December 23, 1988

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] A[redacted] d[redacted] P[redacted]-S[redacted]

This is an appeal from an administrative determination of the Department of State that appellant, M[redacted]a A[redacted] [redacted] P[redacted]-S[redacted], expatriated herself on June 8, 1978, under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/

The Department approved the certificate of loss of nationality executed in appellant's name in July 1979. She entered an appeal from the Department's decision in October 1986. An initial issue thus is presented: whether the Board may entertain an appeal taken seven years after the Department determined that appellant expatriated herself. For the reasons that follow, we hold that the appeal was not taken within the limitation prescribed by the applicable regulations and is time-barred. Accordingly, we dismiss the appeal for lack of jurisdiction.

1/ In 1978, Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), read as follows:

> Section 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 --
>
> ...
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof: or....

Pub. L. 99-653, (approved Nov. 14, 1986), 100 Stat. 3655, 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". Pub. L. No. 99-653 also amended paragraph (2) of section 349(a) by inserting "after having attained the age of eighteen years" after "thereof".

I

Appellant was born at Mexico City on January 3, 1960 of a United States citizen mother. She thus acquired the nationality of the United States pursuant to the provisions of section 301(g) of the Immigration and Nationality Act, 8 U.S.C. 1401. Having been born in Mexico, she also acquired the nationality of that country, and thus enjoyed dual nationality. The United States Embassy at Mexico City issued a report of appellant's birth as a United States citizen in May 1962. It does not appear from the record that appellant received documentation from the Embassy after 1962.

On June 2, 1978, aged 18 years and 5 months, appellant executed an application for a certificate of Mexican nationality (CMN). In the application she declared that she expressly renounced United States citizenship and all allegiance to the United States. She swore adherence, obedience and submission to the laws and authorities of Mexico. A CMN was issued to appellant on June 8, 1978.

In October 1978 the Department of Foreign Relations informed the Embassy that appellant had applied for and obtained a CMN. Enclosed with the Department's note were copies of appellant's application for the CMN and of the CMN. Shortly after receiving the Department's note, the Embassy wrote to appellant to inform her that she might have expatriated herself by making a formal declaration of allegiance to Mexico. She was invited to complete a form eliciting information about herself and her performance of the expatriative act for the Department's consideration in making a determination of her citizenship status. She was offered the opportunity to discuss her case with a consular officer, and advised that if she did not reply to the Embassy's letter within 60 days, it would be assumed that she did not wish to submit evidence regarding her case. Appellant received the Embassy's letter but did not complete the citizenship questionnaire or otherwise respond. Accordingly, on April 30, 1979, a consular officer executed a certificate of loss of nationality in the name of Monica Lynn Aranda, 2/ in compliance with

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2/ Apparently sometime after 1979 appellant married a Mexican citizen, one [redacted]-[redacted] .

the provisions of section 358 of the Immigration and Nationality Act. 3/ The officer certified that appellant acquired the nationality of both the United States and Mexico at birth; made a formal declaration of allegiance to Mexico in connection with application for a certificate of Mexican nationality on June 2, 1978; and thereby expatriated herself on the latter date under the provisions of section 349(a)(2) of the Immigration and Nationality Act. The certificate of loss of nationality was sent to the State Department under cover of a pre-printed memorandum in which the Embassy checked a box that read as follows:

> /XX/ The 'Embassy followed the procedures set forth in the reference in the subject's case, but received no reply to either the Uniform Loss of Nationality Letter. ~~or the Final Letter.~~ As a result and on the basis of the information of record, it is considered the subject intended to transfer allegiance from the United States to Mexico. There-

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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.

fore a Certificate of Loss of Nationality has been prepared and is attached.

The Department approved the certificate on July 6, 1979, approval constituting an administrative determination of loss of nationality from which a timely and properly filed appeal may be taken to the Board of Appellate Review.

Seven years later, in October 1986, appellant filed an appeal from the Department's holding of loss of her nationality. She grounds her appeal on the following considerations:

-- that she was young and immature at the time she performed the expatriative act (simply to get a passport to leave Mexico to visit relatives in the United States) and had no one to advise her:

-- that she had been given wrong information by the Embassy, namely, that inevitably she would be required to make an oath of allegiance to Mexico (in order to get a job, attend school or travel), but since her mother was a U.S. citizen, she could always apply for an immigration visa:

-- that she did not then realize she could live in Mexico as a United States citizen and believed she had no option but to obtain a CMN.

II

At the outset, the Board must determine whether it has jurisdiction to consider this appeal. In order to exercise jurisdiction, we must conclude that the appeal was filed within the limitation prescribed by the applicable regulations. Timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). Thus, if we find that the appeal was not entered within the applicable limitation and no legally sufficient excuse therefor has been presented, the appeal must be dismissed for want of jurisdiction. See Costello v. United States, 364 U.S. 265 (1961).

Consistently with the Board's usual practice, we will apply here, not the present limitation on appeal, but the one prescribed by regulations in effect at the time the Department approved the certificate of loss of nationality issued in appellant's name, namely, section 50.60 of Title 22, Code of Federal Regulations (effective November 29, 1967 to November 30, 1979), 22 CFR 50.60. That section provide as follows:

> 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.

Reasonable time" is determined in light of all the facts and circumstances of the particular case, taking into consideration the interest in finality, the reason for delay, the practical ability of the Litigant to learn earlier of the grounds relied upon, and prejudice to other parties. Ashford v. Steuart, 657 F.2d 1053, 1055 (1981). Similarly, Lairsey v. The Advance Abrasives Company, 542 F.2d 928, 940, quoting 11 Wright & Miller, Federal Practice & Procedure, Sec. 3866 at 228-29:

> What constitutes reasonable time must of necessity depend upon the facts in each individual case. The courts consider whether the party opposing the motion has been prejudiced by the delay in seeking relief and they consider whether the moving party had some good reason for his failure to take appropriate action sooner.

Reasonable time makes allowance for the intervention of unforeseen circumstances beyond a person's control ~~that~~ might prevent him from taking a timely appeal. Accordingly, appellant in the instant case has the burden of showing that she initiated the appeal within a reasonable time after 1979, when she received notice that the Department had determined that she expatriated herself. The rationale for allowing one a reasonable period of time within which to appeal an adverse citizenship is pragmatic and fair. It allows one sufficient time to prepare a case showing that the Department's decision was wrong as a matter of law or fact, while penalizing excessive delay which may be prejudicial to the rights of the opposing party, since passage of time inevitably obscures the events

surrounding the citizen's performance of the expatriative act. Furthermore, passage of many years between performance of an expatriative act and the taking of an appeal can also make it extremely difficult for the Board as trier of fact to make a fair, reasoned determination whether the act was done voluntarily with the intention of relinquishing United States nationality.

Appellant is not precise about why she did not take an appeal much earlier', The one clear reason she advanced in her initial submission is' that on several occasions between **1978** and 1982 she visited the Embassy "to try to appeal," but was told by a clerk that an appeal was almost impossible "and that it would be more effective to apply for [an] immigrant visa.'' She also states that she was told by the man (unidentified) who took her application for an immigrant visa in January **1983** that there was nothing that could be done about her citizenship case "until the law was revoked.'' Subsequently, she stated to the Board that she finally decided to appeal after seven years [b]ecause I was told they had changed the law. **A** renouncement of **U.S.** citizenship at age **18** was not irrevocable."

Appellant's argument that the appeal should be considered timely because there was little hope in appealing until there was a change in United States law has no merit. As set forth in note 1 supra, the Immigration and Nationality Act was amended in **1986.** The amendments relevant to appellant's case, however, did not substantively change the law as it existed prior to 1986. Prior to **1986,** she was no less free than she is now to argue that she acted involuntarily and did not intend to relinquish United States nationality. Furthermore, before amendment of the act a person of 18 years had capacity to expatriate him or herself. The amendments made no change in that provision.

We now turn to her other argument: that she was deterred from taking an earlier appeal because she was discouraged by the replies she received to inquiries about what she could do to recover her citizenship.

Absent evidence to the contrary, appellant presumably received a copy of the certificate that was approved in her name reasonably soon after it had been approved. On the reverse of the certificate was printed information about making an appeal. The information cited

the applicable regulations and indicated that appellant might obtain more information about taking an appeal from the nearest embassy or consulate, or from the Board itself. She states that on several occasions she sought advice from the Embassy but received discouraging responses. While we will accept that she made inquiries (although nothing of record supports her allegations to that effect), we are unable to accept that she was justified in not pursuing the matter more diligently and persistently. She seems to have followed too readily someone's suggestion that she initiate immigrant visa proceedings. Greater concern about loss of her United States citizenship surely would have prompted her to seek out more aggressively information about taking an appeal. There is no indication that she asked to see a consular officer, for example; rather she accepted as definitive the statements of a clerk or local employee.

In brief, appellant was on notice from the first that she had expatriated herself and that there was a procedure whereby she might challenge loss of her nationality. Nothing of record indicates that unforeseen elements beyond her control stood in her way to seek timely review of her case by this Board.

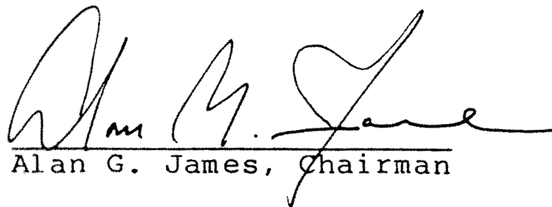
Absent a legally sufficient reason for not moving sooner, appellant's delay of seven years in taking an appeal plainly is unreasonable.

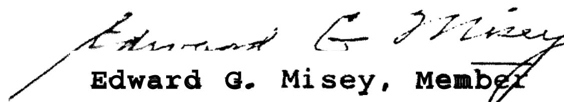
Not only has appellant failed to satisfy her burden of proving that she was justified in not appealing until seven years after the Cepartment determined she expatriated herself. But also there must be an end to litigation at some point. In this case where on its face the Department's determination appears to have been fairly reached, the interest in finality and stability of administrative determinations is entitled to considerable weight.

III

Upon consideration of the foregoing and the entire record before us, we are unable to conclude that the appeal was taken within a reasonable time after appellant had notice of the Department's holding of loss of her nationality, as prescribed by the regulations on

limitation then in effect. Accordingly, we find the appeal time-barred and that the Board is without jurisdiction to entertain it. The appeal is dismissed.


Alan G. James, Chairman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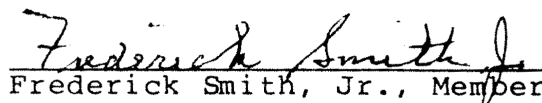
Frederick Smith, Jr., Member