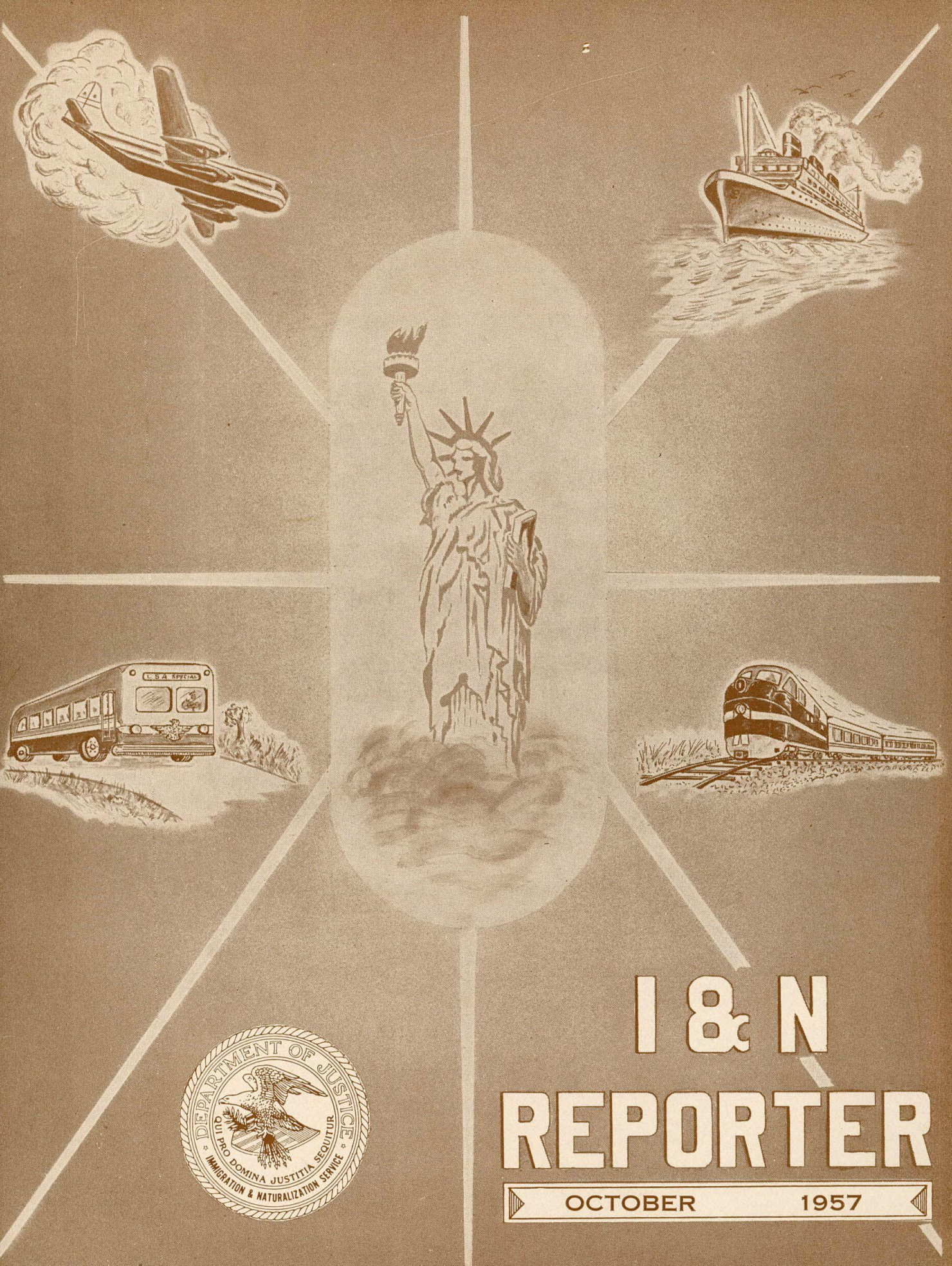

I & N REPORTER

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The Alien Smuggling Problem

by

Paul K. Crosby

Assistant Chief, Border Patrol

and

Laurence R. Kesler

Supervisory Investigator

It can be assumed that alien smuggling has existed in this country since passage of the first restrictive immigration measure in 1875.

Following enactment of the Chinese Exclusion Act in 1882, smuggling of Chinese—first through seaports and later across the Mexican Border—became a lucrative profession. Further restrictions on movement of aliens into the United States were made by the Act of 1917 which extended the requirement that entry be made through designated ports to include land border ports, and by the 1924 Act which established quota immigration and the requirement of entry documents. Aliens unable to enter legally sought other means and some entered surreptitiously.

Enforcement of each new provision of law at the ports and along the borders caused some of these aliens to seek the aid of professional smugglers. Smuggling activities spread to include the land borders as well as the seacoasts.

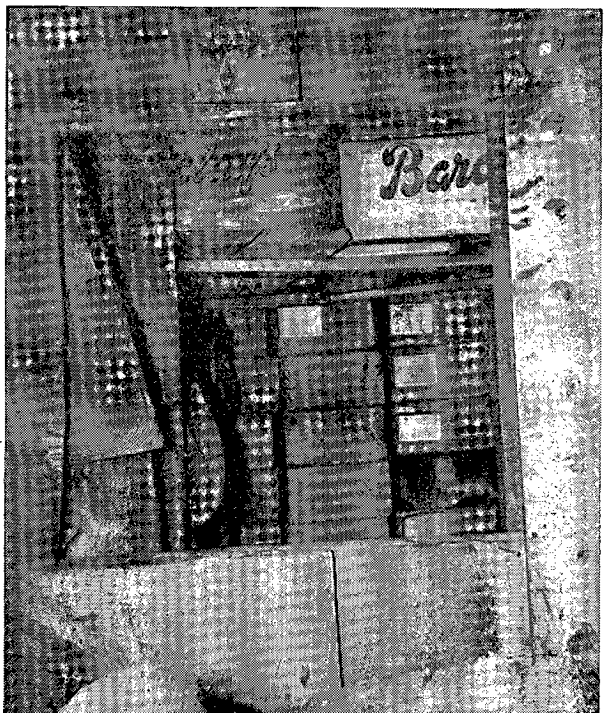
Any limitation on the movement of aliens into the United States will tend to cause a proportionate increase in the use of professional smugglers. Restriction may be in the form of legislation as in the Immigration Act of 1924, tightening of border security as was seen on the Mexican Border during the past three years, or the development of new techniques in crewmen control and ship searching operations.

Trends toward illegal entry of aliens and the use of smugglers to help them are brought about by many factors. Political and religious persecution, revolution, war, depression, drought and pestilence provide incentives for people to leave their own country. Our enjoyment of human rights and the highest living standard in the world provide an attractive contrast.

The greater the contrast the greater likelihood that aliens, excludable because of criminal or subversive backgrounds or inability to obtain visas due to oversubscribed quotas, will seek the aid of smugglers to gain entry into the United States.

Any method by which a person can move or be moved without being seen, without being suspected, or without being overtaken can and probably has been used by professional smugglers. New methods of smuggling and of transporting smuggled aliens to the interior are continually being discovered.

There is no limit to the imagination of a smuggler. Aliens are hidden in any place large enough to hold them. Illegal aliens have



A year ago officers of the Border Patrol station at Mobile, Alabama apprehended four aliens being smuggled into the United States from the SS. ALMEIRIM. The aliens were found in a compartment, the entrance to which is seen here. The enclosure measured about five feet square and served as a hiding place for the men during the ship's voyage. The compartment was constructed at the end of a passageway by cutting an opening in the bulkhead and piling supplies and equipment against a stack of boxes in such a way as to conceal the tiny room and the aperture.

been found hidden in automobile trunks, under the seats, inside rear seat cushions from which springs had been removed, between the radiator and grill and between the motor and hood of vehicles.

They have been found in gasoline tank trucks, in sprinkler wagons, in specially built compartments in cars and trucks, and in cramped spaces arranged within all kinds of cargo from lumber and baled hay to frozen fish.

All means of transportation have been used including freight cars, automobiles, trucks, buses, small boats and private airplanes. With or without assistance of crew members, aliens have stowed away on airliners and steamships.

In moving smuggled aliens, transporters have used scout cars to determine the whereabouts of Border Patrol officers. Short-wave radios have been used to warn border violators of the approach of our officers, as have telephones and many other means of communication. When a new method of transportation is devised, smugglers will use it. When a new type of communication is devised, smugglers will use that too.

The professional smuggler operates for profit. Some limit their activities to the transportation of aliens from border or coastal areas to the interior. Some operate alone and may reside here or in another country.

Where organized rings have been uncovered in other countries, such operations, almost invariably, were found to require confederates within the United States. For example, a relative or prospective employer in this country may make the first contact with the alien—either in person or by mail. On the Mexican Border the smuggler may solicit laborers on his own initiative.

Smugglers' fees vary considerably, depending on many factors including the nationality of the alien, the distance to be traveled and means of transportation, and the anti-smuggling activities of the Immigration and Naturalization Service. At present illegal aliens find that rates are high and seem to be increasing.

Crew members frequently assist aliens in stowing away on vessels destined to the United States. Some aliens are promised a refund of half the exorbitant fee in the event of apprehension and deportation, provided details of the arrangements are not disclosed to the Government. Often only a part of the fee is paid in advance, the balance being collected after a "safe" arrival.

On the Mexican Border the fee is sometimes collected in installments after the smuggled alien has obtained employment. In some instances the employer, having conspired with the smuggler to violate the law, deducts the smuggler's fee from the alien's wages. As smuggling for gain is a deportation charge, the fee is often camouflaged by requiring the alien to contribute to the joint purchase of an automobile registered in the name of the smuggler.

To cope with illegal entry problems the Immigration and Naturalization Service continually studies and revises its anti-smuggling operations. Primary responsibility for enforcing the laws pertaining to alien smuggling lies with the Border Patrol along the land borders of the United States and the Gulf and Florida coastal areas. In other areas the responsibility lies with the Investigations Division of the Service.

Smugglers of aliens are generally prosecuted under Section 274 of the Immigration and Nationality Act, which imposes a maximum penalty of five years imprisonment or a fine of $2,000, or both, for inducing, bringing in, harboring or concealing an alien not entitled to enter the United States, or for transporting an alien after he has made an illegal entry.

Section 277 of the Act imposes a penalty of imprisonment for five years or a $5,000 fine, or both, for aiding or assisting a subversive alien to enter. Section 278, which makes it illegal to import an alien for prostitution or any other immoral purpose, provides a 10-year sentence and a $5,000 fine. In addition, the general conspiracy statute (18 U. S. C. 371), often used in connection with smuggling cases, provides a penalty of five years or $10,000, or both.

During the fiscal year ended June 30, 1957, 237 criminal complaints were filed in smuggling and related offenses. Convictions were obtained in 183 cases, 12 were acquitted and 42 cases were dismissed. Aggregate fines amounted to $14,805, and sentences totaling 140 years and 21 days were imposed.

Illegal entry methods follow no set pattern. The time, place, and method thought safest by each individual is used. The several aliens making up a group may enter in different ways and rendezvous later within the United States. Some aliens of a group may enter across the line surreptitiously with or without assistance, while others enter with false documents which they have obtained, or which

have been furnished by the smuggler. Others may enter with the smuggler during rush hours and make brazen claims to American citizenship. The several aliens then proceed to a prearranged meeting place where they are picked up by the smuggler or a confederate who transports them to their destination.

Smugglers have recently resorted to the practice of dropping the aliens off singly at widely scattered points. This method, coupled with the fact that the aliens are warned against revealing method of entry, route of travel, etc., makes the investigation extremely difficult. In addition, prosecution of the confederate is sometimes rendered more complex since the ringleader often remains outside the United States.

Mobile search teams have been established to combat alien smuggling at seaports. Specially trained Investigators and Patrol Inspectors conduct ship searches and provide a nucleus of trained personnel for expanded operations in event of a National emergency.

This special training program, conducted by the United States Bureau of Customs, includes lectures on methods of smuggling, vessel nomenclature, safety practices, techniques of vessel searching, and related subjects. The lectures are supplemented by visual aids and the actual boarding and searching of vessels together with customs officers.

Immigration officers, incidental to the performance of their normal duties, often find it necessary to make an arrest or seizure involving customs laws. Therefore, Investigators assigned to mobile search teams and all Border Patrol officers have been designated by the Bureau of Customs as acting customs officers.

The Investigations Division of the Immigration and Naturalization Service furnishes field offices with periodically revised lists of vessels having past records of carrying stowaways, whether or not assisted. The list includes vessels suspected of being engaged in smuggling activity. Timely notification of the scheduled arrival of these "hot" ships is furnished field officers so that appropriate search operations may be conducted.

During fiscal year 1957, 13 major seaport smuggling cases were discovered by immigration officers. Twenty-two smugglers, 10 harborers or transporters, and 39 stowaways were involved.

Recently, Investigators arrested a British Honduran alien in New York on information obtained by Tampa, Florida Border Patrol officers from confidential sources. Evidence that the alien had been picked up in Compeche Bay, Mexico by the captain of a shrimp boat, and unlawfully landed in Florida was corroborated. This information was furnished the Tampa officers who arrested the captain. The alien was removed to Florida where he appeared as a Government witness.

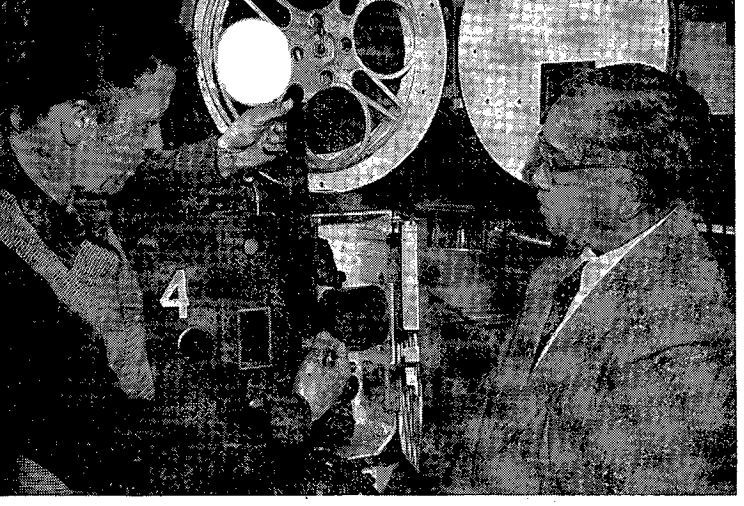
This incident shows how results are attained through close coordination between Service officers. It also illustrates the geographical difficulties often encountered in combating smuggling activities.

When the SS. ST. TROPEZ arrived at Boston, Massachusetts on November 2, 1956, from Italy, four Italian stowaways were discovered. They were concealed and assisted during the voyage by two crew members who were also apprehended. Five United States citizens were also involved in the attempted landing. Prosecution was instituted against all of the principals. The stowaways were given suspended sentences and deported. The crewmen were sentenced to one year imprisonment plus fines of $100 and $1,600 respectively, and deported upon completion of their sentences. The five United States citizens were given one year suspended sentences and placed on probation for two years.

In a recent case two Americans collected fees from six Mexican aliens to haul them far into the interior of the United States. By pre-

Continued on Page 23

In 1956 these illegal aliens were smuggled into the United States at Calexico, California, concealed in a load of boxes. The smuggler sits sullenly in the cab of the vehicle after discovery of the aliens by Immigration and Naturalization Service officers.



In the interest of promoting better understanding of America abroad, Mr. U. Sein, editor of the Hanthawaddy Daily Newspaper in Rangoon, Burma, recently made an 11-week tour of the United States. He observed, first-hand, the many aspects of American life, later to be reported to his Burmese readers.

At a television studio in San Francisco, film editor Robert Hartley explained to Mr. Sein how motion picture film is used on television programs in this country.

The Exchange Visitor Program

by

John J. O'Shea

Supervisory

Immigrant Inspector

The statute governing the Exchange Visitor Program was enacted in 1948, and was designed to enable the Government of the United States to promote a better understanding of this country abroad, and to increase mutual understanding between the people of the United States and the people of other countries.

Laws relating to educational and scientific cooperation with Latin America had been enacted in 1938 and 1939, and during the succeeding 10 years the Congress considered various proposals to extend this type of cooperation to the entire world. But it was not until 1948 that the Information and Educational Exchange Act (62 Stat. 6) became law.

The 80th Congress had instructed a Subcommittee of the Senate Foreign Relations Committee to study the role of public relations in the foreign policy of our Government. Similar studies were made by a House Subcommittee and the result was a recommendation calling for increased activities abroad in the field of public relations, with a view to counteracting the influence of hostile propaganda campaigns. The Congress adopted this recommendation which was embodied in the 1948 Act.

The Act provides for both an information service to disseminate information in foreign countries about the United States, its people, policies and form of Government, and for an educational exchange service to cooperate with other nations in the interchange of persons, the rendering of technical services, and the exchange of information on developments in education, science and art.

The Immigration and Naturalization Service is primarily concerned with the provisions of the Act relating to the temporary admission of aliens. As implied by its title, however, the Act also provides that a United States citizen may, in furtherance of its objectives, accept employment with a foreign government, provided he is not required to take any action (such as an oath of allegiance) which would jeopardize his retention of American citizenship.

Aliens coming to the United States under the Act must be coming to a previously designated program. Such programs may be sponsored by Government agencies, such as the International Educational Exchange Service and the International Cooperation Administration, or by non-governmental agencies such as schools, colleges, universities, museums, hospitals, business or industrial concerns.

Between 1948 and 1952, aliens who entered under the Information and Educational Exchange Act were classified by this Service as visitors under Section 3(2) of the Immigration Act of 1924. Since enactment of the Immigration and Nationality Act of 1952, they have been classified as nonimmigrants under Section 101 (a) (15) of that Act.

Although not designated as a separate class of nonimmigrant under the Immigration and Nationality Act, they are known technically as "exchange aliens" or "exchange visitors" and are, for all practical purposes, treated as a separate category of nonimmigrants.

These persons are not required to pay a fee for extension of their temporary stay and they may receive remuneration for their services. Otherwise, they are subject to the rules gener-

ally applicable to nonimmigrant control maintained by the Central Office of the Service at Washington, D. C.

The 1948 Exchange Act remained in its original form until passage of the Immigration and Nationality Act of 1952 which necessitated that some technical changes be made. Participants were brought within the definitions of the 1952 Act relating to nonimmigrants, and proceedings to effect expulsion of those who failed to maintain status were brought into line with the 1952 Act.

No other amendments to the Exchange Act were found necessary until 1956 when Congress became concerned over the problem caused by an increasing failure of alien participants to achieve the stated purpose of the 1948 Act. Many of the exchange visitors decided either to remain in the United States, or to return to the United States as immigrants soon after arrival in their homes abroad. Obviously, this action prevented participants in the program from applying their newly acquired skills in their native lands, and at the same time, from disseminating information about the United States in places where such information would be useful as a deterrent to hostile propaganda.

Accordingly, on June 4, 1956, Public Law 555 (70 Stat. 241), was enacted as an amendment to Section 201 of the 1948 Exchange Act.

The amendment provided that no person admitted as an exchange visitor shall be eligible to return to the United States as an immigrant or as a nonimmigrant in the "H" category (those with special skills, those coming to perform temporary services, and industrial trainees) until he has resided and been physically present in a cooperating country or countries for an aggregate of two years following departure from the United States.

However, this amendment does permit exceptions from the two-year rule if, in an individual case, the Attorney General after a recommendation from the Secretary of State, finds that the interests of this country might be better served thereby.

Although it had been the policy of the Government, in line with the objectives of the 1948 Act, to require the return of a participant to his home country or to a cooperating country, there was no statutory delineation of this policy until enactment of Public Law 555. In the absence of such a requirement, the Congress felt that it would be unfair to make the provisions of that law retroactive, and added a proviso that the amendment would not be applicable to exchange visitors who acquired that status before June 4, 1956.

The Committee Report stated that the restrictive portions of the amendment were to apply with equal force to exchange visitors who received an extension of stay after passage of the Act. Since the regulations implementing the legislation could not immediately be brought to the attention of everyone affected thereby, it is the present administrative practice to include within the restrictive portion of the amendment only those exchange visitors who receive an extension of stay after September 19, 1956, the effective date of the regulations of the Department of State.

An alien who desires a waiver of the two-year requirement may submit his request, in the form of an affidavit with supporting evidence, to the District Director of Immigration and Naturalization having jurisdiction over his place of residence. The request is then forwarded through the appropriate Regional Commissioner to the Department of State. The International Educational Exchange Service, the agency of the Department of State designated to act on such applications, returns the case to the Regional Commissioner with the recommendations of the Secretary of State. The Regional Commissioner, acting upon the delegated authority of the Attorney General of the United States, makes the final decision. If the Department of State recommends favorably, the Regional Commissioner may or may not concur. If the Department of State recommends unfavorably, the Regional Commissioner may not, under the terms of the statute, grant the desired waiver.

An alien who has already left the United States, and who requires a waiver for his return, may submit his request to the nearest American Consul who forwards it to the Department of State. It is thereafter forwarded, with the State Department recommendation, to the Regional Commissioner having jurisdiction over the alien's intended place of residence in the United States.

The number of aliens entering the United States under the Exchange Visitor Program has increased steadily over the past five years. In fiscal year 1953, 12,584 participants in the program were admitted. By 1956 the figure had jumped to 17,204, and for the year which closed June 30, 1957, 17,849 Exchange Visitors had availed themselves of the opportunity to study and work in the United States with a view to promoting international understanding.

HIGHLIGHTS OF SELECTED RECENT COURT DECISIONS

CITIZENSHIP

Ferretti v. Dulles and Shaughnessy. Judicial review; Denial of right or privilege as citizen; Exhaustion of administrative remedies. Appeal from orders denying appellant's motion for summary judgment declaring her to be a national of the United States and granting motion of the appellees to dismiss the complaint. Affirmed. **(C.A. 2, July 31, 1957).**

The appellant in this case alleged that she was born in this country in 1922, was taken to Italy by her father when three years old, and remained in Italy until she returned to the United States as a visitor in 1955. While in Italy she voted in Italian elections and had been informed by an American consular officer that by so voting she had become expatriated. She alleged that she did not vote voluntarily but only under duress and that she was prevented from repatriating herself by the actions of staff members of the consulate in Rome who had not answered her correspondence in that regard.

The appellant insisted that she could maintain suit under section 360(a) of the Immigration and Nationality Act and that, in view of the savings provision of section 405(a) of that statue, the action would lie under section 503 of the Nationality Act of 1940. She also urged that she had an independent right to maintain the suit under the Declaratory Judgment Act (28 U. S. C. 2201). And furthermore, that since she was, while in Italy, notified that she had become expatriated and was prevented from repatriating herself as alleged, she could, if the suit will not lie under the above mentioned statutes maintain it under the provisions of section 10 of the Administrative Procedure Act (5 U. S. C. 1009).

The appellate court held that the alien had not properly alleged that any government agency or official thereof had denied her any right or privilege as a national of the United States. The notice that by voting she had become expatriated was not the denial of any specific right or privilege which she had claimed. That notice did not leave her less free to claim any right or privilege as a United States national than she had been before she received it. Her allegation that she had been prevented from repatriating herself by the failure to answer her correspondence in that regard does not amount to a claim that she was denied any specified right or privilege she had as a national of this country. There is nothing to show that what she calls her correspondence amounted to a claim of any right or privilege which was denied by the failure to answer it. Even if the right to sue under section 503 of the 1940 Act was preserved by the savings clause in the 1952 Act, there still must have been a denial of some specific right or privilege which appellant had claimed as a national which had been denied on the ground that she was not a national. Consequently, no cause of action was properly alleged under either the 1940 or 1952 Acts.

The Declaratory Judgment Act by itself does not provide a remedy for the appellant since that statute created new procedural remedies without enlarging the jurisdiction of federal courts. And of course the appellant must exhaust her administrative remedies before she can present a final administrative action reviewable under the provisions of the Administrative Procedure Act. She has not done that. The notification that she had expatriated herself by voting was not a final action. She used no reasonable persistence to obtain a reversal of that notification. Furthermore, she did not resort to the administrative remedies provided in subsections (b) and (c) of section 360 of the 1952 Act and since she did not exhaust those remedies her effort to obtain judicial review of agency action is now premature.

DEPORTATION

Vlisidis v. Holland and Mavrelos v. Holland. Inferences from silence in deportation cases; Effect of invoking Fifth Amendment; Evidence. Appeals from decisions upholding the validity of deportation orders. Affirmed. **(C.A. 3, July 3, 1957).**

The appellate court stated that it found only one argument on appeal which was sufficiently substantial to require discussion and analysis. That is the argument that the Special Inquiry Officer penalized the aliens in an unconstitutional way by drawing an unfavorable inference against each of them because, claiming privilege under the Fifth Amendment, he had refused to testify at the deportation hearing about his origin, citizenship or stay in this country, and also had refused to identify certain documents.

The appellate court pointed to the fact that there had been introduced in evidence official Crewman's Landing Permits issued to these aliens and said that such an official document may be regarded in any administrative proceeding, and certainly one before the Service, as bearing on its face such indicia of authenticity as to be received in evidence without need for identification by the person signing it. There can be no valid objection to the use of such evidence if the document is first shown to the respondent whose name appears thereon and opportunity afforded him to impeach it if he so desires. No inference need be drawn from the refusal of the alien to identify the document in order to make it admissible. And the identity of an alien's name—an unusual one in this country—with the name of the alien seaman whose record of entry was before the Special Inquiry Officer justified an inference, absent any showing to the contrary, that the alien was that seaman.

The court held that in each of these cases it was satisfied that there was a proper and adequate evidentiary basis for a finding that the person before the Special Inquiry Officer was an alien who had remained in this country beyond the authorization of his temporary entry. Actually, it was necessary to show only the single fact that the respondent was an alien, for, once that is proved, the legislative scheme requires the alien to justify his presence in the United States. Neither of these aliens attempted any such showing of lawful presence.

In these circumstances, the court said, it thought the aliens had not been prejudiced in any way because of their invocation of the Fifth Amendment. The essential fact of alienage was established quite apart from that action. The court therefore found it unnecessary to comment upon cases relied upon by the Government to establish the propriety of drawing an unfavorable inference from a respondent's invocation of the Fifth Amendment in a deportation proceeding.

Duran-Garcia v. Neelly. Documents obtained by fraud or misrepresentation; Effect of subsequent admission with immigrant visa. Appeal from a decision upholding an order of deportation. Affirmed. **(C.A. 5, July 16, 1957).**

In this case the alien obtained a border crossing card in 1953 at which time she made various misrepresentations of fact. In 1955, however, she applied for and was granted an immigrant visa for permanent residence. At the deportation hearing the Special Inquiry Officer concluded that there was insufficient evidence to show any fraud in obtaining the 1955 visa.

Among other contentions raised by the alien in this proceeding was that no misconduct prior to the lawful obtaining of the last valid visa can be raised in a deportation proceeding. The appellate court pointed out that the present deportation proceedings were based entirely on the alien's misstatements in her 1953 application, since the Special Inquiry Officer found insufficient evidence of fraud in the 1955 application. The court said that the excludability based upon fraud in obtaining entry documents is new to the Immigration and Nationality Act and in the years since its enactment apparently no case directly in point has been decided. The question is whether the statute requires the deportation of an alien who at one time in the past had obtained a visa by means of materially fraudulent statements but who subsequently secured another visa untainted by fraud and who now is in the United States pursuant to an entry under the legitimate document. Pointing to the language of the appropriate statutory provision, section 241(a)(19), the court said that the words "any alien who . . . . has procured a visa . . . . by fraud, or by willfully misrepresenting a material fact" permit, if they do not require, the interpretation urged by the Government. While the legislative history of the statute is not entirely clear and the point involved was not discussed in either brief, the court felt that in the absence of any relevant aids to interpretation, it would incline toward and adopt the literal reading of the statute.

Tseung Chu v. Cornell. Crimes involving moral turpitude; Evasion of income tax; Fraud in procuring visa; Effect of plea of nolo contendere. Appeal from a decision upholding the validity of a deportation order. Affirmed. **(C.A. 9, July 11, 1957).**

The alien was ordered deported on the ground that prior to his last entry he had been convicted in 1944 of a crime involving moral turpitude, namely, willfully attempting to defeat or evade the income tax (Internal Revenue Code of 1939, Title 26, U.S.C.A. 145(b)) and that he had procured a visa for his last entry in 1953 by fraud or by willfully misrepresenting a material fact.

On the appeal the alien contended that conviction of a violation of the aforesaid section of the Internal Revenue Code was not a conviction of a crime involving moral turpitude; that conviction of a violation of that statute was not a material fact which he was under a duty to disclose on his application for a visa; that his "conviction" upon a plea of nolo contendere is not such a conviction as need be admitted in a civil proceeding, and therefore need not be disclosed in an application for an immigration visa, and that the phrase "crime involving moral turpitude" as used in the Immigration and Nationality Act does not have a sufficiently definite meaning "to afford a constitutional standard for deportation."

In a lengthy opinion the appellate court rejected all of the alien's contentions and upheld the deportation order.

Paris v. Shaughnessy. Ineligibility to citizenship as bar to admission of alien for permanent residence; Applicability of savings clause of 1952 Act. Appeal from a decision upholding the validity of a deportation order. Affirmed. **(C.A. 2, July 2, 1957).**

The alien in this case, a lawful permanent resident of the United States, applied for relief from training and service in the armed forces in 1951 and by so doing debarred himself from becoming a citizen of the United States. Under the law in effect prior to the Immigration and Nationality Act of 1952, an alien permanent resident could depart from this country and reenter legally as a returning resident despite his ineligibility to become a citizen. The 1952 Act, however, changed the statute in that respect and provides that aliens who are ineligible for citizenship cannot be admitted for permanent residence.

The alien contended that at the time of his last entry in 1953, he was protected in his right to reenter by virtue of the savings clause contained in the 1952 Act and that he is as non-deportable at this time as he was prior to the 1952 Act.

The appellate court said, however, that the alien misreads the provisions of the savings clause, and that his pre-existing status of non-deportability would have remained unchanged only if the 1952 Act did not otherwise specifically provide. The court said that section 212(a)(22) of that Act does so otherwise specifically provide and the deportation order was valid.

Hsuan Wei v. Robinson. Maintenance of status as nonimmigrant; Member of Chinese Nationalist armed forces admitted for military training; Employment with permission. Appeal from a decision invalidating a deportation order. Reversed. **(C.A. 7, June 28, 1957).**

The alien in this case was admitted temporarily to the United States in 1952 for training under the Mutual Defense Assistance Program. He was a member of the armed forces of Nationalist China and entered this country for further military training and was classified as a Government official under section 3(1) of the Immigration Act of 1924. He completed his military training in United States about the middle of 1954 and was ordered to return to Formosa. In accordance with these orders, he travelled to San Francisco but while waiting return to Formosa he advised an officer of the Chinese Nationalist Army that he would not return. He then abandoned his military status and returned to Chicago where he accepted employment as an elevator operator. He was thereafter arrested in deportation proceedings charging that he was subject to that action because he had failed to maintain the status of a Government official granted him under section 3(1) of the 1924 Act. In the judicial proceedings, he attacked the constitutionality of the regulation of the Service which forbids employment by a nonimmigrant which is inconsistent with his status in this country unless prior approval by the Service has been obtained. He also alleged that the refusal to grant him voluntary departure was arbitrary and capricious. He further attempted to invoke the provisions of the savings clause of the Immigration and Nationality Act of 1952 and contended that he could not be required under the 1924 Act to depart from the United States without the approval of the Secretary of State.

The appellate court said there is little, if any, critical difference in the alien's position under either the 1924 or 1952 Acts and that under either Act the alien possessed a privilege pivoting on his continued maintenance of status. Even if the current savings clause were utilized, he would still be compelled to maintain his status. There is nothing in either Act allowing him or

any other alien to "parley" permissive entry into permanent domicile by the simple expedient of refusing to leave America.

The court said further that the alien had not previously raised his argument concerning the necessity of obtaining permission by the Secretary of State for his deportation and that under the circumstances in the case he had waived any action by the Secretary of State in his case. The court found nothing in the 1924 Act helpful to the alien. He impaired his status by refusing, and articulating his rejection, to return to Formosa and his subsequent employment simply buttresses the announced relinquishment. He was not admitted to this country for the purpose of becoming a civilian employee of private business. Whether the statute or regulations omit mention of, or inhibit nonimmigrant aliens from, taking employment is beside the mark. The statutory standard under either Act dictates maintenance of status consonant with the purpose for which the alien received the privilege of admission.

Barber v. Lal Singh. Suspension of deportation—Applicability of Immigration Act of 1917—Savings Clause. Appeal from a decision holding that the alien's eligibility for suspension of deportation should be determined under the provisions of the Immigration Act of 1917 rather than the Immigration and Nationality Act of 1952. Affirmed. **(C.A. 9, June 24, 1957).**

This alien had made several illegal entries into the United States. In 1949 he made application for registry to legalize his residence and made various false statements in connection with that application. In 1950 a warrant for his arrest in deportation proceedings was issued. His first deportation hearing was held on February 8, 1954. On April 12, 1955 he applied for suspension of deportation under section 244 of the Immigration and Nationality Act and a further hearing in his deportation case was held on that date. The Special Inquiry Officer found that the alien was deportable and that he had not been of good moral character for seven years before his application for suspension of deportation, although he had been of good moral character for the last five years. He was therefore granted the privilege of voluntary departure. The Board of Immigration Appeals affirmed the order of the Special Inquiry Officer and held that the alien's application for suspension made on April 12, 1955 had to be considered under the 1952 Act, under which he could not qualify.

The district court held that by virtue of section 405(a), the savings clause of the 1952 Act, the alien was entitled to have his eligibility for discretionary suspension considered under the 1917 Act. The appellate court agreed. It said that the mere fact that the last sentence of section 405(a) states that an application for suspension pending on the date of enactment of the Act (which the court felt should read effective date) shall be regarded as a proceeding within the meaning of section 405(a), does not necessarily limit the meaning of "proceedings" as used earlier in that section. Furthermore, the court concluded that the last sentence of section 405(a) was placed in the savings clause to enable those aliens who had applied for suspension of deportation, but against whom deportation proceedings had not been commenced, to retain their rights under the 1917 Act. The court said that this alien had a proceeding pending against him when the 1952 Act became effective and held that as a part of that proceeding he had the right to have his eligibility for suspension determined under the 1917 Act.

Nani v. Brownell. Conspiracy to violate narcotic laws—Due process—Necessity of granting rights to file briefs before the Attorney General. Appeal from a decision granting the Government's motion for summary judgment in a deportaion case. Affirmed. **(C.A. D.C., June 27, 1957).**

This case involved primarily the legal question whether the alien's conviction of conspiracy (under 18 U.S.C. 371) to violate the Jones-Miller Act, 21 U.S.C. 174, and the Harrison Narcotic Act, 26 U.S.C. 2553(a), was a conviction of "a violation of any law or regulation relating to the illicit traffic in narcotic drugs" within the meaning of section 241(a)(11) of the Immigration and Nationality Act. The appellate court agreed with the lower court that a conviction of conspiracy to violate the aforesaid statutes was within the purview of section 241 (a)(11). The appellate court also held, as had the district court, that the warrant of deportation adequately stated the nature of the crime of which the alien had been convicted.

The alien also urged that he was not notified that his case had been referred to the Attorney General for review after the Board of Immigration Appeals had ruled in his favor, and that he had no opportunity to file a brief before the Attorney General. The court said that under the circumstances of this case the alien could not fairly allege lack of due process, or any prejudicial non-compliance with law. In his complaint in the district court he raised the question of law which had been considered by the Attorney General and the district court ruled on that question. Since that ruling, in the opinion of the appellate court, appeared to be clearly correct the latter felt that it would be a frivolity to remand the case to the Attorney General for the receipt of briefs to give the alien a chance of securing from the Attorney General a new and different decision on a point of law which, in the view of the district court and the appellate court, would be erroneous.

EXCLUSION

Dong Wing Ott and Dong Wing Han v. Shaughnessy; Lue Chow Yee and Lue Chow Lon v. Shaughnessy. Possible physical persecution; Availability of claim to persons excluded from admission to United States. Appeal from decision holding that aliens excluded from the United States are not entitled to apply for withholding of deportation on ground of physical persecution as provided in section 243(h) of the Immigration and Nationality Act. Affirmed. **(C.A. 2, July 5, 1957).**

In these two cases the Court of Appeals for the Second Circuit affirmed decisions by the District Court (142 F. Supp. 379; 146 F. Supp. 3) holding in effect that excluded aliens are not "within the United States" so as to be eligible for the relief provided by section 243(h). In so doing the Second Circuit appears to agree with the Ninth Circuit in **Leng May Ma** v. **Barber,** 241 F. 2d 85, cert. granted June 3, 1957, 25 LW 3359, and to disagree with the District of Columbia Circuit in **Jimmie Quan** v. **Brownell.**

Jimmie Quan et al v. Brownell. Possible physical persecution—Availability of claim to persons excluded from admission to United States. Appeals from judgments dismissing complaints in civil actions. Reversed. **(C.A.D.C., June 27, 1957).**

These cases involved four natives of China who arrived in the United States at various dates seeking admission. They were paroled into the United States in exclusion proceedings under the authority of section 212(d)(5) of the Immigration and Nationality Act. Thereafter they were ordered excluded and deported to the place whence they came, which was Hong Kong. They claimed that deportation to Hong Kong is in fact deportation to Communist China and that if sent there they will be subject to physical persecution. They therefore applied for withholding of deportation under the provisions of section 243(h) of the Immigration and Nationality Act. That section specifies that it is applicable to aliens "within the United States".

The Government urged that the aliens were not "within the United States" within the meaning of the statute and, therefore, the Attorney General has no power to withhold their deportation. The appellate court rejected this contention and held that an alien who is paroled into the United States under section 212(d)(5) is entitled to have his application considered under section 243(h) of the Act.

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ALIEN SMUGGLING PROBLEM . . .

Continued from Page 17

arrangement, the group was "intercepted" near the Border by a confederate of the smugglers who signaled them with a red spotlight. The aliens were told to hide in the brush while the Americans "eluded immigration officers." In this neatly arranged double cross the Americans failed to return as promised. Driven by hunger and thirst the aliens were forced to leave their hiding place and were picked up by Border Patrol officers. The smugglers and their confederate, who were later apprehended, pleaded guilty in the United States District Court and were sentenced.

Stories told arresting officers by smuggled aliens are sometimes hard to believe. One alien, when arrested more than 200 miles from the border, claimed to have riden the entire distance through a desert area in midsummer with 12 others hidden in a tank truck!

The alien's claim was later verified when inspection of a sprinkler truck described by him revealed the bottom quarter of the water tank filled with sand. The sand had been saturated with water which dripped, sparingly, through the sprinkler attachment, thus giving an impression that the truck was being used for its designed purpose.

The truck driver, when arrested, admitted making numerous trips over the same area. He added that the trip was bearable because when the truck was in motion it was less torrid inside the water tank. Further investigation of this case led to the arrest of over 150 smuggled aliens.

Results attained by the Investigations Division and Border Patrol in the anti-smuggling program would not have been possible without the assistance of all other Immigration and Naturalization Service Divisions participating in the many phases of this activity.

Credit is also given to the many Federal, State, and local agencies, as well as to officials and private individuals who have given their wholehearted cooperation.

RECENT ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of these decisions may be seen at any local office of the Immigration and Naturalization Service. Copies of these Interim Decisions may also be purchased on a yearly subscription basis ($3.25 per year, 75 cents extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington 25, D. C. The decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at Government Printing Office, Washington 25, D. C.)

Interim Decision Number 837

(In the Matter of M—A—. In Deportation Proceedings, A-10259724. Decided by the Board of Imm. Appeals, December 7, 1956.)

Good moral character—Adultery—Section 101 (f) (2), Immigration and Nationality Act.

Good moral character is established notwithstanding respondent's cohabitation with a married woman where the evidence shows that respondent did not know of the existence of the marriage; the relationship was faithful, stable and long continuing; and respondent entered into marriage with the woman as soon as they were free to do so.

Interim Decision Number 838

(In the Matter of W—. In Visa Petition Proceedings, VP 8-I-16596. Decided by the Board of Imm. Appeals, December 11, 1956.)

Nonquota status—Section 101 (a) (27) (A) and section 101 (b) (1) (C), Immigration and Nationality Act—Legitimation of children, Ohio.

Where the petitioner, a United States citizen and a resident of Ohio, obtained a decree of legitimation from the Lake County Probate Court in behalf of his three children born out of wedlock in Jamaica, B.W.I., the children are regarded as legitimated within the meaning of section 101 (b) (1) (C) of the act and eligible for nonquota status under section 101 (a) (27) (A) of the act. While under Jamaican law legal custody of illegitimate children is with the mother, it must be assumed that the provisions of the Ohio statute were met and that the mother consented to the application for legitimation thereby agreeing that custody of the children would be transferred to the petitioner, their natural father.

Interim Decision Number 839

(In the Matter of U—. In Deportation Proceedings, A-6586642. Decided by the Board of Imm. Appeals, December 20, 1956.)

Good moral character—Adultery—Section 101 (f) (2), Immigration and Nationality Act.

Section 101 (f) (2) of the act does not preclude a finding of good moral character where respondent enters into a second marriage in good faith and in the honest belief that her first marriage had been lawfully dissolved when, in fact, it was not terminated until six years later. Hence, voluntary departure may be granted under section 244 (e) of the act. (**Matter of N—**, A-2752014, Interim Decision No. 764, overruled in part.)

Interim Decision Number 840

(In the Matter of B—R—. In Deportation Proceedings, A-1233572. Decided by the Board of Imm. Appeals, January 9, 1957.)

Conviction—Does not occur under California law where imposition of sentence is suspended—Deportability, section 241 (a) (4), Immigration and Nationality Act.

Where respondent pleaded guilty to a complaint charging petty theft in violation of section 484 of the Penal Code of California and the court suspended proceedings without imposition of sentence, there was no final judgment of conviction sufficient to sustain a finding of deportability under section 241 (a) (4) of the act.

Interim Decision Number 841

(In the Matter of F—. In Deportation Proceedings, A-8849440. Decided by the Board of Imm. Appeals, January 14, 1957.)

Crime involving moral turpitude—18 U.S.C. 1708, revision of June 25, 1948, taking a letter from the U.S. mail.

Taking a letter from the U.S. mail in violation of 18 U.S.C. 1708 (revision of June 25, 1948) involves moral turpitude, as the statute refers to a **larcenous** taking.

Interim Decision Number 842

(In the Matter of I—M—. In Deportation Proceedings, A-6017471. Decided by the Board of Imm. Appeals, January 15, 1957.)

Deportability—Section 241 (a) (13), Immigration and Nationality Act—Within five years after any entry, knowingly and for gain, assisted any other alien to enter or try to enter the United States in violation of law.

Transporting within the United States for gain aliens known to be illegally within this country does not bring respondent within the provisions of section 241 (a) (13) of the act when it is established that respondent did not know the transported aliens until after they were in the United States, did not aid or assist them in entering, and was not a party to any prearranged plan for bringing them to the United States.

Interim Decision Number 843

(In the Matter of A—M—. In Deportation Proceedings, A-8870405. Decided by the Board of Imm. Appeals, Oct. 30, 1956.)

Burden of Proof—Deportation proceedings—Alienage.

(1) In deportation proceedings a person claiming United States citizenship who admits he was born abroad is **prima facie** an alien and must meet the burden of proof in establishing his claim to citizenship. Respondent was born in Mexico and claims United States citizenship through the birth of his mother in this country. As he has been unable affirmatively to establish that his mother was a United States citizen at the time of his birth, he has not met the burden of proof and is deportable as an alien.

(2) Deportation proceedings against respondent's mother were terminated because she produced some evidence to support her claim to birth in the United States and the Government did not sustain its burden of proving that she was an alien.

Interim Decision Number 844

(In the Matter of B—. In Deportation Proceedings, A-8315659. Decided by the Board of Imm. Appeals, January 25, 1957.)

Visa—Procured by misrepresentation—Willfulness of misrepresentation not material where alien was ineligible for the visa he received and the charge is based on invalid visa.

(1) Where an alien concealed the true facts of his marital status in applying for a visa and the true facts, if disclosed to the consul, would have raised a question as to the alien's eligibility for a visa in respect to the commission of bigamy, the visa was invalid as having been procured by fraud or misrepresentation.

(2) When the charge is based on the invalidity of the visa, it is immaterial whether the concealment was made willfully. It is sufficient if the record establishes that the alien had obtained a visa to which he was not entitled and that there had been a misrepresentation.

Interim Decision Number 845

(In the Matter of B—. In Deportation Proceedings, A-10474501. Decided by the Board of Imm. Appeals, January 28, 1957.)

Suspension of deportation—Sections 244 (a) (3) and (5), Immigration and Nationality Act—Eligibility where alien found deportable under section 241 (a) (9) of the act is also deportable under section 241 (a) (2) of the act.

An alien admitted as a crewman on August 29, 1950, who is found deportable under section 241 (a) (9) of the act is statutorily ineligible for suspension of deportation under section 244 (a) (3) of the act if he also comes within the deportable provisions of section 241 (a) (2) of the act as a "remained longer." In that situation, eligibility for suspension of deportation can be established only under section 244 (a) (5) of the act.

Interim Decision Number 846

(In the Matter of L—R—. In Deportation Proceedings, A-8769665. Decided by the Board of Imm. Appeals, September 4, 1956. Decided by the Attorney General, February 18, 1957.)

Conviction—Not final in Texas where sentence suspended until final conviction for "any other felony, pending the suspension of sentence"—Section 241 (a) (4), Immigration and Nationality Act.

Under Texas law, neither a verdict of conviction nor the judgment thereon becomes final where sentence is suspended until there has been a final conviction for "any other felony, pending the suspension of sentence." Hence, a conviction in Texas for knowingly attempting to pass a forged instrument lacks finality where sentence was suspended and there is no evidence of a subsequent felony conviction pending suspended sentence. Under the rule of **Pino v. Landon,** 349 U.S. 901, such

a conviction is insufficient to support a charge of deportability under section 241 (a) (4) of the act.

Interim Decision Number 847

(In the Matter of P—. In Deportation Proceedings, A-2530906. Decided by the Board of Imm. Appeals, December 18, 1956.)

Crime involving moral turpitude—Atrocious assault and battery, New Jersey—Good moral character—Adultery, New Jersey.

(1) Atrocious assault and battery in violation of New Jersey Statutes Annotated, chapter 90, section 2A:90-1, is a crime involving moral turpitude.

(2) Adultery under the New Jersey law regulating divorce is committed by the voluntary sexual intercourse of a married person with one not the husband or wife of that person. An offender is precluded from establishing good moral character under section 101 (f) (2) of the Act.

Interim Decision Number 848

(In the Matter of PAWA Plane No. 774. In Fine Proceedings F-0800/35. Decided by the Board of Imm. Appeals, February 6, 1957.)

Fine—Section 251 (a) and (d), Immigration and Nationality Act—Carrier is liable for clerical errors in manifests after repeated violations and warnings.

A carrier which had repeatedly submitted incorrect manifests and had been warned about further errors is subject to fine for a clerical error in its manifest, although no opportunity for correction was provided. In this situation, the United States implementation to paragraphs 11.3 and 11.4 of Annex 9 to the Convention on International Civil Aviation controls on the question of liability.

Interim Decision Number 849

(In the Matter of B—. In Deportation Proceedings, A-10235421. Decided by the Board of Imm. Appeals, February 19, 1957.)

Good moral character—Section 101 (f) (7), Immigration and Nationality Act—Applies to confinement endured by an individual whether he was a citizen or an alien.

An individual who falls within the terms of section 101 (f) (7) of the act is precluded from establishing good moral character regardless of whether he was a citizen or alien during the period of his confinement to the penal institution.

Interim Decision Number 850

(In the Matter of H—. In Deportation Proceedings, A-6420754, A-6726086, A-6726088. Decided by the Board of Imm. Appeals, February 21, 1957.)

Evidence—**Res judicata**—Collateral estoppel—Differing burden of proof in suit for declaratory judgment and in deportation proceedings.

(1) A suit under section 503 of the Nationality Act of 1940 for a judgment declaring respondent to be a national of the United States is not the same cause of action as a proceeding to deport respondent. Hence, the doctrine of **res judicata** cannot be invoked in the deportation proceeding as settling the issue of alienage, notwithstanding the Court's dismissal of the declaratory judgment suit.

(2) Because of the different burden of proof involved, the doctrine of collateral estoppel does not render conclusive in the deportation proceeding the findings as to expatriation made by the court in dismissing respondent's suit for declaratory judgment.

(3) In his action for a judgment declaring him to be a national of the United States, the respondent had the burden of proving his case by a preponderance of the evidence. In the deportation proceeding, the Government has the burden of proving alienage; and where it is shown that respondent acquired United States citizenship by birth in the United States, the Government must prove expatriation by clear, unequivocal and convincing evidence.

Interim Decision Number 851

(In the Matter of C—. In Exclusion Proceedings, A-8403599. Decided by the Board of Imm. Appeals, March 14, 1957.)

Excludability—Section 212 (a) (12), Immigration and Nationality Act—Prostitution.

Inadmissibility under section 212 (a) (12) of the act is not established where applicant was paid by the owners of various houses of prostitution in Mexico for her services therein as a nurse and there is evidence that the employment was in furtherance of health regulations and was not in furtherance of prostitution.

Interim Decision Number 852

(In the Matter of L—. In Deportation Proceedings, A-7947316. Decided by the Board of Imm. Appeals, March 14, 1957.)

Suspension of deportation—Section 244 (a) (2), Immigration and Nationality Act—"requisite documents" must be valid immigration documents.

An individual who at the time of his entry was in possession of immigration documents to which as a matter of law he was not entitled cannot be said to have been in possession of all the "requisite documents" as required by section 244 (a) (2) of the act and is ineligible for suspension of deportation under that section.

Interim Decision Number 853

(In the Matter of P—M—. In Deportation Proceedings, E-057956. Decided by the Board of Imm. Appeals, February 24, 1956.)

Waiver—Section 211 (c), Immigration and Nationality Act—Not authorized where ten-year-old child was erroneously admitted as United States citizen upon second return of citizen mother to United States.

There is no authority in section 211 (c) of the act to waive **nunc pro tunc** the visa requirement for an alien whose United States citizen mother brought him here in 1943 when he was ten years of age on the occasion of her second return to this country, at which time the child was erroneously admitted as a citizen of the United States.

Interim Decision Number 854

(In the Matter of F—M—. In Deportation Proceedings, A-8664171. Decided by the Board of Imm. Appeals, March 1, 1957.)

Visa—Procured by concealment of true facts is invalid where disclosure of truth would have raised serious question as to applicant's eligibility and would have required refusal of visa.

(1) An alien who in his visa application showed his wife to be the woman whom he had married in 1953, and concealed his prior marriage in 1944, which had never been legally terminated, did not obtain a valid visa, since, if the truth had been revealed, he would have made either a valid admission of the commission of bigamy or would have admitted the essential elements thereof. In either event, a serious question would have been raised as to applicant's eligibility for issuance of the visa. (Supersedes rule stated in **Matter of G—**, 1403-17906, Int. Dec. No. 611, 6, I. & N. Dec. 9.)

(2) A material misrepresentation invalidates a visa under section 212 (a) (20) of the act, even though it may not have been made willfully and purposely to obtain a benefit under the act and a charge under section 212 (a) (19) of the act would not be sustained.

Interim Decision Number 855

(In the Matter of D—M—. In Visa Petition Proceedings, VP 07-I-17306. Decided by the Board of Imm. Appeals, March 26, 1957.)

Preference quota status—Section 203 (a) (4), Immigration and Nationality Act—Legitimation in Italy.

Acknowledgment of a child born out of wedlock by an unmarried parent at any time and by a married parent after his marriage has been dissolved by death of his spouse, plus the subsequent marriage of the two natural parents, results in legitimation under article 252 of the Italian Code of 1942 and the provisions of the Italian Code of 1865.

Interim Decision Number 856

(In the Matter of R—M—. In Deportation Proceedings, A-8499300. Decided by the Board of Imm. Appeals, January 18, 1957.)

Deportability—Section 241 (a) (12), Immigration and Nationality Act—Includes procuring male persons for the purpose of sexual intercourse with prostitutes.

An alien who has solicited, procured, and transported male persons for the purpose of sexual intercourse with prostitutes is deportable under section 241 (a) (12) of the act.

Interim Decision Number 857

(In the Matter of N—S—. In Section 248 Proceedings, A-8898254. Decided by the District Director, March 6, 1957. Approved by Central Office, March 28,1957.)

Change of nonimmigrant status to treaty trader under section 101 (a) (15) (E) (i) of the 1952 act and 22 CFR 41.71—Nationality of employer corporation is determined by nationality of majority of stockholders.

(1) A nonimmigrant in the United States who applies for a change of status to treaty trader must establish his eligibility therefor under the terms of section 101 (a) (15) (E) (i) of the act as well as under 22 CFR 41.71.

(2) The requirement that the applicant be employed by a foreign person or corporation having his nationality is satis-

fied when it is shown that 51% or more of the stock of the employer corporation is owned by persons of applicant's nationality. Such a firm is a "foreign corporation" within the meaning of the regulation, without regard to whether it was incorporated abroad or in the United States.

Interim Decision Number 858

(In the Matter of D—. In Visa Petition Proceedings, VP 10-I-218. Decided by the Board of Imm. Appeals, March 21, 1957.)

Nonquota status—Section 101 (a) (27) (A), Immigration and Nationality Act—Legitimation of children, Italy.

Acknowledgment under Article 277 of the Italian Civil Code of 1942 does not constitute "legitimation" within the meaning of section 101 (b) (1) of the act. Under Italian law, only legitimation by subsequent marriage of the parents or by royal or presidential decree gives to the person born out of wedlock the attributes of a legitimate child in all respects.

Interim Decision Number 859

(In the Matter of V—. In Deportation Proceedings, A-10316169. Decided by the Board of Imm. Appeals, April 5, 1957.)

Burden of proof—Deportation proceedings under section 241 (c), Immigration and Nationality Act.

In deportation proceedings under section 241 (c) of the act, the government has the burden of establishing alienage and that the relationship in point of time of marriage, entry, and annulment exists. After the government has done this, the burden is upon the alien to show that he is within the exemption by establishing that the marriage was not contracted for the purpose of evading the immigration laws.

Interim Decision Number 860

(In the Matter of S—. In Deportation Proceedings, A-10089027. Decided by the Board of Imm. Appeals, April 2, 1957.)

Deportation—Fair hearing—Factual allegations must be furnished respondent when additional charge is lodged.

8 CFR 242.16 (d) requires the submission of factual allegations in support of any additional charge lodged during a deportation hearing.

Interim Decision Number 861

(In the Matter of SS MARILENA. In Fine Proceedings, ALB—10/10.1. Decided by the Board of Imm. Appeals, April 3, 1957.)

Fine—Section 254 (a) (2), Immigration and Nationality Act —Where alien crewman was refused a conditional landing permit, separate notice to detain is not required.

(1) Liability to fine under section 254 (a) (2), of the act has been established where an alien crewman who had been refused a conditional landing permit deserted the vessel about an hour before departure time.

(2) It is no defense to the agents that they were never served with notice to detain the crewman on board, since the statute itself places the parties, including the agents, on notice to detain without more.

(3) It is likewise no defense that the parties charged with liability are agents for the charterers only. In that capacity, they have a connection with the vessel which suffices to establish their liability to fine under the statute.

Interim Decision Number 862

(In the Matter of O—. In Deportation Proceedings, A-4188325. Decided by the Board of Imm. Appeals, April 4, 1957.)

Suspension of deportation—Section 244 (a) (5), Immigration and Nationality Act—Final order of deportation—Alien ineligible for suspension at time of final deportation order remains ineligible whether or not his application for suspension was filed prior to or subsequent to the deportation order.

(1) The purpose of the requirement in section 244 (a) (5) of the act that the alien "has not been served with a final order of deportation issued pursuant to this Act" is to preclude suspension of deportation where the alien was not eligible for such relief at the time of the final order. (Cf. **Matter of C—L—**, E-086239, Int. Dec. No. 774.)

(2) Hence, an alien who was served with a final order of deportation under the Immigration and Nationality Act on November 19, 1954, at which time he was statutorily ineligible for suspension of deportation under section 244 (a) (5) of the act because ten years had not elapsed between the time of the cessation of his membership in the Communist Party and the date of his application for suspension may not be granted such relief on a subsequent application, despite a showing that more than ten years have now elapsed since he left the Communist Party.

Interim Decision Number 863

(In the Matter of T—. In Deportation Proceedings, A-8605228. Decided by the Board of Imm. Appeals, February 26, 1957.)

Burden of proof—Deportation proceedings under section 241 (c), Immigration and Nationality Act—Evidence—Credibility of witnesses—SIO who hears and observes witnesses in better position to determine credibility.

(1) After the Government has established a **prima facie** case of deportability under section 241 (c) of the act, the respondent has the burden of showing that his marriage to a citizen was not contracted for the purpose of evading any provision of the immigration laws. **Cf. Matter of V—**, A-10316169, Int. Dec. No. 859.)

(2) Where the testimony on this issue is conflicting, the Board will not ordinarily set aside the findings of the special inquiry officer resolving the conflict, since the special inquiry officer is primarily the trier of fact and has had an opportunity to judge the demeanor and credibility of the witnesses.

Interim Decision Number 864

(In the Matter of G—L—. In Deportation Proceedings, A-10181656. Decided by the Board of Imm. Appeals, April 5, 1957.)

Visa procured by fraud or misrepresentation—Forged affidavit of support.

A forged affidavit of support presented to the consular officer in connection with an application for a visa is a misrepresentation as to a material matter where the evidence indicates there was a great liklihood that the applicant would become a public charge if admitted to the United States and presentation of the affidavit prevented the consular officer from ascertaining the true facts. (Cf. **Matter of M—**, E-086095. Int. Dec. No. 791.)

Interim Decision Number 865

(In the Matter of S—. In Deportation Proceedings, A-8940918. Decided by the Board of Imm. Appeals, May 24, 1957.)

Presumption of validity of second marriage, California—Good moral character—Bigamous marriage precludes establishing eligibility for discretionary relief.

(1) Under California law, the presumpton of the validity of a second marriage is rebutted by evidence that a former spouse is living and that neither a divorce nor an annulment of the first marriage has been obtained, unless the person seeking the benefit of the presumption establishes that when he entered into the second marriage he believed in honesty and in good faith that his first spouse was dead.

(2) Where respondent's first wife was alive at the time he contracted marriage in California to his second wife and where both he and his second wife were aware that his first marriage had not been legally dissolved, there is an absence of good faith and honest belief and the presumption of validity of the second marriage does not arise. As the second marriage is bigamous, respondent is unable to establish good moral character to qualify for discretionary relief.

Interim Decision Number 866

(In the Matter of R—R—. In Deportation Proceedings, A-10543035. Decided by the Board of Imm. Appeals, May 29, 1957.)

Conviction—Final in Texas where execution of sentence was suspended and alien placed on probation—Section 241 (a) (4), Immigration and Nationality Act.

(1) A final judgment of conviction exists for purposes of the immigration laws (section 241 (a) (4) of the 1952 act) when an alien has been convicted and sentenced in Texas to imprisonment for a crime involving moral turpitude, notwithstanding that his sentence has been suspended for the full period of confinement and he has been placed on probation under the provisions of article 781b of the Code of Criminal Procedure.

(2) The fact that under Texas law the court is required to discharge the defendant upon satisfactory fulfillment of the conditions of probation and may expunge the conviction from the record does not affect the finality of the conviction during the period of probation. Although such expungement might remove liability to deportation under section 241 (a) (4), that action is discretionary with the court and the possibility that expungement may be granted in the future does not divest the conviction of finality at this time.

NOTE: Instant case which involves suspension of sentence and probation under article 781b of the Texas Code of Criminal Procedure is to be distinguished from the situation where there has been suspension of sentence under article 778 of the Code. In the latter case, the conviction lacks finality until there has been a subsequent conviction. See **Matter of L—R—**, A-8769665, Int. Dec. No. 846.

Interim Decision ıber 867

(In the Matter ı I—. In Deportation Proceedings, A-10750962. Deci ›y the Board of Imm. Appeals, May 31, 1957.)

Voluntary departu CFR 242.21—Appeals by examining officer.

While regulations ıit an examining officer to appeal from a decision of a al inquiry officer granting voluntary departure to an ali ith less than five years' residence, the Board will not r › the special inquiry officer in such cases unless convinc hat the decision so clearly needs correction as to justi he Board in taking the matter on certification.

Interim Decision N ›er 868

(In the Matter of I —. In Visa Petition Proceedings, VP 3-I-98742. Decided by the Board of Imm. Appeals, June 13, 1957.)

Parent and child—Section 101 (b), Immigration and Nationality Act—Marriage—Validity of foreign religious marriages.

(1) A foreign religious marriage will be held valid for immigration purposes, even though proof of its formal perfection is lacking, where it was entered into in good faith under the color of a marriage ceremony, where the parties lived together over a period of time and considered themselves married, and where children have been born to the union.

(2) Hence, the marriage of the petitioner's parents in Italy in 1928 in accordance with the edicts of the Orthodox Jewish religion, although not contracted in accordance with the Italian civil law, will be held valid for the purpose of establishing the relationship of parent and child and conferring second preference quota status upon petitioner's mother under section 203 (a) (2) of the act.

CHANGES IN THE REGULATIONS

Under Title 8, Code of Federal Regulations

Consult *The Federal Register, Vol.* 22, *No.* 138,*July* 18, 1957, Sections 1.1(a)(6); 1.1(b)(4)(iv) (revoked); 1.1(b)(14); 2.5 (5th and 21st items); 6.1(b)(6); 6.1(c); 6.1(h)(1)(iii); 6.2; 6.11; 6.21(c); 7.1(a)(12) (revoked); 9.5a (r), (s), (hh), (ii), (nn), and (oo) (revoked); and 10.1.

Vol. 22, *No.* 152, *August* 7, 1957, Section 212.3(b) and Part 214c.

Vol. 22, *No.* 154, *August* 9, 1957, Part 211 and Sections 245.2 and 299.1.

Under Title 22, Code of Federal Regulations

Consult *The Federal Register, Vol.* 22, *No.* 127, *July* 2, 1957, Proclamation 3188A.

Vol. 22, *No.* 139, *July* 19, 1957, Sections 41.100(a); 42.26 and 42.27.

Vol. 22, *No.* 149, *August* 2, 1957, Sections 40.7(d); 41.3; 41.11; 41.12(c); 41.16(a); 41.17(g) (added); 41.65(f); 42.13(d) (added); 42.22(a); and 42.41(a).

Vol. 22, *No.* 151, *August* 6, 1957, Section 41.6(b) and Part 68.

Vol. 22, *No.* 174, *September* 7, 1957, Part 44 (revoked).

Vol. 22, *No.* 178, *September* 13, 1957, Section 42.3(d) (added).

IMMIGRATION, Fiscal Year 1957*

Not since 1927 has immigration reached the peak reflected during the year ended June 30, 1957, when 326,867 immigrant arrivals were recorded. Compared with 1956, immigration was up two percent.

Quota immigrants arriving numbered 97,178—nine percent above that of 1956, and the highest since 1930 except for the four years 1949-1952 when quota immigration was augmented by the displaced persons and German ethnics.

In spite of the admission of 82,444 refugees under the 1953 Refugee Relief Act, nonquota immigration was down slightly in 1957 as compared with 1956. This drop is due almost entirely to fewer Mexican immigrants, of whom there were 49,154 in 1957 and 65,047 in 1956.

The increase, over 1956, of some 10,000 in the number of immigrants arriving who were born in Europe is due in part to about 7,000 more quota immigrants from Ireland and the United Kingdom. Arrivals of refugees born in Europe were up 3,065. Some countries, notably Germany, Greece, and Italy, showed fewer refugees in 1957 since their allotments under the Refugee Relief Act were filled earlier.

Countries of birth which showed considerably more refugees in 1957 were Czechoslovakia, the Netherlands, Poland, the U. S. S. R., Yugoslavia, and Hungary, whose 7,945 included 6,130 Hungarian refugees from the October revolution.

* See table, Page 28.

IMMIGRANT ALIENS ADMITTED, BY CLASSES UNDER THE IMMIGRATION LAWS AND COUNTRY OR REGION OF BIRTH: YEAR ENDED JUNE 30, 1957

Country or region of birth	Number admitted	Quota Immigrants	Total nonquota immigrants	Wives of U.S. citizens	Husbands of U.S. citizens	Children of U.S. citizens	Natives of W. Hemisphere countries	Spouses, children of natives of W. Hemisphere countries	Persons who had been U. S. citizens	Ministers, their spouses, children	Refugees [1]	Other classes
All countries	326,867	97,178	229,689	21,794	5,767	4,798	111,344	2,144	58	403	82,444	937
Europe	185,115	90,838	94,277	12,652	3,670	2,751	..	1,747	..	219	72,862	376
Austria	4,109	1,460	2,649	434	39	45	..	24	..	5	2,086	16
Belgium	1,520	1,330	190	38	1	2	..	14	..	3	129	3
Bulgaria	345	50	295	7	4	..	..	3	..	..	281	..
Czechoslovakia	3,541	1,229	2,312	302	40	35	..	34	..	1	1,900	..
Denmark	1,373	1,131	242	140	35	15	..	26	..	..	17	9
Estonia	440	85	355	14	4	..	..	3	..	2	332	..
Finland	675	576	99	53	15	9	..	7	..	3	9	3
France	4,180	2,593	1,587	1,055	51	94	..	46	..	9	321	11
Germany	45,230	24,135	21,095	5,899	148	526	..	89	..	5	14,321	107
Greece	4,952	302	4,650	562	613	214	..	16	..	8	3,231	6
Hungary	8,705	539	8,166	86	48	30	..	32	..	22	7,945	3
Ireland	9,124	9,064	60	18	4	1	..	22	..	1	1	13
Italy	19,061	5,613	13,448	1,724	1,533	836	..	398	..	22	8,895	40
Latvia	1,077	172	905	23	14	3	..	6	..	1	858	..
Lithuania	1,266	221	1,045	31	15	3	..	10	..	3	979	4
Netherlands	12,416	2,798	9,618	245	65	20	..	33	..	10	9,205	40
Norway	2,533	2,334	199	81	47	21	..	16	..	9	13	12
Poland	11,225	3,300	7,925	345	116	105	..	123	..	18	7,203	15
Portugal	1,537	445	1,092	225	282	435	..	127	..	2	21	..
Rumania	2,573	286	2,287	95	54	11	..	30	..	22	2,073	2
Spain	1,009	186	823	314	199	72	..	139	..	49	47	3
Sweden	2,294	2,214	80	20	9	8	..	8	..	..	27	8
Switzerland	1,800	1,641	159	71	28	11	..	18	..	..	25	6
United Kingdom (England	19,533	18,769	764	140	25	18	..	309	..	1	236	35
United Kingdom (No. Ireland	1,492	1,465	27	7	..	2	..	13	..	..	2	3
United Kingdom (Scotland	5,946	5,813	133	18	2	1	..	99	..	..	5	8
United Kingdom (Wales	599	560	39	3	2	3	..	7	..	..	22	2
U.S.S.R.	4,523	1,100	3,428	94	41	9	..	44	..	13	3,208	19
Yugoslavia	9,842	621	9,221	364	107	179	..	35	..	6	8,530	..
Other Europe	2,193	806	1,384	244	129	43	..	16	..	4	940	8
Asia	23,102	3,266	19,836	7,891	889	1,632	..	68	6	113	9,207	30
China [2]	5,425	389	5,036	904	138	296	..	8	..	16	3,669	5
India	337	198	139	49	53	10	..	4	1	..	20	2
Israel	1,275	778	497	51	54	33	..	9	..	32	316	2
Japan	6,354	159	6,195	5,003	168	442	..	2	4	32	541	3
Palestine	475	70	405	15	22	6	..	3	..	5	354	..
Philippines	1,996	97	1,899	1,069	99	668	..	..	..	2	55	6
Other Asia	7,240	1,575	5,665	800	355	177	..	42	1	26	4,252	12
North America	106,942	1,156	105,786	743	981	337	102,691	259	47	52	167	509
Canada	33,203	11	33,192	78	25	6	32,797	1	5	1	10	269
Mexico	49,154	..	49,154	32	28	7	48,924	1	1	3	3	155
West Indies	18,056	876	17,180	576	871	311	15,010	253	1	48	29	81
Central America	5,780	103	5,677	37	25	12	5,590	2	1	..	7	3
Other North America	749	166	583	20	32	1	370	2	39	..	118	1
South America	9,002	148	8,854	63	62	13	8,653	4	1	6	36	16
Africa	1,673	1,097	576	236	107	46	..	38	..	5	142	2
Australia & New Zealand	756	441	315	191	53	15	..	26	..	8	21	1
Other countries	277	235	45	18	5	4	..	2	4	..	9	3

[1] Figures include 2,108 refugees in the United States who had adjusted their status under Sec. 6 of the Refugee Relief Act of 1953.

[2] Includes Formosa.

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