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MONZEN, ALICE HATSUYE nee KONO

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

In Re: ALICE HATSUYE MONZEN, nee Kono,)
Appellant.)
-----)

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

ALICE HATSUYE (HATSUE) MONZEN, nee Kono, of 613 Banchi,
Kita-Shimoyasu, Gion-machi, Asa-gun, Hiroshima-ken, Japan, born
in Honolulu, T.H., on September 25, 1930, hereby appeals from the
"Certificate Of Loss Of The Nationality Of The United States"
issued to her on January 10, 1956, by Maida F. Stotts, Vice-
Consul of the United States at Kobe, Japan, and approved by the
Department of State on January 26, 1956, and from the denial to
her of a U.S. passport for which she had applied, said denial
having been based on an erroneous conclusion she had expatriated
herself by purportedly voting in Japan in April of 1953. On
March 4, 1957, William A. Mitchell, American Vice-Consul at Kobe,
informed appellant by letter that the denial was based upon a
finding that she had expatriated herself under the provisions of
Section 401(e) of the Nationality Act of 1940, and on May 2, 1957,
Maida F. Stotts, American Vice-Consul at Kobe, informed her by
letter that she had expatriated herself under the provisions of
Section 349(a)(5) of the Immigration and Nationality Act of 1952.
Appellant also moves to reopen said cause and to have the same
reconsidered that her appeal be sustained and that thereupon a
United States passport issue to her as a United States citizen.

1 Attached hereto as an exhibit and made a part hereof, as
2 additional evidence to be considered in connection with this
3 appeal and in support of said motions is the "Affidavit Of Alice
4 Hatsue (Hatsue) Monzen", the appellant, dated the 9th day of
5 September, 1958. Counsel is informed that the record in this
6 cause contains the following documents, among others, heretofore
7 filed with the U.S. Consul at Kobe, and which are material to the
8 issue herein, viz:

- 9 1. Petition of the appellant dated March 7, 1956;
- 10 2. Statement of Hatsue Kumanaka dated March 7, 1946,
11 addressed to the American Consul-General; certified
by Keiichiro Nagai on June 5, 1956;
- 12 3. Statement of Tetsuzo Monzen, certified by Keiichiro
13 Nagai on June 5, 1956; and
- 14 4. Petition of the appellant dated May 13, 1956, addressed
to the American Consul General.

15 It is requested that if any of the documents heretofore
16 submitted as evidence on appellant's application for a United
17 States passport or the affidavits herewith submitted as evidence
18 to be considered on this appeal and motion to reopen and recon-
19 sider her application for a United States passport for any reason
20 be deemed insufficient in form or in substance as to cause an
21 unfavorable decision to be rendered thereon the appellant requests
22 an opportunity to have such deficiency corrected.

23 The application to reopen the cause and for reconsideration
24 of the cause on its merits, for cancellation of the said Certi-
25 ficate Of Loss Of Nationality and for the issuance to appellant
26 of a U.S. passport as a citizen of the United States are made in
27 view of the evidence heretofore and now submitted in this cause
28 and also in the light of the applicable rules announced in the
29 recent United States Supreme Court decisions of Perez v. Brownell,
30 U.S., 78 S.Ct. 568, and Nishikawa v. Dulles, U.S., 78 S.Ct. 612,
31 both decided on March 31, 1958, and also the rule announced by the
32 Court of Appeals for the Third Circuit on April 11, 1958, in

1 Jalbuena v. Dulles, 254 Fed. 2d 379, at 381.

2
3 Statement of Facts

4 The appellant was born in Honolulu, T.H., on September 25,
5 1930. In the winter of 1934 when she was 4 years of age she was
6 taken to Japan and placed in the care of her grandfather for
7 maintenance and support. Her parents remained in Hawaii. She
8 was sent to Japan because of economic reasons. Her father sub-
9 sequently passed away in Hawaii when she was 11 years of age and
10 attending school. She received some 10 years of schooling in
11 Japan. She was only 11 years of age when the war broke out on
12 Dec. 7, 1941. She is presumed to be a "dual citizen" by reason
13 of the fact that her grandfather registered her birth in the
14 family koseki in Japan on October 30, 1943, during the war, when
15 she was 13 years of age. Although she was under compulsion to
16 vote in two elections in Japan in 1953 she did not actually vote
17 but appeared at the voting place and made a pretense of voting
18 for the reasons set forth in her affidavit filed herewith and in
19 her petition dated March 7, 1956, which is a part of the record
20 in this cause. We submit, therefore, that she did not vote in a
21 foreign election even though she was under compulsion to do so
22 and that, in consequence, she did not commit an act of expatria-
23 tion. Further we contend that a "dual national" does not become
24 expatriated by participation in a foreign election.

25
26 Voting By Dual National Is Not An Act Of Expatriation

27 The appellant presumptively is a "dual national" and, as
28 such, she was expected to vote and was entitled to vote in
29 Japanese elections without thereby expatriating herself. Neither
30 Section 401(e) of the Nationality Act of 1940 nor Section
31 249(a)(5) of the Immigration and Nationality Act of 1952 operate
32 to deprive a "dual national" of the U.S. citizenship for

1 participating in a foreign election even if participation therein
2 is wholly voluntary. It is now the rule, however, under Perez v.
3 Brownell, 78 S.Ct. 568, that voluntary voting in a foreign
4 political election by a person who possesses only the nationality
5 of the United States expatriates such person. The Supreme Court
6 justifies that rule on the ground that Congress may deprive such
7 a citizen of his political status by reason of its power to
8 "regulate foreign affairs" because such voting causes "embarrass-
9 ment in the conduct of our foreign relations". The question of
10 whether a person of single U.S. nationality nevertheless might
11 vote voluntarily in a foreign election without expatriating
12 himself on the ground that he is protected in so doing by the "free
13 speech and press" guaranty of the First Amendment of the U.S.
14 Constitution has not been passed on by the Supreme Court. We
15 direct attention to the fact that although Congress may regulate
16 our foreign affairs its power so to do cannot be exercised in
17 contravention of the provisions of the First Amendment.

18 A "dual national" who while in the foreign country where
19 deemed a national of that country exercises rights of nationality
20 in that country does not thereby renounce or lose his U.S.
21 citizenship. See Jalbuena v. Dulles, 254 Fed. 2d. 379, at page
22 381, decided on April 11, 1958, with knowledge of the Perez
23 decision and distinguishing the rule applicable to dual nationality
24 cases from the rule applicable to persons of a single nationality.
25 That decision states:

26 "The United States recognizes that a person may
27 properly be simultaneously a citizen of this country
28 and of another. Neither status in itself or in its
29 necessary implications is deemed inconsistent with
30 the other....The concept of dual citizenship recog-
31 nizes that a person may have and exercise the rights
32 of nationality in two countries and be subject to the
responsibilities of both. The mere fact that he
asserts the rights of one citizenship does not with-
out more mean that he renounces the other...."

1 The right of a "dual national" to vote in a foreign election
2 cannot embroil the United States in a controversy with a foreign
3 government because the right of the dual national there to vote
4 is recognized or conferred by the foreign government as is the
5 case in Japan. We draw attention to the fact that Congress has
6 not expressly or impliedly attempted to penalize or expatriate a
7 "dual national" for an act of voting in a foreign political elec-
8 tion under the 1940 or the 1952 Act. Had it attempted to do so
9 we submit that its provision would be void for being repugnant to
10 the guaranty of the First Amendment for voting is nothing but an
11 expression of free speech or press.

12
13 Appellant's Appearance At Voting Place Was Involuntary
14 And Did Not Expatriate Her

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

19 In the Perez decision the Supreme Court declared:

20 "Whatever divergence of view there may be as to what
21 conduct may, consistent with the Constitution, be said
22 to result in loss of nationality, cf. Perez v. Brownell,
23 78 S.Ct. 568, it is settled that no conduct results in
expatriation unless the conduct is engaged in voluntarily.
Mandoli v. Acheson, 344 U.S. 133, 73 S.Ct. 135, 97 L.Ed."

24 In the Nishikawa decision the Supreme Court decided that in
25 all expatriation cases under all the subsections of Section 401
26 of the Nationality Act of 1940 the burden of proof rests upon the
27 government to prove expatriation by "clear, convincing and un-
28 equivocal" evidence, in the following language:

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

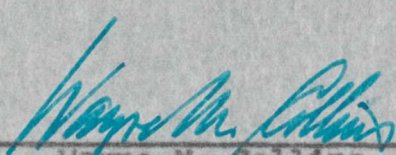
1 We submit that the mere appearance of the appellant at the
2 voting place for the sole purpose of making a pretense of voting
3 did not constitute voting in a foreign election within the meaning
4 of Sec. 401(e) of the Nationality Act of 1940 or under Sec. 349-
5 (a)(5) of the Immigration and Nationality Act of 1952. Further,
6 her appearance there was not voluntary but was caused by the
7 coercion of her father-in-law and her husband and her fear of
8 ostracism, as the evidence discloses. In spite of the coercion,
9 however, she deliberately failed and refused to cast a vote. Her
10 appearance, in consequence, was nothing but a pretense.

11 We submit that her acts amounted to nothing but a semblance
12 of voting and was a mere pretense and that, in consequence, even
13 though she was under coercion and her appearance an involuntary
14 one she nevertheless did not actually vote and that her action
15 did not expatriate her.

16
17 Conclusion

18 We submit that appellant's cause should be reviewed in the
19 light of the Perez, Nishikawa and Jalbuena decisions, supra, and
20 be decided in her favor and that a U.S. passport issue to her.

21 Dated: February 5, 1959.

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24 
25 Wayne M. Collins
26 1300 Mills Tower
27 220 Bush Street
28 San Francisco 4, California
29 Garfield 1-5827

30 Attorney for Appellant Alice Hatsuye Monzen.
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AFFIDAVIT OF ALICE HATSUYE MONZEN

I, Alice Hatsuye Monzen, nee Kono, reside at 613 Banchi, Kita-Shimayasu, Gion Machi, Asa Gun, Hiroshima Ken, Japan, was born in Honolulu, T.H., on September 25, 1930.

I did not vote voluntarily in any elections in Japan, although I was under compulsion to vote in two elections in Japan in 1953. I did not then know that either voting or making a pretense of voting in Japan would affect my American citizenship. I had no interest in voting or about political matters in Japan. I did not actually vote in either of those elections although it is true that I was twice coerced into going to the voting place in 1953 and there made a pretense of voting but on neither occasion did I actually vote. The reasons why I went to the voting place and made a pretense of voting are as follows:

About the first election. My father-in-law, Tetsuzo Monzen, told me that I must go and vote as he was an election official and that he would be in a difficult position if I didn't vote because I was a member of his family and should vote or else he would be criticized for having an uncooperative person in his family. He said that unless I was ill I must vote or else I would be shunned by the people and be an outcast and bring disgrace upon him and also he told me that I would be deprived of rice ration. Also he said that if I didn't go and vote the whole village would know about it and people would come around and state that I was a disgrace and make life miserable for me and disgrace the family. My husband, Yutaka Monzen, whom I married on March 3, 1949, also told me I must vote and I said I didn't have any interest in voting. He said I must do it or his father and our whole family would be disgraced and that I must obey and vote like his father wanted me to do. I didn't know at the time that if I voted it would affect my American citizenship. I didn't want to vote as I had no interest in voting and decided to myself that I just wouldn't show up to vote and wouldn't say anything about it. I was fearful though that if my father-in-law and husband found out that I didn't vote that it would cause them to upbraid me and treat me shamefully and I was afraid of their anger for disobedience but thought that maybe they would forget about it. But they didn't. My father-in-law, Tetsuzo Monzen, found out before the election time closed that I hadn't appeared for voting and he sent Mrs. Hatsue Kumanaka to fetch me to see that I went and voted and she came and told me. I told her I didn't have any interest in voting but she said my father-in-law said I must vote or else my father-in-law who was an election official would be very angry and she also said that the people would call me names and say things about me and shun me and that I would not get rice rations unless I went and voted. I didn't want any trouble with my father-in-law or my husband or with the people and didn't want to be called names and ostracized by the neighbors as I wouldn't be able to live among them in peace and what is more I was afraid to lose my rice rations as food was scarce and loss of rations would make me suffer very much. Also she said her husband was an attendant of the election so that if I didn't show up and vote the neighbors would all know about it and it would affect my family's honor and bring disgrace on them and she said if her family or relatives didn't vote it would disgrace her husband's honor and bring disgrace for my father-in-law and husband and was fearful of the results of going against their will because of how they would treat me and how the neighbors would treat me and being afraid of loss of rice rations I decided that I would have to go but I made a

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resolution in my mind that I would go but wouldn't vote. Mrs. Kumanaka pulled me by the hand saying I must hurry and go and must vote before it was too late and she frightened me. Because of my hearing the results of not going I went along but I didn't actually vote at all as my vote was just blank, I not being interested in voting and this satisfied everybody because nobody knew that my voting was just blank so everybody was satisfied thinking that I had voted and I didn't get into any trouble with my father-in-law, husband or the neighbors and didn't lose my right to rice rations which were essential to live on.

About the second election. Before that election my father-in-law and husband said it was required that I should vote in that election too. I had told them that I had gone to the voting place in the first election but didn't tell them or anybody that I hadn't voted but left the vote blank and so I didn't get criticized or mistreated or cause myself or my family trouble. I told them I wasn't interested in voting in that second election but they said I being a wife must obey my father-in-law and husband and not cause the family any disgrace or trouble and I mustn't lose rice ration. I was worried and fearing what would happen to me if they or the neighbors found out I voted blank at the first election. When the time came for this second election Mrs. Hatsuye Kumanaka came to see that I went to vote and I told her I didn't care to vote as I had no interest in voting or political matters. She said I must do it or the neighbors would say I was unpatriotic and wouldn't cooperate with the voting requirement and would shun me and make my life miserable and bring my husband and father-in-law into disgrace as well as myself and that I was sure to be deprived of rice rations. Naturally I didn't want to cause trouble with my father-in-law and husband as I am a woman and woman's position in Japan is low and she must obey her husband and father-in-law because of feudal bonds or be in for serious trouble which I didn't dare to cause for myself and my family. So I decided the best way out for me to avoid trouble and disgrace and loss of rice rations was to go again to voting place but not vote at all and so when Mrs. Kumanaka said I had to do it I went along but didn't actually vote but just voted in blank which wasn't voting at all.

I didn't know that voting would affect my American citizenship, but as I didn't vote, only in blank which wasn't voting at all, I didn't cause trouble for myself and didn't get in trouble with my husband or father-in-law or with the neighbors and I didn't lose my rice rations. I didn't know that just going and making a pretense of voting would affect my U.S. citizenship.

/s/ Alice Hatsuye Monzen

Alice Hatsuye Monzen

Subscribed and sworn to before me this 9th day of September, 1958.

/s/ Howard B. Crotinger

Howard B. Crotinger
Vice Consul of the United States of
America in and for Kobe, Japan

(SEAL)

Tariff No. 58(a)
Fee Paid: U.S. \$ gratis
Local Cy. equiv. ¥ (nee fee)