

DEPARTMENT OF STATE

BOARD OF APPELLATE REVIEW

IN THE MATTER OF: M ██████ G ██████

The Department of State made a determination on June 28, 1983 that M ██████ ██████ expatriated herself on February 7, 1983 under operation of section 349(a)(5) of the Immigration and Nationality Act by making a formal renunciation of her United States citizenship before a consular officer of the United States at Ciudad Juarez Mexico. Ms. G ██████ entered an appeal from that determination on May 26, 1990.

In light of the fact that the appeal was not filed within the prescribed limitation of one year after the making of an adverse determination with respect to nationality, we confront at the outset a jurisdictional issue: whether despite the fact of apparent untimely filing, appellant has shown good cause why the Board should enlarge the time for filing. For the reasons that follow, we conclude that appellant has not made such a showing. Accordingly, we dismiss the appeal for lack of jurisdiction.

I

Ms. G ██████ acquired the nationality of the United States by virtue of her birth at ██████ ██████. A few days after her birth at Ciudad Juarez, Mexico where she still lives. In 1967, she was registered as a United States citizen by the Consulate General at Ciudad Juarez and re-registered in 1978 at which time she was issued an identify card, valid until 1983.

The records of the Consulate General show that appellant, on January 27, 1983, came to inquire as to how to renounce her U.S. citizenship, Reason: To pay lower tuition at

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; . . .

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Cuidad Juarez/ University, 2500 Dls. if US citizen or \$2500 pesos of Mex." She was given, to study, a copy of the prescribed oath of renunciation, a statement of understanding of the serious consequences of formal renunciation of citizenship, and a form entitled "Information For Determining U.S. Citizenship."

On February 4, 1983, the Consulate General also gave her a letter to present at University showing that she has an appt. for 2-7-83, to renounce her U.S. cit." She returned to the Consulate General on February 7, 1983 where she made a formal renunciation of her United States citizenship. The Consulate General reported her action to the Department, indicating that the renunciation had been accomplished by specified law and regulations.

The applicant appeared today at the Consulate General and expressed her desire to renounce her American citizenship. After the seriousness of her contemplated act was explained to her, she signed the State of Understanding and Oath of Renunciation was administered to her. No acts of possible ~~prior~~ expatriation were disclosed.

In compliance with the statute, the consular officer who presided executed a certificate of loss of nationality (CLN) in appellant's name. 2 Therein he certified that appellant acquired United States nationality by virtue of her birth in the United States; acquired the nationality of Mexico by virtue of her birth abroad to a Mexican citizen mother; and made a

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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 forwarded to the Attorney General, for his

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formal renunciation of her United States citizenship on February 7, 1983, thereby expatriating herself under the provisions of section 349(a)(5) of the Immigration and Nationality Act.

The Department approved the CLN on June 23, 1983. On July 20, 1983, the Consulate General at Ciudad Juarez sent appellant a copy of the approved CLN and informed her that she had the right to appeal the Department's decision.

Please note the Consulate General wrote that the reverse of the certificate of loss of nationality sets forth the appeals procedures. For your convenience, a Spanish translation thereof is attached, should you require it.

Nearly three years later, appellant went to the Consulate General, as that office recorded, 'to inquire about the possibility to recover her U.S. citizenship that she voluntarily renounce sic, gave her instructions regarding appeal.' A few days later, while visiting an aunt in Chicago, appellant applied for a United States passport at the Passport Agency in that city. In processing her application, the Agency asked appellant to complete a citizenship questionnaire. In it she stated, inter alia, that she had never lived in the United States but came here occasionally to shop and visit relatives. When she renounced her citizenship she did so involuntarily and had not intended to relinquish her United States citizenship. She performed the expatriative act simply in order to qualify as a Mexican citizen and thus pay a lower university tuition; she could not afford to pay the tuition charged to foreign students, especially since her mother was then gravely ill and her medical expenses were very high.

The Department disapproved her passport application in July 1986 on the grounds of non-citizenship. Once again she was expressly advised that she had a right to appeal the Department's original decision of expatriation.

For your information, the letter of denial read there exists a Board of Appellate Review of the

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2. (Con't.)

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.

Department of State to consider appeals from Administrative Determinations of loss of Nationality. Should you desire additional information concerning the matter of an appeal, it is suggested you write directly to the Board of Appellate Review, Department of State, Washington, D.C. 20520.

On May 26, 1990, appellant lodged an appeal with this Board. She grounded the appeal on the following considerations:

~~I~~In 1983<sup>7</sup> I was enrolled at the Autonomous University of Ciudad Juarez, ... The fee per semester was 2,500 Mexican pesos but because I was a foreign student they were charging me the equivalent in the currence of my country of origin, i.e., US\$2,500 per semester, as provided in the internal regulations of the university. Since I did not have that much money, I went to talk to various university officials. However, they refused to let me continue my studies unless I renounced my citizenship either that or give up my studies. In addition, at about that time my mother was diagnosed as having cancer...and so I was very upset emotionally....

~~M~~y situation at that time was pretty desperate and I was in no condition to make a ~~sic~~ such an important decision, one that would determine my future. Finding myself in that situation I opted to renounce the citizenship so that I could continue my studies and, at the same time, be at my mother's side during her final months, taking care of her myself because we didn't have the money to put her in a hospital in El Paso.

The Department took the position that the appeal was time-barred and should therefore be denied by the Board for lack of jurisdiction. The Board sent a copy of the Department's brief to appellant for reply in the autumn of 1990. There ensued a considerable delay while the Board sought to ascertain if appellant understood that she might make a

reply and if she did, whether she intended to do so. Finally, the Board informed appellant that if by December 15, 1991 she did not reply and explain why she had not done so within the prescribed time, the Board would decide her appeal on the basis of the record before it. As of December 15th, appellant had not communicated with the Board.

## II

As an initial matter the Board must determine whether the jurisdictional prerequisites to 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 June 28, 1983, approved the CLN that was executed by the Consulate General at Ciudad Juarez in appellant's name. Under the regulations, she had until June 28, 1984 to appeal the Department's holding. She did not do so, however, until May of 1990, six years after the time allowed for appeal. Appellant's delay in seeking appellate review of her case may 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 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.

Appellant does not argue that she did not receive in timely fashion a copy of the approved CLN with information on the reverse. Asked by the Board after she lodged her appeal to explain why she did not or could not take an appeal within the time allowed appellant made this reply:

I expound the reasons for which I waited 7 years to appeal. The first few years I did not perceive the consequences of such a decision, as when my mother died I fell into a great depression which lasted for a long time. The first time that I sought information regarding the recuperation of my U.S. Citizenship I was in Chicago, Illinois, visiting one of my aunts. She suggested that we go to the Department of State at 230 S. Dearborn St., Chicago, Illinois 60604, where there was a Passport Service. (I am including a copy of the Petition for an American Passport). In answering negatively to my request, they asked me for a letter in which I would explain the motives for renouncing my U.S. Citizenship. When they answered me they informed me that they could do nothing to help me in that matter. In 1987 I personally appeared in the American Consulate General in Cd. Juarez to see ~~if~~ if there was any possibility of retaining my U.S. Citizenship, and was informed that, there was none. 3 Not being in conformity with that response, I consulted with various Attorneys in El Paso, Texas, and they gave me some hope, but unfortunately the cost of such an endeavor precludes that route and this is why I am appealing to you.

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3. Appellant must be mistaken. The records of the Consulate General do not indicate that she visited that office in 1987; only in March 1986. It would appear that after she consulted the Consulate General in March 1986 she decided, while visiting a relative in Chicago, to make an effort to recover her citizenship by applying for a United States passport.

The reason appellant presents to excuse her delay in taking the appeal does not satisfy the criteria of "good cause."

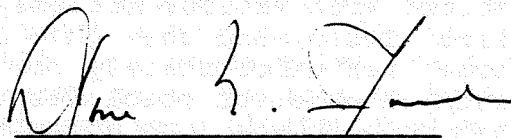
In 1983-4 she had all the information she needed to challenge the Department's decision, if, upon reflection, she believed she had acted hastily, under stress or without fully appreciating the consequences of formal renunciation. In the spring of 1986 when she showed interest in recovering her citizenship, and again in the summer of that year after denial of her passport application, she was expressly advised how to seek review of the Department's adverse decision. Yet four more years passed before she moved for relief. Seeking legal counsel but finding it too expensive to lodge an appeal through counsel does not, as she suggests, excuse her delay. If she found the costs of legal representation too high, she need not have delayed, for she could at any time have obtained, free of charge, clarification of the appeal procedures simply by consulting the Consulate General at Ciudad Juarez or writing directly to the Board.

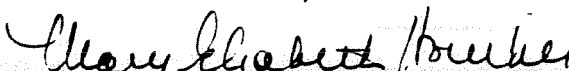
Possibly (but without accepting it as a fact), she was so upset in 1983-84 by her mother's fatal illness and death that she could not act. But what excuse did she have for not initiating an appeal by 1986 at the latest? She has offered none. On the facts, there was no unforeseen obstacle beyond her control to exercise her right of appeal.


III

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.

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

  
Alan G. James, Chairman

  
Mary Elizabeth Hoinkes, Member

  
Frederick Smith, Jr., Member