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TANAKA, AKIRA

1958

78/177
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1 BEFORE THE BOARD OF REVIEW OF THE PASSPORT OFFICE
2 OF THE STATE DEPARTMENT
3
4

5 In re: AKIRA TANAKA, }
6 Appellant. }
7 -----

8 APPEAL FROM CERTIFICATE OF LOSS OF UNITED STATES NATIONALITY,
9 MOTIONS TO REOPEN AND RECONSIDER APPLICATION FOR UNITED STATES
10 PASSPORT, AND FOR ISSUANCE OF UNITED STATES PASSPORT
11 -----

11 Akira Tanaka, residing at 273 Oaza, Nagatani, Kurate-machi,
12 Kurate-gun, Fukuoka-ken, Japan, born in Reedley, Fresno County, on
13 October 8, 1921, hereby appeals from the "Certificate Of The Loss
14 Of The Nationality Of The United States" issued to him under date
15 of November 7, 1957, by William Dixon, Vice-Consul of the United
16 States of America, at Fukuoka, Japan, which was approved by the
17 Department of State on December 26, 1957, and from the denial of the
18 issuance to him of a United States passport for which he had
19 applied and which said denial was based upon a purported expatria-
20 tion under the provisions of Section 401(c) of Chapter IV of the
21 Nationality Act of 1940 by reason of his induction into and service
22 in the Japanese Army from April 10, 1943, to June 17, 1946. The
23 appellant also moves to reopen said cause and have the same recon-
24 sidered and moves that thereupon a United States passport issue to
25 him as a United States citizen.

26 Attached hereto as exhibits and made a part hereof, as addi-
27 tional evidence to be considered in connection with this appeal and
28 in support of said motion is (1) appellant's Affidavit executed on
29 July 23, 1958, (2) the Affidavit of Iwagoro Tanaka executed on
30 July 26, 1958, and (3) the Affidavit of Osamu Tanaka executed on
31 July 19, 1958; and (4) Certificate of Yamori Kurita (Mayor of
32 Kurate) with translation of June 27, 1958. Appellant and his

1 counsel request that if any of the documents heretofore submitted
2 as evidence on appellant's application for a United States passport
3 or the affidavits herewith submitted as evidence to be considered on
4 this appeal and motion to reopen and reconsider appellant's
5 application for a United States passport for any reason be deemed
6 insufficient in form or in substance as to cause an unfavorable
7 decision to be rendered thereon the appellant requests an oppor-
8 tunity to have such deficiency corrected.

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

19 In the Perez case the Supreme Court decided that "Congress
20 can attach loss of citizenship only as a consequence of conduct
21 engaged in voluntarily", citing Mackenzie v. Hare, 239 U.S. 299,
22 311-312.

23 In the Perez decision the Supreme Court declared:

24 "Whatever divergence of view there may be as to what
25 conduct may, consistent with the Constitution, be said
26 to result in loss of nationality, cf. Perez v. Brownell,
27 78 S.Ct. 568, it is settled that no conduct results in
expatriation unless the conduct is engaged in voluntarily.
28 Mandoli v. Acheson, 344 U.S. 133, 73 S.Ct. 135, 97 L.Ed.
143."

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

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

7 The evidence discloses the facts to be that the appellant's
8 induction into the Japanese Army and his service therein took
9 place in wartime Japan while and when he was stranded in Japan
10 with no possibility of returning to the United States. He then
11 was faced with public hostility because of his U.S. citizenship.
12 It reveals that he could not avoid submission to his physical
13 examination and conscription into the Japanese Army because of the
14 coercion of the Japanese civil and military conscription laws and
15 because of his well founded fears that if he disobeyed or resisted
16 he would be severely punished by the authorities and the public
17 and also would face being imprisoned by the civil authorities or
18 punished by the military authorities. His father and two brothers,
19 Osamu and Takeshi, also were brutally treated by the Japanese author-
20 ities because of the resistance of their family to the conscription
21 of the sons. His submission thereto was the direct and proximate
22 result of duress and his fear of punishment and, in consequence,
23 his submission thereto as a matter of law and as a matter of fact
24 did not constitute an act of expatriation under Section 401(c) of
25 the Nationality Act of 1940.

26 We submit that the evidence is conclusive that the appellant's
27 conscription into the Japanese Army and his service therein were
28 wholly involuntary and did not as a matter of law or as a matter
29 of fact constitute expatriating acts on his part and that appel-
30 lant's cause should be reviewed in the light of the Perez and
31 Nishikawa decisions and be decided in his favor.

32 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 28, 1958.

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

Attorney for Appellant Akira Tanaka

COPY

AFFIDAVIT OF AKIRA TANAKA

1 I, AKIRA TANAKA, residing at 273 Oaza, Nagatani, Kurate machi,
2 Kurate gun, Fukuoka-Ken, Japan, was born in Reedley, Fresno County,
3 California, on October 8, 1921. My father brought me to Japan in
4 April of 1931 when I was 9 years of age. I was sent to the Ninobu
5 Shogakko, a grammar school, and then to the Oaza Agricultural
6 School as my folks wanted me to learn agriculture that would
7 enable me to become a farmer in California when I finished my
8 education.
9

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11 In April of 1941 while I was attending school I received a
12 notice to go to the Miyadi-cho Grammar School to have a physical
13 examination which was required by the laws of Japan. It was a
14 military service requirement. I was 19 years old. I didn't want
15 to be forced to go into the military service. I talked it over
16 with my parents and said I wanted to avoid it and be sent back to
17 the United States but they said that I wouldn't be forced into
18 military service as I was attending school and that as it was
19 peacetime they said I could finish school first and then return to
20 the United States without having to enter the military service
21 but that I had better report for the examination or else I would be
22 violating the laws of Japan and would be sent for and be taken by
23 the police to be examined anyway and that I would be punished and
24 that they would be investigated and punished for my refusing to
25 obey. So I went and had my examination in April, 1941.

26 I was attending agriculture school when the war was started
27 by Japan on Dec. 7, 1941, and finished school in 1942. I didn't
28 realize that there was real danger of war until it was started
29 although just a few months before the outbreak of the war rumors
30 were flying around that there might be war. If I had known about
31 it or if my folks had realized there was real danger of war they
32 would have let me leave school and return to the United States but

1 by the time my folks came to believe that war was imminent it was
2 too late to send me back to the United States because there wasn't
3 a chance of getting on a boat. Up to then my parents weren't
4 willing to let me leave school and return to the United States
5 although I wanted to leave Japan from the time I entered the
6 agricultural school and finish my education in the United States
7 where I belonged. They wouldn't give me the fare before the war
8 because they didn't believe that there would be war until it was
9 too late for them to decide differently so I wasn't able to leave
10 anyway.

11 Soon as I got out of school I helped my father on the small
12 farm at Kurate-cho and kept to myself and away from other people
13 as much as possible because I was an American citizen and the
14 neighbors knew it and didn't like the idea because they distrusted
15 foreigners and suspected me because of my being an American and
16 being sympathetic to the United States and not loyal to Japan.
17 They were suspicious of my family too because we had lived in the
18 United States where I had been born and raised until I was about
19 10 years old. My parents always were proud of my being an
20 American and so was I. But it was not safe to be known as an
21 American citizen by the Japanese people during the war as they were
22 very suspicious of persons from the United States and spread ugly
23 rumors about us and said we were disloyal and spying.

24 My father, Iwagoro Tanaka, was beaten on several occasions
25 by the Japanese police because my brothers, Osamu and Takeshi, and
26 I were American citizens and none of us wanted to help or serve
27 Japan in any way whatever and my father held the same views as we
28 did. About August of 1942 my father was taken by several police
29 to the Furumon Police Station and one of the officers beat him with
30 a club saying that his children were traitors and disloyal to
31 Japan and that he was a traitor to Japan too. He was beaten on
32 several later occasions for the same reasons.

1 When my brother Takeshi received orders for conscription in
2 1942 and opposed it he was beaten by the kempeitai and the
3 workers at the Mitsubishi Kasei at Yahata City where he was forced
4 to work and he was also beaten by the plant manager and called a
5 traitor to Japan. Because of such brutal treatment Takeshi was
6 forced to obey and be conscripted. My father told me there was
7 no other way out for me and that if I refused to obey conscription
8 orders I was sure to be brutally beaten and probably killed as a
9 traitor to Japan. Later on my brother Osamu resisted induction
10 into the Japanese Army because he was an American citizen and
11 didn't wish to serve and because of his resistance he was beaten
12 on the head with a sword and kicked in his classroom at the
13 Nagasaki Normal School, Isahaya, Kyushu, by a Kempeitai officer
14 and was called a traitor to Japan. After the war the Japanese
15 government deported Osamu to the United States because he had been
16 branded a traitor to Japan.

17 I was conscripted into the Japanese Army on April 10, 1943,
18 against my will and I was forced to serve therein until June 17,
19 1946. My father told me that I must report for induction or I
20 would be brutally beaten by the kempeitai, then be put in prison
21 or else be taken by the military authorities and be beaten or
22 killed. Knowing how harsh and brutal the kempeitai could be and
23 how much worse the military authorities would treat me and fearing
24 for my safety and life I was compelled to obey the conscription
25 order. My father also told me that if I refused the kempeitai
26 then the military authorities would punish not only me but him and
27 my brothers and sisters as well. I was in fear of persecution of
28 myself and also of my family if I disobeyed.

29 The kempeitai and the military authorities were informed and
30 knew that I was an American citizen and that I was opposed to
31 being conscripted and that is why they regarded me as a spy and
32 as a disloyal person and as a traitor to Japan. Because the

1 military authorities distrusted me the officers kept their eyes
2 on me all the time I was in the Japanese Army and that is also
3 why I was abused and mistreated as an American while I was serving.
4 Because the non-commissioned officers didn't like the idea that
5 I was an American and didn't like my reluctance to serve in the
6 Japanese Army I was beaten several times while they said they
7 would beat the Yamato spirit into me. I wanted very much to
8 desert the Japanese Army but as there was no chance for me to
9 escape I didn't dare to try it for fear I would be caught and be
10 shot. I was forced to serve in the 54th Unit of the Western Corps
11 at Kurume City and later was sent to the Celebes, South Seas, as
12 a private, was taken prisoner by the Australian Forces in August
13 of 1945, and then was released in May of 1946 and sent to Japan
14 in June of 1946. I worked for the U.S. Army at the Ashiya Air Base
15 8081 from Jan. 1951 to Jan. 1955.

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JAPAN
PREFECTURE OF FUKUOKA
CITY OF FUKUOKA
CONSULATE OF THE UNITED
STATES OF AMERICA

/s/ Akira Tanaka
Akira Tanaka

Subscribed and sworn to before me this 23rd day of
July, 1958.

/s/ Wm. Dixon
Vice Consul of the United States
of America

SERVICE No. 5668

Tariff Item No. 45
Fee Paid U.S. \$2.50
Local Cy Equiv. ¥905

U.S. Consulate Seal
Fukuoka, Japan

AFFIDAVIT OF IWAGORO TANAKA

My name is Iwagoro Tanaka; I reside at 509 Banning Street, Los Angeles, California.

I am the father of Akira Tanaka who was born in Reedley, Fresno County, California, on October 8, 1921, of Osamu Tanaka who was born at 17 Baldwin Island, Stockton, California, on April 16, 1924, of Takeshi Tanaka who was born at Baldwin Island, Stockton, California, on June 26, 1926, and of daughter Tsugi who was born at San Jose, California, on _____, 1908.

I took my said children to Japan with me in 1931 where I desired them to obtain part of their education.

Before the war was started by Japan on December 7, 1941, when it appeared that war really was imminent, it was impossible for me and my family to return to the United States for lack of passage space.

My son, Akira Tanaka, was attending the Oaza Agriculture School in 1941 when his notice to appear at the Miyadi-cho Grammar School for a physical examination was received. He was 19 years old at the time. That was before Japan started the war. He didn't wish to comply with that order because he was an American citizen and didn't wish to be forced into the Japanese Army. I told him repeatedly that since it was peacetime that he wouldn't be forced to go into the Japanese Army because he was still attending school and that when he finished school he could return to the United States. I told him, however, that he must report for his physical examination or it would mean serious trouble for him and for me and my other sons and that the police would be sent to fetch him by force to take the examination anyway or have him placed in jail. Akira obeyed my instructions and reported for his physical examination with great reluctance but in the belief that he would not have to go into the Japanese Army but would be able to finish school and thereupon return to the United States and evade being impressed into the Japanese Army. Unfortunately he was still attending the agricultural school when Japan started the war on December 7, 1941, and so became stranded in Japan by the outbreak of war and there was no way for him or any of my family to get out of Japan. Finishing school in 1942 Akira worked on the farm at Kurate-cho.

The authorities and neighbors, knowing that my sons were American citizens and loyal to the United States, made a great deal of trouble for all of us. Sometime about August of 1942 I was arrested by the police and taken to the Furumon Police Station and was accused of being disloyal to Japan and of having children who were disloyal and traitors to Japan and was clubbed. My sons had knowledge of these facts. I was similarly treated by the police on several subsequent occasions. My son Takeshi also was beaten by the police in 1942 when he opposed his conscription. He was beaten by the police and by the plant manager and workers at the Mitsubishi Kasei in Yahata City. As a result of the beatings and threats made against him he was forced to be conscripted. My son Akira and I had knowledge of the beating and ordeal of Takeshi.

My son Akira was ordered to be conscripted in April of 1943. He opposed being conscripted. I told him he must report or face being arrested and beaten by the police and be sent to jail or be seized by the military authorities and be beaten by them or be jailed or shot. For his own safety he had to submit to induction. There was no other way out for him. Not only the neighbors but the police and the military authorities had no use for me and my family, considering us disloyal

and traitors to Japan because my children were American citizens and none of them wished to be conscripted into the Japanese Army and I didn't wish any of them to be conscripted. We were kept under constant surveillance by the police. My son Akira was abused and mistreated and beaten while he was serving in the Japanese Army because he was an American citizen and was not loyal to Japan. My son Osamu and I talked several times that Akira might be better off dead than to undergo the brutal treatment he was undergoing and that if we could send him some poisoned tea he could take his own life but because such a plan might be discovered we didn't dare carry it out. We just hoped that Japan would be defeated quickly and that Akira would survive and come back to me.

When my son Osamu later resisted conscription into the Japanese Army he was beaten in his classroom at the Nagasaki Normal School by a police officer. He was struck on the head, was kicked, beaten and villified as a traitor to Japan. Because of his fear for his life he was forced to comply with the order for his induction and at the end of hostilities the Japanese government ordered him deported to the United States because he was considered a traitor to Japan.

/s/ IWAGORO TANAKA

(Notary Seal)

Iwagoro Tanaka

26 July

Subscribed and sworn to before me
this _____ day of _____, 1958

/s/ DANIEL Miyake

XXXXXXXXXXXX
Notary Public for the County
of Los Angeles, State of California.

My Commission Expires June 23, 1961

AFFIDAVIT OF OSAMU TANAKA

My name is Osamu Tanaka, and I reside at 509 Banning Street, Los Angeles, California. I am an American citizen. I was born on April 16, 1924, at 17 Baldwin Island, Stockton, California. When war broke out by the Japanese attack on Pearl Harbor on Dec. 7, 1941, my parents, brothers, sister and I were in Japan. We had no chance to leave Japan.

I received a notice for physical examination from the Japanese Army either in 1944 or 1945. This notice came from Fukuoka City. I appeared for physical examination, and I was classified physically fit for military duty. I was expected to report for induction on or about April, 1945, but I refused to be conscripted into the Japanese Army because I was an American citizen. I was then attending the Nagasaki Normal School at Isahaya, Kyushu, Japan. Inasmuch as I was attending the school and wanted to avoid conscription, I requested deferment to avoid conscription. Captain Furukawa and Lieutenant Otsubo of the kempeitai came from Nagasaki to our school and I was beaten in the classroom in the presence of other students. I was beaten over the head with a sword, and it was necessary to have several stitches to close the wound on my forehead. Captain Furukawa was the individual who beat me with the sword and he called me "hikokumin" (traitor). He also kicked me with his army boots near the liver. As a result thereof I was confined in the Nagasaki College Hospital for a period of two months. I still possess this scar near my abdomen. Lt. Otsubo did not strike me but he called me a traitor.

My brother, Akira Tanaka, already had been conscripted into the Japanese Army against his will. When I visited him while he was stationed at Kurume City, Akira stated to me that the upper non-commissioned officers also had beaten him because of his being

an American citizen and because he was not loyal to Japan and was suspected of being loyal to the United States which was true. He told me that when he was beaten he was told that it was being done to infuse loyalty into him and to instill a Japanese spirit into him. Later Akira was sent to Java and was taken a prisoner of war by the Australian Forces in 1945. I recall vividly how my father and I discussed the difficult time Akira was having in the Japanese Army. Father and I discussed on several occasions that we would send him some poisoned tea so that he could take an easy way out from the brutal treatment he had received and was receiving at the hands of the Japanese military authorities but we didn't dare do it because we feared it would be discovered and also because we were hoping that somehow Akira might manage to survive his ordeals and that America would win the war before long and Akira would come back to us.

My father, Iwagoro Tanaka, who presently resides at P. O. Box 637, Guadalupe, California, was beaten on several occasions by the Japanese police. He was beaten before Akira was forced to comply with the draft laws and submit to conscription into the Japanese Army and this caused Akira to fear like and also much worse punishment if he disobeyed a conscription order. I witnessed one of the beatings of my father by the police long before Akira was conscripted. I was powerless to prevent it or to do anything about it. I had returned home from Nagasaki for my summer vacation period about August of 1942. My father was taken by force by several persons and I followed them to the Furumon police station. One of the police officers beat him with a police club on the hip, saying that his children were disloyal to Japan and traitors and that he was disloyal and a traitor too. He was also given several similar beatings on several other occasions, all because he was the father of American born citizens who were deemed to be disloyal to Japan and who, in fact, were disloyal to Japan,

1 and did not owe Japan any loyalty and did not give any loyalty to
2 Japan.

3 I was deprived of my food ration because of my refusing to
4 serve in the Japanese Army. I had to obtain food from my
5 brothers and sister when I went to Fukuoka. The ration official
6 would not give me a ration card for essential food as I was then
7 classified as a traitor to Japan.

8 I was deported to the United States by the Japanese govern-
9 ment. I left Japan on or about September 4, 1955, and landed into
10 the United States on September 18, 1955. I had received a notice
11 from the Japanese Home Ministry or the Japanese Immigration &
12 Naturalization Service stating that under Section 24 of their
13 Japanese law, I was given the option of leaving Japan voluntarily
14 or be deported from that country as I was a traitor to their
15 country during the period of World War II.

16 My brother, Takeshi Tanaka, c/o Tsuru-shoten, Nakano-machi,
17 Onga-gun, Fukuoka-ken, Japan, was born on or about June, 1926, in
18 the United States. While he was working for Mitsubishi Kasei at
19 Yahata City, Japan, he also was conscripted into the Japanese
20 Army. He was drafted into this manufacturing plant which was
21 making pharmaceutical products for military use. His real
22 vocation was farming. When he received his notice on or about
23 1942 to report to the Japanese Army he refused to go. He was
24 beaten at the factory by the kempeitai and the Japanese co-workers
25 at the factory. He was also beaten by the manager of the plant,
26 and he was villified as a traitor to Japan. After such brutal
27 treatment Takeshi had no other choice but to be conscripted into
28 the Japanese Army or face the consequences. He was sent to
29 Manchuria, and he became seriously ill in the Army. He was sent
30 back to Fukuoka, and at a later date he was redrafted again and
31 served for a period of time. My brother, Akira, who then resided
32 at Nishikawa-mura, Kurate-machi, knew exactly how Takeshi was

1 treated, and he also had no choice but to be conscripted or be
2 beaten or suffer imprisonment or death.

3

4

/s/ Osamu Tanaka
Osamu Tanaka

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8 Subscribed and sworn to before
9 me this 19th day of July, 1958.

10

11 /s/ Tetsujiro Nakamura

12 Notary Public in and for the County
13 of Los Angeles, State of California.

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C E R T I F I C A T E #369

Legal domicile: 273, Oaza Nagatani, Kurate-machi, Kurate-gun
Fukuoka-ken

Name: TANAKA Akira

Birth: October 8, 1921

This is to certify that the above-named person entered the Japanese Army SEIBU 54th Corps, not as a Volunteer out of his own will, but as a Replacement Reservist, having responded to the call to the arms.

Yamori KURITA
Mayor of Kurate-machi
Kurate-gun, Fukuoka-ken

I certify that the above has been translated from the attached document in Japanese, and it is a full, true and correct translation to the best of my knowledge.

June 27, 1958

/s/ Seisuke Sakamoto

Japan
Prefecture of Fukuoka
City of Fukuoka
Consulate of the United States of America)

Seisuke SAKAMOTO
20, Sakura-machi, Fukuoka-shi

) ss:

Subscribed and sworn to before me this 27th day of June, 1958.

(SEAL)

Service No. 4997
Tariff No. 45
Fee Paid: U.S. \$2.50
Local Cy. equiv. Y 905

/s/ Benjamin C. Hilliard
Benjamin C. Hilliard
Consul of the
United States of America