

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: C [REDACTED] T [REDACTED] D [REDACTED]

C [REDACTED] T [REDACTED] D [REDACTED] appeals from a determination made by the Department of State on November 4, 1980 that she expatriated herself on September 29, 1980 under the provisions of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States nationality before a consular officer of the United States at Munich, Germany. 1 The appeal was entered in late 1991, more than ten years after the Department held that appellant expatriated herself. Since the appeal was not entered within the prescribed limitation (one year after approval of the certificate of loss of nationality) and since appellant has not shown good cause why the appeal could not have been filed within the prescribed time, we conclude that the appeal is time-barred. Accordingly, we dismiss it for lack of jurisdiction.

I

Appellant, C [REDACTED] T [REDACTED] D [REDACTED], n [REDACTED] C [REDACTED], acquired the [REDACTED] States by virtue of her birth in the [REDACTED] to a United States citizen father on [REDACTED] 2 Her mother is a German citizen.

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

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 --

. . .

(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; . . .

2. Appellant acquired United States citizenship pursuant to section 301(a)(7) of the Immigration and Nationality Act, now section 301(g), 8 U.S.C. 1401(g). She was initially subject to a provision of the Act that she reside in the United States for two years prior to her 28th birthday in order to retain citizenship. In 1978, that provision was repealed, and persons like appellant who had not reached their 28th birthday on that date were no longer subject to the retention provision.

- 2 -

Appellant has lived most of her life in Germany, save for two years from 1962 to 1964 and one year from 1977-1978 when she lived in the United States. She was issued passports on four occasions by United States Consulates in Germany, the last one in 1979.

Shortly after her 18th birthday, appellant went to the United States Consulate General at Munich where she made a formal renunciation of her United States citizenship. She executed a statement of understanding, acknowledging, inter alia, that:

-- she had the right to relinquish her United States citizenship and was doing so voluntarily

-- she would, after renouncing, become an alien toward the United States;

-- she had been afforded an opportunity to make a separate written explanation of the reasons for her renunciation, but did not choose to do so; and

-- that the extremely serious nature of her contemplated act had been fully explained to her by the consular officer concerned and that she fully understood those consequences.

The statement was witnessed by two employees of the Consulate General and attested by the consular officer. Appellant then made the prescribed oath of renunciation: "I hereby absolutely and entirely renounce my United States nationality together with all rights and privileges and duties of allegiance and fidelity thereto pertaining."

As required by law, the consular officer who presided executed a certificate of loss of nationality (CLN) in the name of [REDACTED] T [REDACTED] C [REDACTED]. 3 Therein he certified that

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

appellant acquired United States nationality by virtue of her birth in Germany of a United States citizen father; that she made a formal renunciation of United States nationality; and thereby expatriated herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

The Consulate General referred the case to the Department for adjudication under cover of a routing and transmittal slip which stated:

Enclosed for the Department's approval is Certificate of Loss of Nationality of the United States with related documents, which was prepared by this Consulate General in the name of [REDACTED].

Her United States passport No. 23438851, issued on April 10, 1979 by this office is enclosed for the Department's disposition.

The Department approved the CLN on November 4, 1980, approval being an administrative determination of loss of nationality from which a timely appeal may be taken to the Board of Appellate Review.

Appellant married a German citizen in 1981 and shortly afterwards acquired German citizenship. Ten years passed, In late 1991, she initiated this appeal.

Appellant submits that she did not act voluntarily or with full knowledge of the consequences of her renunciation. She asserts that her mother, a German citizen, wanted her to be German, not American. After she turned 18, her mother filed an application on her behalf for naturalization as a German citizen. Appellant was apparently informed by the German authorities that she would have to relinquish United States citizenship in order to become a German. Accordingly, in obedience to her mother and in order to meet the requirements

3. (Cont'd.)

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.

of naturalization, she went to the Consulate Genral at Munich to surrender her citizenship. She never wanted to give up her American citizenship and has regretted her decision "so many times." She was, as she put it, very young and under the influence of her mother. In fact, on the day she renounced her citizenship, her mother accompanied her. "I didn't want to sign /the renunciation papers/ but my mother stood next to me and said it was alright to sign."

11

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 November 4, 1980 approved the CLN that was executed by the Consulate General at Munich in appellant's name. Under the regulations, she had until November 1981 to appeal the Department's holding. She did not do so, however, until 1991, 10 years after the time allowed for appeal. Appellant's delay in seeking appellate review of her case may therefore be excused only if she is able to show a legally sufficient reason for not moving within the prescribed time.

"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

- 5 -

depends upon the circumstances of the particular case. In general, to establish good cause for taking an action belatedly one must show that unforeseen circumstances beyond one's control intervened to prevent one from taking the required action.

Appellant does not argue that she did not receive in timely fashion a copy of the approved CLN with information on the reverse about the time limit on appeal and how one might pursue an appeal before the board.

From the time she initiated the appeal, she was aware of the importance of addressing the issue of timely filing and explaining her delay in seeking relief before this Board. Appellant has, however, made no effort to justify her delay in seeking review of the Department's adverse judgment. Indeed, she has ignored the issue, apparently hoping that the board would find her claims that she did not act voluntarily and with full knowledge of the consequences of her act sufficient to enable the Board to proceed to the substance of the matter. That we manifestly are unable to do.

In 1980, appellant had all the information she needed to initiate an appeal if she believed she had acted hastily and unknowingly and under her mother's influence. It appears, however, that she was content for a number of years to have German citizenship, which she acquired not long after renouncing her United States citizenship. Indeed, she has stated she was happy to have German citizenship (not American) because she was able to gain employment with the American forces as a local hire. Furthermore, she also asked disarmingly how could she have known when she gave up her American citizenship or in the time she had to take an appeal that her husband would change his mind about leaving Germany and agree to go to the United States to live with her?

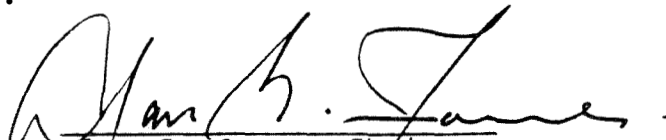
Appellant clearly implies that until her circumstances changed a number of years later she did not wish to avail herself of the opportunity to have the board review the Department's decision. It almost appears as though she consciously decided it was not in her interest to appeal within the time allowed.

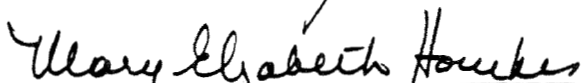
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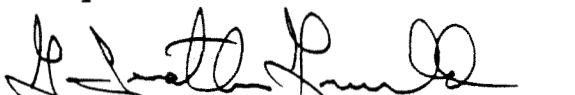
Since the appeal was not filed within one year after the Department approved the certificate of **loss of** appellant's nationality and since she has failed to show good cause why the Board should enlarge the prescribed time for taking the appeal, the Board has no discretion to allow the appeal. It is time-barred and must be, and hereby is, dismissed for lack of jurisdiction.

- 6 -

In view of our disposition of the case, we are unable to make other determinations.


Alan G. James, Chairman


Mary Elizabeth Hoinkes, Member


G. Jonathan Greenwald, Member