filed an appeal in accordance with the instructions on the reverse of the certificate of loss of nationality and that she never received a reply to her appeal. Appellant has offered no evidence of her having previously filed an appeal, and there is no record of an appeal having been entered prior to her letter of appeal to this Board, dated February 25, 1988.

It is clear that appellant had ample opportunity to take an appeal prior to 1988. She was informed in August 1979 of her right to appeal the Department's holding of loss of nationality to this Board and of appeal procedures generally. If she had any questions or required additional information about filing an appeal, she could have consulted any embassy or consulate, or written to this Board, as she did in February 1988. She permitted a substantial period of time to elapse before entering her appeal. The period of reasonable time commences to run with appellant's receipt of the Department's holding of loss of nationality in 1979, and not from the time she




- 9 -

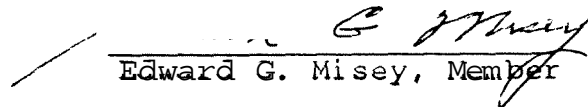
obtained the assistance of a Dutch lawyer in appealing her case in 1988. Whatever the meaning of the term "within a reasonable time", as found in the regulations, may be, we do not believe that the term contemplates a delay of nine years in taking an appeal justified only by the loss of courage and the lack of assistance which could readily have been obtained. Appellant has not offered a legally sufficient reason to justify the delay. In our view, appellant's unexcused delay of approximately nine years in taking an appeal was unreasonable in the circumstances of this case.

## III

On consideration of the foregoing, we are unable to conclude that the appeal was taken within a reasonable time after receipt of the Department's administrative holding of loss of nationality. We find the appeal time barred, and, as a consequence, the Board is without jurisdiction to consider the case. The appeal is hereby dismissed for want of jurisdiction.

Given our disposition of the case, we do not reach the other issues that may be presented.

  
Alan G. James, Chairman

  
Edward G. Missey, Member

  
Gerald A. Rosen, Member