DEPARTMENT OF STATE **May 18, 1990**

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: J[redacted] E[redacted] D[redacted] B[redacted]

De[redacted]en[redacted] S[redacted] termined on July 21, 1976 that J[redacted] E[redacted] D[redacted] B[redacted], who acquired United States nationality by virtue of his naturalization on December 7, 1953 while serving in the United States Army, expatriated himself on November 15, 1974 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon his own application. 1/

B[redacted] wrote to the Board of Appellate Review on October 14, 1989 to state that he wished to appeal from the Department's adverse determination.

The threshold question is whether this appeal may be deemed to have been entered within the limitation prescribed by the applicable regulations. In cases such as this one, the Board customarily applies the limitation which was in effect prior to November 30, 1979, the date on which the present regulations entered into force. The limitation on appeal prescribed by the previous regulations was "within a

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), 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 –
>
> (1) obtaining naturalization in a foreign state upon his own application or upon an application filed by a duly authorized agent, after having obtained the age of eighteen years: ...

B[redacted] acquired Canadian citizenship (actually British subject status) by virtue of his birth in [redacted]. He reacquired Canadian citizenship pursuant to section 10(4)(a) of the Canadian Citizenship Act of 1946 which provided that the competent minister might issue a certificate of citizenship to one who had been born Canadian but had lost citizenship by naturalization in a foreign state.

reasonable time" after the affected party received notice of the Department's adverse holding with respect to his nationality. 22 CFR 50.60 (1967-1979). In this case, in October 1976 B[redacted] received a copy of the approved certificate of [redacted]f his nationality and information about his right to take an appeal to the Board of Appellate Review. He took no action to seek review of the decision on loss of his nationality until thirteen years had passed.

After carefully reviewing B[redacted] submissions as well as the record upon which the Department based its decision of loss of nationality, the Board has concluded that it lacks jurisdiction to entertain the appeal. In the Board's judgment, the appeal is time-barred, appellant having proffered no legally sufficient reason why he could not appeal the Department's determination much sooner. 2/

2/ B[redacted] maintains that in his case the rule on "reasonable time 'seems to [should?] allow for family contingencies, for professional career, for one's reasonable interests and responsibilities to be taken into account." After loss of his citizenship and until recently

> the prevailing conditions in both my private and professional lives remained such that I could not file an appea1 such as this in good conscience unless and until I were free to move back to the USA. Now, I have valuable training ...It took a long time to resolve the problems which forced my hand in making a serious decision without the benefit of having a choice in the matter.

It might simply be observed that appellant's reasons cannot excuse a delay of thirteen years in seeking relief from the Department's holding of loss of his citizenship. Plainly, appellant deliberately decided that he should not appeal until his personal and professional circumstances were more propitious than they were in 1976.

Consistently with the applicable provisions of federal regulations, we must and hereby do dismiss the appeal for lack of jurisdiction. 3/

Alan G. James, Chairman

Warren E. Hewitt, Member

Frederick Smith, Jr., Member

2/ (Cont'd.)

The judgment of the Supreme Court in a case where the petitioner made a considered choice not to appeal because he did not feel an appeal would be worth what he thought was a required sacrifice of his home is apposite to Bouchard's case.

> ...His choice was a risk, but calculated and deliberate and such as follows a free choice. Petitioner cannot be relieved of such a choice because hindsight seems to indicate to him that his decision not to appeal was wrong,...There must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from.

Ackerman v. United States, 340 U.S. 193, 198 (1950).

3/ In its brief, the Department of State declared that in light of a number of recent decisions of the Board of Appellate Review holding that the government's burden of proof had not been met in cases where, as here, a citizen obtained naturalization in Canada without making a renunciatory oath but for long years held themselves out as Canadian citizens, the Department was of the view that the evidence supporting the original decision in Bouchard's case should be carefully scrutinized. Therefore, if the Board decided it lacked jurisdiction to hear and decide the appeal, the Department proposed to "carry out a thorough investigative administrative review of its earlier decision...."

The Board notes, with respect to the foregoing statment, that the fact that the Board of Appellate Review has dismissed the appeal on the grounds that it lacks jurisdiction does not in itself bar the Department from taking such further administrative action as may seem appropriate in the premises. Opinion of the Legal Adviser of the Department of State, Davis R. Robinson, December 27, 1982. See American Journal of International Law, Vol 77 No. 2, April 1983.