July 12, 1990

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

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

The Department of State determined on July 1, 1982 that M [redacted] A [redacted] B [redacted] expatriated himself on October 13, 1981 under the provisions of section 349(a)(2) of the Immigration and Nationality Act by making a formal declaration of allegiance to Mexico. 1/ An appeal was entered through counsel on May 24, 1989.

A threshold issue is presented: whether the Board has jurisdiction to decide the appeal on the merits, For the reasons set forth below, we conclude that the appeal is barred by the passage of time and not properly before the Board. Accordingly, the appeal is dismissed for want of jurisdiction.

I

Appellant B [redacted] acquired the nationality of the united States under the provisions of section 301(a)(7) of the Immigration and Nationality Act by birth of a United States citizen mother at [redacted]. 2/ By'

1/ Section 349(a)(2) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(2), reads 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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> . . .
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political sub-division thereof, after having attained the age of eighteen years;
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> ...

2/ In 1956, section 301(a)(7) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1401(a)(7) read in pertinent part as follows:

virtue of his birth in Mexico he also acquired Mexican citizenship, and so enjoyed dual nationality. When he was about one year old his parents took him to the united States where he lived until around 1970 uhen he returned to Mexico. He obtained a United states passport in 1975, valid to 1980. In 1979 he was employed by Aeromexico and obtained a Mexican passport valid to 1981; a notation on the passport stated that presentation of a certificate of Mexican nationality would be required for renewal.

On October 2, 1981 appellant, accompanied by his mother, went to the United States Embassy at Mexico City. There he completed an application for a new United States passport. According to the records of the Embassy passport No. Z 4076527 was issued to appellant on that day; his previous passport (which expired the year before) was cancelled and returned to him. Appellant states he never received the passport purportedly issued on October 2, 1981.

On the Passport and Nationality Card which the Embassy maintained to record its dealings with appellant appears the following statement, typed personally by the consular officer with whom appellant spoke:

> 10-2-81: Subj was not pleased to have his B-2 & **D** visas cancelled in his Mex ppt. Was told that as a USC he had to enter and leave the US as a USC not as Mex and that the visas should never have been issued. May apply for a Cert of Mex Nationality. He has not decided

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2/ (Cont'd.)

> (a) The following shall be nationals and citizens of the united States at birth: **...** (7) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior **to** the birth of such person, was physically present in the United States or its outlying possessions for **a** period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years:...

Public Law 95-432, Oct. 10, 1978, 92 Stat. 1046, amended section 301 by striking out "(a)" after "Sec. 301" and redesignating paragraphs (1) through (7) as subsections (a) through (g) respectively.

> yet. He works for Aeromexico the Govt airline as a flight attendant & is afraid he will lose his job if he is not documented as a Mexican. Present /Mexican/ ppt expires Oct. 26, 81 and can be renewed only upon presentation of a CMN. Cautioned him that if he feels he must apply for a CMN but does not intend to lose his US citizenship, he should make an affidavit at the Embassy stating his reasons for applying for the CMN and whether he intends to lose US citizenship and if not, why not. Told he should do the affidavit prior to applying for the CMN if he decides to apply for the CMN. as.

The initials "as" which appear at the end of the entry are those of Ann Sheridan, the consular officer who interviewed appellant on October 2, 1981. Ms. Sheridan made a declaration on January 17, 1990 in which she stated that she typed the foregoing entry, and that her notes correctly reflect the situation with respect to appellant's citizenship, insofar as she could remember them.

On October 4, 1981 appellant signed an application for a certificate of Mexican nationality (CMN) which read in pertinent part as follows:

> I therefore hereby expressly renounce ...citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially that of ..., of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.

The blank spaces were filled in with the words "Norte Americana" (North American) and "Estados Unidos de Norte America" (United States of North America), respectively. The Department of Foreign Affairs issued a CMN in appellant's name on October 13, 1981.

The Department of Foreign Affairs sent a diplomatic note to the Embassy on February 9, 1982 confirming that appellant had applied for and been issued a CMN. Enclosed with the note were copies of his application and the CMN. Thereafter, on April 16, 1982 the Embassy sent appellant its customary uniform

loss of nationality letter by registered mail. Therein the Embassy informed appellant that he might nave expatriated himself by making a formal declaration of allegiance to Mexico; requested that he complete an enclosed questionnaire to facilitate determination of his citizenship status; and advised him that he might discuss his case with a consular officer. According to appellant, he never received the Embassy's letter. However, the record shows that on May 7, 1982 appellant visited the Embassy where he again saw Consul Ann Sheridan. At the top of a copy of the Embassy's letter of April 16, 1982, there appears the notation: "Original presented by applicant." There is no indication who in the Embassy made the notation. Consul Sheridan typed the following in the Embassy's record of appellant's case: "Appl. came to Embassy to complete questionnaire. Is not contesting loss of U.S. citizenship. as." In the record there is a completed citizenship questionnaire signed by appellant and dated May 7, 1982. There is also an application for a passport signed by appellant and dated May 7, 1982, at the top of which is printed the notation: "For information purposes only." Consul Sheridan signed the application, attesting that appellant subscribed and swore to before her the following statement: "I nave not (and no other person included in this application has), since acquiring United States citizenship, performed any of the acts listed in section 1 on the reverse of this application form (unless explanatory statement is attached). /The acts are the 7 acts enumerated in section 349(a) of the Immigration and Nationality Act./ I solemnly swear (or affirm) that the statements made on all-of the papers of this application are true and the photograph(s) attached is (are) a likeness of me and of those persons to be included in the passport."

On May 25, 1982 in compliance with the statute, Consul Sheridan executed a certificate of loss of nationality (CLN) in appellant's name. 3/ Therein she certified that appellant

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3/ 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

acquired the nationality of the United states by birth in Mexico of a United States citizen mother; that he made a formal declaration of allegiance to Mexico on October 4, 1981 in conjunction with an application for a CMN and on October 13, 1981 was issued a CMN; and that he thereby expatriated himself under the provisions of section 349(a)(2) of the Immigration and Nationality Act.

The Department approved the certificate on July 1, 1932, approval constituting an administrative determination of loss of nationality from which an appeal may be taken to the Board of Appellate Review. According to the Embassy's records, a copy of the approved CLN was sent to appellant on July 20, 1982 at his local address, and a handprinted entry in the record states: "PPT in Burning Bag." 4/

Appellant married a Mexican citizen in 1983. Tney have one child who was born in Mexico. In the late winter or early spring of 1988 appellant moved to the United states where he now lives. In March 1988 he applied for a United States

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3/ (Cont'd.)

> 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.

4/ With respect to the latter entry, Consul Sheridan in her statement of January 17, 1990 stated:

> 9. At this point, I cannot remember whether or not Mr. Sustamante received passport No. 24076527 issued on October 2, 1981, on that date nor can I recall any reason why it might not have been given to him. I believe that if it were held at the Embassy for any reason, the fact would have been noted on his passport and nationality card. The passport placed in the burn bag on July 20, 1982, must have been passport No. 24076527, as there seems to me to /sic/ no other passport to which this notation would refer. I cannot, however, state that the date on which we received the passport was May 7, 1982.

passport. His application was denied in June 1988 on the grounds of non-citizenship. On May 24, 1989 he entered this appeal through counsel.

Oral argument was heard on April 5, 1990.

II

At the threshold, we must determine the Board's jurisdiction to consider and decide this appeal. To exercise jurisdiction the Board must conclude that the appeal was filed within the limitation prescribed by the governing regulations. For the courts have generally held that timely filing is mandatory and jurisdictional. United States v. Robinson, 361 U.S. 220 (1960). If an appellant does not enter an appeal within the applicable limitation and does not show good cause for filing after the prescribed time, the Board would lack jurisdiction over the appeal. Costello v. United states, 365 U.S. 265 (1961).

Under federal regulations, the limitation on taking an appeal to the Board is one year after approval by the Department of the certificate of loss of nationality. 5/ The regulations further provide that an appeal filed after She prescribed time shall be denied unless the Board determines, for good cause shown, that the appeal could not have been filed within one year after approval of the certificate. 6/

5/ 22 C.F.R. 7.5(b) (1989) reads:

> (b) Time limit on appeal. (1) A person who contends that the Department's administrative determination 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 by the Department of the certificate of loss of nationality or a certificate of expatriation.

6/ 22 C.F.R. 7.5(a) (1989) reads:

> (a) Filing of appeal. A person who has been the subject of an adverse decision in a case falling within the purview of sec. 7.3 shall be entitled upon written request made within the prescribed time to appeal

Here, the Department approved the certificate of loss of United States nationality on July 1, 1982. Appellant therefore had until July 1, 1983, to file an appeal from the Department's adverse determination. He did not enter an appeal, however, until May 24, 1989, nearly six years after the allowable time. Appellant's delay in seeking appellate review of his case may be excused only if he is able to show good cause for not acting within the prescribed time.

"Good cause" is a term of art whose meaning is well settled. 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 make a timely filing was the result of some event beyond his immediate control and which to some extent was unforeseeable.

Appellant submits that his appeal should be adjudged timely because he did not receive notice of the Department's determination of loss of nationality until June 1988 when the Houston Passport Agency informed him that his application for a passport was denied on the grounds that he was nut a United states citizen. Nor did he have reason before June 1988 to believe he had expatriated himself. Not having been informed of the determination of loss of his nationality, he did not know that he had the right to take an appeal within one year after the Department made its decision.

Appellant contends that nothing that transpired when he visited the Embassy with his mother on October 2, 1981 to apply for a passport gave him cause to believe that he would jeopardize his United States citizenship if he were to apply for and obtain a CMN (a prerequisite to obtain a Mexican passport). He disputes Consul Ann Sheridan's account of his visit, asserting that his mother did virtually all the talking with Ms. Sheridan. At the hearing he denied that he had oeen interviewed by Ms. Sheridan; that she had told him that if he applied for a CMN and made a declaration of allegiance to

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6/ (Cont'd.)

> the decision to the Board. The appeal shall be in writing and shall state with particularity reasons for the appeal. The appeal may be accompanied by a legal brief. 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.

Mexico he might expatriate himself; or that if he decided he must obtain a CMN in order to yet a new Mexican passport, he might be able to protect his United States citizenship by making an affidavit declaring that he did not intend to relinquish United States citizenship. 7/ He acknowledged that he had talked to the Ms. Sheridan but only briefly and only after she asked to see him so that she might cancel the United States visas in his Mexican passport.

Nor, appellant alleges, did making application for a CMN two days later (October 4, 1981), lead him to believe that he might be jeopardizing his United States citizenship. He needed a Mexican passport to keep his *job* with Aeromexico; no one explained to him that he ran any risk in obtaining one. Furthermore, the proceeding at the government office was brief and informal; his mother filled out the application, and he signed without reading it. 8/

Although the Department contends that the Embassy's letter of April 16, 1982 made it plain that appellant nas placed his American citizenship at risk, appellant was adamant that he never received the letter and so was unaware of its import. He suggests that it was pure coincidence that he happened to go to the Embassy on May 7, 1982 three neeks after the Embassy sent him its letter. His visit was prompted by a wish to obtain a passport since he never received the one purportedly issued to him on Octooer **2**, 1981. 9/ According to appellant, his mother filled out the application for a passport that he signed on May 7, 1982, as well as the citizenship questionnaire. He denied that he had seen Ms. Sheridan, or that there had been any discussion about possible loss of his citizenship. As to the notation in the citizenship and passport card that he did not intend to contest loss of citizenship, he disputes that he made such a statement. In short, his visit to the Embassy on May 7, 1982 gave him no cause to think that he might have expatriated himself by making a declaration of allegiance to Mexico.

As to the disposition of the **CLN** which the Embassy mailed to him on July 20, 1982, appellant contends that he never received it. He maintains that the Nationality and Passport card indicates that the CLN was sent by ordinary not

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7/ Transcript of Hearing in the Matter of M[redacted] A[redacted] B[redacted] Board of Appellate Review, April 5, 1990 (hereafter referred to as "TR"). TR 20-22.

8/ TR 22-26.

9/ TR 27-34.

registered mail: given the well-known inadequacies of the Mexican postal system, he maintains that a letter sent by ordinary mail quite possibly could go astray. In short, according to appellant, there is nothing of record to impeach his claim that he did not receive the CLN.

We address first appellant's claim that he did not receive the CLN which the Embassy mailed to him on July 20, 1582.

One cannot be sure that the CLN was not sent by registered mail; the person who made the entry on the Nationality and Passport card might simply have neglected so to note. Say, however, that the CLN was sent to appellant by ordinary mail. If it was so sent, the Embassy's action was not material error. For we have no doubt that tne Embassy did what the entry on the Nationality and Passport card stated: mailed tne CLN to appellant at his fixed address in Mexico City. The Embassy thus complied with the duty with which it is charged by section 358 of the Immigration and Nationality Act. what happened to the CLN after it left the Embassy and entered the Mexican postal system probably cannot now be established. Assume, however, for the sake of argument, that the CLN did not reach appellant. Since there is little doubt that the Embassy actually mailed the CLN to him, did appellant have any responsioility to take timely action to seek review of his case? The answer to that question depends on whether in light of all the relevant facts and circumstances appellant had any reason to believe before October **4**, 1982 that he might lose, or after October 4, 1582, that he might have lost his citizenship.

Appellant's visit to the United States Embassy on October 2, 1981 should have left him in no doubt that if he applied for a CMN and made a declaration of allegiance to Mexico, he would perform an act that might result in loss of his American citizenship. Contrary to appellant's contentions, the record of his October 2, 1981 visit to the Embassy made contemporaneously with his visit establishes that Consul Ann Sheridan carefully explained to appellant the legal implications of his holding dual nationality and that if he made an oath of allegiance to Mexico in order to obtain a CMN, he might expatriate himself. The record also makes it clear that Ms. Sheridan informed appellant that if he felt it necessary to apply for a CMN and wished to retain United States citizenship, he might protect his position by making an affidavit expressing hi5 intent to retain citizenship. Ms. Sheridan is positive that she saw appellant on October 2, 1581 and counseled him with respect to the foregoing matters. 10/

10/ After the hearing, at the Board's request, **Ms.** Sheridan made statements on April 25 and May 17, 1990 clarifying several

Ms. Sheridan's record of what transpired on October 2, 1981 may not, without more, be impeached by the recollections of appellant and his mother nine years after the event. It therefore is incontrovertible that appellant was given notice that he might expatriate himself if he were to apply for a CMN, make a declaration of allegiance to Mexico and accept a CMN.

The next event that should have alerted appellant that he might jeopardize his citizenship occurred two days after his visit to the Embassy. On October 4, 1981 appellant and his

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10/ (Cont'd.)

circumstances which were not entirely clear from the record. One of those circumstances was her meeting with appellant on October 2, 1981. With respect to the question whether she actually interviewed appellant and discussed with him his applying for a CMN and possible loss of citizenship, Ms. Sheridan stated:

> I can state unequivocally that on October 2, 1981 Mr. B[redacted] himself was thoroughly counseled by me on all the ramifications and consequences with respect to his American citizenship if he were to obtain a CMN. His mother may have been present, but it was Mr. [redacted] who was counseled. I definitely told him repeat him that going by past experience there was every proba- oility that he would lose his U.S. citizen- ship if he decided to obtain the CMN but that, if he did not intend to lose his American citizenship, he should execute an affidavit -- preferably prior to his ob- taining a CMN -- explaining that he did not intend to lose his citizenship by ob- taining a CMN and explaining why he felt it was necessary to obtain a CMN.
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> It was explained to Mr. B[redacted] that the execution of such an [redacted] appeared to offer the **only** chance for him to avoid losing his American citizenship. He definitely was not told that it was a matter of not being able to have a Mexican and a U.S. passport at the same time. It was made quite clear in the counseling that it was the loss of his **U.S.** citizenship repeat citizenship that was involved. However, he

mother went to a government office where he signed an application for a CMN in order to get a new Mexican passport. We cannot accept that that event raised no question in his mind about whether he was jeopardizing his American citizenship. He was 25 years of age and employed in a responsible position. Whether or not he still depended on his mother for guidance in important matters, he must be held accountable for his own actions. Can he have failed to notice that there were two statements indicating that he renounced United States nationality and allegiance to the United States? We are given no persuasive reason to doubt that he did.

The next circumstance which we think should have Drought home to appellant that he might have expatriated himself is the Embassy's letter of April 16, 1982 which informed appellant that making an oath of allegiance to a foreign state is an expatriative act and that he might therefore have lost his American citizenship. Appellant disputes that the letter constituted notice that his citizenship was in jeopardy on the grounds that he never received it. Although there is no signed postal receipt in the record, we cannot but wonder wnether appellant has had a lapse of memory, €or as noted above, on the top of the photo copy of the letter in the record appears the notation: "Original presented by applicant". Asked to comment on the notation, Consul Ann Sheridan stated:

10/ (Cont'd.)

> was told that, if he retained his American citizenship, he would have to enter and leave the United States with documentation showing him to be a United States citizen and could not enter the United States with a C-1/D visa which is what he wished to do to prevent the Mexican authorities from becoming aware that he was an American citizen. In fact, it is the unusual circumstances of Mr. Bustamante's being the employee of a Mexican airline and wishing to possess a C-1/D visa which makes the counseling for Mr. B[redacted] case stand out more clearly in my memory than the majority of the loss cases which occurred while I was chief of the citizenship and passport unit in Mexico city.

Counsel for appellant commented on May 31, 1990 to Ms. Sheridan's foregoing statement that his client "disputes that he was ever counseled in this regard."

> The signature on the letter is definitely mine. However, the notation 'original presented by applicant' written at the top of this letter was not written by me. I never write the letter R in the form that it has been written in the word 'presented.' I do not know who made this notation. 11/

The contemporary evidence snows that appellant was aware on May 7, 1982 that he performed an expatriative act. The note Consul Sheridan made in the record that appellant would not contest loss of his citizenship cannot be impeached by uncorroborated latter-day allegations that he did not make the statement and did not see Consul Sheridan at all on that day. That the Embassy on May 7, 1982 considered his case as one of loss of nationality, processed it as such, and presumptively indicated to appellant that he was being given an opportunity to submit evidence on his behalf is also established by the fact that the passport application appellant filled out (or his mother filled out and he signed) was "for information purposes only" to be considered by the Department along with other information in determining his citizenship status. The application was not an operative application; no fee was charged. **12**/

11/ see note 10 supra.

Counsel for appellant commented on Ms. Sheridan's statement as follows:

> There is no evidence that he received the letter of April **16**, 1982 except for the fact that he appeared at the consulate about 3 weeks later and the mysterious notation. In fact, the evidence is to the contrary - the notation on the card maintained by the U.S. Consulate shows that the letter was sent by registered mail, return receipt requested, but the return receipt is not in the file and was, therefore, presumably, never returned.

12/ Consul Sheridan on April 29, 1990 gave this account of the events of May 7, 1982:

> I cannot, at this time, recall whether or not I personally met with Mr. B[redacted] on May 7, 1982. However, when Mr. B[redacted] came to the Embassy on May 7, 1982, and completed the ques-

With respect to the May 7, 1982 meeting at the Embassy tne contemporary evidence must be deemed more persuasive than latter day recollections of appellant and his mother. The balance of probabilities is that on May 7, 1982 appellant understood that he had done an act that would result in loss of his citizenship.

In brief, appellant's interview at the Embassy on October 2, 1981; the uniform loss of nationality letter from the Embassy of April 16, 1982 which it strains credulity to believe appellant did not receive; and appellant's second meeting on May 7, 198.2 with Consul Sheridan are events which were sufficient to put appellant on notice that his citizenship status was in jeopardy.

12/ (Cont'd.)

> tionnaire regarding loss of nationality, he would have been counseled by me or by another employee of the citizenship section regarding the possibility of appealing the loss of American citizenship as this was our invariable practice. Furthermore, if Mr. B[redacted] had not stated that he was not contesting the **loss** of his U.S. citizenship, a remark to this effect would not have been noted on the card.
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> On May 17, 1990, she supplemented the foregoing answer:
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> When I stated that **I** could not recall wnether or not I had met with Mr. B[redacted] on May 7, 1982, I had not focussed on the fact that his application for a passport for information purposes was executed on that date. I would never have signed any passport application as having been quote subscribed and sworn to (affirmed) before me unquote on a certain date if I had not personally taken the passport application and taken the oath on the date designated. Therefore, as May 7, **1382**, is the date on which the application was executed by Mr. B[redacted], I must have met with him on that date.
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> 3. In addition, I would not have stated on his passport and nationality card that he was not contesting the loss of his nationality unless he had said *so.*

In the circumstances, it was incumbent on appellant to act sooner than he did to verify where matters stood with respect to his citizenship; to exercise due diligence with respect to a right he must have realized was in peril. His argument that he had no such responsibility to act until 1988 is too facile. After he left the Embassy on May 7, 1982 he did not take any action with respect to his united States citizenship until six years passed. We are unable to accept that in the circumstances he was justified to remain passive so long.

The courts charge a person having **some** but **less** than full information about some aspect of his business affairs with a responsibility to use that information to acquire the whole picture; and if he does not proceed upon inquiry, he will be held liable for the consequences. See Hux v. Butler, 339 F.2d 797, 700 (6th Cir. 1964):

12/ (Cont'd.)

To Ms. Sheridan's statements, counsel for appellant observed:

> A notation was made that 'Is not contesting loss of U.S. citizenship. as'. There is no statement signed by Mr. B to this effect. There are no notes reflecting what counselling or warnings or advice, if any, he received at that time. There is no indication that Mr. B was invited to sign a statement r ing his U.S. Citizenship such as Form F34F-2 entitled 'Oath of Renunciation of tne Nationality of the United States'. Even if Mr. B had said that he was not contesting his loss of U.S. Citizenship, he should have been counselled as to the effect of his statement, his appeal rights and appropriate notations made. The fact that notations were made on the card as a result of the conversations on October 2, 1981, to the effect that Mr. B was cautioned about obtaining a CMN and the need to present an affidavit and no notation was made on his card about any counselling on May 7, 1982, would lead a reasonable person to conclude that no counselling, in fact, took place on May 7, 1982.

> Even if it should be assumed that such facts fall short of establishing actual knowledge on the part of Mrs. Butler that she was aiding and assisting her husband in the use of corporate funds for speculative and gambling purposes, it could hardly be denied that such facts are more than sufficient to charge her with constructive knowledge to the nature of the transactions which were being carried on in her name and of the use which was being made of the large funds which were passing through her hands. As a reasonably prudent person she was charged with knowledge of facts which inquiry would have disclosed. It seems clear from the record that the slightest inquiry on her part would have fully disclosed to her the character of the transactions themselves, as well as the source of the funds which were being used.

See also McDonald v. Robertson, 104 F.2d 945 (6th Cir. 1939); and Nettles v. Childs, 100 F.2d 952 (4th Cir. 1939).

In the case before us, appellant must be charged with knowledge of his probable expatriation. He therefore cannot be said to have shown good cause why he could not appeal within the prescribed limitation. This being so, the Board has no discretion under the applicable regulations to do otherwise than find the apeal untimely.

III

Since the appeal is time-barred, the Board is without jurisdiction to consider and decide it. The appeal is dismissed. Given our disposition of the case, we do not reach the other issues presented.

Alan G. James, Chairman

Edward G. Misey, Member

J. Peter A. Bernhardt, Memb