6523

In the United States Circuit Court of Appeals

For the Ninth Circuit

No. 6523

NARCISO LUCCHESI,

Appellant,

vs,

LUTHER WEEDIN, as United States Commissioner of Immigration at Seattle, Washington,

Appellee.

Upon appeal from the District Court of the United States for the Western District of Washington, Northern Division.

HONORABLE JEREMIAH NETERER, JUDGE

BRIEF OF APPELLEE

ANTHONY SAVAGE,
United States Attorney,

HAMLET P. DODD,
Assistant United States Attorney,
Attorneys for Appellee.
Office and Postoffice address:
310 Federal Building, Seattle, Washington.

JOHN F. DUNTON,
United States Immigration Service,
Seattle, Washington,

On the Brief.

MERCANTILE PTG. & ADV. CO.

INDEX

STATUTES CITED

CASES CITED

In the

United States Circuit Court of Appeals

For the Ninth Circuit

No. 6523

NARCISO LUCCHESI,

Appellant,

vs,

LUTHER WEEDIN, as United States Commissioner of Immigration at Seattle, Washington,

Appellee.

Upon appeal from the District Court of the United States for the Western District of Washington, Northern Division.

HONORABLE JEREMIAH NETERER, JUDGE

BRIEF OF APPELLEE

STATEMENT OF THE CASE

The appellant, NARCISO, alias NELSON, LUCCHESI, alias NARCISO LUCCHESI, was born in Italy January 24, 1888, and is a subject of Italy. He claims that he first came to the United States in 1905 or 1906; that he remained in this country two and one-half years and then returned to Italy; that he next entered the United States in 1911; that he

departed for Italy June 8, 1925, and remained there about two or three months. The record shows that he returned to this country on the steamer "Duilio," landing at the port of New York, August 25, 1925.

Information having been received by the immigration officials that said appellant was running the Palmer Hotel in Tacoma as a house of prostitution, an investigation as to the facts was instituted by the said officials and, in connection therewith, statements were taken by Immigrant Inspector H. G. Yeager at Tacoma, Washington, October 16, 1928, from the appellant and from Helen Alice Wilbert, Mrs. Phemie Novak and Immigrant Inspector William G. McNamara. October 17, 1928, the Commissioner of Immigration at Seattle, Washington, applied to the Secretary of Labor for a warrant for the arrest of the appellant, and such warrant was issued October 18, 1928, by A. E. Cook, Assistant to the Secretary of Labor, charging that said appellant had been found in the United States in violation of the Immigration Act of February 5, 1917, for the following among other reasons:

> "That he has been found managing a house of prostitution, or music or dance hall or other place of amusement, or resort, habitually frequented by prostitutes; that he has been found

receiving, sharing in, or deriving benefits from the earnings of a prostitute; and that he has been found assisting a prostitute."

The appellant was duly arrested by an immigrant inspector under authority of this warrant, and was released under $1,000 bond October 20, 1928, pending further hearing and investigation. January 3, 1929, a hearing under the said warrant was held at the United States Immigration Station at Seattle, Washington, said hearing being conducted by Immigrant Inspector Joseph H. Gee. At this hearing testimony was taken from the appellant and Immigrant Inspectors C. C. Hall and William G. McNamara. September 26, 1929, a further hearing was accorded the appellant at the same place by the same Immigrant Inspector. Thereafter the entire record was forwarded to the Department of Labor at Washington and, on December 12, 1929, a warrant of deportation was issued by P. F. Snyder, Assistant to the Secretary of Labor, commanding that the appellant be returned to Italy, on the finding that he had been found in the United States in violation of the Immigration Act of February 5, 1917, to wit:

"That he has been found managing a house of prostitution, or music, or dance, hall, or other

> place of amusement, or resort, habitually frequented by prostitutes, or where prostitutes gather."

Before deportation could be accomplished the appellant was convicted of violating the National Prohibition Act and was sentenced to six months imprisonment in the Pierce County Jail. He surrendered to the immigration authorities August 26, 1930, and, on August 27, 1930, filed a Petition for a Writ of Habeas Corpus in the District Court of the United States for the Western District of Washington, Northern Division. He was released by the immigration officials August 30, 1930, by order of said court, having filed therewith a bond of $1,000. After various postponements of the hearing on the Order to Show Cause, which had issued on the filing of the Petition, the habeas corpus proceedings were dismissed without prejudice December 29, 1930, at the request of the appellant, and a petition for a re-hearing was filed with the Department of Labor, pending the result of which the appellant was released under $1,000 bond to that Department. This petition was denied by the Department of Labor and the appellant then filed a petition for a stay of deportation, which also was denied. The appellant again surrendered to the immigration authorities February 24, 1931, and immediately filed another

petition for a Writ of Habeas Corpus in the same court as before. He was admitted to bail by said court February 26, 1931, and was released by the immigration authorities on that date. Subsequently the writ was denied by said court, and the case now comes before this court on appeal from said judgment.

ARGUMENT

The Petition alleged that the petitioner was not granted a fair hearing by the Immigration officials, and cited as reasons for such allegation:

1. "That witnesses were examined in the absence of his counsel of record."

2. "That the record and evidence discloses no facts or evidence upon which the Secretary of Labor and Commissioner of Immigration at Seattle, Washington, could base the finding that your petitioner had violated said Act, as charged."

Immigrant Inspector Carl C. Hall reported October 8, 1928, (pp. 33-32) that, on October 4, 1928, about midnight, he called at the Palmer Hotel and was met at the door by the "landlady"; that the said "landlady" asked him what he wanted, and he replied that he wanted a girl; that the "landlady"

told him to return the following afternoon, as there was no girl there at the time; that he then asked the "landlady" if she wouldn't do, and the "landlady" that she had a "party" and was busy; that he then inquired of the "landlady" the price of a "trick", and she replied that the price was two dollars; that, about 9:30 P. M. October 5, 1928, he again visited the Palmer Hotel and was met at the door by the same "landlady"; that he asked her if he could have a girl; that she sent a girl into the hallway; that said girl, who informed him that her name was "Marion", stated to him that she charged two dollars a "trick", and that she gave the "landlady" half of the money which she received for each "trick"; that, earlier in the evening, he had walked up and down the street in front of the Palmer Hotel, and had seen men go into and come out of, said hotel quite frequently.

Helen Alice Wilbert testified October 16, 1928 at Tacoma, Washington, before Immigrant Inspector H. G. Yeager, (pp. 14-12) that she had been practicing prostitution for four years, in Seattle and Tacoma; that she had been living at the Palmer Hotel since a week ago the preceding Saturday; that a girl named "Marion" had been at the said hotel prior to the time she went there; that Phemie Novak was "running" the Palmer Hotel for Nels Lucchesi.

Mrs. Phemie Novak testified on the same date, at the same place and before the same Inspector, (pp. 12-10) that she was taking care of the Palmer Hotel for Nelson Lucchesi; that he owned the said hotel and that she was just doing the work around there, for which she received her room and board; that she had had girls living at said hotel, among them being "Marion" who had gone to Olympia about three weeks before; that "Marion" must have been at the said hotel about five days altogether, inclusive of October 5, 1928; that "Marion" paid her two dollars a night for her two rooms; and, although denying that she knew for what purpose Immigrant Inspector Hall wanted a girl, when he came to the hotel in the evening of October 5th and asked for one she let him in and sent the girl "Marion" out into the hall to see him, because "Marion" was the only girl there at the time. She denied that, when the said Immigrant Inspector had called at the said hotel about midnight of October 4, 1928, she had told him that the price for prostitution at the said hotel was two dollars, *and claimed that she knew nothing concerning the price, because that was "up to" the girls.*

After Mrs. Novak had testified, Helen Alice Wilbert made a further statement (pp. 10-9) and admitt-

ed that she had practiced prostitution at the Palmer Hotel within the last week, and that she had performed approximately ten such acts. She also stated that Lucchesi never had told her that she could not practice prastitution in the said hotel.

Mrs. Phemie Novak also made an additional statement (pp. 9-8) and testified that she had stopped at the Palmer Hotel for approximately seven months; that, prior to going to the said hotel to stay, she often visited Lucchesi's wife there, and that there were a number of prostitutes there; that, since she had been at the hotel, she had given Helen Wilbert the privilege of "picking up extra change" from men; that, as far as she knew, Helen's statement that she had performed acts of prostitution with approximately ten men during the last week was correct that Helen did not hesitate to accommodate men because Lucchesi happened to be in the building; that Lucchesi had never said anything to her regarding getting the girl, Helen, out of the hotel; that the girl, "Marion", paid her two dollars a night for her room, with the privilege of practicing prostitution, and that the said "Marion" took men to her room.

The appellant, Narciso Lucchesi, also testified on the same date, at the same place, before the same

Inspector, (pp. 8-4) that he was also known as Nelson Lucchesi; that he bought and paid for the Palmer Hotel; that he did not buy it for himself, but for his wife, Loie Tucker; that, after said Loie Tucker had left him and gone to Aberdeen,, he got the woman, Phemie Novak, to take care of it for him until he could sell it; that there were girls staying at the hotel but he did not know what they were doing.

United States Immigrant Inspector William G. McNamara testified on the same date, at the same place, before the same Inspector, (p. 4) that, on the 16th (apparently, from subsequent testimony, should read 4th) of October 1928, he visited the Palmer Hotel; that he saw a girl called "Helen" there; that he also saw a tall girl "running" the place, and Mr. Lucchesi; that he talked with the girl who was running the place and that the said girl, *in the presence of Mr. Lucchesi*, stated that they kept only one girl there because there was no business for more; that this girl (who was running the place) stated to him that the price was two dollars; that the girls did not pay room rent, but "split at the time". When Inspector McNamara concluded his statement, Lucchesi, who appeares to have been present while he was making same, was asked if there was anything he wished to ask the Inspector, and answered, "No". (p. 4)

It will be noted that the report of Immigrant Inspector Hall and the statements, *supra*, were made *prior to* the designation of Mr. C. T. McKinney as attorney for the appellant, notice of Mr. McKinney's authorization to represent the appelant being dated October 17, 1928, (see Exhibit "A"). The appellant had no counsel of record prior to that date. Consequently the allegation that these witnesses (presumably referred to in the Petition) were examined in the absence of the appellant's counsel of record is totally without foundation. The appellant and the witnesses were advised of the object of taking their testimony and there is nothing in the record to show that any one of their statements was other than voluntary. Consequently such statements were admissible in evidence:

Low Wah Suey v. Backus, 225 U. S. 460-469-470.

Ng Kai Ben v. Weedin, 44 F (2nd) 315. (this court).

Ex Parte Kaizo Kamiyama, 44 F (2nd) 503. (this court).

Bilo Kumsky v. Tod, 263 U. S. 149.

Vajtauer v. Commissioner of Immigration, 273 U. S. 103.

October 17, 1928, Phemie Novak and Helen Alice Wilbert again testified before Immigrant Inspec-

tor H. G. Yeager, at Seattle, Washington. The appellant was present at this hearing, together with Attorney C. T. McKinney who participated in the examination of the witnesses.

Phemie Novak testified (pp. 38-37) that she was temporarily managing, or looking after, the Palmer Hotel, and that Lucchesi was the owner of said hotel. She also reaffirmed her statement of October 16th regarding Helen Wilbert's presence in the said hotel and having accorded the said Helen Wilbert the privilege of practicing prostitution there; also as to the presence of the girl "Marion" at the said hotel, although claiming that she did not remember anything regarding having given "Marion" the privilege of practicing prostitution there. On cross examination by Attorney McKinney she testified that she was unable to prove that Lucchesi was the owner of the hotel in question, and knew only that he claimed ownership thereof. She also stated that, as far as she knew, Lucchesi had no knowledge regarding "Marion's" presence there.

Helen Alice Wilbert testified (pp. 36-35) that she was a prostitute by occupation, and reaffirmed her former statements as to having been granted the privilege of practicing prostitution at the Palmer

Hotel, and having practiced prostitution there. She also testified that, during the period of approximately one week she was at the hotel, she saw Lucchesi there, and that he was in the place three or four times and stayed all night once or twice. She claimed, however, that she never talked with Lucchesi about practicing prostitution there, and that she did not know that he had knowledge that she was doing so, and that, while she had no absolute knowledge that Lucchesi was the owner of the hotel, it was her understanding, from what she had heard, that such was the fact.

On re-call Phemie Novak testified (pp. 35-34) that, while Mrs. Lucchesi was at the Palmer Hotel, she had visited there and had seen girls there; that, while she was living at the hotel, Luccesi never had told her to allow girls to practice prostitution there.

At the hearing under the warrent of arrest January 3, 1929, Attorney C. T. McKinney was present and participated in the examination of the witnesses.

At said hearing the appellant (pp. 54-50 and 45-44) repudiated his former statement that he bought the Palmer Hotel for his wife, and claimed that his wife paid for the said hotel with her own money.

He also claimed that he never had any interest in the said hotel, that he never paid any bills for said hotel and never had any voice in the management of same. He stated, however, that he had roomed at the said hotel from 1923 or 1924 until the date which he was testifying, and that *he did not pay any room rent.*

Immigrant Inspector Carl C. Hall testified (pp. 50-47) as to his visit to the Palmer Hotel October 4 and 5, 1928, and his testimony was in substantial agreement with his report of October 8, 1928, referred to above. He stated that, on the occasion of his visit to the Palmer Hotel October 5th,, he made it fully known to the "landlady" that he wanted a girl for the purpose of committing an act of prostitution, and reiterated his statements contained in his report that the girl, "Marion," told him that two dollars was the price of a "trick" and that she paid one-half of that amount to the "landlady".

Immigrant Inspector William G. McNamara testified (pp. 47-45) that, on or about October 4, 1928, he visited the Palmer Hotel in company with Inspector Yeager; that Inspector Yeager represented to the girl they met at the hotel that he was a real estate dealer from Seattle and that the witness wished

to see about buying the hotel; that he and Inspector Yeager saw the girl named "Phemie" and that she called Lucchesi, telling him that he and Inspector Yeager were a couple of "guys" from Seattle who wanted to buy the place; that he and Inspector Yeager talked to Lucchesi, and that Lucchesi stated that he was the owner of the hotel and would sell it for $2,500.00; that Lucchesi stated that he did not have any girls there at the time, but they should see his manager, Phemie; that Lucchesi called Phemie in, and Phemie showed them over the place and mentioned that she did not have any girls there at that time; that, during the conversation between them and Phemie, Phemie stated that the girls, when there, got two dollars but, as the loggers were all going to Seattle, they probably woud have to cut the price to a dollar and a half; that, at all times during their conversation with Lucchesi, Lucchesi represented himself to them as the owner, or proprietor, of the hotel and that he referred to the woman Phemie as his manager; that, during their visit to the hotel, they saw a smaller woman there who was called Helen; that Lucchesi made no claim that he was trying to sell the hotel for any person other than himself.

September 26, 1929 the appellant was accorded a further hearing at the Seattle Immigration Station

by Immigrant Inspector Josheph H. Gee. Paul D. Coles was present as attorney for the appellant and participated in his examination.

The appellant testified (pp. 43-41) that he did not remember whether or not, about February 16, 1925, he made application to the City Light and Water Department of Tacoma to have the light turned on at the Palmer Hotel. He stated that sometimes he paid the rent for the said hotel as the owner thereof sometimes sent him over to pay the rent. When asked if it was not a fact that, February 16, 1925, he signed an application to the Pacific Telephone and Telegraph Company, Tacoma, Washington, for a telephone for the Palmer Hotel, and also an application for a private telephone for his own room at the said hotel, he answered that he did not remember, and that he never had a telephone in his room. On cross-examination by Mr. Coles, he testified that he thought that he leased the Palmer Hotel in 1924 or 1923 and had it probably about fifteen months; that he thought that, when he made application for City Light and Water in February 1925, he signed the said application for Loie Tucker; that, when he paid the rent for the Palmer Hotel, he did so for Loie Tucker; that, if he ever signed for the telephone at the hotel, he did so for Loie

Tucker; that he never got any money from the Palmer Hotel and never had anything to do with the management of same.

Immigrant Inspector Voligny's report of January 19,, 1929 (pp. 31-30), shows that, on February 16, 1925, the appellant signed an application to have the electric light turned on at the Palmer Hotel, and on the same date signed applications of a telephone for the said hotel and for his room therein. However, as the hotel appears to have been in the hands of another person for some months in 1926 prior to its lease by Loie Tucker September 17 of that year these matters do not appear to have any material bearing on the present case.

The record shows that the appellant was married in Italy June 3, 1909, to one Assunta Trinci and had two children by her; that he never was divorced from her; that, on or about September 15, 1925, shortly after his last return from Italy, he bigamously married Loie Beatrice Jacobs, alias Loie Tucker, at Everett, Washington; that he lived with the said woman from that time until about May or June 1928, when she left him and went to Aberdeen, Washington, to live; that he and the said woman lived together at the Palmer hotel from the latter part of

1926 until May or June 1928, and that he continued to make his home at the said hotel after the said woman went to Aberdeen, and until the date on which he testified (January 3, 1929).

It was contended before the Department of Labor that, inasmuch as the appellant had a business a few miles distant from the Palmer Hotel, he could not have been managing said hotel at the time in question. The record shows, however, that he was present at said hotel several times during the period Helen Wilbert was there, and also was present when Immigrant Inspectors McNamara and Yeager called there October 4, 1928. It also was contended that he could not have been the owner, or lessee, of the hotel because the said building had been leased to Loie Tucker September 17, 1926, for a period of three years. There is no reasonable evidence that Loie Tucker complied with the terms of said lease after she went to Aberdeen in May or June 1928, and that the appellant did not take over the hotel on his own account when she left. In fact the evidence shows that, when he offered to sell the hotel to Immigrant Inspectors McNamara and Yeager October 4, 1928, he told the said inspectors that he had a lease on same. As this so-called "hotel" is said to contain only seven bed-rooms, a parlor and a

kitchen, the petitioner's claim that he did not know what the girls were doing there is absurd.

Among various definitions of the term "Manage" contained in Webster's International Dictionary, 1923 Edition, are the following:

> "To have under control and direction;" "to conduct;" "to cotnrol;" "to carry on;" "to have the care of;" "to tend;" "to direct affairs;" "to carry on business or affairs;" "to administer;" also "to admit of being carried on."

Section 19 of the Immigration Act of February 5, 1917 (8 USCA, Section 155) provides as follows:

> "* * * Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; any alien who *manages* or is employed by, in, or in connection with *any house of prostitution* or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists any prostitute * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported; * * * In every case where any person is ordered deported from the United States under the provisions of this act, or of any law or treaty, the decision of the

Secretary of Labor shall be final." (Italics ours)

Section 20 of the same Act (8 USCA, Sec. 156) provides:

> "That the deportation of aliens provided for in this act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foriegn port at which such aliens embarked for the United States; or, if such embarkation was for foriegn contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous territory from the United States and later entered the United States; or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their re-entry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in which they resided prior to entering the conutry from which they entered the United States. * * *"

The findings of immigration officials on questions of fact, after a fair hearing, are conclusive:

Vajtauer v. Comis. of Immigration, supra.

Tod v. Walman, 266 U. S. 103.

Tisi v. Tod, 264, U. S. 131.

A Departmental warrant for the deportation of an alien cannot be rightfully issued without evidence to support it, but, *if there is a hearing and some evidence,* the decision of the Secretary of Labor is conclusive:

United States v. Uhl, (CCA), 211 Fed. 628.

It also has been uniformly held that the courts have no power to interfere with decisions of immigration officials unless there was a denial of a fair hearing, or the finding was not supported by evidence, or there was erroneous application of a rule of law:

United States v. Ju Toy, 198 U. S. 253.

Chin Yow v. United States, 208 U. S. 8.

Low Wah Suey v. Backus, supra.

Kwock Jun Fat v. White, 253 U. S. 454.

In reception of evidence immigration officials are not restricted to such evidence as meets the requirements of legal proof, but can receive, and determine the questions before them upon, any evidence which seems to them worthy of credit:

Johnson v. Kock Shing (CCA 1), 3 F (2d) 889.

Moy Said Ching v. Tillinghast (CCA 1), 21 F (2d) 810,811.

In immigration cases neither the hearsay, the best evidence, nor any of the common-law rules of evidence need be observed:

United States ex rel. Smith v. Curran (CCA NY), 12 F (2d) 636.

Ng Mon Tong v. Weedin 43 F (2d) 718. (this court).

The present case differs materially from *Katz v. Commissioner of Immigration*, 245 Fed. 315, and *Backus v. Katz*, 245 Fed. 320, cited by counsel for the appellant. Katz was simply the owner of a house which he was shown to have rented to a woman who apparently used it for a house of prostitution. He did not live there nor have anything whatever to do with the management. In the present case the evidence shows that, after Loie Tucker left him and went to Aberdeen, Washington, to live, the appellant continued to make his home at the Palmer Hotel, #1307½ Broadway, Tacoma; that *he secured* Phemie Novak to act as housekeeper, or "landlady," at said hotel; that Phemie Novak acted as such *for him;* that he claimed to be the owner of the said hotel, and was so regarded by both Phemie Novak and Alice Wilbert. The present case is clearly distinguished from *Strench v. Pedaris*, particularly in that Pedaris was charged with being an "inmate" of a house of pros-

titution. The case of *Backus v. Owe Sam Goon* is not in point here.

The record contains two affidavits dated January 14, 1930 (more than three and one half months subsequent to the last hearing; more than two and one half months after the record of the various hearings had been forwarded to the Department of Labor at Washington, D. C., and more than a month after the warrant of deportation was issued), one of same purporting to have been executed by PHEMIE NOVAK, and the other by LOIE TUCKER (pp. 78-75). The affidavit of PHEMIE NOVAK is to the effect that the appellant never had knowledge of any acts of prostitution committed by HELEN WILBERT, or any other person, in the Palmer Hotel; that, when she was questioned by Inspector Yeager October 17, 1928, she merely *assumed* that the appellant was the owner of said hotel; that, at the time HELEN WILBERT was stopping at said hotel, the appellant was convalescing at the home of his brother from an operation for appendicitis; that the said HELEN WILBERT was staying at the said hotel for the purpose of being a companion to her (the affiant), and did not pay any room-rent at any time to her or to any other person. The affidavit of LOIE TUCKER is to the effect that she was the owner of the Palmer Hotel

and that the appellant never had anything to do with its operation, and never shared in the profits therefrom; that PHEMIE NOVAK was in charge of said hotel and the appellant was living there at her request for the purpose of protecting her interests, and was receiving free rent for his services in her behalf; that, at said time, she was the legal wife of the appellant.

The above-mentioned affidavits apparently were forwarded to the Commissioner-General of Immigration by United States Senator C. C. Dill with his letter of March 10, 1930 (p. 79). The Commissioner-General of Immigration replied to said letter April 21, 1930 (pp. 83-82) to the effect that the appellant was then serving a sentence of six months in the Pierce County Jail, that his deportation was mandatory under the law and would be proceeded with upon the termination of his imprisonment. In the said letter of reply the Commissioner-General also cited some of the testimony which had been adduced, and which has been refered to *supra*. August 19, 1930, telegrams were sent to the Department of Labor by Congressman Albert Johnson and Attorney Louis F. Buty requesting that the petitioner's deportation be stayed (pp. 83½ and 89), which request was denied (See memorandum of the Board of Review, p. 90). Such

stay of deportation was effected, however, by the institution of habeas corpus proceedings. After said proceedings had been dismissed at the request of the petitioner in the latter part of December 1930 (more than a year after the warrent of deportation was issued), a formal Petition for a re-hearing of the case was filed (pp. 130-124), accompanied by affidavits purporting to have been executed by LOIE BEATRICE HART, PHEMIE NOVAK, the appellant, and NEILL M. HEATH, a certificate by Dr. A. L. SCHULTZ, and a letter, or certificate, by E. R. KRONA (pp. 123-107). This Petition was followed up closely by a letter from the Director of the National Catholic Welfare Conference and telegrams from three Catholic clergymen of Tacoma and St. Martin's College (pp. 137-134).

The affidavit of LOIE BEATRICE HART asserts that, at the time in question (October 1928), she and the appellant had been separated for several months, during which period she had been living in Aberdeen; that, prior to leaving the appellant, she had employed PHEMIE NOVAK to act as her agent and manager, and given her instructions to conduct the Palmer Hotel in a proper and legitimate manner, and to make all accountings to her; that she did not at any time authorize the said PHEMIE NOVAK to

operate the said hotel as a house of prostitution; that she had no knowledge of the manner in which the said PHEMIE NOVAK operated the hotel, for the reason that she never visited the hotel after separating from the appellant.

The affidavit of PHEMIE NOVAK contradicts her testimony (pp. 12-8) in most of the essential particulars, as will be noted by perusal of same. That of the appellant amounts to a reiteration of his former claims that he did not own or have anything to do with the management of the Palmer Hotel. It also sets forth that LOIE TUCKER, instead of himself as he testified at first, hired PHEMIE NOVAK to manage the hotel; that, during the period in question, he was making his home with his brother, and had no idea whatever as to the manner in which the said PHEMIE NOVAK was conducting the hotel. The affidavit of NEILL M. HEATH is of a negative character, and is of no value as impeaching any of the testimony. The laudatory telegrams of the clergymen (pp. 136-134) are of no evidential value. It seems evident that the said clergymen did not know that the appellant was a bigamist, and that he had served a sentence of six months in the Pierce County Jail for violation of the prohibition laws only a short time before.

Nearly nine months intervened between the hearings January 3, 1929, and September 26, 1929, and nearly another month elapsed before the record was forwarded to the Department of Labor October 24, 1929. The record of the hearing September 26, 1929, gives no indication that the appellant was not prepared to go forward with same at that time, or that he desired or proposed to introduce any additional evidence later. Had it been desired to introduce anything additional, there was ample opportunity to have done so.

The record shows that, at the hearing January 3, 1929, the appellant was represented by Attorney C. T. McKinney, a former Assistant United States Attorney; that, at the hearing September 26, 1929, he was represented by Attorney Paul D. Coles, another former Assistant United States Attorney, and that the Brief in the appellant's behalf (pp. 27-20) was signed by Thomas P. Revelle, former Uniter States Attorney for the Western District of Washington; also that the appellant was represented before the Department of Labor at Washington, D. C. by Roger O'Donnell, unquestionably one of the ablest attorneys in the United States in immigration matters, whose Brief comprises pages 62-58 of the record. No contention was set up by Mr. O'Donnell that the appel-

lant's rights had been prejudiced in any manner by the change in counsel during the progress of the case, which appears to be the principal basis for the Petition for Re-hearing filed more than a year after the case was closed and the warrant of deportation issued.

Attention is invited to the memorandum of the Board of Review made in connection with the denial of the said petition (pp. 139-138).

The Secretary of Labor was not obliged to believe the statements contained in the affidavits executed and filed after the case was closed, and would not have been obliged to believe such testimony as might have been offered if the petition for a re-hearing had been granted:

Prentis v. Seu Leung (CCA 7), 203 F. 25.

Moy Chee Chong v. Weedin, 28 F. (2d) 263. (this court).

Ghiggeri v. Nagle, 19 F. (2d) 875. (this court).

Ng Kai Ben v. Weedin, supra.

The Secretary of Labor was under no legal obligation to grant the petition for a re-hearing and, under the circumstances, his refusal to do so was not arbitrary or unfair:

Flynn ex rel. v. Jew Yet Wing v. Tillinghast, (CCA 1), 44 F (2d) 789.

While the circumstances in said case were not exactly parallel with those in the present one, it is believed that the opinion is applicable here.

CONCLUSION.

The appellant was accorded a fair hearing by the immigration officials. The action of the Assistant to the Secretary of Labor in issuing the warrant of deportation, and in denying the petition for a rehearing, was not arbitrary, or capricious, or in contravention of any rule of law. There was ample evidence to justify the conclusion that, on or about October 4th and 5th, 1928, the Palmer Hotel, #1307½ Broadway, Tacoma, Washington, was a "house of prostitution," and that the appellant had been found "managing" same. The charge in the warrant of deportation is sustained. The District Court was not in error in denying the Writ of Habeas Corpus and its Judgement should be affirmed.

Respectfully submitted,

ANTHONY SAVAGE,
United States Attorney,

HAMLET P. DODD,
Assistant United States Attorney,
Attorneys for Appellee.

JOHN F. DUNTON,
United States Immigration Service, Seattle, Washington,
On the Brief.