

7 FAM 1230 APPEALING LOSS OF NATIONALITY DECISIONS

(TL:CON-5; 3-30-84)

a. Persons held to have lost U.S. nationality by performance of acts made expatriating by statute have the right of appeal as part of the due process of law guaranteed by the Fourteenth Amendment. The Board of Appellate Review in the Office of the Legal Adviser (L/BAR) is the designated authority in the Department to consider appeals.

b. The procedures for appealing the Department's administrative holding of loss of nationality are shown on the reverse side of the Certificate of Loss of Nationality (CLN; see section 7 FAM 1221 b).

7 FAM 1231 ADMINISTRATIVE REVIEW OF LOSS DECISIONS

a. Some cases in which the Department had previously held loss of nationality may be reversed administratively by the Department. Advantages of this procedure are that it is less expensive to the person appealing and more convenient. This is not a substitute for the person's right to appeal but is an option available in some cases. These cases should be submitted to the Department (Attention: CA/OCS/CCS). This procedure may be followed when:

(1) The law under which the holding of loss of nationality was made is later held unconstitutional; for example, a law concerning voting in a foreign election;

(2) A major change in the interpretation of the law on expatriation is made as a result of a U.S. Supreme Court decision; for example, the decision in Afroyim v. Rusk or Vance v. Terrazas;

(3) A major change is made in the interpretation of the law by the Department or is made by another agency and adopted by the Department. Most of these changes arose under previous statutes and prior to the decision in Afroyim v. Rusk; for example, cases involving naturalization of a minor;

(4) Substantial new evidence of involuntariness or intent, not previously considered, is presented by the individual.

b. These cases should be presented on the basis of a passport or registration application under cover of an operations memorandum giving the consular officer's opinion and enclosing all relevant evidence. The Department will review the request to determine if it meets the above criteria and if, based on all the facts and circumstances, relief would be equitable. The Department will take into account, in appropriate cases, the timeliness of any request for administrative review, whether there has been an unreasonable delay by the applicant in seeking such review and, if so, whether that delay has impaired the Department's ability clearly to establish the facts and circumstances concerned. If warranted, the CLN will be vacated and the post will be notified.

7 FAM 1232 APPEALS TO BOARD OF APPELLATE REVIEW

a. Persons who have received an approved CLN must be notified of the right to appeal (see 22 CFR, Part 7 and 22 CFR 50.52). Notification is provided by the summary on the back of the CLN (see section 7 FAM 1230 b). CLN's not having this summary, or those which contain procedures in effect before November 30, 1979, should be amended to inform expatriates regarding current appeal rights and procedures.

b. The appellant should address the notice of appeal to the Board of Appellate Review, Department of State, Washington, D.C. 20520. This address should also be used if the person is appealing desires to receive any information about relevant portions of the Code of Federal Regulations, information on appeal procedures, and other correspondence concerning proceedings. If the post receives correspondence or if circumstances make submission to the Board too expensive or cumbersome, the post may forward it to the above address under cover of a memorandum. Appeals may also be directed through an attorney in the United States.

c. The following regulations apply to appeals to the Board of Appellate Review:

(1) An appeal must be taken within 1 year after approval of a CLN (see 22 CFR 7.5(b)(1)). The Board has discretion to enlarge a time limit on holdings made before November 30, 1979, the effective date of those regulations, or in cases involving unusual facts which may toll the running of the time limitation (see 22 CFR 7.10).

(2) An appellant may appear in person or with an attorney who must be admitted to practice in the United States (see 22 CFR 7.5(k)).

(3) The Board has no authority to consider arguments challenging the constitutionality of a law or regulation. It restricts itself solely to consideration of the case record, new evidence, and factual or legal arguments presented (see 22 CFR 7.5(j)).

(4) New evidence or arguments made in connection with the appeal become part of the appellant's passport and citizenship file. Hearings are private unless the applicant requests otherwise in writing (see 22 CFR 7.6(c)).

(5) The Board may, upon motion, reconsider a previous decision (see 22 CFR 7.9).

d. A decision by the Board in favor of the person appealing is the Department's final determination and cannot be appealed to the courts.

7 FAM 1233 THROUGH 1239 UNASSIGNED