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TAMADA, TATSUO

1958

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

In re: TATSUO TAMADA,
Appellant.

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

Tatsuo Tamada, of 61-2-5 Ote Machi, Hiroshima Shi, Japan,
born in Hawaii, T.H., on February 16, 1916, hereby appeals from the
"Certificate Of The Loss Of The Nationality Of The United States"
issued to him under date of April 12, 1956, by Maida F. Stotts, Vice-
Consul of the United States of America, at Kobe, Japan, which was
approved by the Department of State on July 16, 1956, and from the
denial of the issuance to him of a United States passport for which
he had applied and which said denial was based upon a purported
expatriation under the provisions of Section 401(c) of Chapter IV
of the Nationality Act of 1940 by reason of his induction into and
service in the Japanese Army from December 1, 1941, to March 18,
1946. The appellant also moves to reopen said cause and have the
same reconsidered and moves that thereupon a United States passport
issue to him as a United States citizen.

Attached hereto as exhibits and made a part hereof, as addi-
tional evidence to be considered in connection with this appeal and
in support of said motion is appellant's affidavit executed on May
23, 1958. Appellant and his counsel request that if any of the
documents heretofore submitted as evidence on appellant's applica-
tion for a United States passport or appellant's affidavit herewith
submitted as evidence to be considered on this appeal and motion to

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

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

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

20 In the Perez decision the Supreme Court declared:

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

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

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

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

17 The voting by the appellant in Japan in 1946 and 1947 was not
18 in a "foreign election" within the meaning of 8 USCA, Sec. 801,
19 of the Nationality Act of 1940 but took place while Japan was an
20 occupied country. Further his voting was caused by the persuasion
21 and pressure of SCAP and the Allied military authorities and he
22 feared penalties would be invoked against him if he failed to vote.
23 Also it was caused by the coercion of the local officials and his
24 consequent fear of the threatened loss of his ration card which he
25 was informed, believed and feared, would be another result of his
26 failure to vote. In consequence, his voting was involuntary and did
27 not constitute an act of expatriation.

28 We submit that the evidence is conclusive that the appellant's
29 induction into the Japanese Army and his service therein and also
30 his voting in Japan in 1946 and 1947 were wholly involuntary and did
31 not as a matter of law or as a matter of fact constitute expatriat-
32 ing acts on his part and that appellant's cause should be reviewed

1 in the light of the Perez and Nishikawa decisions and be decided in
2 his favor.

3 Wherefore, appellant requests that his motion to reopen the
4 cause and for reconsideration thereof be granted and that his
5 appeal be sustained and that a United States passport issue to
6 him.

7 Dated: July 18, 1958.

10 _____
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15 Attorney for Appellant Tatsuo Tamada.
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