DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M[redacted] B[redacted] J[redacted]

The Department of State made a determination on January 10, 1983 that M[redacted] A[redacted] [redacted], n[redacted] B[redacted], now J[redacted], expatriated herself on November 24, 1977 under the provisions of section 349(a)(1) of the Immigration and Nationality Act by obtaining naturalization in Canada upon her own application. 1/ Mrs. J[redacted] entered an appeal from the Department's determination in October 1989.

Since the appeal was not entered within one year after approval of the certificate of loss of nationality, as prescribed by the applicable regulations, we confront a threshold issue: whether appellant has shown good cause why the appeal could not be filed within the time allowed, and thus excuse the late filing. For the reasons given below, it is our conclusion that there has been no such showing. Accordingly, the appeal is time-barred and the Board lacks jurisdiction to hear and decide it. The appeal is dismissed.

I

Appellant, Mrs. J[redacted], acquired United States citizenship by virtue of her birth at [redacted] She received a B.A. degree from the University of [redacted] and obtained a [redacted] Certificate. In 1968 she married a Canadian citizen. After living in the United States for several years, the couple moved to Canada in 1972. Appellant was hired as a junior high school teacher in the City of Calgary. In the Spring of 1976,

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1/ Section 349(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(1), provides 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 voluntarily performing any of the following acts with the intention of relinquishing United States nationality -
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> . . .
>
> (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; ...

appellant states, she was informed that the city school board had made a rule that its United States citizen employees must acquire Canadian citizenship in order to retain their employment. Appellant states that since she needed the employment she "reluctantly" applied to be naturalized.

The record shows that on November 24, 1977 appellant was granted a certificate of Canadian citizenship. At that time she made the following oath of allegiance as prescribed by law:

> I swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her Heirs and Successors, according to law, and that I will faithfully observe the laws of Canada and fulfil my duties as a Canadian citizen.
>
> So help me God.

Five years passed. Appellant informed the Board that in the autumn of 1982 she was getting a divorce and planning to move back to the United States. She was thus moved to inquire about her citizenship status at the American Consulate General in Calgary. There her case was processed as one of loss of nationality. As part of the processing appellant completed the customary questionnaire, "Information for Determining U.S. Citizenship." One question in the questionnaire stated that if the respondent performed an expatriative act (in this appellant's case, obtained naturalization in a foreign state), voluntarily with the intention of relinquishing United States nationality,

> you may sign the statement below and return this form to us, and we will prepare the necessary forms to document your loss of U.S. citizenship. If you believe that expatriation has not occurred, either because the act you performed was not voluntary or because you did not intend to relinquish U.S. citizenship, you should skip to item 11 and complete the remainder of this form.

Appellant signed the "Statement of Voluntary Relinquishment of U.S. Nationality" attesting that she obtained naturalization in Canada "voluntarily and with the intention of relinquishing my U.S. nationality." She did not complete the rest of the form.

On December 17, 1982, in compliance with the statute, an officer of the Consulate General executed a certificate of loss

of nationality in the name of M[redacted] A[redacted] H[redacted]. 2/ Therein he certified that appellant acquired United States-citizenship at birth and that she obtained naturalization in Canada upon her own application, thereby expatriating herself under the provisions of section 349(a)(1) of the Immigration and Nationality Act. The Consulate General forwarded the certificate to the Department of State under cover of a brief memorandum which read as follows:

> Enclosed are the original and two copies of the certificate of loss of nationality issued in the name of M[redacted] A[redacted] H[redacted] nee Baertschy, together with the original and two copies of the official notification from the Canadian Citizenship Registration Branch, and the original and two copies of the Statement of Voluntary Relinquishment of U.S. Nationality signed 11/5/82 by Ma[redacted] H[redacted]
>
> The consular officer is satisfied that M[redacted] A[redacted] H[redacted] naturalized in Canada on November 24, 1977 with the intention of relinquishing her U.S. nationalitiy. We request the certificate of loss be approved.

2/ 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 Department approved the certificate on January 10, 1983, thereby making an administrative determination of loss of nationality from which an appeai may be taken to this Board.

It appears that a year or so after appellant received notice that the Department had approved the certificate of loss of nationality which the Consulate General executed in her case, she obtained an immigrant visa and returned to the United States where she now lives.

On October 31, 1989 appellant filed this appeal. She contends she did not intend to relinquish her United States citizenship when she became a Canadian citizen. The citizenship questionnaire the Consulate General asked her to complete was, she asserts, unfair, misleading and confusing. With respect to her signing the statement of voluntary relinquishment of citizenship, she explained to the Board that:

> I also remember agonizing over the 'voluntary' and 'intent to relinquish'. Though I certainly was 'under pressure' economically and domestically, no one held a gun to my head. So in a sense, it was 'voluntary'. 'Intent to relinquish'? I did NOT want to relinquish my U.S. citizenship, but was told I had no other option. The 2 comments in one statement were unfair. But I filled out the form, signed it, and mailed it in. I sincerely expected other forms to follow in my pursuit of my citizenship status and was literally taken aback when I received the loss of citizenship certificate. When I phoned to ask what had happened, a woman at the Consulate told me I had signed the form (information for Determining U.S. Citizenship) and that was that.

II

As an initial matter, we must determine whether the Board has jurisdiction to hear and decide this appeal. The Board's jurisdiction depends on whether the appeal was filed within the applicable limitation, for timely filing has been held to be mandatory and jurisdictional. See 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 deter-

> mination 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 that was issued in this case on January 10, 1983. The appeal was not entered until October 31, 1989, more than five years after the time allowed for appeal. We must therefore determine whether appellant has shown good cause why she could not take the appeal within the limitation prescribed by the applicable regulations.

"Good cause" is a term of undisputed meaning. It means a substantial reason, one that affords a legally sufficient excuse. Black's Law Dictionary, 5th ed. (1979). It is generally accepted that 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.

Appellant submits that she is able to show good cause why her appeal should be heard. As she put it in her reply to the brief of the Deprtment of State:

> I waited more than 6 years before filing an appeal very simply because the lady at the Calgary consulate had been so definite that the citizenship issue was a closed door for me. It wasn't until last year /1989/ when I had a reunion with a childhood-friend and his parents that he informed me of his dual status. He had lived in Canada a long time, too, and had been forced by his employer to change citizenships. Through the aid of his consulate and a lawyer, he was able to secure dual status. It was after that

> reunion that I began my correspondance, /sic/ with the hopes that perhaps the citizenship issue was still resolvable. Had I not met with them, I might never have known about the dual status or reinstatement of citizenship. So there is nothing magical about 6 years. It might have been longer but for a reunion!

"I believe I have 'good cause'," appellant continued, "when I had been directed by a member of the State Department bureaucracy into taking an improper course of action." (Emphasis hers.) "Anyone with a sense of reason can see that I did not understand the appeal procedure."

The dispositive question on the issue of timely filing is whether appellant's reasons for not initiating an appeal until more than five years after the time allowed for appeal constitute good cause.

The Department of State approved the certificate of loss of nationality that was executed in this case on January 10, 1983. Shortly thereafter, the Embassy forwarded a copy of the approved certificate to appellant. A postal receipt signed by appellant shows that she received the certificate on February 7, 1983.

On the reverse of the certificate information was set forth about how to prepare and file an appeal to this Board, "within one year after approval of the certificate of loss of nationality." The information included a statement that an appeal should be addressed to the Board of Appellate Review, directly or through an embassy or consulate or authorized attorney in the United States. The Board's address was given, and it was stated that further information about taking an appeal might be obtained by consulting an embassy or consulate, or by writing directly to the Board.

Obviously appellant received timely notice, as requirsd by the regulations, that she had the right to appeal the Department's determination. 3/ It is apparent too that she nad

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3/ 22 CFR 50.52 provides that:.

> When an approved certificate of loss of nationality or certificate of expatriation is forwarded to the person to whom it relates or his or her representative, such person or representative shall be informed of the right to appeal the Department's

sufficient guidance to enable her to frame a request that the Board review the Department's adverse decision with respect; to her nationality. She did not, however, avail herself the right of appeal until more than five years had passed.

Appellant has not explained why she gave no consideration to writing to the Board, although she was given full information about the appeal process. She asserts that she was told by someone at the Consulate General that she had no recourse from the Department's adverse decision on her citizenship and therefore that if she wished to return to the United States she would have to immigrate. If she received a discouraging reply to her question, one would think that concern for loss of a precious civil right would have led appellant, an educated woman and presumptively a person of ordinary prudence, to take the simple and inexpensive step of writing to the Board of Appellate Review to get authoritative information from the Board about what she might do to try to recover citizenship. Parenthetically, it might be added that it is also difficult to understand that appellant would accept the advice (probably oral) of someone whose name, status and authority she has not disclosed, and that she did not pursue the matter vigorously with a senior official of the Consulate General before resigning herself to applying for an immigrant visa.

In short, appellant has not demonstrated that circumstances she was unable to foresee and over which she had no control prevented her from taking a timely appeal. On the evidence, it is clear that appellant alone was responsible for the delay in taking the appeal.

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 be entered within the limitation.

3/ (Cont'd.)

> determination to the Board of Appellate Review (Part 7 of this chapter) within one year after approval of the certificate of loss of nationality or certificate of expatriation.

III

Since the appeal was not filed within one year after the Department approved the certificate of loss of appellant's nationality and since she 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 conclude that the appeal is time-barred, and hereby dismiss it for lack of jurisdiction.

Alan G. James, Chairman

George Taft, Member

J. Peter A. Bernhardt, Member