IN RE TAKAO OZAWA.

NATURALIZATION OF A JAPANESE-SUBJECT.

THIRD BRIEF

BY

TAKAO OZAWA--PETITIONER

In his "ADDITIONAL BRIEF FOR THE GOVERNMENT" United States Attorney MR. Vaughn says: The Government respectfully submits that petitioner is not eligible to naturalization and his petition should be denied because it appears both frome the petition and frome the evidence that petitioner is not a free white person, and that he is not of African descent nor of African nativity! In order to supe- support his statement he cited ten cases. Unfortunately,however, these cases have hardly any merits to bar me frome admition for the following reasons:

At present in the Unit States there are two naturalization laws in force specifing what person to be admitted and what person to be denied. The former is Section 2I69 Revised Statutes of the United States which says: "The provision of this title shall apply to aliens being FREE WHITE PERSONS and to aliens of African nativity and to person of African descents. And the latter is the Act of May 6 I882 Chap.I26 Sec. I4. which says:"That hereafter no state court or court of the United States shall admit Chinese to citizenship,and all laws in conflict with this act are hereby repealed."

There is no law prohibiting any Japanese frome naturalization Hence there is no necessity for ME to prove whether or not I am a Japanese And also there is no law prohibiting all Mongolian Race for admition.

(8)

Hence there is no necessity for me to prove that I am not a member of the Mongolian Race. However what I must to prove are

Ist, That I am not a Chinese. 2nd, That I am a free white person in the sence the term is used in the law.

By reading the Act of I882, and also the treaty of I894 between the United States and Chinese Empire,(see my second brief p. I3) we will easily be convinced that the term ~~Chinese~~ Chinese used in the law and the treaty means a subject of Chinese Empire. Hence the term Chinese used in the law is a common name of the peaple belonging to a particular nation known as China . I was born in Japan, my father and mother are Japanese. My family by generation was known as Nanushi -the head man of a village. Hence I am a Japanese. Therefor I am not a Chinese. Since I am not a CHinese, it is absotutely unjust to apply the Chinese Prohibition law upon my case, in order to bar me frome admission.

Second, As the result of my diligent study on the quetion of naturalization,I become able to prove that I am a FREE WHITE PERSON in the sence the term is used in the law in force.

Now, in order to make every point very clear, I will discuss each point as follow:

First, The term FREE used before the words White Person was not used in the sence of at Liberty.

Second, The term FREE WHITE PERSON does ~~m~~ not mean any WHITE PERSON.

Third, The term FREE WHITE PERSON was not originally used to mean the CAUCASIAN RACE.

Fourth, The term FREE WHITE PERSON was not used to exclude all races except the CAUCASIAN RACE.

Fifth, The term FREE WHITE PERSON in the law was used to mean all person not vividly African.

Sixth, Conclusion.

Of The term FREE WHITE PERSON, the word FREE was not used to mean LIBERTY, It was used to means RESPECTABLE.

If the term FREE was used to mean at LIBERTY, in the first naturalization law of I790, it should have been ~~droped~~ dropped from the law, at the time the law was revised in I870 for that time slavery was already abolished every where. In Europe RUSSIAN was the last in abolishing the slavery which was existing in the form of Serfdom.in I86I. In the United States, after the civil war, the slavery was abolished. Again, at the time the law was revised, the slavery did not exist in Japan. Hence the term FREE was no longer needed in the law.

Notwithstanding of these facts, the word FREE wasnot striken out from the law And it is still used in the law of to-day. Therefore the term FREE was not used to mean at LIBERTY, It must have some other meaning. The term FREE was used in the same sence as it was used in the Articles of Confederation which was enacted in I778, which was in force untill two years beforethe passage of the naturalization law of I790. The provision of this articles(inthe fourth article) was that the FREE INHABITANTS of each state(PAUPERS, ~~VA~~-vagabands, and FUGITIVES from justice ezcepted) shall be entitled to

all privilegs and inmunities of FREE CITIZEN-~~inth~~- in the several states. Here Paupers, Loafers, Criminals are exclude frome FREE INHABITANTS OR FREE CITIZENS. Hence the term FREE was used in the sence as INDEPENDENT, IDUSTRious, AND GOOD(inanother words RESPECTABLE or HONORABLE).

The foregoing statement will suficiently prove that the term FREE was not used to mean at LIBERTY, But it was used in the same sence as RESPECTABLE.

Second. The term FREE WHITE PERSON does not mean any WHITE PERSON.

Any person who construe the term FREE WHITE PERSON as any WHITE PERSON, is no wiser than a boy who construes the term FRESH WHITE EGGS as any WHITE EGGS. Whenever we speak of White Eggs, we mean the eggs having White shells. Hence the term WHITE does not idicate any quality of eggs. ~~It only-----It designates-~~ It only designate the color of eggs. On the other hand, when w we speak of FRESH WHITE EGGS, we mean newly laid eggs. A WHITE EGG may or may not be FRESH, But a FRESH EGG must always be FRESH, that is, of good quality of egg. Hence the term FRESH WHITE EGG indicates the good quality egg. Thus the term FRESH WHITE EGG does not mean ANY WHITE EGG

Simlarly, in the expression WHITE PERSON , the word WHITE designates the color of person but not quality. On the other hand in the expression FREE WHITE PERSON, the term FREE indicates the good quality of ~~person~~ a person. A word designating any color

and that indiating good quality are not same. Thus the term FREE does not mean ANY WHTTE PERSON. Hence the term FREE WHITE PERSON and WHITE PERSON ought not to be costrued as same. 2 and 3 and 4 does not mean 3 and 4.

Third. The term FREE WHITE PERSON was not used to mean the CAUCASIAN.

Hitherto,many judges who took up the cases of naturalization construed the term FREE WHITE PERSON used in the law of I790 as CAUCASIAN. Because they thoght the law was based on Blumenbach's Race Clacification which was published 9 years before the passage of that law,that is, in I78I. Unfortunately ,however, their guesses were entirely wrong.

(I) Blumenbach's race clacification was published during the American Revolutoin,in I78I, in Germany, in German Language. But it was not translated into English in America until I798,by Coldwll, and in London, in I807, by Eliotson (ref. Encyclopidia Britania Vol. III P. 84I0.) Hence his clacification was certainly not generally known or current in the United States in I790. (Ref. In re Dow, 2I3 Fed. 359 & 226 Fed. I45.

(2) No college or Univercity taught anthlopology until after the middle of the nineteenth century. The first American institutions in which systematic instruction in anthlopology was introdused were Harvard and Clark University in I888 and I889. (Ref. Cyclopedia of Education Vol. II 6I).

(3) Neither Colleges nor University taught French until I783, German until I825.

At Harvard,about this time(I783),the first significant change in the curriculum permitted those who are not preparing for the ministry to take French instead of Hebrew. But the morden language were regarded with suspition both by the defenders of the classics and defender of the Orthodox religions.

In I825,Charles Follen,a German schoar, became the first instructer in German, at Harvard College. Until the first decade of the nineteenth century, the influence of the German upon the American Education did not become evident.(Ref. Cyc. Ed. Vol. II page 6I) also The national Cyc. of Amer. Biography Vol. 7 page 289.

(4) There were thirty (30) Senators and sixty three (63) Congressmen in I790. But all those who went to college or to Unifercity were graduated before I78o ,as shown in the list of senators and congressmen .(SEE my second Brief P. I6.) All those who did not go to college or university were ~~graduated~~ either soldiers or self educated lawyers. Only a few of them came from England and Scotland, And all the rest were born in the United States. Ref. The National Cyc.Amer. Bio. Vol. I to I3.

Thus the above stated facts will sufficiently prove that neither Senators nor Congrssmen knew nothing ~~aeu~~ about Blumenbach's Race Clacification at the time they were making the first naturalizatoin law of I790, in which the term FREE WHITE PERSON was first used and is still used in the law of to-day. Therefore we now absolutely certain that the law of I790 was not based on Blumenbach's Race Clacification which has hardly any merit at present day.

Hence the FREE WHITE PERSON in the law was not used to mean Caucasian Race.(ref. In re Dow 3I2 Fed. 357 and 226 Fed. I45).

Since the law was not based on any race clacificatoin , it ought to be treated independently from it, and the term FREE WHITE PERSON in the law must be construed in the same ~~as-it-is-used~~ sence as it was commonly used in the United States. ----------

(4) The term FREE WHITE PERSON was not originally used to exclued All Races except Caucasian Race.

In re Saito, the court says: "The Japanese, like Chinese, belong to Mongolian Race,and the question presented is whether they are included within the meaning of the term White Person. These words were incorporated in the naturalization law ~~of-as-early~~ as early as I802. At that time, the country was inhabited by three races,the Caucasians,or white race, the Negro or black race, and American or Red race. It is reasonable therefore,to infer that when Congress, in designating the class of person who could be naturalized, inserted the ~~qualifing~~ qualifying word WHITE, it intended ~~to exclued~~ exclude from the privilege of citizenship all alien races except the Caucasian ".

I am, however, unable to agree with his view for the following reasons:

(I) Whether Japanese belong to Mongolian race or not ,it has nothing to do with Chinese. For there is no law to exclude from the privilege of citizenship All Mongolian Race.

It is true there is a law known as the Act of I882 prohibiting

Chinese from naturalization. But this law was made against Chinese , and not against any Japanese,nor against all Mongolian race. It is true that some Chinese belong to Mongolian race(I say"some" because now aday among so called Chinese we may find SOME who belong to other races,) same as American are-- American are composed of many races,namely,Black, White,Red,Brown,And Yellow races. But the Mongolian Race is not necessary Chinese,just as English ~~is-not-~~ are Eurpean ~~,but-the-English--are-not--neceessary~~ but European are not necessarily English,for French,Spanish, German and others are also European. A part does not equal to Whole"

Wherefore, the law made against Chinese has Nothing to do with other nationalities whether they belong to Mongolian race or not. By the law of I882, Chinese are expresitly prohibited from naturalization,but Japanese are not. Hence whether Japanese belong to Mongolian race or not , it has nothing to do with Chinese.

(2) Again, the court says: These words incorporated in the naturalization law as early as I802. Here his own statement proves that he is ignorant of the fact that the words FREE WHITE PERSON was already used twelve years before,that is ,in the law of I790.

(3) Again, the court says: At that time ,the country was inhabited by Three races,the Caucasian ,white race , Negro,black. race, American ,red race. It is reasonable, therefor, to infer that when Congress,in designating the class of person who could be naturalized inserted the qualifying word"white" ,it intended to exclude

from the privilege of citizenship ALL ALIENS except CAUCASIAN.

An immigration law is made for the person comming from other country, but not for the inhabitants of the country where the law was made. Similarly, the naturalization law of the United States is made FOR THE PERSON COMMING"WITHOUT", but not FOR THE INHABITANTS LIVING"WITHIN", Hence the naturalization law has nothing to do with the inhabitants of this country whether they are composed of BLACK, WHITE, or RED.

Again, the fact that this country were inhabited by three races, has no weight to prove that the term FREE WHITE PERSON was used to exclude all races except Caucasian race. Because at the time the term FREE WHITE PERSON was used in the law of I790, the law-makers did not know Blumenbach's Race Clasification. So ofcouse they did not know the word Caucasian as I prove before. (see page 4 & 7)

Hence his INFERENCE, that the Congress inserted the qualifying word WHITE in the law to exclude from the privillege of citizenship all aliens races except Caucasian, IS INCORRECT. THerefore it has no merit to be cited as AUTHORITATIVE.

Thus I have proven that the term FREE WHITE PERSON was not used to exclude all races except Caucasian.

(5) The term FREE WHITE PERSON in the law was used to mean a RESPECTABLE PERSON not vividly AFRICAN.

In Holly Trinity Church -United States. I45 U.S. 459, Justice Brewer say: It may is a familiar rule that a thing may be within the letters of the statutes, and yet not within the the statutas, because not within its spilit, nor within the intention of the

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law makers

While reading many decisions in regard of naturalization, I found out that some judges were paying much attention upon the lettrs of statutes, instead of its spirit and of the intention of its makers.

For instance, some judges declared that the term FREE WHITE PERSON was used to mean Caucasian Race accoding to the clacification made by Bulumenbach, and refused Japanese and admitted Syrians.

In re saito--62 Fed. I26.
Bessho -U.S. I78 Fed. 245,
In re Ellies I97 Fed I002-3,
In re Dow 226 Fed. I45.

And some declared that it was used to mean European, and refused Syrian.

In re Dow 2I3 Fed. 3I5.

But there are some who admit aliens by paying considerable attention upon the sprits of the Statutes and intention of the law makers, rather than upon the letters of the Statutes.

For instance, In re RODRIQUEZ 8I Fed 337, District Judge Maxey says: If the strict scientific clacification of the anthropologist, should be adopted, he was probably not classed as White. It is certain he is not an African nor of a person of African descent. According to his own statement, he is a pure blooded Mexican bearing no ralation Aztecs or Original race of Mexico. Being then a citizen of Mexico, may he be naturalized pursuant to the laws? If Debarred By The Strict Letters Of Law From Recieving Letters Of Citizenship, Is He Embrassed within the meaning and intent of law, his application should be granted, notwithstanding the letters of statutes may be against him.

In conclution ,the court says: The court is of opinion that whatever may be the statutes of the applicant viewed solely from the standpoint of ethnology,he is embrssed within the spirits and the intent of our laws upon naturalization, ~~he is~~-- his application should be granted, if he is shown by the testimony to be a man attached to the principle of the constitution,well disposed to the good order and happiness of the same. Naturally enough, his untrainedmind is found deficient in the power to elucidate or define the principles of constitution. But testimony discloses he is a very good man,peaceable and industrious,of good moral character and law abiding to a remarkable degree. And hence it may be said of him,notwithstanding disability to undergo an examination on the question of costitutional law, that by daily walk, during the residence of IO years, in the city of San Antonio, he has practically illustrated and emphasized his attachment to the principle of the Congress.

In the judgement of the court ,applicant posses the requisite qualification for the citizenship,and his application will therefore be granted.

For other instances:

Blight -Rochester 7 Wheat 534,
Hogan -Kurzt 94 U.S. 773,
Boyd -Thayer I43 U.S.,I35,
Contzen - U.S. I79 U.S. I9I.

The court says: Where no record of naturalization can be produsedd,evidence that a person having the requisite qualification to become a citizen, did in fact and for a long time vote and hold office and exercized rights belonging to citizen,is sufficiently to warrant a jury in infering that he had been duly naturalized.

Thus some Judges paid cosiderale attention upon the LETERS of STATUTES, while others upon the spirit of the law and INTENT of the LAW-MAKERS.

Now ,of these Judges ,who should be more honored than the other? I believe the one who pays considerable attention upon the spirit of the laws and the intent of the law makers.

For the sake of clearness,I will use the following illustration.

Suppose a store keeper instructs his two employees A& B to buy FRESH WHITE EGGS. One of them "A" thinking that the term FREE WHITE ~~PERSON~~ EGGS means any A WHITE EGGS, bought many white eggs rejecting all other more or less colored eggs.which are all Fresh. What will be the result? The result is when all these white eggs were brpken ,many of them were rotten. Whose falt is this? Undoubtedly it is the falt of this careless employee "A". This is the result of not paying any attention upon the limiting word FRESH. Thus "A" proved himself noy to be trusted.

On the other hand ,"B" employee bought all FRESH EGGS, some white and some are more or less clored. He paid more consideration upon the word FRESH than to the secon d word white, because ,from the fact that his employer did not tell them Not to buy any other more or less colored eggs,he knew that his employer's intention was tobuy FRESH EGGS. When all these ~~white~~ fresh eggs ware broken, not one of them were rotten. Consequently his employer did not lose even a cent, not only that , he made some money out of these FRESH EGGS.

Now which of these two employees,carried out the employer's Order properly? Certainly it was "B" who paid more cosi-

consideration upon the qualifying word FRESH than to the second word WHITE.

This illustration will clearly show that true intention of the employer is expressed in the word FRESH, rathr than in the term White. Because the term FRESH indicates a good quality of eggs, while the word WHITE designates the color of eggs only. Hence of these three words ~~FREE WHITE PERSON~~ "FRESH WHITE Eggs", much consideration must be paid upon the term FRESH.

Similarly, of the term FREE WHITE PERSON the term FREE is more important than the term WHITE; in this word FREE, all intents of the law makers are expressed. This fact can easily be found by reading the Cngessional record of I790,of I795,Of I798,of I870 etc. At the time the first naturalization law was made ,and at the time The law was changed or revised,each time ,the law makers expressed their wish to adomit the person who loves this country and lives here permanently and will do his best for the welfare of this country.

In the course of debate in I790, Medison said " They would induce the worthy of mankind to come, the object being to inclease wealth and strength of this country. Those who weaken IT were not wanted .

This is the intention of the majority of the law makers who enacted the first naturalization law of I790. And their intention is expressed in the word FREE with the meaning as respectable, as it was used in the Articles of Confederation. Therefore of these words FREE WHITE PERSON, the term FREE is more important than the term WHITE.

The foregoing discussion will clearly show that (I) the term FREE WHITE PERSON was not used to mean Caucasian Race. Nor

It was used to exclude all races except Caucasian (3) It was simply used to exclude non-respectable person as it used in the Articles of Confederation. And the word FREE is more important than the word WHIT

Now I must prove that term FREE WHITE PERSON was used to mean a respectable person not vividly AFRICANO

It has already been proven that the naturalization law was not based on any race clasification, and the term FREE WHITE PERSO was not used to mean Caucasian. We must therefore treat the law independently from any race classifications.

(I) If the term FREE WHITE PERSON was used to exclude all races except EUROPEAN, thre is absolutely ~~any~~ no necessity to make any law against any race or against any nation outside EUROPE. But in I882,Congress enacted a law known as the Act of I882,prohibiting Chinese from naturalization,and the law is still in force. The necessity of keeping the Act of I882,in force will clearly prove that the term FREE WHITE PERSON was not used to ~~mean~~ exclude all races except EUROPEAN.

(2) Again ,if Chinese were not included within the meanig WHITE PERSON, there is absolutely no necessity to make a law against them. The necessity of keeping the Act of I882 in force will prove that Chinese were included within the meaning of WHITE PERSON.

(3)Any words used in the United States must be construed in the sence the peaple of the United States use,and not in the sence of other country peaple use. For instance,Blumenbach and other ethnologists used the term AMERICAN to mean RED INDIAN, but in this country the term AMERICAN is used to mean the peaple of the United States.

(4) Then in what sence the term WHITE PERSON has been used in the United States?

In the United States the term WHITE PERSON was generally construed as a person without admixture of colored blood . In various Statutes and decisions in different states,since I865 white person is construed as in effect:

In ARKANSAS and OKLAHAMA,

A WHITE is one not having any negro blood.

In ALABAMA, FLRIDA, GEORGIA,INDIANA,KENTUCY,MARYLAND, MINNESOTA, MONTANA, TENNESSEE,TEXAS,MAINE, NORTH CAROLINA, SOUTH CAROLINA,

A WHITE PERSON is one having less than one eighth of negro blood.

In MICHIGAN, NEBRASKA, OREGON,VIRGINIA,

A WHITE PERSON is one having less than one fourth of Negro blood.

In Ohio,

A WHITE PERSON is one having less than one half of Negro blood.

Ref. WEBSTER'S NEW INTERNATIONAL DICTIONARY published in I909.

In the United States ,any person without admixture of Negro or Indian blood is called WHITE PERSON. Since I865 various legal constructions have been made in different states. As in ARKANSAS, where a WHITE PERSON is one having no Negro blood. In OHIO where one is WHITE PERSON who has one half Negro blood to his vein etc

Ref. New Standard Dictinary, published in I9I5.

Thus two leading Dictionaries defined the term WHITE PERSON as one not having any Negro blood,or one having less than one eighth or one fourth or less than one half of Negro blood.

In my first Brief P. 26,27, I cited many decisions and Statutes which will support the deffinitions given by these authoritative Dictionaries.

Hence the term WHITE PERSON,in the United States, was not used to mean strictly CAUCASIAN or EUROPEAN. It was simply used to distiguish black race from other race. This is the reason , the Congress enacted a law agaist Chinese who are not Black race, but whom the law makers did not want to naturalize, because they thought that"their(CHINESE) total inability to assimilate with the peaple of this country in their laws,customs,institution or religion, or even to suffer their acquisitions to go into the general store of prosperity; their idol worship; their mode of living; their very vice; and latly the countless myrads who stood hovering on the shore of the Chinese water,ready and anxious to swarm upon us,like the Goths and Huns upon ancient Rome--were a menace."

(underlined portion is cited from
T.M.Paschal's Brier, in re Rodriquez,
8I Fed.337,May 3 I897.)

Now ,there is no doubt that the term FREE White Person used in the law was simply used to distiguish black race from other race.

If the Congress want to exclude all races except Eurpean or Caucasian, it should strike out the words FREE WHITE PERSON from the

law, and insert the word either EUROPEAN or CAUCASIAN, and at same time,it must repeal the Act of I882. Otherwise the law will be meaningless.

As yet, no such steps is taken,and there is no law either against Japanese, or against all Mongolian race; and there is no Supreme Court descion either against Japanese or against all Mongolian race; and also there is no gentleman agreement between the United States and Japan to bar any Japanese subject from admission. therefore,any good Japanese who possess the requisite qualification for citizenship,should be admitted under the existing law.

In my first and second ~~R~~ brief,I have clearly proven that I am more qualified than required by the law in force,and that I have very good character, and that I have strong attachment to the Principle of the Constitution. hence in all respects ,I possess the requisite qualification for the citizenship.

Therefore,I sincerely hope that the United States will admit me,for I am now thoroghly Americanized as the result ~~of~~ of my long steady preparation of over thirteen years to become a good and useful citizen of the United States.

Respectfully submitted,

Takao Ozawa

Feb. 25 1916.

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In the U. S. District Court, Territory of Hawaii

In re Petition of

Tatsuo Ozawa

for Naturalization

Petitioner's Brief