DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: L[redacted]

This is an appeal from an administrative determination of the Department of State, dated March 26, 1974, that appellant, L[redacted] P. C[redacted], expatriated herself on November 27, 1973 under the provisions of section 349(a)(6), now section 349(a)(5), of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Tel Aviv, Israel. 1/ Ms. C[redacted] entered an appeal in 1989.

After appellant entered the appeal, the Department reviewed the record and requested that the Board remand the case so that the certificate of loss of nationality might be vacated. The Department concluded that it could not carry its burden of proving that appellant, who was only 15 years old when she renounced, intended to relinquish her United States citizenship.

---

1/ Section 349(a)(6) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(6), 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 --
>
> . . .
>
> (6) 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;...

Pub. L. 95-432, 92 Stat. 1046, (1978) repealed paragraph (5) of subsection 349(a) of the Immigration and Nationality Act, and redesignated paragraph (6) of subsection 349(a) as paragraph (5).

Pub. L. No. 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".

The Board is unable to remand the case as the Department requests, since, in our opinion, the appeal is time-barred and the Board accordingly lacks jurisdiction to entertain it. The appeal is therefore dismissed. The fact that the Board has dismissed the appeal does not, however, preclude the Department from taking further administrative action to correct manifest errors of law or fact.

I

Appellant acquired United States nationality by virtue of her birth at Chicago, Illinois on April 4, 1958. She resided in the United States until 1970. In that year appellant was taken to Israel by her father, [redacted] leader of the Black Hebrew sect. According to appellant, she and her mother thought appellant was going for a visit to Israel and would return in a few weeks. Instead, she remained (or was detained) in Israel and still lives there.

Appellant informed the Board that at the age of 15 she was escorted to the United States Embassy in Tel Aviv to renounce her United States citizenship. "I was still a minor, was told what to say and didn't understand what was taking place." The record shows that appellant appeared at the Embassy on November 21, 1973. The Embassy's records do not indicate whether anyone accompanied her. The consular officer who presided over appellant's renunciation stated in an affidavit executed in March 1974 that:

> L[redacted] appeared at the American Embassy in Tel Aviv on November 21, 1973 in order to renounce her United States citizenship. At that time I counseled her regarding the seriousness of her contemplated act. I also advised her regarding the legal ramifications of a minor renouncing his United States citizenship and explained the provisions of the law to her. 2/
>
> I spoke to [redacted] privately, and she struck me as being relatively mature. She seemed to be cognizant of the effect of her contemplated act.

---

2/ Section 351(b) of the Immigration and Nationality Act, 8 U.S.C. 1483(b), provides inter alia, that one who renounces citizenship while under the age of 18 may recover citizenship within six months of becoming 18 by asserting a claim to citizenship in the manner prescribed by the Secretary of State.

[redacted] stated at the time that she had not been coerced or pressured into making her decision by her father or any other members of the Black Hebrew movement.

On November 27, 1973 [redacted] returned to the American Embassy in Tel Aviv for the purpose of renouncing her United States citizenship. Before her oath of renunciation was accepted, I reviewed the statements of Understanding and the questions in the Special Affidavit with her. She reiterated that she had made her decision independently and had not been influenced by her parents.

After the renunciation formalities were completed the consular officer executed a certificate of loss of nationality in appellant's name, as required by law. 3/ The officer certified that appellant became a United States citizen by birth therein; that she made a formal renunciation of her United States nationality; and thereby expatriated herself under the provisions of section 349(a)(6) of the Immigration and Nationality Act. After the consular officer concerned made the declaration quoted above attesting that appellant had

---

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.

acted voluntarily and not under the influence of another, the Department approved the certificate, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review, pursuant to 22 CFR 7.3(a) (1988).

Fifteen years passed. In January 1989, appellant gave notice that she wished to appeal the Department's decision that she expatriated herself. She informed the Board subsequently that she could remember little of her renunciation, and had no evidence to present to support her appeal, as there was no one in Israel who would testify on her behalf. "After I came here [to Israel] I lost contact with my mother. Therefore I had no one to return to and I also did not know I would have problems when I did decide to go back to my mother. I had even forgotten I had renounced [,] it had been so long ago. I don't remember being told that at 18 I could get my citizenship back." 4/

II

The Department of State filed a memorandum on June 19, 1989 informing the Board that:

> ...Despite the fact that the appeal is untimely, the Department has concluded that the record evidence warrants a remand and a vacating of the CLN. Specifically, at the time of Ms. C[redacted]'s renunciation she was fifteen and a half years of age, and never understood the ramification of her actions or fully grasped the seriousness of her renunciation. The Department believes that appellant was too young to have formed the requisite intent to relinquish her U.S. citizenship.

After setting forth facts already stated in this opinion, the Department continued:

> It is the Department's burden to prove by a preponderance of the evidence that Ms. C[redacted] intended to divest herself of U.S. citizenship when she renounced her citizenship in Israel. [Vance v.

---

4/ See note 2 supra.

> Terrazas, 444 U.S. 252 (1980). The intent to be shown is the intent at the time of the expatriating act. [Id.]
>
> Based on the evidence submitted, the Department believes that it will not be able to meet its burden in that the appellant was still a minor and unaware of the significance of her actions.
>
> Therefore, it is requested that the Board of Appellate Review remand this case in order that the Certificate of Loss may be vacated.

III

To remand this case, we Board must first establish that the Board has jurisdiction to entertain the appeal. If the Board determines that the jurisdictional prerequisites have not been met, the only proper course is to dismiss the appeal, for 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. Costello v. United States, 364 U.S. 265 (1961).

Consistently with the Board's 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 provided 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 of 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 to be determined in light of all the 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 Abraisives Company, 542 F.2d 928, 940, quoting 11 Wright & Miller, Federal Practice and Procedures, 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.

The Board invited appellant to explain why she waited fifteen years to challenge the Department's holding of loss of her nationality. She did not give any reason for her delay. The record gives little insight into appellant's circumstances in Israel after she renounced her nationality, so one could only speculate why she did not move sooner.

The Board has great sympathy for appellant, and applauds the Department's decision to rectify what, in retrospect, is an appallingly insensitive decision on the part of the Department. Had the appeal been timely, the Board would have remanded the case with alacrity. However, in the circumstances, since there has been no showing of a requirement for an extended period of time to prepare an appeal or any obstacle beyond appellant's control to move much sooner, the norm of reasonable time cannot extend to a delay of fifteen years.

IV

Upon consideration of the record before us, it is our conclusion that appellant's waiting for fifteen years to challenge the Department's determination of loss of her nationality was without legal justification. The appeal is time-barred and is hereby dismissed for lack of jurisdiction. 5/

---

5/ The fact that the Board has determined that the appeal is time-barred and has dismissed it on the grounds that it lacks jurisdiction, does not in itself bar the Department from taking further administrative action.

Given our disposition of the case, we do not reach the substantive issues presented.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member

---

5/ (cont'd.)

> ...where the Board of Appellate Review has dismissed an appeal in a citizenship case as time barred, that fact standing alone does not preclude the Department from taking further administrative action to vacate a holding of loss of nationality. This continuing jurisdiction should be exercised, however, only under certain limited conditions to correct manifest errors of law or fact, where the circumstances favoring reconsideration clearly outweigh the normal interests in the repose, stability and finality of prior decisions.

Opinion of Davis R. Robinson, Legal Adviser of the Department of State, December 27, 1982. Excerpted in American Journal of International Law, Vol 77 No. 2, April 1983.