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MIYAKE, HIDEO

1958

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

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In re: HIDEO MIYAKE,  
Appellant.

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APPEAL FROM CERTIFICATE OF LOSS OF UNITED STATES NATIONALITY,  
MOTION TO REOPEN AND RECONSIDER APPLICATION FOR UNITED STATES  
PASSPORT, AND FOR ISSUANCE OF UNITED STATES PASSPORT  
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Hideo Miyake, residing at 599 - 4 chome, Sendagaya, Shibuya-Ku,  
Tokyo, Japan, born in Fair Oaks, California, on June 19, 1925,  
hereby appeals from the "Certificate Of The Loss Of The Nationality  
Of The United States" issued to him under date of April 3, 1952,  
by Lucian L. Rocke, Jr., Vice-Consul of the United States of  
America, at Tokyo, Japan, which was approved by the Department  
of State on May 6, 1952, 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 pro-  
visions of Section 401(c) of Chapter IV of the Nationality Act of  
1940 by reason of his service in the Japanese Army from April 10,  
1945, to September 20, 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 addi-  
tional evidence to be considered in connection with this appeal  
and in support of said motion are the following documents, namely:  
Exhibit (1) Affidavit of Hideo Miyake dated June 4, 1958, relating  
to his conscription and service in the Japanese Army in 1945 and  
also to his voting in Japan in 1947; Exhibit (2) Affidavit of Hideo  
Miyake dated June 10, 1958, with the certification of Toshio Nomura,  
official Town Headman of Sato-cho, Asa-gun, Hiroshima-Ken, Japan,

1 under seal, certifying appellant's statement relating to his  
2 compulsory obedience to Japan's conscription law to be true, and  
3 accompanied by translation thereof; and Exhibit (3) Statement,  
4 under seals, executed by Kunchi, Hori, Tamaichi Ohyanagi, Daiso  
5 Kato, Teruichi Kagawa, Aki Nishida and Masashi Miyake dated June  
6 15, 1958, relating to his compulsory voting in Japan in 1947, and  
7 accompanied by translation thereof.

8 The application to reopen the cause and for reconsideration  
9 of the cause on its merits, for cancellation of the aforesaid  
10 Certificate of Loss of Nationality and for the issuance to appel-  
11 lant of a United States passport as a citizen of the United States  
12 are made in the light of the recent United States Supreme Court  
13 decisions of Perez v. Brownell, 79 S.Ct. 568, and Nishikawa v.  
14 Dulles, 78 S.Ct. 612, both decided on March 31, 1958, which deci-  
15 sions we declare are applicable and controlling in the instant  
16 case.

17 In the Perez case the Supreme Court decided that "Congress  
18 can attach loss of citizenship only as a consequence of conduct  
19 engaged in voluntarily", citing Mackenzie v. Hare, 239 U.S. 299,  
20 311-312.

21 The voting of the appellant in Japan in 1947 was not in a  
22 "foreign election" within the meaning of 8 USCA, Sec. 801, of the  
23 Nationality Act of 1940 but took place in 1947 while Japan was an  
24 occupied country. Further, his voting was caused by the persua-  
25 sion and pressure of SCAP, and by the coercion of the local public  
26 officials and neighbors and, in consequence, was involuntary and  
27 did not constitute an act of expatriation.

28 The appellant's induction into the Japanese Army at the age  
29 of 19 years while he was a minor and his subsequent service there-  
30 in were not voluntary acts on his part but were coerced and being  
31 the products of duress did not expatriate him.

32 In the Perez decision the Supreme Court declared:

1 "Whatever divergence of view there may be as to what  
2 conduct may, consistent with the Constitution, be said  
3 to result in loss of nationality, cf. Perez v. Brownell,  
4 78 S.Ct. 568, it is settled that no conduct results in  
5 expatriation unless the conduct is engaged in voluntarily.  
6 Mandoli v. Acheson, 344 U.S. 133, 73 S.Ct. 135, 97 L.Ed.  
7 143."

8 In the Nishikawa decision the Supreme Court decided that in  
9 all expatriation cases under Section 401 of the Nationality Act  
10 of 1940 the burden of proof rests upon the government to prove  
11 expatriation by "clear, convincing and unequivocal" evidence,  
12 in the following language:

13 "In Gonzales v. Landon, 350 U.S. 920, 76 S.Ct. 210, 100  
14 L.Ed. 806, we held the rule as to burden of proof in  
15 denaturalization cases applied to expatriation cases  
16 under Section 401(j) of the Nationality Act of 1940.  
17 We now conclude that the same rule should govern cases  
18 under all the subsections of Section 401."

19 Attention is drawn to the fact that Exhibit (2), the Affidavit  
20 of appellant dated June 10, 1958, bears his signature and seal,  
21 and also bears the certification of Toshio Nomura, Town Headman  
22 of Sato-cho, Asa-gun, Hiroshima-Ken, Japan, and his seal. It is  
23 counsel's belief that the said certificate, being under seal,  
24 constitutes a verified statement under oath. Also Exhibit (3),  
25 the certified statements of six persons dated June 15, 1958, also  
26 bear the respective seals of such persons and it is counsel's  
27 belief that the signatures of such persons, each being under his  
28 respective seal, constitute verifications of said statements.

29 Appellant and his counsel request that if any of the docu-  
30 ments heretofore submitted as evidence on appellant's application  
31 for a United States passport or any of the documents herewith  
32 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 defi-  
ciency corrected.

1           Wherefore, appellant requests that his motion to reopen the  
2 cause and for reconsideration thereof be granted and that his  
3 appeal be sustained and that a United States passport issue to  
4 him.

5           Dated: July 16, 1958.

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

Attorney for Appellant Hideo Miyake

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AFFIDAVIT OF HIDEO MIYAKE

I was born at Fair Oaks, California, on June 19, 1925. I am living at 599-4 chome, Sendagaya, Shibuya-ku, Tokyo, Japan. My father registered my birth I believe about June 23, 1925, at the Japanese consular office in San Francisco, California, when I was an infant. My grandfather having passed away my parents took me to Japan in August of 1939 and sent me to the Yagi Grammar School and later to the Sataku Middle School. My parents intended that I finish the Sataku Middle School and upon being graduated I was to be sent back to the United States. On April 10, 1941, when I was 15 years old, I appeared at the U. S. Consul's office in Kobe, Japan, with my younger brother Seiji and applied for a new U. S. passport so that I would have it available to return to the United States when I finished school. I didn't have any idea that Japan would start a war against the United States and neither did my parents for had we expected war my parents would have sent me back to the United States soon as possible. So no opportunity was given me by my parents to leave Japan and return to the United States prior to the outbreak of the war. After that it became impossible to apply during the war and it would have been dangerous to try to leave as I would have been regarded and treated as a disloyal person and my folks also would have been in for serious trouble from the police.

I was 16 years old when the war broke out on Dec. 7, 1941, and was attending the Sataku Middle School. Sometime about June 1944, while I was still attending that school I received a notice from the authorities to report to the Gion Grammar School in Hiroshima for a physical examination sometime in August, 1944. I discussed the question with my parents of what I should do about reporting and if I reported what I should say to the examining officials about my American citizenship and if there was any way of avoiding my being conscripted into the Japanese Army. Both of my parents said that I must report and be examined and that if I passed the examination I would be drafted into the Japanese Army regardless of my American citizenship because I was a dual national and was not exempt from being drafted by Japan's laws and that a refusal to report or any opposition to conscription would be dealt with severely as the Kempeitai would pick me up and I would be put in jail and would be turned over to the military authorities for more severe punishment. They told me that if I didn't show up for the physical examination the kempeitai would pick me up and force me to take the examination and after that would shadow me until I was inducted and then I would be under the thumbs of the military officials and if I violated any military rules or orders I would be placed in a stockade and be courtmartialed and punished as a draft evader or traitor to Japan. It was a matter of common talk at school and also common knowledge among the neighbors that the Kempeitai and also the military officials would treat draft evaders very harshly. My father said that as I was also an American citizen and that as we had all lived in the United States the Kempeitai kept their eyes on us as everyone from the United States was kept under suspicion of the Kempeitai. Not being able to escape from going and having my physical examination I had to have that examination to avoid severe punishment for myself and avoid trouble from the police for my folks.

About one month later I received a notice in the mail that I had passed the physical examination. I was 19 years old and still attending the Sataku Middle School at the time and living with my parents.

I graduated from the Sataku Middle School in March, 1945, at the age of 19 years and shortly thereafter I was ordered to report for induction into the Japanese Army on April 10, 1945. Up to that time my father had told me that there was a chance I wouldn't have to submit to conscription because Japan would be the loser in the war before the time for my induction came around and as the months passed it became evident that Japan couldn't hold out much longer. But as things got worse in Japan the Kempeitai and the military became more drastic and there was generalized fear of saying anything about the military class or of criticizing the war or of the people taking a defeatist attitude. I didn't wish to be conscripted into the Japanese Army but was afraid to try to avoid my induction. I wanted to get a deferment but didn't have a ground for deferment because it would be ignored and I would be regarded as a draft violator and because of being an American citizen would be treated with great harshness by the civil and military authorities so I couldn't with safety to myself or family apply for a deferment as I didn't have any recognized grounds to apply for it. My parents told me I must submit to induction as there was no way out of it and I couldn't risk my own safety and mustn't do anything to try to escape from it as it was inevitable and any attempt to delay or avoid induction would result in immediate punishment to me and would bring my parents into immediate trouble with the kempeitai and might also bring them trouble from the military for aiding or harboring a draft evader. There was a generalized fear in the people of saying or doing anything that would cause the kempeitai or military to take action against persons for any adverse criticism of the government or the military class or violation of the conscription laws. My parents didn't wish me to be conscripted because they were not in sympathy with Japan and they had not expected that I would be drafted into the Japanese Army and had intended up to the time of the war to send me back to the States soon as I finished the Sataku Middle School but this was prevented by the outbreak of the war. As there was no way out for me I had to report and be inducted into the Japanese Army knowing that if I did not do so I would be arrested by the Kempei and be sent to jail as a draft evader and that if I was turned over to the military authorities I would be brutally handled and would be placed in a stockade or concentration camp and possibly be executed. My parents told me that I could expect no mercy if I protested or resisted induction and I was fearful of saying or doing anything to resist induction. The records relating to me and the questions I had to answer at the time of my physical examination and conscription disclosed that I was born in the United States and was an American citizen but according to Japanese law I was regarded as a dual national and the fact that I was an American citizen didn't relieve me from conscription. Because of my fear of immediate and severe punishment if I protested induction, I was afraid to protest or resist it. It was fear of punishment from the Kempeitai and from the military that forced me to be conscripted. Also I was fearful that if I protested or resisted induction I would be taken by force and be punished as a draft evader or as a kokuzoku (traitor) and that the neighbors and Japanese people would view and treat me and my family with great hostility and that my folks would be abused and punished by the Kempeitai for having a son who violated the laws and was against Japan and for abetting me in my attitude and actions.

I was inducted into the Japanese Army against my will and was compelled to serve for five months until discharged on September 17, 1945, at Wakamatsu-shi in Fukuoka-ken. I did not participate in any

combat. I was put to work hauling wood to be used as supports for air raid shelters. My induction and service in that Army was wholly involuntary and there was no way for me to escape that induction and service and any attempt to have done so would have imperiled my life, for Japan was completely controlled by the military class and the military authorities were noted for harshness and had no use for draft evaders or anyone suspected of disloyalty. My younger brother Seiji Miyake who was in Japan with my folks and me was not forced to be conscripted because he was under age. He returned to the United States and served in the U. S. Army in the U. S. and in Germany and has been honorably discharged from service.

In 1945 and 1946, I voted in elections in Hiroshima-ken believing that it was essential that I do so because I was instructed by the election official in Yagimura that it was a requirement of SCAP and that SCAP wanted a 100% turnout at the polls and that it was compulsory. Mr. Sugita, a neighbor, who was the block leader told me that it was a SCAP order and he also said that everyone was bound to obey the requirement of the occupation authorities. Also Mr. Nishida who was an official at Yagi informed me that it was a requirement and that dual nationals must vote or risk being penalized for disobeying the occupation authorities. I was informed that the failure to vote would cause me to be deprived of a ration card which was necessary to assure me of sufficient food to prevent starvation and I was fearful of being deprived of rations during 1946 and 1947 because food was so scarce that starvation would have resulted. Also I didn't dare think of going counter to the military requirement of voting as I had been informed and believed that voting was compulsory.

After my release from the Japanese Army I worked for the British Occupation Forces variously as an interpreter and accountant at Kaitaichi, Hiroshima and Kure and also at the Ebisu Camp in Tokyo from Feb. 1946 to 1950 and from March 1955 to October 1956.

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Hideo Miyake

Subscribed and sworn to before me this fourth day of June,  
1958.

(S) George H. Haselton  
Consul of the United States of America  
at Hiroshima, Japan  
being duly commissioned and qualified.

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CERTIFICATE

In Japan, the conscription law was compelled to obey. As it was during the war at that time, I was fearful that if I protested or resisted induction I would be arrested by the Kempeitai or by the military authorities and would be placed in a stockade, according to the old criminal law and therefore my induction into and service in the Japanese armed forces was not voluntary but was coerced.

June 10, 1958

Hideo Miyake (sealed stamp)  
of  
Yagi, Sato-cho, Asa-gun, Hiroshima-ken

I HEREBY CERTIFY THAT THE ABOVE TO BE A TRUE STATEMENT.

June 11, 1958

Toshio Nomura (Sealed stamp)  
Town Headman of  
Sato-cho, Asa-gun, Hiroshima-ken

(Translated by Hideo Miyake)

HL(3)

AFFIDAVITS

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When Mr. Hideo Miyake voted in the political election sometime around 1947, Japan was occupied by the Allied Powers and Japanese election official was instructed by SCAP that all residents in Japan to vote. He feared that if he didn't vote he would be punished for violating the order and therefore his voting was involuntary. We hereby certify that his voting was not by his own will, but it was compulsory.

June 15, 1958

Yagi, Sato-cho, Asa-gun, Hiroshima-ken

(Translated by Hideo Miyake)

Kunichi Hori	(Sealed stamp)
Tamaichi Ohyanagi	( " " )
Daiso Kato	( " " )
Teruichi Kagawa	( " " )
Aki Nishida	( " " )
Masashi Miyake	( " " )