DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: R[redacted] N[redacted] S[redacted]
Motion for Reconsideration

The Board of Appellate Review on June 25, 1990 affirmed an administrakive determination of the Department of Stake that R[redacted] N[redacted] l S[redacted] expatriated himself on March 18, 1987 under the provisions of section 349(a)(5) of the Immigration and Nabionality Act, 8 U.S.C. 1481(a)(5), by voluntarily making a formal renunciabion of United States nationality wihh the intention of relinquishing that nationality before a consular officer of the United States at Tel Aviv, Israel. Pursuanb to 22 CFR 7.10, 1/ S[redacted] moved for reconsideration of the Board's decision on Ocbober 4, 1990. We granb the motion and reverse our original decision.

I

S[redacted] principal argumenk is:

> The Board misunderstood my contention that my renunciation of my United States

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1/ 22 CFR 7.10 provides that:

> The Board may entertain a motion for reconsideration of a Board's decision, if filed by either party. The motion shall state with particularity the grounds for bhe motion, including any facts or points of law which bhe filing party claims the Board has overlooked or misapprehended, and shall be filed within 30 days from the date of receipt of a copy of the decision of the Board by the party filing the motion. Oral argument on the motion shall not be permitted. However, the party in opposition to bhe motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the dabe khe Board forwards a copy of the motion to the party in opposition. If the mobion to reconsider is granted, the Board shall review khe record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

> citizenship was made under duress (being obedient to orders of the officials of the Black Hebrew Community) ard was not voluntary. The Black Hebrew Community provided a spiritual and psychological /emphasis appellant's/ need that I, as well as others, depended upon. The fear of this, as well as being ostracised by the officials and members of the Community, prevailed in my actions. This at that time for me, was coercion at its highest levels.

The Department of State did not file a memorandum in opposition to S[redacted]' motion but on December 5, 1990 submitted a statement the main points of which may be summarized as follows:

-- After the Board decided S[redacted]' appeal, the Department adopted new policy guidelines for administrative review of its decision on loss of rationality as a result of formal renunciation by members of the Black Hebrew Community.

-- The rationale for adopting new policy guidelines to determine whether a renunciant in the Black Hebrew Community made a free reasoned choice in renouncing American citizenship is that the environment in which members of the Community live is rot conducive to making a free choice, when ordered to do so, whether to renounce citizenship or not.

-- The Department has therefore since adoption of the rew policy guidelines reversed a large ?umber of its original decisions of loss of nationality.

-- Accordingly, "we believe the Board should take this development into consideration when reviewing /Swails'/ request for review of its previous decision."

II

Although S[redacted] moved for reconsideration on October 4, 1990, more than 30 days after he presumably received a copy of the Board's opinion, we will deem the motion timely. (See note 1 supra). The Board sent a copy of its opinion o? S[redacted]' appeal to the Embassy at Tel Aviv on June 26, 1990, requestirg that the Embassy forward it to Swails by registered mail. The Embassy obviously did so, but the record does not contain a postal receipt indicating when S[redacted] received the opinion. It is not unreasonable to assume, however, based on previous experience of the time for diplomatic mail to reach the Embassy from Washington and the time required for the Embassy to forward an opinion of the Board to the person to whom it relates,that at least a month elapsed before S[redacted] received

the Board's opinion. That would be around July 10, 1990. He therefore would have had until August 10, 1990 to file a motion for reconsideratior. That the motior was not filed urtil approximately two months after that time allowed does not in our view bar the motion. For, meanwhile, on July 27, 1990, the Chairman of the Board wrote to S[redacted] as follows:

> The Department of State has recently made a policy decision affecting the handling of the cases of members of the Black Hebrew Community in Israel who have made a formal renunciation of their United States nationality. Such persons may, upon making a satisfactory statement of their reasons for believirg that they were coerced to renounce their nationality, have their loss of nationality cases reviewed administratively by the Department, without making a formal appeal to this Board. Your case does rot qualify for such review since the Board's decision or, your appeal is final within the Department. However, in light of the Department's new policy, the Board considers it fair that you be giver, an opportunity to have your case reviewed by the Board. Accordingly, this letter is sert to advise you that the Board is prepared to entertain a motion for recopsideration of its decision on your appeal.

S[redacted] communicated with the Embassy sometime in August to receive assistance about filing a motion for reconsideration, ard not long afterwards made a filirg. He thus showed due diligence in pursuing his available remedy. Pursuant to 22 CFR 7.11, we will exercise our discretion ard therefore deem the motion timely, and proceed to decide it on the merits. 2/

III

We find the Department's position - the environmert of the Community at Dimona is not corducive to permit a free,

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2/ 22 CFR 7.11 provides in pertirent part that: "Tne Board for good cause showr, may in its discretion enlarge the time prescribed by this part for the taking of any action."

unfettered and rational choice to renounce American citizenship - persuasive. Upon further review of the record and reconsiderahion, we are now unable to conclude that appellant's formal renunciakion was wholly without taint of coercion. In our opinion, a renunciation procured by pressure, even pressure exerted on a presumptively strong, resourceful person cannot stand as a matter of law.

IV

Upon consideration of the foregoing, we hereby reverse our decision of June 25, 1990 in which we affirmed the Department's determination that S[redacted] voluntarily renounced his United States citizenship with hhe intention of terminating that citizenship.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member