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Sumiyoshi, Iwao

1958

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

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In re: IWAO SUMIYOSHI,
Appellant.

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

Iwao Sumiyoshi of 2708-4 Hiro-machi, Kure-shi, Hiroshima-ken, Japan, born in Seattle, Washington, on January 18, 1924, hereby appeals from the "Certificate Of The Loss Of The Nationality Of The United States" heretofore issued to him by the United States Consul at Hiroshima, Japan, 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 the Japanese Army in April of 1940 prior to the war through no choice of his own when he was a minor only 16 years of age and his subsequent service therein to December 1945 when he was made a prisoner of war of the Soviet Union forces and was impressed into a labor batallion and compelled to labor in Siberian mines until June of 1948 when he was released and returned to Japan. 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 additional evidence to be considered in connection with this appeal and in support of said motions are the following documents:

- 1 1. Affidavit of Iwao Sumiyoshi (appellant) dated October
- 2 30, 1958.
- 3 2. Affidavit of Kotone Sumiyoshi (mother of appellant) dated
- 4 October 30, 1958.
- 5 3. Affidavit of Tatsumi Ozawa dated December 18, 1958.

6 Appellant and his counsel request that if any of the documents
7 heretofore submitted as evidence on appellant's application for a
8 United States passport or the affidavits herewith submitted as
9 evidence to be considered on this appeal and motion to reopen and
10 reconsider appellant's application for a United States passport
11 for any reason be deemed insufficient in form or in substance as to
12 cause an unfavorable decision to be rendered thereon the appellant
13 requests an opportunity to have such deficiency corrected.

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

24 In the Perez case the Supreme Court decided that "Congress
25 can attach loss of citizenship only as a consequence of conduct
26 engaged in voluntarily", citing Mackenzie v. Hare, 239 U.S. 299,
27 311-312.

28 In the Perez decision the Supreme Court declared:

29 "Whatever divergence of view there may be as to what
30 conduct may, consistent with the Constitution, be said
31 to result in loss of nationality, cf. Perez v. Brownell,
32 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.

1 In the Nishikawa decision the Supreme Court decided that in
2 all expatriation cases under Section 401 of the Nationality Act
3 of 1940 the burden of proof rests upon the government to prove
4 expatriation by "clear, convincing and unequivocal" evidence, in
5 the following language:

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

12 The evidence discloses the facts to be that the appellant's
13 induction into the Japanese Army took place in April of 1940 prior
14 to the outbreak of the war and at a time when he was a minor only
15 16 years of age. He had no choice in the matter. His induction
16 was without his consent. It was forced on him by his mother, with
17 the connivance of his teacher, as the means to insure him of food,
18 clothing and shelter which his mother was unable to provide for
19 him. His service therein subsequent to December 7, 1941, from the
20 outbreak of war was not voluntary but was inescapable and open
21 protest against it would have resulted in immediate punishment, as
22 the evidence shows.

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

29 Wherefore, appellant moves to reopen the cause and for recon-
30 sideration thereof and that his appeal be sustained and that a
31 United States passport issue to him.
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1 Dated: January 15, 1959.

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Wayne M. Collins

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1300 Mills Tower
San Francisco 4, California
GARfield 1-5827

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Attorney for Appellant Iwao Sumiyoshi

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JAPAN)
 PREFECTURE OF HYOGO) SS.
 CITY OF KOBE)
 CONSULATE GENERAL OF)
 THE UNITED STATES OF)
 AMERICA)

AFFIDAVIT OF KOTONE SUMIYOSHI

My name is Kotone Sumiyoshi, I reside at 2708-4 Hiro-machi, Kure-shi, Hiroshima-ken, Japan. I am the mother of Iwao Sumiyoshi who resides at 2708-4 Hiro-machi, Kure-shi, Hiroshima-ken, Japan. My husband, Jitsuo Sumiyoshi, died as a result of a railway accident at Seattle, Washington, in 1928. In May of 1935 I took my son Iwao, his brother and sister to Japan and left them with their aunt and grandmother and thereafter returned to Seattle. My children attended primary school in Hiro. I returned to Japan from the United States to Japan in 1939 planning to return to the United States but was unable to do so. I had a very difficult time making ends meet and I was never certain of having sufficient funds on hand to sustain my children. I urged my son to join the Japanese Army as did his uncle and his teachers because it would assure him of getting clothes, food and shelter. Iwao desired very much to complete his education but it was impossible for me in my circumstances to support him and I insisted that he must join the army. He endeavored to enter a number of high schools but was rejected because he was older than most of the other boys. Iwao did not wish to go into the army. He insisted that he wished to receive an education. Being in a desperate plight, I had his teacher, Hayami Inoue, prepare an application to enlist and signed the application for him as he was but 15 years of age. After I had filed the application I told my son that he would have to go into the Japanese army. I said that it was the only thing that he could do as he was too young to earn a living and I did not wish him to face starvation. At my request his teacher took him to the army office to report for service.

Right after Japan started the war against the United States my son informed me and his teacher that he was going to apply for a release from the Japanese army because he was a United States citizen and did not wish to serve in the Japanese army against the United States. His teacher and I both informed him that he dare not make such an application because if he did so the Japanese military authorities would consider him to be disloyal and a traitor to Japan and would inflict severe and immediate punishment upon him. My son realized this and because of his fear of punishment did not dare to do any such thing. The military authorities knew that my son was a dual national because his papers showed that he was born in the United States.

/s/ Kotone Sumiyoshi
 Kotone Sumiyoshi

Subscribed and sworn to before me this 30th day of October, 1958.

(SEAL)
 CONSUL GENERAL OF THE
 UNITED STATES OF AMERICA
 KOBE-OSAKA, JAPAN

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

Service No. 4581 -
 Tariff No. 45
 Fee Paid: U.S. \$ 2.50
 Local Cy equiv. ¥905.-

AFFIDAVIT OF TATSUMI OZAWA

My name is Tatsumi Ozawa. I reside at 1258 Ohmori, Niho-machi, Hiroshima-shi, Hiroshima-ken, Japan. My sister is mother of Iwao Sumiyoshi, who resides at 2708-4 Hiro-machi, Kure-shi, Hiroshima-ken, Japan. I had been the guardian for Iwao, his brother and sister who had been left by his mother in 1935, her husband having passed away in Seattle in 1928.

Iwao's mother, Kotone Sumiyoshi, returned to Japan from the United States in 1939 to make provision for her children. Iwao's mother, with all assistance that I could render was having a very difficult time supporting herself and her children and there was not enough food to go around. Iwao and his brother and sister were attending school. He wanted very much to go to a higher school. His teachers and his mother and I many times pressured him to join the Japanese army as that would be a solution to his problem because he was too young to go to work and earn a living and in the army he would be supplied with clothes, food and shelter and even spending money. His teachers at school had also given him the same advice. But he was opposed to service in the Japanese army. He wanted to complete his education. He endeavored to enter a number of high schools but was unsuccessful in being accepted because he was over the age of most of the other boys. His mother prepared an application to have him enlisted in the Japanese army in 1940. His mother and his teacher made the arrangements without notifying him. His mother subsequently informed him that she had made the application and that he would have to enter the army. His teacher escorted him to the enlistment office.

Almost immediately after December 7 of 1941 when Japan started the war against the United States Iwao told me that he was opposed to serving in the Japanese army against the United States which was his own country. I told him that if he dared to do any such thing the military authorities would suspect him of being disloyal and would throw him into prison and might even consider him to be a spy and a traitor. He feared that if he made the application that he would be regarded as a disloyal person or as a traitor and would be immediately and severely punished. As a result he was not able to apply for a discharge from the Japanese army.

/s/ Tatsumi Ozawa (seal)
Tatsumi Ozawa

Subscribed and sworn to before me this 18 day of December, 1958.

/s/ R. Hira1 (seal)
Notary of Hiroshima Oral Testimony Office

JAPAN)
HYOGO PREFECTURE)
CITY OF KOBE) S.S.
CONSULATE GENERAL OF THE UNITED)
STATES OF AMERICA)

I hereby certify that R. HIRAI, whose true signature and official seal are, respectively, subscribed and affixed to the attached document, was on the 18th of December, 1958, the day of the signing and affixing of said signature and seal thereto, a Notary Public, R. HIRAI, to whose official acts faith and credit are due.

December 22, 1958.

/s/ Howard B. Crotinger

(SEAL)
CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA
Kobe-Osaka, Japan

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

Post Kobe-Osaka, Japan
Date 12-22-58
Service No. 5224
Tariff Item No. 46
Fee Paid: U.S. \$2.50
Local Cy. Equiv. ¥905-