August 12, 1992

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M K

This case is before the Board of Appellate Review on the appeal of M K from an administrative determination o e tment of State, dated April 10, 1990, that he expatriated himself on March 19,1990 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 of the United States at Bonn, Germany. 1

K noted an appeal from the Department's holding of loss of his citizenship by letter, dated July 8, 1991. The appeal thus was filed approximately three months after the time prescribed for appeal by the applicable federal regulations, namely, within one year after approval by the Department of the certificate of loss of nationality. A jurisdictional issue is therefore presented: whether, despite the fact that the appeal was not filed within the time allowed, appellant has shown good cause why the appeal should be allowed. For the reasons that follow, we conclude that he has not shown good cause. The appeal is time-barred, and accordingly will be dismissed for lack of jurisdiction.

I

Appellant M K was born at on and thus acquired the nationality of the United States at birth. Since his parents were citizens of the

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1. Section 349(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1481(a)(5), provides:

> 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; . . .

Federal Republic of Germany (his father was in the German Air Force then training in Texas) he also acquired German citizenship and thus enjoyed dual nationality.

On a date not stated in the record, appellant's parents returned to Germany with him, probably while he was very young. He was reared and educated in Germany. The United States Embassy at Bonn issued a passport to appellant in 1981 and again in 1986.

In the spring of 1990, appellant applied for a position in the Federal Office for Communications Statistics, an agency of the German Government. His application was accepted on condition that he relinquish his United States nationality.

Prior to applying for the position, appellant had written to the United State Embassy at Bonn in January 1990 to state that he wished to renounce his citizenship "for personal reasons." The Embassy responded:

> ...we would like to draw your attention to the fact that renouncing a citizenship is a serious step which cannot be dealt with simply by mail.
>
> We must therefore request you to appear in person here at the Consular Division of the American Embassy in order to complete and sign the necessary forms and swear the required oath. In case you want to take out German citizenship, we also need the assurance from the German authorities that you will be granted German citizenship.

Appellant appeared at the Embassy on March 19, 1990. He presented the letter the Embassy had sent him in January and stated that he wished to renounce his citizenship. According to a report the Embassy made to the Department after this appeal was filed, a local employee of the Embassy explained to him the seriousness of the step he contemplated making and told him it was irrevocable. Since appellant nonetheless wished to proceed with renunciation, a local employee gave him the proper forms to complete. The Embassy's report continues:

> ...
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> 6. After K[redacted] completed the forms, the consular officer interviewed him extensively, pointing out that renunciation is a permanent act with very serious consequences, including

> that Mr. K[redacted] would be con[redacted]ed an alien of the Uni[redacted]tates. Mr. K[redacted] stated that he understood this, that both his parents were German, that he had no intention of ever living in the U.S. anyway, and that he was prepared to renounce. He did not say or do anything that would lead the /local employee/ or the consular officer to believe that he had any doubts o[redacted]servations about his renunciation. Mr. K[redacted] signed the statement of understanding and renounced his citizenship formally on that same day.

Appellant was then nearly 22 years of age.

At the time of his renunciation, appellant submitted what he called an "explanation", which reads in pertinent part as follows:

> I, M[redacted] K[redacted], born in [redacted] posses /sic/ the American citizenship by birth and the German one.
>
> This year I will start a language training at a german /sic/ administrative body.
>
> One of the preconditions to be taken up into the training contract is to renounce the American citizenship.

Upon completion of the formalities of renunciation, the consular officer concerned executed a certificate of loss of nationality (CLN) as prescribed by law. [2] Therein, the

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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

officer certified that appellant acquired the nationality of the United States by virtue of his birth at El Paso, Texas; and that he made a formal renunciation of that nationality, thereby expatriating himself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

In forwarding the relevant documents to the Department for adjudication of the case, the Embassy stated that the consequences of renunciation had been discussed with K[redacted] and that "the consular officer is satisfied that he had given considerable thought to the question of citizenship."

The Department approved the CLN on April 10, 1990. The Embassy forwarded a copy of the approved CLN to appellant by registered mail on May 7, 1990. On the reverse of the CLN is set forth information about the right to make an appeal to the Board of Appellate Review within one year after approval of the CLN by the Department.

About one year later (May 30, 1991), appellant's father addressed a letter to the United States Ambassador, "to help my son regain his American citizenship." His son had "very reluctantly" decided to give up his citizenship "in order to avoid difficulties." The father's letter continued: "The renunciation became effective on May 7, 1990 /sic/." (Appellant's expatriation became effective March 19, 1990.) Meanwhile, he noted, his son had given up the position with the federal agency and returned home.

"It is his frequently expressed wish," his father added, "that he regain his American citizenship, but he is convinced that this is no longer possible. He also would like to move to North Carolina, where we have friends, with his parents as soon as he has completed his education."

On June 12, 1991, a consular officer of the Embassy replied that the Embassy was not in a position to assist appellant to regain his citizenship. However, his son might take an appeal from the Department's decision, as indicated on the reverse of the CLN that was sent to him after it had

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2. Cont'd.

> 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.

been approved by the Department. A few weeks later, by letter dated July 8, 1991, appellant noted an appeal to this Board. As appellant put it, his father had been told by the Embassy that "I am allowed to withdraw my disclaimer of my American nationality. Herewith I ask you to accept my withdrawal of my disclaimer and to allow me to obtain possession of the American nationality again."

At the request of the Board, appellant amplified his grounds of appeal in October 1991. He had taken the government position (an apprenticeship at a government language school) while waiting for a university place; had he not done so, he would have been unemployed for an indefinite period of time. It had been hard for him to accept the stipulation that he give up American citizenship; however, everyone, including his parents, had urged him to do *so.* The consular officer at the Embassy had "tried to explain to me the consequences of my renunciation," but he could not fully understand them. "I was in a crucial interior conflict, under pressure." He had faced a dilemma: be unemployed or have employment and lose his American citizenship. Under such psychological pressure he could hardly understand the consular officer's explanations. Therefore, it could not be said that he renounced voluntarily.

Before making the foregoing submission, appellant consulted an officer of the Embassy. According to a statement the officer made on May 1, 1992, the officer pointed out to appellant (and to his parents who also were present) that

> **...loss** of citizenship must normally be appealled /s within one year of the loss. Mr. [redacted] /appellant's father/ said that they were aware of this. M[redacted] /appellant/ also nodded at this time. The father went on to say that they wished to file an appeal anyway, in the hope that it would be granted on 'compassionate' grounds. I explained the appeal procedure, providing them with the necessary addresses. I again explained that they would have to respond to the question of why the appeal was filed after the deadline. They acknowledged this, thanked me and departed.

Invited by the Board to comment on the officer's statement, appellant stated: "We agree with its content with the exception of the statement, we were aware of the fact the citizenship must be appealed within one year."

II

As an initial matter the Board must determine whether the jurisdictional prerequisites to our consideration of the appeal have been satisfied. Timely filing being mandatory and jurisdictional. (United States v. Robinson, 361 U.S. 220 (1961)), the Board's jurisdiction depends upon whether the appeal was filed within the limitation on appeal prescribed by the applicable federal regulations. The limitation on appeal is set forth in section 7.5(b)(1) of Title 22, Code of Federal Regulations, 22 CFR 7.5(b)(1), which reads as follows:

> 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.

The regulations further provide 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. 22 CFR 7.5(a).

The Department of State on April 10, 1990 approved the CLN that was executed by the Consulate General at Munich in appellant's name. Under the regulations, he had until April 10, 1991 to appeal the Department's holding. He did not do so, however, until July 8, 1991, three months after the time allowed for appeal. Appellant's delay in seeking appellate review may be excused only if he is able to show a legally sufficient reason for not moving within the prescribed time.

Appellant did not address the issue of timely filing in his submissions of July or October 1991. Indeed, he addressed the issue only after the Department filed its brief. In his reply, appellant stated merely: "I did neither intend to ignore the time limitation for filing an appeal nor the proper appeal procedures. I can only assure, repeat and declare: I was under extreme psychic stress." His only other reference to timely filing was in his brief comment on the statement of the Embassy officer to whom he spoke in late August of 1991. (Supra.)

He suggests, but does not elaborate, that he did not appeal within the time allowed because he was unaware of the time limit on appeal and because he was under such stress that he was unable to act in timely fashion.

"Good cause" is a term of art and settled meaning. It is defined in Black's Law Dictionary, 5th ed. (1979), as "a substantial reason, one that affords a legal excuse. Legally sufficient ground or reason." What constitutes good cause depends upon the circumstances of the particular case. In general, to establish good cause for taking an action belatedly one must show that circumstances which were largely unforeseeable and beyond one's control intervened to prevent one from taking the required action.

The Embassy sent a copy of the approved CLN to appellant by registered letter, dated May 7, 1991. There is no question that appellant received the Embassy letter and the enclosed CLN. Indeed, as we have seen, when appellant's father wrote to the Ambassador on May 30, 1991 to request assistance for his son to recover his citizenship, the senior K[redacted] indicated that the letter had duly arrived. On the r[redacted]e of the CLN the limitation on appeal and the procedures to make an appeal are clearly set forth. Therefore, from around mid-May 1991, appellant was squarely on notice of his right to appeal and the time within which an appeal should be filed. If then, or during the ensuing 11 months, he believed he acted hastily or without full understanding of the serious consequences of his act, he had all the information he required to act. That he did not act within the time allotted plainly was not the consequence of anything unforeseen or beyond his control. We find apropos the comment of the Embassy officer to whom appellant spoke in August 1991:

> I[redacted]s clear at that time that M[redacted] K[redacted] genuinely regretted his d[redacted]ion to renounce his citizenship. He pointed out that he had renounced in order to enter a military training program, but later discovered that the program was not appropriate for him. He dropped out of the training program after nine months, and now wanted his citizenship back. The K[redacted] expressed interest in an appeal of his [redacted] of citizenship only after M[redacted]'s military training had been terminated.
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> The K[redacted] have never disputed timely receipt of the CLN. Indeed, in their letter to the Ambassador of May 30, 1991, they explicitly mention the Embassy's letter that accompanied the CLN. Furthermore, the K[redacted] acknowledged to me during our conver-s[redacted] in August/September of 1991 that they were aware of t[redacted]e year deadline for appeal. Neither Marco K[redacted] nor either of his parents has ever stated why they did not appeal M[redacted]'s

loss of citizenship until after the one year deadline had expired.

We cannot entertain appellant's argument that he was under such "psychic" stress that he was unable even to initiate an appeal within the limit on appeal. He has submitted no evidence to support his contention. Absent evidence to the contrary, we must presume that he was capable of understanding what he had to do to contest the decision of loss of his citizenship and the time within which he should act.

III

Since the appeal was not filed within one year after the Department approved the certificate of loss of appellant's nationality and since he 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. It is time-barred and must be, and hereby is, dismissed for lack of jurisdiction.

Alan G. James, Chairman

Mary Elizabeth Hoinkes, Member

Frederick Smith, Jr., Member