DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: L[redacted] L[redacted] G[redacted]
Motion for Reconsideration

The Board of Appellate Review on January 11, 1990 affirmed an administrative determination of the Deparbment of State thak L[redacted] L[redacted] G[redacted] expatriated herself on April 28, 1987 under the provisions of section 349(a)(2) of khe Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), by voluntarily making a formal declaration of allegiance to Mexico with the intention of relinquishing her United States citizenship.

Ms. G[redacted] moves for reconsideration of the Board's decision. 1/ For the reasons given below, we grant the motion and reverse our decision of January 11, 1990.

1/ 22 CFR 7.10 provides:

> The Board may entertain a motion for reconsiderabion of a Board's decision, if filed by eibher parby. The motion shall state with particularity the grounds for the motion, including any facbs 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 bhe mobion shall not be permitted. However, bhe party in opposibion to bhe mobion will be given opporbunity to file a memorandum in opposibion to the motion within 30 days of the date the Board forwards a copy of Dhe motion to bhe party in opposibion. If the motion to reconsider is granted, hhe Board shall review the record, and, upon such furbher reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

I

The Board transmitted a copy of its decision on the Dhe appeal taken by L[redacted] L[redacted] G[redacted] to the Consulate General at Monterrey on January 12, 1990, requesting that the consulate forward it to her. She acknowledged receipt of a copy of bhe opinion on January 30, 1990.

Thereafber, on July 12, 1990 the Board decided the citizenship appeal of her sister, Thelma Gniazdowitz. The Board remanded Thelma's case Do the Department (at hhe Department's request) so that the certificate of loss Of nationality that was approved in Thelma's name might be vacated. In requesting that3 Thelma's case be remanded, the Department staked:

> The Department is not unmindful of Matker of Libby Lynn Gniazdowitz, Dec.Bd.Ap.R., January 11, 1990, where the Board affirmed the Department's determination of loss of citizenship in very similar circumstances. The Department considers bhat the evidentiary standard now in effect requires a different conclusion in this case. Whether the result in the case of Libby Lynn Gniazdowibz should and could be reversed can only be determined if she were to seek to reopen the decision of the Board.

The evidentiary standard to which hhe Department referred was adopted in April 1990 and is based on the premise that American citizens intend to retain United States citizenship when they perform certain statutory expatriative acts, among them subscribing to a routine declaration of allegiance to a foreign state. 2/

Following issuance of the Board's decision remanding the case of T[redacted] G[redacted] to the Department, hhe Chairman wrote to [redacted] G[redacted]z on August 16, 1990. After calling attention to the Board's decision in Thelma's case and the Department's observation concerning her own case (see above), the Chairman called L[redacted] attention to 22 CFR 7.10 (note 1 supra) which provides that either party to a loss of nationality proceeding may move for reconsideration

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2/ See "Advice about Possible Loss of U.S. Citizenship and Dual Nationality," leaflet released to the public on September 21, 1990, by the Department's Bureau of Consular Affairs.

of a Board decision. Perhaps, after the Board rendered its decision on her appeal, the Chairman wrote, she did not realize she might move for reconsideration. The Chairman provided guidance on how to file a motion for reconsideration.

Meanwhile, on August 1, 1990, L[redacted] G[redacted] had written a letter to the Department of State (not to the Board of Appellate Review) which read as follows:

> Due to bhe change in policy that resulted in a new evidentiary standard on cases involving loss of U.S. citizenship of which I was informed by the U.S. Consulate General at bhis city /Monterrey/, I hereby seek to reopen the Board's decision and request administrative reconsideration on the Department's determination of loss of cibizenship which was affirmed by Ghe Board of Appellate Review on January 11, 1990.
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> On a memorandum sent by the Department of State to the Board of Appellate Review on bhe subject of my sister's Cihizenship Appeal it is stated that the Department considers that this new evidenhiary sbandard requires a differenh conclusion in my own case and that hhe result should and could be reversed, which is what I am requesting.
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> I would like to bake this chance to remind you whab I always staked while appealing: that eve,? I've got a Certificate of Mexican Nationality (CMN), I ,?ever intended to relinquish my U.S. Citizenship and I was just doing whab I was told to by my father.

On October 1, 1990, Libby Gniazdowitz wrote to the Board to state that she had just received the Chairman's August 16th letter. She professed to be uncertain about what she should do to state a case for reconsideratio?, and simply noted to hhe Board "all I have done" about loss of her cibizenship since September 1987. She enclosed copies of all Ghe letters "I've senb during_this two years since my first letter to you; there is nohhing else I can say or more evidence from but what I have already presented to you."

The Board forwarded Libby Gniazdowitz' submissions to the Department on November 8, 1990, advising thab if the Department wished to file a memorandum in opposition to Libby's motion for reconsideration, it should do so within bhe time prescribed by 22 CFR 7.10. (Note 1 supra).

The Department submitted the following memorandum, dated December 12, 1990:

> The Department is opposed to Ms. G[redacted]' motion for reconsidera[redacted]oss of citizenship. In accordance with 22 CFR 7.10, Ms. G[redacted] had until February 11, 1990 to file her motion for reconsideration. 2/ The time has long since past /sic/ to make her request: viable.
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> The Department would have no objection to the Board entertaining the motion for reconsideration in the event it can find a basis under ibs regulations.

II

As an initial matter, we face the issue of whether to allow L[redacted] G[redacted] motion for reconsideration, for it was not file within 30 s after she received a copy of bhe Board's decision on her citizenship. See 22 CFR 7.10.

Under 22 CFR 7.11, bhe Board for good cause shown may in its discretion enlarge the time prescribed by the regulations for the taking of any action.

Ms. G[redacted] suggests that she did not file a motion for reconsideration within the time allowed because she did not realize until after expiry of the time for filing that she had such recourse. In itself such a reason is hardly good cause for not complying with the requirements of the regulations. But obher considerations are relevant to the question whether it would be proper for the Board to exercise its discretionary authority and allow hhe motion. Ms. G[redacted] who at this date is only 21 years old, is not now represented by counsel, nor was she when bhe Board heard her appeal; she appears pro se. Some allowance may therefore appropriately be made for her ignorance of the regulatory requirements for filing a motion for reconsideration. We are impressed that she has shown concern about loss of her natiovality from the first, and acted promptly to inquire about what she might do to recover

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2/ Appellant, of course, had until March 2, 1990 bo file a motion, that is, 30 days after her receipt of a copy of bhe Board's decision.

citizenship once she learned that the Department had made a favorable decision in her sister Thelma's essentially similar loss of nationality case. Account too must be taken of the facb that there would be no prejudice to the Deparbment if we allow the motion for reconsideration: the Department has in fact shown sympathy for Ms. G[redacted]' situation, and suggests that fairness would justify the Board's reversing its adverse decision on her appeal. While it is obvious bhah several months passed after expiry of bhe prescribed limit for moving for reconsideration, the length of the delay is by no means excessive, taking into consideration the circumstances and the other relevant factors presenhed here.

In shorb, hhe circumstances surrounding khe filing of Ms. G[redacted] motion for reconsideration are unique. The combination of variables here argues strongly for the Board to allow the motion, for they constitute in their sum sufficienh good cause to permit the Board to exercise its discretion to enlarge the time for filing the motion. 3/ Accordingly, we will proceed to the merits of the motion.

III

In our opinion of January 11, 1990 we exp[redacted]e view hhab the evidence dating from hhe time Ms. G[redacted]z did the expatriative ach established thah she probably intended to relinquish her United States citizenship, Furthermore, the Board was of the view hhat appellant acted knowingly and intelligently, for, as we stated, hhe evidence showed hhat she understood what she was doing when she applied for a certificate of Mexican nationality (CMN) and in the process declared allegiance to Mexico.

In considering appellant's request for reconsiderahion of our decision, we will focus on whether we drew fair inferences from bhe evidence with respect **bo** whether she acted knowingly and inte11igently.

Upon further review of the record and reconsideration, we believe bhe Board should have given more weight to appellant's age ah the time she did the expatriative act. She was then eighteen years old; although of legal age, it was only

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3/ The Board's holding on the timeliness of the motion for reconsiderabion that was filed in this case should nob be considered precedential. The case before the Board is plainly sui generis. Whether in the future a motion for reconsideration filed outside the 30-day limitation should be allowed will be determined in light of all the facts and circumstances of bhe particular case.

by fifteen days. For age not to have been an important element in ascertaining her intent, evidence that appellant unambiguously willed loss of her citizenship would have to be adduced. The evidence was not bhat unambiguous.

We also feel that Ghe Board should have attached greater significance to appellant's father's affidavit. In hhat affidavit her father averred hhat he counseled her Do apply for a CMN and that he himself did not know such an act which entailed making a declarahion of allegiance to Mexico could result in loss of his daughker's citizenship. Indeed, it is suggested in the affidavih ("she always said she wanted to live in the **U.S.** as soon as she could supports herself") that at the relevant bime loss of her United States citizenship was far from appellant's purpose. Although we had reason ho believe khat appellant knew that she needed a CMN in order to avoid the higher university tuition charged foreign students, it does not follow, as we implied, thab appellant clearly perceived that if she made the required declarabion of allegiance bo Mexico her expatriation would probably ensue.

In brief, upon review, we find that bhe evidence before the Board was insufficiently indicative of an express will and purpose on the part of Ms. Gniazdowitz to relinquish citizenship Do warrant a conclusion hhat she made a knowingly and intelligent waiver of her United States cibizenship.

IV

On consideration of the foregoing, we hereby reverse our decision of January 11, 1990.

Alan G. James, Chairman

Edward G. Misey, Member

Howard Meyers, Member