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SATO, ISAMU

1958

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BEFORE THE BOARD OF REVIEW OF THE PASSPORT OFFICE
OF THE STATE DEPARTMENT

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In re: ISAMU SATO,
Appellant.

APPEAL FROM CERTIFICATE OF LOSS OF UNITED STATES NATIONALITY,
MOTIONS TO REOPEN AND RECONSIDER APPLICATION FOR UNITED STATES
PASSPORT AND FOR ISSUANCE OF UNITED STATES PASSPORT

Isamu Sato of 115-1 Shibasaki-cho, Tachikawa-city, Tokyo, Japan, born in San Gabriel, California, on May 3, 1920, hereby appeals from the "Certificate Of The Loss Of The Nationality Of The United States" issued to him under date of August 30, 1950, by Charles H. Stephan, American Consul, at Yokohama, Japan, which was approved by the Department of State on May 24, 1951, and from the denial of the issuance to him of a United States passport for which he had applied and which said denial was based upon a purported expatriation under the provisions of Section 401(c) of Chapter IV of the Nationality Act of 1940 by reason of his induction into and service in the Japanese Army from February, 1943, to September, 1945. The appellant also moves to reopen said cause and have the same reconsidered and moves that thereupon a United States passport issue to him as a United States citizen.

Attached hereto as exhibits and made a part hereof, as additional evidence to be considered in connection with this appeal and in support of said motions are the following documents:

1. Affidavit of appellant Isamu Sato dated July 30, 1958.
2. Certificate (Statement) dated May 5, 1957, under seal, of Wakimizu Shigetomi, accompanied by translation of Masahiko Hayashi, and certification of Yosaku Furuya, under seal, and translation thereof by Masahiko Hayashi.

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3. Statement (Certificate), under seal, dated March 12, 1957, of Nishiuchi Shigeki, with translation thereof by Masahiko Hayashi, and certification by Yosaku Furuya with translation thereof by Masahiko Hayashi.
4. Statement re Voting of Isamu Sato (appellant) dated November 26, 1957.
5. Request for Certification of Employment dated May 6, 1957, executed by Nishiuchi Shigeki, under seal, certified by Hiranuma Ryoze, Yokohama City Governor, on May 6, 1957, and accompanied by translations of Masahiko Hayashi.
6. Request for Certification of Isamu Sato (appellant) under seal, dated May 14, 1957, accompanied by translation thereof executed by Masahiko Hayashi.
7. Request for Certification dated May 21, 1957, executed by Isamu Sato (appellant), under seal, accompanied by translation thereof by Masahiko Hayashi.
8. Request for Certification of Employment dated May 6, 1957, under seal, executed by Wakimizu Shigetomi, certified by Hiranuma Ryoze, Yokohama City Governor, under seal, and accompanied by translation of Masahiko Hayashi.
9. Letter "To Whom It May Concern" dated May 8, 1957, signed by William T. Duke, DAC.
10. Letter "To Whom It May Concern" dated May 20, 1957, signed by Gordon K. Fukuda, Personnel Manager, 2710th Air Base Wing.

Appellant and his counsel request that if any of the documents heretofore submitted as evidence on appellant's application for a United States passport or the affidavit herewith submitted as evidence to be considered on this appeal and motion to reopen and reconsider appellant's application for a United States passport for any reason be deemed insufficient in form or in substance as to cause an unfavorable decision to be rendered thereon the appellant requests an opportunity to have such deficiency corrected.

The application to reopen the cause and for reconsideration of the cause on its merits, for cancellation of the aforesaid Certificate Of Loss Of Nationality and for the issuance to appellant of a United States passport as a citizen of the United States are made in view of the evidence heretofore and now submitted in

1 because of the coercion of the Japanese civil and military con-
2 scription laws and the Japanese authorities. His fears that if
3 he disobeyed or resisted further that he would be severely
4 punished by the authorities and the public and also would face
5 being imprisoned by the civil authorities or punished by the
6 military authorities were well founded fears. His submission
7 thereto was the direct and proximate result of duress and his
8 fear of punishment and, in consequence, his submission thereto as
9 a matter of law and as a matter of fact did not constitute an act
10 of expatriation under Section 401(e) of the Nationality Act of
11 1940.

12 We submit that the evidence is conclusive that the appellant's
13 induction into the Japanese Army and his service therein were
14 wholly involuntary and did not as a matter of law or as a matter
15 of fact constitute expatriating acts on his part and that
16 appellant's cause should be reviewed in the light of the Perez
17 and Nishikawa decisions and be decided in his favor.

18 Wherefore, appellant requests that his motions to reopen the
19 cause and for reconsideration thereof be granted and that his
20 appeal be sustained and that a United States passport issue to
21 him.

22 Dated: August 20, 1958.

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Wayne M. Collins
1300 Mills Tower
San Francisco 4, California
Garfield 1-5827

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27 Attorney for Appellant Isamu Sato
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1 this cause and also in the light of the applicable rules announced
2 in the recent United States Supreme Court decisions of Perez v.
3 Brownell, 78 S.Ct. 568, and Mishikawa v. Dulles, 78 S.Ct. 612,
4 both decided on March 31, 1958, which rules we declare are
5 applicable and controlling in the instant case.

6 In the Perez case the Supreme Court decided that "Congress
7 can attach loss of citizenship only as a consequence of conduct
8 engaged in voluntarily", citing Mackenzie v. Hare, 239 U.S. 299,
9 311-312.

10 In the Perez decision the Supreme Court declared:

11 "Whatever divergence of view there may be as to what
12 conduct may, consistent with the Constitution, be said
13 to result in loss of nationality, cf. Perez v. Brownell,
14 78 S.Ct. 568, it is settled that no conduct results in
expatriation unless the conduct is engaged in voluntarily.
Mandell v. Acheson, 344 U.S. 133, 73 S.Ct. 135, 97 L.Ed.

15 In the Nishikawa decision the Supreme Court decided that in
16 all expatriation cases under Section 401 of the Nationality Act of
17 1940 the burden of proof rests upon the government to prove
18 expatriation by "clear, convincing and unequivocal" evidence, in
19 the following language:

20 "In Gonzales v. Landon, 350, U.S. 920, 76 S.Ct. 210, 100
21 L.Ed. 800, we held the rule as to burden of proof in
22 denaturalization cases applied to expatriation cases
23 under Section 401(j) of the Nationality Act of 1940.
We now conclude that the same rule should govern cases
under all the subsections of Section 401."

24 The evidence discloses the facts to be that the appellant's
25 induction into the Japanese Army and his service therein took
26 place in wartime Japan while and when he was stranded in Japan
27 with no possibility of returning to the United States. He then
28 was ill and also was faced with public hostility because of his
29 U.S. citizenship. It reveals that he protested his coerced
30 physical examination in April of 1942, but could not avoid report-
31 ing for his physical examination. It reveals also that he pro-
32 tested his induction but was powerless to prevent his conscription