

16.6

NAKASUJI, KIYOSHI

1957-1958

78/177
c

V/S

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

In re: KIYOSHI NAKASUJI,)
Appellant. }

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

Kiyoshi Nakasuji, residing at #188, Izumi-Dori, 6 Chome, Nada-Ku, Kobe City, Japan, born in Honolulu, T.H., on May 25, 1926, hereby appeals from the "Certificate Of The Loss Of The Nationality Of The United States" issued to him under date of June 8, 1951, by T. M. Manley, Vice-Consul of the United States of America, at Kobe, Japan, which was approved by the Department of State on November 28, 1952, and from the denial of the issuance to him of a United States passport for which he had applied and which said denial was based upon a purported expatriation under the provisions of Section 401(c) of Chapter IV of the Nationality Act of 1940 by reason of his service in the Japanese Army from July 7, 1945, to September 5, 1945. The appellant also moves to reopen said cause and have the same reconsidered and moves that thereupon a United States passport issue to him as a United States citizen.

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

- a. Affidavit of Kiyoshi Nakasuji (appellant) dated June 4, 1958.
- b. Petition of Kiyoshi Nakasuji (appellant) dated August 15, 1957 (being duplicate of original filed with U.S. Consul at Kobe in 1957).
- c. Affidavit of Sadasuke Nakasuji, under seal, dated June 15, 1958, accompanied by translation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

- d. Statement of Tomeichi Ono, under seal, dated June 20, 1956, accompanied by translation, (and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1956).
- e. Testimony of Koichi Kawaguchi, under seal, dated June 19, 1957, accompanied by translation, (and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1957).
- f. Affirmation of Eiji Kameoka, under seal, dated June 20, 1957, accompanied by translation, (and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1957).
- g. Statement of Masato Kohda, under seal, dated June 18, 1957, accompanied by translation, (and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1957).
- h. Testimony of Iwao Ishihara, under seal, dated July 30, 1957, accompanied by translation, (and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1957).
- i. Certificate of Mitsuo Hayashi, under seal, dated August 15, 1957, relating to Japanese law, accompanied by translation thereof, (and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1957).
- j. Copy of letter of Paul S. Tsutsui dated October 18, 1956, the original of which, apparently, was filed with the U.S. Consul at Kobe in 1956.
- k. Letter of recommendation by Capt. Raymond E. Jackson dated October 23, 1956, and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1956.
- l. Letter of recommendation by Roy T. Mori, Civilian Personnel Officer, dated August 19, 1957, and, apparently, being a duplicate original of one filed with the U.S. Consul at Kobe in 1957.
- m. Copy of Certificate of Proficiency issued to appellant showing completion of management training course as at January 26, 1954, executed by Colonel Allen F. Haynes.

Attention is drawn to the fact that Exhibits (d), (e), (f), (g), (h) and (i) bear seals and that it is counsel's belief that the said documents, being under seal, and having heretofore been filed and accepted by the U.S. Consul at Kobe, Japan, in appellant's cause, constitute verified statements under oath. Exhibit (c), the affidavit of Sadasuke Nakasuji, father of appellant, dated June 15, 1958, is under seal and was intended by appellant to be filed with the U.S. Consul at Kobe, Japan, but was forwarded

1 to counsel instead to be annexed as an Exhibit hereto and, in
2 consequence, may not be deemed by your Review Board to be accept-
3 able as a verified statement under our law and, if such be the
4 case, counsel will obtain a new affidavit from said person to be
5 executed before a Notary Public in Hawaii and be forwarded to your
6 Board to be considered on this appeal.

7 Appellant and his counsel request that if any of the docu-
8 ments heretofore submitted as evidence on appellant's application
9 for a United States passport or any of the documents herewith
10 submitted as evidence to be considered on this appeal and these
11 motions to reopen and reconsider appellant's application for a
12 United States passport for any reason be deemed insufficient in
13 form or in substance as to cause an unfavorable decision to be
14 rendered thereon the appellant requests an opportunity to have such
15 deficiency corrected.

16 This appeal and these motions to reopen the cause and for re-
17 consideration of the cause on its merits, for cancellation of the
18 aforesaid Certificate of Loss of Nationality and for the issuance
19 to appellant of a United States passport as a citizen of the
20 United States are made in the light of the application of the rules
21 announced in the recent United States Supreme Court decisions of
22 Perez v. Brownell, 79 S.Ct. 568, and Nishikawa v. Dulles, 78 S.Ct.
23 612, both decided on March 31, 1958, and which rules we declare are
24 applicable, controlling and dispositive of the issues involved
25 herein.

26 In the Perez case the Supreme Court decided that "Congress
27 can attach loss of citizenship only as a consequence of conduct
28 engaged in voluntarily", citing Mackenzie v. Hare, 239 U.S. 299,
29 311-312.

30 The appellant's induction into the Japanese Army on July 7,
31 1945, at the age of 19 years while he was a minor and his subsequent
32 service therein for less than two (2) months to September 5, 1945,

1 were not voluntary acts on his part but were coerced and being
2 the products of duress did not expatriate him.

3 In the Perez decision the Supreme Court declared:

4 "Whatever divergence of view there may be as to what
5 conduct may, consistent with the Constitution, be said
6 to result in loss of nationality, cf. Perez v. Brownell,
7 78 S.Ct. 568, it is settled that no conduct results in
8 expatriation unless the conduct is engaged in voluntarily.
9 Mandoli v. Acheson, 344 U.S. 133, 73 S.Ct. 135, 97 L.Ed.
10 143."

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

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

22 We submit that the evidence is conclusive that the appellant
23 induction into and service in the Japanese Army was wholly in-
24 voluntary and the product of duress and fear and that his said con-
25 scription and service did not as a matter of law or of fact con-
26 stitute an expatriating act on his part and that his case should
27 be reviewed in the light of the principles of law announced in the
28 Perez and Nishikawa decisions.

29 Wherefore, appellant request that his motion to reopen the
30 cause and for reconsideration thereof be granted and that his
31 appeal be sustained and that a United States passport issue to
32 him.

Dated: July 17, 1958.

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

Attorney for appellant Kiyoshi Nakasuji

Japan
Prefecture of Hyogo
City of Kobe
Consulate General of the
United States of America)
SS:

AFFIDAVIT OF KIYOSHI NAKASUJI

My name is Kiyoshi Nakasuji and my address is #188, Izumi-Dori, 6-chome, Nada-Ku, Kobe City, Japan. I was born on May 18, 1926, at Honolulu, T.H. My father told me that he registered my birth on May 25, 1926, with the Japanese Consulate in Honolulu, T.H.

My parents brought me to Japan on June 9, 1941, for a visit when I was 15 years old and dependent upon them. I was not aware that there was danger of war breaking out at the time and neither were my parents but after being in Japan for a while there were rumors that there was a possibility of war and because of the rumors I wished to return to the United States and my parents concurred in my wish. I applied to the Immigration Office in Kobe to return to the United States in September of 1941 but was notified that it was impossible as the last ship to the United States, the Tatsuta Maru of the NYK Line had left in the latter part of August, 1941, and that there was no chance for me to get passage to leave. Being unable to get back to the United States I had to remain in Japan and my parents with whom I lived decided that I must attend the Tanabe Commercial School and I was enrolled as a student there.

I was 15 years old when Japan bombed Pearl Harbor and started World War II and all during the war period the Japanese people were very anti-American and my folks and I were always worried about the fact that my American citizenship and the fact that we had lived in the United States would cause us to be suspected by the police authorities and by the neighbors.

I talked many times to my friend Masato Kohda who had been brought by his parents to Japan and who also was trapped in Japan by the war and who lived with his folks and had come from Honolulu, T.H., where he was born, about the war and how wrong it was for Japan to start the war and that Japan was sure to lose it and about our predicament in being caught in Japan with no way to leave and about the hostility of the people and how the police kept foreigners under suspicion and how we should keep American citizenship no matter what happened. When it looked as though we would sometime be called for conscription and how we could avoid it I told him that I just wouldn't be conscripted. He knows that I was opposed to being conscripted and that I protested in 1945 to the authorities against being impressed into the Japanese Army. He lives at 1173, Tanami, Kushimoto, Nishimura-gun, Wakayama Prefecture.

In June of 1945, shortly after I became 19 years of age, I was informed that I would have to report for a physical examination for conscription. This meant that if I was found to be in good physical condition I would be inducted into the Japanese Army. I was just 19 years old at that time. I didn't wish to be drafted because I was an American citizen and didn't have any loyalty or owe any allegiance to Japan. I was an American citizen and all my sympathies were with the United States and its Allies. I talked to my father and mother about what I was to do to avoid getting conscripted. (My father, Sadasuke Nakasuji, lives at 1255, Kamanuwai Lane, Honolulu, T.H. My mother, Yaeno Nakasuji has passed away.) They told me that because I was a dual citizen and in Japan and couldn't possibly get away that I would have to submit to the conscription law or else the Kempeitai (police) would arrest me and I would be punished either by being sent to prison or to death because the police and military officials wouldn't show any mercy on anyone who refused to be conscripted. Also they said they feared

the police would take reprisal on them if I refused to abide by the conscription laws and that the neighbors who looked on us with suspicion because of our having come from the United States and might cause them serious trouble. I was worried about these things but I told my parents that I should try to get a postponement from conscription as long as possible and if I was lucky to get a postponement maybe Japan would be defeated before the time came for me to be inducted. My parents told me though that I didn't have any ground to defer conscription and that if I tried to do it anyway I would be considered a draft evader and betrayer of the country and would be taken by the kempeitai and thrown into jail or be turned over to the Japanese army officials for punishment by them which would be much worse for me. Scared as I was about these things happening to me I decided that I must try to do something to avoid being conscripted so I went and talked to Mr. Tomoeichi Ono who was the civilian Village Headman in Tanami, Kushimoto-cho, Wakayama Prefecture, who was in charge of military affairs then, and told him that I was an American citizen and that I wouldn't be drafted or serve in the Japanese Army and that I wouldn't do anything to take any action against the United States or fight against the United States which was my own country. He told me that I didn't have any choice in the matter as I was a dual national and had to obey the law and that if I didn't obey the law but refused to submit to the physical examination or to be inducted the kempeitai would take me into custody as a draft evader and I'd be sent to prison and that the military authorities might take me by force and if I resisted or disobeyed I could be shot. What he had to tell me made me fear punishment more than before if I resisted being drafted.

Nevertheless, even though what Mr. Ono told me scared me more than ever, I decided that I would see what I could do to avoid conscription and see if I could get out of it. I went to see Mr. Eiji Kameoka, who had taught me at the Tanabe Commercial School and also I went and talked to another one of my teachers, Mr. Koichi Kawaguchi, who then was the Chief of the Special Attack Squad. I told both of them that I was born in Hawaii and was an American citizen and that I was opposed to being impressed into the Japanese Army and that I would not take any action against the United States which was my own country where I was born and that I was loyal to the United States. Both of them, however, told me that I was a dual citizen and in Japan even though I had American nationality I could not escape being conscripted because of the Japanese conscription laws and that if I was stubborn and resisted I would be arrested as a draft law violator by the kempeitai and would be sent to prison for a long term and that if the military authorities didn't like my resistance to the law I could be taken anyway by force and also could be sent to prison or be shot. Both of them told me that as the country was in control of the police and military that those authorities would think nothing of subjecting me to immediate and the severest type of punishment for draft evasion and for being a betrayer of the nation. Mr. Eiji Kameoka's address is 1038, Tanami Kami, Kushimoto City, Nishimuro-Gun, Wakayama Prefecture. Mr. Koichi Kawaguchi's address is 66, Sakae-machi, Tanabe City, Wakayama Prefecture. What both of those gentlemen told me made me worry all the more and I was too afraid of punishment to refuse to have my physical examination and to be inducted on July 7, 1945, when I was just 19 years old and was compelled by my fear of punishment to submit to induction into the Shinodayama Field Artillery Battalion of the Japanese Army at Tanami-mura, Nishimuro-Gun, Wakayama Prefecture, after receiving notice on July 5, 1945, that I must do so. The induction officers were informed of my birth in Honolulu and of my American citizenship but it made no difference to them because of my being considered also

be to a Japanese national and subject to their conscription laws.

Except for my fear of sure and severe punishment for violating the Japanese conscription laws I would not have submitted to the physical examination or to induction but I was too afraid for my own personal safety to carry on any further resistance to my conscription. I was compelled to serve in the Japanese Army for 39 days digging trenches for air raid shelters in Wakayama and didn't take part in any fighting. I was released on August 15, 1945, and was still just 19 years of age. During the time I had to serve I tried my best to avoid working and got into trouble for my misbehaviour and was bawled out frequently and several times was struck by officers as I had told them I was an American and they knew I was opposed to doing anything to help Japan. Mr. Iwao Ishihara whose address is 2 Susano-dori, 2-chome, Hyogo-Ku, Kobe, knows about my attitude and the trouble and difficulties I was in during the 39 days I was in the Japanese Army. I was required by the laws and authorities in Japan to submit to the physical examination, to induction and to that military service in Japan and was compelled to do so by my knowledge and fear that disobedience and resistance to such things would have resulted in swift and severe punishment to me. I was compelled to comply and did so involuntarily and against my will and under protest.

I worked for the United States Army as interpreter, translator and clerk, special auto-driver foreman in Kobe from October 1945, to August 1957.

/s/ Kiyoshi Nakasuji

Kiyoshi Nakasuji

Subscribed and sworn to before me this 4th day of June,
1958.

/s/ Howard B. Crotinger

Vice Consul of the
United States of America

(CONSULAR SEAL)

Service No. --
Tariff No. 58a
Fee Paid: U.S.\$ nil
Local Cy. equiv. ¥ nil

COPY

P E T I T I O N

15 August 1957

TO: American General Consul in Kobe

FROM: Kiyoshi Nakasuji
PER. DOMICILE: 856, Tanami, Kishimoto City, Nishimuro-gun,
Wakayama-Pref.
PRE. ADDRESS: 23/243, Hitotsu Kuwayama, Obu, Yamada-cho,
Hyogo-ku, Kobe
DATE OF BIRTH: May 18, 1926
BIRTH AT: Honolulu, Hawaii Island

SUBJECT: Recover of American Citizenship

Sir:

It was on June 19, 1947, when I made a formal proceeding at the American Consul for the first time to get back my citizenship. But this was, regret to say, flatly turned down on the ground that I joined the former Japanese Army for 39 days starting July 7, 1945 to August 15, the same year.

In an attempt to get my aim, everything conceivable has been put upon Tokyo International Law Office, Civil Government Offices at Osaka and Kobe, without any effect.

As per attached certificates herewith, before I was forced to enlist at Shinodayama Field Artillery Battalion on July 7th, 1945, I accompanied by Mr. Masato Kohda, my Hawaiian born friend, attended at the Kempeitai Kushimoto Branch or the Village Office to see the headman concurrently the man in charge of Military Affairs and firmly claimed that I, American Citizen, though also Japanese National on the other hand, wouldn't join in action against America, my mother land. To this, what I heard from him was that, regardless of what dual nationality I have, I had to join the Army, abiding by the Japanese Constitution in which conscription was instituted as one of the three major obligations toward the Japanese National. It would be a violation of the Constitution, if I refused and, to add to this, that never was absolutely allowed to do when the nation had been placed under the war structure.

Thereupon I rushed to Mr. Kameoka, my teacher, who taught me while I was in the Tanabe Commercial School, and Mr. Kaichi Kawaguchi (Chief of the Special Attack Squad at that time) and asked for their opinions about this matter. All I had got was that theirs were the same as was given by the headman in charge of the Military Affairs.

Judging from the circumstances the whole nation was under at the time, there was no other opinion to be heard of, whatever source I might go, so I believe now. Being arrested as a betrayer to the nation was a thing I could not stand for the sake of my conscience as a man. For this reason I gave up and joined the army.

Right after I did so, with an excuse I was sick or something, I did take no fighting discipline of any kind even after I was moved to a camp in Wakayama. My army life whiling away 39 days, doing nothing against my mind, came to an end.

Since U.S. Army came ashore on the Sumitomo Beach, Wakayama, in September 1945, I got a post as interpreter for them. In March 1946, I moved with my Corps, 530 M.P. to Kobe and kept working with them there. Ever since I was with U.S. Army C.I.D., Q.M., Port Command and so on without intermission. During the time, I took a Management Training Program from the Army and received letters of recommendation from officers in charge at the places where I had got a position.

I earnestly beg you to take a Special Consideration upon my actions moved by the Limitless devotion toward my mother land, America, and the desire of living for ever through rainy day with my brother-in-law who rendered distinguished services as a soldier belonging to 442 corps of U.S. Army, cousins and sisters in America and to let me have an American Citizenship again.

Respectfully Yours,

/s/ Kiyoshi Nakasuji

Affidavit

Name: Sadasuke Nakasuji
Address: 1255 Kamanuwai Lane,
Hawaii, T.H.

In June, 1941, I returned to visit the home land, Japan, for summer vacation, accompanied by my father, Gorokichi Nakasuji, and my son, Kiyoshi.

With the new school term which began from September drawing near, I took along my son to Kobe at the end of August to go through due formalities for getting back to Hawaii. To my great regret, however, I learned at the Kobe Emigration Office that the Tatsuta Maru (?), the last boat bound for Honolulu, had already set out on 24th of the month. Then I went to the Kobe Custom House and found out that this fact was not wrong. Now there was no way left for me but to have him give up returning to Honolulu and enter the Tanabe Commercial School as he was asking me.

Soon after the war broke out. When he was 19 years old, he had to serve in the army. He asked me a lot of things concerning the conscription. Every time our talks would come round to this problem, I told him that, if he had not been willing to be drafted, he would have been against one of the three major obligations to Japanese national, resulting that he would have been punished to penal servitude, if handled lightly, or condemned to shoot to death, if gone worse. My persuasion kept on going; that was no way that I let him have a double nationality, otherwise he would not have had to be afraid of violating the obligation.

It was after an unflagging and enduring admonition that I could get him to be enlisted and his soldiering came to an end in only those 35 days, owing to the armistice.

I affirm the above to be true in every particular.

/s/ Sadasuke Nakasuji
Sadasuke Nakasuji

June 15th, 1958

(SEAL)

COPY

UNITED STATES ARMY FORCES FAR EAST
HEADQUARTERS, CAMP KOBE, APO 317

CERTIFICATE OF PROFICIENCY

This is to certify that

NAKASUJI, KIYOSHI		
Name	Rank	SN

has

on the 26th day of January 1954

Satisfactorily completed the prescribed course in

MANAGEMENT TRAINING

conducted by

Headquarters, Camp Kobe

/s/ Allen F. Haynes
ALLEN F. HAYNES
Colonel, TC, Commanding
Signed _____
Commandant