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

In re: YOSHITO TANAKA,
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

Yoshito Tanaka of 94-3 Chome, Hon-machi, Yoshiura, Kure-shi, Hiroshima-ken, Japan, born in Aiea, Honolulu, T.H., on May 19, 1923, hereby appeals from the "Certificate Of The Loss Of The Nationality Of The United States" issued to him under date of June 11, 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 30, 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 September 1, 1942, to September 1, 1945. 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 motion is appellant's affidavit executed on December 15, 1958, and the verified "Statement Of Sosuke Tanaka" dated March 6, 1959. Appellant and his counsel request that if any

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of the documents heretofore submitted as evidence on appellant's application for a United States passport or the affidavits herewith submitted as evidence to be considered on this appeal and motion to reopen and reconsider appellant's application for a United States passport for any reason be deemed insufficient in form or in substance as to cause an unfavorable decision to be rendered thereon the appellant requests an opportunity to have such deficiency corrected.

The application to reopen the cause and for reconsideration of the cause on its merits, for cancellation of the aforesaid Certificate Of Loss Of Nationality and for the issuance to appellant of a United States passport as a citizen of the United States are made in view of the evidence heretofore and now submitted in this cause and also in the light of the applicable rules announced in the recent United States Supreme Court decisions of Perez v. Brownell, 78 S.Ct. 568, and Nishikawa v. Dulles, 78 S.Ct. 612, both decided on March 31, 1958.

The appellant was born in Aiea, Honolulu, T.H., on May 19, 1923. His birth was registered with the Japanese Consulate in Honolulu, T.H., on July 19, 1923, by his father for the purpose of reserving Japanese nationality for him although he was a dual citizen by the organic law of Japan. At the age of 13 years he was taken by his parents to Japan along with his brother and two sisters. His parents kept him in Japan and placed him in school. He had no opportunity of returning to the United States prior to or during the war. He was only 15 years of age at the onset of war and there was no method of his leaving Japan.

In May or June of 1942 when he was 19 years of age he was ordered to report for a physical examination for ultimate conscription purposes. He was admonished to obey that instruction. His father advised him that he must obey. He was conscripted on September 1, 1942, into the Japanese Army. He didn't wish to be

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inducted but knew no way to avoid it except by facing punishment. He was a minor, 19 years of age at the time. His submission to the physical examination and his induction into that army while a minor were the direct and proximate result of duress exerted upon him during the war when Japan was in the grip of its military authorities. Fear of punishment compelled him to submit to induction and, consequently, his induction and service were wholly involuntary and did not expatriate him under the provisions of Section 401(c) of the Nationality Act of 1940.

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

In the Perez decision the Supreme Court declared:

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

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

> "In Gonzales v. Landon, 350, U.S. 920, 76 S.Ct. 210,100 L.Ed. 806, we held the rule as to burden of proof in denaturalization cases applied to expatriation cases 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." (underscoring supplied.)

We submit that the evidence is conclusive that the appellant's induction into the Japanese Army while he was a minor was wholly involuntary and did not as a matter of law or as a matter of fact constitute an expatriating act on his part and that appellant's cause should be reviewed in the light of the Perez and Nishikawa

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decisions and be decided in his favor.

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

Dated: March 13, 1959.

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

STATEMENT OF SOSUKE TANAKA

I, Sosuke Tanaka, of Otachi, Kurahashi-cho, Aki-gun, Hiroshima-ken, Japan, declare that I am an adult person and a Japanese citizen; that my son Yoshito Tanaka who presently is living at 94-3 Chome, Hon-machi, Yoshiura, Kure-shi, Hiroshima-ken, Japan, was born at Aiei, Oahu, T.H. on May 19, 1923. My wife Sago and I left Hawaii in August, 1936, with our said son who then was 13 years of age and also our other son and two daughters to live in the village of Otachi, Kurahashijima, Hiroshima-ken, Japan. We sent Yoshito to attend the Otachi Primary School. Unfortunately he was viewed by the other school children as an outsider because he was born in Hawaii and was an American citizen. After the outbreak of the Pacific War his classmates and also his teachers subjected him to much abuse and criticism because of his birth in Hawaii and his American citizenship and was regarded as being disloyal to Japan by reason of his sympathies being American. He complained to me and his mother frequently concerning these abuses but there was nothing we could do about it. His complaints to us were frequent after each of the visits of recruiting officers to his school who urged and tried to persuade him and others to enlist in the Japanese Army for three years and get their service over with and that if they did so they wouldn't have to serve in the Army when they got older. My son did not wish to enlist in the Army and, in consequence, refused to enlist. He didn't wish to be conscripted into it after the war broke out. We had not anticipated that he would be pressured to enlist. He steadily was opposed to enlisting and so he had to bear the criticism and abuse of his schoolmates and teachers. After the outbreak of the war the criticism and abuse of Yoshito became more acute and his life at school was made very miserable by his schoolmates. He was regarded and treated as an outcast and as a person who was disloyal to Japan by them. Nevertheless Yoshito did not enlist or take any steps to enlist. He was opposed to any such procedure and so were his mother and I. We hoped that someday Yoshito could return to Hawaii. During his minority we wanted to keep him with us and let him return to Hawaii when he finished school and go to be of an age to be able to take care of himself and then someday we expected he could look out for our family.

I remember that about six months or so after the outbreak of war that Yoshito received notice to report for a physical conscription examination at the Funakoshi Primary School. He consulted us about this matter stating that he did not think he was subject to conscription because of his being an American citizen born in Hawaii and that the authorities had no right to force him into service. We did not want him to be forced into the Army. Our elder son had been in the Japanese navy and he was killed while in that service. We told Yoshito that there was no way open for him to evade conscription, that refusal to conscription orders would result in swift arrest and imprisonment and punishment either as a draft-dodger, traitor or spy, that the fact of his being an American citizen made no difference to the military authorities as by Japanese law he was regarded as a Japanese citizen, and that there was no way by which he could leave Japan and that if he attempted to run away and hide to avoid conscription he would be caught and suffer the severest form of punishment. We pointed out to him that he musn't attempt to postpone conscription because he didn't have any ground for postponement and that an attempt to do so would mark him as a draft-dodger and for exhibiting disloyalty to Japan and would bring the authorities down on him and also the hatred of his schoolmates, teachers and our neighbors. Yoshito was fully aware of the danger to himself if he tried to run away

or offered open opposition to conscription. The police kept everyone under surveillance. We were closely watched because we had lived in the United States for many years and because our children were Americans and we were suspected of American sympathies. We had heard of numerous cases where Nisei had been threatened, abused and physically attacked for being Americans and for being loyal to the United States and for being sympathetic to the Allies. Yoshito and all members of our family were in constant fear of the police and military authorities and of being reported to them by hostile neighbors. It was because of his very real fears of harm and punishment being inflicted upon him and possible harm to our family and the hostility and enmity of neighbors to us that compelled Yoshito to obey the conscription order against his own will and desire.

/s/ Sosuke Tanaka
Sosuke Tanaka

Subscribed and sworn to before me this 6th day of March, 1959.

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

(CONSULAR SEAL)
CONSULAR GENERAL OF THE
UNITED STATES. KOBE-
OSAKA, JAPAN.

Tariff No. 58(a)
Fee Paid: U.S.$ no fee
Local Cy. equiv. ¥ no fee