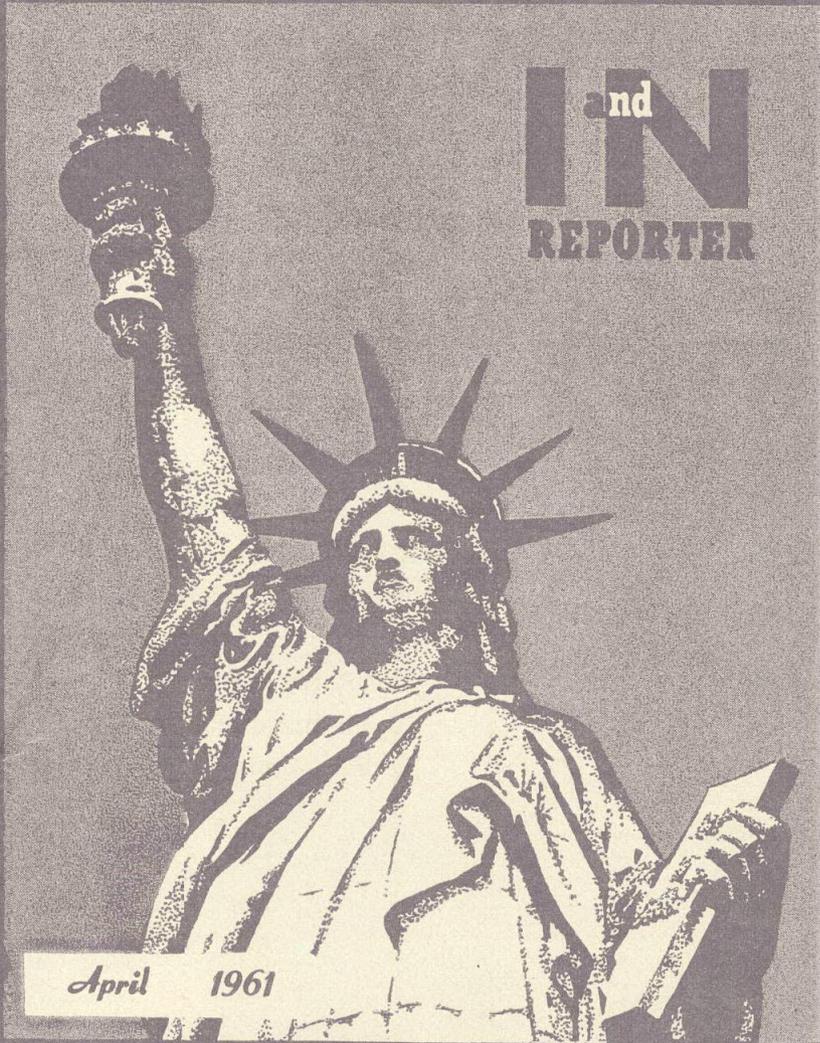


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THE UNITED STATES DEPARTMENT OF JUSTICE

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IMMIGRATION AND NATURALIZATION SERVICE

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Alien Orphans

by Gertrude D. Krichefsky

Statistician

Central Office

During the past thirteen years nearly 17,000 orphaned or abandoned children have brought happiness and enriched the lives of thousands of childless American couples and other families in the United States, where the demand for children for adoption is greater than the number available.

Through enactment by the Congress of special temporary legislation, the Immigration and Naturalization Service has been able to participate in this important humanitarian activity whereby homes are given to these unfortunate children of the world. The present orphan program is authorized by Section 4 of the Act of September 11, 1957, as amended, which expires on June 30, 1961. A number of measures were introduced in the last session of Congress and reintroduced in the first session of the 87th Congress designed to eliminate the termination date and to establish the orphan program on a permanent basis.

Orphan Programs Prior to Act of September 11, 1957¹

The orphan programs were prompted by the tragic plight of children left without parents in the wake of World War II and the Korean conflict, and the unsettled world conditions which brought thousands of refugees to the United States.

Even before the first orphan measure was passed in 1948, some 1,600 orphaned children had come to this country. During May and June 1946, 231 Polish children from the Santa Rosa Camp in Mexico came under the care of the Catholic Committee for Refugees. In 1947 and 1948, 1,379 unaccompanied alien children were brought to this country for adoption under the sponsorship of the United States Committee for the Care of European Children.

The Displaced Persons Act of 1948 contained the first provision for nonquota status for alien orphans under 10 years of age. Of 10,000 authorized admissions, only 4,065 orphans were

admitted during the time this program was in effect. The principal countries from which these orphans came were Greece (1,246), Germany (1,156), and Italy (568).

The Act of July 29, 1953, which followed the Displaced Persons Act, permitted the issuance of 500 nonquota visas for orphans adopted abroad by military and civilian personnel. Of the total 466 orphans admitted under this law during 1954 and 1955, 287 were born in Japan.

The third legislative orphan program was contained in the Refugee Relief Act of 1953. Section 5 of the Act authorized 4,000 special nonquota visas to eligible orphans under 10 years of age. A total of 3,761 orphans entered the United States under this Act. This number includes 1,315 born in Japan, 506 in Greece, 464

(TABLE 1)
IMMIGRANT ORPHANS ADMITTED TO THE UNITED STATES UNDER SPECIAL LEGISLATION, BY COUNTRY OR REGION OF BIRTH: JULY 1, 1948—DECEMBER 31, 1960

Country or region of birth	Total	Number admitted under			
		Displaced Persons Act, 1948	Act of July 29, 1953	Refugee Relief Act of 1953	Act of September 11, 1957
All countries	16,766	4,065	466	3,761	8,474
Europe	9,212	4,052	140	1,622	3,398
Austria	719	169	75	367	108
Czechoslovakia	36	34	-	2	-
Finland	28	4	-	5	19
France	138	4	1	13	120
Germany	1,795	1,156	54	197	388
Greece	2,891	1,246	4	506	1,135
Hungary	45	39	-	1	5
Italy	2,230	568	4	464	1,194
Latvia	208	202	-	2	4
Lithuania	71	69	-	-	121
Poland	336	214	-	1	60
Portugal	73	4	-	9	98
Spain	118	-	-	20	36
Switzerland	37	-	-	1	1
U.S.S.R. (Europe)	51	50	-	-	51
Yugoslavia	303	236	-	16	56
Other Europe	133	57	2	18	-
Asia	7,300	1	324	2,092	4,883
China and Formosa	391	1	3	47	228
Hong Kong	255	-	-	27	1,089
Japan	2,691	-	287	1,315	2,841
Korea	3,301	-	-	460	136
Philippines	235	-	15	84	84
U.S. Ryukyu Islands	190	-	-	106	165
Other Asia	237	-	19	53	-
North America	135	-	-	11	9
South America	9	-	-	-	27
Africa	45	1	1	16	8
Australia and N. Zealand	18	-	1	9	25
All Other	47	11	-	11	-

¹ For additional information on prior orphan programs, see articles on immigrant orphans in I & N REPORTER, October 1958 and April 1960.

ALIEN ORPHANS—Continued

in Italy, 460 in Korea, 367 in Austria and 649 in other countries.

The remaining visas to make up the 4,000 authorized by the Refugee Relief Act were issued to United States servicemen and civilians abroad. But there were still many citizens stationed abroad who had adopted or were about to adopt orphans. In this situation, the Immigration and Naturalization Service exercised the discretion contained in Section 212(d)(5) of the Immigration and Nationality Act and authorized parole of the eligible orphans. By September 19, 1957, 925 orphans, who had fully qualified under the Refugee Relief Act of 1953, were paroled into this country to their adoptive or prospective adoptive parents.

Orphan Program under Act of September 11, 1957

The fourth and current orphan program was initiated by the Act of September 11, 1957. Under the terms of Section 4(d) of that law, the Service could adjust the status of an orphan previously paroled into the United States to that of a permanent resident. A total of 875 paroled orphans had their status adjusted during the two years this provision was in effect. Four-fifths of these orphans were born in only four countries: Korea (282), Japan (213), Italy (117), and Greece (108).

Another subsection of Section 4 authorized the issuance, until June 30, 1959, of an unlimited number of nonquota visas to eligible orphans under 14 years of age, adopted abroad or brought to the United States for adoption. The closing date was extended by the Act of September 9, 1959, to June 30, 1960, and again extended to June 30, 1961, by the Act of July 14, 1960.

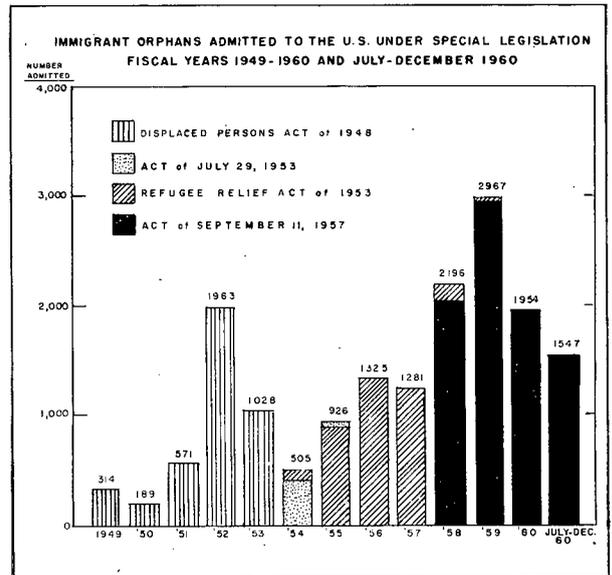
The nonquota orphan visas are available only to eligible orphans from over-subscribed quota areas. One couple is allowed to petition for no more than two orphans, unless necessary to prevent the separation of brothers or sisters.

From enactment of the 1957 law until the close of December 1960, a total of 8,474 orphans were admitted under the provisions of the Act of September 11, 1957, as amended. Nearly three-fourths of the children were from the same four countries cited above: Korea (2,841), Italy (1,194), Greece (1,135), and Japan (1,089).

Petitions under Act of September 9, 1959

As originally enacted in 1957, the law did not require a petition or investigation for

orphans adopted abroad. Nonquota status was granted the orphan if the adoption was determined to be valid. Prospective parents of orphans to be adopted in the United States had to petition for the orphans and had to provide assurances that they would adopt and give proper care to the child, and that the preadoption requirements, if any, of the State of the orphan's proposed residence had been met.



The Act of September 9, 1959, which amended Section 4 of the Act of September 11, 1957, made a significant change in the law. The amended law requires a petition and an investigation for orphans adopted abroad as well as those brought to the United States for adoption. These additional safeguards were provided in the law to eliminate any abuses which may have existed in the past.

Congress placed the responsibility for administering the immigrant orphan program, including investigations, in the Attorney General, who is charged with the administration and enforcement of the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens.²

In the instructions attached to the petition (I. & N. Form I-600), the Service suggests that the petitioners may wish to obtain assistance from a recognized social agency or from any

² Immigration and Nationality Act of 1952, Sec. 103(a).

ALIEN ORPHANS—Continued

public or private agency recognized by the appropriate authority of the State. Several such agencies which have agreed to furnish assistance are listed in Form I-600.

The petitioners must be persons of good moral character and must establish that they will care for the orphan properly if he is admitted to the United States. If the orphan was not adopted abroad, the petitioners must also establish that they will adopt him in this country and that the preadoption requirements, if any, of the State of the orphan's proposed residence have been met.

In each case a prompt investigation is made to determine the ability of the petitioners to furnish an adequate home and proper care for the child. An investigation is also conducted overseas to determine the orphan's eligibility under the law. After the petition is approved, it is forwarded, together with supporting documents, to the American consul abroad for issuance of a nonquota visa.

In the sixteen-month period September 9, 1959, through December 1960, a total of 2,765 orphan petitions were approved under the provisions of the Act of September 11, 1957, as amended, and 219 petitions were denied. The usual grounds for denial were that it was not established that the petitioners were able to care for the orphan properly if he was admitted to the United States; that the preadoption requirements of the State of proposed residence of the orphan were not met; or that the beneficiary was not an eligible orphan.

Reason for Orphanage

An "eligible orphan" is defined in the law as an alien child under the age of 14, orphaned by the death or disappearance of one or both parents, or because of abandonment, desertion, or separation from one or both parents. Where the orphan has only one parent, that parent must be incapable of providing for the orphan's care, and must have irrevocably released the orphan for emigration and adoption.

In about half of the cases of orphan petitions approved since September 9, 1959, the orphan had no parents. In the other cases the orphan had one remaining parent who was unable to provide for the orphan and had released him for adoption.

Some interesting variations in surviving parents were noted among the several nationalities. Eighty-nine percent of the orphans from Korea had neither parent living. Also without either parent were 76 percent of the orphans from

Hong Kong, 73 percent from Spain, 56 percent from China and Formosa, and 52 percent from Italy. In contrast, 88 percent of the orphans from Germany, 87 percent from the Philippines, 81 percent from Greece, 75 percent from Poland, and 64 percent from Japan, had one remaining parent.

Citizenship of Petitioners

The law requires that the orphan must be adopted by a United States citizen and spouse. In 83 percent of the cases of orphan petitions approved since September 9, 1959, the husband petitioner was a native-born United States citizen, and in 16 percent of the cases he acquired citizenship after birth. In only one percent of the cases was the husband petitioner an alien and the wife petitioner a citizen. Over three-fourths of the wife petitioners were also born in the United States. In practically all of the adoptions of Korean, Japanese, German, Austrian, French, and Spanish orphans the husband petitioner was a native-born United States citizen.

A comparison made of the petitioners' country of birth with that of the orphan indicates that a number of couples are adopting alien orphans of the same ethnic origin. For example, four-fifths of the Chinese orphans were brought to the United States or were adopted abroad by couples who were born in China or Formosa and who have since acquired United States citizenship. Over two-fifths of the husband petitioners and more than half of the wife petitioners for Philippine orphans were born in the Philippines. One-third of the orphans from Hong Kong were adopted or brought for adoption by natives of that country. One-fourth of the Polish orphans, 20 percent of the Italian orphans, and 15 percent of the Greek orphans were born in the same country as the husband petitioner. While the number of alien orphans from the West Indies is relatively small, nearly three-fourths were born in the same country as the husband petitioner.

Proxy and Other Adoptions

As shown in Table 2, two-thirds of the 2,765 orphans for whom petitions were approved from September 9, 1959, through December 31, 1960, were adopted abroad. One-third came to the United States to be adopted. Half of the orphans adopted abroad were by proxy. In such cases the adoptive parents who were not able to go abroad had another person act as "proxy" in a foreign country. Such orphan adoptions have been held to be valid if they are in accord with

ALIEN ORPHANS—Continued

(TABLE 2)

ORPHAN PETITIONS APPROVED UNDER THE ACT OF SEPTEMBER 11, 1957,
AS AMENDED BY ACT OF SEPTEMBER 9, 1959, BY TYPE
OF ADOPTION AND COUNTRY OR REGION OF BIRTH:
SEPTEMBER 9, 1959—DECEMBER 31, 1960

Country or region of birth	Total number	Personally adopted abroad	Proxy adoptions abroad	To be adopted
All countries	2,765	918	924	923
Europe	1,264	563	195	506
Austria	40	20	16	4
France	59	52	1	6
Germany	337	312	7	18
Greece	239	111	77	51
Italy	363	20	22	321
Poland	83	11	49	23
Portugal	28	-	-	28
Spain	44	11	7	26
Other Europe	71	26	16	29
Asia	1,434	339	726	369
China	145	9	6	130
Hong Kong	133	7	5	121
Japan	233	163	52	13
Korea	815	96	650	69
Philippines	55	33	2	20
Other Asia	53	26	11	16
North America	48	8	1	39
Africa	3	6	2	5
Oceania	3	-	-	1
Other countries	3	-	-	3

¹ Includes Formosa.

the laws of the foreign country involved. The overseas investigation by the Immigration and Naturalization Service before the visa is issued acts as a safeguard in such cases for the protection of the child and prospective parents.

The table below gives percentage distribution of adoptions, by type, under the 1957 Act. It points out some interesting differences among the countries listed.

Country of birth	Adopted abroad		Brought to U.S. for Adoption
	Proxy	In person	
	%	%	%
Korea	80	12	8
Greece	32	47	21
Japan	22	72	6
Italy	6	6	88
Hong Kong	4	5	91
China and Formosa	4	6	90
Germany	2	93	5

In a sample of about 200 visa petitions approved during a recent six-week period, it was found that about one-third of the petitioners were in the Armed Forces of the United States. In practically all of the adoptions by military

personnel, the child was adopted abroad. Six out of every 10 of the orphans adopted by military personnel were adopted in Germany. The validity of the visa is extended by law for a period not to exceed three years, allowing time for persons in the Armed Forces, or United States Government employees abroad to return to this country.

Sex and Age

The number of boy and girl orphans admitted to the United States since September 1959 was about equal. However, there were twice as many Korean girls as boys. Twice as many Chinese boys were admitted as girls. Six Italian boys were admitted to every four girls.

Whereas the law sets a maximum age limit of fourteen years, the median age of the orphans admitted was only 2.6 years. Girls were slightly younger than boys. The average Chinese orphan was 11 years old, eight and one-half years older than the other orphans. The Chinese girls were about a year younger than the boys. The average Korean boys were three years old; the girls were a year and one-half younger. The median age of the Italian male orphan was 2.8 years, while the Italian girl averaged a year older. The median age of German orphans was 1.8 years and of Greek orphans was 1.5 years. Nearly one-fourth of all the orphans admitted were less than a year old.

State and Area

Orphans admitted in the past 16 months went to live in every State, with concentrations of more than half in only six States: California, New York, Illinois, Texas, Pennsylvania, and Ohio. Fifteen percent went to rural areas of less than 2,500 inhabitants, nearly twice the proportion of immigrants admitted in the fiscal year 1960. Forty-five percent went to live in urban areas of less than 100,000 inhabitants. Slightly over a third went to live in large cities, whereas more than half of the immigrants admitted in the past fiscal year were destined to large cities. As in the case of the average immigrant admitted, New York was the principal city to which the orphans went. Concentrations were also noted in the cities of Los Angeles, Chicago, Honolulu, and San Francisco.

Summary

Through four legislative orphan programs the helping hand of the United States has been outstretched to unfortunate orphaned children by providing for nonquota admissions. Since

The Growing Foreign Student Program

by Frank E. Bartos

Supervisory Investigator

Central Office

During the first two decades following enactment of the Immigration Act of 1924, there was a steady influx of foreign students into this country, averaging slightly over 1,700 a year. An upward trend began at the close of World War II, reaching a high in 1948 when nearly 12,000 nonimmigrant students were admitted.

Acceleration of the foreign student program during recent years has been brought about by several factors and considerations, including the general improvement in economic conditions throughout the world, the high standing of educational institutions in the United States, elimination by the Immigration and Nationality Act of some of the statutory restrictions under the 1924 Act, the world-wide emphasis on education, and concern with international cultural interchanges. Under the provisions of Section 101(a) (15) (F) of the Immigration and Nationality Act of 1952, the number of nonimmigrant students admitted during fiscal year 1960 totaled 35,415.

Concomitant with that upsurge in the foreign student admissions has been the increased Service responsibility to assure compliance with the terms of admission during the authorized stay, and departure from this country upon expiration of that period.

When applying for a visa abroad, the prospective alien student is required to present to the American consular officer Form I-20, Certificate of Eligibility (for Nonimmigrant "F" Student Status). The completed face of that form, subscribed to by an authorized school official in the United States, certifies acceptance of the person named therein to pursue a full course of study. Also set forth is an agreement by the school to file a written report, immediately upon initial registration of the nonimmigrant student, with the local office of the Service having jurisdiction over the area in which the school is located; and forthwith, upon termination of attendance, file a written notification, including the date when, and reasons why terminated, the whereabouts of the alien if that information is available, and the date, means of transportation, and port of proposed departure if the alien is about to leave the country.

When applying for the visa abroad, the burden of establishing admissibility into the United States in a student classification rests upon the applicant. He must satisfy the American consular officer, and, later, the examining officer of this Service at the port of entry in the United States, that he is seeking admission temporarily as a qualified bona fide student solely for the purpose of pursuing a full course of study at the school designated by him, that school having been approved by the Attorney General for the attendance of foreign students. The applicant student so acknowledges his understanding thereof over his signature on the reverse of Form I-20. Documentary evidence must be submitted to establish his ability to support himself during his entire stay while pursuing a full course of study.

The prospective student is on notice that if admitted into the United States, the following conditions must be met:

1. That he is not to be engaged in business or remunerative employment, unless necessary for him to do so in order to defray a part of his living expenses, and then only if permission has been granted in advance by the Immigration and Naturalization Service.
2. That he is not to remain in the United States beyond the period fixed at the time of admission, unless an extension of stay has been authorized by the Service.
3. That he must comply with the requirements of Section 265 of the Immigration and Nationality Act.
4. That he will surrender his temporary entry permit (Form I-94) at the time of departure from the United States.
5. That he will not transfer from the school of attendance to another until his advance written application for permission to do so is approved by the Service.
6. That whenever a period of employment for practical training has been authorized by the Service, any application for an extension thereof will be granted only upon certification by the school and the training agency that the practical training cannot be completed in a shorter time.

When the alien student meets the general requirements applicable to all nonimmigrants, and satisfactorily establishes his admissibility in the student classification, Form I-20 which he presented at the port of entry is endorsed showing admission for an initial period fixed by the examining immigration officer, not exceeding one

THE GROWING FOREIGN STUDENT PROGRAM—Continued

year. That form is then transmitted to the office of the Service having jurisdiction over the place where the school of attendance is located. Thereafter, while the student remains in that area, matters relating to his immigration status are dealt with by that office. Either the student or the school of attendance may deal directly with the Service office having jurisdiction in matters concerning the student.

Breaches in the conditions of admission by alien students most commonly occur by engaging in employment without the requisite Service permission, discontinuance of studies, inability to maintain the required scholastic standing, and transfer to other schools without advance Service approval. Generally, any activities conflicting or inconsistent with the purpose of admission are impliedly an abandonment of status.

Despite the large number of foreign students entering yearly, a relatively low percentage of status violations occur. Much of this is attributable to the mutual, close cooperation between the Service and the schools to keep violations at a minimum. Many schools have officials designated as Foreign Student Advisors, most of whom are members of the National Association of Foreign Student Advisors. The Association holds meetings annually. A Service representative usually attends, participating in panel dis-

cussions and serving generally in an advisory capacity.

The Service maintains liaison with the schools throughout the year. Frequently, Service officers attend meetings arranged by school officials where problems relating to foreign students are discussed. Officers of the Service also initiate similar conferences in their own offices to keep school officials currently informed on pertinent changes in regulations and procedures.

Continuous checks and inquiries are conducted by officers of the Service to ascertain whether nonimmigrant students are abiding by the terms of their admission. If the Nonimmigrant Control Unit in the Central Office does not receive a record of departure following expiration of the alien's authorized stay, notification is forwarded to the Service office having jurisdiction for inquiry. If the alien is found to be in illegal status, action is initiated to effect his departure from this country.

The foregoing presents only some of the more general aspects of the foreign student program. The excellent curricula, plus extensive facilities available at most schools in this country, should continue to attract many students from abroad and further the policy and leadership of our Government in promoting international good will in the quest for world peace.

CHANGES IN THE REGULATIONS

UNDER TITLE 8, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register*, Vol. 25, No. 250, December 24, 1960, Sections 324.15 (added); 332.11(a); 332.12 (revoked).

Vol. 26, No. 12, January 19, 1961, Section 211.1.

Vol. 26, No. 14, January 24, 1961, Section 214.2 (c) (1).

UNDER TITLE 22, CODE OF FEDERAL REGULATIONS

Consult *The Federal Register*, Vol. 26, No. 12, January 19, 1961, Sections 46.3(k) and 53.3(g).

Vol. 26, No. 14, January 24, 1961, Section 41.6(e) (1).

Vol. 26, No. 24, February 7, 1961, Sections 41.114; 41.120; and 53.3 (g) and (h) (effective Mar. 16, 1961).

The Refugee-Escapee Parole Program

by John W. Bowser

Deputy Assistant Commissioner
Special Projects

Under provisions of the July 14, 1960 Act (Public Law 86-648), the Attorney General for the first time received statutory authority to select and parole refugees into the United States. That Act also authorizes the Attorney General to accord such parolees status as lawful permanent residents, two years after parole.

The Attorney General may parole into the United States refugee-escapees, as defined in Section 15 of the Act of September 11, 1957, who are not residing in a Communist, Communist-dominated, or Communist-controlled country; who are under the mandate of the United Nations High Commissioner for Refugees; and who are not nationals of the country from which they apply.

From the effective date of the Act until December 31, 1960, the number of refugee-escapees to be paroled could not exceed 25 percent of the total number of refugee-escapees who, during World Refugee Year,¹ had availed themselves of resettlement opportunities in countries other than the United States. Thereafter, during each six-month period up to July 1, 1962, the number to be paroled cannot exceed 25 percent of the total number of refugee-escapees who, during the immediately preceding six-month period, avail themselves of resettlement opportunities in countries other than the United States. Thus, the ceiling on the number who can be paroled during the period January 1 through June 30, 1961, is 25 percent of the total number resettled in all other countries during the period July 1 through December 31, 1960.

Because P. L. 86-648 authorized the parole of the greatest number of refugee-escapees during the period ending December 31, 1960, it was essential that Immigration and Naturalization Service operations begin at the earliest possible date following enactment. On July 18, 1960, the Department of State notified the Service that a determination had been made that refugee situations existed in Austria, France, Germany, Greece, and Italy. By the latter part of the month, a representative of the Immigration and Naturalization Service and of the Department of State were traveling to various locations in the five countries to confer with appropriate

officials and work out arrangements for carrying out the program.

Before the program could be effectuated, the Secretary of State made arrangements with each foreign government to (1) establish the right of return of any refugee-escapee whose parole was revoked within 24 months after arrival in the United States, (2) obtain the right of officers of the Immigration and Naturalization Service to interrogate any parole applicant or other refugee, and (3) establish the right of Immigration and Naturalization Service officers to have access to records within the control of the foreign government, which would have a bearing on the eligibility and admissibility of the parole applicants.

These arrangements were speedily completed and this Service so notified. By the first week in August 1960, the registration of applicants within the mandate of the United Nations High Commissioner for Refugees had begun.

The Secretary of State, on July 23, 1960, furnished an advisory report—based on statistics available at that time—showing the number of refugee-escapees resettled in all other countries during the first 10 months of World Refugee Year. On October 3, 1960, a further report was furnished, as specified in Section 1 of P. L. 86-648, advising this Service that a total of 22,286 refugee-escapees had availed themselves of resettlement opportunities offered by nations other than the United States, during the period July 1, 1959 through June 30, 1960. Accordingly, based upon the 25 percent formula set forth in that law, it was determined that a total of 5,571 qualified refugee-escapees could be paroled into the United States during the period ending December 31, 1960.

Through the cooperation of local authorities, international organizations, and voluntary agencies, registration forms were made available throughout each country in which the parole operation was placed in effect. While all organizations having contact with or interest in refugees were invited to assist in the registration, it was recognized that the work of regis-

¹ July 1, 1959 through June 30, 1960.

THE REFUGEE-ESCAPEE PAROLE PROGRAM—Continued

tering the refugees would fall largely upon the voluntary agencies. All persons and organizations involved were informed of the need for registering the refugee-escapees as rapidly as possible in view of the short period of time available in which to process for parole the number authorized during the period ending December 31, 1960.

Although the Immigration and Naturalization Service representatives are assigned at various locations in Europe, those offices were established and staffed to carry out Service responsibilities under other provisions of law. Therefore, it was necessary for the Service to augment its European staff in order to carry out the parole program.

Examination of all parole applicants includes a medical examination, given by physicians of the United States Public Health Service, which is identical with that accorded immigrant visa applicants. Interrogation and fingerprinting of each principal applicant, and accompanying member of his family over the age of 14, is conducted by officers of the Immigration and Naturalization Service, as are the security checks against records of the United States Government intelligence agencies, and records of the countries in which the refugees are processed. The United Nations High Commissioner's representatives furnish certifications that the refugee-escapees are within the mandate.

A system of priorities was established for the processing of refugee-escapees who registered under the program, with highest priority being given to those who were in camps. However, as the program developed there was no need to follow the priorities system due to the small number of registrations.

The Department of State, on December 12, 1960, informed this Service of the determination that a refugee situation existed in Lebanon, and registration of refugees in that country was commenced shortly thereafter. Subsequently, the State Department notified the Service of the existence of a like refugee situation in Belgium. Registration of refugees in that country began in March 1961.

By close of the first parole period, December 31, 1960, a total of 6,334 refugee-escapee applicants had registered for parole. Of this number, 5,141 had been found qualified for parole, while 339 were found not qualified. Three hundred fifty-four applications were closed for other reasons, and 500 applications were pending. The 354 applications which were closed represent cases in which the refugees, after registering, either took advantage of resettlement oppor-

tunities offered by other countries or withdrew their applications for other reasons. The majority of the 500 applications pending on December 31, 1960, represent refugees who, for one reason or another, had failed to appear for scheduled interviews.

Arrangements for transportation to the United States of refugee-escapees approved for parole are made by the Inter-Governmental Committee for European Migration. Upon arrival at a United States port of entry, the refugee-escapee receives from this Service Form I-94, showing the date and port of parole. The form is retained by the parolee as evidence of his status in the United States, and as evidence of his compliance with the alien registration requirements of the Immigration and Nationality Act.

The relating file is forwarded to the district director of this Service having jurisdiction over the alien's intended place of residence in the United States. The parolee's place of residence is verified and a control is established in the district office to insure examination after two years to determine eligibility for status as a permanent resident. If, at the end of two years, the parolee is found eligible, a record of lawful admission for permanent residence will be created as of the date of parole.

There is nothing in the Act of July 14, 1960, which precludes a parolee from applying for status as a permanent resident under the provisions of Section 245 of the Immigration and Nationality Act, at any time within the two-year period. But, if he elects to proceed under that provision of law his status will be adjusted as of the date of approval of the Section 245 application, not as of the date of parole.

Section 2(b) of the Act authorizes the parole of 500 refugee-escapees designated by the United Nations High Commissioner as "difficult to resettle." None of the registrants processed during the period ending December 31, 1960, were certified by the High Commissioner's office as difficult to resettle. Consequently, no cases were processed under Section 2(b) prior to that date.

Some cases will undoubtedly be approved under Section 2(b) prior to June 30, 1961. However, applicants afflicted with tuberculosis who would be eligible for admission under Section 6 of the Act of September 11, 1957, will be paroled under Section 2(a) of the Act, thereby conserving numbers under the 500 limitation placed on "difficult to resettle" cases by P.L. 86-648. Parole of a number of such applicants has already been authorized.

THE REFUGEE-ESCAPEE PAROLE PROGRAM—Continued

Various public and private surveys have included in their estimates of "in-camp refugees" any non-national who is residing in public housing. This has been misleading, since the majority of these people feel that they are established in the foreign country and do not desire to migrate. This Service has concentrated on refugees who have been furnished not only "in-camp" housing, but food, clothing, and allowances, and who have no private income and desire to migrate. One of the principal objectives of World Refugee Year was to assist this group of refugees.

Registration of refugee-escapees, within the mandate, who desire to enter the United States is essentially complete at this time in the first six countries in which the parole program has been operating.² Voluntary agency representatives in each of these countries have been striving to locate eligible refugees. It appears that hereafter, in these countries, registrations will be received primarily from recent arrivals or from refugees who for some reason did not wish to register when first afforded an opportunity to do so.

From all reports, the economic situation in Germany, France, and Austria is such that refugees in those countries, other than the handicapped or those who especially desire to

go to the United States, are not anxious to embark upon a migration venture. Consequently, they are not interested in registering under the program. Jobs are available in all three countries, since all are in need of workers. During the past year, Germany not only placed 200,000 refugees from the Soviet Zone but, in addition, imported 330,000 workers from other countries. Jobs are plentiful in France, but there is a housing shortage which has, no doubt, prompted some refugees to register for parole.

On March 2, 1961, the Secretary of State informed the Attorney General that 14,819 refugee-escapees, as specified in Section 1 of the Act, had availed themselves of resettlement opportunities in countries other than the United States during the period July 1 through December 31, 1960. Therefore, under the 25 percent formula, the Service may parole an additional 3,705 refugee-escapees during the period January 1 through June 30, 1961.

The 500 applications pending on December 31, 1960, were carried over to the next period. During the first three months of that period, 2,665 refugee-escapees had registered in the seven countries in which the program is being carried out, and 1,225 had been approved for parole.

² Austria, France, Germany, Greece, Italy, and Lebanon.

ALIEN ORPHANS

the first program in 1948, almost 17,000 orphans have been admitted as nonquota immigrants. Three-fourths of these orphans came from only five countries—Germany, Italy, Greece, Japan, and Korea. The orphan provision in Section 4

of the Act of September 11, 1957, will expire on June 30, 1961. Legislation now pending in Congress, if enacted, may extend the expiration date or incorporate the alien orphan program into a permanent immigration law.

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HIGHLIGHTS OF SELECTED RECENT COURT DECISIONS

DEPORTATION

Contesi v. Pilliod. Judicial review of deportation proceedings; Jurisdiction under 8 U.S.C. 1009; Preference quota status—child of resident alien. (N.D., Illinois, November 1, 1960)

Plaintiff, as the unmarried daughter of a legally-resident alien, was issued a third preference quota visa by the United States Consulate at Naples under the provisions of sec. 203(a)(3), 1952 Act (8 U.S.C. 1153(a)(3)).

Three days before leaving Italy for the United States she married and did not disclose that fact to the immigration authorities when she applied for admission and was admitted to the United States.

Her marital status became known when she petitioned for a resident visa for her husband and deportation proceedings followed. She was found deportable by the special inquiry officer under sec. 241(a)(1)—8 U.S.C. 1251(a)(1)—because, at the time of her entry, she was inadmissible under sec. 211(a)(4)—8 U.S.C. 1181(a)(4)—as an alien who was not of the proper status under the quota. (8 U.S.C. 1101(b)(1) defines a "child" as an unmarried person under twenty-one years of age and no immigrant may be admitted unless he is of the proper status under the quota—8 U.S.C. 1181(a)(4)).

Her application for a visa waiver under sec. 211(c), 1952 Act, (8 U.S.C. 1181(c)) was denied as a matter of discretion. Her administrative appeal was dismissed.

Thereupon she filed a declaratory judgment action pursuant to 5 U.S.C. 1009 for a review of the administrative proceedings, not only with respect to the finding of deportability, but also to the denial of the visa waiver which she contended was arbitrary, capricious and unreasonable.

The court said that a review of the administrative record disclosed that the plaintiff was accorded due process and a fair hearing, and that the order of deportation is supported by the evidence.

The court said it was without jurisdiction to review the order denying the visa waiver since it was an agency action by law committed to agency discretion and is unreviewable under 5 U.S.C. 1009.

Summary judgment for defendant.

Cheng Fu Sheng and Lin Fu Mei v. Rogers. "Country" to which alien may be deported (8 U.S.C. 1253)—Formosa. (Supreme Court, No. 393.)

In declaratory judgment proceedings respecting the deportation of natives and citizens of China the U. S. District Court for D. C. held that Formosa is not a "country" to which they could be deported (177 F. Supp. 281).

The Court of Appeals in reversing held that since Formosa is a well-defined geographical, social, and political entity and since there is a government on Formosa which has undisputed control of the island it is a "country", within the Immigration and Nationality Act (8 U.S.C. 1253), to which an alien may be deported (280 F. 2d 663).

The Supreme Court denied certiorari (No. 393; November 14, 1960; 29 LW 3146).

U.S. ex rel. Juan Perez-Varela v. Esperdy. Habeas Corpus; Right to deportation hearing and administrative bail; Deserter from Foreign Naval Vessel; Adjustment of status. (C.A. 2, December 22, 1960)

Relator appealed from an order dismissing his peti-

tion for habeas corpus seeking his release from the custody of the Service.

After discussing the Treaty of 1903 between the United States and Spain, its amendment by Congress in 1915 (Chap. 153, Laws of 1915; 38 Stat. 1184), and its impact on the immigration law, the Court of Appeals concluded that the action of the Service in proceedings against the relator under the Treaty rather than under the I & N Act of 1952 was proper.

It likened the situation of a seaman on a ship of war in a foreign port to that of a soldier in troops that have been given leave to pass through the territory of another friendly state. He remains subject to the same controls that apply while the regiment is in its own territory.

In commenting on relator's contention that he deserted from a training ship and not a ship of war the court said, "It is plain that a ship used to train seamen to serve on ships of war should be equally immune from local jurisdiction. It would obviously be an absurd distinction to protect only that part of the military establishment of another state which is already qualified, but to deny protection to those who are in process of preparation."

Order affirmed.

Chao-Ling Wang v. Pilliod. Country of deportation—Formosa; Physical persecution if deported—prosecution in foreign state; Withholding deportation—legal standard applied. (C.A. 7, December 27, 1960)

Plaintiff is a citizen of the Republic of China who was ordered deported for failure to comply with the conditions of his status as a foreign government official (Chinese Navy Lieutenant in the United States for military instruction).

The warrant of deportation directed his deportation to England, if that country would accept him; otherwise to Formosa, or to the mainland of China. England declined to accept him. He then applied for a stay of deportation under section 243(h) of the 1952 Act (8 U.S.C. 1253 (h)) alleging that he will be subject to physical persecution if deported to either Formosa or China.

He was accorded an interrogation by a special inquiry officer to support his application for a stay of deportation at which he and a former governor of Formosa testified. The Government offered no evidence. The special inquiry officer recommended a stay of deportation to China but that deportation to Formosa not be stayed. The Regional Commissioner adopted that recommendation and ordered a stay insofar as China was concerned but denied it as to Formosa on the grounds that the applicant (plaintiff) had not established that he would be subject to physical persecution if deported to the latter country.

The District Court overruled plaintiff's contention that Formosa is not a "country" within the meaning of section 243(a) of the 1952 Act (8 U.S.C. 1253(a)) and from that part of the court's order the plaintiff appealed. The court further held that the order refusing to withhold plaintiff's deportation to Formosa was unsupported by substantial evidence and that the Government's failure to introduce evidence or information in denying his application for that relief constituted a denial of due process of law. It remanded the cause to the Service for further action and the District Director appealed from that portion of the order.

The Court of Appeals said the court below was correct in holding that Formosa is a "country" contem-

Highlights of Selected Recent Court Decisions—Continued

plated by section 243(a), but that the remainder of its holding was incorrect. It had applied the wrong legal standard since it equated the procedure adopted for use in discretionary or non-compulsory proceedings with that followed in a deportation hearing. The Court of Appeals pointed out that while the 1952 Act made no provision for the administration of section 243(h)—8 U.S.C. 1253(h)—a procedure was established by the implementing regulations, 8 CFR 243.3(b)(2). These provide that the alien may submit any evidence in support of his claim for the consideration of the special inquiry officer and it has been held that this procedure satisfies the requirements of procedural due process. It is not a question, in such a case, of whether substantial evidence supports the order of denial but whether the alien had a fair opportunity to present his case.

In disposing of the plaintiff's contention that he would be prosecuted as a violator of the armed forces criminal code upon his return to Formosa, the Court of Appeals held that a prosecution before a military tribunal convened pursuant to laws of a foreign state to try offenses committed by a member of the military forces of that country, cannot be construed to be physical persecution under 8 U.S.C. 1253(h).

Affirmed in part and reversed in part.

Chan Chuen v. Esperdy. Judicial review of deportation order; Country of deportation—Hong Kong. (C.A., 2; No. 26250; December 30, 1960)

Plaintiff appealed from a District Court order granting summary judgment to defendant in his action to review an order directing his deportation to Hong Kong.

The appeal was based on the assertion that Hong Kong, a colony of the United Kingdom, is not a "country" within the meaning of section 243(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1253(a)(7)).

The word "country", having no fixed meaning, should be construed in accordance with the purpose of the particular legislation the Court of Appeals said. In line with the general Congressional policy for facilitating the deportation of deportable aliens the court said, "we think that any place possessing a government with authority to accept an alien deported from the United States can qualify as a "country" under the statute. Whatever the distribution of power between Hong Kong's local, partially autonomous government and Great Britain, Hong Kong is a "country" under the above definition."

Affirmed.

Fleuti v. Hoy. Judicial review of deportation order; Psychopathic personality—sexual deviate; Constitutionality of 8 U.S.C. 1182(a)(4). (S.D., California, January 9, 1961)

Plaintiff sought a review of an administrative order of deportation based on a charge that, when he last entered the United States in August 1956, he was excludable under section 212(a)(4) of the 1952 Act (8 U.S.C. 1182(a)(4)), as a person afflicted with psychopathic personality (sexual deviate).

The evidence to support that charge was: (1) a certified record of plaintiff's conviction in 1956 of a violation of sec. 288a, Penal Code of California; (2) a sworn statement of the plaintiff in which he admitted having been a sexual deviate for some time prior to his original entry (1952); and (3) a report by a doctor of the United States Public Health Service which classified the plaintiff as a psychopathic personality. The court found that evidence ample to support the Serv-

ice's findings that the plaintiff, at the time of his entry, was a sexual deviate, classifiable as a person afflicted with psychopathic personality.

As to the plaintiff's principal contention that the term "psychopathic personality" is so vague and indefinite as to render the statute (8 U.S.C. 1182(a)(4)) invalid and unconstitutional the court said that while it may be true that if that term were to be so used in a criminal statute it would be held to be unconstitutional, the statute here is not a criminal one but defines aliens who are to be excluded from the United States.

There is no question but that Congress can determine what persons should be excluded and for whatever causes. From the legislative history of the statute it is clear that Congress intended that sexual deviates would be classified by the enforcing agencies as psychopathic personalities.

Summary judgment for defendant.

FINES

Grace Line, Inc., v. White. Administrative fine—stowaways; Materiality of line's lack of knowledge and search of vessel. (S.D., California, December 5, 1960; Civ. No. 588-60 Y)

Three Ecuadorian nationals stowed away on plaintiff's vessel and illegally entered the United States at Los Angeles Harbor on March 7, 1959. Subsequently the plaintiff was fined \$3,000 by the Service pursuant to section 273(d) of the 1952 Act (8 U.S.C. 1323(d)).

Plaintiff opposed assessment of the fine on the grounds that it, and the officers and crew of its vessel, had no knowledge of the existence of the stowaways on board and that due diligence had been exercised in searching the vessel for stowaways.

The Service took the position that due diligence and lack of knowledge were not defenses to assessment of the fine.

Having exhausted its administrative remedies the plaintiff, on May 11, 1960, paid to defendant (Collector of Customs) the \$3,000 fine and brought this action to recover it.

The court held that Section 273(d) imposes a fine for failure to detain stowaways aboard plaintiff's vessel, and that plaintiff's lack of knowledge of the existence of the stowaways and its efforts in searching the vessel previously for possible stowaways are not material, nor are they elements to be considered in the imposition of the fine.

Summary judgment for defendant.

NATURALIZATION

Petition of Papathanasiou. Residential requirement; Honorable service in U.S. armed forces; Credit for reserve duty. (E.D., N.Y., October 1960)

The petitioner entered this country as an alien crewman and was drafted into the Army on October 2, 1951. He served until September 10, 1953, when he was transferred to the Ready Army Reserve. On May 7, 1957 he was transferred to the Stand-by Reserve until his Honorable discharge on October 15, 1959.

On November 13, 1959 he filed a petition for naturalization under section 328 of the 1952 Act (8 U.S.C. 1439) which relieves an alien who has served honorably in the armed forces for a period or periods aggregating three years from the requirement of five years' residence in the United States applicable to petitioners generally.

He contended that he should be permitted to augment

Highlights of Selected Recent Court Decisions—Continued

his active service with enough of his reserve service to provide him with the period of three years required by the statute, and the Government argued that the words "served" and "service" in section 328 mean "active service" and that reserve service may not be substituted for active service.

The court found the facts to be similar to those in *U. S. v. Rosner*, 249 F. 2d 49, on which the petitioner relied. In that case the petitioner's contention that service on reserve was service contemplated by section 328 was upheld. The court in that case observed that, while in sections 329 and 329a (which apply to a petitioner's service in an active-duty status between certain dates—8 U.S.C. 1440 and 1440a) Congress expressly inserted the words "active" and "actively" in reference to the type of military service required by those sections, their omission in section 328 raised a strong inference that Congress meant the type of military service required by the latter section to be somewhat different than that required by the other two.

The court said that since sections 328 and 329 were simultaneously enacted and that only the latter refers to "active duty" status led him to conclude that petitioners under section 328 are entitled to credit the period of reserve duty as part of their service in the armed forces, within the meaning of that section.

Matter of Joseph Estevez. Derivative citizenship—loss by revocation of father's naturalization; Ineligible to citizenship—neutral alien; Savings clause 1940 Act. (E.D., Pennsylvania, December 9, 1960)

Petitioner for naturalization was born in Spain in 1916, came to the United States with his father in 1932 and has remained in this country since that time.

His father, who was naturalized in 1932, returned to Spain permanently in 1933. On June 5, 1940 suit was instituted to revoke his naturalization and that was accomplished in 1941.

In 1943 petitioner applied for and received exemption from service in the United States armed forces as a neutral alien.

While under section 338(d), Nationality Act of 1940 (8 U.S.C. 738(d)) derivative rights of a child are not extinguished by the revocation of the parents' naturalization unless it be on the grounds of actual fraud, the court held that the 1940 Act savings clause, section 347(a)—8 U.S.C. 747(a)—preserved the revocation suit commenced prior to the enactment of the 1940 Act and its effect must be determined under the law when it was commenced.

The greater weight of authority in determining the

law prior to 1940 have held that derivative citizenship was lost if the person through whom citizenship was derived had his certificate revoked for either actual or presumptive fraud. Since the petitioner's father failed to return to the United States it is presumed that he obtained his certificate by fraud and the petitioner cannot be said to have retained his derivative citizenship by virtue of the old law.

However, the court found him ineligible for naturalization, in spite of several appealing factors, for having made an "intelligent choice" in applying for exemption from military service as a neutral alien in 1943 (which was granted) and not being saved from the operation of that disability by the holding in *Moser v. U. S.*, 341 U.S. 47.

Petition denied.

Petition of Dobric. Good moral character; Non-support of minor children. (D.C., Minnesota, No. 6739; December 21, 1960)

Petitioner for naturalization came to the United States as an immigrant in 1952. His wife remained in Italy with their two infant children.

In 1954, in Chicago, Illinois, he divorced her and remarried in Minnesota in 1956. His petition for naturalization was filed on July 15, 1957.

Prior to his second marriage he sent money to Italy from time to time for the support of his minor children. This was in amounts of two to ten dollars and after July 1956 he sent none despite a request from his wife through the Italian Consul at Chicago for more support.

The court was convinced that the petitioner evaded his solemn obligation adequately to support and care for his infant children and that he could have done so out of wages earned in the United States. (Petitioner testified that he had an annual income of "around \$3000.")

The court said that, as a husband, he had the right to choose his place of domicile and to withhold support from a wife who failed to abide by it, but that her deficiency in that respect afforded no justification for his failure to support his infant children whom she retained in Italy. Such shortcomings of the parents must not be visited upon the innocent children.

He was and is obligated by all applicable law, natural, human, moral and divine to protect, support and care for his infant children and, failing that he has not established the requisite good moral character for naturalization.

Petition 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 1076

(In the Matter of L—. In Exclusion Proceedings,

A-11152100. Decided by the Board of Imm. Appeals, May 11, 1960.)

Commuter status—Two hours employment in United States during ten-month period insufficient to confer commuter status.

Canadian national who was employed in United States for only two hours between January and November 1959 never acquired eligibility for commuter status; hence, temporary incapacity for employment during that period due to pregnancy was immaterial to disposition of case.

Interim Decision Number 1077

(In the Matter of R—. In Deportation Proceedings, A-7488062. Decided by the Board of Imm. Appeals, May 20, 1960.)

Mental defect—Temporary illness due to wartime experiences.

Service has not sustained burden of proving that alien was afflicted with mental defect (schizophrenia) at time of entry when evidence reasonably supports conclusion that he suffered from temporary illness akin to neurosis brought on by wartime experiences.

Interim Decision Number 1078

(In the Matter of N—. In Deportation Proceedings, A-8676012. Decided by the Board of Imm. Appeals, May 26, 1960.)

Deportability—Section 241 (a) (4) of 1952 act—Commitment to California Youth Authority not "sentence to confinement."
Alien convicted in California for attempted robbery (maximum punishment, 20 years imprisonment) who was ordered "committed to the Youth Authority of the State of California for the term prescribed by law" has not been sentenced to confinement within meaning of section 241 (a) (4) of the act. (Overrules Matter of C— R—, 4 I. & N. Dec. 136.)

Interim Decision Number 1079

(In the Matter of D—. In Deportation Proceedings, A-10976326. Decided by the Board of Imm. Appeals, May 25, 1960.)

Deportability—Section 241 (a) (4)—Petty offense exemption not applicable.
Petty offense exemption in section 4 of Act of September 3, 1954 held inapplicable to deportation charge under section 241 (a) (4) of the Immigration and Nationality Act.

Interim Decision Number 1080

(In the Matter of C—. In Deportation Proceedings, A-11659714. Decided by the Board of Imm. Appeals, May 31, 1960.)

Discretionary relief—Section 211 (c) and (d)—Not granted where alien on notice that marriage would invalidate preference visa.
Section 211 (c) and (d) waiver will not be exercised in favor of 20-year-old Italian girl who was married a few days before departing for United States after having signed statement in Italian and English (attached to her third preference quota visa) placing her on notice that marriage prior to entering the United States would invalidate the visa.

Interim Decision Number 1081

(In the Matter of P—C—. In Deportation Proceedings, A-10172681. Decided by the Board of Imm. Appeals, June 1, 1960.)

Deportability—Section 241 (a) (11)—Conviction in New York for possession of narcotics—Nature of drug ascertained from police affidavit and laboratory report.
Conviction in New York for possession of unspecified narcotic drug supports deportability under section 241 (a) (11) of act where police officer's affidavit and laboratory report disclose that drug in question was heroin. Under rules of the New York Code of Criminal Procedure police affidavit and laboratory report were part of pleading on which respondent was tried and are considered part of record of conviction.

Interim Decision Number 1082

(In the Matter of SS. YARMOUTH. In Fine Proceedings, MIA-10/61.210. Decided by the Board of Imm. Appeals, June 6, 1960.)

Fine—Section 273 (d) of 1952 act—Not imposed where only evidence of stowaway's presence on particular vessel is own statement.
Violation of section 273 (d) not established where sole evidence that alien arrived aboard named vessel was his own statement which was contradicted by affidavits of vessel's master and crew members and which was otherwise questionable because of alien's lengthy criminal record.

Interim Decision Number 1083

(In the Matter of R—. In Deportation Proceedings, A-1472888. Decided by the Board of Imm. Appeals, June 9, 1960.)

Pardon — Wisconsin — Restoration of civil rights not a "pardon" within section 241 (b) when granted subsequent to 1947 change in Wisconsin law.
Pardon restoring civil rights issued by the Governor of Wisconsin subsequent to 1947 amendment of State law providing for automatic restoration of civil rights upon completion of sentence is not a full and unconditional pardon within meaning of section 241 (b) of the 1952 act.

Interim Decision Number 1084

(In the Matter of B—. In Deportation Proceedings, A-8258569. Decided by the Board of Imm. Appeals, June 21, 1960.)

Recommendation against deportation—Ineffective when made at time of resentencing.

Judicial recommendation against deportation made at time of resentencing is held ineffective to avert deportation where sole purpose of court in vacating original judgment of conviction and sentence was to repair the omission to have made such recommendation initially within the time limitation set by section 241 (b).

Interim Decision Number 1085

(In the Matter of P—. In Deportation Proceedings, A-8421656. Decided by the Board of Imm. Appeals, June 21, 1960.)

Recommendation against deportation—Ineffective when made at time of resentencing—Notice from court not required where attorney had notified Service recommendation would be requested.
(1) Court's recommendation against deportation not timely when made upon resentencing on October 2, 1959, following retrial as result of *coram nobis* proceedings alleging respondent did not comprehend the nature of the complaint when he originally pleaded guilty to disorderly conduct on March 19, 1959. Respondent again pleaded guilty at new trial; hence, sole purpose was to obtain recommendation against deportation not previously made.
(2) "Notice" requirement in section 241 (b) (2) of the 1952 act is satisfied when respondent's counsel has furnished Service with notice of intention to move the court for a recommendation against deportation.

Interim Decision Number 1086

(In the Matter of PAWA PLANE NO. 715. In Fine Proceedings HHW-10/24.1 & 10/24.3. Decided by the Board of Imm. Appeals, June 22, 1960.)

Fine—Section 231 of 1952 act—Opportunity for correction not required where history of errors and warnings exists.
Carrier which has repeatedly submitted incorrect Forms I-94 and has been warned about further errors incurs liability for fine under section 231 of 1952 act because of clerical errors in its manifests even without an opportunity for correction, withheld because of resultant delay in inspection. (Cf. Matter of PAWA Plane No. 774, 7 I. & N. Dec 403.)

Interim Decision Number 1087

(In the Matter of C—. In Deportation Proceedings, A-3873207. Decided by the Board of Imm. Appeals, June 23, 1960.)

Evidence—Jencks rule—Responsibility for determining existence of pre-hearing statements—Recall of Government witnesses for cross-examination on basis of pre-hearing statements—Alien's rights controlled by Jencks statute.
(1) Special inquiry officer was not required to make independent determination of whether additional Jencks statements were available where examining officer's declaration that the two pre-hearing statements supplied respondent were the only ones in existence was supported by the record.
(2) Special inquiry officer's refusal to recall Government witnesses for cross-examination on basis of pre-hearing statements made available for first time at reopened hearing was not prejudicial error where witnesses had previously testified in great detail on very matters contained in pre-hearing statements and full and adequate cross-examination on such matters had been allowed.
(3) Respondent is not entitled to greater rights under Jencks rule than he has under Jencks statute (18 U.S.C. 3500).

Interim Decision Number 1088

(In the Matter of W—. In Exclusion Proceedings, A-10197638. Decided by the Board of Imm. Appeals, July 5, 1960.)

Waiver of excludability—Section 5, P.L. 85-316—Separation from citizen spouse not "extreme hardship"—Discretionary elements.
(1) Mere separation from citizen spouse does not establish "extreme hardship" within the meaning of section 5 of P.L. 85-316 where there are no children of the marriage (which occurred after comparatively brief acquaintance of the parties) and respondent's wife is not dependent upon him for support.
(2) Denial of section 5 application is also warranted as a matter of discretion where applicant was convicted as recently as 1959 of second degree burglary and grand larceny, has an unsatisfactory employment record, and obtained his visa without disclosing his criminal record.

Interim Decision Number 1089

(In the Matter of M/V Signeborg. In Fine Proceedings, CHI-10/4.6; MIL-10/4.2. Decided by the Board of Imm. Appeals, July 7, 1960.)

Fine—Section 254 (a)—Failure to detain on board—Multiple violations by same crewman incur single fine.

Recent Administrative Decisions—Continued

Maximum penalty under section 254 (a) of 1952 act for failure to detain crewman on board vessel in course of single trip to this country is \$1,000 for each such crewman despite successive violations at ports of call in United States.

Interim Decision Number 1090

(In the Matter of M—. In Deportation Proceedings, A-10594987. Decided by the Board of Imm. Appeals, August 5, 1960.)

Adjustment of status—Section 245 of 1952 act—Board lacks jurisdiction to review Regional Commissioner's action.

Jurisdiction delegated to the Board of Immigration Appeals under 8 CFR 3.1 (b) does not include authority to review Regional Commissioner's denial of application for adjustment of status under section 245 of the 1952 act.

Interim Decision Number 1091

(In the Matter of L—. In Deportation Proceedings, A-4226313. Decided by the Board of Imm. Appeals, August 8, 1960.)

Deportability—Section 241 (a) (6) of 1952 act—Membership in Finnish Workers Federation—Affiliation with Communist Party—Distribution of proscribed literature.

Evidence—Jencks rule—Recall of Government witnesses after completion of cross-examination.

(1) Membership in Finnish Workers Federation supports deportation charges under section 241 (a) (6) of Immigration and Nationality Act upon evidence establishing that Finnish Workers Federation was an "affiliate" of the Communist Party of the United States within meaning of subparagraph (C) (v); or Finnish Workers Federation was an organization that distributed material advocating doctrines of world communism within meaning of subparagraph (H).

(2) Consistent support of Communist Party by Finnish Workers Federation establishes "affiliation" within definition of section 101 (e) (2); unnecessary to show that Finnish Workers Federation was an "integral part" of the Communist Party.

(3) Respondent not entitled under Jencks rule to demand recall of Government witnesses for further cross-examination where witnesses were dismissed and respondent made no request for production of their pre-hearing statements prior to completion of cross-examination.

Interim Decision Number 1092

(In the Matter of P—R—. In Deportation Proceedings, A-11322755. Decided by the Board of Imm. Appeals, August 5, 1960.)

Expatriation—Section 401 (j), Nationality Act of 1940, as amended—Evidentiary standard not satisfied.

Evidentiary standard applicable to expatriation cases precludes findings of loss of citizenship under section 401 (j) of Nationality Act in circumstances where native-born citizen was taken to Mexico by his parents at age of 6 in 1930 or 1931 and did not return here until 1950, despite his testimony, later repudiated, that he remained abroad in deference to the wishes of his parents who refused him permission to return to the United States at an earlier date because of fears regarding his liability for wartime military service.

Interim Decision Number 1093

(In the Matter of G—. In Section 245 Proceedings, A-11539151. Decided by Regional Commissioner; approved by Assistant Commissioner, August 25, 1960.)

Adjustment of status—Section 245, as amended—Burden is upon applicant to establish favorable action is warranted.

Section 245 application is denied as a matter of discretion to an alien who married a United States citizen in 1959 and who has presented no independent evidence to support his present claim that his prior sworn testimony regarding the existence of a marriage in Poland was false. Applicant has burden of establishing that his case merits favorable consideration.

Interim Decision Number 1094

(In the Matter of C—. In Deportation Proceedings, A-10265782. Decided by the Board of Imm. Appeals, August 22, 1960.)

Expatriation — Dual national — Conclusive presumption of voluntariness.

Respondent's United States citizenship acquired at time of birth abroad pursuant to section 1993, Revised Statutes, was lost under section 349 (a) (3) of the Immigration and Nationality Act upon performance of military service in the Italian

Army 1953-1955. Where the evidence establishes that at the time of his military service the respondent was a dual national of the United States and Italy who had been physically present in Italy for more than ten years, the conclusive presumption of voluntariness of the expatriating action attaching under section 349 (b) of the Act precludes defense that respondent's army service was involuntary and the result of conscription.

Interim Decision Number 1095

(In the Matter of B—. In Visa Petition Proceedings, A-8115379. Decided by the Board of Imm. Appeals, August 22, 1960.)

Adoption—Benefits under immigration laws based on natural relationship between parent and child not lost when child is adopted after age 14.

Adult naturalized United States citizen who was legally adopted in this country at age 15 held entitled to confer second preference quota status upon natural parents. Unless an adopted child acquires immigration rights and privileges as between himself and his adoptive parents pursuant to an adoption which has conformed to the standards contained in section 101 (b) (1) (E) of the Immigration and Nationality Act, his relationship with his natural parents remains unchanged for immigration purposes.

Interim Decision Number 1096

(In the Matter of K—B—N—. In Section 245 Proceedings, A-10825969. Decided by Regional Commissioner, September 14, 1960; approved by Assistant Commissioner, October 3, 1960.)

Adjustment of status—Section 245, as amended—Knowing false claim to citizenship precludes eligibility as alien who has been inspected and admitted—Discretionary denial based on lack of good faith.

(1) An alien who obtained entry into the United States by knowingly and falsely claiming United States citizenship is deemed to have entered the United States without inspection. Hence, he cannot be regarded as having been "inspected and admitted" with the contemplation of amended section 245 of the Immigration and Nationality Act.

(2) By virtue of the prior regulations governing the admission of a holder of a certificate of identity under section 503 of the Nationality Act of 1940, such a person will be found to have been "inspected and admitted" into the United States. Nevertheless, adjustment of status under section 245 of the Act will be denied as a matter of discretion in such a case when it is shown that the applicant obtained his certificate of identity by false testimony and acted with a lack of good faith in subsequent judicial proceedings.

Interim Decision Number 1097

(In the Matter of F—. In Section 245 Proceedings, A-10490404. Decided by Regional Commissioner, September 16, 1960; approved by Assistant Commissioner, October 7, 1960.)

Adjustment of status—Section 245, as amended—Alien erroneously admitted as United States citizen without false claim held eligible.

An alien who was erroneously admitted as a United States citizen but who did not wilfully make a false claim to citizenship meets the "inspected and admitted" requirement for eligibility under amended section 245 of the Immigration and Nationality Act. The contrary rule obtains when the claim to citizenship was made wilfully and fraudulently.

Interim Decision Number 1098

(In the Matter of B—. In Deportation proceedings, A-10201175. Decided by the Board of Imm. Appeals, August 11, 1960.)

Deportability—Section 241 (a) (3), 1952 Act—Charge not sustained where proximate causes of mental illness develop in United States despite hereditary predisposition toward mental illness.

Respondent's hereditary predisposition toward mental illness not conclusive on issue of whether psychosis manifested in the United States existed prior to entry. Where respondent has established that he was not afflicted with any specific mental disease or defect before arrival and that proximate causes of his having become a mental patient in the United States were his failure to make a satisfactory work and social adjustment and stresses accompanying an injury received in an automobile accident, he has carried the burden of proving that his mental illness did not exist prior to his admission to this country. Hence, deportation charge under section 241 (a)(3) of Immigration and Nationality Act not sustained.