January 18, 1991

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: W[redacted] T[redacted] H[redacted]

On Motion for Reconsideration

The Board of Appellate Review in a decision rendered on October 15, 1990, concluded that it Lacked jurisdiction to consider an appeal taken by W[redacted] T[redacted] H[redacted] on April 7, 1989, from an administrative [redacted] on loss of United States nationality made by the Department of State on April 27, 1978. Tne Board determined that the appeal was time-barred because it was not filed within the limitation prescribed by the regulations in effect in 1978. 1/ The Board accordingly dismissed the appeal. On October 31, 1990, appellant moved for reconsideration of the Board's decision. 2/

1/ Section 50.60 of Title 22, Code of Federal Regulations (1967-1979), 22 CFR 50.60, read as Eollows:

> A person who contends that the Department's administrative holding of loss of nationality or expatriation in his case is contrary to law or fact shall be entitled, upon written request made within a reasonable time after receipt of notice of such holding, to appeal to the Board of Appellate Review.

2/ Section 7.10 of Title 22, Code of Federal Regulations (1990), 22 CFR 7.10 provides:

> Sec. 7.10 Motion for reconsideration.
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> 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 the motion, including any facts or points of law which the 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 the motion will be given opportunity to file a memorandum in opposition to the motion within 30 days of the date the Board

For the reasons stated below we deny the motion.

I

Appellant believes that his appeal was not barred by the passage of time. He contends that he entered an appeal as soon as he was informed by the Miami Passport Agency in January 1989 of the existence of the Board. Prior to that time, he claims that he had no knowledge of an appellate board or even how to appeal. In support of the motion, appellant's mother submitted an affidavit, dated December 10, 1990, in which she elaborated on her earlier submission to the Board why her son did not file a timely appeal with the Board. She attributes the delay to her failure for almost 11 years (May 1978 - January 1989) to inform her son of, and forward to him, a letter of the United States Embassy at Caracas, dated May 2, 1978, addressed to appellant, which enclosed a copy of a certificate of loss of United States nationality. Appellant's motion and the affidavit of his mother essentially reiterate facts and arguments made previously in their submissions to the Board.

The Department of State elected not to file a memorandum in opposition to appellant's motion for reconsideration. It expressed the view, however, that the Board properly dismissed the appeal for lack of jurisdiction because appellant did not file his appeal within a reasonable time after issuance of the certificate of loss of United States nationality.

II

The fundamental flaw in appellant's case is his refusal to recognize that in the particular circumstances of his case he had a clear responsibility (even if no one advised him on the matter until **1989** which we are not satisfied was the case) to take the initiative to ascertain what relief might be available to him. He may not excuse a delay of 11 years in entering the appeal by asserting simply that no one told him until 1989 that there was a Board of Appellate Review from which he might seek relief. **As** we stated in our original

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2/ (Cont'd.)

> . forwards a copy of the motion to the party in opposition. If the motion to reconsider is granted, the Board shall review the record, and, upon such further reconsideration, shall affirm, modify, or reverse the original decision of the Board in the case.

opinion, appellant performed the most unequivocal act of expatriation; he assuredly knew from 1977 forward that he gave up his United States citizenship. And he has expressly acknowledged that in 19132 wnen he returned to Caracas from studying in the United States that he knew an adverse decision with respect to his citizenship had bean made by the Department in 1978. Indeed, he has stated that he consulted the United States Embassy at Caracas about how he might regain his citizenship and was advised, among other things, to retain counsel. Whether he was or was not specifically advised about the right to appeal to this Board, we do not know for there is no record of the alleged conversation. Yowever, we find it difficult to accept that if he expressly asked an Embassy official how he might regain his citizenship, he was not told about the Board of Appellate Review. Be that as it may, he thereafter allowed five years to pass before taking any further action with respect to challenging the Department's determination of loss of nationality; in 1987 ne asked tne Department to send him copies of the certificate *of* loss of nationality (CLN) that was approved in his name. He has not explained why in the face of sure knowledge that he lost his citizenship he did not move again until 1987. Even after receiving the copies of the CLN he failed to act until a year and a half later when in December 1988 he applied for a United States passport.

We can but reiterate what we stated in our original opinion: appellant knew from the first that he had expatriated himself: even if no one told him before 1989 that he might appeal to the Board (the evidence is too murky in this respect for us to be satisfied that no one did), he had knowledge of a vital fact which, as a matter of law, should have been sufficient to lead him, had he exercised the diligence of an ordinary, concerned person, to other facts, namely, his right to seek appellate relief and how to proceed to obtain review.

Appellant alone is responsible for the fact that the appeal was not entered until nearly 11 years after the Department (in effect) ratified his act of relinquishment of United States citizenship.

III

After careful review of the motion and the supporting affidavit, **we** are unable to discern a legally sufficient reason to justify a delay of 11 years in taking an appeal. Moreover, the motion and supporting affidavit, in our view, do not disclose any facts or points of lax that the Board overlooked or misapprehended in rendering its decision of October 15, 1990, or any new matters that would warrant reconsideration of its decision.

Accordingly, appellant's motion for reconsideration is hereby denied.

Alan G. James, Chairman

Edward G. Misey, Membe

George Taft, Member