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A Current Problem of Naturalization

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A CURRENT PROBLEM OF NATURALIZATION

ALIENS have no right inherent or statutory, to be admitted to membership in the body politic of the United States of America. Naturalization, then, being solely and entirely a political privilege extended by sovereign grace to aliens resident within the United States, Congress has undoubted authority under the Constitution to prescribe the terms and conditions upon which such privilege shall be granted.[1]

While Congress, in dealing with the naturalization problem, recognized it to be impolitic to perpetuate the character of alien any longer than was absolutely necessary, that law making body still recognized that a reasonable probationary term should be prescribed to enable candidates to rid themselves of foreign and to acquire American attachments, to learn the principles and imbibe the spirit of our government, and to admit of a probability, at least, of their feeling a real interest in our affairs. A residence of not less than five years was, therefore, required of an alien before he might petition for citizenship, this to accommodate the feelings of the candidate to the manners, laws and government of this country.[2]

Since the status of citizenship involves reciprocal obligations between state and citizen, it ought in fairness and in compensation for such obligations to be beneficial as well to the state as to the person who seeks citizenship. To this end, the proofs exacted from the applicant, and the status and condition of the applicant, which these proofs disclose, ought to be considered in the light of what such status and conditions promise to the government for the future, and with only *negligible* regard for the past.[3] While the antecedent character of the applicant and his reputation and acts in the past are persuasive, as aiding the assumption of continuance upon a good course, yet the government is entitled, before it receives him, and before it assumes the obligation to protect him as a citizen, to consider whether the burdens entailed, will not be so much greater than the benefits accruing to it as to make the naturalization of the applicant a bad or dangerous bargain, and a bargain utterly unfair to its other millions of citizens. Thus, where an applicant had left his wife and children in Russia in 1913 and had

[1] *Ex. p. Eberhardt*, 270 Fed. 334; *In re Tomarchio*, 269 Fed. 334; *In re Sigelman*, 268 Fed. 217.

[2] Sec. 2170, U. S. Rev. Stat., and see *In re Vasicek*, 271 Fed. 326.

[3] *Lucia v. United States*, 231 U. S. 23, 34 Sup. Ct. 10.

not been able to communicate with them for a period of seven years, his petition was denied where it appeared that he sought citizenship mainly for the purpose of returning to Russia under the protection of the American flag in order to get his family and bring them to this country, and it further appeared that he secured service on his representation that his wife and children were "mainly dependent on his labor for support." The court, however, said it did not particularly stress the latter point, and it principally emphasized the fact that the benefits which the country would receive were entirely incommensurate with the obligations it would incur by reason of possible foreign complications.[4]

Since the late World War, the question has constantly arisen as to the status of that class of people designated as enemy aliens. Section 2171 of the Revised Statutes of the United States provides that: "No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty, with which the United States are at war, at the time of his application, shall be *then* admitted to become a citizen of the United States." In time of peace this section, of course, is unimportant. The first application of the section during the war occurred where the applicant, had long before April 6, 1917, declared his intention of becoming a citizen, and on the date of the declaration of a state of war between the United States and Germany, made application to be admitted to citizenship. The court held that since he was a German subject, he came within the section above quoted and he could not be admitted. His application was *not denied,* however, but was *merely postponed* until the close of the war.[5]

The Draft Act subjected to draft for military service all resident aliens of the prescribed age who had declared their intention of becoming citizens of the United States.[6] It was subsequently amended to provide that an alien might be relieved from military service by withdrawing his declaration of intention, in which event he was forever barred from becoming a citizen.[7] Many aliens, both declarant and non-declarant, claimed exemption from the draft, and such exemptions were frequently granted declarant aliens contrary to the presidential regulations. These claims for exemption have been a constant source of controversy in connection with the naturalization of aliens who made such claims.

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[4] *In re Sigelman,* 268 Fed. 217.

[5] *Matter of Meyer,* 100 Misc. (N. Y.) 587 (1917).

[6] Comp. Stat., 1918, 1919, Supp. Sec. 2044b.

[7] Comp. Stat. 1919, Supp. Sec. 10563e.

The courts have taken three positions with reference to such aliens: (1) that they were forever barred from naturalization; (2) that prior declarations of intentions by them were invalidated, but that after the statutory period of five years, they would be eligible to citizenship; (3) that their naturalization was not substantially affected.

Although the authorities are clear that in the absence of specific legislation, no naturalization court can forever bar an alien from citizenship,[8] this was done in a number of unreported cases.[9] In one instance, an order forever barring an alien from naturalization was amended and the alien merely required to serve the probationary term of five years.[10] Whether the bar was declared to be permanent, or, as in most cases, for a period of five years only, the reasoning of the court was the same: viz., that by his claim for exemption, the alien shirked his duties and showed that he was not attached to the Constitution, nor loyal to the United States.[11]

The Naturalization Law requires the applicant to establish that he has behaved "as a man of good moral character, attached to the principles of the Constitution" for the five years immediately preceding his petition. The decisions holding aliens who have claimed exemption ineligible for five years measures that period either from the time the claim was made,[12] or from the date of the Armistice.[13]

There are fewer recorded opinions holding that aliens were not disqualified for naturalization by claiming exemption under the draft. In one of the earliest decisions, the court ruled that under the Selective Service Law, Secs. 2, 4 (Comp. Stat. 1919, Secs. 2044f, 2044d) and the selective service regulations wholly excluding alien enemies from military service, an alien enemy's claim of exemption on the ground of alienage did not show that he was unattached to the principles of the Constitution and well disposed to the good order and happiness of the country as required by the Naturalization Law of June 29, 1906,

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[8] *State v. District Court,* 202 P. 387 (1921); *In re Conti,* 217 Fed. 833; *In re Guliano,* 156 Fed. 420.

[9] American Civil Liberties Union—Bulletin No. 23.

[10] *In re Lindner,* 292 Fed. 1001.

[11] *In re Leon,* 262 Fed. 166, where the court said: "Any person unwilling to pledge his hands, his heart, his life, to the service of the government of the United States, first and always, is unworthy to be admitted to citizenship." See also, *In re Silberschutz,* 269 Fed. 398; *In re Tomarchio,* 269 Fed. 400; *In re Trachsel,* 271 Fed. 779; *In re Rubin,* 272 Fed. 697; *In re Shanin,* 278 Fed. 739; *In re Pitto, etc.,* 293 Fed. 200; *In re Lindner,* 292 Fed. 1001; *In re Penelacqua,* 295 Fed. 862.

[12] *In re Pitto, etc.,* 293 Fed. 200.

[13] *In re Lindner,* 292 Fed. 1001.

Sec. 4 (Comp. Stat. Sec. 4352), since the mere claim of an exemption established by law, was not an act of disloyalty.[14]

In re Siem,[15] decided November 27, 1922, was the earliest recorded case in which the application for naturalization of a non-enemy declarant who had claimed exemption was granted. The claim of Siem, a Norwegian, for exemption had been denied and Siem classified as A-1, but he was later rejected for physical disabilities and rendered non-combatant service in the copper mines. The court held that the obligation of military service attached to citizenship and that no duty to render such service rested upon a resident alien, even though he had declared his intention to become a citizen. Until he became a full citizen his allegiance to his native country persisted, and he could not be compelled to render military service to the United States without violation of international law. In such circumstances, his claim to exemption was only patriotism to Norway, a neutral country, which gave promise of his being in the future a better citizen of this country, and was no indication that he was not attached to the principles of the American Constitution.

The latest and best reasoned opinion on this point is found in a case but recently decided by Judge Geiger in the District Court of Wisconsin,[16] wherein the government's objections to the naturalization of (1) enemy aliens, declarant and non-declarant; (2) declarant non-enemy aliens, and (3) non-declarant non-enemy aliens who had claimed exemption from the draft, were all overruled. The opinion holds that in view of the fact that whether or not an alien was liable to the draft dependent on his status: viz., whether alien or non-alien, declarant or non-declarant, he should not be penalized for making either a tenable or untenable claim to exemption, even where such claim was, as often happened, allowed. Judge Geiger concluded from the developments of the situation, that the whole matter of pressing the Draft Law against an alien status was believed to be open to fair, if not grave, debate. The court points out that it was mandatory for the administrators of the Draft Law to *exclude all enemy aliens* from ser-

[14] *In re Miegel*, 272 Fed. 688. The court further ruled that a claim of exemption from military service under the Selective Service Law by an alien, *not an enemy*, who had declared his intention to become a citizen, and who was not entitled to the exemption claimed, indicated that he was not attached to the principles of the Constitution, and that a five year probationary period was necessary before admittance could be sought.

[15] 284 Fed. 868. This decision was later affirmed when the government sought to cancel the certificate of naturalization granted. *United States v. Siem*, 299 Fed. 582.

[16] *In re Naturalization of Aliens, etc.*, I Fed. (2nd) 594.

vice, regardless of whether any exemption was claimed on the part of such alien. The court asks:

"Why were aliens, who, under the law, were subject to nothing but peremptory exclusion, asked whether they *claimed* exemption, when, under the law, a negative answer still left them nothing but exclusion? . . . . shall we conclude that the administrative boards, also *advisory* boards, consisting largely of members of the legal profession, deliberately committed themselves to exacting futile answers respecting untenable claims—either for or against *willingness* to serve—with the idea that such answers might serve to block naturalization?"

The court took cognizance of the other decisions and shows how the government was confronted at once with the question of whether the probationary period was to run from the time exemption was claimed, from the date of the Armistice or from the date of the final treaty of peace. Says the judge. "I have no doubt that the government must realize the incongruity of its position. Plainly, if such is the law, it puts aliens who really desired to avoid service in no severer task than making a choice between going to war and deferring their naturalization."

Upon a comparison of the conflicting authorities, the more persuasive conclusion is that claims for exemption unconnected with any other manifestation of disloyalty, should not affect an application for naturalization. The courts seem gradually to be coming to this conclusion, and in the words of Judge Bourquin:

"As the war and its emotions recede, it is interesting to note that the earliest of said decisions denied admission 'with prejudice'; the later, without this futile excommunication; the latest, with express leave to renew; and now in the instant proceedings with its decision granting admission."[17]

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[17] *In re Siem*, 284 Fed. 868 at page 869.

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