DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: D[redacted] G[redacted] A[redacted]

The Department of State made a determination on May 27, 1987, that D[redacted] G[redacted] A[redacted] expatriated himself on March 20, 1987 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 at the United States Embassy in London. 1/ A[redacted] entered an appeal on March 15, 1989.

As an initial matter, it must be determined whether the Board may exercise jurisdiction over the appeal, which was entered 10 months after expiry of the limitation on appeal. For the reasons given below, we conclude that the appeal is time-barred. It is accordingly denied for want of jurisdiction.

I

Appellant, D[redacted] G[redacted] A[redacted] acquired United States citizenship under section 1993 of the Revised Statutes by virtue of his birth on August 13, 1932 at Vancouver, Canada of a United States citizen father. 2/ Since he was born in

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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 -
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> . . .
>
> (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; ...

2/ In 1932, section 1993 of the Revised Statutes of the United States read as follows:

> Sec. 1993. All children heretofore born or hereafter born out of the limits and juris-

Qnada he also acquired the status of British subject at birth. He married a Canadian citizen in 1953 and a few years later was hired by a United States company for which he worked for many years. At a date not given in the record, appellant was transferred by his employer to England.

Appellant described in rather elliptical fashion circumstances that led him to renounce United States citizenship:

> At the time of the renunciation of my United States citizenship I was very upset by being informed by my United States employer of 30 years that I was being terminated via early retirement.
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> In early 1986 I had several discussions with my senior management about being reassigned to a United States management position upon completion of my overseas transfer. As a result of these talks, I registered my United States citizenship at the London embassy in August 1986. 3/
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> Unfortunately, I was severly disappointed when I was told at the end of 1986 that what had been discussed career wise was no longer available and that I was to be terminated.
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> Needless to say, after 30 years service, severence of employment was very upsetting and led me to renounce my United States citizenship in March 1987.

2/ (Cont'd.)

> diction of the United States, whose fathers were or may be at the time of their birth citizens thereof are declared to be citizens of the United States: but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

3/ The Embassy issued appellant a passport on August 11, 1986.

On March 20, 1987 appellant went to the United States Embassy in London to renounce his citizenship, Prior to doing so, in the presence of a consular officer and two witnesses he executed a statement of understanding in which inter alia he swore that "I am exercising my right of renunciation freely and voluntarily;" acknowledged that upon renouncing he would become an alien towaru the United States; averreu that the extremely serious and irrevocable nature of renunciation had been explained to him by the vice consul, and, that he understood the consequences. He did not elect to make a written statement of the reasons for his renunciation.

After executing the statement of understanding, appellant made the prescribed oath of renunciation which was attested to by the consular officer, Thereafter, *on* March 30, 1987, the consular officer executed a certificate of loss of nationality in appellant's name, as required by the statute, 4/ In the certificate the officer stated that appellant acquired the nationality of the United States *by* birth abroad to a United States citizen father; also acquired at birth the citizenship of Canada; and made a formal renunciation of United States nationality, thereby expatriating himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

The Embassy forwarded the certificate and supporting papers to the Department under cover of a memorandum which

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4/ 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.

communicated nothing more enlightening about the case than that: "Attached for approval by the Department of State is a Certificate of Loss of Nationality (CLN) in the name of [redacted]"

The Department approved the certificate on May 27, 1987, approval being an administrative holding of loss of nationality from which an appeal may be taken to the Board of Appellate Review.

The appeal was entered on March 15, 1989. Appellant concedes that he expatriated himself voluntarily.

> ...However, I have since realized that my actions were in haste and misdirected.
>
> I did not intend to relinquish my United States citizenship, but, I was frustrated by the treatment I had received and incorrectly expressed myself in this manner.

He continues:

> ...The reasons may not mean much to some people, but to me they made a large impact on my life.
>
> If a person has the natural and inherent right to voluntarily renounce their U.S. citizenship, which he/she had the right to through birth, then the same right should apply to recover their loss of nationality. I believe that birthright is an extremely important factor in the consideration of my appeal.
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> In short, I want to rectify the serious error of giving up my citizenship so that I can regain my status and to make my home again in U.S. This why [sic] I am asking the Board for the opportunity to again enjoy the privileges of my birth-right to U.S. citizenship,...

II

As an initial matter, the Board must determine whether it has jurisdiction to entertain this appeal. The Board's jurisdiction depends on whether the appeal was filed or may be deemed to have been 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 holding 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 of 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 of loss of nationality that was issued in [redacted] name on May 27, 1987. He did not enter the app [redacted] March 1989, 10 months beyond the time allowed for appeal. Such a delay in seeking relief from the Department's adverse determination can be excused only if [redacted] is able to show good cause why he could not move within one year after the Department approved the certificate of loss of nationality.

Appellant acknowledges that his appeal is tardy. "The lateness," he explained to the Board,

> ...is due mainly to having to relocate back in Canada, after being retired early from a U.S. firm, which has a truck manufactoring division in England, where I was stationed at the time of my severence.

He added in his reply to the Department's brief:

> Although my appeal has been filed outside the normal time period, I believe that I do have good cause for the lateness. I maintain that the circumstances pertaining to my case are extenuating. The whole process of being relocated back to Canada and the adjustment period consumed my time and thoughts. Once my wife and I were established, things settled down and gave me time to decide what I should do.

"Good cause" is a term of art the meaning of which is well-settled. It means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th Ed. (1979). Generally, 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 an event beyond his immediate control and which to some extent was unforeseeable.

Although the delay in taking the appeal is slightly less than one year, we do not consider that it may be excused; the grounds on which appellant seeks to justify it plainly do not satisfy the requirements of good cause.

The record shows that on June 30, 1987 appellant acknowledged receipt of a registered letter from the Embassy which enclosed a copy of the approved certificate of loss of nationality. On the reverse of the certificate was set out the following information about the right of appeal:

> Appeal Procedures
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> Any holding of loss of United States nationality may be appealed to the Board of Appellate Review of the Department of State within one year after approval of the certificate of loss of nationality. The regulations governing appeals are set forth at Title 22 Code of Federal Regulations, Part 7. Notice of appeal should be addressed to the Board of Appellate Review, and may be submitted through an American Embassy or Consulate or through an authorized attorney in the United States or directly to the Board of Appellate Review, Department of State, Washington, D. C. 20520.

> The appeal must be in writing and it must state with particularity the reason why it is being made. It may be accompanied by a legal brief. Any statement of facts or circumstances not mentioned when the case was previously considered should be sworn to before an official authorized to take oaths and should be supported by the best evidence obtainable.
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> For additional information about appeal procedures and to obtain copies of the relevant provisions of the Code of Federal Regulations, consult the nearest American Embassy or Consulate or write to the Board of Appellate Review, Department of State, Washington, D.C. 20520.

Plainly, appellant received timely and explicit notice that within one year after the Department approved the certificate of loss of his nationality, he might appeal she Department's determination. It appears that appellant went to Canada shortly after receiving the certificate of loss of nationality, for on July 31, 1987 the United States company for which appellant worked wrote to him at the address in British Columbia, where he has apparently lived for the past two and one half years, to convey information about his retirement benefits. As of the summer of 1987 appellant was in Canada, and presumably engaged in planning his future, He has not alleged that at that time or until May 1988 (the expiry of the one year limit on appeal) he was incapable mentally or physically to assess the most important aspects of his personal life and career, which assuredly included his citizenship status, and to take such action as appeared necessary to set his life in order.

While we can accept that during the period July 1987 to May 1988 appellant may have been distressed about forced retirement, he has not shown that his condition inhibited him in any way from such a simple act as writing to a **U.S.** consular office in Canada or directly to the Board to find out how he might obtain a review of loss of his citizenship.

III

Since the appeal was not filed within one year after the Department approved the certificate of loss of [redacted] United States nationality and since appellant 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. The only proper course of action is therefore for the Board to dismiss it which we hereby do.

Given our disposition of the case, we are unable to reach the substantive issues presented./?

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member