

2484

No. 11668

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

WILLIAM A. CARMICHAEL, District Director, Immigration and Naturalization Service, United States Department of Justice, District 16,

Appellant,

vs.

WONG CHOON HOI,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

FILED

SEP 20 1947

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

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United States Attorney,

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Los Angeles 12, Calif.

For Appellee:

BENJAMIN W. HENDERSON

417 South Hill Street
Los Angeles 13, Calif. [1*]

Original
 (To be retained by
 Clerk of Court)

73
 No. 126123

UNITED STATES OF AMERICA
 PETITION FOR NATURALIZATION

[Of a Married Person, under Sec. 310 (a) ~~or~~ (b),
~~311 or 312~~, of the Nationality Act of 1940 (54
 Stat. 1144-1145)]

To the Honorable the District Court of The United States
 at Los Angeles, Calif.

This petition for naturalization, hereby made and filed
 pursuant to Section 310(a) ~~or~~ (b), or ~~Section 311 or~~
~~312~~, of the Nationality Act of 1940, respectfully shows:

(1) My full, true, and correct name is Wong Choon
 Hoi

(Full, true name, without abbreviation, and any other name which
 has been used, must appear here)

(2) My present place of residence is 1606 Court St.
 Los Angeles, 26, Cal. (3) My occupation is Merchant
 (City or town) (County) (State)

(4) I am 31 years old. (5) I was born on July 7,
 1914, in Hen-Kong-Hoiping, China
 (Year) (City or town) (County, district, province, or state) (Country)

(6) My personal description is as follows: Sex male;
 color yellow complexion med. color of eyes brn, color
 of hair blk, height 5 feet 5 inches, weight 160 pounds;
 visible distinctive marks scar above bridge of nose;
 scars on jaw & neck; race white; present nationality
 China

(7) I am married; the name of my wife or husband is June; we were married on Oct. 5, 1941 at Los Angeles, (Month) (Day) (Year) (City or town) Cal.; he or she was born at Hoi Sun, China, on..... (State or country) (City or town) (County, district, province, or state) (Country) (Month) (Day) 1925 entered the United States at San Pedro, Cal. (Year) (City or town) (State) on Sept. 20, 1935 for permanent residence in the United (Month) (Day) (Year) States, and now resides at with me and was naturalized (Number and street) (City or town) (State or country) on..... at..... (Month) (Day) (Year) (City or town) (State) certificate No.....; or became a citizen by a citizen by birth abroad to an American citizen

(7a) (If petition is filed under Section 311, Nationality Act of 1940) I have resided in the United States in marital union with my United States citizen spouse for at least 1 year immediately preceding the date of filing this petition for naturalization.

(7b) (If petition is filed under Section 312, Nationality Act of 1940) My husband or wife is a citizen of the United States, is in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General of the United States, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof; and such husband or wife is regularly stationed abroad in such employment. I intend in good faith to take up residence within the United States immediately upon the termination of such employment abroad.

(8) I have \approx 3 children; and the name, sex, date and place of birth, and present place of residence of each of said children who is living, are as follows: Daniel (m) 8-9-42-Calif; res. with me; Linda (f) 11-9-43-Calif; res. with me John (m) 8-9-45-Calif; res. with me.

(9) My last place of foreign residence was Hen-Kong,
(City or town)

China (10) I emigrated to the United States from
(County, district province, (Country)
or state)

Hongkong China (11) My lawful entry for permanent
(City or town) (Country)

residence in the United States was at San Pedro, Calif.
(City or town) (State)

under the name of Choon Hoi Wong As the son of a Merchant under S c.3(6) of the Immigration Act of 1924 on Nov. 24, 1934 on the SS Pres. Coolidge as
(Month) (Day) (Year) (Name of vessel or other means of conveyance)

shown by the certificate of my arrival attached to this petition.

(12) Since my lawful entry for permanent residence I have not been absent from the United States, for a period or periods of 6 months or longer, as follows:

* * * * *

(13) (Declaration of intention not required) (14) It is my intention in good faith to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen, and it is my intention to reside permanently in the United States. (15) I am not, and have not been for the period of at least 10 years immediately pre-

ceding the date of this petition, an anarchist; nor a believer in the unlawful damage, injury, or destruction of property, or sabotage; nor a disbeliever in or opposed to organized government; nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government. (16) I am able to speak the English language (unless physically unable to do so). (17) I am, and have been during all of the periods required by law, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States. (18) I have resided continuously in the United States of America for the term of 3 year.... at least immediately preceding the date of this petition, to wit: since Nov. 24,
(Month) (Day)

1934 (19) I have not heretofore made petition for nat-
 (-Year)

uralization number..... on.....at.....
(Month) (Day) (Year) (City or town)
 in the
(County) (State) (Name of court)

Court, and such petition was dismissed or denied by that Court for the following reasons and causes, to wit:.....
 and the cause of such dismissal or denial has since been cured or removed.

(20) Attached hereto and made a part of this, my petition for naturalization, are a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavit of at least two verifying witnesses required by law.

(21) Wherefore, I, your petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to Harry "H" Wong

(22) I, aforesaid petitioner, do swear (affirm) that I know the contents of this petition for naturalization subscribed by me, that the same are true to the best of my own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters I believe them to be true, and that this petition is signed by me with my full, true name: So Help Me God.

WONG CHOON HOI

(Full, true and correct signature of petitioner, without abbreviation)

bms [2]

AFFIDAVIT OF WITNESSES

The following witnesses, each being severally, duly, and respectively sworn, depose and says:

My name is Isabel Cholakian my occupation is Nursery Home I reside at 1863 Blake Ave. Los Angeles,

(Number and street) (City or town)

Calif.

(State)

My name is Jimmy L. Wong my occupation is Clerk I reside at 1606 Court St. Los Angeles, Calif.

(Number and street) (City or town) (State)

I am a citizen of the United States of America; I have personally known and have been acquainted in the United States with Wong Choon Hoi, the petitioner named in the petition for naturalization of which this affidavit is a part, since Aug. 1942 to my personal knowledge the

(Month) (Day) (Year)

petitioner has resided, immediately preceding the date of filing this petition, in the United States continuously since the date last mentioned, and I have personal knowledge that the petitioner is now and during all such period has been a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States, and in my opinion the petitioner is in every way qualified to be admitted a citizen of the United States.

I do swear (affirm) that the statements of fact I have made in this affidavit of this petition for naturalization subscribed by me are true to the best of my knowledge and belief: So Help Me God.

ISABEL CHOLAKIAN.

(Signature of witness)

JIMMY L. WONG.

(Signature of witness)

Subscribed and sworn to before me by the above-named petitioner and witnesses, in the respective forms of oath shown in said petition and affidavit, in the office of the Clerk of said Court at Los Angeles, Cal. this 4th day of Sept., Anno Domini 1945. I hereby certify that Certificate of Arrival No. 23 133432 from the Immigration and Naturalization Service, showing the lawful entry for permanent residence of the petitioner above named, has been by me filed with, attached to, and made a part of this petition on this date.

EDMUND L. SMITH,

Clerk U. S. District Court, Southern District of California.

By Geo. E. Ruperich,
Deputy Clerk.

OATH OF ALLEGIANCE

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So Help Me God. In acknowledgment whereof I have hereunto affixed my signature.

WONG CHOON HOI

(Signature of Petitioner)

* * * * *

Note.—In renunciation of title or order of nobility, add the following to the oath of allegiance before it is signed: “I further renounce the title of (give title or titles) which I have heretofore held,” or “I further renounce the order of nobility (give the order of nobility) to which I have heretofore belonged.”

Petition granted: Line No..... of List No. 6641237 and Certificate No.....issued.

Petition denied: List No..... 3-4-47

Petition continued from..... to
Reason.....

[Stamped]: Seal of U. S. District Court, Southern District of California. [3]

No. 23 133432

CERTIFICATE OF ARRIVAL

I Hereby Certify that the immigration records show that the alien named below arrived at the port, on the date and in the manner shown, and was lawfully admitted to the United States of America as the son of a merchant under Sec. 3(6) of the Immigration Act of 1924.

Name: Choon Hoi Wong

Port of entry: San Pedro, California

Date: November 24, 1934

Manner of arrival: SS President Coolidge

I Further Certify that this certificate of arrival is issued under authority of and in conformity with the provisions of the Nationality Act of 1940 solely for the use of the alien herein named and only for naturalization purposes.

In Witness Whereof this Certificate of Arrival is issued July 10, 1945.

[Stamped] DEPARTMENT OF JUSTICE

UGO CARUSI

Commissioner

cg

[Endorsed]: Filed Sep. 4, 1945. [4]

In the District Court of the United States
Southern District of California

Central Division

No. 246/P/126123

In the Matter of the Petition of
WONG CHOON HOI
for Naturalization

MEMORANDUM OF DECISION

Wong Choon Hoi, a native-born Chinese, has filed his petition to be naturalized as a citizen of the United States. The petition is predicated upon the claim that petitioner resided continuously in this country for more than three years immediately preceding the filing of his petition, is married to a citizen of the United States, and has met all other requirements specified in §310(b) of the Nationality Act of 1940. [8 U.S.C. §710(b).]

There is no controversy as to the facts. Petitioner's father, Wong Yung San, a Chinese merchant, was admitted to this country in 1922 pursuant to Article II of the Treaty of 1880 between the United States and China. Petitioner was admitted in 1934 as an unmarried minor child of a resident [5] Chinese "treaty trader."

Both father and son have resided here continuously since their respective entries, and both are merchants engaged in trade. In 1941 petitioner married a born citizen of the United States. In 1943 Chinese persons were made eligible for naturalization by amendment to §303 of the Nationality Act of 1940. [8 U.S.C. §703.]

Section 310(b) provides that: "Any alien who, on or after May 24, 1934, has married or shall hereafter marry

a citizen of the United States . . . may, if eligible for naturalization, be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions: (1) No declaration of intention shall be required; (2) In lieu of the five-year period of residence within the United States, and the six months' period of residence in the State where the Petitioner resided at the time of filing the petition, the petitioner shall have resided continuously in the United States for at least three years immediately preceding the filing of the petition." [8 U.S.C. §710(b).]

The Commissioner of Immigration and Naturalization opposes the petition urging: that the three-years' "residence" [6] specified in §310(b) could only be acquired following admission for permanent residence, that petitioner's entry was not for permanent residence, but was made pursuant to §3(6) of the Immigration Act of 1924 [8 U.S.C. §203(6)], hence for temporary residence.

I am unable to perceive any sound basis for the Commissioner's opposition. Precedent of long standing holds that where, as in the proceeding at bar, a Chinese merchant was admitted to this country prior to 1924 pursuant to the Treaty of 1880, members of his family (wife and unmarried minor children) coming after 1924 are entitled to be admitted for permanent residence by virtue of the Treaty. [Cheung Sum Shee v. Nagle, 268 U. S. 336 (1925); Haff v. Yung Poy, 68 F. (2d) 203 (C. C. A. 9th, 1933).]

These decisions are to be respected as determining the character of residence for which petitioner was admitted. The fact that Chinese persons were ineligible for naturalization until the 1943 amendment cannot affect the char-

acter of that residence. [Petition of Chi Yan Cham Louie, No. 39,067 (W. D. Wash., unreported decision of Judge Black, August 29, 1946).]

Long before the Nationality Act of 1940, Chinese merchants admitted to engage in business here pursuant to the [7] Treaty of 1880 were referred to as "domiciled" in this country. [Cheung Sum Shee v. Nagle, *supra*, 268 U. S. at p. 344; United States v. Mrs. Gue Lim, 176 U. S. 459 (1900); Lau Ow Bew v. United States, 144 U. S. 47 (1892); Wong Yow v. Weedin, 33 F. (2d) 377 (C. C. A. 9th, 1929); Woo Hoo v. White, 243 Fed. 541 (C. C. A. 9th, 1917).]

The term "residence", as used in the naturalization statutes, is practically synonymous with "domicile." [Petition of Wright, 42 F. Supp. 306, 307 (E. D. Mich., 1941; United States v. Parisi, 24 F. Supp. 414, 419 (D. C. Md., 1938); Petition of Oganessoff, 20 F. (2d) 978, 980 (S. D. Cal., 1927); United States v. Shanahan, 232 Fed. 169, 172 (E. D. Pa., 1916).]

Being a minor when he entered this country, petitioner acquired at that time the domicile of his father. There has been no suggestion of any act or expression of intent indicating change of domicile either before or after petitioner became emancipated upon attaining majority.

Indeed all the facts in evidence are to the contrary. Petitioner has been present and engaged in business in this country for twelve years and more since his admission for permanent residence. During the past five years

he has been married to a citizen of the United States by birth, and is now the father of three children born in this country. [8]

Accordingly it must be held that petitioner has more than met the three-year residence requirement of §310(b) of the Nationality Act of 1940. The petition of Wong Choon Hoi is granted.

February 17, 1947.

WM. C. MATHES
United States District Judge

[Endorsed]: Filed Feb. 17, 1947. [9]

Book 10 Page 333

Date March 4, 1947 List No. 1

This list consists of two sheets. Sheet No. 1.

NATURALIZATION PETITIONS
RECOMMENDED TO BE DENIED

To the Honorable the District Court of the United States sitting at Los Angeles, Calif.

H. B. Terrill, K. Parker duly designated under the
(Name(s) of designated officer(s))

Nationality Act of 1940 (54 Stat. 1156) to conduct preliminary hearings upon petitions for naturalization to the above-named Court and to make findings and recommendations thereon, has personally examined under oath at a preliminary hearing the following two (2) petitioners for

naturalization and their required witnesses, has found for the reasons stated below, that such petitions should not be granted, and therefore recommends that such petitions be denied.

No.	Petition No.	Name of Petitioner	Reason for Denial
1	4079-M	Josip Bozin	Petitioner was not lawfully admitted to the United States as contemplated by Section 701 of the Nationality Act as amended.
2			
3			
4			
5			
6			
7			
8	126123	Wong Choon Hoi	(1) There was not filed with the petition a valid certificate showing the date, place and manner of the petitioner's arrival in the United States, and (2) that petitioner has failed to establish continuous legal residence in the United States for the period required by law.
9			
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* * * * *

Respectfully submitted,

F. J. BURNS

(Signature of officer in attendance at final hearing)

Date March 4, 1947. [10]

Original

Book 10 Page 334

Date March 4, 1947 List No. 1

This list consists of two sheets. Sheet No. 2

ORDER OF COURT

State of California

County of Los Angeles—ss:

In the District Court of the United States

Upon consideration of the petitions for naturalization listed on List No. 1 (sheet(s) 1 to dated March 4, 1947, presented in open Court this 4th day of March, A. D., 1947, It Is Hereby Ordered that each of the said petitions be, and hereby is, denied, except those petitions listed below.

Recommendation of Designated Officer Is Disapproved as to the Petitions listed Below, and each of said petitioners so listed having appeared in person, It Is Hereby Ordered that each of them be, and hereby is, admitted to become a citizen of the United States of America. Prayers for change of name listed below granted, except in petition(s) No.

	Petition No.	Name of Petitioner	Change of Name
1	4079-M	Josip Bozin	Joe Bozin
2	126123	Wong Choon Hoi	Harry H. Wong
	*	*	*

It is further ordered that petitions listed below be continued for the reasons stated.

Petition No.	Name of Petitioner	Cause for Continuance
*	*	*

By the Court.

WM. C. MATHES

Judge. [11]

[Title of District Court and Cause]

NOTICE OF APPEAL

You Will Please Take Notice that William A. Carmichael, District Director, Immigration and Naturalization Service, United States Department of Justice, District 16, the respondent and appellant herein, hereby appeals to the United States Circuit Court of Appeals for the 9th Circuit from the Judgment and Order of the above-entitled District Court entered March 4, 1947, and from the whole thereof, granting the petition for naturalization of said Wong Choon Hoi.

JAMES M. CARTER

United States Attorney

RONALD WALKER

Assistant United States Attorney

Attorneys for Respondent and Appellant

[Endorsed]: Filed & mld. copy to Ben Henderson, atty. for petnr., Jun. 3, 1947. [12]

[Title of District Court and Cause]

ORDER DIRECTING CLERK TO MAKE CERTIFICATION OF NATURALIZATION RECORDS.

It appearing that William A. Carmichael, District Director, Immigration and Naturalization Service, United States Department of Justice, District 16, the respondent and appellant herein, has filed a notice of appeal on June 3, 1947, in the above matter and is now in the process of

perfecting said appeal; and it also appearing that under Section 341(e) of the Nationality Act of 1940 (Title 8 USC 74(e)) the Clerk is prohibited from making certification of naturalization records without an order of Court; and good cause appearing therefor

It Is Hereby Ordered that the Clerk of this Court issue its certification of the following naturalization records in the above-entitled action, to wit:

1. Petition for Naturalization.
2. Certificate of Arrival.
3. Recommendation of denial of citizenship by the Immigration and Naturalization Service.
4. Order of Court granting petition for naturalization dated March 4, 1947. [15]

Dated this 25th day of June, 1947.

WM. C. MATHES

District Judge

[Endorsed]: Filed Jun. 25, 1947. [16]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 18 inclusive contain full, true and correct copies of Petition for Naturalization; Certificate of Arrival;

Memorandum of Decision; Naturalization Petitions Recommended to be Denied; Order of Court; Notice of Appeal; Statement of Points on Appeal; Order Directing Clerk to Make Certification of Naturalization Records and Stipulation for Record on Appeal which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 26th day of June, A. D. 1947.

(Seal)

EDMUND L. SMITH,

Clerk,

By Theodore Hocke,
Chief Deputy Clerk.

TH/a

[Endorsed]: No. 11668. United States Circuit Court of Appeals for the Ninth Circuit. William A. Carmichael, District Director, Immigration and Naturalization Service, United States Department of Justice, District 16, Appellant, vs. Wong Choon Hoi, Appellee. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed Jun. 27, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the Circuit Court of Appeals of the United States

In and for the Ninth Circuit

No. 11668

WILLIAM A. CARMICHAEL, District Director, Immigration and Naturalization Service, United States Department of Justice, District 16,

Appellant

v.

WONG CHOON HOI,

Appellee

STATEMENT OF POINTS ON APPEAL

Comes Now Appellant William A. Carmichael, District Director, Immigration and Naturalization Service, United States Department of Justice, District 16, and files herewith his statement of the points on which he intends to rely on the appeal in the above matter:

1. The District Court erred in holding and deciding that petitioner was admitted to the United States for permanent residence under the Treaty of Commerce and Navigation with China in 1888 (22 Stat. 826) for naturalization purposes.

2. The District Court erred in holding and deciding that petitioner's admission to the United States constituted lawful permanent residence for naturalization purposes.

3. The District Court erred in failing to hold and decide that petitioner was admitted to the United States temporarily as a non-immigrant alien under Section 3(6) of the Act of May 26, 1924, Title 8 USC 203).

4. The District Court erred in admitting petitioner to citizenship.

Dated this 8th day of July, 1947.

JAMES M. CARTER,
United States Attorney

RONALD WALKER
Assistant United States Attorney
Attorneys for Appellant

Received copy of the within documents this 2nd day of July, 1947. Benjamin W. Henderson, Attorney for Appellee, by Sue Ganser.

[Endorsed]: Filed Jul. 1, 1947. Paul P. O'Brien, Clerk.