

174

KISHI, MASAO

1946 - 1955

78/177
C

U. S. DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

HEARING:

File No. 1610-2111

| | |
|--------------------------------|-----------------------|
| Date: | June 18, 1946 |
| Place: | San Pedro, California |
| Presiding Inspector: | Lloyd H. Jorgensen |
| Official Japanese Interpreter: | Henry K. Imanaka |
| Stenographer: | Bernice Volding |
| Respondent: | MASAO KISHI |

Hearing conducted in the Japanese language; Henry K. Imanaka, Official Japanese Interpreter.

BY PRESIDING INSPECTOR TO RESPONDENT:

Q Do you speak and understand the English language?

A No.

Q Do you speak and understand the Japanese language?

A Yes.

Q What is your full true and correct name?

A Masao Kishi.

Q I show you, read and explain to you, decoded telegraphic warrant of arrest in deportation proceedings, issued by the District Director, Immigration and Naturalization Service, Los Angeles, California, on June 18th, 1946, wherein it is charged that Masao Kishi, who entered this country at New Orleans, Louisiana, on the 21st day of March, 1944, has been found in the United States in violation of the following provisions of the immigration laws, to wit:

(1) The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; (2) The Passport Act approved May 22, 1918, as amended, and the Act of February 5, 1917, in that, at the time of entry, he did not present an unexpired passport or official document in the nature of a passport issued by the government of the country to which he owes allegiance or other travel document showing his origin and identity, as required by Executive Order in effect at time of entry; and, (3) The Immigration Act of May 26, 1924, as amended, in that, he is an alien ineligible to citizenship and was not entitled to enter the United States under any exception of paragraph (c), Section 13 thereof. You are herewith furnished a copy of this decoded telegraphic warrant of arrest which you may retain. Do you fully understand the nature of the charges specified therein?

A Yes, I understand.

Q The warrant of arrest in your case provides that you may be released from custody, insofar as this Service is concerned, under bond in the sum of \$1,000. Are you willing and able to furnish such bond?

A I desire to retain an attorney, and I would like to consult with him regarding my bond.

Q In accordance with the warrant of arrest in your case, you are now to be accorded a hearing to show cause why you should not be deported in conformity with law; do you understand?

A Yes.

Q Mr. Ernest Besig of San Francisco, California, has filed notice of appearance as attorney of record in your case. Do you desire to be represented in this proceeding by Mr. Besig?

A Yes.

Q Your hearing will be continued at this time to afford your attorney an opportunity to be present at your hearing; do you understand?

A I understand.

HEARING CONTINUED:

Detention Status: Det. Q., San Pedro, California.

Personal Description: Japanese; male; single; age 24; height - 5'7"; weight - 140; yellow complexion; black hair; black eyes; born February 2, 1922, Lima, Peru. Parents: (Father) Hajime Kishi; (Mother) Shiduye Kishi; both born in Japan.

I HEREBY CERTIFY that the foregoing is a true and correct transcript of my stenographic notes taken thus far in this continued hearing.

Bernice Volding,
Clerk-Stenographer.

WARRANT

FOR ARREST OF ALIEN

DECODED TELEGRAPHIC

United States of America

DEPARTMENT OF JUSTICE

WASHINGTON

Los Angeles, California

No. 1610-2111
To OFFICER IN CHARGE, IMMIGRATION & NATURALIZATION SERVICE, SAN PEDRO, CALIFORNIA
Or to any Immigrant Inspector in the service of the United States.

WHEREAS, from evidence submitted to me, it appears that the alien

MASAO KISHI

who entered this country at New Orleans, La.,
on ----- the 21st day of March, 1944, has been found in the United States
in violation of the immigration laws thereof, and is subject to be taken into
custody and deported pursuant to the following provisions of law, and for the
following reasons, to wit:

The Passport Act approved May 22, 1918, as amended, and the Act of Feb. 5, 1917,
in that, at the time of entry, he did not present an unexpired passport or official
document in the nature of a passport issued by the government of the country to
which he owes allegiance or other travel document showing his origin and identity,
as required by Executive Order in effect at time of entry.

The Immigration Act of May 26, 1924, as amended, in that, he is an alien ineligible
to citizenship and was not entitled to enter the United States under any exception
of paragraph (c), Section 13 thereof.

The Immigration Act of May 26, 1924, in that, at the
time of entry, he was an immigrant not in possession of a
valid immigration visa and not exempted from the presenta-
tion thereof by said Act or regulations made thereunder.

I, by virtue of the power and authority vested in me by the laws of the
United States, hereby command you to take into custody the said alien and
grant him a hearing to enable him to show cause why he should not be deported
in conformity with law. The expenses of detention, hereunder, if necessary,
are authorized payable from the appropriation "Salaries and Expenses, Immi-
gration and Naturalization Service, 1946 ." Authority has been granted to
release under bond in the sum of \$1000.00, the alien named.

For so doing, this shall be your sufficient warrant.
Witness my hand and seal this 18th day of June, 1946.

ALBERT DEL GUERCIO
District Director
Los Angeles District

mfd

WARRANT FOR ARREST

OF

Served by me at _____

_____ 194____, at _____ M.

Alien was then informed as to cause of arrest, the conditions of release as provided therein, advised as to right of counsel and furnished with a copy of this warrant.

TITLE _____

Witness my hand and seal this _____ day of _____, 194____.

Special Agent in Charge

DEPARTMENT OF JUSTICE
BUREAU OF IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON, D. C. 20535
OFFICE OF THE ATTORNEY GENERAL
UNITED STATES OF AMERICA

U.S. DEPARTMENT OF JUSTICE
BUREAU OF IMMIGRATION AND NATURALIZATION SERVICE
Form I-206
(Rev. 3-1-45)

File

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Lafayette Bldg., 5th & Chestnut Sts.

NSE 0400/19166

March 6, 1950

Mr. Masao Kishi
Seabrook Farms
Bridgeton, N. J.

Dear Sir:

You are directed to be present for a continued hearing in deportation proceedings in your case in Room 717 Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania on March 13, 1950 at 2:00 p.m.

A copy of this letter is being furnished your representative, Ernest Besig, American Civil Liberties Union, 461 Market Street, San Francisco, California.

Very truly yours,

Karl I. Zimmerman
District Director

COPY TO:

Ernest Besig, Esquire
American Civil Liberties Union
461 Market Street
San Francisco 5, California

For your information.

Karl I. Zimmerman
9/24/50

XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

Lafayette Bldg., 5th & Chestnut Sts.

NSE 0400/19166

March 6, 1950

Mr. Katsumi Kishi
Seabrook Farms
Bridgeton, New Jersey

Dear Sir:

You are directed to be present for a continued hearing in deportation proceedings in your case in Room 717 Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania on March 13, 1950 at 12:30 p.m.

A copy of this letter is being furnished your representative Ernest Besig, Esquire, 461 Market Street, San Francisco 5, California.

Very truly yours,

Karl I. Zimmerman
District Director

✓ COPY TO:

Ernest Besig, Esquire
American Civil Liberties Union
461 Market Street
San Francisco 5, California

For your information.

Karl I. Zimmerman
TKK

I-226
(5-25-50)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Lafayette Building, Fifth & Chestnut Streets
Philadelphia 6, Pennsylvania

Date August 17, 1950

File No. A-7,549,306

Mr. Masso Kishi
Seabrook Farms
Bridgeton, New Jersey

Dear Sir:

Pursuant to warrant of arrest served on you on June 18, 1946, you are advised to appear at 1:00 P.M., on August 23, 1950, in Room 717 Lafayette Building, 5th & Chestnut Streets, Philadelphia, Pa., for a hearing to enable you to show cause why you should not be deported from the United States in conformity with law. **Your father should accompany you at the time of your hearing.**

The hearing under said warrant is being held pursuant to authority contained in and jurisdiction conferred by Sections 19 and 20 of the Act of February 5, 1917, as amended (8 U.S.C. 155, 156), and Sections 5, 7, and 8 of the Administrative Procedure Act (5 U.S.C. 1004, 1006, 1007).

It is asserted that (1) you are an alien, and (2) you entered the United States on March 21, 1944 at New Orleans, Louisiana; that you are in the United States in violation of the Immigration Act of May 26, 1924, in that, at the time of entry, you were an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; The Passport Act approved May 22, 1918, as amended, and the Act of Feb. 5, 1917.
(OVER)

You are advised that at the hearing you have the right to be represented by counsel of your own choice and at your own expense, or by any other person duly qualified to practice before the Immigration and Naturalization Service. You are further advised that you should bring to the hearing any documents which you desire to have considered in connection with the case. If any of these documents is in a foreign language, you should bring the original and certified translation thereof. **A copy of this letter is being furnished your attorney, Wayne M. Collins, Esq., 1701 Mills Tower, 220 Bush Street, San Francisco 4, Calif.**

You are further advised that if you are deported or if you depart under an order of deportation you will not be permitted to enter the United States within one year after the date of your departure. If you desire to enter the United States after one year has elapsed from the date of your deportation or departure under an order of deportation you must obtain permission from the Attorney General to apply for admission into the United States. If you enter the United States at any time after deportation or departure under an order of deportation without receiving permission from the Attorney General, you will be guilty of a felony and upon conviction be liable to imprisonment of not more than two years or a fine of not more than \$1,000, or both such fine and imprisonment.

COPY TO: Wayne M. Collins, Esq.
1701 Mills Tower
220 Bush Street
San Francisco 4, Calif.

Karl I. Zimmerman
District Director

By: Charles B. Richter
District Docket Officer

1917, in that, at the time of entry, you did not present an unexpired passport or official document in the nature of a passport issued by the government of the country to which you owe allegiance or other travel document showing your origin and identity, as required by Executive Order in effect at time of entry; and The Immigration Act of May 26, 1924, as amended, in that, you are an alien ineligible to citizenship and were not entitled to enter the United States under any exception of paragraph (c), Section 13 thereof.

File

XXXXXXXXXXXXXXXXXXXX
XX
XXXXXXXXXXXXXXXXXXXX
Lafayette Bldg., 5th & Chestnut Sts.
Philadelphia 6, Pa.

September 20, 1950

DDO A-7,549,306

Mr. Masao Kishi
96 Hoover Village Annex
Seabrook Farms
Bridgeton, New Jersey

Dear Sir:

Hearing in the deportation proceeding against you was deferred on August 23, 1950 to enable you to have counsel present at your hearing.

A continued hearing will be held in Room 717 Lafayette Building, 5th and Chestnut Streets, Philadelphia, Pennsylvania on September 26, 1950 at 9:00 a.m.

A copy of this letter is being furnished Wayne M. Collins, Esquire, 1701 Mills Tower, 220 Bush Street, San Francisco 4, California.

Very truly yours,

Karl I. Zimmerman
District Director

By: *Charles B. Richter*
District Docket Officer

COPY TO:

Wayne M. Collins, Esquire
1701 Mills Tower
220 Bush Street
San Francisco 4, California

COPY FOR ATTORNEY
OR REPRESENTATIVE

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A-7549306 - Philadelphia (0400-19166)

(Appeal 15)

In re: MASAO KISHI

JUN 14 1951

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT: Wayne M. Collins, Esquire
1701 Mills Tower
220 Bush Street
San Francisco, California

CHARGES:

Warrant: Act of 1924 - No immigration visa
Act of 1918 - No passport
Act of 1924 - Ineligible to citizenship

Lodged: None

APPLICATION: Voluntary departure and preexamination

DETENTION STATUS: Released on parole

DISCUSSION: The respondent is a 29-year-old single male, a native and citizen of Peru of the Japanese race. He arrived in the United States on March 21, 1944, at the port of New Orleans, Louisiana accompanying his father who was being brought to the United States as an enemy alien for internment. The aliens were brought to the United States on a United States Army Transport and were not accorded an examination by an immigrant inspector at the time of their entry. The respondent was not in possession of the required immigration documents at the time of his entry. He is ineligible for naturalization because of his race.

Respondent is employed as a farm laborer at a salary of about \$60 a week. He has about \$1,000 in a bank but is unwilling to pay his own transportation back to his native land because he alleges he was brought to the United States against his will. He is ineligible for preexamination because he is a person who is of a race ineligible to citizenship. His mother resides in Japan. He has a father and brother in the United States. Both are presently under deportation proceedings. The brother was also brought to the United States under the same circumstances created in the respondent's case. Although the respondent will soon have seven years' residence in the United States, he would be denied the discretionary relief of suspension of deportation after he had achieved such

residence, as he was brought to the United States solely for reasons connected with the war, Matter of W, A-5908014, B.I.A., 1950 (Interim Decision 225).

It thus appears that the sole discretionary relief which would be available to the respondent would be voluntary departure. Although he has indicated a refusal to accept such relief, we believe he should be afforded a reasonable period, approximately 30 days, to depart voluntarily before deportation is ordered, in accordance with the rule laid down in United States ex rel Sommerkamp v. Zimmerman, 178 F. 2d 645 (C.A. 3, 1949).

ORDER: It is ordered that an order of deportation be not entered at this time but that the alien be required to depart from the United States, without expense to the Government, within such period of time and under such conditions as the Officer in Charge of the District deems appropriate.

IT IS FURTHER ORDERED that the alien's applications for preexamination and suspension of deportation be denied.

ASSISTANT COMMISSIONER
ADJUDICATIONS DIVISION

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
WASHINGTON 25, D. C.

PLEASE ADDRESS REPLY TO

AND REFER TO THIS FILE NO.

June 18, 1951

A-7549306

Wayne M. Collins, Esquire
1701 Mills Tower
220 Bush Street
San Francisco, California

Dear Sir:

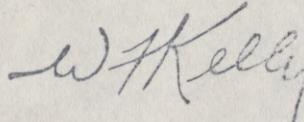
The attached is a copy of the decision and order of the Commissioner in the case of **MASAO KISHI**.

This order is final unless an appeal is taken to the Board of Immigration Appeals in Washington, D. C., and notice of appeal is filed within **15** days (not including Saturdays, Sundays, and holidays) after receipt of this notice.

If appeal is desired, notice of appeal, forms for which are attached, should be executed in triplicate. Two copies must be filed with the local field office of the Immigration and Naturalization Service in which the proceedings were held and the third copy must be filed directly with the Board of Immigration Appeals, Department of Justice, Washington, D. C.

Any questions which you may have will be answered by the local immigration office nearest your residence.

Sincerely yours,



ASSISTANT COMMISSIONER
ENFORCEMENT DIVISION

REGISTERED MAIL

Enclosures

ADJ-18
7-22-47

June 27, 1951

District Director
U.S. Immigration & Naturalization
Service
Lafayette Building, 5th & Chestnut Sts.
Philadelphia, Pennsylvania

Dear Sir:

Re: Masao Kishi - File No. A-7549306

Enclosed find duplicate original notices of appeal in the above cause, together with duplicate original briefs on behalf of the appellant. An original of said notice and said brief have been forwarded this date to the Board of Immigration Appeals.

I wish to inform you that it is my understanding that Masao Kishi has moved to San Diego and his present address is c/o Mr. K. Kaneko, 2926 G St., San Diego 2, California.

Very truly yours,

June 27, 1951

Board of Immigration Appeals
Department of Justice
Washington 25, D. C.

Dear Sirs:

Re: Masao Kishi - File No. A-7549306

Enclosed find notice of appeal in the above-entitled case together with the brief for the appellant in connection with his appeal. Duplicate originals of said notice of appeal and briefs have been forwarded to the Commissioner of Immigration at Philadelphia.

Very truly yours,

U. S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS
WASHINGTON

7549306, 5981983

ADDRESS REPLY TO BOARD OF
IMMIGRATION APPEALS AND
REFER TO FILE NUMBER

Kishi

November 28, 1951

Wayne M. Collins, Esquire
1701 Mills Tower
San Francisco 4, California

My dear Mr. Collins:

Reference is made to the appeal entered from the order of the Commissioner of Immigration and Naturalization concerning the above case.

For your information, there is enclosed herewith copy of the decision of the Board of Immigration Appeals.

This decision will not become effective until notification has been transmitted by the Immigration and Naturalization Service to the field office which handled the case. Any further information concerning this matter may then be obtained from the field office.

Sincerely yours,

Thos. G. Finucane

Thos. G. Finucane
Chairman

NOV 28 1951

Files: A-7549306 and A-5981983

In re: MASAO KISHI and KATSUMI KISHI

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT: Wayne M. Collins, Esquire
1701 Mills Tower
San Francisco 4, California

CHARGES:

Warrant: Act of 1924 - No immigration visa
Act of 1918 - No passport
Act of 1924 - Ineligible to citizenship

Lodged: None

DETENTION STATUS: Released on parole

APPLICATION: Voluntary departure and preexamination

Respondents are twenty-nine years old and twenty-six years old, natives and citizens of Peru of the Japanese race. They arrived in the United States on March 21, 1944, at the port of New Orleans, Louisiana, accompanying their father who was being brought to the United States as an enemy alien for internment. Respondents have testified that they came of their own volition, in order to accompany their father who was elderly and unwell. It appears that at the time that Peruvian citizens of Japanese ancestry were being evicted from Peru, respondents accompanied the father to the United States, and respondents' mother and two younger members of the family returned to Japan.

It is the contention of respondents' counsel that because respondents were brought into the United States against their will that they have not made an entry into the United States and therefore are not persons who are illegally resident in the United States. The courts require only that persons brought into the United States in these circumstances be afforded an opportunity to depart voluntarily before deportation is ordered. U. S. ex rel Sommerkamp v. Zimmerman, 178 F. 2d. 645 1949. Respondents have been offered the opportunity to depart from the United States voluntarily, and it is apparent that they have no intention of doing so.

Respondents are found to be persons of good moral character. They have been self-supporting at all times since they have been allowed to accept employment in the United States. Their internment record is without fault. They have testified that they support their father who is unable to work. They have testified that they requested ~~ex~~expatriation of their Japanese citizenship, and this expatriation was granted. Therefore, they are stateless persons.

Counsel argues that respondents are not persons ineligible to naturalization under 8 U.S.C.A. 703, that the law does not expressly prohibit naturalization of residents born in Japan or of Japanese parents. That section of the statute expressly extends the naturalization privilege "only to white persons, persons of African nativity or descent, etc." We cannot accept counsel's extension of the statute. It is well established that the privilege of naturalization is a statutory thing to be conferred by the sovereign state, in this case by Congress. The statute does not include respondents within its terms.

It has been the Attorney General's holding in cases of this kind that suspension of deportation would not be granted to persons who were brought to the United States for reasons solely connected with the war, except in cases where they have been in the United States the required seven years and have United States citizen dependents. This policy has been discussed by us in many cases, Matter of Westerhausen, A-590801 (May 13, 1950), Matter of Sommerkamp, A-5907999 (June 12, 1950) and by the Court of Appeals for the Second Circuit in Mastropasqua v. Shaughnessy, 180 Fed. 2d. 999, C. A. 2, 1950. However, the situation of the Peruvian Japanese is somewhat different from the cases of crews interned from captured German and Italian vessels, or the cases involving German immigrants who were brought to the United States from South American countries for internment because they were considered to be suspicious or dangerous persons. The Peruvian Japanese were brought to the United States through no fault of their own. In addition, the Government of Peru has refused until very recently to accept those who wish to return or who have not found sanctuary elsewhere. It is our understanding, however, that very recently a few of these persons have been permitted to return to Peru. For this reason we will grant respondents an additional six months in which to make an attempt to return to Peru. If they make a bona fide attempt and fail, then this order is without prejudice to a reopening of these cases and a reapplication for suspension of deportation on the ground of seven years residence in the United States.

ORDER: It is ordered that the outstanding orders of deportation be withdrawn and the aliens be permitted to depart from the United States voluntarily without expense to the Government, to any country of their choice, within such period of time, in any event not less than six months, and under such conditions as the officer-in-charge of the District deems appropriate.

San Diego, California

1607-20406 & 1610-2112

December 19, 1951

Mr. Masao KISHI
&
Mr. Katsumi KISHI
3130 K. Street
San Diego, California

Dear Sirs:

This is to advise that under date of November 23, 1951, the Board of Immigration Appeals ordered that the outstanding Warrants of Deportation in your cases be withdrawn and that you be permitted to depart from the United States voluntarily without expense to the Government, to any country of your choice, within six months from the date of the decision. In view of this decision it is suggested that you make arrangements for departure before May 19, 1952 and that you make arrangements with this office in order that your departures may be verified.

Very truly yours

U.L. Press
Officer in Charge

cc-Wayne M. Collins
1701 Mills Tower
San Francisco 4, California

Masao Kishi
3130 "K" St.,
San Diego 2, Calif.

January 5, 1952

Mr. Wayne M. Collins
San Francisco, Calif.

Dear Mr. Collins:

I am writing to you in regards to the letter my father wrote you on Dec. 24, 1951.

Last Wednesday, when we went to the Immigration office for our report, Mr. Simpson told us that we had to leave United States on our own by May 28, 1952 to any place we want to go. He also said that in case we don't make any arrangements for departure before May 19, 1952, the Immigration will proceed by all means to deport us from the United States.

I asked Mr. Simpson about getting married and he told me that my wife if I get married will be deported with me and my marrying a citizen it would not help my staying in the United States.

I presume you got a copy from the Immigration
on our case. I would like to hear from you about this
matter as soon as possible.

Sincerely yours,

Masao Kishi

January 8, 1952

Mr. Hajime Kishi
3130 "K" Street
San Diego 2, California

Dear Mr. Kishi:

Katsumi Kishi and Masao Kishi are born native born Peruvian citizens. In consequence, neither one of them can be deported to Japan. They can be ordered deported to Peru but inasmuch as the Peruvian Government thus far refuses to authorize their return to Peru, it is obvious that they cannot be deported even to Peru.

If Masao marries a citizen of the United States or a legally resident alien of the U.S., a new application can thereafter be made by me requesting a suspension of deportation for him on that ground. Therefore, when he does marry he should write me and let me know the date and place of marriage and the maiden name of the lady he marries, and also notify me of the place and date of her birth.

There is no reason for you to be alarmed at any deportation order which the Immigration Office may enter against you or your children. They are in no danger of being deported to Japan; neither are you.

Each of the Peruvians who has not yet had a hearing on an application for suspension of deportation soon will be given such a hearing. In all those cases where a child has been born in this country the parents will be granted a suspension of deportation. Likewise all those persons who marry citizens of the United States or legally resident aliens will receive a suspension of deportation. However, in all cases where single aliens are in the country and have no family ties here, orders to deport them to Peru will be issued by the Immigration Service. If Peru finally refuses to re-admit them to Peru, it is possible that the Immigration Service thereafter might attempt to

deport those persons to Japan. However, there is no reason for any of them to feel any degree of alarm. The Immigration Service has agreed to allow ample time for me to complete my negotiations with the Peruvian authorities with a view toward having Peru authorize their return. If the Government ever attempts to deport any of such persons to Japan I shall commence a test suit to prevent the Government from so doing and that suit would take a minimum of two years to have the legal issues decided by the United States Supreme Court. If by chance I were to lose such a case in the U.S. Supreme Court a special bill covering all the Peruvians might be introduced in Congress.

In view of the foregoing there is no reason for you or any of the Peruvian group to fear being deported to Japan. As a matter of fact, it is doubtful if the Government actually could deport anybody to Peru. It is my opinion that the courts might hold that none of the Peruvian group could even be deported to Peru against their consent.

Very truly yours,

Reopen this
on basis

4261 Chamourne Ave.,
San Diego, California.

January 25, 1952

Mr. Wayne M. Collins
Mills Tower, 220 Bush St.,
San Francisco 4, California.

Dear Mr. Collins:

On January 19, 1952, I was united in marriage to Agnes Masaya Tange, at Senshin Buddhist Church in Los Angeles, California. Agnes was born in Florin, Sacramento County, California, on May 19, 1926. Therefore, she is a citizen of the United States.

Please make an application for a suspension of deportation for me.

Thank you.

Sincerely yours,
Masao Kishi

4261 Chamoune Avenue
San Diego 15, California
March 31, 1952

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

Dear Mr. Collins:

Last January, after I was married, I wrote you the details concerning my wife and the wedding, as you requested. In the previous letter, you said that you will make a new application requesting a suspension of deportation as soon as you heard from me, so I am wondering if you have made it for me.

In a letter to me and my brother, Katsumi, from the immigration office here, we were advised to leave here voluntarily before May 19, 1952. In case we are asked about our arrangements for departure, what can we say? What will happen to us in case we do not report our intentions of departure by the nineteenth of May? Will you advise us what we should report to the office here?

My brother, Katsumi, isn't married, but does he have a chance to have a hearing reopened?

About a month ago, my father was told that his hearing will be opened after questioning his neighbors. But there has been no notice of a hearing as yet.

I appreciate your great effort in our behalf.

Sincerely yours,

Masao Kishi

April 11, 1952

Mr. Masao Kishi
4261 Chamoune Avenue
San Diego 15, California

Dear Mr. Kishi:

Application has been made to the Commissioner of Immigration to reopen your case to enable you to apply for suspension of deportation by reason of your marriage to an American citizen. In due course of time I expect that the cause will be reopened and be set down for hearing on that issue. There is no reason for you or your brother to be alarmed about deportation.

The Peruvian Government continues to refuse to admit the Peruvian Japanese of which fact the Commissioner has actual knowledge. It is necessary for the Immigration Service to conclude each case either by granting the application for suspension or by ordering a person deported. However, in those cases where deportation is ordered the Peruvian affected will not be deported so long as negotiations with the Peruvian Government toward repatriating them to Peru are continuing.

If at any time the Immigration authorities actually commence to deport any Peruvian to Japan a suit in a U.S. District Court can be commenced to test whether the Immigration authorities have any right or not to deport such a person.

Very truly yours,

April 11, 1952

The Commissioner of Immigration
Washington, D. C.

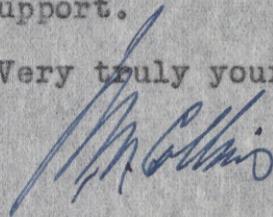
Dear Sir:

In re: Masao Kishi
No. A-7549306; 1607-20406

On November 28, 1951, the Board of Immigration Appeals ordered the outstanding orders of deportation of the alien above-named to be withdrawn and to permit voluntary departure.

I am enclosing herewith amended application to reopen cause of the alien above-named to enable him to apply for suspension of deportation on the ground that he has married an American citizen who is dependent upon him for maintenance and support.

Very truly yours,



U. S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS
WASHINGTON

R 8/9/52
ADDRESS REPLY TO BOARD OF
IMMIGRATION APPEALS AND
REFER TO FILE NUMBER
7549306
Kishi

July 29, 1952

Wayne M. Collins, Esquire
1701 Mills Tower
San Francisco 4, California

My dear Mr. Collins:

Reference is made to your interest in the above case.

For your information, there is enclosed herewith copy of the
decision and order of the Board of Immigration Appeals.

Sincerely yours,

Leigh L. Nettleton

Leigh L. Nettleton
~~Thos. G. Finucane~~
Acting Chairman

JUL 29 1952

IN THE MATTER OF
MASAO KISHI

File: A-7549306 - Los Angeles
(1607/20406)

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT: Wayne M. Collins, Esquire
1701 Mills Tower,
San Francisco 4, California

This case comes before us on motion of counsel dated April 11, 1952, requesting that the hearing be reopened for the reception of new material evidence and for the purpose of affording the respondent an opportunity to apply for suspension of deportation.

The respondent, a 30-year-old married male, native and citizen of Peru, of full Japanese blood, has resided continuously in the United States since his arrival at New Orleans, Louisiana on March 21, 1942, as an enemy alien for internment. When this case was last before us on November 28, 1951, we entered an order granting the respondent six months within which to effect voluntary departure from the United States. This order was entered without prejudice to reopening and reapplication for suspension of deportation.

Counsel by brief on motion asserted that the respondent has resided continuously in the United States for seven years or more and was residing therein on July 1, 1948, the effective date of the Act amending subsection 3 of Section 19 of the Immigration Act of 1917, as amended. Counsel further asserted that the respondent's deportation would result in a serious economic detriment to his native

born citizen spouse, to whom he was married on January 19, 1952 at Los Angeles, California. Counsel therefore requested that the hearing be reopened for the purposes stated in the first paragraph of this opinion.

In view of the foregoing intelligence, we will direct that the hearing be reopened for the reception of the new material evidence referred to above and for the purpose of affording the respondent an opportunity to apply for the discretionary relief set forth in Section 19(c)(2) of the Act of 1917, as amended, provided that a showing is made by the respondent that he is unable to return to his native country.

ORDER: It is ordered that the hearing be reopened for the purposes stated in the foregoing opinion

Acting Chairman

JEK:pe

August 4, 1952

Mr. Masao Kishi
4261 Chamoune Avenue
San Diego 15, California

Dear Mr. Kishi:

The Board of Immigration Appeals has granted my petition to re-open your case to enable you to apply for a suspension of deportation on the ground that you are married to an American citizen.

In due course the District Director of the Immigration Service at Los Angeles will set your cause down for such a hearing.

Very truly yours,



4261 Chamoune Avenue
San Diego 15, California
August 7, 1952

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

Dear Mr. Collins:

Yesterday I received your letter informing me that my case will be reopened for hearing for suspension of deportation soon. Thank you for your sincere interest and assistance.

I hope you will continue to help me settle my case.

Sincerely yours,

Masao Kishi

Ted

4261 Chamoune Avenue
San Diego 15, California
May 14, 1953

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

Dear Mr. Collins:

According to your proposition, I am willing to pay a fee of \$400 for your services. However, I am unable to pay it all at one time since I help to support my family in Japan and needed so many things after I was married. I am enclosing a check for \$100. I shall be able to send \$50 each month or \$150 every three months, whichever is more convenient for you.

I should like to ask you to consider my brother, Katsumi, as the head of the family consisting of himself and my father. Your consideration will be greatly appreciated.

Will you let me know how I should send the balance of fee?

Thank you for your efforts and cooperation.

Sincerely yours,

Masao Kishi
— Masao Kishi

4261 Chamouné Ave.

San Diego 15, California

June 29, 1953

Mr. Wayne M. Collins
220 Bush Street.
San Francisco 4, California

Masaru Kishi

Dear Mr. Collins:

According to Mr. Kuratobi, he and you have discussed the case of each family separately and have arrived at a certain amount of fee for each family. He informed us that you have decided on the sum of \$200.- for Mr. Kaneko and \$500.- for us. We are all grateful for your special considerations.

Last month we sent you \$200.-, as part payment of our fee. At that time we promised to make a payment each month. Accordingly, we are enclosing a check for \$150.-, \$100.- to be towards our payment and \$50.- from Mr. Kaneko. We shall send the same amount each month. We hope that it meets with your approval.

Thank you once again for your effort.

Sincerely yours,

Masaru Kishi

Katsumitishi

3130 "K" Street
San Diego 21, California
July 31, 1953.

Mr. Wayne M. Collins
1701 Mills Tower
220 Bush Street
San Francisco 4, California

Dear Mr. Collins:

We are enclosing \$150.00 check as part for
our payment for your services. That is \$50.00 from
Mr. Kaneko and \$100.00 from us. That leaves \$100.00
for our payment, which we shall send next month.

Sincerely yours,

Masao Kishi

Katsumi Kishi

3130 "K" Street
San Diego 2, California
August 30, 1953.

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

Dear Mr. Collins:

Percussion We are enclosing a check for \$150, of which \$50 is from Mr. Kaneko and \$100 from us. According to Mr. Kurotobi, you decided upon \$500 as our share of payment. This will complete our payments, but Mr. Kaneko will send \$50, which he still owes directly to you next month. We hope this arrangement has been satisfactory for you.

I, Katsumi, had my hearing last Tuesday and requested a copy be sent to you, but the hearing officer said he could not do it. He will send me an extra copy so I shall send you a copy when I get it. I hope the recommendation will be good.

Thank you again for your efforts.

Percussion
Sincerely yours,
Masao Kishi

Katsumi Kishi

6219 Tarragona Dr.
San Diego, California
October 8, 1953.

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

Dear Sir:

*add
OK.*

This is to inform you that in October 4,
I moved from 4261 Chamoune Ave to
6219 Tarragona Drive, San Diego. I already
have reported my change of address to the
Immigration office at San Diego and to
the Alien Registration Division in Washington,
D.C.

Sincerely yours,
Masao Kishi

Peruvian

Form 16-164
1-10-45

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
458 South Spring Street
Los Angeles 13, California

Immigrant Japanese

Date: Nov. 10, 1954

File Number: A7 549 306 IB

CR #: 60-3

Mr. Masao Kishi
6219 Tarragona Drive
San Diego, California

*add
time*

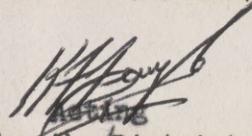
Dear Sir:

This is to inform you that a Concurrent Resolution has been passed by Congress upon the Order approved by the Attorney General, suspending deportation in your case.

A record of your lawful entry for permanent residence may therefore be created by this Service, conditioned upon payment of the required \$18.00 fee. The fee should be submitted by you to this office at the address shown above, in the form of a U. S. Postal Money Order payable to the Commissioner of Immigration and Naturalization, Los Angeles, California.

As it is to your interest that your case be concluded without unnecessary delay, you should submit the fee to this office within ten days of this notification. If for any reason you are unable to submit the fee within the time specified, please so inform this office immediately, giving the reasons therefor.

Very truly yours,


For the District Director

PLEASE RETURN THIS NOTICE WITH YOUR REMITTANCE

**COPY TO: Wayne M. Collins, Atty. at Law, 1701 Mills Tower,
San Francisco 4, Calif.**

File

November 19, 1954

Mr. Masao Kishi
6219 Tarragona Drive
San Diego, California

Dear Mr. Kishi:

Your application for suspension of deportation has been approved by Congress. Therefore you are entitled to the status of an alien who has permanent residence status in the United States.

However, it is necessary for you immediately to send to the District Director of the Immigration and Naturalization Service, 458 South Spring Street, Los Angeles 13, California, along with its letter to you of November 10, 1954, the sum of \$18.00 to create a record of your permanent residence. The remittance in the sum of \$18.00 should be in the form of a U.S. Postal Money Order made payable to the Commissioner of Immigration and Naturalization, Los Angeles, California.

As soon as you have sent the \$18.00 to the District Director of the U.S. Immigration and Naturalization Service, kindly send me a post card or letter informing me that you have paid it.

After you have paid that sum to the Immigration Service, that office will issue to you in a month or two your permanent Alien Registration Card. You must not go to a foreign country, whether it be Canada, Mexico, Cuba, Japan or any other foreign country, unless you first obtain from the Immigration Service, upon an application being made therefor, a re-entry permit. If you do leave the U.S. at any time without first obtaining such a re-entry permit you will be denied the right to enter the U.S. because you will then become an alien who has lost permanent residence status.

When your permanent Alien Registration Card is issued to you by the U.S. Immigration and Naturalization Service, you will become eligible for naturalization as a United States citizen. Therefore, when that card issues to you, you should go to the Immigration Service office nearest you and apply to become a naturalized U.S. citizen as soon as possible.

Very truly yours,

DP:rn

file

Permitted Japanese

add name

6219 TARRAGONA DRIVE
SAN DIEGO 15, CALIFORNIA

NOVEMBER 22, 1954

MR. WAYNE M. COLLINS
MILLS TOWER
220 BUSH STREET
SAN FRANCISCO 4, CALIFORNIA

DEAR MR. COLLINS:

ON THE 12TH. OF NOVEMBER, I GOT A NOTICE FROM THE DISTRICT DIRECTOR OF THE IMMIGRATION AND NATURALIZATION SERVICE IN LOS ANGELES INFORMING ME THAT CONGRESS APPROVED MY APPLICATION FOR SUSPENSION OF DEPORTATION. I IMMEDIATELY SENT THAT DAY \$18.00 IN U.S. POSTAL MONEY ORDER AS DIRECTED.

OUR DAUGHTER ELENA MIDORI ARRIVED IN OCTOBER 8, 1954.

SINCERELY YOURS,

Masao Kishi

6219 Tarragona Drive
San Diego 15, California

April 19, 1955

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

Dear Mr. Collins:

In your letter of November 19, 1954, you said that the Immigration & Naturalization Service will issue me an Alien Registration Card in a month or two after I send \$18.00 to the office. It is over five months since I have sent in \$18.00 in U.S. Postal Money Order, number 12-89,091, 955, dated November 12, 1954 with the letter, but so far haven't had a word from the Immigration Service.

On March 15, 1955 I wrote to the Commissioner of Immigration & Naturalization giving the U.S. money order number and inquiring if he had received it. I have not had any reply yet.

I wonder whether you will check to see what happened to my case so far. Thank you.

Sincerely yours,

Masao Kishi

April 22, 1955

Mr. Masao Kishi
6219 Tarragona Drive
San Diego 15, California

Dear Mr. Kishi:

The Alien Registration Cards are prepared in Washington, D.C., and in consequence, it sometimes takes several months before a record of a permanent residence is established, and the Alien Registration Card is forwarded to you.

Inasmuch as you have written to the Immigration Service at Los Angeles concerning your Alien Registration Card, I suggest that you wait another month before sending out a tracer in connection therewith.

When you receive your card, you should apply to the Immigration Service at San Diego for naturalization as a U.S. citizen. I would thank you to notify me when you receive your card.

Very truly yours,

add
same (6219 Tarragona Drive
San Diego 15, California

July 17, 1955

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

Dear Mr. Collins:

Last Friday, I finally received my Alien
Registration Card No A-7549306, making me a
permanent resident of United States. I shall apply
for naturalization as a United States citizen as
soon as possible.

Thank you very much for all your effort in
making this possible.

Sincerely yours,

Masao Kishi

July 19, 1955

Mr. Masao Kishi
6219 Tarragona Drive
San Diego 15, California

Dear Mr. Kishi:

I was pleased to learn that you have received your alien registration card and that you intend soon to apply for naturalization as a U.S. citizen.

In the meantime, and until such time as you become a naturalized U.S. citizen, you must not depart from the U.S. and go to any foreign country including Mexico, even for a short visit because in such an event, you will lose your status unless you first obtain a re-entry permit from the U.S. Immigration Service to enable you to go to any foreign country.

Very truly yours,

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BEFORE THE BOARD OF IMMIGRATION APPEALS
BEFORE THE COMMISSIONER OF IMMIGRATION

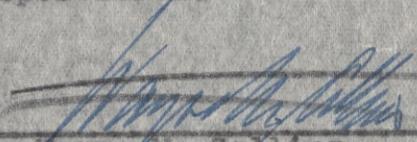
In the Matter of
MASAO KISHI
VICTOR TOSHIMITSU TANAWA

No. A-7549306
1607-20406

AMENDED
APPLICATION TO REOPEN CAUSE FOR A SUSPENSION OF DEPORTATION

MASAO KISHI
VICTOR TOSHIMITSU TANAWA hereby requests that the deportation proceeding heretofore instituted against him be reopened for the purpose of enabling him to apply for a suspension of deportation under the provisions of Title 8 USCA, Sec. 155 (c) effective as at July 1, 1948, (Public Law No. 863), on the ground that he is and has been, for a period of time in excess of five years, a person of good moral character and that he has resided continuously in the United States for seven years or more and now so resides and was so residing on July 1, 1948, the effective date of said Act; and on the further ground that he is the husband of ^{AGNES} ~~Taeko~~ MASAYE KISHI, nee TANAWA, a native born citizen resident of the United States, and that his deportation would result in serious economic detriment to his said dependent wife.

WHEREFORE, applicant requests that said cause be reopened for the aforesaid purposes to enable applicant to introduce oral and documentary evidence of his eligibility to apply for and to receive the benefits afforded by the provisions of Title 8 USCA, Sec. 155 (c), and regulations thereunder and for the grant of said application for suspension of deportation.


Wayne M. Collins
1701 Mills Tower
San Francisco 4, Calif.
Attorney for Applicant

AFFIDAVIT OF MERITS

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO } SS,

Wayne M. Collins of said City and County and State, being first duly sworn, deposes and says: that he is the attorney for ~~VICTOR TOSHIMITSU SAWARA~~ ^{MASAO KISHI}, the applicant in the foregoing application named; that he is informed and believes and therefore alleges upon such information and belief that the applicant is and has been a person of good moral character for a period of time in excess of five years and has resided continuously in the United States for seven years or more and now so resides and was so residing on July 1, 1948, when Title 8, USCA, Sec. 155 (c) as amended, became effective; that on ~~June 16, 1949~~ ^{JAN. 19, 1952} at ~~Denver, Colorado~~ ^{LOS ANGELES, CALIF.}, applicant lawfully was united in marriage to ~~Faeko Sawara~~ ^{AGNES MASAYE TAYGE}, a native born U.S. resident citizen; that the deportation of applicant would result in serious economic detriment to his said wife; that applicant desires to have his deportation proceeding reopened to enable him to apply for a suspension of deportation under the provisions of Title 8 USCA, Sec. 155 (c), by reason thereof, and is ready willing and able to submit at such reopened hearing oral and documentary evidence demonstrating his said eligibility to apply for and to be granted such suspension of deportation.

Wayne M. Collins
Wayne M. Collins
1701 Mills Tower
San Francisco 4, Calif.

Attorney for Applicant

Subscribed and sworn to before me
this 4th day of April, 1952

Wheat Berry
Notary Public in and for the City and
County of San Francisco, State of California

My Commission Expires
December 23, 1952

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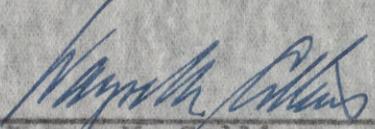
BEFORE THE BOARD OF IMMIGRATION APPEALS
BEFORE THE COMMISSIONER OF IMMIGRATION

In the Matter of)
MASAO KISHI) No. A - 7549306; 1607-20406
-----)

AMENDED APPLICATION TO REOPEN CAUSE FOR A
SUSPENSION OF DEPORTATION

MASAO KISHI hereby requests that the deportation proceeding heretofore instituted against him be reopened for the purpose of enabling him to apply for a suspension of deportation under the provisions of Title 8 USCA, Sec. 155 (c) effective as at July 1, 1948, (Public Law No. 863), on the ground that he is and has been, for a period of time in excess of five years, a person of good moral character and that he has resided continuously in the United States for seven years or more and now so resides and was so residing on July 1, 1948, the effective date of said Act; and on the further ground that he is the husband of Agnes Masaye Kishi, nee Tange, a native born citizen resident of the United States, and that his deportation would result in serious economic detriment to his said dependent wife.

WHEREFORE, applicant requests that said cause be reopened for the aforesaid purposes to enable applicant to introduce oral and documentary evidence of his eligibility to apply for and to receive the benefits afforded by the provisions of Title 8 USCA, Sec. 155 (c), and regulations thereunder and for the grant of said application for suspension of deportation.



Wayne M. Collins
1701 Mills Tower
San Francisco 4, Calif.

Attorney for Applicant

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AFFIDAVIT OF MERITS

STATE OF CALIFORNIA,
CITY AND COUNTY OF SAN FRANCISCO } SS,
----- }

Wayne M. Collins of said City and County and State, being first duly sworn, deposes and says: that he is the attorney for MASAO KISHI, the applicant in the foregoing application named; that he is informed and believes and therefore alleges upon such information and belief that the applicant is and has been a person of good moral character for a period of time in excess of five years and has resided continuously in the United States for seven years or more and now so resides and was so residing on July 1, 1948, when Title 8, USCA, Sec. 155 (c) as amended, became effective; that on Jan. 19, 1952, at Los Angeles, Calif., applicant lawfully was united in marriage to Agnes Masaye Tange, a native born U.S. resident citizen; that the deportation of applicant would result in serious economic detriment to his said wife; that applicant desires to have his deportation proceeding reopened to enable him to apply for a suspension of deportation under the provisions of Title 8 USCA, Sec. 155 (c), by reason thereof, and is ready willing and able to submit at such reopened hearing oral and documentary evidence demonstrating his said eligibility to apply for and to be granted such suspension of deportation.

Wayne M. Collins

Wayne M. Collins
1701 Mills Tower
San Francisco 4, Calif.
Attorney for Applicant

Subscribed and sworn to before me

this 17th day of April, 1952

James H. Deery

Notary Public in and for the City and County of San Francisco, State of California

My Commission Expires
December 23, 1952

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BEFORE THE BOARD OF IMMIGRATION APPEALS

In the Matter of)
MASAO KISHI) A-7549306
) Phil. (0400-19166)
-----)

BRIEF FOR APPELLANT

The appellant MASAO KISHI, a citizen and native of Peru who is of Japanese lineage, has appealed from the Order of the Commissioner of Immigration denying his application for suspension of deportation urged under Title 8 USCA, Sec. 155 (c), his application for preexamination and from the Order of said Commissioner requiring him to depart.

The appellant's father was seized at his home in Peru by the Peruvian authorities in 1944. The seizure was not authorized by legal process. It was the result of a secret agreement between the United States and Peru under which the Peruvian police indiscriminately arrested him and other resident Japanese nationals and Peruvian citizens, naturalized and native born, held them incommunicado, confiscated their properties, deprived them of judicial and administrative hearings on the reasons for this abuse and mistreatment, and delivered them over to U.S. authorities in Peru for transportation to the United States and final imprisonment here.

This criminal kidnapping of innocent persons was carried into execution under lettres de cachet despite the fact that the 5th Amendment operates as a guaranty against such letters. They were invoked under the fictitious plea that they were dictated by Western Hemispheric security reasons, i.e., extra-constitutional

1 reasons. It is fortunate that, so far, their justification has
2 not been asserted for global security reasons for that would
3 mean that any government, upon such a plea, could justify the
4 removal from the face of the earth of persons who were the objects
5 of governmental enmity.

6 In plotting this cruel program for application to its own
7 residents and native born Peruvian citizens the Peruvian
8 authorities violated Peruvian law and did violence to the
9 principles of international law. Although individuals, under
10 a favorable environment, are able to suppress their instincts
11 of cruelty governments seldom rise to that level. The reckless
12 participation of the United States in this outrage does not
13 indicate its own complete emergence from barbarism to the dignity
14 of a civilized States.

15 The appellant is not and has not been a prisoner of war
16 although the U.S. treated his father as such. The mass uprooting
17 of these innocent Peruvian-Japanese, including the male heads
18 of families, their spouses and children, was for the secret
19 pernicious governmental purpose of getting bodily possession of
20 them to exchange them for Allied prisoners of war held by the
21 Japanese in Japan. This ruthless action of the United States
22 and Peruvian governments was unlawful from the viewpoint of
23 international law and the common principles of justice. The
24 appellant did not enter the U.S. of his own free will and desire.
25 The forced entry of his father compelled him to consent to his
26 own entry as a voluntary refugee from Peru. In consequence,
27 our government is estopped to assert that his entry on March 21,
28 1944, was unlawful because it forced him to that election for its
29 own unlawful purpose. It cannot prevail over him by asserting
30 its own wrongs or the wrongs of its agents. See principle
31 announced in Weeks v. U.S., 232 U.S. 383; Upshaw v. U.S., 335 U.S.
32

1 410; McNabb v. U.S., 318 U.S. 332; Lustig v. U.S., 338 U.S. 74.*
2 The sole contention that our immigration authorities are able to
3 assert in connection with the Peruvian-Japanese so outrageously
4 uprooted from their homes is that their presence in the U. S.
5 is unlawful because they lack admission credentials. The above-
6 mentioned estoppel principle, however, precludes the U.S. from
7 making such a contention. In addition, the consent of the U.S.
8 to his entry and presence here is established by the fact that it
9 not only authorized his entry as a voluntary exile from Peru
10 scheduled for detention in an "alien internment camp" which, as
11 to him, was simply a "protectional camp" for such refugees, but
12 also actually brought him here for that purpose.

13 Because he was brought here through the instrumentality of
14 the wrongdoing and the evil doing of the United States and its
15 co-conspirator, the Peruvian government, he is entitled to refuge
16 and asylum from being forcibly returned to Peru. He is also
17 entitled to freedom from any threat of being removed to Peru by
18 virtue of the stated principle that the United States is not
19 authorized to assert its own illegal acts and wrongdoing to take
20 advantage of his misfortune which was caused thereby. (Because
21 he is a citizen of Peru he cannot be deported to Japan in any
22 event.)

23 He was released from any claim of being subject to voluntary
24 internment on August 6, 1946, when all the Japanese nationals
25 from Peru were liberated from internment. Thereafter he was
26 permitted to reside in the U.S., not as an excludable alien but
27 as a non-resident alien subject to deportation proceedings simply
28 because his presence here without admission credentials was deemed
29 by the immigration authorities to be unlawful. That contention
30

31 *The application of this principle was neither raised, argued,
32 considered nor decided in U.S. ex rel. Sommerkamp v. Zimmerman
(CCA-3), 178 Fed. 2d. 645, or in Schirrmeister v. Watkins (CCA-2),
171, Fed. 2d. 858.

1 is specious. He has resided continuously in the U.S. since
2 his arrival in 1944. His is not an exclusion case. It is not
3 even properly a deportation case by reason of the said estoppel
4 principle which precludes the U.S. from denying him the status
5 of a resident alien. In view of the fact that he actually has
6 resided here for a period of time in excess of seven (7) years,
7 2½ as a voluntary exile and almost 5 as a resident, and is a
8 person of good moral character he is entitled to a suspension
9 of deportation under 8 USCA, Sec. 155 (c).

10 The bringing of the appellant into the United States had
11 no relevancy whatsoever to our successful prosecution of the war.
12 It had no reasonable relation to national defense or to western
13 hemispheric defense. Neither the Peruvian nor the United States
14 government would dare to lodge a factual accusation against the
15 appellant's father charging him with having been a menace to
16 any such security and neither would dare to try his father on
17 any such fictitious charge. Neither government has the courage
18 or the honesty to admit the truth or to reveal the truth concern-
19 ing its participation in the outrage. Both resort to the subter-
20 fuge of secrecy to conceal their crimes against these unfortunates.
21 The U.S. does not assert that the appellant was brought here or
22 detained here as a dangerous alien enemy pursuant to any provision
23 of the Alien Enemy Act. He was nothing but a voluntary detainee
24 allowed refuge and asylum in this country for political reasons,
25 i.e., because the U.S. did not wish to inflict the final cruelty
26 of a family separation upon these Peruvian-Japanese. The U.S.
27 was not willing to stoop to the low level of the Hitler and Stalin
28 regimes in such matters.

30 The Commissioner's Order erred in assuming, without any
31 supporting evidence whatever, that appellant's detention for the
32 full period of his residence here was as an alien enemy, apparently

1 under the provisions of the Alien Enemy Act, and that his entry
2 and presence here was necessitated because of the war. (Further,
3 attention is directed to the fact that no express provision of the
4 Alien Enemy Act makes that statute applicable to aliens seized
5 abroad in either a neutral or an allied country and forcibly
6 brought here or to aliens from such a country who are brought
7 here as voluntary detainees. Its legislative history contains
8 no suggestion that it was to be applicable to any such a situation.
9 No court in this land has ever held that such an alien properly
10 may be subjected to the provisions of the Alien Enemy Act.)
11 Nevertheless, the appellant's voluntary detention was cancelled
12 and terminated on August 6, 1946. Further, his presence here
13 never was legitimately necessitated by reason of the war. The
14 present deportation proceeding is not one under the Alien Enemy
15 Act where the reasons for the detention or removal of an alien
16 enemy can be concealed by the executive branch of the government.
17 It is a deportation proceeding in which the reasons for the
18 appellant's entry and the reasons, if any, demonstrating his
19 presence was necessitated by reason of the war, matters which
20 the Commissioner's Order assumes without evidence being adduced
21 thereon, must be proved by a preponderance of evidence if the
22 requirements of the due process clause of the 5th Amendment are
23 to be satisfied. There is not a scintilla of evidence in the record
24 showing that the appellant was brought to this country for
25 legitimate purposes.* There is not an iota of evidence in the
26 record tending to show that he was brought here "solely for reasons
27 connected with the war" or even for reasons remotely related
28

29 *In U.S. ex rel. Sommerkamp v. Zimmerman (CCA-3), 178 Fed. 2d,
30 645 at 646, the appellant's counsel did not question that his client
31 had been brought to the U.S. for national security reasons. In
32 the instant case we have and do question the reason for the bring-
ing of the appellant to this country.

1 thereto. The act of an executive officer is not to be taken
2 "as conclusive proof of its own necessity" and is not to be
3 "accepted as in itself due process of law". See Sterling v.
4 Constantin, 287 U.S. 378, 398.

5 In consequence, it is apparent that the real factual reasons
6 for the acts of our executive agencies in seizing Japanese
7 national alien heads of families in Peru and in interning them
8 here, along with voluntary detainee members, until August 6,
9 1946, would have to have been established by the immigration
10 authorities in these proceedings by the production of evidence
11 proving the necessity for those acts before a finding could be
12 made that the appellant who is not subject to the provisions of
13 the Alien Enemy Act was brought here for legitimate governmental
14 purposes. This is an evidentiary condition precedent and a
15 burden the immigration authorities first must establish in order
16 to sustain an order based upon a mere conclusion that his entry
17 and presence does not constitute such residence as is prescribed
18 by 8 USCA, 155 (c) for a suspension of deportation.

19 The Constantin case decided that the validity of an executive
20 act claimed to have been taken in good faith in the face of a
21 public emergency is not sustained by "mere executive fiats".
22 Proof that the seizure of these people in Peru and their trans-
23 portation to this country and their internment or voluntary
24 detention actually was based upon a public emergency and that
25 our treatment of them was "conceived in good faith, in the face
26 of an emergency" must be proved by evidence offered by the
27 government. The "allowable limits" of executive discretion
28 and "whether or not they have been overstepped in a particular
29 case, are judicial questions". See Sterling v. Constantin, supra.
30 Because the appellant by oral testimony and documentary evidence
31 proved his seven years' residence as required by 8 USCA, Sec.
32

1 155 (c), to satisfy the residence requirement for suspension of
2 deportation and that proof was not met or overcome by the
3 production of contrary evidence offered by the Immigration
4 Service the Commissioner's Order denying suspension of deporta-
5 tion was erroneous. If the appellant had done nothing more
6 than to have raised a presumption of seven years' residence the
7 Commissioner's Order denying him suspension of deportation for
8 want of the required period of residence still would have been
9 erroneous because the presumption would have been sufficient to
10 require a finding of the required period of residence. See
11 Department of Water and Power v. Anderson (CCA-9), 95 Fed. 2d
12 577, 583-5.

13 The secret internment of these Peruvian-Japanese aliens and
14 the voluntary detention of their family members was revealed in
15 early 1946. Thereupon the State Department washed its hands of
16 the matter. J. Edgar Hoover, Director of the F.B.I., pronounced
17 them harmless. The Justice Department disclaimed any
18 responsibility for their internment. On August 6, 1946, the
19 internment of the Japanese national males, originally asserted
20 to have been authorized by the Alien Enemy Act, was cancelled.
21 The restraint thereupon was transformed into simply detention
22 and they passed into the custody of the USI&NS. Thereafter,
23 deportation proceedings were instituted against them. On June 25,
24 1946, two habeas corpus test proceedings were instituted in the
25 U.S. District Court at San Francisco, California, (proceedings
26 Nos. 26139 and 26140), and the deportation proceedings were
27 brought to a halt. Thomas M. Cooley II, who became Director of
28 the Alien Enemy Unit of the Justice Department, was one of the
29 attorneys for the government in those proceedings.
30

31 During 1946 and 1947 every Congressman had been informed
32 of the plight of these unfortunates by letters from counsel

1 for the Peruvian-Japanese group. Congress was aware of the
2 plight of these Peruvian-Japanese when it amended 8 USCA, Sec.
3 155 (c) on July 1, 1948. That law was enacted with the
4 particular intent that it enable these mistreated persons, as
5 well as illegal entrants and persons who had lost their admis-
6 sion status, to be granted a suspension of deportation and to
7 acquire a permanent residence status in this country. It is
8 significant that in neither Schirmeister v. Watkins (CCA-2),
9 171 Fed. 2d. 858, nor in U.S. ex rel. Sommerkamp v. Zimmerman
10 (CCA-3), 178 Fed. 2d. 645, was the legislative history of the
11 relief statute, 8 USCA, Sec. 155 (c), as amended July 1, 1948,
12 raised, argued, inquired into or considered. That legislative
13 history, however, as it bears on the rights of the Peruvian-
14 Japanese group and also of Japanese aliens who entered this
15 country illegally or lost their admission status by reason of
16 the war, is particularly significant and pertinent to the instant
17 case for it discloses the intention of Congress to benefit
18 these aliens in particular. That legislative history, in con-
19 sequence, is to be considered in construing the provisions of
20 the relief statute.

21
22 In 1947 or early 1948, Thomas M. Cooley II, who then was
23 the Director of the Alien Enemy Control Unit of the Department
24 of Justice, submitted to the House and Senate immigration com-
25 mittees proposals which ultimately resulted in the July 1, 1948,
26 amendment of 8 USCA, Sec. 155 (c). The House and Senate immigra-
27 tion committees then were fully aware of the hardship our foreign
28 policy had caused these unfortunates. The then Attorney General,
29 Tom Clark, testified in favor of the passage of the legislation.
30 Congress enacted the relief statute. It knew what it was doing
31 when it enacted that statute and certainly intended that the
32 Peruvian-Japanese should benefit by its provisions. In consequence,

1 it was error for the Commissioner to base his Order denying the
2 appellant relief upon the ground that the seven years' residence
3 of the appellant in this country is not to be construed as
4 residence contemplated by the statute. Congress had been fully
5 informed, prior to the passage of the statute, that the male heads
6 of these Peruvian-Japanese families had been brought to this
7 country under a claim they were subject to internment as alien
8 enemies under the provisions of the Alien Enemy Act, 50 USCA,
9 Sec. 21 et seq. and that their wives and children accompanied
10 them as voluntary internees, that the internment terminated on
11 August 6, 1946, that thereafter all were held in simple detention
12 for possible deportation proceedings and that a number of them
13 were parents of American born citizen children. In view of
14 these facts it is apparent that Congress, in passing the relief
15 legislation, contemplated that the seven year residence provision
16 thereof was to commence to run from the date they were brought
17 here.

18 It is submitted that the appellant, being a native and
19 citizen of Peru, is eligible for naturalization and, in con-
20 sequence, for the privilege of pre-examination. In denying him
21 pre-examination because of a conclusion he was ineligible to
22 naturalization and hence to pre-examination the Commissioner's
23 Order erred. Ineligibility to naturalization cannot be laid upon
24 the irrelevant factor of "race".

25 It is to be noted that Congress never has expressly
26 declared that resident aliens who were born in Japan or elsewhere
27 of Japanese ancestry or that expatriates from Japan were ineligible
28 to citizenship. In the past our officials have fallen into the
29 habit of guessing or inferring that Congress may have intended
30 to place such a bar upon them. In U.S. v. Bhagat Singh Thind,
31 261 U.S. 204, 215, the Supreme Court expressed an opinion by way
32

1 of obiter dicta, that the Act of Feb. 5, 1917, 39 Stat. 874,
2 which set up a bar on the admission to the United States of
3 aliens from a barred zone on the Asiatic mainland and islands
4 contiguous thereto, the limits of which it prescribes by degrees
5 of latitude and longitude, might be deemed evidence of a then
6 congressional attitude of opposition to the naturalization of
7 Asiatic peoples. However, Congress always has had the ability
8 to express with precision what it means by its enactments. Had
9 it seen fit to exclude resident Japanese nationals or residents
10 of Japanese ancestry from naturalization it would have declared
11 its purpose in plain English. It has never expressly declared
12 them to be ineligible to naturalization. A few administrative
13 agencies and courts have assumed them to be barred from this
14 privilege but the assumption rests on no stronger a basis than
15 the said dicta of the Supreme Court. However, even if it be
16 deemed that Congress in 1917 entertained the notion of prevent-
17 ing their naturalization its attitude and intent have been modified
18 with the passage of the years. If it once was opposed to their
19 naturalization that was the product of a bygone prejudice that
20 no longer is justified or understandable.

21 Attention is directed to the fact that even were the
22 naturalization laws to be deemed to bar Asiatic descended persons
23 from naturalization the classification long ago lost its factual
24 basis for discrimination. When it enacted Title 8 USCA, Sec.
25 703, on Oct. 14, 1940, Congress declared therein that naturaliza-
26 tion should extend only to "white persons, persons of African
27 nativity, descendants or races indigenous to the Western
28 Hemisphere, and Chinese persons or persons of Chinese descent".
29 However, Congress never has expressly prohibited the naturalization
30 of our residents who were born in Japan, Peru or elsewhere of
31 Japanese parentage and, in the absence of such a prohibition,
32

1 it must be deemed that Congress has not intended to deprive
2 them of the right to naturalization. It well may be that under
3 Section 703 Congress recognized that alien Japanese long
4 resident here would be naturalizable as "descendants of races
5 indigenous to the Western Hemisphere" on a like basis as
6 American Indians who are descendants of races of the same
7 familial Mongolian or Asiatic stock. The appellant qualifies
8 as being of the race of Peruvians by virtue of his birth in Peru.

9 In enacting Title 8 USCA, sec. 724a, on Oct. 14, 1940,
10 Congress authorized the naturalization of resident Japanese
11 aliens and other aliens who have served in our armed forces.
12 Title 8 USCA, Sec. 717, authorizes former U.S. citizens of Japanese
13 ancestry to be naturalized. Consequently, any bar to naturaliza-
14 tion based upon "racial" origin long has lost what little vitality
15 it once may have had. In expressly destroying the bar on the
16 naturalization of Chinese and East Indian aliens and Filipinos,
17 on July 2, 1946, (8 USCA, sec. 703, subd. (a)), Congress expressed
18 its present policy of viewing a "geographical" test of admis-
19 sibility to this country and a "racial" test of eligibility to
20 naturalization as relics of a past intolerant era.

21 The Constitution authorizes Congress to "establish an
22 uniform Rule of Naturalization" (Art. I, Sec. 8 subd. 4). It
23 does not authorize rules of naturalization lacking uniformity.
24 It Title 8 USCA, sec. 703, as amended July 2, 1946, extending
25 the privilege of naturalization only to "white persons, persons
26 of African nativity or descent, and persons who are descendants
27 of races indigenous to the continents of North or South American
28 or adjacent islands and Filipino persons or persons of Filipino
29 descent" and "Chinese" and persons of races indigenous to India",
30 is to be construed to exclude Peruvian born natives of Peru but
31 of Japanese ancestry from naturalization that would destroy the
32

1 uniformity of the naturalization rule and render the naturalization
2 statute void. Such an exclusion also would be repugnant to the
3 due process clause of the 5th Amendment which implicitly guarantees
4 equal application of the laws to all persons in like categories
5 within the United States. It would be void also as a "bill of
6 attainder" forbidden by Sec. 9 (3) of Art. I of the Constitution.
7 It is submitted, therefore, that the appellant, a Peruvian native
8 and citizen, is eligible to naturalization and hence to pre-
9 examination and that the Commissioner's order erred in drawing
10 a conclusion to the contrary.
11

12 For the foregoing reasons it is urged that the order requiring
13 appellant to depart be cancelled and the order denying the
14 appellant's application for discretionary relief under the Act
15 be set aside; that his application for such relief be granted
16 and that the order denying him pre-examination be set aside and
17 that his application for pre-examination be granted.
18
19

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