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THE NATIONALITY OF AMERICAN-BORN PERSONS OF
JAPANESE DESCENT UNDER JAPANESE LAW

A Memorandum Prepared for the
Department of Justice by
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A

Summary

Under Japanese Law as of 1941 (the latest year for which information is now available), the nationality status of American-born persons of Japanese descent (nisei) is as follows:

A. A nisei, born in the United States before 1 December 1924, whose father had Japanese nationality at the time of his or her birth, now has Japanese nationality¹ unless he or she

(1) between 1 August 1916 and 1 December 1924, secured the permission of the Japanese Minister of Home Affairs for a renunciation of nationality,²

(2) renounced Japanese nationality after 1 December 1924 in the manner specified by the Japanese Nationality Act and the Nationality Enforcement Regulations. This renunciation required (a) domicile in the United States (b) the possession of American citizenship, and (c) the submission to an Embassy, or Consulate of Japan, located in the United States of

1. A certified copy of the Family Register of the individual
2. A certificate of birth issued or authenticated by an American official

¹See Pages 3-4.

²See Pages 17-18.

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3. The consent in writing of a legal representative (if the party renouncing Japanese nationality was an incompetent or a minor over 15 years of age) or the family council (when the legal representative, referred to in the previous paragraph, was a stepfather, stepmother, or guardian).¹

This renunciation might have been superseded by a later recovery of Japanese nationality, which would have required among other things a domicile in Japan.²

- (3) lost his or her Japanese nationality through a change in family relationship, such as acknowledgment by a non-Japanese as an illegitimate child.³

B. A nisei, born in the United States after 1 December 1924, whose father had Japanese nationality at the time of his or her birth, has no Japanese nationality,⁴ unless

- (1) a reservation of nationality was made on his or her behalf
 - (a) by one of his or her parents, (b) within two weeks of birth, and (c) through the submission of a notice through a Japanese Consulate or Embassy in the United States, accompanied by a report of birth.⁵

¹See Pages 18-21.

²See Pages 24-25.

³See Pages 21-22.

⁴See Pages 4-7.

⁵*Idem.*

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However, a nisei on whose behalf such a reservation of nationality was made still may have lost Japanese nationality through a later

1. renunciation similar to that described in A (2) of Page 28¹

2. change in family relationship such as is described in A (3) of the preceding page.

(2) he or she has subsequently acquired Japanese nationality through a change in family relationship, such as marriage to (if a female), adoption by, marriage-adoption by (if a male), or acknowledgment as an illegitimate child by, a Japanese.² A recording of such a change of relationship, upon the proper Family Register in Japan, is essential to an acquisition of nationality by this method.³ Upon the dissolution of these family relationships, Japanese nationality is lost, providing the original foreign nationality is regained.⁴

C. A third generation American-born individual of Japanese descent whose father at the time of his or her birth did not have Japanese nationality, has no Japanese nationality, unless

¹See Pages 18-21

²See Pages 7-12

³See Page 9

⁴See Pages 21-22

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- (1) it has been acquired through naturalization (which requires among other things, a domicile in Japan)¹
- (2) he or she has subsequently acquired it through a change in family relationship such as described in B, (2) of the preceding page.

¹See Pages 12-15

Part I

Introduction

This memorandum is based on Japanese legal materials of mid 1941 and earlier. Relevant sources of a later date are not available in the United States at the present time, and therefore no more can be attempted here than a description of Japanese law as of 1941 and before. Nor does this memorandum consider Japanese law prior to the enactment of the initial Nationality Act in 1899. While it appears that many of the provisions of earlier Japanese law were incorporated in the 1899 Act, detailed statements of these provisions are also lacking. It is unlikely that Japanese law before 1899 would be material to any determination of the present nationality of American-born children of Japanese descent.

Any analysis of the nationality of American-born children of Japanese parentage, generally and herein described as Nisei,¹ is complicated by several revisions in the Japanese Nationality Act (Kokusekiho) since its initial enactment. These make essential to certain determinations of nationality, not only such matters as the date of birth, the place of birth, the subsequent domicile and acts of the individual concerned, and the steps taken on his behalf by relatives or guardians, but also the individual's status under American law. For that reason, it is necessary to approach the problem of Nisei nationality with separate considerations of the principles of Japanese law which pertain to acquisition, loss, and recovery of nationality during

¹Strictly speaking, the term "Nisei", which in Japanese means "second generation", includes only offspring of Japanese emigrants. It does not include subsequent generations. However, the American usage of "nisei" has come to be that of "Americans of Japanese descent" regardless of generation. This is the connotation of "nisei", as the term is used in this memorandum. In the few situations wherein the legal positions of second and third generation Japanese-Americans differ, a numerical distinction is made specifically.

various periods since 1899.

In general, Japanese law follows the principles of Jus Sanguinis, although with certain qualifications in cases where another nationality is acquired by birth in a country applying the Jus Soli or through marriage, adoption or other changes in family relationship. Some of the more important qualifications were added by amendments to the original Nationality Act (1899) in 1916 and 1924, and were intended to answer American objections to the dual nationality of Nisei.

¹YAMADA, Saburo, Kokusai Shiho (Private International Law) 1932, Volume I
Pages 152-153.

Part II

The Acquisition of Japanese Nationality

A. Acquisition of Japanese Nationality by Birth

1. Before 1 December 1924

Article 1, of the Nationality Act, states the fundamental principle of Japanese nationality law:¹

"A child is regarded as Japanese if its father is at the time of its birth a Japanese * * *"

Under the terms of this article, any child born in the United States before 1 December 1924, whose father was a Japanese, automatically acquired Japanese nationality.² Unless such an individual has in some manner lost or divested himself of Japanese nationality (as through marriage, adoption, acknowledgment, renunciation or naturalization), he remains a subject of Japan under Japanese law. The changes made in the 1924 revision of the Nationality Act³ (discussed in the following paragraph), did not apply retroactively to

¹Statute (Horitsu) #66, enacted 15 March 1899, and in force from 1 April 1899. Amended by Statute #27 of 1916, and Statute #21 of 1924. To be found in Genko Horei Shuran (Laws and Ordinances currently in force), Pages 929-930, (annotated to 28 February 1940). For a translation see "Nationality Laws" by Flournoy and Hudson, Oxford Press 1929, Pages 382-386. A slightly changed translation has been prepared in connection with this memorandum.

The text of this article has been unchanged since enactment in 1899, although its effect has been modified by subsequent additions and revisions of other articles of the Nationality Act.

²The nationality of the mother is immaterial. YAMADA, (supra) Page 159.

³Statute #19, enacted on 22 July 1924, and made effective on 1st December 1924 by Imperial Ordinance (Chokurei) #261 of 1924. This revision is to be found on Pages 18-20 of the July 1924 issue of Nippon Horei Zensho (Complete Collection of Laws and Ordinances), and also in a special issue of Kampo (Official Gazette), of the same date.

persons born before 1 December 1924.¹

2. Acquisition after 1 December 1924

Technically, the changes of the 1924 Amendment to the Nationality Act pertain to loss rather than acquisition of nationality. In legal theory, Japanese nationality still is bestowed by birth, in accordance with Article 1², but is made subject to a condition subsequent. Despite the phraseology of certain articles, the net effect of the 1924 amendment is to confer a lasting Japanese nationality only upon individuals on whose behalf certain measures are taken soon after birth. For that reason, the following portions of the

¹Paragraph 2 of Part 2 of Article 20 of the Nationality Act (added by the 1924 revision), through a description of the special procedure whereby a Nisei born before 1 December 1924 could renounce Japanese nationality, makes it clear that no retroactive loss of nationality for such an individual was intended. This obvious intention was admitted in an opinion of the Japanese Department of Justice (#739 Civil, dated 6th of September 1930, found in Hosokai Zasshi, Vol. 8, Part 10, Pages 157-158), which held that a Nisei born in the United States before 1 December 1924 remained a Japanese subject after that date, and that his name was to be recorded on his family's record upon his coming to Japan.

An examination of the comments of YAMADA, Saburo, in his article "Kokuseki no Ridatsu ni Kansuru Shinkitei ni tsuite" (Concerning the new provisions for the renunciation of nationality), found on Pages 629-642, Vol. 2, Part 7 of Kokusaiho Gaiko Zasshi (Magazine of International Law and Diplomacy) further supports this interpretation.

²See YAMADA, *supra*, Page 207. A question of the proper method of conferring Japanese nationality on a person whose nationality had been lost through failure of notice as prescribed by Paragraph 1, Part 2 of Article 20 of the Nationality Act, and by Article 2 of the Nationality Act Enforcement Regulations, was presented to the Ministry of Justice in 1930, in connection with the registration of such a person under the Family Registration Act. (See footnote on Page 7). In the opinion of the Chief of the Civil Affairs Bureau, the proper method was a recovery of nationality, rather than a naturalization. This clearly implies an initial possession, but subsequent loss, of Japanese nationality by American-born Nisei. Opinion #739, dated 6th September 1930. Hosokai Zasshi, Volume 8, Part 10, Pages 157-158.

1924 amendment are presented here in connection with acquisition, instead of in the later section dealing with loss.

Paragraph 1 of Part 2 of Article 20 of the Nationality Act (in effect from 1 December 1924)¹, provides:

"A Japanese who, by reason of having been born in a foreign country designated by Imperial Ordinance, has acquired the nationality of that country, and who does not, as laid down by order, express his intention of retaining Japanese nationality, loses his Japanese nationality retroactively from birth."

Imperial Ordinance #262² of 1924 designates as countries to which Paragraph 1 of Part 2 of Article 20 is applicable, "the United States of America, Canada, Argentina, Brazil, Chile and Peru."

The Nationality Act Enforcement Regulations (Kokusekiho Shiko Kisoku)³ which supplies the details for the operation of the Nationality Act provides:

"Article 2

"If a retention of nationality, in accordance with the provisions of Paragraph 1 of Part 2 of Article 20 of the Nationality Act, is desired, the person submitting a report of birth under the provisions of Paragraphs 1 or 2 of Article #72 of the Family Registration Act

¹Statute #19, enacted on 22 July 1924 and made effective on 1st December 1924 by Imperial Ordinance (Chokurei) #261 of 1924. This revision is to be found on Pages 18-20 of the July 1924 issue of Nippon Horei Zensho (Complete Collection of Laws and Ordinances), and also in a special issue of Kampo (Official Gazette), of the same date. A translation has been prepared in connection with this memorandum.

²Proclaimed 15 November 1924 and effective 1 December 1924. Found on Pages 201-202, Imperial Ordinance Section of the November 1924 issue of Nippon Horei Zensho; also in the 17 November 1924 issue of Kampo. A translation has been prepared in connection with this memorandum.

³Issued on 17th November 1924 as Home Affairs Ministry Ordinance #26, effective on 1 December 1924, and to be found on Pages 28-30, Home Affairs Ministry Ordinance Section, of the November 1924 issue of Nippon Horei Zensho. A translation has been prepared in connection with this memorandum.

must accompany the report of birth with a notice to this effect within the period provided by Article #69 of the Family Registration Act."¹

Therefore, by virtue of the above provisions, the Japanese nationality which is given to every child of Japanese paternity, is lost retroactively by children born in the United States after 1 December 1924, unless retained

¹Family Registration Act (Kosekiho), to be found on Page 932, of Volume 14 of the Gonko Horei Shuran provides:

"Article 69

"A report of birth must be made within 14 days * * *"

"Article 72

"The birth of a legitimate child must be reported by the father. If the father is unable to report the birth, or if the circumstances described in Paragraph 1, and the exception to Paragraph 2 of Article #734 of the Civil Code exist, the mother must make the report.

"The birth of an illegitimate child (of a concubine) (shoshi) must be reported by the father. The birth of a bastard (shiseiji) must be reported by the mother."

(Article #734 of the Civil Code provides:

"If a father, before the birth of a child, leaves a household through reason of divorce or dissolution of adoption, the provisions of Paragraph 1 of the previous article (which states that a child becomes a member of the household of his father), shall apply retroactively to the time of conception.

"The provisions of the previous paragraph shall not apply at times when both the father and mother leave the household, except on those occasions when the mother shall be reinstated in the household before the birth of the child.")

through a properly filed notice of statement of intention. This notice or statement of intention must be filed by a parent at a Japanese embassy or consulate within two weeks of the child's birth, and must be supported by the proper documentary proof of birth.

B. Acquisition of Japanese Nationality by Methods Other Than Birth.

Article 5 of the Nationality Act governs the acquisition of Japanese nationality by methods other than birth. It provides:

"An alien acquires Japanese nationality in the following cases:

- (1) by becoming the wife of a Japanese
- (2) by becoming the nyufu of a Japanese woman
- (3) by acknowledgment of his or her father or mother who is a Japanese
- (4) by adoption by a Japanese
- (5) by naturalization"

Articles 147-152 of the Family Registration Act² makes certain requirements concerning the recording of changes in nationality:

"Article 147

"At times when an alien acquires Japanese nationality through adoption or marriage, the former nationality of the individual must be stated in the report of adoption or marriage."

¹A man who marries the female head of a family and at the same time becomes a member thereof through adoption.

²Japan has a highly developed system of family and personal registration. Vital facts concerning individuals, and their family relationships are recorded in Family Registers (Koseki) which are kept by all municipal offices. Entries may be made either orally or in writing. For convenience, overseas Japanese may file reports via the Ambassador, Minister, or Consuls in the country of residence.

The statute establishing this system (Kosekiho) is sometimes translated as the Family Census Registration Act, or the Census Domicile Act.

"Article 148

"At times when an alien acquires Japanese nationality through acknowledgment, the former nationality of the individual must be stated in the report of acknowledgment.

"If the person making the acknowledgment is the father, the nationality of the mother must be stated."

"Article 149

"A report of naturalization must be made within ten days of the date of the permit.

"The report must include the following facts:

- (1) The former nationality of the person naturalized.
- (2) The names and nationalities of his or her father and mother.
- (3) The date of the permit.
- (4) When other persons acquire Japanese nationality along with the person naturalized, their names, dates of birth, and relationships to the person naturalized.

"When the wife and children of a naturalized person do not acquire Japanese nationality along with such naturalized person, the report must state the reason therefor."

"Article 150

"A report of a loss of nationality must be made by the head of the family or the heir, within one month following the date when such fact became known.

"The report must include the following facts:

- (1) The name and family register of the person who has lost his or her nationality.
- (2) The reason and date for the loss of nationality.
- (3) If a new nationality is acquired, that nationality."

"Article 151

"A person losing his nationality, if a male over 17 years of age, must attach to his notice a written certificate of the completion of active service in the army or navy, or the lack of an obligation to serve. However, the above provision does not apply to a person who loses his nationality in accordance with the provisions of Parts 2 and 3 of Article 20 of the Nationality Act."

"Article 152

"A report of recovery of nationality must be made within ten days of the date of the permit.

"The report must include the following facts:

- (1) The reason for loss of Japanese nationality and the date.
- (2) The nationality possessed before the recovery of Japanese nationality.
- (3) The date of the permit.
- (4) When other persons acquire or recover Japanese nationality along with the person recovering Japanese nationality, their names, dates of birth, and relationships to the person recovering Japanese nationality.

"Paragraph 3 of Article 149 shall apply mutatis mutandis to the report mentioned in the previous paragraph."

Although not specifically provided by the Nationality Act, or by the Family Registration Act, a recording of the act of naturalization or the change in family relationship, in accordance with the provisions of the Family Registration Act cited above, seems to be essential to the acquisition of Japanese nationality by such means. The only Japanese authority whose consideration of this point is now available¹, makes this assertion in connection with a discussion of marriage as a method of acquisition of nationality. This interpretation is in accord with constructions of other provisions of the Family Registration Act, which require a proper recording of a change in family status, as a prerequisite of its legal validity.

1. Acquisition by Marriage.

Japanese authorities and official interpretations agree that the acquisition of Japanese nationality through marriage is automatic. It follows as a result of marriage, irrespective of the domicile of the couple or the desires of the wife.² However, a marriage such as could result in the acquisition of Japanese nationality requires (1) conformance with the marriage laws of the country in which the marriage occurs, and (2) a recording of the marriage upon the proper family register in Japan.

Therefore, a wife whose husband possesses Japanese nationality, ac-

¹ISANEGATA, Tadao, "The Nationality of a Married Woman", Page 1607, Part 9, Volume 49 of Hogaku Kyokai Zasshi.

²Yamada, Saburo, Kokusai Shiho, Pages 164-165.

quires such nationality through marriage. Her premarital nationality status under Japanese law if she too, were a nisei, is immaterial. As long as the marriage continues in force, she is, by Japanese law, a subject of Japan.¹

2. Acquisition by Acknowledgment

The acknowledgment by a Japanese father or mother of an illegitimate child who has another nationality, confers Japanese nationality on the child under Paragraph 3 of Article 5, quoted above. Certain limitations are imposed by Article 6.

"For an alien to acquire Japanese nationality by acknowledgment the following conditions must be fulfilled:

- (1) He or she must be a minor by the law of his or her country.
- (2) She must not be the wife of an alien.
- (3) The parent, whether father or mother, who has first made acknowledgment, must be a Japanese.
- (4) If the father and mother have made acknowledgment simultaneously, the father must be a Japanese."

The provisions of Articles 5 and 6 could conflict with the clear intention of Paragraph 1 of Part 2 of Article 20 to restrict the acquisition of Japanese nationality by nisei. Under a strict construction of the provisions of Articles 5 and 6, an illegitimate nisei, born in the United States and subsequently acknowledged, would acquire Japanese nationality automatically, and subject to no limitations, whereas a legitimate American-born nisei (born after 1 December 1924) would acquire only a conditional nationality, whose preservation would require a subsequent filing of notice in the manner specified by law. While no comments of Japanese authorities concerning such a situation are to be found, it is unlikely that Japanese courts and officials

¹SANEGATA, Tadao (supra), Page 49.

would follow a construction of the Nationality Act which favored illegitimates in the acquisition of Japanese nationality. Therefore, in my opinion a notice of intention to reserve nationality, such as is required for legitimate American-born nisei under Part 1 of Article 20, would be needed by illegitimate nisei born in the United States.

It is difficult to predict the official solution of such a problem, but there are at least two possibilities. The period within which such notice must be given could be either (1) that prescribed for legitimates (which would limit acquisitions of Japanese nationality by American-born illegitimate nisei to those acknowledged within two weeks after birth) (2) or a similar two weeks' period following acknowledgment.

Illegitimate nisei, born in the United States before 1 December 1924, are not affected by the provisions of Paragraph 1 of Part 2 of Article 20 of the Nationality Act. They would acquire Japanese nationality, upon acknowledgment, whether this acknowledgment came before or after 1 December 1924.

3. Acquisition through Adoption and Adoption-Marriage (Nyufu Konin)

Adoption and the combination of adoption and marriage of males (a legal procedure peculiar to Japan), are both mentioned under Article 5, as methods of acquiring Japanese nationality. Both are also regulated by a 1898 statute entitled "Concerning the Marriage-adoption and Adoption of Foreigners".¹

This statute provides:

"Article 1

"Japanese who adopt or marry-adopt foreigners must secure the permission of the Minister of Home Affairs.

¹Statute #21, enacted 11 July 1898, amending decree (fukoku) #103 of 1873. To be found at Pages 250-251 of Volume 14 of the Genko Horei Shuran.

"The permission referred to in the previous article cannot be granted unless the foreigners fulfill the following conditions:

- (1) having had continuous residence or domicile for a year or more in Japan
- (2) being of good character."

The procedure for securing permission was determined in an ordinance entitled "Concerning the Procedure for Submitting Applications for the Marriage-Adoption or Adoption of Foreigners."¹

"Persons seeking to adopt or marry-adopt foreigners in accordance with the provisions of Statute #21 of 1878, must submit applications to the Minister of Home Affairs via the Governor of the prefecture of the permanent domicile or residence."

The above Statute and Ordinance make residence in Japan essential to a valid adoption or marriage-adoption of a foreigner. Likewise, an adoption or marriage-adoption must be recorded on the Family Register in Japan.² In my opinion a de facto adoption in the United States, which, although adequate under American law, fell short of the above-mentioned requirements of Japanese law, would not extend Japanese nationality to an adopted child.

4. Acquisition by Naturalization

As is indicated in Part III of this memorandum, a nisei who has lost Japanese nationality regains it, not through naturalization, but through a restoration proceedings. Japanese law relating to naturalization seems to be applicable only to aliens who never in their lives have had Japanese nationality. Certain third-generation Japanese-Americans might be of this description. Under the provisions of Article 1 of the Nationality Act, Japanese

¹Home Affairs Ministry Ordinance #51, enacted 14 September 1899 and amended by Home Affairs Ministry Ordinance #27 of 1924. To be found at Page 251 of Volume 14 of Genko Horei Shuran.

²Family Registration Act #147.

nationality is conferred by birth only when the father is, at time of birth, a Japanese. A child, born in America to a nisei father who had lost his Japanese nationality (as was possible from 1 August 1916), would have no Japanese nationality whatsoever.

However, the provisions of the Nationality Act suggest that a naturalization proceedings, on behalf of such a child, is a possibility under Japanese law.

Naturalization is governed by the following provisions of the Nationality Act:

"Article 7

"An alien may become naturalized with the permission of the Minister of Home Affairs.

"The Minister of Home Affairs cannot permit naturalization, except in the case of persons fulfilling the following conditions:

- (1) Having had a domicile in Japan for five or more years consecutively.
- (2) Being of full twenty years of age or more, and having legal capacity by the law of his or her country.
- (3) Being of good character.
- (4) Having sufficient property, or ability, to secure an independent livelihood.
- (5) Having no nationality, or when he or she would lose his or her nationality in consequence of the acquisition of Japanese nationality."

"Article 8

"The wife of an alien cannot become naturalized, except in conjunction with her husband."

"Article 9

"The aliens mentioned below, if they are actually in possession of a domicile in Japan, may become naturalized, although they may not have satisfied condition number 1 of Paragraph 2 of Article 7:

- (1) Those whose fathers or mothers were Japanese.
- (2) Those whose wives were Japanese.
- (3) Those born in Japan.
- (4) Those who have had places of residence in Japan for ten years or more, consecutively.

"The persons mentioned in numbers 1 to 3, inclusive, of the preceding paragraph, cannot become naturalized unless they have possessed places of residence in Japan for three years or more, consecutively; but if the father, or the mother, of a person mentioned in number 3 was born in Japan, this rule does not apply."

"Article 10

"In cases where the father, or the mother, of an alien is a Japanese, if the alien in question is in actual possession of a domicile in Japan, he or she may become naturalized, although he or she may not have satisfied the conditions mentioned in numbers 1, 2 and 4 of Paragraph 2 of Article 7."

The method of naturalization is specified in Article 1 of the Nationality Act Enforcement Regulations.

"Article 1

"A child is regarded as a Japanese if its father is at the time of its birth a Japanese. The same applies if the father who died before the child's birth was at the time of his death a Japanese."

Article 10 states the exception which appears to permit a greatly simplified naturalization of a third-generation Japanese-American child. In my opinion, this article makes possible the naturalization of such a child, while still a minor and without a long residence in Japan, providing the father or mother have regained Japanese nationality after the child's birth.

Within ten days of issuance of a certificate of naturalization, such naturalization must be entered on the Family Register.¹ In my opinion the

¹Article #149 Family Registration Act.

effect of this provision is similar to the requirement for registration of marriage--i.e. failure to place this fact on record would result in a failure of acquisition of nationality. (See the previous parts 1, 2 and 3 of this section).

Part III

LOSS OF JAPANESE NATIONALITY

A. Loss of Nationality through Renunciation

1. From 1 April 1899 until 1 August 1916

During the period 1st April 1899 until 1 August 1916, although the loss of nationality through naturalization was possible under the nationality Act, a loss through renunciation was not.

The Nationality Act (in effect from 1899), provides:

"Article 20

"A person who voluntarily acquires foreign nationality loses Japanese nationality".

"Article 21

"If the wife and child of a person who loses Japanese nationality acquire the said person's new nationality, they lose Japanese nationality."

Until 1916 no provision existed for the loss of Japanese nationality as a result of an involuntary acquisition of foreign nationality. The tenor of later amendments and the remarks of authorities¹ made it clear that the term "voluntary acquisition", as used in Article 20, means "naturalization". A person born in the United States acquires American citizenship by reason of birth and cannot become a naturalized American. Therefore, during the period from 1 April 1899 until 1 August 1916, an American-born Nisei could divest himself of Japanese nationality only by naturalization and this was possible only in some country other than the United States.

¹YAMADA, Supra, Page 203.

2. From 1 August 1916 to 1 December 1924

Statute #27 of 1916¹ amended the Nationality Act of 1899 by adding Part 2 of Article 20 which permitted a renunciation under certain conditions:

Part 2 of Article 20 (as of that period) provided:

"A Japanese who through birth in a foreign country has acquired the nationality of the country, may, if domiciled in that country, renounce Japanese nationality by securing the permission of the Minister of Home Affairs.

"The application for permission referred to in the previous paragraph shall be presented by the legal representative if the person who is renouncing Japanese nationality is less than fifteen years of age; if the person is a minor over fifteen years of age, or is an incompetent, the consent of his legal representative is required.

"If the application or the consent referred to in the previous paragraphs is to be given by the stepfather, stepmother, legitimate wife, or guardian, the consent of the family council is required.

"A person who renounces his or her nationality shall lose Japanese nationality."

The method of application for permission to renounce nationality was defined in Home Affairs Ministry Ordinance #8, 10th July 1916² as follows:

"Article 1:

"A person desiring to renounce nationality in accordance with the provisions of Part 2 of Article 20 of the Nationality Act, must submit to the Minister of Home Affairs, through a Japanese Ambassador, Minister or Consul resident in the country (of the person's domicile) a request which is accompanied by the following items:

¹Enacted 15 March 1916, and found on Pages 52 and 53 of Statutes Section of the March, 1916 issue of Nippon Horei Zensho; also in the 16 March 1916 issue of Kampo. A photostat and translation are attached. This article was put into effect on 1st August 1916 by Imperial Ordinance #181 of 8 July 1916, found at Pages 213-214 of Imperial Ordinance Section of the July, 1916 issue of Nippon Horei Zensho, and also in the 10 July 1916 issue of Kampo. A translation has been prepared in connection with this memorandum.

²In effect from 1 August 1916. To be found on Pages 201-202 of the Ministerial Ordinance Section of the July 1916 issue of Nippon Horei Zensho; probably found as well in the 10th July 1916 issue of Kampo.

- (1) A copy of his family register.
- (2) A certificate of his birth issued or authenticated by an official of the country of birth.
- (3) His address and length of residence on all occasions when he has been in Japan.
- (4) The year in which his father and mother acquired a domicile in the country of his birth.
- (5) The names and relationships of family members who are domiciled with him.
- (6) If he is a minor over fifteen years of age, or an incompetent, the written consent of his legal representative.
- (7) The written consent of his family council, in cases when such consent is required for a request or a consent to a request.
- (8) If he is a male over 17 years of age, documentary proof of the completion of active service in the army or navy, or the lack of an obligation to serve."

This amendment was designed to answer American objections to the dual nationality of nisei. The procedure provided proved inadequate, and the requirement of completion of military service as a prerequisite to renunciation was strongly criticized. Nevertheless, from 1 August 1916 until 1 December 1924, a nisei, born in the United States, (either before or after 1899), could have divested himself of Japanese nationality by complying with the above-mentioned provisions of Part 2 of Article 20 of the Nationality Act and Home Affairs Ministry Ordinance #8 of 1916.

3. From 1 December 1924

The last amendment of the Nationality Act (as determined from available sources), was Statute #19 of July 1924.¹ This amendment cancelled Part 2 of Article 20, which had been enacted in 1916, and substituted the following method of renunciation of nationality:

"Part 2 of Article 20

¹See Footnote 3, Page 3.

"A Japanese who, by reason of having been born in a foreign country designated by Imperial Ordinance, has acquired the nationality of that country, and who does not as laid down by order express his intention of retaining Japanese nationality, loses his Japanese nationality retroactively from his birth.

"Persons who have retained Japanese nationality in accordance with the provisions of the preceding paragraph, or Japanese subjects who, by reason of having been born in a designated foreign country before its designation in accordance with the provisions of the preceding paragraph, have acquired the nationality of that country, may when they are in possession of the nationality concerned and in possession of a domicile in that country, renounce Japanese nationality if they desire to do so.

"Persons who shall have renounced their nationality in accordance with the provisions of the preceding paragraph lose Japanese nationality."

The Nationality Act Enforcement Regulations, in specifying the mode of renunciation, contained the following provisions:

"Article 3:

"A person desiring to renounce his nationality in accordance with the provisions of Paragraph 2, of Part 2 of Article 20, of the Nationality Law, shall notify the Minister of Home Affairs through a Japanese ambassador, minister or consul in the country of domicile. The notification referred to in the previous paragraph shall be made by the legal representative of a person less than fifteen years of age or an incompetent, the consent of the legal representative is required.

"If the notice or consent referred to in previous paragraphs is to be given by a stepfather, stepmother, legitimate wife, or guardian, the consent of the family council is required."

"Article 4:

"The written notification mentioned in the preceding articles shall be accompanied by the following documents:

- a. A copy of the Family Register
- b. A birth certificate issued or authenticated by an official of the country of birth
- c. Consent in writing, in those cases where this is required by Paragraphs 2 and 3 of the preceding article."

"Supplemental provisions (unnumbered additions to the regulations):

"Requests for the permission of a renunciation of nationality made in accordance with the provision of Home Affairs Ministry Ordinance #8 of 1916 before the effective date of this ordinance, shall, in the case of Japanese who have acquired foreign nationality by reason of birth in a foreign country designated in Imperial Ordinance #262 of 1924, be regarded as notifications of renunciation of nationality made on the effective date of this ordinance."

By virtue of the above provisions, a nisei born in the United States before 1 December 1924, or a nisei born after this date and on whose behalf Japanese nationality has been reserved (as described above in Part B of II) may give "notice" of a renunciation of Japanese nationality. This "notice" is a unilateral act, which requires no permission or consent of any individual or unit in the Japanese government. In this respect, it is quite different from the "application for permission" to renounce nationality which was required from 1 August 1916 until 1 December 1924. The essentials for a valid "notice" of renunciation by a nisei born in the United States are

- (1) Domicile in the United States
- (2) The possession of American Citizenship
- (3) Notification of the type described by the Nationality Act Enforcement Regulations.

Some misunderstanding has existed concerning the effect of Article 24 of the Nationality Act which states

"Notwithstanding the provisions of Article 19, Article 20 and the preceding three articles, a male of seventeen years of age or over does not lose Japanese nationality unless he has completed active service in the army or navy, or unless he is under no obligation to serve."

It is clear from the text of this article that the reference to "Article 20" designates only the initial part of the article, and not Parts 2 and 3 which were introduced by a subsequent amendment providing for renunciations.

This limiting interpretation is reinforced (1) by the absence of any requirement for proof of completion of military service in the Nationality Act Enforcement Regulations, (2) by the exception in Paragraph 1 of Article #151 of the Family Registration Act,¹ and (3) by the comments of Japanese authorities.² A discharge or exemption from military service is not a prerequisite for the renunciation of Japanese nationality under the terms of Parts 2 and 3 of Article 20.

B. Loss of Nationality through Failure of Notice of Intention to Retain.

(See Part A, 2, of Section II of this memorandum)

C. Loss of Japanese Nationality through a Change in Family Relationship.

Certain changes in family relationship could have resulted in loss of Japanese nationality at any time since 1899. The following article of the Nationality Act makes provision for such loss of nationality.

"Article 18

"A Japanese, who on becoming the wife of an alien has acquired her husband's nationality, loses Japanese nationality."

"Article 19

"A person who has acquired Japanese nationality by marriage or by adoption, loses Japanese nationality by divorce or the dissolution of adoption only when he or she thereby recovers his or her foreign nationality."

"Article 21

¹See Page 8 for a translation of Article 151 of the Family Registration Act.

²YAMADA, Supra, Page 210.

"If the wife and child of a person who loses Japanese nationality acquire the said person's new nationality, they lose Japanese nationality."

"Article 22

"The provisions of the preceding article do not apply to the wife and child of a person who loses Japanese nationality by divorce, or by the dissolution of adoption. But cases in which the wife is not divorced when the dissolution of the husband's adoption takes place or in which the child leaves the family together with the father, do not come under this rule."

"Article 23

"If a child who is a Japanese acquires foreign nationality by acknowledgment, he or she loses Japanese nationality. But this rule does not apply to a person who has become the wife, the nyufu, or the adopted child of a Japanese."

"Article 24

"Notwithstanding the provisions of Article 19, Article 20, and the preceding three articles, a male of seventeen years of age or upwards does not lose Japanese nationality unless he has completed active service in the army or navy, or unless he is under no obligation to serve."

Thus, Japanese nationality may be lost by a woman who marries a non-Japanese and thereby gains her husband's nationality, or by an illegitimate child who is acknowledged by a non-Japanese parent. These losses of nationality are subject to the exceptions of Articles 23 and 24, given above.

If under American law, the acquisition of American citizenship by orientals is not possible through marriage or a subsequent naturalization proceedings, the loss of Japanese nationality, does not result from a marriage of a Japanese woman to an American.

Although a proper recording is essential to the acquisition of Japanese nationality by means of acknowledgment, in my opinion this is not the case when an acknowledgment would result in a loss of Japanese nationality. Article 150 of the Family Registration Act¹ provides for a report of such act of

¹See Page 8

acknowledgment by the head of the Japanese family to which the child belonged, but in my opinion a failure of registration of such a report would not prove fatal to the loss of nationality, if the acknowledgment were adequate in other respects.

Part IV

Recovery of Nationality

A nisei born in the United States, who has lost Japanese nationality through the provisions of Part 1 of Article 20, or by marriage or by renunciation, is permitted to reacquire Japanese nationality under certain circumstances and upon the fulfillment of certain conditions. The following provisions of the Nationality Act and the Nationality Act Enforcement Regulations are self-explanatory of the periods in which they apply:

A. 1 April 1899 to 1 August 1916

"Article 25 of the Nationality Act of 1899 provided:

"A person who has lost Japanese nationality by marriage and who is domiciled in Japan after the dissolution of the marriage, may, with the permission of the Minister of Home Affairs, recover Japanese nationality."

"Article 26 of the same act provided:

"If a person who has lost Japanese nationality in accordance with the provisions of Article 20 and Article 21 is domiciled in Japan, he or she may, with the permission of the Minister of Home Affairs, recover Japanese nationality * * *".

B. 1 August 1916 to 1 December 1924

Statute #27 of 1916, in effect from 1 August 1916, while retaining Article 25, amended Article 26 to make possible recovery following a renunciation. The new text reads:

"If a person who has lost Japanese nationality in accordance with the provisions of Article 20, Part 2 of Article 20, and Article 21, is domiciled in Japan, he or she may, with the permission of the Minister of Home Affairs, recover Japanese nationality.

"When the person who has lost his Japanese nationality in accordance with the provisions of Part 2 of Article 20 is under 15 years of age, the request (for a restoration of nationality) specified in the previous paragraph must be presented by the father of the house to which he

belongs; if the father is unable to make the request, it must be presented by the mother; if the mother is unable, by the grandfather, if the grandfather is unable, by the grandmother."

C. From 1 December 1924

Statute #21 of 1924, in effect from 1 December 1924, also retained Article 25, and further enlarged the scope of Article 26 by permitting a recovery of Japanese nationality after other forms of loss.

"Article 26

"If a person who has lost Japanese nationality in accordance with the provisions of Article 20 to Article 21 inclusive is domiciled in Japan, he or she may, with the permission of the Minister of Home Affairs, recover Japanese nationality. But this rule does not apply to cases in which the persons mentioned in Article 16 have lost Japanese nationality."

In addition, Article 8 of the Nationality Act Enforcement Regulations, effective 1 December 1924 made recovery proceedings similar to those for naturalization by providing:

"A person desiring the recovery of his nationality in accordance with the provisions of Article 25 or 26 of the Nationality Act, shall request the permission of the Minister of Home Affairs in accordance with the provisions of Article 1.¹

"When a person under fifteen years of age has lost his nationality, in accordance with the provisions of Parts 2 and 3 of Article 20 of the Nationality Act, the request (for a recovery) must be presented by his father; if his father is unable to make the request, by his mother, if his mother is unable to make the presentation, by his grandfather; if his grandfather is unable to make the presentation, by his grandmother."

¹According to a Federal Communications Commission Monitoring Report of a Japanese broadcast of 19 June 1944, prefectural governors now may grant permissions for a recovery in nationality.

Part V

Proof of Acquisition, Loss or Restoration of Nationality

The Nationality Act provides:

"Article 12

"Naturalization must be announced in the Official Gazette (Kampo)."

"Part 2 of Article 27

"The procedure relative to the renunciation and recovery of nationality shall be determined by ordinance."

"Article 7 of the Enforcement Regulations provides:

"The Minister of Home Affairs will announce the receipt of notifications of renunciation of nationality and the permission of renunciations of nationality."

The announcement of these notifications and permissions of renunciations is made in the Kampo and in the Nippon Horei Zensho in the form of "proclamations" (kokuji) of the Minister of Home Affairs. Virtually complete sets of Kampo and Nippon Horei Zensho are at the Library of Congress, Washington, D. C., at Harvard Law Library, Cambridge, Mass., at Northwestern University, Evanston, Illinois and probably at other places in the United States. Therefore it should be possible to check any allegations of renunciation of nationality if doubt exists as to the sufficiency of the proof submitted by individuals.

The Nationality Act (Part 2, Article 27) provides that the procedure for restoration of nationality would be determined by ordinance but no specific procedure for publication has yet been set out. In view of the language of Article 8 of the Nationality Act Enforcement Regulations, provisions for publication of naturalization probably would apply by analogy, and counterproof

of later restoration of Japanese nationality presumably could be made from notices in Kampo or Nippon Horei Zensho.

As was indicated in B of Part II on Pages 7-9, a recording of a naturalization or a change of family relationship is necessary for an acquisition of Japanese nationality by these means. Original family registers are kept at municipal offices in Japan. The most satisfactory method of proof of facts on record would be the submission of certified copies of pertinent portions of the proper family register, but in lieu of this any proof of the filing of a report of such change with a Japanese Consulate or Embassy in the United States should be presumptive of the actual entry in the proper register, since consular and diplomatic officials are charged with a duty of forwarding reports to the proper municipal office.