

4:7

JUSTICE DEPARTMENT

1955-1959

78/177

C

Kiyoshi Yokotake

born: 6/16/19

Mezore, Oregon

Issued date: Nov. 13
1945

W 25 294

Approved 3/22/45

1317-B Tel. Lg.

January 11, 1955

Department of Justice
Department of Justice Building
Washington 25, D.C.

Attention: Enoch E. Ellison, Esq.

Gentlemen:

Re: Kiyoshi Yokotake
No. 146-54-2292

Kiyoshi Yokotake, born in Medford, Oregon, June 16, 1919, once residing in Block 2317-B at Tule Lake Center, whose renunciation was approved March 22, 1945, was one of the original parties plaintiff in suit No. 25294 filed on November 13, 1945.

Very truly yours,

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

WEB:PJG

146-54-2292

93-1-1320

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

cch

JAN 7 1955

Wayne Collins, Esquire
Attorney at Law
Mills Tower
220 Bush Street
San Francisco 4, California

Re: Kiyoshi Yokotake
No. 146-54-2292

Dear Mr. Collins:

Reference is made to the affidavit filed by the above subject which was sent in to this office by United States Attorney Lloyd H. Burke on December 6, 1954. We are unable to identify this subject as a party plaintiff in the Abo suit and would therefore appreciate your advising this office of his birth date and the date of his joinder to the suit.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By: *Enoch E. Ellison*
Enoch E. Ellison
Chief, Japanese Claims Section

hnd

WEB:PJO

146-54-746

146-54-97

146-54-1449

93-1-1320

COPY FROM
DEPARTMENT OF JUSTICE
CIVIL DIVISION
WASHINGTON 25, D. C.

AIR MAIL

JAN 25 1955

Lloyd H. Burke, Esquire
United States Attorney
422 Post Office Building
7th and Mission Streets
San Francisco 1, California

Attention: Mr. Charles Elmer Collett
Assistant United States Attorney

Re: Abo et al v. Brownell et al, Civil No.
25294 and 25295 - Renunciation of
Citizenship. (Yoshio Abe; Makio Nakamura;
Tsuyako Nakamura; Fumi Nakanishi and
Yoshio Nakanishi.)

Dear Sirs:

This acknowledges the receipt of your letter of January 20, 1955, in which you advise that your office has informed Attorney Fred Okrand that you will not stipulate to the setting aside of the dismissals previously entered without prejudice in these causes as to the above named plaintiffs.

In view of Mr. Collins' protest we see no objection to your action in this regard. However, this Department should not be placed in the position of having to make such a decision.

As matters now stand, the Government should be completely neutral on the question of whether or not the aforementioned dismissals should be set aside. In the event, however, the District Court is called to rule upon the question, your office should make it clear on the record that failure to object to the same on the part of the Government should not be construed as a waiver of any defenses to the causes that were available prior to their dismissal.

We are informing your office of our views at this time so that in any future proceedings germane to the matter here under discussion you may be informed of our position.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

cc: Fred Okrand, Esq.

Wayne H. Collins, Esq.

By: Enoch E. Ellison
Chief, Japanese Claims Section

John F. J. Kono

January 26, 1955

Enoch E. Ellison, Esq.
Department of Justice
Department of Justice Building
Washington 25, D. C.

Dear Mr. Ellison:

In re: Yoshio Abe; Sumio Kono; Makio Nakamura;
Tsuyako Nakamura; Fumi Nakanishi;
Toshio Nakanishi; and Kiyoharu Umekubo.

I have been informed by Charles Elmer Collett, Assistant U. S. Attorney for this district, that the firm of Wirin, Rissman & Okrand of 257 Sough Spring Street, Los Angeles 12, California, has communicated with your office to ascertain if you might be willing to consent to set aside the withdrawals I entered in court of some five of the above-named renunciants. Said persons once were listed as being within a class of persons whose rights were affected by the litigation commenced by some 987 plaintiffs who instituted the consolidated mass class equity suits, entitled Abo et al., v. Brownell, etc., et al., No. 25294-5, on their own behalf and as representatives of a class of similarly situated persons. The persons above-named were not among the original parties plaintiff but were listed years later as persons falling within the class of affected persons whose rights might be determinable in the representative suits.

On the heel of the withdrawal and dismissal of a number of persons from said proceedings I received from that firm of Wirin, Rissman & Okrand a letter requesting that said firm be substituted in the mass class proceedings as counsel for five of such persons. On December 5, 1954, I returned the proposed substitution forms and informed that firm the five persons no longer were listed as plaintiffs. I referred it to your office for information if it desired to learn the nature of administrative remedies it might pursue, if so inclined, to obtain clearance of the political status of citizenship of such persons and pointed out that it probably was aware of methods by which such status also might be determined judicially. In addition, I informed it that if it desired to learn the general nature of the documentary evidence against such persons, made in your offers of proof

filed in said proceedings, I would supply such information upon request. Thereafter, I received a letter from that firm requesting such information and also containing a request that it be substituted as counsel in said proceedings for Sumio Kono and Kiyoharu Umekubo. On January 12, 1955, I returned the two proposed substitution forms to that firm accompanied by a letter flatly refusing its request to substitute it as counsel for any person whomsoever in said class actions.

Not one person of the original group which commenced the suits as class actions for themselves and as representatives of a class of similarly situated persons and not one member of the committee through which it acts would consent to a substitution of counsel for the group or any member of the represented class. The committee so has informed me. Particularly do they object to Messrs. Wirin, Rissman, Okrand, Chuman, et al., and their employees and associates because of their persistently pernicious conduct, extending over a series of years, injurious to renunciants generally, and which they deemed, and justifiably so, to have been occasioned by motives considered to be anything but good. Eleven of a much longer list of acts committed by members of that lawfirm, if lawfirm it is, were specified in my letter to that firm.

My position has been made quite clear to Messrs. Wirin, Rissman & Okrand in my letter to that firm dated January 12, 1955, a copy of which, excepting deleted matter I deem immaterial to communicate to you, is enclosed.

I assume that your office may be aware that my sympathies lie with each and every renunciant who, so long as I live, I will maintain was and is an innocent victim of governmental malevolence and chicanery. Because of this I am willing to assist any or all of them so long as it be without such actual cost to me as seriously to impair the maintenance of my office. Because of my views, therefore, to the extent revealed in my letter of January 12, 1955, to Messrs. Wirin, Rissman and Okrand, I am willing to assist the renunciants in whom that firm appears to be interested.

Very truly yours,

January 12, 1955

Messrs. Wirin, Rissman & Okrand
257 South Spring Street
Los Angeles 12, California

Sirs:

In re: Yoshio Abe; Sumio Kono; Makio Nakamura;
Tsuyako Nakamura; Fumi Nakanishi;
Toshio Nakanishi; and Kiyoharu Umekubo.

"I believe the Department of Justice asserts, among other things, that each of the following named persons about whom you have inquired either gave negative answers to the loyalty question (question 28 in DSS-Form 304-A or question 28 in Form WRA-126-Rev.) in February or March, 1943, while detained in a W.R.A. Center, or then and there refused to answer that question; that, in the absence of proof to the contrary, each then was presumed to be a dual citizen and that each made an application for repatriation to Japan. In addition thereto, that Department has asserted that it has documentary evidence . . . viz:

1. Abe, Yoshio: that he is a Kibei who received his formal education and training in Japan; that he was a member of a pro-Japanese organization at the Tule Lake Center; and that he voluntarily returned to Japan.
2. Nakamura, Tsuyako Mrs.: that she voluntarily returned to Japan.
3. Kono, Sumio: that he was a member of a pro-Japanese organization at the Tule Lake Center; and that he voluntarily returned to Japan.
4. Nakamura, Makio: that he was a Kibei who received his formal education and training in Japan; that he applied for expatriation to Japan before he renounced his U.S. citizenship; and that he voluntarily returned to Japan. (He is a veteran of the U.S. armed services.)
5. Nakanishi, Fumi: that she is a Kibei who received her formal education and training in Japan; and that she voluntarily returned to Japan.
6. Nakanishi, Toshio: that he is a Kibei who received his formal education and training in Japan; that he was a member of a pro-Japanese organization at the Tule Lake Center; and that he voluntarily returned to Japan.

7. Umekubo, Kiyoharu: the Justice Department has not specified what documentary evidence it holds against him . . . (I understand that your office long ago filed an independent suit in Los Angeles to determine his nationality.)

In my opinion each of the above-named persons has an excellent chance to have his or her citizenship status determined favorably by applying for a passport and filling out the special affidavit form required of renunciants. If, on being processed through a U.S. Consular office, the State and Justice Departments conclude that the material contained therein satisfactorily shows that their renunciations were the products of fear, coercion or duress and that they have not committed other acts of expatriation passports will issue to them. If they heretofore were denied passports it probably was because the affidavits they presented to U.S. Consuls in Japan were insufficient on their faces to enable the State and Justice Departments to reach a conclusion thereon."

"If you will examine the McCarran Act I believe you will find that if said persons applied for and were denied U.S. passports by U. S. Consuls abroad that the denials thereof occurred before the passage of that Act and that, if so, their right to resort to suits to determine their nationality appears to be preserved by the savings clause of Section 405 which specifies that the Act does not affect "any status, condition, right in process of acquisition," etc., at the time it took effect.

For your information, said persons have available to them certain administrative remedies as well as judicial remedies through the medium of which the political status of each and the validity or invalidity of their respective renunciations can be established. For examples, the following remedies appear to be available to them, viz.:

1. They can make application for U.S. passports abroad and fill out the special affidavits required of renunciants by the State Department. (These may be bolstered by affidavits or by depositions of witnesses.) If they obtain clearance thereon from the State and Justice Departments U.S. passports will issue to them which will show them to be citizens of the United States. If a consul refuses them passports they can prosecute appeals to the Secretary of State. If the Secretary of State declines to order the passports to issue I believe a judicial review can be obtained thereon. There is no law known to me under which the courts are stripped of the right to review an abuse of discretion on the part of the Secretary of State (or the Attorney General) in refusing to permit a passport to issue to a person whose renunciation was caused by duress or coercion or where a constitutional defect is resident in a renunciation.
2. Further, it is my opinion that suits lie in the District of Columbia against the Attorney General to cancel a renunciation for legal or constitutional infirmities and that such jurisdiction is part of the general equitable jurisdiction lodged in the judicial branch of government.

3. In addition to the foregoing, I believe you will find that the Attorney General by regulation has established a procedure whereby a person asserting U.S. citizenship can obtain an administrative hearing on an application for a certificate of citizenship and I believe that from an adverse decision by him on such an application a judicial review can be obtained for an abuse of discretion as well as on constitutional grounds.

In addition, I direct your attention to the fact that the McCarran Act does not expressly or impliedly preclude a claimant to U.S. citizenship from a judicial determination of his citizenship. All that it does is authorize a special proceeding for a person denied a "right or privilege" of citizenship to enforce that particular right or privilege. It does not purport to prevent a claimant to U.S. citizenship from resort to a special proceeding for a writ of mandamus to compel his entry into the U.S. or to seek a judicial review of a denial of his right to enter, or to deny to such a person the right to resort to injunctive relief to prevent him from being denied entry inasmuch as such a person asserts the political status of U.S. citizenship and not the mere denial of a "right or privilege". Such a person would not seem to be limited to a resort to a suit under that Act to determine his citizenship. He can prosecute a mandamus proceeding and also can invoke the jurisdiction of equity to establish his citizenship and, as an incident thereto, can enforce a right or privilege of which incidentally he may have been deprived. In addition, there seems to be no bar to such a person seeking a declaratory judgment to establish his citizenship and incidentally to enforce a right or privilege of citizenship of which he may have been deprived.

I do not think that Congress is empowered by the Constitution to deprive a person of citizenship either adjectively or substantively or to bar a person from asserting it or to prevent a court from settling his status for such would be repugnant to Article III of the Constitution. Furthermore, expatriation must be a voluntary act of the individual. I do not believe Congress can take away a native born citizen's citizenship or set up a bar to the determination of such a person's citizenship. I do not believe it has attempted to do any such thing in passing the McCarran Act.

It is presumptuous for your firm, to say the least, to assert in your letter of 29 December 1954 that your "prime consideration in these matters is to do everything possible to help these unfortunate people" and that such a motive is the "sole concern" that actuates you. Members of your firm, its associates and employees, past and present, have done all that it was possible to do, within their means, to injure the mass of renunciants and to harm their cause.

The motives that presently actuate your firm are precisely those which steadily have actuated it since the latter part of 1945, namely, profit and cheap publicity. Until I received your letter of 29 December 1954 I had not supposed it necessary to redirect the attention of your firm to the following matters which, among a number of others, demonstrate your real motives and prove a wanton willingness to harm the renunciants and to injure their cause, viz.:

1. The long, active and scandalous solicitation of renunciation cases by members of your firm at the Tule Lake W.R.A. Center, the Alien Internment Camp at Santa Fe and the Alien Internment Camp at Crystal City.
2. The covert offers made by a member of your firm to members of the Tule Lake Defense Committee to dispense with my services and to engage a member of your firm for their counsel.
3. The false publicity that a member of your firm caused to be published in the Pacific Citizen to the effect that he filed the mass class suits and was the plaintiffs' attorney.
4. The fact that a member of your firm testified before the Dickstein Congressional Committee that all persons who renounced their citizenship while detained in W.R.A. Centers should be deported to Japan.
5. The fact that a goodly number of the renunciants, in the mass class suits, have made oaths that they were induced to renounce their citizenship by the advice of a member of your firm given to them during the course of his representation of them on criminal accusations.
6. The preparation of an affidavit of an hireling of your firm which was filled with false and scurrilous statements but which admitted your firm was engaged in the solicitation of the cases of renunciants and which was submitted by a member of your firm to the ACLU of New York for his own personal reasons.
7. The filing of sundry suits to determine the nationality of certain renunciants with knowledge that they already were parties to prior suits involving that issue.
8. The actions of a member of your firm in causing three renunciants who had been induced by him to represent them to be transferred from Tule Lake to the local immigration detention quarters where he shabbily abandoned them and their cause.
9. The various untrue statements made by a member of your firm in writing and orally to a former U.S. Attorney, a former Assistant U.S. Attorney, and a former attorney for the Justice Department and others concerning litigation affecting certain renunciants.
10. The various and continued surreptitious attempts, without notice or knowledge to me or to the attorneys for the defendants in the class suits and without motions in court and without court orders, to dismiss various parties plaintiff in the mass class suits.
11. The brazen publicity your firm obtained in this country and Japan about the purposes of the visits of members of your firm to Japan in connection with the rights and remedies of renunciants and strandeers.

I believe I should inform you that the attorneys for the defendants several times have made motions, contended and still contend that the class suits are moot for want of jurisdiction over the cause and over the defendants because the defendants no longer detain for deportation or threaten to detain or deport any renunciant, that in consequence, there is no justiciable controversy existing between the parties and that no party beneficiary of the class suits now is being deprived of a right or privilege of citizenship by any defendant and that there now is no jurisdiction here over the Attorney General. Because of the possibility of the class suits being mooted in the event such contentions were to be sustained it was considered by me to be essential to clear as many renunciants as possible administratively before the unsuccessful ones abroad return on certificates of identity for special court hearings because, in the event the district court then were to decide the causes to be moot or the appellate court were to hold them moot for jurisdictional reasons (and the Justice Department intends to obtain a determination of this question), renunciants would be put to considerable expense in instituting individual litigation to cancel their renunciations or to determine their citizenship status and those abroad then probably would have to exhaust their administrative remedies as a prerequisite to the maintenance of individual suits. In the event the causes were held to be moot before each affected renunciant had a full opportunity to be cleared administratively irreparable harm would occur to the remaining ones and each of the remaining ones would be put to considerable personal expense to determine his status and rights.

I certainly would not consent to a substitution of your firm or any member of your firm for parties plaintiff in the class suits whether the persons were onetime beneficiaries or are possible present beneficiaries of the class suits which were brought and are maintained by me for the Tule Lake Defense Committee and the joint benefit of the class but not for the individuals severally unless a consent thereto first be obtained from the committee and the persons who instigated the class suits. No individual is entitled as a matter of right freely to utilize the class suits, at the expense of those who initiated the suits and who have borne the costs and expenses, or to substitute counsel, without the prior consent of the committee and those who instituted the class suit. If any individual desires you or your firm to represent him or her individually such an individual has recourse to individual administrative remedies as well as to individual judicial remedies to determine his or her political status or the validity or invalidity of his or her renunciation.

If any of the persons whose names have been withdrawn from being listed among the persons entitled to the benefits of the class suits, pursuant to order of court, nevertheless has reconsidered and desires again to be listed as such a person so as to receive the benefit of the legal presumption that duress was the causative factor of his or her renunciation I believe a course might be decided upon to enable such a person or persons so to do. I believe the lawyers for the Justice Department who represent the defendants would give me their consent to set aside the withdrawals of their names and to relist them as beneficiaries of the class suits. In such an event, however, such persons

then first would be required to fill out the affidavit forms I sent them many months ago, or have you or other lawyers assist them in so doing, and forward to me for processing through the office of the U.S. Attorney here and the Justice Department. If they thereby obtain administrative clearance they can obtain U.S. passports and if administrative clearance is denied they then can apply for certificates of identity and, in due course they would be eligible for court hearings at which, if they so desired, they could obtain the services of whatsoever attorneys they might desire to appear specially for them. However, I wish to point out to you that I certainly would not and will not consent to this procedure if such persons refuse first to endeavor to obtain administrative clearance and seek to return on certificates of identity without first so doing and I would refuse my consent in the event the hearings of such persons in court were set down or tried to be set down by you or anyone else for court hearing in advance of the hearings of other renunciants here and abroad who first have sought administrative clearance and who are entitled to priority in having their hearings in court. If the persons about whom you have inquired are willing to follow out such a procedure and you are willing to be bound by such a procedure I will seek the necessary consent thereto from the committee. However, I wish you to understand that the committee and representatives of those who initiated the class suits have informed me that they will not consent to substituting you or any member of your firm as counsel for plaintiffs in the class suits or any of them. In consequence, the purported substitutions relating to Sumio Kono and Kiyoharu Umekubo, like the ones returned to you December 16, 1954, herewith are returned to you.

In view of the foregoing facts it seems to me that you have transgressed the lawful limits of propriety in communicating with the attorneys for the government in what your letter of 29 December 1954 terms to be an effort to have them agree that the dismissals of the above-mentioned persons be set aside. You are presumptuous also in stating that you presume I have no objection to such a course of conduct. In consequence, in the event you wish to move in the class suits to substitute yourself or your firm for any plaintiffs whomsoever whether they once were listed as beneficiaries or are presently listed as beneficiaries of the class suits your efforts and motion or motions will be resisted by the Tule Lake Defense Committee, the persons who instituted the class suits and by me.

Very truly yours,

February 23, 1955

Department of Justice
Department of Justice Building
Washington 25, D. C.

Attn: Enoch E. Ellison, Esq.

Gentlemen:

Re: ADACHI, Fumiko Rose
No. 146-54-2198

In reply to your letter of February 18, 1955, please be informed that Mrs. Fumiko Rose Adachi was joined as a party plaintiff in the mass suits on Sept. 20, 1948 as : ADACHI, Fumiko Rose. Her birthdate is Dec. 18, 1923, and birthplace is Sacramento, California. She was listed on one of your lists, enclosed with your letter of March 10, 1954, under Designation XVIII - which erroneously reported her birthdate as 11-12-23.

Very truly yours,

Re: ADACHI, Fumiko Rose Mrs.

Joined in suit under Order of
Sept. 20, 1948 as -

ADACHI, Fumiko Rose

She was listed on Gov. Design. List
~~of~~ sent to us March 10, 1954,
as Des. XVIII (This list showed her
birthdate as 11-12-23)

Birthdate: Dec. 18, 1923

Birthplace: Sacramento, Calif.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

gW

WEB:PJG

146-54-2198

93-1-1320

FEB 18 1955

Wayne Collins, Esquire
Attorney at Law
Mills Tower
220 Bush Street
San Francisco 4, California

Re: Fumiko Adachi (nee Sako)
No. 146-54-2198

Dear Mr. Collins:

Reference is made to the affidavit filed by the above subject which was sent in to this office by United States Attorney Lloyd H. Burke on February 9, 1955. We are unable to identify this subject as a party plaintiff in the Abo suit and would therefore appreciate your advising this office of her birth date and the date of her joinder to the suit.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

JOINED: ORDER OF 9/26/48
ADACHI, FUMIKO ROSE

By: *Enoch E. Ellison*
Enoch E. Ellison
Chief, Japanese Claims Section

March 10, 1955

Department of Justice
Department of Justice Building
Washington 25, D. C.

Attn: Enoch E. Ellison, Esq.

Gentlemen:

Re: Tadashi Izuhara, a Plaintiff in
Abo, et al., v. Brownell, et al.,
No. 25294, USDA, San Francisco.

On March 1, 1955, the affidavits of Tadashi Izuhara, along with others, were delivered to the U. S. Attorney's office here for administrative processing. Mr. Izuhara has written me that there is an error in his typewritten answer to Question 8(A) in the affidavit forms. His answer thereto indicates that he was a member of the Suiko Sha which is in error. The "X" therein was intended for his answer to membership in the Hokoku Seinen-Dan. The residue of his answers to the subdivision of Question 8 indicate that he was actually referring to the Hokoku Seinen-Dan.

Very truly yours,

WJB:PJO

93-1-1320

MAR 11 1955

AIR MAIL

Lloyd H. Burke, Esquire
United States Attorney
422 Post Office Building
7th and Mission Streets
San Francisco 1, California

Re: Abo et al v. Brownell et al; Furuya et al v.
Brownell et al; Consolidated Actions, Civil No.
25294 and 25295. Renunciation of citizenship,
Title 8 U.S.C. 801(i).
Your reference: CEC:hw.

Dear Mr. Burke:

Preliminary examination of some of the affidavits of renunciations submitted by your office indicates that we could advise your office to enter into the necessary arrangements for disposition of the cases in accordance with this Department's letter of September 21, 1953, to Mr. Wayne M. Collins, were it not for the fact that there is evidence of record that particular subjects expatriated themselves by recovery of Japanese citizenship through the entry of their names in the Koseki (family register). See former Title 8 U.S.C. 801(a), now 8 U.S.C. Sec. 1481 (a)(1).

In an effort to arrive at some reasonable solution to this problem this office consulted with the Department of State with the following results. The view of the Department of State is that the question of whether or not a person has effectively recovered Japanese nationality by an act such as the registration of his name in the Koseki, must in the case of persons resident in Japan be determined by a competent tribunal of the Japanese Government according to the laws of Japan. The Department of State advised that it is willing to apply the following procedure in instances where they are notified by this Department's letter that the case of a plaintiff in the Abo suit is within the purview of the Murakami decision but that judgment could not be stipulated because of an alleged recovery of Japanese citizenship by registration in the Koseki. The appropriate United States consul in Japan will be instructed to receive for processing such a plaintiff's application for documentation as an American citizen upon presentation to him by such plaintiff of a copy of this Department's aforementioned letter to the Department of State and the presentation of a certified copy of a decision of a

competent tribunal of Japan that the alleged recovery of Japanese citizenship was invalid.

This Department in such cases, will not object to the usual stipulation for judgment on the merits upon the receipt in evidence of a certified copy of a decision of a competent Japanese tribunal holding that the purported recovery of Japanese citizenship by the particular renunciant was invalid. We can perceive of no reason why Mr. Collins should object to this procedure in this type of case but in the event that he does, please request him to immediately notify this office of the same via air mail.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By:
Enoch E. Ellison
Chief, Japanese Claims Section

~~Follow~~
UP

March 18, 1955

Department of Justice
Department of Justice Building
Washington 25, D. C.

Attn: Enoch E. Ellison, Esq.
Chief, Japanese Claims Section

Gentlemen:

Re: Kazuji Okimoto; Your Letter - 3/4/44,
File: WEB:CMR; 146-54-1171; 93-1-1320, and
Grace Akiye Sukimoto; Your Letter - 3/9/55;
File: WEB:CMR; 146-54-543; 93-1-1320.

In your letters to Lloyd H. Burke, Esq., United States Attorney, at San Francisco, you gave notice of administrative clearance of Kazuji Okimoto, born Dec. 28, 1920, and Grace Akiye Sukimoto, born Nov. 1, 1922, who presently are in Japan. The letters were not accompanied by copies of any letters to the State Department. I would be grateful if you would forward to me copies of the letters to the State Department so that I may transmit them to the respective parties in Japan for presentation to the U. S. Consul.

Very truly yours,

INCLOSURE

Nº 97099

FROM

Department of Justice

7—849

WEB:CMR

146-54-1171

146-54-543

93-1-1320

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

CS

MAR 25 1955

Wayne M. Collins, Esquire
Mills Tower, 220 Bush Street
San Francisco 4, California

Re: Kazuji Okimoto, 146-54-1171; 93-1-1320, and
Grace Akiye Sukimoto, 146-54-543; 93-1-1320.

Dear Mr. Collins:

This will acknowledge receipt of your letter of March 18, 1955, relative to the above-captioned cases.

With reference to the case of Grace Akiye Sukimoto, our records reflect that copies of our letter to the Department of State were forwarded to Mr. Burke on March 9, 1955. Because of the possibility that they may have gone astray, a copy of our letter is enclosed herewith.

In processing the case of Kazuji Okimoto, we inadvertently failed to advise the Department of State of our action. We are now advising the Department of State and a copy of this letter is, likewise, enclosed.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By: *Enoch E. Ellison*
Enoch E. Ellison
Chief, Japanese Claims Section

Encl. No. 97099

March 30, 1955

Department of Justice
Department of Justice Building
Washington 25, D. C.

Attn: Enoch E. Ellison, Esq.

Gentlemen:

Re: George Joji Kawata - Birthdate: 5/4/22

Enclosed find extra copy of affidavit of George Joji Kawata of San Francisco, California, a renunciant whose original affidavit and two copies were forwarded to you on or about Feb. 9, 1955, by the U.S. Attorney's office here for administrative processing.

In the event that Mr. Kawata is cleared, his employer wishes to send him to Japan for a short business trip. In consequence, I would be grateful were you to place him on the list of persons seeking administrative clearance and for a U.S. passport.

Very truly yours,

April 8, 1955

Department of Justice
Department of Justice Building
Washington 25, D.C.

Attn: Enoch E. Ellison, Esq.
Chief, Japanese Claims Section

Gentlemen:

Re: Hisako Miyata; Your letter -
File: WEB:OC; 146-54-1343; 93-1-1320

In your letter of March, 1955, to Lloyd H. Burke, Esq., United States Attorney, at San Francisco, you gave notice of administrative clearance of Hisako Miyata, born July 30, 1917, who presently is in Japan. The letter was not accompanied by copies of any letter to the State Department. I would be grateful if you would forward to me two copies of the letter to the State Department so that I may transmit a copy to Mrs. Miyata in Japan for presentation to the U.S. Consul.

Very truly yours,

ADDRESS ALL COMMUNICATIONS TO
UNITED STATES ATTORNEY
AND REFER TO INITIALS AND NUMBER

CEC:hv

United States Department of Justice

UNITED STATES ATTORNEY

NORTHERN DISTRICT OF CALIFORNIA

422 POST OFFICE BUILDING

SEVENTH AND MISSION STREETS

SAN FRANCISCO 1

June 14, 1955

Wayne M. Collins, Esq.,
Attorney at Law
1701 Mills Tower
San Francisco 4, California

Re: Abo v. Brownell

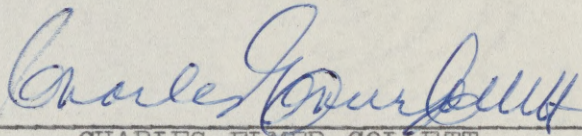
Dear Mr. Collins:

Enclosed is a copy of a letter from the Department concerning the plaintiffs in the Abo cases.

Very truly yours,

LLOYD H. BURKE
United States Attorney

By



CHARLES ELMER COLLETT
Assistant United States Attorney

Enc.

COPY FROM
DEPARTMENT OF JUSTICE
CIVIL DIVISION
WASHINGTON 25, D. C.

WHP/PJG

93-1-1320

June 9, 1955

AIRMAIL

Lloyd H. Burke, Esquire
United States Attorney
422 Post Office Building
7th & Mission Streets
San Francisco 1, California

Re: Abo et al. v. Brownell et al., No. 25294
Furuya et al. v. Brownell et al., No. 25295
United States District Court for the North-
ern District of California, Southern Division.

Dear Mr. Burke:

Reference is made to this Department's letter of September 21, 1953 to Mr. Wayne M. Collins relative to the above-captioned cases, a copy of which was forwarded to you, in which we advised that we would be willing in the cases of individual renunciants to stipulate to the introduction of satisfactory affidavits and to inform the District Court that we would have no objection to the granting of relief on the merits where we deem the cases fairly to fall within the coverage of the Murakami decision, in the light of the further pronouncements of the United States Court of Appeals for the Ninth Circuit, in the instant causes. This agreement reserved the defendants' right to appeal on jurisdictional grounds, since it was our view duly urged in the District Court that the remaining cases of individual renunciants became moot as the result of the termination of the declared war with Japan. As you well know, we have advised your office in the cases of a great many renunciants in the above-entitled actions, that there is no objection to the granting of relief on the merits subject only to the aforementioned right to test the jurisdictional issue on appeal. Counsel for these plaintiffs has refrained from taking the necessary action prerequisite to the entry of judgments since, as we understand it, he wishes to clear administratively as many cases as possible before testing the jurisdiction of the District Court.

As you probably know, the United States Court of Appeals for the Ninth Circuit on April 1, 1954, published its opinion in Acheson v. Furusho, 212 F. 2d 284. The ruling there announced was that it is unnecessary to comply with the substitution time limit prescribed by Rule 25(d) of the F.R.C.P., seemingly because of the view that suits properly brought under Section 503 of the Nationality Act of 1940 (former 8 U.S.C. 903) do not abate upon the

death or resignation of the defendant officer who is a party to the denial of the right of citizenship originally complained of. The Courts of Appeals for the Third, Seventh, and Tenth Circuits have adopted this decision. (See Lehmann v. Acheson, C.A. 3d, 214 F. 2d 403; Chew Yin v. Acheson, C.A. 7th, 216 F. 2d 60; Tom Wing Po v. Acheson, C.A. 10th, 214 F. 2d 661.) While these cases are distinguishable on the facts, the District Court's holding on the jurisdictional issue might arguably fall within the apparent rationale of the Ninth Circuit's holding in the Furusko case. In any event, the possible impact of the aforementioned decisions on the jurisdictional issue in the instant cases was sufficient for this Division to request an interlocutory ruling from the Solicitor General as to the necessity or obligation on the part of the Government to adhere to its original decision to test the jurisdictional issues in the instant cases. The Solicitor General has now advised this office that in the case of renunciants submitting satisfactory affidavits it is not incumbent on the Government to raise the jurisdictional issue heretofore mentioned. Accordingly, you are advised that the views expressed by this office in its letter of September 21, 1953 to Mr. Wayne K. Collins are modified to the extent that in cases where satisfactory affidavits are presented no reservation to test the jurisdictional issues on appeal need be made. If the facts of any particular case in our judgment requires a refusal to execute such an unconditional stipulation to the entry of judgment we shall, of course, so advise you.

In view of the foregoing it is suggested that a copy of this letter be forwarded by your office to Mr. Collins and that a form of stipulation be drafted agreeable to the parties concerned. Before such a stipulation is executed and judgment entered pursuant thereto, we shall appreciate your forwarding a copy to this office so that we may have the opportunity to examine it. Once the stipulation and form of judgment meets with the approval of all parties we suggest that immediate steps be taken to finalize the cases already processed.

Please keep this office advised of all further developments in this matter.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By:

Snock E. Ellison
Chief, Japanese Claims Section

July 14, 1955

To: WMC

From: DP

Enclosed find copy of letter
from Dept. of Justice.

Mr. Collett said he would be
glad to speak to you about the
matter as soon as you return to
the office.

C
O
P
Y

COPY FROM
DEPARTMENT OF JUSTICE
CIVIL DIVISION
WASHINGTON 25, D.C.

C
O
P
Y

GSL:PJG

JUL 12 1955

93-1-1320

AIR MAIL

Lloyd H. Burke, Esquire
United States Attorney
422 Post Office Building
Seventh and Mission Streets
San Francisco 1, California

Re: Abo et al v. Brownell et al, No. 25294-5, United
States District Court for the Northern District
of California.

Dear Mr. Burke:

Please refer to the enclosed copy of letter of June 17, 1955, from Mr. Wayne M. Collins, enclosing copies of proposed "Stipulation re Judgment" and "Final Order Judgment and Decree" for filing in the above entitled causes. Subsequent to June 17, Mr. Collins telephoned this office and was informed that certain modifications of such documents were necessary and accordingly the copies of our proposed stipulations and judgments enclosed herewith reflect the same. In the event that these drafts meet with your approval kindly communicate with Mr. Collins in order that the necessary action may be taken to finalize the judgments.

It is the view of this office that the record in the cases of plaintiffs who are named in the enclosed form of judgments entitled "Final Order, Judgment and Decree as to Certain Named Plaintiffs Who Have Submitted Affidavits in Lieu of Oral Testimony" should have incorporated therein a copy of the affidavit submitted for examination by this Department and subsequently returned to your office. It is our understanding that Mr. Collins would have no objection to this procedure.

Except as hereinafter noted, the enclosed documents prepared by this office contain the names of all of the persons which were set forth in the list of Mr. Collins entitled "For Judgment List."

Masomi Yasuda, minor, at the time of his renunciation, although not included in his list, is added to the enclosed listing as are many other names of plaintiffs as to whom we have withdrawn our Offers of Proof.

Akiko Sano appears on the enclosure containing the names of persons as to whom offers of proof have been withdrawn. She appears on the list submitted by Mr. Collins as a minor but the birth certificate contained in our file indicates that she was born December 5, 1922, rather than December 5, 1925, as indicated by Mr. Collins.

In Mr. Collins' listing, Yoshio Sakamoto, born April 24, 1924, is included as a minor. We have not included her in our listings since our records indicate that her name appears on the judgment entered in the District Court on May 29, 1952.

The listing submitted by Mr. Collins contains the names of some of the plaintiffs who were added as party-plaintiffs over objection of the defendants by Order of the District Court dated July 9, 1953. The list prepared by this office contains the names of such persons with the exception of Kuzuo Douichi. The persons so included, according to our records, are presently in the United States and have never repatriated to Japan. Accordingly they could institute, in appropriate circumstances, under the provisions of 360(A) of the Immigration and Nationality Act of 1952, a suit for a declaratory judgment of citizenship under Title 28 U.S.C. Section 2201. Since the latter statute is also one of the grounds for jurisdiction alleged in the complaints in the instant causes we can perceive no objection to the inclusion of their names in a final judgment. However, we do not deem it proper to so stipulate in the case of Kuzuo Douichi, since our records indicate that he repatriated to Japan and presumably is still there. We adopt this view because under the provisions of Section 360(b) and (c) of the Immigration and Nationality Act of 1952, a person denied admission to the United States on the ground that he is not a national thereof, can test the validity of such action only in habeas corpus proceedings and not otherwise. Since the effective date of the Immigration and Nationality Act was December 24, 1952, and Mr. Douichi was not added as a party-plaintiff until July 9, 1953, we are of the view that his remedy under former Title 8 U.S.C. Sec. 903 has been lost and was not preserved by the savings clause of Section 405(a) of the said Act.

The pertinent file of this office indicates we informed your office on February 1, 1955 that Douichi's case might be considered as coming within the purview of the Murakami decision as supplemented by the Abo decision, and we advised you to dispose of his case in accordance with the procedures outlined in our letter of September 21, 1953, to Mr. Collins. As you know in our letter of September 21, 1953 we reserved the right to test the jurisdictional question and while such right is not preserved in the cases of persons named in our enclosed proposed form of judgments, we deem it necessary to reserve the right in the case of Douichi and accordingly any stipulation which you execute with respect to that plaintiff should contain such reservation.

You will note that Etsuko Hashima Sasaki, born December 4, 1925, is included in the enclosed stipulation even though she has repatriated and was joined by the aforementioned Court Order of July 9, 1953. We have included her name since our records indicate that she had been previously joined as a party-plaintiff on November 26, 1952 prior to the effective date of the Immigration and Nationality Act of 1952.

The following named persons, although included in the list submitted with Mr. Collins' letter of June 17, 1955, are not included in the enclosed stipulations prepared by this office for the reason that they voted in a political election in Japan. As you were previously advised we feel that we can not properly stipulate in such cases. However, as you know, the Department of State has agreed, in the case of such renunciants whose affidavits bring them within the purview of the Murakami decision, to inform the appropriate United States Consul in Japan that such persons might apply for naturalization to such consular officers pursuant to the provisions of Public Law 515, 83d Congress, approved July 20, 1954. Upon naturalization the instant law suits would in our view become moot. The names of such persons are as follows:

<u>Names</u>	<u>Date of Birth</u>
FURUYA, Hideo	2-16-23
IKE, Haruno	2-1-21
IKE, Shizue	5-29-22
NISHI, Hideko	7-31-20
TSUJI, Toshiko	11-18-15

You will note also that the enclosed Stipulation and Form of Judgments contain the names of minors and a person as to whom reports of competent medical doctors indicate that such person did not have sufficient mental capacity to accomplish a legally binding act of renunciation.

Finally, you will observe that the enclosed drafts would not have direct application to named defendants other than the Attorney General and those under his control. This is in accord with the decision of the United States Court of Appeals for the Ninth Circuit in this cause.

Yours very truly,

JOSEPH D. GUILFOYLE
Acting Assistant Attorney General

By:
Enoch E. Ellison
Chief, Japanese Claims Section

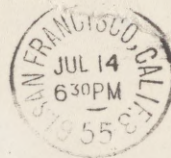
cc: Wayne M. Collins, Esq.
Attorney at Law
San Francisco, California

WAYNE M. COLLINS
ATTORNEY AT LAW
MILLS TOWER, 220 BUSH STREET
SAN FRANCISCO 4, CALIFORNIA

AIR MAIL

AIR MAIL

Wayne M. Collins
Attorney at Law
2135 Willow Street
San Diego 6, California



WAYNE M. COLLINS

ATTORNEY AT LAW

MILLS TOWER, 220 BUSH STREET
SAN FRANCISCO 4, CALIF.

TELEPHONE GARFIELD 1-1218

July 25, 1955

Department of Justice
Washington 25, D.C.

Attn: Enoch E. Ellison, Esq.

In re: Abo et al., v. Brownell, et al.
Cons. No. 25294-5,
USDC; San Francisco

Gentlemen:

In the proposed Stipulations and Judgment forms that you sent to Lloyd H. Burke, Esq., I wish to suggest the following corrections relating to the spelling of certain names of parties plaintiff and birthdates inasmuch as my records indicate variance from yours. They are as follows:

(A) On the "Stipulation That Certain Plaintiffs May Introduce Affidavits In Lieu Of Oral Testimony And That Entry Of Final Judgments Against Certain Defendants Will Not Be Opposed In Such Cases" and the "Final Order, Judgment And Decree" as to them, I suggest that the birthdates of the following be shown as follows:

1. Chida, Tokio, 11-4-23 ~~or 11-4-24.~~
2. Ota, Tokuo, ~~12-12-15~~ or 12-2-12.

(B) On the "Stipulation Re Judgment As To Certain Named Parties-Plaintiff Who Were Incompetent To Renounce Their Citizenship At The Time Of Attempting To Take Such Action" and the "Final Order, Judgment and Decree" as to them, I suggest that there should be stricken from said Stipulation and said Judgment the name of Masami Yasuda, birthdate 4-14-25, inasmuch as he never became a party plaintiff to the suits. (On February 11, 1952, I directed your attention to the fact that my records showed that the Masami Yasuda who was born on March 25, 1913, in Mayhews, Sacramento Co., California joined as a party plaintiff on November 13, 1945 is a different person.) Also, on said Stipulation and Judgment, I suggest that the birthdate of the following named person be shown as follows:

1. Saito, Jean Ayako, 7-30-24 or 7-5-24. OK

(C) On the "Stipulation Re Judgment As To Certain Named Parties-Plaintiff Who Have Been Documented Or Recognized as United States Nationals" and the "Final Order, Judgment And Decree" as to them, I suggest that the following additions in the spelling of names and birthdates be included as to the following plaintiffs, to-wit:

1. Abe, Isumi (Ezumi or Izumi)
2. Amemiya, Sadako, 7-25-18 or 7-12-18.
3. Hamada, Hatsuko, nee Yamakami, 12-20-13 or 12-20-14. OK

Department of Justice
Page 2

- ✓ 4. Minato, Kazue, nee Okazaki, 5-1-18 ~~or 4-29-18.~~
- ✓ 5. Nakahira, Hisao, ~~7-13-22~~ or 7-12-22.
- ✓ 6. Sakamoto, Asako (Asaka) Mary
- ✓ 7. Suenaka, Shizue, 3-26-13 or 3-26-14.
- ✓ 8. Taira, Aiko (Akiko), nee Iida, 7-25-07 or 7-25-06.
- ✓ 9. Tao, Matsuye, 7-12-14 ~~or 7-13-14.~~
- 10. Tonai, Yaye (Yaeko) (Takao), 12-18-20 or 12-18-16.
- 11. Wakayama, Toki June, nee Maruyama, 6-29-14 or 6-28-14.
- ✓ 12. Yoshida, Michiko Hieda (Hiyeda), 7-20-22 ~~or 7-20-23.~~

*delete as
not*

On the same Stipulation and Judgment, the name of Tamashiro, Shigeru should be stricken from the list inasmuch as he withdrew as a plaintiff and was dismissed by order of court dated December 14, 1954.

I suggest also that the captions on the respective Judgment forms should be as follows:

TADAYASU ABO, et al., etc.,

Plaintiffs,

-vs-

HERBERT BROWNELL, JR., as Attorney
General of the United States;
LLOYD H. BURKE, as United States
Attorney for the Northern District
of California and, as such, the head
of the Department of Justice in said
District; et al.; JOSEPH MAY SWING,
as the Commissioner of the United
States Immigration and Naturalization
Service; BRUCE G. BARBER, as the
District Director of the United States
Immigration and Naturalization Service
for the Northern District of California,
etc.; et al.,

Defendants.

and No. 25294-G

MARY KANAME FURUYA, et al., etc.,

Plaintiffs,

-vs-

(same defendants as above),

Defendants.

No. 25295-G

BR

BR

Department of Justice
Page 3

If you consent that the above-mentioned corrections and additions may be made or that they should not be, I would thank you to telephone me at my expense;thereupon, the Stipulation and Judgment forms may be finalized.

Very truly yours,

cc: Lloyd H. Burke, Esq.

July 26, 1955

Charles Elmer Collett, Esq.
Assistant U.S. Attorney
U.S. Attorney's Office
7th and Mission
San Francisco, California

In re: Abo et al., v. Brownell, et al.,
Cons No. 25294-5 USDC S.F.

Dear Mr. Collett:

Enclosed find copy of my letter to Mr. Enoch
E. Ellison in reference to the above-mentioned
cases.

Very truly yours,

WAYNE M. COLLINS
ATTORNEY AT LAW
MILLS TOWER, 220 BUSH STREET
SAN FRANCISCO 4, CALIF.
TELEPHONE GARFIELD 1-1218

July 26, 1955

Department of Justice
Washington 25, D.C.

Attn: Enoch E. Ellison, Esq.

In re: Abo et al., v. Brownell, et al.
Cons. No. 25294-5,
USDC; San Francisco.

Gentlemen:

In the letter I sent you yesterday requesting additions and corrections in the names and birthdates of certain of the parties plaintiff, I failed to advise you therein of the birthplaces of the said persons which are as follows:

Chida, Tokio, Santa Paula, California.
Ota, Tokuo, Covina, California.

Saito, Jean Ayako, Seattle, Washington.

Abe, Isumi (Ezumi or Izumi), San Fernando, California.
Amemiya, Sadako, Glendale, California.
Hamada, Hatsuko, nee Yamakami, Hilo, Hawaii.
Minato, Kazue, nee Okazaki, Los Angeles, California.
Nakahira, Hisao, Los Angeles, California.
Sakamoto, Asako (Asaka) Mary, Phoenix, Arizona.
Suenaka, Shizue, Pacoima, California.
Taira, Aiko (Akiko), nee Iida, Pepeekeo, Hawaii.
Tao, Matsuye, Walnut Grove, California.
Tonai, Yaye (Yaeko) (Takao), Paauiilo, Hamakua, Hawaii.
Wakayama, Toki June, nee Maruyama, Fruitland, Los Angeles, Calif.
Yoshida, Michiko Hieda (Hiyeda), Reedley, California.

Very truly yours,

cc: Lloyd H. Burke, Esq.

INCLOSURE

Nº 96524

FROM

Department of Justice

7—849

GSL/PJC

93-1-1320

AIRMAIL

August 2, 1955

Lloyd H. Burke, Esquire
United States Attorney
422 Post Office Building
7th & Mission Streets
San Francisco 1, California

Re: Abo et al. v. Brownell, et al.
Consolidated Nos. 25294-5; United
States District Court for the
Southern District of California.

Dear Mr. Burke:

There is enclosed herewith a copy of our letter of August 2, 1955, to Mr. Wayne M. Collins, responding to his letter of July 25, 1955. Our letter is self-explanatory but we wish to specifically draw your attention to the fact that the names of Tonai Yaye (Yaeko (Takao) and Wakayama, Toki June (nee Maruyama), should be stricken from the Stipulation and Judgment pertaining to the parties-plaintiffs who have been documented or recognized as United States nationals.

Since this office has delayed the processing of cases of many affiants pending agreement on Stipulations and Judgments, we suggest that this matter be given your immediate attention and when the same is finalized we shall appreciate being advised thereof. We make this request because we shall continue to delay the processing of cases as to which we can stipulate until we are informed of your action in this matter.

Yours very truly,

GEO. S. LEONARD
Acting Assistant Attorney General
Civil Division

By:

Enoch E. Ellison
Chief, Japanese Claims Section

Encl. #300282

cc: Mr. Wayne M. Collins, Esq.
San Francisco, Calif.

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

GSL/PJG

93-1-1320

August 2, 1955

AIRMAIL

Wayne M. Collins, Esquire
Attorney at Law
Mills Tower Building
220 Bush Street
San Francisco 4, California

Re: Abo et al. v. Brownell, et al.
Consolidated Nos. 25294-5;
U.S.D.C., San Francisco.

Dear Mr. Collins:

This acknowledges the receipt of your letter of July 25, 1955, suggesting certain proposed corrections relating to the spelling of certain names and birthdates of parties-plaintiff set forth in the proposed Stipulation and Judgment forms which we previously sent to Lloyd H. Burke, Esquire. Our comment thereon is as follows:

a) The files of this Department contain a certified copy of the birth certificate relative to Chida, Tokio with the date of birth indicated thereon to be November 4, 1923. ✓

The pertinent file of this Department contains a certified copy of a birth certificate relative to Ota, Tokuo with the date of birth being indicated thereon as December 2, 1915. ✓

b) We are in agreement with your suggestion that there should be stricken from the appropriate stipulation previously forwarded the name of Masami Yasuda, born April 14, 1925. ✓

Alternate birth dates of July 30, 1924 or July 5, 1925²⁴ may be used with respect to Saito Jean Ayako, and this for the reason that the pertinent file of this Department does not contain a birth certificate relative to this plaintiff. ✓

c) With reference to paragraph C of your letter of July 25, 1955, we are in agreement as follows:

Abe, Isumi (Ezumi or Izumi) ✓

Amemiya, Sadako, July 25, 1918 or July 12, 1918 ✓

Hamada, Hatsuko, nee Yamakami, December 20, 1913 or ✓
December 20, 1914.

✓ Sakamoto, Asako (Asaka) Mary -

✓ Suenaka, Shizue, March 26, 1913 or March 26, 1914.

✓ ✓ Taira, Aiko (Akiko) nee Iida, July 25, 1907 or July 25, 1906.

The pertinent files of this Department contain a certified copy of a birth certificate relative to Minato Kazuye (nee Okazaki) with the date of birth indicated as May 1, 1918. ✓

The pertinent file of this Department contains a certified copy of a birth certificate relative to Nakahira, Hisao, with date of birth indicated to be July 12, 1922. ✓

This Department also has on file a certified copy of a birth certificate relative to Tao, Matsuye, with date of birth indicated thereon to be July 12, 1914. ✓

The pertinent file of this Department contains a certified copy of a birth certificate relative to Yoshida, Michiko Hieda (Hiyeda), with date of birth indicated thereon to be July 20, 1922. ✓

It would seem desirable where there is available a certified photostatic copy of a birth certificate to use only one birth date in the interest of accuracy. In cases where there is no public document available to check alternate birth dates we, of course, have no objection to their being entered in the Stipulation and Judgment.

✓ We are in agreement with your suggestion that the name of Tamashiro, Shigeru, should be stricken from the list in view of his withdrawal as a party-plaintiff.

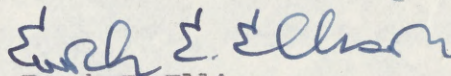
✓ We regret to inform you that a recheck of our files indicates that in addition to the names set forth in our letter to Mr. Burke of July 12, 1955, as voting in Japanese elections, the names of Tonai Yaye (Yaeko) (Takeo) and Wakayama Toki June (nee Maruyama), should have been included therein. Accordingly, their names should be stricken from the Stipulation and Judgment containing the names of plaintiffs who have been documented or recognized as United States nationals. Since we have heretofore advised the Department of State that their cases come within the purview of the Murakami decision, they may take appropriate action to apply for naturalization pursuant to the provisions of Public Law 515, 83d Congress. We have this date instructed Mr. Burke to strike their names from the list previously forwarded.

The suggested captions on the respective judgment forms set forth in your letter of July 25, 1955, are agreeable to this office.

Yours very truly,

GEO. S. LEONARD
Acting Assistant Attorney General
Civil Division

By:


Enoch E. Ellison

Chief, Japanese Claims Section

cc: Lloyd H. Burke, Esq.
United States Attorney
San Francisco

Encl. #96524

WAYNE M. COLLINS

ATTORNEY AT LAW
MILLS TOWER, 220 BUSH STREET
SAN FRANCISCO 4, CALIFORNIA

TELEPHONE GARFIELD 1-1218

September 23, 1955

Attorney General of the United States
Department of Justice
Washington 25, D.C.

Attn: Enoch E. Ellison, Esq., and
Paul J. Grumbly, Esq.

In re: Abo et al., etc., v. Brownell, etc., et al., and
Furuya, et al., etc., v. Brownell, etc., et al.,
Consolidated No. 25294-5-G, U.S. District Court
San Francisco, California.

Gentlemen:

The above-entitled consolidated class lawsuits were filed in the U.S. District Court for the Northern District of California, Southern Division, on Nov. 13, 1945, to determine the United States nationality and citizenship of the plaintiffs and to cancel their renunciations of U.S. nationality executed during 1944 and 1945 under the provisions of Section 401(i) of the Nationality Act of 1940, as amended, while they were detained in relocation, segregation and internment camps by governmental authority, and to cancel the approvals thereof made by the Attorney General. In these pending lawsuits there still are in excess of seven hundred (700) of the plaintiffs who are and continuously have been living in Japan since their transportation there by the government during the latter part of 1945 and in 1946.

The court trials of the parties plaintiff in said lawsuits are being held in abeyance pending an administrative determination of their citizenship status and rights pursuant to a definite administrative procedure presently being engaged in by your office and mine and with the cooperation of the State Department. The intervention of the administrative procedure was decided upon for the purpose of facilitating a disposition of the individual causes of the plaintiffs following an offer by your Department relating thereto and pursuant to a procedure generally approved by the U.S. Court of Appeals for the Ninth Circuit. The administrative procedure is designed in large part to relieve the District Court of the onerous task of trying the hundreds of cases involved on an individual basis which effectively would swamp the district court and consume years of that court's time.

The preparation and the processing of the affidavits of in excess of seven hundred (700) of the parties plaintiff in said lawsuits have not as yet been completed. In consequence, no administrative determination or concession as yet has been made by your Department under the administrative procedure agreed upon and being executed, on the issue whether their renunciations of U.S. nationality and citizenship are void as the products of fear, coercion or duress and no final or conclusive court decision has been made thereon.

The problem that confronts me and those of my clients who are plaintiffs in said lawsuits and are in Japan occasions me considerable difficulty in deciding whether or not the provisions of Section 350 of the Immigration and Nationality Act of 1952, as amended, are applicable to them. That Section provides, in substance, that a person who acquired at birth U.S. nationality and a foreign nationality (Japanese) and who has voluntarily sought or claimed benefits of the nationality of a foreign state (Japan) shall lose his United States nationality by having a continuous residence for three (3) years in the foreign state (Japan) of which he is a national at birth unless he shall prior to the expiration of the three year period (in these cases the expiration period being Dec. 24, 1955) take an oath of allegiance to the U.S. before a U.S. diplomatic or consular officer and have his residence outside of the United States solely for one of the reasons therein referred to or specified.

It is my opinion that the savings clause provisions of Section 405 of that Act renders the provisions of Section 350 thereof inapplicable to those of said plaintiffs in said consolidated lawsuits who are in Japan and who are persons who acquired at birth the nationality of the United States and of Japan and who may have voluntarily sought or claimed the benefits of the nationality of Japan and that it relieves them from compliance with the oath and residential requirements prescribed by Section 350 thereof.

However, if it be a fact that the provisions of Section 350 of that Act are applicable to the plaintiffs in Japan who are in the consolidated lawsuits, there being in excess of 700 of them now in Japan, it is likely that a substantial number of these, by a failure on their part to comply with the oath and residential requirements imposed by Section 350 of that Act before December 24, 1955, would be affected adversely. Their right to a final and conclusive court determination of their U.S. nationality and citizenship in the pending consolidated lawsuits and also to an administrative determination thereof, pursuant to the administrative procedure above-mentioned, might be interfered with or nullified as to any such plaintiff if he is a person who acquired at birth the nationality of the United States and of Japan and "has voluntarily sought or claimed benefits of the nationality" of Japan and it be contended, urged or decided by your Department or the Department of State or be decided by the court that he thereby lost his United States nationality by having a continuous residence for three years in Japan and having his residence there for reasons other than those referred to or specified in Section 350 of that Act.

The said plaintiffs in the consolidated suits who are in Japan and who might be affected by the provisions of Section 350 of said Act are ready and willing to offer to take and also to take the oath of allegiance prescribed by said Act before December 24, 1955. However, it is likely that U.S. Consuls in Japan would refuse to administer the oath of allegiance to them and also would reject their offers to take the oath on the ground that their U.S. citizenship still is in dispute.

Compliance with the provisions of said Act that such plaintiffs have a residence in Japan solely for one of the purposes referred to or specified in Section 350(2) of said Act would necessitate that each of said plaintiffs depart from Japan and relinquish his residence in that country before December 24, 1955, and gain admission to the United States for court trial purposes in said consolidated suits. This, however, could be accomplished only through the medium of "Certificates of Identity" being issued to them upon their applications first being presented and passed on by our Consuls in Japan.

Inasmuch as the U.S. Consuls in Tokyo, Yokohama, Kobe and Fukuoka, and elsewhere in Japan, apparently on instructions from the State Department, presently make it a condition precedent to the issuance of "Certificates of Identity" to them that each of the plaintiff applicants for such a Certificate first must present to the U.S. Consul in Japan a letter, statement or certificate from the Clerk of the U.S. District Court where the said consolidated suits are pending stating that the individual court trial of such plaintiff will be had within six (6) months. However, it is apparent that precipitating individual court trials of the large number of plaintiffs in said consolidated suits within such a period of time would place a quite impossible burden upon the district court and also disrupt the procedure of administrative processing of the administrative phases of the cases of said plaintiffs. In addition, the issuance of "Certificates of Identity" to a large number of plaintiffs of necessity would mean that many of the said plaintiffs who thereafter entered the United States on such Certificates for court trial purposes would have to wait considerably longer than six months for their individual court trials to be concluded.

I am willing, nevertheless, to have all the cases of the plaintiffs who presently are in Japan set down on the calendar of the district court here for individual trials so that the Clerk of that Court may issue such letters, statements or certificates to them to present to U.S. Consuls in Japan to enable "Certificates of Identity" to be granted to them to facilitate their departure from Japan for the United States and to relinquish Japan residence prior to December 24, 1955, and will do so if the provisions of Section 350 of that Act prescribing the oath and residential requirements are deemed, decided or ruled by your Department or the Department of State to apply to them or to any of them. It would be preferable of course, from my viewpoint and, I presume, from that of your Department that the administrative processing pursuant to the administrative procedure heretofore agreed upon in these cases be completed before resort is had to individual court trials inasmuch as this will remove a considerable work burden from your Department, from me and from the court.

For the foregoing reasons I request a ruling from your Department and from the Department of State on the question whether the plaintiffs or any of them in said consolidated lawsuits who are in Japan are required, by December 24, 1955 to comply with the provisions of Section 350 of the Immigration and Nationality Act of 1952, as amended, namely, to take the said oath of allegiance and to comply with the residential requirements referred to and therein specified, in order to preserve their United States nationality and citizenship, or to preserve their right to have their said nationality and citizenship determined administratively, pursuant to the agreement heretofore entered into between us and now in various stages of execution, or to preserve their right to have their said nationality and citizenship determined in the aforesaid consolidated class lawsuits or to forfeit their right to any of said things for failure to comply therewith.

I shall be grateful for a prompt ruling on these questions from your Department and from the Department of State.

Very truly yours,

Mr. Allen

cc: Lloyd H. Burke, U.S. Attorney.

11-4-55

"State Department advises today that this Department will be informed sometime next week ~~xxx~~ their position re application of Section 350 of the Immigration and Nationality Act of 1952 to renunciants presently residing in Japan. We will advise you."

(signed) Enoch E. Ellison
Chief, Japanese
Claims Section

message from Washington received today; will forward copy of wire to office later.

Rec'd 7th 1953

GSA
PBS TELETYPE

1955 NOV 4 PM 2 27

WS088-SF WAY 16 JD 38

WASHINGTON DC 11-4-55 445P

WAYNE M COLLINGS ESQ

ATTY AT LAW 1707 MILLS TOWER BLDG SF 4 CALIF

~~STAEXXX~~ STATE DEPARTMENT ADVISED TODAY THAT THIS DEPARTMENT WILL BE INFORMED SOMETIME NEXT WEEK THEIR POSITION RE APPLICATION OF SECTION 350 OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 TO RENUNCIANTS PRESENTLY RESIDING IN JAPAN. WE WILL ADVISE YOUR.

ENOCH E ELLISON CHIEF JAPANESE CLAIMS SECTION

350 1952

MPR 447P

CONFIRMATION COPY	
This is a confirmation copy of a message telephoned	
to	<i>K. Otagiri</i>
on	<i>11-4-55</i> at <i>2:55</i> M.
GENERAL SERVICES ADMINISTRATION PUBLIC BUILDINGS SERVICE	
KLondike 2-2350 Ext. 6960	
Tel. By	<i>A. Byrne</i>

GENERAL SERVICES ADMINISTRATION

49 FOURTH STREET

SAN FRANCISCO 3, CALIFORNIA

OFFICIAL BUSINESS

TELETYPE DIVISION
11 FEDERAL OFFICE BLDG,
SAN FRANCISCO 2, CALIF.

PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300.



WAYNE M. COLLINS, ESQ
ATTY AT LAW
1707 MILLS TOWER BLDG.
SAN FRANCISCO 4, CALIFORNIA

WEB:PJG

93-1-1320

SEP 30 1955

AIR MAIL

Wayne M. Collins, Esquire
Attorney at Law
Mills Tower Building
220 Bush Street
San Francisco 4, California

Re: Abo et al, v. Brownell et al, and
Furuya et al, v. Brownell et al;
Consolidated Nos. 25294-5-G; U. S. District
Court, San Francisco, California.

Dear Mr. Collins:

This acknowledges the receipt of your letter of September 23, 1955, in which you request a ruling from this Department and from the Department of State as to whether plaintiffs in the above entitled actions who are presently in Japan are required by December 24, 1955, to comply with the provisions of Section 350 of the Immigration and Nationality Act of 1952 as amended.

As you know, Mr. Grumbly has been handling matters relative to this case and due to a death in his family, he was not able to give immediate attention to this matter. However, he has now returned to the office and accordingly an answer to your inquiry should be forthcoming in the immediate future.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By:
Enoch E. Ellison
Chief, Japanese Claims Section

WAYNE M. COLLINS
ATTORNEY AT LAW
MILLS TOWER, 220 BUSH STREET
SAN FRANCISCO 4, CALIFORNIA
TELEPHONE GARFIELD 1-1218

September 23, 1955

Attorney General of the United States
Department of Justice
Washington 25, D.C.

Attn: Enoch E. Ellison, Esq., and
Paul J. Grumbly, Esq.

In re: Abo et al., etc., v. Brownell, etc., et al., and
Furuya, et al., etc., v. Brownell, etc., et al.,
Consolidated No. 25294-5-G, U.S. District Court
San Francisco, California.

Gentlemen:

The above-entitled consolidated class lawsuits were filed in the U.S. District Court for the Northern District of California, Southern Division, on Nov. 13, 1945, to determine the United States nationality and citizenship of the plaintiffs and to cancel their renunciations of U.S. nationality executed during 1944 and 1945 under the provisions of Section 401(1) of the Nationality Act of 1940, as amended, while they were detained in relocation, segregation and internment camps by governmental authority, and to cancel the approvals thereof made by the Attorney General. In these pending lawsuits there still are in excess of seven hundred (700) of the plaintiffs who are and continuously have been living in Japan since their transportation there by the government during the latter part of 1945 and in 1946.

The court trials of the parties plaintiff in said lawsuits are being held in abeyance pending an administrative determination of their citizenship status and rights pursuant to a definite administrative procedure presently being engaged in by your office and mine and with the cooperation of the State Department. The intervention of the administrative procedure was decided upon for the purpose of facilitating a disposition of the individual causes of the plaintiffs following an offer by your Department relating thereto and pursuant to a procedure generally approved by the U.S. Court of Appeals for the Ninth Circuit. The administrative procedure is designed in large part to relieve the District Court of the onerous task of trying the hundreds of cases involved on an individual basis which effectively would swamp the district court and consume years of that court's time.

The preparation and the processing of the affidavits of in excess of seven hundred (700) of the parties plaintiff in said lawsuits have not as yet been completed. In consequence, no administrative determination or concession as yet has been made by your Department under the administrative procedure agreed upon and being executed, on the issue whether their renunciations of U.S. nationality and citizenship are void as the products of fear, coercion or duress and no final or conclusive court decision has been made thereon.

The problem that confronts me and those of my clients who are plaintiffs in said lawsuits and are in Japan occasions me considerable difficulty in deciding whether or not the provisions of Section 350 of the Immigration and Nationality Act of 1952, as amended, are applicable to them. That Section provides, in substance, that a person who acquired at birth U.S. nationality and a foreign nationality (Japanese) and who has voluntarily sought or claimed benefits of the nationality of a foreign state (Japan) shall lose his United States nationality by having a continuous residence for three (3) years in the foreign state (Japan) of which he is a national at birth unless he shall prior to the expiration of the three year period (in these cases the expiration period being Dec. 24, 1955) take an oath of allegiance to the U.S. before a U.S. diplomatic or consular officer and have his residence outside of the United States solely for one of the reasons therein referred to or specified.

It is my opinion that the savings clause provisions of Section 405 of that Act renders the provisions of Section 350 thereof inapplicable to those of said plaintiffs in said consolidated lawsuits who are in Japan and who are persons who acquired at birth the nationality of the United States and of Japan and who may have voluntarily sought or claimed the benefits of the nationality of Japan and that it relieves them from compliance with the oath and residential requirements prescribed by Section 350 thereof.

However, if it be a fact that the provisions of Section 350 of that Act are applicable to the plaintiffs in Japan who are in the consolidated lawsuits, there being in excess of 700 of them now in Japan, it is likely that a substantial number of these, by a failure on their part to comply with the oath and residential requirements imposed by Section 350 of that Act before December 24, 1955, would be affected adversely. Their right to a final and conclusive court determination of their U.S. nationality and citizenship in the pending consolidated lawsuits and also to an administrative determination thereof, pursuant to the administrative procedure above-mentioned, might be interfered with or nullified as to any such plaintiff if he is a person who acquired at birth the nationality of the United States and of Japan and "has voluntarily sought or claimed benefits of the nationality" of Japan and it be contended, urged or decided by your Department or the Department of State or be decided by the court that he thereby lost his United States nationality by having a continuous residence for three years in Japan and having his residence there for reasons other than those referred to or specified in Section 350 of that Act.

The said plaintiffs in the consolidated suits who are in Japan and who might be affected by the provisions of Section 350 of said Act are ready and willing to offer to take and also to take the oath of allegiance prescribed by said Act before December 24, 1955. However, it is likely that U.S. Consuls in Japan would refuse to administer the oath of allegiance to them and also would reject their offers to take the oath on the ground that their U.S. citizenship still is in dispute.

Compliance with the provisions of said Act that such plaintiffs have a residence in Japan solely for one of the purposes referred to or specified in Section 350(2) of said Act would necessitate that each of said plaintiffs depart from Japan and relinquish his residence in that country before December 24, 1955, and gain admission to the United States for court trial purposes in said consolidated suits. This, however, could be accomplished only through the medium of "Certificates of Identity" being issued to them upon their applications first being presented and passed on by our Consuls in Japan.

Inasmuch as the U.S. Consuls in Tokyo, Yokohama, Kobe and Fukuoka, and elsewhere in Japan, apparently on instructions from the State Department, presently make it a condition precedent to the issuance of "Certificates of Identity" to them that each of the plaintiff applicants for such a Certificate first must present to the U.S. Consul in Japan a letter, statement or certificate from the Clerk of the U.S. District Court where the said consolidated suits are pending stating that the individual court trial of such plaintiff will be had within six (6) months. However, it is apparent that precipitating individual court trials of the large number of plaintiffs in said consolidated suits within such a period of time would place a quite impossible burden upon the district court and also disrupt the procedure of administrative processing of the administrative phases of the cases of said plaintiffs. In addition, the issuance of "Certificates of Identity" to a large number of plaintiffs of necessity would mean that many of the said plaintiffs who thereafter entered the United States on such Certificates for court trial purposes would have to wait considerably longer than six months for their individual court trials to be concluded.

I am willing, nevertheless, to have all the cases of the plaintiffs who presently are in Japan set down on the calendar of the district court here for individual trials so that the Clerk of that Court may issue such letters, statements or certificates to them to present to U.S. Consuls in Japan to enable "Certificates of Identity" to be granted to them to facilitate their departure from Japan for the United States and to relinquish Japan residence prior to December 24, 1955, and will do so if the provisions of Section 350 of that Act prescribing the oath and residential requirements are deemed, decided or ruled by your Department or the Department of State to apply to them or to any of them. It would be preferable of course, from my viewpoint and, I presume, from that of your Department that the administrative processing pursuant to the administrative procedure heretofore agreed upon in these cases be completed before resort is had to individual court trials inasmuch as this will remove a considerable work burden from your Department, from me and from the court.

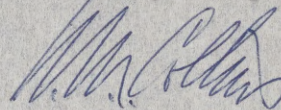
Attorney General of the U.S.

Page 4

For the foregoing reasons I request a ruling from your Department and from the Department of State on the question whether the plaintiffs or any of them in said consolidated lawsuits who are in Japan are required, by December 24, 1955 to comply with the provisions of Section 350 of the Immigration and Nationality Act of 1952, as amended, namely, to take the said oath of allegiance and to comply with the residential requirements referred to and therein specified, in order to preserve their United States nationality and citizenship, or to preserve their right to have their said nationality and citizenship determined administratively, pursuant to the agreement heretofore entered into between us and now in various stages of execution, or to preserve their right to have their said nationality and citizenship determined in the aforesaid consolidated class lawsuits or to forfeit their right to any of said things for failure to comply therewith.

I shall be grateful for a prompt ruling on these questions from your Department and from the Department of State.

Very truly yours,



cc: Lloyd H. Burke, U.S. Attorney.

9/22/55 Rep 7-8200 Extension

1230 PM.

Phil Ellison - gone for day - talked to Burke.

① Preference to Japanese applicants for passports

acc. effect of McCann Act
3 yr. residence

② Will set cases of all Japanese.

Letter from Clark

Certificates of Identity

(Koseki)
registered
by relation

~~Ask State Dept~~ ~~Write Dept Justice~~

Write Justice Dept to get rule

(Change McCann Act)

Inset
with **15** parts can do it
Koski 2 of page

not inset
in inset

Armed = (CH)

(CH)

INCLOSURE

Nº 96202

FROM

Department of Justice

7-849

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

WEB:PJG

93-1-1320

AIR MAIL

NOV 15 1955

Wayne M. Collins, Esquire
Attorney at Law
Mills Tower, 220 Bush Street
San Francisco 4, California

Re: Abo et al, v. Brownell et al, and Furuya et al,
v. Brownell et al. Consolidated No. 25294-5,
U.S. District Court, San Francisco, California.

Dear Mr. Collins:

On September 23, 1955, you made inquiry concerning the question whether the plaintiffs, or any of them, in the above captioned consolidated law suits, who are presently in Japan, are required to comply with the provisions of Section 350 of the Immigration and Nationality Act by December 24, 1955.

This Department in its letter of October 6, 1955, requested the Department of State for an expression of its views relative to the aforementioned question raised by you. The views of that Department are set forth in the enclosed copy of its letter dated November 15, 1955. You will note that the opinion expressed therein has application only to the cases of plaintiffs who were joined in the Abo and Furuya cases prior to December 24, 1952.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By: *Enoch E. Ellison*
Enoch E. Ellison
Chief, Japanese Claims Section

Enclosure
No. 96202

DEPARTMENT OF STATE
WASHINGTON

NOV 15 1955



In reply refer to
136.1/28 Japanese Renunciants ABO

Dear Mr. Burger:

Concerning your letter of October 6, 1955 (File No. WEB:PJG 93-1-1320), this Office agrees that the cases of those plaintiffs who joined in the ABO and FURUYA consolidated lawsuits prior to December 24, 1952 come within the savings clause provisions of Section 405(a) of the Immigration and Nationality Act of 1952, under the theory that the pending court actions are "rights in the process of acquisition". The question raised by Mr. Collins, attorney for the plaintiffs in those suits, is whether plaintiffs who acquired both United States and Japanese nationality at birth and who have been living in Japan since 1945 or 1946 would be adversely affected, in the event that a decision favorable to them is obtained on the renunciation question, by a failure on their part to take the oath of allegiance prescribed in Section 350 of the Immigration and Nationality Act prior to December 24, 1955, or to terminate their residence in Japan before that date.

Under the savings clause theory we believe that it would not be necessary for the ABO and FURUYA plaintiffs residing in Japan to take any action prescribed by Section 350, even though some of them may have voluntarily sought or claimed the benefits of Japanese nationality. Moreover, as this Office holds that the three year period of residence in the foreign state of which the individual is also a national by birth, as prescribed in Section 350, must be voluntary residence, there might well arise some question as to the propriety of holding that plaintiffs' residence if continued in Japan after December 24, 1955, in the particular circumstances of these cases, was of that character. The administration of an oath

of

Mr. Warren E. Burger,
Assistant Attorney General,
Department of Justice,
Washington 25, D. C.

of allegiance - conditional or otherwise - to these persons who on the present record are considered as aliens would seem to be an unauthorized procedure, as well as an unnecessary burden on the American Consular staff in Japan. The filing of applications for certificates of identity at this stage of the proceedings would likewise appear to be unwarranted and a considerable burden on the Consular staff.

In answer to the specific question contained in paragraph two of your letter, we believe that the requirement of seeking or claiming "benefits" of the nationality of a foreign state is met when the dual national has performed an affirmative act with the intent or purpose of obtaining, enjoying or fulfilling some right, privilege, advantage or profit of a national of a foreign state. Examples would be:- applying for a foreign passport or identity card; applying for registration as a national of the foreign country; holding real property in a zone where such ownership is limited to nationals of the foreign state; seeking a scholarship available only to the nationals of the foreign state. It is our opinion that the benefit sought or claimed does not have to be actually obtained or that such a benefit, if obtained, need not be a continuing one or be enjoyed for any particular period of time. Mere residence in a foreign state, without any overt act of seeking or claiming benefits as nationals of the state is not believed to bring one within the provisions of Section 350. The same is true of cases in which the act whereby the benefit was sought or claimed is a voluntary act which, of itself, would cause expatriation under another provision of United States law, such as voting.

Sincerely,

Willis H. Young
Deputy Director, Passport Office

C
O
P
Y

DEPARTMENT OF STATE

Washington

Nov 15 1955

In reply refer to
136.1/28 Japanese Renunciants ABO

Dear Mr. Burger:

Concerning your letter of October 6, 1955 (File No. WEB:PJG 93-1-1320), this Office agrees that the cases of those plaintiffs who joined in the ABO and FURUYA consolidated lawsuits prior to December 24, 1952 come within the savings clause provisions of Section 405(A) of the Immigration and Nationality Act of 1952, under the theory that the pending court actions are "rights in the process of acquisition". The question raised by Mr. Collins, attorney for the plaintiffs in those suits, is whether plaintiffs who acquired both United States and Japanese nationality at birth and who have been living in Japan since 1945 or 1946 would be adversely affected, in the event that a decision favorable to them is obtained on the renunciation question, by a failure on their part to take the oath of allegiance prescribed in Section 350 of the Immigration and Nationality Act prior to December 24, 1955, or to terminate their residence in Japan before that date.

Under the savings clause theory we believe that it would not be necessary for the ABO and FURUYA plaintiffs residing in Japan to take any action prescribed by Section 350, even though some of them may have voluntarily sought or claimed the benefits of Japanese nationality. Moreover, as this Office holds that the three year period of residence in the foreign state of which the individual is also a national by birth, as prescribed in Section 350, must be voluntary residence, there might well arise some question as to the propriety of holding that plaintiffs' residence if continued in Japan after December 24, 1955, in the particular circumstances of these cases, was of that character. The administration of an oath

Mr. Warren E. Burger,
Assistant Attorney General
Department of Justice,
Washington 25, D.C.

of allegiance - conditional or otherwise - to these persons who on the present record are considered as aliens would seem to be an unauthorized procedure, as well as an unnecessary burden on the American Consular staff in Japan. The filing of applications for certificates of identity at this stage of the proceedings would likewise appear to be unwarranted and a considerable burden on the Consular staff.

In answer to the specific question contained in paragraph two of your letter, we believe that the requirement of seeking or claiming "benefits" of the nationality of a foreign state is met when the dual national has performed an affirmative act with the intent or purpose of obtaining, enjoying or fulfilling some right, privilege, advantage or profit of a national of a foreign state. Examples would be:-applying for a foreign passport or identity card; applying for registration as a national of the foreign country; holding real property in a zone where such ownership is limited to nationals of the foreign state; seeking a scholarship available only to the nationals of the foreign state. It is our opinion that the benefit sought or claimed does not have to be actually obtained or that such a benefit, if obtained, need not be a continuing one or be enjoyed for any particular period of time. Mere residence in a foreign state, without any overt act of seeking or claiming benefits as nationals of the state is not believed to bring one within the provisions of Section 350. The same is true of cases in which the act whereby the benefit was sought or claimed is a voluntary act which, of itself, would cause expatriation under another provisions of United States law, such as voting.

Sincerely,

Willis H. Young
Deputy Director, Passport Office

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

WEB:PJG

93-1-1320

SEP 30 1955

AIR MAIL

Wayne M. Collins, Esquire
Attorney at Law
Mills Tower Building
220 Bush Street
San Francisco 4, California

Re: Abo et al, v. Brownell et al, and
Furuya et al, v. Brownell et al;
Consolidated Nos. 25294-5-G; U. S. District
Court, San Francisco, California.

Dear Mr. Collins:

This acknowledges the receipt of your letter of September 23, 1955, in which you request a ruling from this Department and from the Department of State as to whether plaintiffs in the above entitled actions who are presently in Japan are required by December 24, 1955, to comply with the provisions of Section 350 of the Immigration and Nationality Act of 1952 as amended.

As you know, Mr. Grumbly has been handling matters relative to this case and due to a death in his family, he was not able to give immediate attention to this matter. However, he has now returned to the office and accordingly an answer to your inquiry should be forthcoming in the immediate future.

Yours very truly,

WARREN E. BURGER
Assistant Attorney General
Civil Division

By: *Enoch E. Ellison*
Enoch E. Ellison
Chief, Japanese Claims Section

Department of Justice
Washington

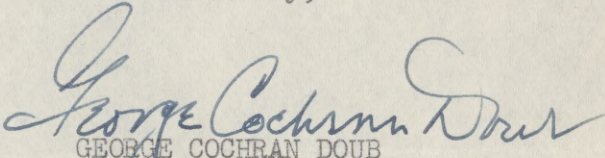
AUG 7 1958

Wayne M. Collins, Esquire
Mills Tower Building
220 Bush Street
San Francisco 4, California

Dear Mr. Collins:

This is to advise you that 258 renunciants who are party-plaintiffs in the Abo suit have neither submitted affidavits under our arrangement therein nor sought administrative rulings on the validity of their renunciations. You will recall that during the conference in Judge Goodman's Chambers on November 21, 1958, you stated you would dismiss from the suit all persons who failed to submit affidavits within six months. As more than eight months have elapsed, I would appreciate being advised of the action you intend to take in the matter.

Sincerely,


GEORGE COCHRAN DOUB
Assistant Attorney General