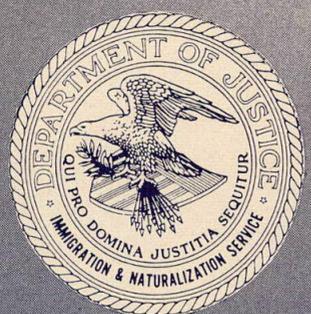
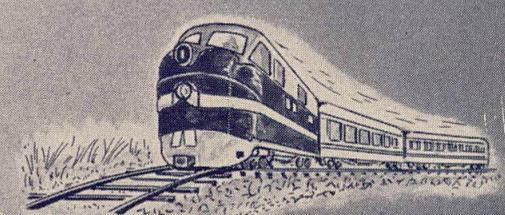
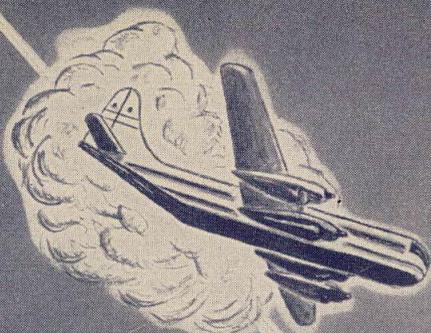


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IMMIGRATION AND NATURALIZATION SERVICE

JAMES L. HENNESSY
*Executive Assistant to the
Commissioner*

RAYMOND F. FARRELL
*Assistant Commissioner
Investigations Division*

EDWIN B. HOWARD
*Assistant Commissioner
Field Inspection and
Security Division*

EDWARD A. LOUGHRAN
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Administrative Division*

FRANK H. PARTRIDGE
*Assistant Commissioner
Enforcement Division*

LELAND W. WILLIAMS
*Assistant Commissioner
Examinations Division*

L. PAUL WININGS, *General Counsel*

ELIZABETH F. HART, *Editor*



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ministrative Division.*

THE UNITED STATES DEPARTMENT OF JUSTICE

WILLIAM P. ROGERS, *Attorney General*

IMMIGRATION AND NATURALIZATION SERVICE

J. M. SWING, *Commissioner*

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Aids To International Travel

by *John F. O'Shea*

Supervisory

Immigrant Inspector

The President has repeatedly expressed his desire that all agencies and Departments of the Executive Branch adopt methods of facilitating international travel.

The Immigration and Naturalization Service is, of course, one of the Government agencies intimately concerned with international travel. Congress has conferred upon the Attorney General responsibility for the enforcement of the Immigration and Nationality Act and all other laws relating to immigration except for certain functions reserved to the President and the Secretary of State. Outlined below are some significant Service accomplishments in easing the burden of the international traveler, whether he be a citizen, resident alien, or an alien seeking temporary or permanent admission to our country.

Preexamination and Enroute Inspection

The Service has consistently favored completion of inspection and a final determination of admissibility prior to the arrival of an applicant at a port of entry. Final inspection at ports of embarkation has been established and is functioning very satisfactorily at Montreal, Toronto, Winnipeg, and Victoria, Canada, and in Hamilton, Bermuda. Final inspection of persons leaving U. S. territories destined to the continental United States or any other place under the jurisdiction of the United States is also completed prior to departure.

Enroute inspection which has the same advantages and accomplishes the same results as pre-departure inspection is carried out on steamship lines operating between Yokohama and Honolulu; the Fiji Islands and Honolulu; Havana, Cuba and Key West, Florida; Vancouver, B. C., Canada and San Francisco, California; and on some railroad lines operating between Canada and the United States. In an effort to expand enroute inspection to Atlantic crossings, trial runs were made on the SS United States and the SS Independence. The Service is prepared to consider the extension of pre-arrival inspection to other areas.

Readmission Documents Simplified

Formerly a resident alien who wished to make a temporary visit overseas was required to obtain a reentry permit from the Service. This permit is no longer required if the alien's foreign visit does not exceed one year. In lieu of the permit, passport or visa, the alien may now present only his alien registration receipt card to satisfy the requirements of law governing the documents needed for readmission.

The citizen of Mexico who desires to visit border areas in the United States has been relieved of the burden of obtaining a nonimmigrant visa. The Mexican who establishes admissibility to the United States may be issued a laminated nonresident alien border crossing card. Over 600,000 of these cards have been issued and are in constant use on the Mexican border.

A similar document for the use of foreign crewmen seeking admission in pursuit of their calling was adopted on May 1, 1958, and since that date more than 50,000 cards have been applied for. The card is issued to a foreign crewman found eligible for shore leave.

Unlike the Mexican border-crossing card the crewman card is not in itself an entry document. It is an identification card and a landing permit. The crewman is still required to present a valid passport and visa, the latter usually being the crew list visa. The card is a forward step in the overall program of facilitating international travel since it permits much more rapid inspection of the crew and eliminates the need for preparation and notation of a Form I-95 for each member of the crew every time the ship arrives in port.

Other Administrative Simplifications

Apart from individual documentation, delays in international travel result if carriers are required to prepare lengthy and complicated manifests containing detailed information on the travelers named in the manifest. On December 1, 1957, a simplified arrival-departure record

Continued on page 22

Recent Naturalization and Citizenship Developments

by

Grace V Leon

Legal Assistant

Administration of the citizenship and naturalization provisions of the Immigration and Nationality Act of 1952 has presented a number of problems which, to some extent, have been eliminated by recent amendments to the law and by judicial rulings.

Prior to the Nationality Act of 1940, the acquisition of United States citizenship at birth abroad to citizen parents was dependent, in part, upon previous residence in the United States by at least one citizen parent. No particular length of residence was specified; any residence, even a brief one, was sufficient.

Since the 1940 Act, more stringent residence or physical presence requirements have been laid down as a prerequisite to the descent of citizenship to the child at birth, unless both parents are United States nationals. In a case in which one parent is an alien at the time of the birth of the child, for citizenship to vest in the child the citizen parent is required to have completed the period of residence or physical presence in the United States fixed by the applicable statute.

Under the 1952 Act, the citizen parent must have been physically present in the United States or its outlying possessions prior to the birth of the child for a period or periods totaling not less than 10 years, at least five of which are after the parent has reached age 14. This requirement is somewhat relaxed in the case of a citizen parent who has had honorable service in the Armed Forces of the United States, by permitting the period of that service to be included in the computation of physical presence. Under the law in effect immediately preceding the present Act, a different combination of conditions applied to the citizen parent—10 years' residence in the United States or one of its outlying possessions (as contrasted with physical presence in the current law), at least five years of which were after attaining 16 years of age. If the citizen parent served in the Armed Forces of the United States between specified dates, the five years could be accumulated after attaining 12 years of age instead of 16 years.

During the effective period of the Nationality Act of 1940—from January 13, 1941, to December 23, 1952—thousands of citizens of the United States were serving abroad in our armed forces. Many married there and children were born to them and their alien wives. The children of some of these citizens (including Korean veterans) were not vested with United States citizenship at birth under that Act, either because the citizen parent was too young at the time of the birth to have completed the required residence or his service in the armed forces did not occur until after the termination of hostilities in World War II. As these children were aliens, it was necessary to obtain visas for them when they were brought to the United States. Oftentimes arrangements to obtain these visas could be made only at considerable inconvenience to the family. Moreover, it was a not uncommon occurrence for these children to be brought to the United States erroneously as citizens of the United States without proper documentation. Under those circumstances, they were not admissible for permanent residence under the immigration laws, and if entry was effected they were illegally in this country.

A solution of the problems raised by this situation was sorely needed. Congress took remedial action by the passage of the Act of March 16, 1956 (70 Stat. 50), conferring United States citizenship upon these children retroactively as of the date of birth if the citizen parent satisfies the physical presence requirements of the Immigration and Nationality Act and has served in the Armed Forces of the United States after December 31, 1946, and before December 24, 1952. Alienage and the attendant irregularities in the immigration status of these children have thus been removed.

Originally, no requirements relating to retention of citizenship were imposed upon the child who acquired United States citizenship through birth abroad to one citizen parent and one alien parent. The Act of May 24, 1934, enacted such requirements, but they were superseded by

Recent Naturalization and Citizenship Developments—Continued

those in the Nationality Act of 1940. The latter, in turn, have been affected by the provisions of the current statute. All of the statutes since 1934 have required the child to come to the United States before reaching a certain age and to complete a specific period of residence or physical presence here under pain of forfeiture of nationality. Compliance with these provisions is often no easy matter for the child.

The conditions for retaining citizenship as originally enacted in the current statute necessitated the child's *continuous* physical presence in the United States for at least five years between the ages of 14 and 28. Any absence, however brief, broke the continuity of the period of physical presence and jeopardized citizenship. Citizenship could be lost as a result of a single casual visit to an adjacent country or a summer vacation abroad.

This harsh result is averted by the remedial provisions of the Act of September 11, 1957 (71 Stat. 639), under which absences from the United States of less than 12 months in the aggregate during the period for which continuous physical presence in the United States is required do not break the continuity of physical presence.

The retention requirements of the current statute (five years' continuous physical presence after age 14 and before age 28) are in some respects less stringent than those of the Nationality Act of 1940 (five years' continuous residence between 13 and 21 years of age). For example, in cases in which the current statute is applicable the citizenship of a child who fails to come to the United States does not terminate until he reaches 23 years of age. Under the Nationality Act citizenship terminates at 16 years of age. On the other hand, the substitution of a physical presence requirement for a residence requirement is more restrictive, since physical presence is not always necessary to accumulate residence.

The Nationality Act and the current statute each provide that retention provisions shall apply to a child born subsequent to May 24, 1934, with the exception in the current statute of a child residing in the United States on December 23, 1952, whose residence began before reaching age 16, and who satisfies the retention requirements of the Nationality Act.

A controversy soon arose about the citizenship status of a child born July 16, 1935. This child was over 16 years of age on December 24, 1952, when the current statute became effective, and his citizenship was regarded as having

terminated under the Nationality Act of 1940 by reason of his failure to take up residence in the United States before reaching 16 years of age. It was urged that the retention provisions in the current law were controlling with regard to his status, rather than those of the Nationality Act, and that he had until he was 23 years old to come to this country. This interpretation was adopted by the Supreme Court, which reversed the lower court's holding to the contrary (*Lee You Fee v. Dulles*, 355 U. S. 61).

During recent years thousands of alien children have been adopted by citizens of the United States. The Nationality Act of 1940 and the current statute as originally enacted included provisions for the naturalization of such a child on a petition filed in his behalf by the adoptive citizen parent or parents. To qualify for naturalization, the child in addition to other prerequisites was obliged after adoption to reside continuously in the United States in the legal custody of the adoptive parent or parents for two years immediately preceding the filing of the petition, one year of which was required to be in actual physical presence. There were many cases in which the citizen adoptive parent was serving in the Armed Forces of the United States or was employed by the Government of the United States and was regularly stationed abroad in that service or employment. In these cases the family's return to the United States was generally for only short periods of time on leave and it was difficult for the child to complete the necessary residence and physical presence. For the child to continue to travel abroad with the family as an alien also raised special problems and served to work hardship on the family in many ways.

Once more the Act of September 11, 1957, came to the rescue by relieving an adopted child from the residence and physical presence requirements for naturalization when the citizen adoptive parent is in the Armed Forces of the United States or in specified employment and is regularly stationed abroad. P. L. 85-697 enacted August 20, 1958, extends the benefits of this section as well to the adopted children of citizens engaged in religious work abroad. Under these liberalized provisions, the adopted child need remain in the United States only long enough for his case to be brought before the naturalization court.

The presence abroad of numerous citizens of the United States is necessitated by activities which further the national interests, such as employment by the United States Government, or by an American institution of research, an

Recent Naturalization and Citizenship Developments—Continued

American firm or corporation, or a public international organization. These citizens are frequently stationed abroad for lengthy periods of time. If the family is to function as a unit, it is well-nigh impossible for the alien spouse of such a citizen to accumulate three years' continuous residence in the United States, 50% in actual physical presence. The current statute, therefore, excepted an alien spouse in this category from meeting these requirements, which are applicable to the spouse of a citizen not so engaged. Until August 20, 1958, however, the problem remained unsolved for a family abroad in connection with religious duties. At that time, the law was expanded by P. L. 85-697 and now also covers the spouse of a citizen stationed abroad in the performance of religious functions.

Among the persons displaced from their homelands by World War II who have been granted a haven in the United States, there are many who, in fear of repatriation to the Union of Soviet Socialist Republics and other Communist-dominated countries, made misrepresentations regarding their country of birth and nationality in connection with obtaining their visas. Viewed in the light of the sufferings endured by these persons, the prospect of possible return to life under similar conditions was an appalling one and the misrepresentations were humanly to be expected. Nevertheless, as a result of the misrepresentations, they were excludable at the time of entry into the United States and their residence here was illegal. Their eligibility for naturalization was also in issue. (Cf. *Petition of Larysa Iwanenko*, 145 F. Supp. 838.)

The Act of September 11, 1957 also favorably affects these persons. Under it, a displaced person who misrepresented the facts regarding his background as a result of fear of persecution because of race, religion or political opinion if repatriated to his former home is made non-deportable for the misrepresentations. This Act benefits as well aliens generally who procured entry into the United States by fraud or misrepresentation and who are the spouses, parents or children of United States citizens or of lawful permanent residents of the United States. The effect of the legislation is to allow all of these aliens to regularize their immigration status in the United States and to proceed toward citizenship.

Various sections of the Nationality Act of 1940 attached the consequence of automatic loss of nationality to the performance of prescribed acts by citizens of the United States. Although

this law was repealed on December 24, 1952, nationality lost under its provisions was not restored by the repeal, and the constitutionality of several of its sections was considered by the Supreme Court of the United States during its October term, 1957.

The statute specifies service in the armed forces of a foreign country as an act which results in automatic loss of United States citizenship. In *Nishikawa v. Dulles* (356 U. S. 129), the constitutionality of this provision of law was questioned. That issue, however, was not determined. The Court, concluding that on the record the Government had failed to establish the voluntary conduct essential to expatriation, reversed and remanded the case to the lower court for further proceedings.

Another prescribed act is voting in a political election in a foreign state or participating in an election or plebiscite to determine the sovereignty of foreign territory. In *Perez v. Brownell* (356 U. S. 44), the constitutionality of this section was upheld as a valid exercise of the power of Congress to regulate foreign affairs.

Desertion from the military or naval forces of the United States in time of war, if followed by court martial and dismissal or dishonorable discharge therefor, is another act statutorily fixed as resulting in automatic divestiture of nationality.

Provisions similar to this section of the Nationality Act have existed in our laws since 1865. In *Trop v. Dulles* (356 U. S. 86), in a five to four decision, this section was held to be unconstitutional. Four of the Justices of the majority were of the opinion that the statute inflicted a cruel and unusual punishment in violation of the Eighth Amendment to the Constitution; the fifth, that there was no rational relation between the section and the power granted to Congress under the Constitution and therefore its enactment was not a valid exercise of that power. The dissent rejected the view that the statute violated the Eighth Amendment and considered its enactment a valid exercise of the war power of Congress. The decision in this case runs contrary to views long held regarding loss of nationality and affects the status of many persons dismissed or dishonorably discharged from the Armed Forces of the United States.

Another provision considered by the Court was that relating to loss of nationality by departing from or remaining outside the United States in time of war or national emergency in order to avoid training or service in the United

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Immigrant Orphans

by
Gertrude D. Krichefsky
Statistician

Of the thousands of orphaned children left in the wake of recent wars, over 10,000 have found homes in the United States in the past decade. The joy of the adoptive parents and the children has often been reflected in newspaper and magazine pictures and articles. The Service, fulfilling its job of administering immigration laws, has had a share in this humanitarian undertaking.

How the Programs Came About

Four times since 1948 The Congress has provided for nonquota admission of orphans.

The tragic plight of these children left in war-torn countries, plagued by economic and over-population problems, prompted these laws. At the same time, many childless couples and other families were eagerly looking for children to adopt, because the demand for such children far exceeded the number available in this country.

American servicemen and civilians stationed abroad adopted many orphans. If quota numbers were available the children were issued visas, and entered the United States with their citizen parents. But, many times, quota numbers were not available.

Thus, through these laws the helping hand of the United States was outstretched by providing for nonquota orphan admissions.

Even before the first legislation was passed in 1948, some 1,600 alien children had come here. During May and June 1946, 231 Polish children came from the Santa Rosa Camp, Mexico, for permanent residence in the United States, under the care of the Catholic Committee for Refugees. In the following two years, nearly 1,400 unaccompanied alien children under sixteen years of age entered for adoption in American homes.

They were sponsored by the United States Committee for the Care of European Children. *Displaced Persons Act of 1948*

The first provision for nonquota status for alien orphans was contained in the Displaced Persons Act. As later amended, the law authorized the issuance of 5,000 visas to United



A tiny Korean orphan, arriving at Portland (Oreg.) International Airport in June 1958 is comforted by Mrs. Marion Henry of that City. The child is one of 915 orphans, born in Korea, and adopted under the Act of September 11, 1957. A total of 2,040 orphans had been admitted under this Act of June 30, 1958.

Nations and Greek orphans, and 5,000 to orphans residing in Western Europe.

Of 10,000 possible admissions, only 4,065 orphans were admitted in the seven years this provision was in effect. Included in the total were 1,246 born in Greece, 1,156 in Germany, 568 in Italy, 236 in Yugoslavia, 214 in Poland, 202 in Latvia, and 169 in Austria.

Visas were limited to orphans under 10 years of age. The law also required assurances that if admitted the orphans would be cared for properly.

The Displaced Persons Commission administered the orphan program and placed it within the Resettlement Division. During the first two years of its operation, the United States Committee for the Care of European Children initially processed the orphans. In 1950 the Displaced Persons Commission established within the Resettlement Division an Orphan Section to deal with the thousands of orphans sponsored by individuals and agencies. Various State departments of public welfare and child welfare agencies cooperated with the Commission in placing the children for adoption. *Act of July 29, 1953*

Act of July 29, 1953

When the Displaced Persons Act expired there were still many servicemen and civilians

Immigrant Orphans—Continued

abroad who wanted to bring home adopted children. To relieve this hardship, the July 29 Act was passed, permitting the issuance of 500 nonquota visas for orphans adopted by military and civilian personnel abroad. This Act provided for adoption of Japanese children, a group not covered by the Displaced Persons Act. Of the total 466 admitted under this law during 1954 and 1955, 287 were born in Japan, 75 in Austria, and 54 in Germany.

Refugee Relief Act of 1953

Section 5 of the Refugee Relief Act of August 7, 1953, authorized 4,000 special nonquota immigrant visas to eligible orphans under ten years of age. An orphan could be adopted abroad or in the United States if assurances were given by a citizen couple that they would adopt the orphan and give him proper care. One couple was not permitted to adopt more than two orphans unless necessary to prevent separation of brothers or sisters. A nonquota visa was issued only if the quota to which the orphan would otherwise be chargeable was oversubscribed.

The prospective adoptive parents were required to select a recognized welfare agency to underwrite their assurance of adoption. The agency was made responsible for the resettlement and care of the child if adoption was not completed. The Administrator of the Refugee Relief Act of 1953 carried out this program, in consultation with the Children's Bureau of the Department of Health, Education and Welfare, State welfare departments, and voluntary agencies.

About 90 percent of the orphan visas issued in Japan and a large proportion of those issued in Germany, Korea, Austria, and Greece went to orphans adopted by Americans stationed in those countries.

When the program ended, on December 31, 1956, the validity dates of the visas already issued were administratively extended for a period of two years so that military and other government personnel stationed abroad could bring their children home with them. This action was later legally affirmed by section 4(c) of the Act of September 11, 1957, which extended the validity period of these visas to three years.

As of June 30, 1958, 3,727 orphans entered the United States under section 5 of the Refugee Relief Act of 1953. This number includes 1,295 born in Japan, 506 in Greece, 459 in Italy, 455 in Korea, and 197 in Germany.

Emergency Parole Procedure

By September 26, 1956, all of the 4,000 nonquota orphan visas were issued. But there were

still many citizens stationed abroad who had adopted or were about to adopt orphans. They could not bring these children back to the United States because no visas were available. In order to avoid this hardship, the Immigration and Naturalization Service, in consultation with Congressional committees and the Department of State, on October 30, 1956, authorized parole of eligible orphans in excess of 4,000 in accordance with the procedure in section 212(d)(5) of the Immigration and Nationality Act.

By September 19, 1957, 925 orphans, who fully qualified under the Refugee Relief Act of 1953, were paroled into this country to their adoptive or prospective adoptive parents.

Act of September 11, 1957

The fourth orphan program, now in progress, was initiated by the Act of September 11, 1957. Under the terms of this law, an orphan previously paroled into the United States may, after adoption, adjust his status to that of permanent resident. By the end of June 1958, 744 paroled orphans adjusted their status under this provision of the law. This number included 264 orphans born in Korea and 189 in Japan.

Another section authorizes the issuance of an unlimited number of visas, until June 30, 1959, to orphans under 14 years of age lawfully adopted by citizen families. The nonquota orphan visas are available only if the quota to which the orphan is chargeable has been oversubscribed.

By June 30, 1958, 1,163 orphans adopted abroad were brought to this country under the 1957 law. This number includes 637 orphans born in Korea, 176 in Japan, and 176 in Greece. The children who came with their adoptive parents were permitted to enter on the passports of their parents.

But not every child came with his adoptive parents. Sometimes, parents not able to go abroad had another person act as a "proxy" in the foreign country. Orphan adoptions by proxy, in accordance with the laws of the foreign country involved, are held to be valid both under the Refugee Relief Act and the Act of September 11, 1957.

In addition to the orphans adopted abroad, the Act specifies that orphans, upon petition by a United States citizen couple, may be brought to the United States for adoption. Prospective adoptive parents must provide assurances that they will adopt and give proper care to the child and that the pre-adoption requirements, if any, of the child's proposed State of residence have been met.

The Immigration and Naturalization Service

Immigrant Orphans—Continued

encourages future parents to consult one of the recognized child welfare agencies, who have agreed to furnish a statement indicating approval or disapproval of the adoption. The agency makes a home study of the couple to evaluate their financial and emotional stability and other qualifications as adoptive parents.

When the couple have been approved, the adoption agency seeks information through an international agency—such as the International Social Service—regarding a suitable child or children. This agency, through its offices abroad, carefully studies the orphan selected. It reports the reason for placement of the orphan, his physical and mental qualifications, his description and present circumstances, and, where needed, it obtains consent for adoption. When the home study and report on the child are completed, the agency certifies that the pre-adoption requirements of the State have been met and that there are no legal obstacles to adoption.

When the citizen couple select a child for adoption, they file a petition (Form I-600), wherein they must specify the name, age, and location of the child. Not more than two children may be adopted by one citizen couple unless this causes a separation of brothers or sisters.

The adoption agency sends notice of the approval of the home, along with the petition, to the Immigration and Naturalization Service. The Service promptly investigates the case to make sure that all legal requirements have been met. Thereafter, the Service forwards the approved petition for issuance of the visa to the American consul nearest the child's place of residence.

After the visa is issued, the adoptive parents

arrange for transportation of the child from abroad to their place of residence.

When the child arrives, the prospective parents initiate adoption proceedings through a recognized agency. The child, however, may not be adopted immediately, since in many States adoption proceedings take about a year to complete. The child does not become a United States citizen upon adoption, but may gain citizenship through naturalization.

By June 30, 1958, 294 visa petitions in behalf of orphans to be adopted under section 4(b) (2) (B) had been approved by the Service, and 133 orphans admitted, 56 of whom came from Italy.

The total number of orphans admitted by June 30, 1958, under the Act of September 11, 1957, was 2,040. These orphans are nearly equally divided as to sex, and their median age is 3.4 years. They went to live in nearly every State, with concentrations in the States of California, New York, Texas, and Oregon.

Summary

10,298 children now have homes and fathers and mothers in the United States because of special legislation.¹ The major countries of birth have, in general, followed the progression of conflicts. Thus, under the Displaced Persons Act of 1948, all of the orphans were from Europe. Most of the 500 authorized in 1953 were from Japan. Of the 3,727 admitted under the Refugee Relief Act, 1,615 came from European countries and 1,750 from Japan and Korea; and under the September 11, 1957, Act, almost half were from Korea. Until June 30, 1959, more orphans will find homes in the United States under this last Act.

¹ See also page 28.

CHANGES IN THE REGULATIONS

UNDER TITLE 8, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register*, Vol. 23, No. 150, August 1, 1958, Introduction, Part 206.1; Sections 206.1(d); 206.2; 206.11; 206.21; 206.3; 212.1(a)(5); Part 214; 237; 242.2(b), (c); 299.1; 322.1; 324.11; 324.12; Part 325; 327.1; Part 328; Part 329; 330.1; 334.11; 334.12; 334.17(a); 334a.1; Part 335b; 336.11, 336.12; and 336.17.

Vol. 23, No. 166, August 23, 1958, Part 235a; Part 242; Sections 245.1, and 249.1.

UNDER TITLE 22, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register*, Vol. 23, No. 94, May 13, 1958, Sections 1.1 and 1.2.

Vol. 23, No. 153, August 6, 1958, Section 41.11.

Vol. 23, No. 176, September 9, 1958, Section 42.3(d), (e).

RECENT NATURALIZATION AND CITIZENSHIP DEVELOPMENTS . . .

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States Armed Forces. In this case, *Mendoza-Martinez v. Mackey* (356 U. S. 258), the Court vacated the judgment of the lower court and remanded for determination in the light of its opinion in the Trop case, above mentioned.

There are provisions comparable to all of these sections in the current Immigration and Nationality Act. The decisions, therefore, will affect determinations under that Act as well as under the Nationality Act.

AIDS TO INTERNATIONAL TRAVEL . . .

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was adopted for the use of airlines bringing aliens to the United States. The result is a greatly simplified procedure since the card, after microfilming, serves as a manifest record. The original of the card is retained by a nonimmigrant alien and informs him of the authorized length of his stay. The duplicate becomes the control card for use in the centralized nonimmigrant control maintained in the Central Office of the Service.

Long standing agreements between the Service and transportation lines operating to foreign contiguous territory or adjacent islands have been cancelled and replaced by a new and simplified agreement of Form I-421. The new agreement, between the transportation line and a Regional Commissioner of the Immigration and Naturalization Service, eliminates the old procedure whereby aliens arriving in foreign contiguous territory destined to the United States were examined for admissibility to the United States and were examined a second time at the actual port of entry. This new agreement provides only a single inspection which normally will occur at the United States port of entry, but the transportation line may request that this examination be completed in the foreign territory.

Public Law 85-508, enacted on July 7, 1958, provided for statehood for Alaska. Immediately upon the approval of the Act the Service discontinued the inspection previously required of persons seeking admission to the States from Alaska.

Travel Committee Established

The selection of Mr. Clarence B. Randall, Special Assistant to the President, to make a detailed study of international travel emphasized the President's concern with the problems involved in the facilitation of international travel.

Mr. Randall completed his study and forwarded his recommendations to the President on April 17, 1958. His report noted with much satisfaction the accomplishments outlined above. He recommended that an Interdepartmental Travel Committee be established at the Assistant Secretary level, chaired by the Assistant Secretary of Commerce, to resolve interagency problems and to promote international travel on a coordinated basis. This Committee has been formed and began its operation on July 25, 1958. The Commissioner of Immigration and Naturalization is the representative of the Department of Justice on this Committee.

HIGHLIGHTS OF SELECTED RECENT COURT DECISIONS

CITIZENSHIP

Bean v. Barber. Power to exclude and deport from the United States person who has established prima facie claim to United States citizenship; Burden of proof. Action to enjoin the Service from excluding and deporting plaintiff from the United States. (N.D., California, June 27, 1958).

The plaintiff was born in the United States of citizen parents. In 1952 he departed to Mexico with his parents, apparently for the purpose of avoiding service in the Armed Forces of the United States. In 1953 he was expelled from Mexico against his will, paroled into the United States, and turned over to the Federal Bureau of Investigation. He pleaded guilty to having failed to report for induction into the armed forces and was sentenced to imprisonment for 42 months. After his release, he was brought before the immigration authorities for a continuation of the exclusion proceedings which had been commenced prior to his parole into this country.

At his administrative hearing, he established the fact of his birth in the United States, but refused to answer any questions concerning the reasons for his departure from the United States. As a result, the Special Inquiry Officer and the Board of Immigration Appeals did not rule on whether the plaintiff had expatriated himself, but held that he was barred from this country as an alien immigrant not in possession of a proper visa. The plaintiff contended that as a citizen he could not be excluded; that the burden of proof to show expatriation is on the government after he had established his birth here, and that expatriation must be proved by clear, unequivocal and convincing evidence. He contended that while the government may not have held that he was expatriated, its ruling was equivalent to such action, and that it had not met the necessary burden of proof.

The court agreed with the plaintiff's position. It pointed out that it could not be assumed that the plaintiff was an alien subject to the excluding provisions of the Immigration and Nationality Act of 1952, because his alienage was the very point in issue. While the plaintiff cannot circumvent the administrative process by his present action, he may not be excluded as an alien when he has established his birth and citizenship on a prima facie basis.

The court observed that however reprehensible the conduct of the plaintiff in absenting himself from the United States in order to avoid service in the armed forces, he cannot be required to forfeit his established citizenship as the result of procedural legerdemain. The plaintiff is entitled to remain in this country absent legal and appropriate steps to deport him.

Summary judgment for the plaintiff.

DEPORTATION

Bonetti v. Rogers. Basic entry for deportation purposes under Internal Security Act of 1950; Communist Party membership. Certiorari to review a decision upholding the validity of a deportation order. Reversed. (U. S. Supreme Court, June 2, 1958).

In this case the alien was ordered deported under the provisions of section 4(a) of the Act of October 16, 1918, as amended by section 22 of the Internal Security Act of 1950. The deportation order was based upon a construction of that Act that the alien was at the time of entering the United States or thereafter a member of the Communist Party. The facts were that the alien first entered this country for permanent residence in 1923, became a member of the Communist

Party in 1932 and remained a member to the end of 1936 when he left the Party and never rejoined it. In June, 1937, he departed the United States, abandoning all rights of residence here, and went to Spain to fight with the Spanish Republican Army. In 1938, he returned to this country as a new or "quota immigrant" and applied for admission for permanent residence. After administrative proceedings during which he freely admitted his Communist Party membership from 1932 to 1936, he was ordered admitted for permanent residence. His only other entry was after a one-day visit to Mexico in 1939.

The Government contended, as had been held in the lower courts, that inasmuch as the alien had been a member of the Communist Party since his first entry in 1923, he was deportable under the Internal Security Act of 1950. The Supreme Court said that the provisions of the 1950 Act were ambiguous and did not contemplate the novel factual situation involved in this case. However, the court concluded that under the provisions of the 1950 Act an alien to be deportable must have been at the time of entering the United States or at any time thereafter a member of the Communist Party and that the statutory language referred to the time the alien was lawfully permitted to make the entry or reentry under which he acquired the status and right of lawful presence that is sought to be annulled by his deportation. In this case, therefore, it was the petitioner's entry in 1938, as affected, if at all, by his subsequent entry in 1939, that constituted "the time of entering the United States" within the meaning of the 1950 Act.

The decision in this case is apparently limited to a construction of the exclusion and deportation provisions of the 1950 Act. The court pointed out that under the Immigration and Nationality Act of 1952, the alien is excluded from admission if he has ever been a member of the Communist Party and that if he enters when excludable he is deportable, even though he would not have been subject to deportation if he had not left the country. In this case, however, the order of deportation was issued prior to the effective date of the 1952 Act and although the provisions of the 1950 Act were repealed in the 1952 Act, those sections nevertheless apply to the instant case under the savings clause of the 1952 Act.

Mr. Justice Clark, with whom Mr. Justice Frankfurter and Mr. Justice Harlan concurred, dissented.

Bisailon v. Hogan. Fair hearing; Representation by counsel; Moral turpitude in passport cases. Appeal from a decision upholding the validity of a deportation order. Affirmed. (C.A. 9, July 1, 1958)

The alien in this case was ordered deported on the ground that she had been convicted of two crimes involving moral turpitude within five years subsequent to her last entry in 1950. In both cases she was found guilty of violating 18 U. S. C. 1542, which prescribes a criminal penalty for making false statements in an application for a passport with the intent to induce the issuance thereof either for his own use or the use of another. In one instance the alien had made a false statement that she was not related to a passport applicant and that she knew the applicant to be a citizen of the United States. Her second conviction was for making a false statement in her own application for a passport to the effect that she was born in Montana.

The first contention of the alien was that she had been deprived of a fair hearing before the Special Inquiry Officer because she was not represented by counsel. The appellate court found that she had had

Highlights of Selected Recent Court Decisions—Continued

ample opportunity to obtain counsel even though her original choice thereof was a former employee of the Service who had been held to be disqualified to represent her. She was given a continuance in order to obtain other counsel but did not do so and consented to proceed before the Special Inquiry Officer. The court found that upon her appeal to the Board of Immigration Appeals and in the district court she had counsel of her own choice and that she could as readily have obtained counsel to represent her before the Special Inquiry Officer.

The court also rejected the alien's contention that certain discussions made "off-the-record" in the proceedings before the Special Inquiry Officer rendered the hearing unfair. The court pointed out that this procedure was authorized by regulations and also that in the lower court a witness that had been present testified as to the nature of the "off-the-record" discussions and that they appeared to have been innocuous so far as the alien was concerned.

The final contention made was that violation of 18 U.S.C. 1542 does not involve "moral turpitude". The government contended that this element was involved since the statute required for conviction proof of a false statement, knowingly and willfully made, with intent to obtain the issuance of a passport contrary to law. This was said to be a fraud on the United States. The alien's counsel argued that in determining whether moral turpitude was involved one may look only at the statute, and not at the indictment or judgment, to see what the particular facts of the offense were. Citing *Tseung Chu v. Cornell*, 247 F. 2d 929, the court rejected that argument. Also rejected was the argument that a non-violent crime, to involve moral turpitude, must contain the element of fraud. In support of this argument the alien cited *Bridges v. United States*, 346 U.S. 209, but the court said that it was significant that in the *Bridges* case the Supreme Court likened the offense there involved to perjury, where fraud is not necessarily present, and which concededly involves moral turpitude and that the statute in this case differs from the statute in *Bridges* in that the present statute requires the presence of the additional element of intent, namely, intent to induce the issuance of passports under the authority of the United States.

The decision of the lower court was therefore affirmed.

Piperkoff v. Murff. Conviction of crime; Judicial recommendation against deportation; When effective. Habeas corpus proceedings to review a deportation order. (S.D.N.Y., July 30, 1958).

The alien in this case was ordered deported on the ground that subsequent to entry he had been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. He contended that the deportation order was incorrect in view of the provisions of section 241(b) of the Immigration and Nationality Act because a judicial recommendation against his deportation had been made. The alien was sentenced to imprisonment for one year in 1935 for burglary and attempted grand larceny and no judicial recommendation was made against his deportation. In 1938, he was found guilty of robbery and was sentenced to from 40 to 60 years imprisonment. Again, no recommendation against his deportation was made. As a result of these convictions he was ordered deported in 1939 under the Immigration Act of 1917. On August 4, 1954, the alien moved by coram nobis to vacate the 1935 conviction because he had not been represented by counsel. This was granted. He then plead guilty to unlawful entry, a misdemeanor, and sentence was sus-

pended but no recommendation against deportation was made. On the same day it was held that his second conviction in 1938 could not be a second felony offense under the law of the State of New York and a new sentence was imposed of from 10 to 20 years. On this sentence the court recommended that the alien not be deported but notice to the interested parties, as required by the statute, was not given.

The alien's deportation proceedings were reopened and on September 1, 1955 he was ordered deported under the Immigration and Nationality Act on the ground that subsequent to entry he had been convicted of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct. The judicial recommendation against deportation of August 4, 1954 was held to be a nullity because it was made without compliance with the statute.

The alien again resorted to coram nobis and on June 27, 1957, the Kings County Court, New York, ordered that the judgments of August 4, 1954 be vacated and that the alien be resented on August 2, 1957. At the resentence the same punishment was provided as on August 4, 1954, the only difference being a recommendation against deportation and a direction for notice to the interested parties. On April 28, 1958 the Board of Immigration Appeals denied the alien's motion to terminate the deportation proceedings, holding that the recommendation against deportation was ineffectual.

In this court action the alien urged that the Service acted arbitrarily in refusing to accept the recommendation against deportation of the Kings County Court. The government contended that the action by the court was not taken at the time of first sentencing as required by the statute. Further, that the 1957 writ of coram nobis was ultra vires and improper.

The court held that the alien obtained no right to avoid deportation (1) by reason of the 1938 sentence because no recommendation was made, or (2) by reason of the 1954 sentences because, although a recommendation was made, no notice was given. The court also concluded that the order of August 2, 1957 was in effect, if not in form, a nunc pro tunc order making a recommendation against deportation to permit notice thereof in order to simulate compliance with the statute and was ineffective. The recommendation of August 2, 1957 was not when "first imposing judgment or passing sentence" as specified by the statute. The word "first" must be given its normal meaning and cannot be disregarded. Finally, the court said that it was not concerned in this action with the validity of the proceedings in coram nobis insofar as State action may be concerned. It is clear that the Federal Government in its own sphere has an inherent right to determine the basis on which an alien, convicted of crime, may comply within conditions necessary to avoid deportation.

EXCLUSION

Rogers v. Jimmy Quan, et al. Application of section 243(h) to excluded aliens; Delay in effecting deportation does not affect status of such persons. Certiorari to review a decision of the Court of Appeals for the District of Columbia holding that the five aliens involved were entitled to the benefits of section 243(h) of the Imm. and Nat'l. Act. Reversed. (U. S. Supreme Court, June 16, 1958).

This was a companion case to *Leng May Ma v. Barber*, discussed below. The five aliens in this case sought admission between 1949 and 1954, four of them arriving before the effective date of the Immigration and Nationality Act. As in *Leng May Ma*, all five aliens

Highlights of Selected Recent Court Decisions—Continued

were paroled into the United States and all later were ordered excluded and deported. They applied for stays of deportation under section 243(h) of the Act and although the district court dismissed their complaints, the Court of Appeals held that excluded aliens on parole are "within the United States" for the purpose of section 243(h).

A contention made in this case which was not directly asserted in **Leng May Ma** was that since these aliens were not "immediately" deported following their exclusion their deportation must rest upon section 243 of the Immigration and Nationality Act as to the alien who arrived after its effective date, and upon section 20 of the Immigration Act of 1917 as to the four aliens who arrived prior to the 1952 Act.

Mr. Justice Clark, delivering the majority opinion, stated that it would be assumed that four of the five aliens are deportable only under prior law by virtue of their early arrival. He observed, however, that under neither of the applicable exclusion sections, i.e., section 237(a) of the 1952 Act and section 18 of the 1917 Act, is the deportation authority confined to those situations where deportation is "immediate". Neither section, when read in its entirety and in context, fairly suggests any such limitation. The opinion pointed out that contested departures often involve long delays and stated that the court doubted that the Congress intended the mere fact of delay to improve an alien's status from that of one seeking admission to that of one legally considered "within the United States". It was concluded, therefore, that there was ample basis under section 237(a) of the 1952 Act and section 18 of the 1917 Act to deport the aliens. Regardless of which of those two exclusion sections apply, the applications for stays under section 243(h) were all filed subsequent to the 1952 Act and must be determined by that Act. For the reasons explained in **Leng May Ma**, the latter section is unavailable to excluded aliens and the fact of parole creates no variance from that principle.

The Chief Justice, Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Brennan dissented for reasons stated in the dissent in **Leng May Ma**.

Leng May Ma v. Barber. Benefits of section 243(h) of Imm. and Nat'l. Act not available to aliens excluded from admission, although paroled pending final determination of admissibility. Certiorari to review a decision by the Court of Appeals for the Ninth Circuit holding that the alien involved was not entitled to the benefits of section 243(h) of the Imm. and Nat'l. Act. Affirmed. (U. S. Supreme Court, June 16, 1958).

This was a habeas corpus case involving section 243(h) of the aforesaid Act which authorizes the Attorney General to withhold deportation of any alien "within the United States" to any country in which in his opinion the alien would be subject to physical persecution. The district court and the Court of Appeals held that this alien was not "within the United States" and therefore was not entitled to the benefits of section 243(h). The alien involved applied for admission in 1951 claiming United States citizenship. After being held in custody for a period of time pending determination of her claim, she was subsequently released on parole. Thereafter it was administratively determined that she was not a citizen and she was ordered excluded and deported from the United States. She surrendered in June 1954, and then applied for a stay of deportation under section 243(h).

Mr. Justice Clark, who delivered the majority opinion, pointed out that the immigration laws have long made a distinction between those aliens who come here seeking admission and those who are within the United

States after an entry, irrespective of its legality. He observed that this distinction was carefully preserved in the Immigration and Nationality Act. He said that for over half a century the Supreme Court has held that the detention of an alien in custody pending determination of admissibility does not legally constitute an entry, though the alien is physically within the United States. The question here involved was whether the granting of temporary parole somehow effects a change in the alien's legal status. He concluded that the parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted. It was never intended to affect an alien's status and to hold that petitioner's parole placed her legally "within the United States" would be inconsistent with the congressional mandate, as revealed by the history and organization of the Immigration and Nationality Act, the administrative concept of parole, and the decisions of the Supreme Court. The majority opinion therefore affirmed the decisions below holding that the alien here involved was not "within the United States" for the purposes of section 243(h).

Mr. Justice Douglas, with whom the Chief Justice, Mr. Justice Black, and Mr. Justice Brennan concurred, wrote a dissenting opinion.

JUDICIAL REVIEW

Wong Kay Suey v. Rogers; Wong Poo Sing v. Rogers; Emily Wong v. Rogers. Nationality; Declaratory Judgment; Blood Test Evidence. (D. C. D. C., June 11, 1958).

Three plaintiffs, allegedly related to each other, brought separate actions against the Attorney General, seeking a declaratory judgment of citizenship under Section 503, Nationality Act of 1940. Each claimed to be the child of a citizen of the United States. The cases were defended on jurisdictional grounds as well as on the merits.

In prior proceedings it had been judicially determined that the Court had jurisdiction, based upon an allegation in the complaint that plaintiffs had been denied rights as nationals of the United States on August 7, 1952. **Wong Kay Suey v. Brownell**, (227 F. 2d 41, cert. den. 350 U. S. 969). At the trial, defendant argued on the basis of the administrative record, which had been before the Court in the prior proceedings, that there had been no final denial of a right as a national of the United States to plaintiffs prior to the repeals of the 1940 Act of December 24, 1952. **Hsiang v. Brownell**, 234 F. 2d 232. Although the Board of Special Inquiry refused admission to the plaintiffs prior to that date, plaintiffs' appeal from said refusal was not dismissed until May, 1953, and it was with the 1953 decision that plaintiffs' asserted rights were denied. The Court rejected defendant's contention and ruled in each case that the Court had jurisdiction citing the **Wong Kay Suey** decision, *supra*.

With respect to the merits, Wong Kay Suey and Wong Poo Sing alleged that they were blood brothers, sons of Wong Yem, and Emily Wong asserted that she was the daughter of a third brother, Wong Hung Hai. The three cases were tried consecutively, before the same judge.

At Wong Kay Suey's trial, the Government introduced and relied upon blood test evidence to defeat plaintiff's claim that he was the son of Wong Yem, now deceased. The deposition of the technician who made blood tests of Wong Yem in Boston in 1952 at the request of the Immigration and Naturalization Service was admitted into evidence, and disclosed that Wong Yem had blood of group "AB". The doctor who

Highlights of Selected Recent Court Decisions—Continued

made the blood tests of Wong Kay Suey shortly before trial pursuant to an Order of Court directing plaintiff to submit to such tests under Rule 35, Federal Rules of Civil Procedure, testified that Wong Kay Suey had blood of group "O" and that it was biologically impossible for him to be the son of a man with blood of group "AB". The court found that the scientific evidence presented established that plaintiff could not have been the blood child of Wong Yem and directed the entry of judgment for defendant.

In the case of Wong Poo Sing, the Court found that if he was the blood brother of Wong Kay Suey, as he averred under oath, Wong Poo Sing could not be the blood son of Wong Yem since it had been established that Wong Kay Suey was not the blood son of Wong Yem. Judgment was entered for defendant.

With respect to Emily Wong, the Court found in the light of the blood test evidence that doubt was cast upon the credibility of plaintiff, her uncles and father because of their testimony with respect to the blood-brother relationship to the three men. The fact that there were inconsistencies between plaintiff's testimony at the trial and statements made under oath before the Immigration Service also led the Court to find that Emily Wong's testimony was not entitled to credibility. In addition, the Court pointed out that all of the witnesses in the case were "interested ones". Judgment was entered for defendant.

NATURALIZATION

Petition of Apilado. Petition filed by citizen parent; Requirements at time of filing petition and at time of naturalization. Petition for naturalization under

section 322 of the Imm. and Nat'l. Act which permits a citizen parent to file a petition on behalf of his child under 18 residing with him. (**Fifth Circuit Court, Hawaii, July 17, 1958.**)

In this case the petition was filed on January 8, 1958 by the citizen parent on behalf of his daughter who will not become 18 years of age until September 27, 1959. At the time the petition was filed the daughter resided with her father and was unmarried. On March 8, 1958 however the daughter was married and since that time has lived together as man and wife with her husband.

The court pointed out that the daughter was no longer a "child" as that term is defined in section 101(c)(1) of the Act since she was now married. The court observed that under the statute the qualifying elements to be met at the time of petitioning for naturalization include (1) that the child be the natural child of the petitioning parent and (2) that one or both of the parents must be citizens of the United States. These requirements were present at the time of the filing of the petition. The court held, however, that at the time of naturalization the beneficiary under the petition must be a "child" within the meaning of the statute. The beneficiary in this case cannot be naturalized even though under the age of 18 since she is married and therefore is no longer a "child". Further, she is not residing with the citizen parent who filed the petition but in fact has been residing with her husband since their marriage on March 8, 1958.

Since the beneficiary no longer meets the requirements of section 322 of the Act, the petition on her behalf was denied.

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 921

(In the Matter of Y—. In Deportation Proceedings, A-10303848. Decided by Board of Imm. Appeals, March 26, 1958.)

Discretionary relief—Burden upon alien to establish eligibility—Refusal to testify under claim of privilege justifies denial of application.

An applicant for the exercise of discretion has the duty of making a full disclosure of all pertinent information. Where, under a claim of privilege pursuant to the Fifth Amendment, such applicant refuses to testify concerning prior false claims to United States citizenship, denial of his application is justified on the ground that he has failed to meet the burden of proving his fitness for relief.

Interim Decision Number 922

(In the Matter of T—. In Section 341 Proceedings, A-6837301. Decided by Regional Commissioner, March 6, 1958. Approved by Assistant Commissioner.)

Citizenship—Acquisition after birth by child born abroad—Section 321 (a) of the 1952 Act—Permanent residence may begin from date of original admission or from date of re-admission as returning resident.

(1) A child born out of wedlock who could not derive citizenship under the Nationality Act of 1940 is held to have acquired citizenship under section 321 (a) of the Immigration and Nationality Act when she has re-entered the United States as a returning resident in 1955, prior to her sixteenth birthday, her mother having been naturalized as a United States citizen in November 1952.

(2) The requirement in section 321 (a) of the act that the child must have begun to reside permanently in the United States while under the age of 16 is satisfied either at the time of an original admission for permanent residence or, after a temporary absence, at the time of readmission as a returning resident.

Interim Decision Number 923

(In the Matter of I—. In Deportation Proceedings, A-10475038. Decided by Board of Imm. Appeals, March 24, 1958.)

Expatriation—Section 401 (d), Nationality Act—Employment as public school teacher in foreign state—Economic duress.

The heavy burden upon the Government of proving expatriation is not sustained under section 401 (d) of the Nationality Act of 1940 in the case of a dual national of the United States and Japan who was employed as a teacher in the Japanese public schools 1942-51 when there is no evidence to contravene her claim that her employment was under economic duress and, hence, not voluntary.

Recent Administrative Decisions—Continued

Interim Decision Number 924

(In the Matter of G—. In Section 341 Proceedings, A-10703284. Decided by Regional Commissioner, April 17, 1958. Approved by Assistant Commissioner.)

Certificate of citizenship—Section 341 of the 1952 Act—May not be issued where claim to citizenship is based on repatriation before American consul under Act of August 16, 1951.

A person who was repatriated before an American consul in Italy pursuant to the provisions of the Act of August 16, 1951, after having lost United States citizenship by voluntarily voting in an Italian national election, may not be issued a certificate of citizenship under section 341 of the Immigration and Nationality Act or any other provision of law.

Interim Decision Number 925

(In the Matter of Plane CUT-604. In Fine Proceedings, MIA-10/61.133. Decided by the Board of Imm. Appeals, April 3, 1958.)

Fine—Section 273 of the 1952 Act—Penalty not imposed for bringing immigrant to U. S. without proper documents where alien is beneficiary of standing waiver published in the regulations.

Transportation company is relieved of fine liability under section 273 of the Immigration and Nationality Act for bringing an immigrant to the United States without a proper visa where such person is admitted under the authority of a published regulation and the regulation in express terms provides that a visa is not required when a waiver is granted. (Cf. 6, I. & N. Dec. 262, 810.)

Interim Decision Number 926

(In the Matter of KLM Plane PH-LKA. In Fine Proceedings, F-0300-8475. Decided by the Board of Imm. Appeals, April 4, 1958.)

Fine—Section 273 of the 1952 Act—Fine liability fixed by regulations in effect at time matter arose.

Where a transportation company becomes liable to fine under section 273 of the Immigration and Nationality Act for bringing a nonimmigrant to the United States without a proper visa, it is no defense that the effect of a subsequently published regulation is to relieve the carrier of penalty in similar cases.

Interim Decision Number 927

(In the Matter of A—. In Section 316 (b) Proceedings, A-10809731. Decided by Regional Commissioner, April 21, 1958; Approved by Assistant Commissioner.)

Residence for Naturalization—Section 316 (b) of 1952 Act—Benefits not available where absence breaks continuity of one year physical presence requirement.

Any absence, no matter how short, breaks the continuity of the one year physical presence requirement in section 316 (b) of the Immigration and Nationality Act. One day trip to Canada prevents applicant from establishing uninterrupted period of physical presence, rendering him ineligible for benefits of section 316 (b).

Interim Decision Number 928

(In the Matter of P—. In Deportation Proceedings, A-7749930. Decided by the Board of Imm. Appeals, April 21, 1958.)

Discretionary relief—Waiver under section 5, Act of September 11, 1957—May be exercised *nunc pro tunc* when entry occurred after effective date of act.

A waiver under section 5 of the Act of September 11, 1957, may be granted *nunc pro tunc* in deportation proceedings to cure a designated ground of inadmissibility at time of entry where the alien was otherwise admissible and the entry occurred after the effective date of that act.

Interim Decision Number 929

(In the Matter of C—H—K—C—. In Visa Petition Proceedings, VP 13-I-45179. Decided by Regional Commissioner March 21, 1958; Approved by Assistant Commissioner.)

First preference quota status—Electrical draftsman—20 months' training as junior draftsman and electrical designer not sufficient to qualify.

An alien with approximately 20 months' training as a junior draftsman and electrical designer who is being sought to

fill position as an electrical draftsman is not entitled to first preference quota status since that position requires a qualified and experienced journeyman and the alien is still in the trainee stage.

Interim Decision Number 930

(In the Matter of S—. In Deportation Proceedings, A-7451818. Decided by the Board of Imm. Appeals, May 2, 1958.)

Act of September 11, 1957—Termination of deportation proceedings under first sentence, section 7—Alien deportable under Act of May 14, 1937, for failure to fulfill marital agreement.

(1) Deportation proceedings are terminated pursuant to the authority contained in the first sentence in section 7, Act of September 11, 1957, in the case of an alien previously found deportable under the Act of May 14, 1937, where the alien was otherwise admissible at the time of entry except for the fraud imputed to her for her failure subsequent to entry to fulfill marital agreement.

(2) The alien is found to have been "otherwise admissible" at the time of entry, since a valid marriage relationship existed at the time of the issuance of the visa and her entry into the United States.

Interim Decision Number 931

(In the Matter of R—S—. In Exclusion Proceedings, A-8993287. Decided by the Board of Imm. Appeals, May 26, and June 10, 1958.)

Loss of citizenship—Section 350 of the 1952 Act—Benefit sought by dual national must be substantial.

Dual national is not expatriated under section 350 of the Immigration and Nationality Act merely by assertion of a claim to Mexican nationality to gain admission to the United States as an agricultural worker. To effect expatriation, the benefit sought under the claim to foreign nationality should be substantial and indicative of a preference for the foreign country to a degree inconsistent with United States citizenship.

Interim Decision Number 932

(In the Matter of M—. In Visa Petition Proceedings, VP 13-I-45941. Decided by Regional Commissioner, June 10, 1958. Approved by Assistant Commissioner.)

First preference quota status—Supervisory orchardist—Extensive specialized experience required.

A 23-year-old alien raised and educated in a farming community in Yugoslavia who received instruction in his high school curriculum, and has had only part time experience in Yugoslavia, in the production, care, and harvesting of orchard crops lacks the specialized experience to qualify for employment as a supervisory orchardist in California. Hence, he is not entitled to first preference quota status.

Interim Decision Number 933

(In the Matter of S—. In Preexamination Proceedings, A-10453280. Decided by Regional Commissioner, June 10, 1958. Approved by Assistant Commissioner.)

Good moral character—Need not be established for any specified period to qualify for preexamination.

There is no requirement that an applicant for preexamination prove good moral character for any specified period of time. Hence, the restrictions in section 101 (f) of the act do not apply. However, preexamination will be denied where the applicant's conduct (reflecting continuing adulterous relationships from July 1956 to July 1957) fails to measure up generally to statutory and case law definitions of good moral character.

Interim Decision Number 934

(In the Matter of Z—. In Deportation Proceedings, A-4472847. Decided by the Board of Imm. Appeals, June 12, 1958.)

Subversive organization—Evidence—Membership in Communist Party after entry—Applicability of *Rowoldt* decision.

Claim to exemption from deportability under the *Rowoldt* decision is rejected when respondent refused to testify and the uncontradicted testimony of the witnesses showed that respondent was a member of the Communist Party over a period of years, attended meetings regularly, and paid dues. In the circumstances, the normal inference follows that he was aware that the party he had joined operated as a political organization.

**ALIEN ORPHANS ADMITTED TO THE UNITED STATES UNDER SPECIAL
LEGISLATION, BY COUNTRY OF BIRTH
YEARS ENDED JUNE 30, 1949-1958**

Country of Birth	Total	Number admitted under			
		Displaced Persons Act, 1948	Act of July 29, 1953	Refugee Relief Act of 1953 ¹	Act of Sept. 11, 1957 ¹
Total	10,298	4,065	466	3,727	2,040
Europe	6,428	4,052	140	1,615	621
Austria	645	169	75	367	34
Belgium	1	1	--	--	--
Bulgaria	2	1	--	1	--
Czechoslovakia	36	34	--	2	--
Denmark	6	6	--	--	--
Estonia	17	17	--	--	--
Finland	13	4	--	5	4
France	45	4	1	13	27
Germany	1,452	1,156	54	197	45
Greece	2,038	1,246	4	506	282
Hungary	41	39	--	1	1
Ireland	1	1	--	--	--
Italy	1,202	568	4	459	171
Latvia	205	202	--	2	1
Lithuania	69	69	--	--	--
Netherlands	3	2	--	1	--
Norway	2	--	--	--	2
Poland	223	214	--	1	8
Portugal	13	4	--	9	--
Rumania	20	20	--	--	--
Spain	33	--	--	20	13
Switzerland	8	--	--	1	7
(England	3	--	--	2	1
United Kingdom (No. Ireland	1	1	--	--	--
(Scotland	1	1	--	--	--
(Wales	1	--	--	--	1
U.S.S.R. (Europe	54	50	--	--	4
Yugoslavia	262	236	--	14	12
Other Europe	31	7	2	14	8
Asia	3,788	1	324	2,066	1,397
China	72	1	3	47	21
India	15	--	2	5	8
Japan	1,951	--	287	1,295	369
Korea	1,370	--	--	455	915
Philippines	125	--	15	84	26
U.S. Ryukyu Islands	133	--	--	106	27
Other Asia	122	--	17	74	31
North America	23	--	--	11	12
South America	1	--	--	--	1
Africa	23	1	1	16	5
Australia and New Zealand	12	--	1	9	2
All other	23	11	--	10	2

¹ Preliminary