1375-C-69,504
Bellal Houssain

~~1375-C-666,788~~
~~Hassan Abdul~~

~~1375-C-69,505~~
~~Abdul Hamit~~

~~1375-C-666,835~~
~~Boksh Rohman Mondul~~

May 21, 1924. 19783/43

The Commissioner:

Herewith are the files in the above cited cases. I am not initialing the letter to the ~~Attorney General~~ Secretary of State nor that to the Commissioner General of Immigration concerning the cancelation of the certificate in the Houssain case because a careful consideration of the file convinces me that the cancelation proceedings should not have been instituted in any of these cases for the reason that there is no evidence to support the claim by the Bureau that they are Hindus. The following facts in this and the three other cases are set forth after a search of the files in the office of the Chief Examiner, Washington, D. C., and the Bureau's records:

Bellal Houssain filed petition for naturalization No. 58, December 30, 1907, in the United States District Court for the Eastern District of Louisiana at New Orleans. In it, he alleged birth at Calcutta, India, March 22, 1875, and renunciation to "Edward VII Emperor of the Empire of India." He was admitted on March 20, 1908, and certificate of naturalization No. 69504 issued on the same date. It shows his color as white, complexion as dark, and black eyes and hair. Petition was based upon an old law declaration. The petition showed that he had been married to Rohima Houssain, who had been born at Calcutta, India, but who had died. He had no children.

Abdul Hamid filed petition for naturalization No. 59, in the same court on the same date, also alleging birth at Calcutta, India, June 17, 1875, and giving the same renunciation. He was admitted on March 20, 1908, and certificate of naturalization No. 69505 issued on the same date. It shows his color as white, complexion as dark, and brown eyes and black hair. Petition was based upon an old law declaration. His wife, Adele Fortineur, is shown by the petition as having been born and as residing at New Orleans, La. He had one child 6 years old, born and residing at New Orleans.

Hassan Abdul filed petition No. 1655, March 10, 1916, in the same court. He alleged birth at Alleppery, Malabordo, Southern India, in 1886, and renunciation to George V, King of Great Britain & Ireland. He was admitted June 13, 1916, and certificate of naturalization No. 666,788 issued on the same date. It shows his color as white, complexion brown, eyes brown, and hair black. Declaration of intention No. 1617, made in the same court, January 19, 1914, shows the same. His wife, Viola Wilson, is shown by the petition as having been born and as residing at New Orleans, La. He had no children.

Boksh Rohman Mondul filed petition for naturalization No. 1667, March 28, 1916, in the same court. He alleged birth at Calcutta, East India,

[illegible]

June 28, 1894, and renunciation to George V, King of Great Britain and Ireland. He was admitted October 3, 1916, and certificate of naturalization No. 666,835 issued on the same date. It shows his color as brown, complexion as dark, and black eyes and hair. His declaration No. 1015, made in the same court on June 11, 1912, shows the same. His wife, Aulio Rucks, is shown by the petition as born and residing at Calcutta, East India. One child, 8 years old, was born and resided at Calcutta.

On February 17, 1908, the then Chief, Division of Naturalization, addressed a letter to Hon. Rufus E. Foster, United States Attorney, New Orleans, Louisiana (file 1375), requesting him to represent the Government at the hearing either in person or by deputy, and calling attention to the two petitions, No. 58 of Bellal Houssain, and No. 59 of Abdul Hamid, with the request that they be opposed "should it appear that they belong to a race excluded from naturalization by the language of Section 2169 of the Revised Statutes (as amended 1875). In re Po, (1894), Twenty-eight New York Supplement, 383-384, it was held that the natives of Burma whose racial characteristics coincide with those of Hindus, were not therefore entitled to naturalization."

Subsequently, on March 26, 1908, the United States Attorney wrote to this office in response to the above letter and inclosed a typewritten transcript of the testimony taken in the cases of Houssain and Hamid on March 20, 1908 (misstated as 1907), adding the information that Judge Saunders had admitted the applicants to citizenship, holding that they were white. The testimony of Abdul Hamid taken at the hearing contains the allegations that he was a native of Calcutta, East India, that he belonged to the white--the Caucasian race, that he did not belong to any Indian tribe but, "my generation comes from Afghanistan."

The testimony of Bellal Houssain at the final hearing contains the following pertinent assertions:

"Q. Where were you born?
A. In Calcutta.
Q. And did your ancestors come from Afghanistan also?
A. From the Turks.
Q. From Turkey?
A. Yes sir.
Q. And you consider yourself a Caucasian?
A. Yes sir."

As has been stated, the personal description in Houssain's certificate gives his color as white, and his complexion as dark; Abdul Hamid's shows the same.

Other correspondence (file 268218-9) shows that this office wrote to the clerk of the above court November 25, 1908, in the cases of Shaik Solomon Mondol and Rosidol Hock Doin, declarants Nos. 160 and 161, stating that it appeared they were Hindus. The clerk was requested to call upon them to surrender their declarations which he was to mark void because they

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did not come within the terms of Section 2169. In his reply of November 28, 1908, the clerk stated that these cases were practically identical with those of Bellal Houssain and Abdul Hamid whom the court had admitted; that the two declarants (Mondel and Doin) "claimed to be of the white race, and, although born at Calcutta, were of Turkish descent."

These cancelation cases appear to have arisen from the request made by you in your letter of March 20, 1923, file 106974/82, to all chief examiners, a month after the Thind (Hindu) decision was rendered, that affidavits be prepared and forwarded to the Bureau for use as a basis for a cancelation proceeding "in the case of every Hindu heretofore admitted to citizenship in your district of which it may be possible to locate a record." Presumably because of the allegations of birth in India, the Chief Examiner at Washington, D. C., submitted affidavits which, however, do not in any case allege that the person named is a Hindu, but merely, that the said person "to the best of my information and belief, is a Hindu and therefore not a white man within the meaning of Section 2169, U. S. R. S." The chief examiner's letter of June 25, 1923, in each case, transmitting the affidavit, refers to the person naturalized as "a Hindu," and the proceedings from that time on are apparently based upon the supposition (without proof) that each person naturalized is a Hindu. Upon the basis of these affidavits the Bureau addressed letters in July, 1923, to the Attorney General requesting the institution of cancelation proceedings, upon the ground that the holders of the certificates were Hindus, and upon the authority of the Thind decision.

The decrees in each of three of the cases first described (all except that of Abdul Hamid) were rendered on April 30, 1924, by Judge Rufus E. Foster of the same court, and declare the naturalization certificates to be "null and void and of no effect as having been obtained by the defendant who is a Hindu and not a white person within the meaning of Section 2169 of the Revised Statutes, and therefore not lawfully entitled to naturalization."

From the decrees it would appear that the defendants were probably never served with notice, except constructively, as P. A. Lalong is referred to in the decrees as Curator Ad Hoc (for this particular purpose), appointed by the court to represent the defendants. In an earlier case (United States v. Ellis, 185 Fed. 546), this same court, in a cancelation proceeding in 1911, overruled a demurrer which raised the question that Section 15 requires service on absentees by publication, and that service on the curator ad hoc is insufficient. This court held that under the laws of Louisiana, no service by publication could be made in a case such as that one was, and that the provision was merely directory. In view of the purpose of the notice, I doubt very much if the court's holding on this point would be affirmed on appeal, as the rule is well established that statutes providing for constructive notice must be strictly followed.

So far as the entire files show, there is not a shred of evidence to prove that any one of these four petitioners is a Hindu, which is the sole ground upon which the citizenship of three of them has already been revoked and the certificates canceled, but on the contrary, in the Houssain case,

the petitioner's sworn statement, given in open court at the final hearing upon his petition contains the positive assertion that he is a Turk by ancestry. His name sounds more Turkish than Hindu. I do not understand that the Bureau is initiating proceedings to cancel certificates of naturalization granted to Turks. If, as would appear from this record, merely constructive notice of the cancelation proceeding was given, a grave injustice appears to have been done this citizen by the cancelation of his certificate without any evidence to support the allegation of the bill of complaint, so far as the record discloses, and upon a mere supposition based upon Houssain's statedplace of birth, in spite of his own evidence of the fact of his Turkish race, contrary to the allegation in the affidavit upon which the proceedings took place.

In the Abdul Hamid case, the same situation exists, in that the record, so far as available, shows Hamid to have been an Afghan by race who was born in India, and not a Hindu as alleged by the chief examiner upon information and belief in the affidavit upon which basis the letter was written to the Attorney General requesting the institution of cancelation proceedings. In the files of the Chief Examiner at Washington, a newspaper clipping from the Times Picayune, of New Orleans, furnished by Examiner Read, contains a purported denial by Hamid that he is a Hindu.

In Abdul Hamid's case, the letter of April 30, 1924, of Examiner Read, referred to the Bureau by the chief examiner, indicates that the cancelation case was called on April 28, 1924, and as no answer or appearance was made by the defendant, a decree pro confesso was taken which would become final in 30 days. As final action has not been taken in this case, there is yet time for the Attorney General to direct the United States Attorney to request the revocation of the decree for the reason that the facts in the Bureau's possession do not support the allegation that Abdul Hamid is a Hindu. In one case only of an Afghan (Jim Shawlee, 2000-C-1496910), the Bureau requested the Attorney General to have a suit instituted to cancel on the ground that petitioner was an Afghan, but the evidence was clear that he was not only a native of Afghanistan, but of full Afghan blood, and the affidavit so alleged.

In the case of Hassan Abdul, he stated, in information furnished in an effort to locate his certificate of arrival, that he was destined to Abdul Hamid, presumably the friend he describes as having known from childhood. This points to the fact that Hassan Abdul may also be an Afghan.

The mere fact of Indian birth gives no assurance that persons born in that country are Hindus as there were in 1911 nearly 100,000,000 natives who were other than Hindus. (Statesman's Year Book for 1922 shows the total population as 313,547,940, of whom 217,586,892 only were Hindus.)

As to the legal phases, it is true that Section 15 of the Act of June 29, 1906 provides that, "if the holder of such certificate which has been fraudulently or illegally procured be absent from the United States or from the district in which he last had his residence, such notice (of sixty days

in which to make answer) shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought."

Technically, it might be contended in the cancelation proceedings of Bellal Houssain, Abdul Hamid, and the others, that they were accorded the due process of law guaranteed to them under the Fourteenth Amendment to the Constitution of the United States, because the curator ad hoc was formally accorded notice of the proceeding. Yet "due process of law" hears before it condemns, proceeds upon inquiry, and renders judgment only after trial. It requires an orderly proceeding, adapted to the nature of the case, in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. As the Supreme Court of the United States has interpreted these words from Magna Carta, incorporated in the Constitution, "the good sense of mankind has at length settled down to this--that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." (Bank of Columbia v. Okely, 4 Wheat. 235, 244.)

Circuit Judge Sanborn, in his concurring opinion in Castle v. Persons (117 Fed. 835, 843, C. C. A., 8th Circuit), said: "That due process of law without which parties may not be deprived of their property gives to them an opportunity to be heard respecting the justice of the judgment sought. It gives notice of the issue to be determined before it is tried. One may not bring suit upon one cause of action, and recover upon another; nor may he go to trial upon one defense and sustain a judgment in his favor upon another and inconsistent defense."

In the Houssain case, if the basis for the proceeding had been that the defendant was of Turkish race and ancestry (which is the only evidence shown in the file, outside of the place of birth), the judgment of cancelation secured upon the basis that he was a Hindu would certainly not have fulfilled Judge Sanborn's interpretation of "due process of law." No notice was apparently ever given of the only issue in this case--whether a Turk is eligible to naturalization. It cannot be argued that, had the cancelation proceeding been based upon the allegation that the defendant was a Turk, the Court would have rendered the same judgment, inasmuch as the proceeding was based upon the Thind decision, which authoritatively determined nothing more than that Hindus were not eligible to naturalization; it did not decide, nor did it attempt to decide, whether Turks or Afghans, or those of other races, were eligible.

The Supreme Court of the United States, in the celebrated case of Pennoyer v. Neff (95 U. S. 714) states that the law may provide for a substituted service or publication of notice where actual service of process is impracticable, and that such constructive service, if authorized by statute, will be regarded as "due process of law," except in actions against non-residents, where it is sought to obtain a personal judgment against them, for, in such cases, there must be personal service of process within the State. If a cancelation proceeding is an action in personam, jurisdiction of the person must be obtained by the service of process upon

him within the territorial jurisdiction, otherwise no personal judgment can be rendered against him which will answer the requirement of due process of law. (Black, Constitutional Law, 3rd Ed., 592.)

Referring further to the Supreme Court's opinion, the following is quoted:

"Substituted service by publication, or in any other authorized form, may be sufficient to inform parties of the object of proceedings taken where property is once brought under the control of the court by seizure or some equivalent act. The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the State, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings in rem. But where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely in personam, constructive service in this form upon a non-resident is ineffectual for any purpose. Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the State where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability." (Pennoyer v. Neff, 95 U. S. 714,727.)

Upon consideration of the opinion of Pennoyer v. Neff, it would seem, from a cursory view of the matter, that if a cancelation proceeding is an action in personam, there is grave doubt of the constitutionality of that portion of Section 15 providing for notice by publication, because of its possible violation of the "due process" clause.

This is peculiarly a time when the United States should be careful in maintaining friendly international relations, and, even though it might appear on the surface that Great Britain, because of her own attitude toward her subjects who are not of the races commonly known as white, might not be particularly interested in the outcome of proceedings such as these involving her former subjects, yet the Secretary of State, under date of February 2, 1924, transmitted to the Secretary of Labor copies of notes dated September 19 and December 28, 1923 from the British Embassy, in behalf of British Indians in the United States who were affected by the Thind decision (file 106974/82). The United States has already become involved in a regrettable international situation with one of the great powers because of the method adopted of showing the unwillingness of this country

memorandum--Bellal Houssain, Abdul Hamid, Boksh Rohman Mondul, and Hassan Abdul--to show whether they are World War veterans. Regardless of whether they were within the draft ages, they may have rendered military service for this country.

The seriousness of the situation, in case citizenship with all its rights and privileges has been improperly revoked, is manifest, when one considers the possible effects of such a decree upon the person affected. If ineligible to citizenship he would be barred from entry into the United States under the immigration law which has recently been passed by Congress. He would be denied the ownership of land in some States. If he had married in a State whose laws prohibit the marriage of white and non-white people, and which declare such marriages to be void, he would be placed in the position of having lived illegally with a woman whom the law recognized that he could not marry and his children would be stigmatized as illegitimate. The personal, property, and political rights which had been freely accorded to him under the judgment of a court, rendered after due consideration and upon the personal appearance of the applicant and his witnesses and observation of them by the court, would be wiped out ab initio.

I do not contend that it has been conclusively shown that the persons involved in these four cases should have been admitted to citizenship. What I do contend is that, upon the face of the record, they have been regularly naturalized, but their certificates unjustly canceled, as there is nothing to show that they are Hindus, as alleged in the proceedings to cancel. It looks as though the great power of the United States has been unintentionally, but none the less surely, used to perpetuate an injustice in depriving without due process of law duly admitted citizens of the invaluable privilege of citizenship which had been regularly granted by a court of competent jurisdiction, after a hearing on the merits. The United States should be the first to admit its error when brought to its attention.

The considerations which are mentioned above show conclusively, I believe, the gravity of the questions involved, for which reason I urgently recommend that the facts in the four cases first mentioned be made known to the Attorney General at once with the request that the United States Attorney be directed to move that the decrees of cancelation be revoked and set aside, and, unless proof be obtained that the defendants are Hindus, that the proceedings be then dismissed.

Chief Naturalization Examiner.

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