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SAKURAI, MikiO

1958

78/177
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1 BEFORE THE BOARD OF REVIEW OF THE PASSPORT OFFICE
2 OF THE STATE DEPARTMENT
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5 In re: MIKIO SAKURAI,)
6 Appellant.)
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9 APPEAL FROM CERTIFICATE OF LOSS OF UNITED STATES NATIONALITY,
10 MOTION TO REOPEN AND RECONSIDER APPLICATION FOR UNITED STATES
11 PASSPORT, AND FOR ISSUANCE OF UNITED STATES PASSPORT
12 -----

13 Mikio Sakurai of 411 Banchi, 2 chome, Kusunoki-machi,
14 Hiroshima-ken, Japan, born in Sacramento, California, on May 3,
15 1922, hereby appeals from the "Certificate Of The Loss Of The
16 Nationality Of The United States" issued to him under date of
17 March 10, 1953, by James M. Richardson, Vice-Consul of the United
18 States of America, at Kobe, Japan, which was approved by the
19 Department of State on August 6, 1953, and from the denial of the
20 issuance to him of a United States passport for which he had
21 applied and which said denial was based upon a purported expatria-
22 tion under the provisions of Section 401(c) of Chapter IV of the
23 Nationality Act of 1940 by reason of his induction into and service
24 in the Japanese Army from April 10, 1943, to November 30, 1944.
25 The appellant also moves to reopen said cause and have the same
26 reconsidered and moves that thereupon a United States passport issue
27 to him as a United States citizen.

28 Attached hereto as exhibits and made a part hereof, as addi-
29 tional evidence to be considered in connection with this appeal and
30 in support of said motion is appellant's affidavit executed on
31 June 11, 1958, and the Affidavit of Yomoichi Sakurai executed on
32 June 18, 1958. Appellant and his counsel request that if any of
 the documents heretofore submitted as evidence on appellant's

1 application for a United States passport or the affidavit herewith
2 submitted as evidence to be considered on this appeal and motion to
3 reopen and reconsider appellant's application for a United States
4 passport for any reason be deemed insufficient in form or in sub-
5 stance as to cause an unfavorable decision to be rendered thereon
6 the appellant requests an opportunity to have such deficiency cor-
7 rected.

8 The application to reopen the cause and for reconsideration
9 of the cause on its merits, for cancellation of the aforesaid
10 Certificate Of Loss Of Nationality and for the issuance to appel-
11 lant of a United States passport as a citizen of the United States
12 are made in view of the evidence heretofore and now submitted in
13 this cause and also in the light of the applicable rules announced
14 in the recent United States Supreme Court decisions of Perez v.
15 Brownell, 78 S.Ct. 568, and Nishikawa v. Dulles, 78 S.Ct. 612, both
16 decided on March 31, 1958, which rules we declare are applicable
17 and controlling in the instant case.

18 In the Perez case the Supreme Court decided that "Congress
19 can attach loss of citizenship only as a consequence of conduct
20 engaged in voluntarily", citing Mackenzie v. Hare, 239 U.S. 299,
21 311-312.

22 In the Perez decision the Supreme Court declared:

23 "Whatever divergence of view there may be as to what
24 conduct may, consistent with the Constitution, be said
25 to result in loss of nationality, cf. Perez v. Brownell,
26 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.
143."

27 In the Nishikawa decision the Supreme Court decided that in
28 all expatriation cases under Section 401 of the Nationality Act of
29 1940 the burden of proof rests upon the government to prove expatri-
30 ation by "clear, convincing and unequivocal" evidence, in the fol-
31 lowing language:

32 "In Gonzales v. Landon, 350, U.S. 920, 76 S.Ct. 210, 100
L.Ed. 806, we held the rule as to burden of proof in

denaturalization cases applied to expatriation cases 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."

The evidence discloses the facts to be that the appellant's induction into the Japanese Army and his service therein took place in wartime Japan while and when he was stranded in Japan with no possibility of returning to the United States. He then was faced with public hostility because of his U.S. citizenship. It reveals that he could not avoid reporting for his physical examination and the subsequent order to report for induction because of the coercion of the Japanese civil and military conscription laws and because of his well founded fears that if he disobeyed he would be severely punished by the authorities and the public and also would face being imprisoned by the civil authorities or punished by the military authorities. His submission thereto was the direct and proximate result of duress and his fear of punishment and, in consequence, his submission thereto as a matter of law and as a matter of fact did not constitute an act of expatriation under Section 401(c) of the Nationality Act of 1940.

We submit that the evidence is conclusive that the appellant's induction into the Japanese Army when he was a minor and his service therein were wholly involuntary and did not as a matter of law or as a matter of fact constitute expatriating acts on his part and that appellant's cause should be reviewed in the light of the Perez and Nishikawa decisions and be decided in his favor.

Wherefore, appellant requests that his motion to reopen the cause and for reconsideration thereof be granted and that his

1 appeal be sustained and that a United States passport issue to
2 him.

3 Dated: July 21, 1958.
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8 San Francisco 4, California
9 GARfield 1-5827

10 Attorney for Appellant Mikio Sakurai
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Japan
Prefecture of Hyogo
City of Kobe
Consulate General of the
United States of America

} SS.
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AFFIDAVIT OF MIKIO SAKURAI

My name is Mikio Sakurai. My present address is 411 Banchi, 2 chome, Kusunoki-machi, Hiroshima-ken, Japan. I was born in Sacramento, California, on May 3, 1922. In August 1934, my father sent me to Japan with my mother. My mother has passed away.

There were rumors in the summer and fall of 1941 that there was a possibility of war between the United States and Japan. The rumors made me wish to leave high school and return to the United States and I told my parents of my wishes but they were opposed to me leaving and against my quitting high school and didn't think there was real danger of war. But as rumors of the possibility of war grew more persistent I was worried as I thought I had better be back in the United States in the event war came but as I was only a high school student and without funds and my father wouldn't send me I was helpless. Then my father and mother said that there was no chance for me to leave anyway as it was impossible to get passage back to the United States and they didn't wish me to leave. Father and mother finally decided that if there really was danger of war the Japanese government wouldn't let me leave anyway as the military officials would look upon me as being disloyal to Japan or possibly a spy and would subject me to punishment if I took steps to leave Japan and that they would be suspected of disloyalty if they let me try. As time passed the news grew more alarming. School-mates and also neighbors said that war might begin at any time and I was worried about some of them reporting me to the Kempeitai as a suspicious person for my being an American citizen.

When the war broke out by the bombing of Pearl Harbor on Dec. 7, 1941, I was attending high school and was scheduled to graduate in the spring of 1942. There was no chance of my leaving Japan or of any way to avoid my being eventually drafted into the Japanese Army. Sometime in May, 1942, I received a notice to appear for a medical examination and I had to appear and take the examination by the draft authorities at the Itsukaichi Grammar School in Hiroshima. I discussed this matter with my parents and they told me that I must report and that if I passed I would be drafted and that there was no way for me to evade it. They told me that if I tried to avoid military service because of my being an American citizen the kempeitai would put me in jail until I obeyed and then the military authorities would force me to serve and if I disregarded orders that I would be tried by a military tribunal and would be put in a military prison and could be executed. At school and in our neighborhood there were stories and reports that anyone who tried to evade military service would be jailed by the kempeitai and their families would be under suspicion and that the neighbors would abuse and mistreat them. My parents were afraid of these things and so was I. They were worried also because anyone who had lived in the United States was likely to be regarded with suspicion. Because of my worries and fears of danger to myself and my family if I failed to report for my medical examination or informed the authorities that I was against my being drafted because of my being an American citizen I was too afraid to tell the draft authorities that I was opposed to being drafted and was too afraid to state that I was loyal to the United States. They had my records and were informed I was born in the United States and was an American citizen but they regarded dual nationals as being draftable regardless and would punish anyone who protested military service. So I had to report for my medical examination without daring to protest against it and the physician verbally told me I passed it.

I was conscripted into the Japanese Army on April 10, 1943, at Hiroshima and had to serve in it until November 30, 1944. Fortunately I did not have to render any combat service. I was in the West 10th Battalion Transport Unit at Hiroshima but as I had asthma I was confined to the Mitagi Hospital in Hiroshima and was operated upon and on November 30, 1944, I received a medical discharge at Hiroshima. There was no way for me to escape from my being conscripted. I had to obey the order to report for induction. I knew that if I refused that the kempeitai would arrest me and beat me up on the spot and that I'd be thrown into an Army jail and then be tried by a military tribunal without counsel and be imprisoned indefinitely and that my parents would be treated as traitors to Japan too by the police and that neighbors would ostracize them and throw stones at them. My parents warned me that Japan was in the grip of the military authorities and that any disobedience to conscription laws or military orders would be dangerous. Everybody knew those things. A number of soldiers had told us at the high school and many other persons said that draft evaders were disloyal and nothing but traitors and that those caught evading the draft would be thrown into the Army stockades or be imprisoned in jail in Kokura and be beaten with green bamboo and then have their heads ducked in cold water during winter until they passed out, drowned or froze to death. My schoolmates had talked about such things and so had neighbors and my parents and friends believed that such things would be done to draft evaders. I believed it too because the rumors about such things were very real and there were many reports that such things had been done. I was afraid that I would be tortured like that if I tried to evade conscription. I didn't wish to be punished by the kempeitai or be sent to prison or be tortured by order of military officials and it was my fear of such things that compelled me to obey the order for my conscription. There was no way for me to escape from those dangers if I exposed my unwillingness to be conscripted and asserted that I was an American and not loyal to Japan. Being just 20 years old and dependent upon my folks and being in Japan which had a militaristic government and where the secret police and the military authorities were known for brutal treatment of anyone suspected of disloyalty or of opposition to the war or of draft evasion and there being no way for me to avoid conscription I had to yield to conscription or endanger my own life and also the safety of my folks.

My conscription into the Japanese Army was not voluntary. I had no choice in the matter. It was either serve or face the consequences of being arrested, beaten, jailed, tortured and, if I refused to obey military rules or orders I would have had to risk a military prison, camp or even of facing a firing squad.

~~/s/ Mikio Sakurai~~
Mikio Sakurai

Subscribed and sworn to before me this 11th day of June,
1958.

(CONSULAR SEAL) /s/ Howard B. Crotinger
Howard B. Crotinger
Vice Consul of the United States of
America in and for Kobe, Japan.

Service No. 2619
Tariff No. 45
Fee Paid: U.S. \$2.50
Local Cy. equiv. ¥905.00

A F F I D A V I T

JAPAN)
 PREFECTURE OF HIROSHIMA) ss
 CITY OF HIROSHIMA)

I, Yomoichi Sakurai, being first duly sworn, do depose and say:

I am father of MIKIO SAKURAI. My present address is 411 Banchi, 2-chome, Kusunoki-machi, Hiroshima, Japan. I was born in Kami-Hera, Hera-mura, Saeki-gun, Hiroshima-ken, Japan, on Feb. 17th, 1884. In 1903 I went to United States and lived there for 39 years. In June 1941, I came back to Japan. My last residence in the United States was in Sacramento, California.

When I came back to Japan there were rumors all over in this country that there was a possibility of war between the United States and Japan. My son, MIKIO SAKURAI, asked my wife and I if he could quit high school and go back to the United States immediately. But my wife and I finally decided that it would be better for him to stay in Japan because he was young and independent and also, he was the only son in our family. There was not a chance for him to go back to the States because it was impossible to get passage. If there really was danger of war the Japanese government wouldn't let him leave anyway as the military officials would look upon him as being disloyal to Japan or possibly a spy, and subject me to punishment if he took steps to leave Japan, and I was worried about some person reporting to Kempeitai that he was a suspicious person in that he was an American citizen. Sometime in May 1942 he received a notice to appear for a medical examination and he had to appear and take the examination by draft authorities at the Itsukaichi Grammar School in Hiroshima-ken. He discussed this matter with us and we told him that he must report and if he passed he would be drafted and that there was no way for him to evade it. We told him that if he tried to avoid military service because of him being an American citizen the Kempeitai would put him in jail until he obeyed and then military authorities would force him to serve and if he disregarded orders, that he would be tried by military tribunal and would be put in a military prison and could be executed. We were afraid that anyone who tried to evade military service would be jailed by the Kempeitai, and their families would be under suspicion, and that the neighbors would abuse and mistreat them. Japan was in the grip of the military authorities and any disobedience to conscription laws or military orders would be dangerous. For that reasons I have told him to report for his medical examination.

His conscription into the Japanese Army was not voluntary. He had no choice in the matter. It was either serve or face the consequences of being arrested, beaten, jailed, tortured and, if he refused to obey military rules or orders he would have had to risk a military prison camp, or even facing a firing squad.

/s/ Yomoichi Sakurai

YOMOICHI SAKURAI

Subscribed and sworn to before me,
 this 18th day of June, 1958. (Sd)
 Sasaki Michio
 Notary Public, Hiroshima, Japan

/s/ Michio Sasaki