October 23, 1989

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: B[redacted] L[redacted]

This is an appeal from an administrative determination made by the Department of State on April 3, 1986 that appellant, B[redacted] L[redacted], expatriated himself on February 27, 1986 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/

Since [redacted] did not enter his appeal from the Department's holding of loss of his citizenship until February 1989, we confront a threshold issue: whether the Board may consider an appeal filed two years after expiry of the limitation on appeal. For the reasons given below, we conclude that the appeal is time-barred. Accordingly, it is dismissed for lack of jurisdiction.

I

Appellant, B[redacted] [redacted] was born at A[redacted], [redacted]. In 1950 he immigrated to the United States, and in 1954 was naturalized a United States citizen while serving in the United States Army in Korea. He lived and worked in the Los Angeles area until 1983. In that year he and his mother, Mrs. [redacted] moved to the United Kingdom, allegedly because of his mother's poor health

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1/ Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), reads as follows:

> Sec. 349. (a) A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality --
>
> . . .
>
> (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; ...

(allergies); they apparently expected that the climate in the UK would be more salubrious for her. [redacted] and his mother settled on the west coast of England, but soon encountered problems as temporary residents, as appellant explained in a letter to the Board, dated February 6, 1989, drafted by him and signed by his mother and himself:

> Shortly after we made up our residence over there, we were called to the Home Office every six months, and every time there was a big to-do, why we wanted to live in the UK and I had to go through a lot of harrassements [sic] and upsets. I was then advised to contact the MP for Bournemouth, Mr. Butterfill, whom I had a meeting with, and who advised me to give up US citizenship, as then we would be able to live in England without any problems, since Germany was considered EEC country.

John Butterfill, Member of Parliament for Bournemouth, by letter to appellant's son dated June 8, 1989, attested to the foregoing as follows:

> I am happy to confirm the advice which I gave you nearly three years ago that you were then best advised to renounce your US citizenship and seek reinstatement of your German citizenship since this would mean that as an EEC citizen you and your mother would have no problems about residing permanently in the UK. 2/

Acting upon the advice of Mr. Butterfill, appellant and his mother went to the United States Embassy in London on February 27, 1986. The record shows that appellant read and signed under oath in the presence of two witnesses a pre-printed form titled "Statement of Understanding." In that statement appellant declared that he wished to exercise his right to renounce his United States nationality; acknowledged that he would thereafter be an alien toward the United States; attested that the extremely serious nature and irrevocability of renunciation had been explained to him by the Vice Consul, and

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2/ There is no indication in the record that appellant and his mother obtained reinstatement of their German citizenship. Presumably they did, since they are living in the Federal Republic of Germany, apparently as German nationals.

that he understood its consequences. He did not elect to make a written statement explaining why he renounced his citizenship. After signing the statement of understanding, he was administered the oath of renunciation, the operative part of which reads as follows:

> That I desire to make a formal renunciation of my American nationality, as provided by section 349(a)(5) of the Immigration and Nationality Act and pursuant thereto I hereby absolutely and entirely, renounce my United States nationality together with all rights and privileges and all duties of allegiance and fidelity thereunto pertaining.

The formalities completed, the consular officer who presided executed a certificate of loss of nationality in appellant's name, as required by law. 3/ The officer certified that appellant acquired the nationality of the United States by virtue of naturalization; that he made a formal renunciation of United States nationality; and thereby expatriated himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

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.

The Embassy forwarded the certificate to the Department under cover of a memorandum which stated simply:

> Attached is CLN in the name [redacted] who appeared at Embassy, London on February 27, 1986 to make a formal renunciation of his United States citizenship.
>
> Certificate of Loss of Nationality is being forwarded for the Department's approval.

The Department approved the certificate on April 3, 1986, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

Appellant summed up the three years following his and his mother's renunciation of citizenship in a letter to the Board, dated May 26, 1989, and signed by them both:

> After we had given up our citizenship, mother took ill in Bournemouth, had a kidney removed and developed terrible allergies. I then thought of what would be best for her health and where to live, so I flew to Germany, and decided that it would be fine, especially since the climate was good, mountenous [sic] area with good clean air, so we moved....

Living in Germany evidently was painful for his mother, as appellant wrote in their joint letter of May 26, 1989,

> Of course, I had been very short sighted and did not think, that Germany would bring back bad memories for mother, as my sister, nephew, brother-in-law, aunt, and many other relatives and friends were put in the Gas Chamber of Auschwitz. Whenever we went shopping or into town, mother could not look at the Germans, as she thought this one or that one may have murdered my children etc.... Of course, I did not realize that before I decided on the move. All I can point out to you is, that I had been extremely foolish or shall

> I say stupid in having done all these changes.

It would be reasonable to assume that his mother's unhappiness about living in Germany caused appellant to consider how he and his mother might recover their United States citizenship. By letter dated February 6, 1989, signed jointly by himself and Mrs. Levy, whose appeal we also decide today, appellant entered an appeal from the Department's holding of loss of his nationality.

II

As an initial matter, we must determine whether the Board may assert jurisdiction over 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 determination 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 by 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 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 April 3, 1986. The appeal was not entered until February 1989, one year and 10 months after the allowable time for appeal. We must therefore determine whether appellant has shown good cause why he could not take the appeal within the limitation prescribed by the applicable regulations.

"Good cause" is a term of settled import. It means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th Ed. (1979). It is generally accepted to meet the standard of good cause, a litigant must show that 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.

Invited by the Board to explain why he did not take an appeal within the time allowed, appellant responded by letter, dated March 8, 1989, drafted by him, and signed by his mother and him, which read in part as follows:

> At the time, we did not realize the consequences this stupid decision may have, and after we left the American Embassy in London on the day of renunciation, we were confused and terribly upset that we never looked at the forms that were given to us by the Embassy, but put them in a safe place. Therefore, we missed the time limit of re-appealing for US citizenship.

Presumably, appellant refers to the documents the Embassy gave him and his mother the day they renounced and to the approved certificates of loss of nationality (CLN) that the Embassy later sent them, on the reverse of which were set forth the one-year limit on appeal and the appeal procedures.

There can be no doubt that appellant received a copy of the CLN that was approved in his name, although there is no postal receipt so attesting. However, on May 10, 1986, appellant's mother acknowledged receipt at their home in Bournemouth of the CLN the Department approved in her name seven days after it approved one for her son. It is therefore reasonable to presume that appellant's CLN reached him around May 10, 1986, possibly shortly before. As noted above, the CLN not only put appellant on notice that he had expatriated himself but also that he had one year within which to move for review of loss of his nationality. Several years passed before he availed himself of the right of appeal.

The reasons appellant offers for failure to take a timely appeal are manifestly insufficient to constitute good cause for not moving within the time allowed. A person of ordinary prudence in appellant's shoes undoubtedly would have familiarized himself at least generally with the contents of the documents pertaining to loss of his citizenship, however confused or dejected he might be. Then 58 years of age and presumably a person of some experience and competence, appellant did not apparently even glance at the CLN and the appeal information until several years had passed. How, in those

circumstances can he expect the Board to find his delay in appealing excusable? The regulations are explicit about the time within which an appeal shall be entered. They are also reasonable and fair, giving one an opportunity to show wherein a delay in taking an appeal was warranted and therefore entitled to be excused. Under the regulations, the Board has no discretion to allow an appeal which is filed more than a year after approval of the CLN and where the party concerned has failed by any objective standard to show good cause why the appeal could not have been entered within the limitation.

III

Since the appeal was not filed within one year after the Department approved the certificate of loss of appellant's nationality and since he has failed to show good cause why the Board should enlarge the prescribed time for taking the appeal, the Board has no discretion to allow the appeal. We find that the appeal is time-barred, and hereby dismiss it for lack of jurisdiction.

Alan G. James, Chairman

Edward G. Misey, Member

Gerald A. Rosen, Member