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 No. 16;

Appellant,

vs.

WONG CHOON HOI,

Appellee.

APPELLANT'S BRIEF.

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APPELLANT'S BRIEF.

Jurisdiction.

The petition of the appellee for admission to citizenship under Section 310(b) of the Nationality Act of 1940 (54 Stat. 1145; 8 U. S. C. 710(b)) was filed in the United States District Court on September 4, 1945 [R. 2-7].

The jurisdiction to naturalize aliens as citizens of the United States is conferred upon the District Courts by Section 301(a) of the Nationality Act of 1940 (54 Stat. 1140; 8 U. S. C. 701(a)).

The decision of the District Court granting the petition was filed February 17, 1947 [R. 10-13], and order admitting appellee to citizenship was entered on March 4, 1947 [R. 15]. Notice of appeal was filed on June 3, 1947

[R. 16], and transcript of record was filed in this Honorable Court on June 27, 1947 [R. 18, 19].

Jurisdiction is conferred upon this Honorable Court to review the final judgments of the district courts of the United States by section 128 of the Judicial Code, as amended (Title 28, U. S. C., sec. 225(a)), wherein it is provided that "the Circuit Courts of Appeals shall have appellate jurisdiction to review by appeal, final decisions * * * in the district courts," except as otherwise provided.

The order of the District Court in granting the petition and admitting appellee to citizenship is a final decision within the meaning of the above law.[1]

Treaties, Proclamations, Statutes, and Regulations.

Treaty between the United States and China, concerning immigration.[2]

> "By the President of the United States of America.
>
> A Proclamation.
>
> 'Whereas a Treaty between the United States * * * and China, for the modification of the existing treaties between the two countries, by providing for the future regulation of Chinese immigration into the United States, was concluded and signed at Peking * * * on the seventeenth day of November in the year of our Lord one thousand eight hun-

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[1] *Tutun v. U. S.*, 270 U. S. 568 46 S. Ct. 425, 70 L. Ed. 738; *U. S. v. Rodiek*, 162 Fed. 469 (9th Cir.).

[2] 22 Stat. L. 826; concluded Nov. 17, 1880; ratification advised by the Senate May 5, 1881; ratified by the President May 9, 1881; ratifications exchanged July 19, 1881; proclaimed Oct. 5, 1881.

dred and eighty, * * * which Treaty is word for word as follows:

'Whereas, in * * * 1858, a treaty of peace and friendship was concluded between the United States of America and China, and to which were added, in * * * 1868, certain supplementary articles to the advantage of both parties, which supplementary articles were to be perpetually observed and obeyed:— and

'Whereas the Government of the United States, because of the constantly increasing immigration of Chinese laborers to the territory of the United States, and the embarrassments consequent upon such immigration, now desires to negotiate a modification of the existing Treaties which shall not be in direct contravention of their spirit:—

'Now, therefore, * * * the said Commissioners Plenipotentiary, having conjointly examined their full powers, and having discussed the points of possible modification in existing Treaties, have agreed upon the following articles in modification:

Article I.

'Whenever, in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or

residence, but may not absolutely prohibit it.[3] The limitation or suspension shall be reasonable, and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation, or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse.

Article II.

'Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities, and exemptions which are accorded to the citizens and subjects of the most favored nation.

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[3]Affected by various provisions of law, prohibiting the admission of Chinese laborers to the United States. By an Act of Congress of May 6, 1882, as amended and added to by the Act of July 5, 1884, enforcement of the Exclusion Treaty with China was provided for: "* * * until the expiration of ten years next after the passage of this Act, the coming of Chinese laborers to the United States * * * is * * * suspended, and during such suspension it shall not be lawful for any Chinese laborer to come from any foreign port or place, or having so come, to remain within the United States." (22 Stat. L. 58; 23 Stat. L. 115.) The Act of May 6, 1882, as amended and added to by the Act of July 5, 1884, was continued in force for an additional period of 10 years from May 5, 1892, by the Act of May 5, 1892 (27 Stat. L. 25); and was, with all laws on this subject in force on April 29, 1902, reenacted, extended, and continued without modification, limitation, or condition by the Act of April 29, 1902 (32 Stat. L. 176), as amended by the Act of April 27, 1904 (33 Stat. L. 428).

Article III.

'If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection and to secure to them the same rights, privileges, immunities, and exemptions as may be enjoyed by the citizens or subjects of the most favored nation, and to which they are entitled by treaty.

Article IV.

'The high contracting powers having agreed upon the foregoing articles, whenever the Government of the United States shall adopt legislative measures in accordance therewith, such measures will be communicated to the Government of China. If the measures as enacted are found to work hardship upon the subjects of China, the Chinese minister at Washington may bring the matter to the notice of the Secretary of State of the United States who will consider the subject with him; and the Chinese Foreign Office may also bring the matter to the notice of the United States minister at Peking and consider the subject with him, to the end that mutual and unqualified benefit may result.

'In faith whereof the respective Plenipotentiaries have signed and sealed the foregoing at Peking, * * * the ratification of which shall be exchanged at Peking within one year from date of its execution.

'Done at Peking, this seventeenth day of November, in the year of our Lord, 1880. * * *

'And whereas the said Treaty has been duly ratified on both parts and the respective ratifications were exchanged at Peking on the 19th day of July 1881;

'Now, therefore, be it known that I, Chester A. Arthur, President of the United States of America have caused the said Treaty to be made public to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

'Done in Washington this fifth day of October in the year of our Lord one thousand eight hundred and eighty-one, * * *.'"

The convention regulating Chinese immigration was concluded March 17, 1894, by which immigration of Chinese laborers was prohibited for ten years. By Article IV of that convention it was provided:

"In pursuance of Article III of the Immigration Treaty between the United States and China, signed at Peking on the 17th day of November, 1880 * * * it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, *excepting the right to become naturalized citizens* * * *." (Italics added.)

By an amendment to "an act to execute certain treaty stipulations relating to Chinese," Congress, on November 3, 1893, defined the term "merchant" as follows:[4]

"Sec. 2. * * * the term 'merchant,' as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other:

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[4](28 Stat. L. 7.)

> *'A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who, during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.'"* (Italics added.)

In the Act of November 3, 1893, Congress also defined a "Domiciled merchant" as follows:[5]

> "Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two creditable witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, *and in default of such proof shall* be refused landings." (Italics added.)

The Immigration Act of May 26, 1924, "to limit the immigration of aliens into the United States," defines its scope:[6]

> "Sec. 25. The provisions of this Act are in addition to and not in substitution for the provisions of the Immigration Laws, and shall be enforced as a part of such laws, * * * not inapplicable, shall apply

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[5]Same as footnote 4.

[6](43 Stat. 166; 8 U. S. C. 223.)

to and be enforced in connection with the provisions of this Act. An alien, although admissible under the provisions of this Act, shall not be admitted to the United States if he is excluded by any provision of the Immigration Laws other than this Act, and an alien, although admissible under the provisions of the Immigration Laws other than this Act, shall not be admitted to the United States if he is excluded by any provision of this Act."

The 1924 Immigration Act classifies all aliens entering the United States for permanent residence as "immigrants" and "non-quota immigrants," excepting from such definition those entering temporarily or during a period requiring the maintenance of status. This latter group is commonly referred to as "non-immigrants." The Statute is in the following language:[7]

"Sec. 3. *When used in this Act the term 'immigrant' means any alien departing from any place outside the United States destined for the United States,* except, (1) an accredited official of a foreign government * * *, (2) an alien visiting the United States * * *, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a *bona fide* alien seaman * * *, and (6) *an alien entitled to enter the United States solely to carry on trade between the United States and a foreign state of which he is a National under and in pursuance of the provisions of a treaty*

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[7](43 Stat. 154; 47 Stat. 607; 54 Stat. 711; 8 U. S. C. 203; Sec. 7(c) Public Law 291, 79th Congress; Chap. 652.1, Sess., approved Dec. 29, 1945.)

of commerce and navigation, and his wife, and his unmarried children under 21 years of age, if accompanying or following to join him * * *, and (7) a representative of a foreign government in or to an international organization * * * or an alien officer or employee of such * * * organization, and the family, attendants, servants, and employees * * *."

Prior to amendment of July 6, 1932, the sixth subdivision of Section 3 read as follows:[8]

"(6) *An alien entitled to enter the United States solely to carry on trade under and in pursuance of the provisions of a present existing treaty of commerce and navigation.*"

"Immigrant" as above defined and "non-quota immigrant" included in the following definition, constitute the classes of aliens whose admission to the United States is authorized for lawful permanent residence under the 1924 Immigration Act:[9]

"Sec. 4. When used in this Act the term 'non-quota' immigrant means—'(a) An immigrant who is

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[8]Act of July 6, 1932 (47 Stat. 607; 8 U. S. C. 203), amending Sec. 3, Act of May 26, 1924 (43 Stat. 154; 8 U. S. C. 203).

[9](43 Stat. 155; 44 Stat. 812; 45 Stat. 1009; 46 Stat. 854; 47 Stat. 656; 8 U. S. C. 204.) The Sec. 4(e) student "nonquota immigrant" is by act of Congress specifically taken out of the class of aliens admitted for permanent residence by Sec. 15, Immigration Act of 1924 (43 Stat. 162; 47 Stat. 524, 525; 54 Stat. 711; 57 Stat. 669; 8 U. S. C. 215, Sec. 7(d), and is subject to deportation if he fails to maintain status under regulations promulgated thereunder providing "A student who violates or fails to fulfill any of the conditions of his admission * * * shall be made the subject of deportation proceedings in accordance with the provisions of the applicable immigration laws * * *" (Sec. 125.5, Title 8, C. F. R.)

> the unmarried child under twenty-one years of age, or the wife, or the husband, of a citizen of the United States: Provided, that the marriage shall have occurred prior to issuance of visa and, in the case of husbands of citizens, prior to July 1, 1932.' '(b) An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad.' '(c) An immigrant who was born in * * * Canada, * * * Mexico,' etc. '(d) An immigrant who * * * seeks to enter the United States solely for the purpose of, carrying on the vocation of minister,' etc. '(e) An immigrant who is a *bona fide* student * * * who seeks to enter the United States solely for the purpose of study,' etc. '(f) A woman who was a citizen of the United States and lost her citizenship by reason of her marriage to an alien,' etc."

Section 15 of the Immigration Act of 1924[10] requires maintenance of the exempt status of aliens admitted to the United States who are excepted from the "* * * *Definition of Immigrant and nonquota immigrant.*"

> "Section 15. The admission to the United States of an alien excepted from the class of immigrants by clause 1, 2, 3, 4, 5, 6 * * * of section 3 * * * shall be for such time, and under such conditions as may be by regulations prescribed * * * to insure, that at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States * * *."

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[10](43 Stat. 162; 47 Stat. 524; 54 Stat. 711; 59 Stat. 669; 8 U. S. C. 215.)

The terms "status" and "trader's status" as used in the Immigration Act of 1924, are defined in regulations promulgated by the Commissioner of Immigration and Naturalization with the approval of the Attorney General, as follows:[11]

> "The term 'status' as used in the Immigration Act of 1924 means the condition of carrying on one of the particular limited activities for which an alien may be admitted under a subdivision of Section 3 of that Act (43 Stat. 154, 47 Stat. 607; 8 U. S. C. 203(e)). * * * When applied to an alien * * *; and the term 'trader's status' means that he is admissible under Section 3 (6) and is an alien entitled to enter and to remain in the United States solely to carry on trade between the United States and the foreign state of which he is a national under and in pursuance of the provisions of a treaty of commerce and navigation, or the wife or unmarried child under 21 years of age of a person so entitled whom he accompanies or follows to join."

Certain non-immigrants are admitted without time limitation so long as the status under which admitted is maintained.[12]

> "The admission of the aliens [officials, visitors and traders] * * * shall be * * * on condition that the alien shall maintain during his temporary stay in the United States the specific status claimed, and shall voluntarily depart therefrom 'at the expiration of the time fixed, or *upon failure to maintain the specific status under which admitted.* * * *'

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[11]Sec. 110.27, Title 8, C. F. R., authorized by Sec. 24, Immigration Act of 1924 (43 Stat. 166; 8 U. S. C. 224).

[12]Sec. 110.29 (a), (b), (c), Title 8, C. F. R.

> "(a) * * * a government official and his family shall be admitted without limitation of time * * *; (b) * * * an alien having a trader's status shall be admitted without limitation of time; (c) * * * an alien who has been admitted as the unmarried minor child of a treaty trader shall be regarded as having maintained his specific status so long as his parent maintains his trader's status."

Rule 18, paragraph 5, of the Chinese Rules of October 1, 1926, promulgated by the Commissioner of Immigration, with the approval of the then Secretary of Labor, under authority contained in Section 24 of the Immigration Act of 1924, provided as follows:[13]

> "Para. 5. Aliens who have been admitted as non-immigrants * * * under Section 3 * * * of the Immigration Act of 1924 * * *, and aliens admitted under Section 3 (6) of said Act as non-immigrants (together with their alien wives and minor children admitted at the same time or subsequently) who shall fail or refuse to maintain the status under which admitted, or to depart voluntarily when they have ceased to maintain such statuts; shall be taken into custody upon the warrant of the Secretary of Labor and deported in the manner provided by Section 14 of the Immigration Act of May 26, 1924."

Provision is made in the Immigration Act of 1924 for the deportation of[14]

> "any alien who at any time after entering the United States is found * * * to have remained therein

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[13](43 Stat. 166; 8 U. S. C. 224.)

[14]Sec. 14, Immigration Act of 1924 (43 Stat. 162; 8 U. S. C. 214).

for a longer time than permitted under this Act or regulations made thereunder, shall be taken into custody and deported in the same manner as provided for in Sections 19 and 20 of the Immigration Act of 1917 * * *"

In enacting legislation for the repeal of the Chinese Exclusion Laws[15] the Congressional Committee, considering the legislation, had the following comment to make:[16]

"*The number of Chinese who will actually be made eligible for naturalization under this Section is negligible.* There are approximately 42,000 alien Chinese persons in the United States (37,242 in continental United States and 4,844 in Hawaii, according to the census figures of 1940). However, *a large number of these Chinese have never been admitted to the United States for lawful permanent residence, which is a condition precedent to naturalization and, therefore, many of this number would not be eligible for naturalization,* not because of racial disability, but because they cannot meet existing statutory requirements of law. *The number of Chinese who will be made eligible in the future, in addition to those already here, will of necessity be very small* because the quota for China is limited to 105 per annum, as provided for in Section 2 of this bill." (Italics ours.)

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[15]On Dec. 17, 1943, Congress passed the Chinese Exclusion Repeal Act (57 Stat. 600).

[16]House Rep. 732; Sen. Rep. 535; 78th Congress, 1st Sess. (p. 6 of Sen. Rep. 535).

In discussing the purpose of the repeal of the Chinese Exclusion Acts the Congressional Committee made the following comment:[17]

> "The purpose of this section is to repeal all of the laws enacted between 1882 and 1913, dealing with the exclusion and deportation of Chinese persons. It should be stated at this point that no substantial gain accrues to the Chinese people through the repeal of these laws from a standpoint of permitting Chinese to enter the country who are at present denied that privilege because other provisions of laws subsequently enacted effectively keep out persons of the Chinese race as well as persons of other races ineligible to citizenship. It does, however, eliminate the undesirable laws specifically designating Chinese as a race to be excluded from admission to the United States."

The following provisions of the Nationality Laws and Regulations require, as a condition precedent to establishing a residence for naturalization purposes, that an alien be admitted for lawful permanent residence. At the time of the admission of the appellee into the United States the Naturalization laws required a registry of all aliens to be made.[18] As a prerequisite to the issuance

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[17]Sen. Rep. 535, 78th Congress, 1st Sess. (p. 3 referring to Sec. 1).

[18]Sec. 328(a), Nationality Act of 1940 (54 Stat. 1151-52; 8 U. S. C. 728), effective Jan. 13, 1941. The language in this section was derived from a similar provision in the basic Naturalization Act of June 29, 1906, which was recast herein without material change. See Chap. 3592, Sec. 1, 34 Stat. 596, which reads:

> "That it shall be the duty of the Bureau of Immigration * * * to provide, for use at the various Immigration stations throughout the United States, books of record, wherein the Commis-

of a valid declaration of intention the Nationality Act of 1940 requires that lawful entry for permanent residence be established.[19]

> "No declaration of intention shall be made by any person who arrived in the United States after June 29, 1906, until such person's *lawful entry for permanent residence* shall have been established, and a certificate showing the date, place, and manner of arrival in the United States shall have been issued. It shall be the duty of the Commissioner, or Deputy Commissioner, to cause to be issued such certificate." (Italics ours.)

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sioners of Immigration shall cause a registry to be made in the case of each alien arriving in the United States from and after the passage of this Act, of the name, age, occupation * * * the place of birth, the last residence, the intended place of residence in the United States, and the date of arrival of said alien, and * * * the name of the vessel in which he comes."

Historically, registry of aliens for naturalization purposes made its first appearance in the naturalization laws in the Act approved June 18, 1798 (1 Stat. 566-569) requiring: "* * * that all * * * aliens who, after the passing of this Act, shall continue to reside, or who shall arrive or come to reside in any part or place within the territory of the United States, shall be reported * * * to the Clerk of the District Court of the District, if living within ten miles of the port or place, in which their residence or arrival shall be, and otherwise, to the Collector of such port or place, or some officer or other person there, * * * who shall be authorized by the President of the United States, to register aliens; * * * in respect to every alien who shall come to reside within the United States * * * *the time of the registry of such alien shall be taken to be the time when the term of residence within the limtis and under the jurisdiction of the United States, shall have commenced, in case of an application by such alien to be admitted as a citizen of the United States; and a Certificate of such registry shall be required in proof of the term of residence, by the Court to whom such application shall and may be made.*" (Italics added.)

[19]Sec. 329(b), Naturalization Act of 1940 (54 Stat. 1152; 8 U. S. C. 729).

The applicant, when declaring his intention for naturalization, must also swear to a recital of *lawful admission for permanent residence* in his declaration of intention.[20]

> "An applicant for naturalization shall make, under oath * * * substantially the following averments * * * (11) *My lawful entry for permanent residence* in the United States was at (city or town) (State) under the name of . . . . . on (month, day, and year) on the (name of vessel or other means of conveyance.)" (Italics ours.)

The Nationality Act of 1940 requires that in the petition for naturalization the applicant also swear to a recital of lawful admission for permanent residence as follows:[21]

> "An applicant for naturalization shall * * * make and file in the Office of the Clerk of a Naturalization Court * * * a sworn petition in writing, signed by the applicant * * * which petition shall contain substantially the following averments by such applicant—(11) *My lawful entry for permanent residence in the United States* was at (City or town) (state) under the name of . . . . . on (month, day, and year) on the (name of vessel or other means of conveyance) *as shown by the Certificate of my arrival attached to this petition.*" (Italics ours.)

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[20]Sec. 331(a)(11), Naturalization Act of 1940 (54 Stat. 1153-54; 8 U. S. C. 731).

[21]Sec. 332(a)(11), Naturalization Act of 1940 (54 Stat. 1154-56; 8 U. S. C. 732).

Under regulations promulgated under the authority of the Attorney General, it is provided that an alien:[22]

> "* * * *in order to be eligible for naturalization* upon a petition for naturalization to a Naturalization Court *shall*, unless specifically exempted as set forth in sub-chapter D of this title: (b) *have been lawfully admitted to the United States for permanent residence.*" (Italics ours.)

Statement of the Case.

Appellee filed his petition to become a citizen of the United States as the husband of a United States citizen, before the Clerk of the United States District Court on September 4, 1945 [R. 2-7]. As the husband of a citizen he was exempt from the requirement of declaring his intention.[23]

There was also filed with the petition for naturalization a "Certificate of Arrival" attesting that appellee had been lawfully admitted to the United States *as the son of a merchant under section 3 (6) of the Immigration Act of* 1924.[24]

On March 4, 1947, there was filed with the District Court a list of petitions recommended to be denied, in-

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[22]Sec. 322.1, Title 8, C. F. R., issued under authority of Sec. 327 of the Naturalization Act of 1940 (54 Stat. 1150; 8 U. S. C. 727).

[23]Sec. 310(b), Nationality Act of 1940 (54 Stat. 1145; 8 U. S. C. 710(b)).

[24](43 Stat. 154; 8 U. S. C. 203).

cluding, under item 8, the name of appellee [R. 13-14]. The petition of appellee was heard in open court on March 4, 1947, and the recommendation of denial was disapproved by the Judge, who granted appellee's petition and admitted him to citizenship of the United States [R. 13-15]. Thereafter, on February 17, 1947, the Judge prepared a written decision in the case [R. 10-13].[25] Notice of appeal was filed with the Court on June 3, 1947 [R. 16].

Summary of the Facts.

Appellee is a native and citizen of China, born July 7, 1914 [R. 2]. Appellee's father, Wong Yung San, was lawfully admitted to the United States in the year 1922, under the status of a Chinese merchant pursuant to Article II of the Treaty of 1880 between the United States and China [R. 10]. On November 24, 1934, appellee was lawfully admitted to the United States under the status of "son of a merchant under section 3 (6) of the Immigration Act of 1924."[26] [R. 9]. Ap-

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[25]See *Petition of Wong Choon Hoi,* 71 Fed. Supp. 160. See, also, C. C. A., 9th Circuit Docket No. 11551. *Bonham etc. v. Chi Yan Cham Louie* in which the facts differ in so far as material from the case at bar only in the circumstance that appellee therein was admitted to the United States prior to the amendment to Sec. 3(6) of the 1924 Act by the Act of July 6, 1932 (footnote 8, *supra*) whereas the present appellee was admitted after the said amendment, both appellees having entered this country after the effective date of the 1924 Act.

[26]Sec. 3(6), Act of 1924 (43 Stat. 154 as amended; 8 U. S. C. 203).

pellee and his father have continuously resided in the United States since their respective entries, and both follow the business profession of merchant [R. 2, 10]. On October 5, 1941, appellee married a native of China who derived citizenship by reason of her father's United States citizenship at the time of her birth. She took up permanent residence in the United States on September 20, 1935 [R. 3].

Specification of Errors.

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 1880[27] for naturalization purposes.

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

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.[28]

The District Court erred in admitting petitioner to citizenship.

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[27](22 Stat. L. 826.)

[28](45 Stat. 154 as amended; 8 U. S. C. 203.)

ARGUMENT.

The Appellee Does Not Meet the Lawful Permanent Residence Requirement Which Is a Condition Precedent to Naturalization.

The facts are not in dispute and the sole issue is whether appellee's admission under the immigration and naturalization laws constitutes a *"lawful entry for permanent residence"*[29] (italics ours) within the meaning of the Nationality Act of 1940. No question is raised as to whether appellee has resided continuously in the United States for the required period of three years "immediately preceding the date of filing * * * petition" for naturalization.[30] Lawful admission for permanent residence within the contemplation of the Nationality Laws does not include an entry which depends for its permanency and continued legal existence upon the maintenance of a particular status, as for example, an alien admitted under the immigration status of a recognized "accredited official

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[29]Secs. 328(a), 329(a)(b), 331, allegation (11), 332(a), allegation (11) and subdivisions (b) and (c), Nationality Act of 1940 (54 Stat. 1151-1152; 8 U. S. C. 728(a), (54 Stat. 1152; 8 U. S. C. 729(a)(b)), (54 Stat. 1153-1154; 8 U. S. C. 731, averment (11)), (54 Stat. 1154-1156; 8 U. S. C. 732(a), averment (11)(b)(c); Sec. 322.1, Title 8, C. F. R., provides that an alien "* * * in order to be eligible for naturalization upon a petition for naturalization to a naturalization court shall * * *: (b) *have been lawfully admitted to the United States for permanent residence.*" (Italics added.)

[30]Secs. 309(a) and 310(a) of the Nationality Act of 1940 (54 Stat. 1143; 8 U. S. C. 709; 54 Stat. 1144; 8 U. S. C. 710). These two sections refer to the continuity of residence to be maintained (under the general law for five years) immediately preceding the filing of the petition for naturalization. Being married to a United States citizen after 1934, appellee was required to establish but three years' residence and was exempt from the filing of the declaration of intention.

of a foreign government."[31] Like the merchant,[32] his admission under the law is without specific time limitation so long as the legal status under which admitted of "accredited official" or "merchant" is maintained. Admission for lawful permanent residence as an "immigrant or nonquota immigrant"[33] carries no restrictions as to occupation, profession or limitation as to time. So long as an alien so admitted does not abandon his legal resident status thus acquired he is relieved from further obligation under the immigration laws. It is only the latter type of admission that will meet the requirements of the naturalization laws. *The starting point of residence prerequisite to naturalization is the entry of an alien under an immigration status for "lawful permanent residence," evidence of which is the record of registry of entry from which a certificate of arrival may be issued certifying that the admission was for lawful permanent residence.* Concededly the question of whether a temporary absence breaks the continuity of the prescribed period of residence immediately preceding filing of the petition for naturaliza-

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[31]Sec. 3(1), Immigration Act of 1924 (43 Stat. 154; 47 Stat. 607; 54 Stat. 711; 8 U. S. C. 203; Sec. 7(c), Public Law 291, 79th Congress; Chapter 652, First Session; approved December 29, 1945); Sec. 15, Immigration Act of 1924 (43 Stat. 162; 8 U. S. C. 215); Secs. 110.27 and 110.29(a), Title 8, C. F. R.

[32]Same as note 31, except "merchant" is provided for under Sec. 3(6) of the Immigration Act of 1924 and the limitation as to purpose referring to "merchant" is included in subdivisions (b) and (c) of Sec. 110.29, Title 8, C. F. R.

[33]Sec. 3, Immigration Act of 1924 (43 Stat. 154; 8 U. S. C. 203); Sec. 4, same act, subdivisions (a) to (f), inclusive, (43 Stat. 155; 44 Stat. 812; 45 Stat. 109; 46 Stat. 854; 47 Stat. 656; 8 U. S. C. 204). See footnote 9 for specific statutory exception both as to time and purpose with respect to students admitted under Sec. 4(e) of the 1924 Act.

tion may be determined by the general rule used in establishing "residence" or "domicile" except as limited by the Naturalization Statutes.[34] Such rule is not, however, applicable in determining whether the commencement of the residence is unrestricted and not dependent upon the maintenance of a particular status within the contemplation of the Nationality Laws. It is settled that such residence cannot result from a mere sojourn in the United States, no matter how protracted.[35] Citizenship was cancelled following a long period of residence where the entry upon which naturalization was founded originated from an entry prior to the Immigration Act of 1924 as a stowaway.[36] Although "residence" or "domicile" may legally be established for many purposes, such as for divorce, charity, etc., by an alien admitted under the legal status of a temporary visitor, it is not sufficient for naturalization.[37] It is equally well settled that an alien cannot meet the legal resident status, requisite for naturalization, although lawfully admitted without time limitation prior to the Immigration Act of 1924 on the basis of his having been found not subject to deportation.[38] In discussing the legal effect of the certificate of arrival

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[34]*U. S. v. Silver,* 55 F. (2d) 250.

[35]*Kaplan v. Tod,* 267 U. S. 228, 45 S. Ct. 257, 69 L. Ed. 585; *Zartavian v. Billings,* 204 U. S. 170, 175, 27 S. Ct. 182, 184, 51 L. Ed. 428.

[36]*U. S. v. Parisi,* 24 Fed. Supp. 414.

[37]*In re Weig,* 30 F. (2d) 418; *U. S. v. Beda,* 118 F. (2d) 458; also as seamen, *U. S. v. Kreticos,* 40 F. (2d) 1020; *Fanfariotis v. U. S.,* 63 F. (2d) 352; *In re Jensen,* 11 F. (2d) 414; *In re Olson,* 18 F. (2d) 425.

[38]*Sadi v. U. S.,* 48 F. (2d) 1040; *Stapf v. Corsi,* 287 U. S. 129, 53 S. Ct. 40, 77 L. Ed. 215.

in the latter case the court stated that "* * * proof of an essential fact is short. It did not show that he was *admitted for permanent residence.* That makes it impossible for him to prove what was necessary even before the Act of March 2, 1929 (45 Stat. 1512) took effect * * *, and so we held that he could not be admitted to citizenship on his pending petition, since he could not show that he had in fact been admitted for permanent residence as the statute required * * * Proof of residence that may, perhaps, become permanent because this alien was not deportable * * * is certainly not the same as proof of his *lawful entry for permanent residence.*" (Italics ours.) It is clear that the nature of the alien's entry must be assessed in the light of the immigration laws.[39] Although regarded as a "permanent resident" of the Virgin Islands by reason of regulations under the immigration laws, an alien who could not establish his original entry by a certificate of arrival from the registry of the arrival of aliens in the Virgin Islands was held not to be entitled to naturalization. The court[40] pointed out that it was not until March 31, 1938 that the Solicitor of the Department of Labor ruled that both the Immigration Acts of 1917 and 1924 were applicable to the Virgin Islands and were enforceable by the Immigration and Naturalization Service. On July 1, 1938, under the above ruling, the Immigration and Naturalization Service assumed responsibility for the enforcement of the immigration laws in the Virgin Islands. Under a regulation promulgated by the Commissioner of

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[39]*Werblow v. U. S.*, 134 F. (2d) 791.

[40]*In re Sinmiolkjier*, 71 Fed. Supp. 553 (D. C.), Virgin Islands, 1947.

the Immigration and Naturalization Service, upon the reentry of an alien, resident of the Islands prior to July 1, 1938, he was to be regarded as presumed to have been lawfully admitted for permanent residence even though no record of his original admission existed, and under the regulation was required to be recorded as a lawful resident alien returning from a temporary absence. The certificates of arrival in these cases were based upon records created under this regulation upon a reentry after July 1, 1938. Applying the general rule by which "residence" or "domicile" may be established clearly, these aliens were "resident" or "domiciled aliens" of the Virgin Islands and although they may remain there indefinitely they were held not to be eligible for naturalization because the starting point of their residence for naturalization purposes could not in fact be evidenced by a certificate of arrival made up from a registry showing their original admission to have been for lawful permanent residence within the meaning of the Nationality Act of 1940.[41]

The requirement that only a certification from the registry of entires of aliens certifying to the admission of the alien for lawful permanent residence will be a proper foundation for a petition for naturalization is a basic longstanding principle of the naturalization laws of this country.[42]

It clearly appears that the lower court in the instant case when stating that "the term 'residence,' as used in the naturalization statute, is practically synonymous with 'domicile'," confused that principle with the test used in

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[41]Secs. 328(a) and 329(a), Nationality Act of 1940, footnote 22.

[42]See footnote 18 for historical background.

determining whether or not there had been a break in the continuity of the statutory period of three years residence which must elapse immediately prior to the filing of petition for naturalization [R. 12]. That fact is further shown by the decisions cited as authority for the court's conclusion, all of which relate to the question of whether there has been a break in the continuity of the residential period, with one exception.[43] These cases do not deal with the question of whether the starting point of residence prerequisite to naturalization was evidenced by a certificate of arrival certifying that the registry showed a lawful admission for permanent residence. The certificate of arrival in the present case does not certify that appellee was admitted for lawful permanent residence, but rather it certifies only that according to the registry of his entry appellee was *"lawfully admitted to the United States of America as the son of a merchant under Section 3 (6) of the Immigration Act of 1924"* [R. 9]. (Italics ours). The lower court further states that "long before the Nationality Act of 1940, Chinese merchants admitted to engage in business here pursuant to the Treaty of 1880 were referred to as 'domiciled' in this country" [R. 12]. None of the cases cited by the court, however, involve a determination of whether "domicile" as there construed would meet the requirement of the Nationality Laws that the entry be evidenced by a certificate certifying to the lawful admission of the alien for permanent residence as a condition precedent to jurisdiction to grant citizenship. All of the cases cited by the court as indicating that merchants were regarded as "domiciled" in this country

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[43]*U. S. v. Parisi* 24 Fed. Supp. 414, 419.

came before the courts in writs of habeas corpus suits to determine whether the Immigration Service in deciding the excludability or deportability of each alien had observed the rules of due process in the administrative proceeding. In none of these cases was the question of construction of the terms "domicile" or "residence" in relation to the naturalization statutes before the court. The mere fact that the court found their residence not subject to any time limitation or that they were not deportable falls far short of holding that the starting point of their residence met the prerequisite of an entry of an alien upon which a certification from the registry of the record of arrival could be made that they were admitted for lawful permanent residence within the meaning of the naturalization laws. *Such a determination would be completely foreign to the legislative design.* It would result in the sanctioning of naturalization of aliens admitted as "accredited officials of a foreign government" under Section 3 (1) of the Immigration Act of 1924; also aliens admitted as a functionary of an international organization under Section (7) of the same act, as amended by the Act of December 29, 1945, Public Law 291, 79th Congress, First Session; or an alien admitted as a treaty trader under Section 3 (6) of the same statute, because in none of these three classes does the law set a time limitation. The period of their residence is unlimited *provided the particular status under which classified by the immigration statutes is maintained.*

Admission After the Immigration Act of 1924 of the Minor Son of a Chinese Merchant, Admitted Prior to That Act, Does Not Constitute Lawful Permanent Residence for Naturalization Purposes.

The court in the instant case reasons that "precedent of long standing" holds that where the merchant father was admitted prior to 1924 and the wife and minor children admitted after 1924 they "are entitled to be admitted for permanent residence by virtue of the treaty" [R. 11]. The question which the Supreme Court in the case of *Cheung Sum Shee v. Nagle*[44] had to decide was whether the wives and minor children of Chinese merchants admitted under the Treaty prior to 1924 were guaranteed the right of entry by the Treaty of 1880 or whether they were mandatorily excluded from the United States under the provisions of the Act of 1924. Article II of the Treaty, although silent as to the family of a merchant, was held by necessary implication to include the wives and minor children.[45]

When enacting Section 3 (6) of the 1924 Act, in its original form, Congress must have been aware of the construction placed on the Treaty, yet it likewise made no mention of the wife and children of a merchant and by Section 13 (c) made excludable all persons racially ineligible to citizenship. The court found that the omission of the wives and children in Section 3 (6) of the 1924 Act in its original form failed to show any "Congressional intent absolutely to exclude" the wives and minor children of Chinese merchants. By Act of July 6, 1932, the sixth

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[44]268 U. S. 336, 45 S. Ct. 539, 69 L. Ed. 985.

[45]*U. S. v. Mrs. Gue Lim,* 176 U. S. 459, 20 S. Ct. 415, 44 L. Ed. 544.

subdivision of Section 3 of the 1924 Act was amended to provide for the entry of the wives and unmarried minor children of merchants as non-immigrants. The decision in the *Sheung Sum Shee v. Nagle* case, *supra*, fell far short of holding that the wives and minor children were entitled to admission under a status equivalent to that of an "immigrant" for lawful permanent residence upon which a petition for naturalization could be founded. Insofar as the 1924 Act related to the wives and minor children, the court in clear and unmistakable language held them not to be admitted as "immigrants," but rather that they were classified as "non-immigrants." Reference is made to the following words of the court (U. S. p. 540): "An alien entitled to enter the United States 'solely to carry on trade' under an existing treaty of commerce and navigation *is not an immigrant within the meaning of the Act, Section 3 (6),* and therefore is not absolutely excluded by Section 13" (Italics ours), of the 1924 Immigration Act. Further, "In a very definite sense *they are specified by the Act itself as non-immigrants.*" (Italics ours.)

The 1924 Immigration Act by express provision applied to all aliens entering the United States after its effective date on July 1, 1924, even though admissible under some other law. It provided that "* * * an alien, although admissible under the provisions of the immigration laws, other than this Act, shall not be admitted to the United States if he is excludable by any provision of this Act."[46] Section 13(c) of the 1924 Act excluded from admission as "immigrants" all aliens ineligible to citizenship unless found to be admissible "* * * as a nonquota immigrant

[46](43 Stat. 166; 8 U. S. C. 223). See footnote 6.

under the provisions of subdivision (b), (d), or (e) of Section 4, or (2) is the wife, or the unmarried child under 18 years of age, of an immigrant admissible under such subdivision (d), and is accompanying or following to join him, or (3) is not an immigrant as defined in Section 3."[47]

Being of a race ineligible to citizenship, the wives and minor children were excludable under the 1924 Act if applying for admission as "immigrants" and could only be admitted under the status of a "nonquota immigrant" under Section 4 of the 1924 Act, or as "non-immigrants" under Section 3 of the same Act. The Supreme Court, therefore, concluded that such racially ineligible wives and minor children were excludable as "immigrants," but that they were admissible under a derivative status as "non-immigrants" as provided in Section 3(6) of the 1924 Act.

This Honorable Court in *Haff v. Yung Poy,*[48] did not decide that the minor son in that case was admitted as an "immigrant" within the meaning of the 1924 Act for lawful permanent residence, such as would meet the requirement of the Nationality Act, nor that his derivative status entitled him to such a classification by reason of the Treaty. The merchant father was not made deportable under the laws enacted prior to 1924 to carry out the Treaty, on the grounds of having failed to maintain the status of merchant under which admitted. This court pointed out the many harsh consequences of requiring the deportation of the wives and minor children, and concluded only that the son was not to be deported because of the abandonment of mercantile status by his merchant father.

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[47](43 Stat. 155; 8 U. S. C. 204). See footnote 9.

[48]*Haff v. Yung Poy,* 29 F. (2d) 999. Relied upon by the lower Court. [R. 12.]

The Repeal of the Chinese Exclusion Acts Did Not Contemplate That Chinese in This Country Under a Mercantile Status Would Become Eligible for Naturalization.

In repealing the Chinese Exclusion Acts and making Chinese racially eligible for naturalization,[49] the Congressional Committees contemplated that such legislation would place those few Chinese that were to be permitted entry on a parity with other racial groups, but not that the legislation would, in any way, change the existing immigration status of Chinese aliens in this country so as to enable greater numbers to meet the requirements for naturalization. In fact, the language of the Senate Committee clearly demonstrates the Committee understood that the greater number of Chinese in this country are ineligible to naturalize because they have not been admitted "* * * *for lawful permanent residence, which is a condition precedent to naturalization.*" (Italics added.) Their understanding was expressed in the following language:[50]

> *"The number of Chinese who will actually be made eligible for naturalization under this Section is negligible.* There are approximately 42,000 alien Chinese persons in the United States (37,242 in continental United States and 4,844 in Hawaii, according to the census figures of 1940). However, *a large number of these Chinese have never been admitted to the United States for lawful permanent residence, which is a condition precedent to naturalization and, there-*

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[49]Chinese Exclusion Repeal Act of Dec. 17, 1943 (57 Stat. 600; Sec. 303); Natl. Act of 1940; Chap. 344, Sec. 3 (57 Stat. 601; 8 U. S. C. 703).

[50]78th Congress, First Session; Sen. Rep. 535, p. 6; House Rep. 732.

> *fore, many of this number would not be eligible for naturalization,* not because of racial disability, but because they cannot meet existing statutory requirements of law. *The number of Chinese who will be made eligible in the future, in addition to those already here, will of necessity be very small* because the quota for China is limited to 105 per annum, as provided for in Section 2 of this bill." (Italics added.)

Section 2 of the Chinese Exclusion Repeal Act of December 17, 1943, limits the number of Chinese who are made admissible under the law for permanent residence to certain aliens classified as "non-quota immigrants,"[51] and sets the number of Chinese admissible annually as "immigrants" to be computed under the provisions of Section 11 of the 1924 Act. Under that computation the quota for Chinese is limited to 105 Chinese annually.[52] The Chinese Exclusion Repeal Act also provides that a preference up to seventy-five per centum of this quota shall be given to Chinese born and resident in China. The remaining twenty-five per centum would be available for Chinese in other countries or temporarily in the United States who are in a position to apply for pre-examination,[53] or other benefits of the immigration laws incident to admission for lawful permanent residence in the United States as "immigrants." Under the limitation of twenty-

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[51]Sec. 4(b)(d)(e) and (f) (43 Stat. 155; with amendments; 8 U. S. C. 204), except subdivision (e) of Sec. 4 is restricted in period of residence by Sec. 15, Act of 1924, as more fully set out in footnote 9.

[52]Sec. 61.316, Title 22, C. F. R. of U. S. A., provides "the following is a list of the annual immigration quotas established for the various quota countries of the world * * * Chinese 105."

[53]Part 142, Title 8, C. F. R.

five per cent of the quota available to Chinese who may be admitted to this country from countries other than China, which includes Chinese already in the United States, it follows that only very few of the Chinese already here can be naturalized, and carries out the legislative design and understanding that "*the number who will naturally be made eligible for naturalization is negligible.*" (Italics added.)

The Congressional Committee indicates very clearly that the purpose of the Chinese Exclusion Repeal Act was not to open wide the doors to Chinese "immigrants."[54]

> "The purpose of this section is to repeal all of the laws enacted between 1882 and 1913, dealing with the exclusion and deportation of Chinese persons. It should be stated at this point that no substantial gain accrues to the Chinese people through the repeal of these laws from a standpoint of permitting Chinese to enter the country who are at present denied that privilege because other provisions of laws subsequently enacted effectively keep out persons of the Chinese race as well as persons of other races ineligible to citizenship. *It does, however, eliminate the undesirable laws specifically designating Chinese as a race to be excluded from admission to the United States.*" (Italics added.)

President Roosevelt, in his message to Congress October 11, 1943, regarding the Chinese Exclusion Repeal Act, stated:[55]

> "By the repeal of the Chinese exclusion laws, we can correct a historic mistake and silence the distorted

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[54]See footnotes 16 and 17.

[55]Sen. Rep. 535, p. 3, 78th Congress, First Session.

> Japanese propaganda. The enactment of legislation now pending before the Congress would put Chinese immigrants on a parity with those from other countries. The Chinese quota, would, therefore, be only about 100 immigrants a year. There can be no reasonable apprehension that any such number of immigrants will cause unemployment or provide competition in the search for jobs. The extension of the privileges of citizenship to the relatively few Chinese residents in our country would operate as another meaningful display of friendship."

The foregoing quotations from the Congressional Committee reports are a public recognition that all the prior laws dealing with Chinese were laws of "exclusion" and not admission, designed for the purpose of preventing an influx of Chinese immigration into the United States, and that the privilege granted by Article II of the Treaty of 1880 to special classes named therein, including merchants, "to go and come of their own free will and accord" was a special privilege granted to a preferred class for commercial purposes only. The Treaty contained no definition of the term "merchant," nor did it provide any particular procedure for his coming and going. It was not until the Act of November 3, 1893, enacted in pursuance of the Treaty, that the term "merchant" was defined.[56] That definition requires that he maintain his mercantile activities in order to retain the status under that Act and the Treaty, of "merchant." By this definition he was required to engage in buying and selling merchandise, and to have a fixed place of business, and during the time he claimed

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[56]See footnote 4.

to be so engaged was not to perform any manual labor except such as was necessary in the conduct of his business as a merchant.

Section 2 of the same Act in defining a "domiciled merchant" signifies in clear language a Congressional intent that admission of a Chinese as a merchant under this law was not to constitute an admission for unrestricted, lawful, permanent residence such as would form the foundation for a petition for naturalization.[57] It was provided that:

> "Where an application is made by a Chinaman for entering into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two creditable witnesses, other than Chinese, the fact that he conducted such business, as hereinbefore defined, for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor excepting such as was necessary in the conduct of his business as such merchant, *and in default of such proof shall be refused landing.*" (Italics added.)

A study of the history of the treaties and the legislation effectuating the treaty stipulations dispels any contention that it was ever intended or contemplated that Chinese were to be admitted into the United States as permanent settlers to become a part of the body politic of this country.

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[57](28 Stat. L. 7.)

At the outset, Congress prohibited the naturalization of any Chinese who might then be in the United States.[58] Moreover, by Article IV of a Convention Regulating Chinese Immigration concluded March 17, 1894, it was provided that:

> "In pursuance of Article III of the Immigration Treaty * * * signed * * * the 17th day of November, 1880 * * * it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, *excepting the right to become naturalized citizens.* * * *" (Italics added.)

All Chinese other than the specified exempt classes were excluded from admission, and if found in the United States were made deportable,[59] unless such Chinese had complied with the law requiring registration of all Chinese laborers within the United States during the registration period.[60] The character of the immigration status with which a merchant was clothed who had been admitted to the United States prior to the Immigration Act of 1924, is shown in a decision of the Supreme Court, involving the admissi-

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[58]Act approved May 6, 1882, providing, "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." (22 Stat. 61; 8 U. S. C. 363.)

[59]Sec. 13, Act of Sept. 13, 1880 (25 Stat. 476, 477); Sec. 2, Act of May 5, 1892 (27 Stat. 25); Sec. 3, Act of Mar. 3, 1901 (31 Stat. 1093).

[60]Act of May 5, 1892, as amended by the Act of Nov. 3, 1893 (28 Stat. 7).

bility of the wife and minor children upon their arrival at a port in the United States in 1917. The mercantile status under which the husband-father was admitted to the United States in 1901 had terminated and he was found to be a laundryman at the time of their application. The court concluded that the husband-father although himself admitted under a mercantile status, no longer had an immigration status entitling his wife and minor children to admission to the United States.[61] Although a Chinese admitted as a merchant prior to 1924 was held not to be subject to deportation because of subsequent abandonment of status, if he left the United States temporarily it was necessary for him to establish a mercantile status each time he reentered the United States. He was not, however, limited in the establishing of such mercantile status to presentation of a section six certificate issued by his own government attesting to his mercantile status in the same manner as on original entry.[62]

From the foregoing judicial interpretations and reference to the history of the treaties and legislation preceding the enactment of the 1924 Immigration Act, it is readily understandable that the Supreme Court would hold that the admission of the wives and minor children after the 1924 Act, under the existing status of a Chinese admitted as a merchant prior to the said Act, was not as "immi-

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[61]*Yee Won v. White,* 256 U. S. 399, 41 S. Ct. 504, 65 L. Ed. 1012; *Chung Yim v. U. S.*, 78 F. (2d) 43.

[62]*Lau Ow Bew v. U. S.*, 144 U. S. 47, 12 S. Ct. 517, 36 L. Ed. 340; *U. S. v. Wong You*, 223 U. S. 67, 32 S. Ct. 195, 56 L. Ed. 354. Mr. Justice Holmes, in referring to the Exclusion Acts, states: "The existence of the earlier laws only indicates the special solicitude of the government to limit the entrance of Chinese."

grants" or "nonquota immigrants" as those terms are used in the 1924 Act which terms define the only classes of aliens admitted for lawful unrestricted permanent residence, but rather found their admissions to be authorized as "non-immigrants," the term used in the 1924 Act to cover all classes of aliens whose admissions are for a period of time to be determined upon a continuous maintenance of status or a period specified at time of admission, but not for lawful unrestricted permanent residence as to time or purpose.

All aliens, including Chinese who did not have an unrestricted permanent immigration status, and who entered the United States prior to the 1924 Act and who were not deportable under that Act, may have their entries or residence legalized, and a registry made of their entries when so created meets the requirement of the Nationality Act of 1940. A certification from such a registry of the alien's entry showing admission for lawful permanent residence meets that essential prerequisite to a grant of citizenship. The Nationality Act provides:[63]

> "(c) For the purpose of the immigration laws *and the naturalization laws* an alien, in respect of whom a record of registry has been made as authorized by this section, *shall be deemed to have been lawfully admitted to the United States for permanent residence* as of the date of such alien's entry." (Italics added.)

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[63]Secs. 328 (b) and (c), Nationality Act of 1940 (54 Stat. 1151-1152; 8 U. S. C. 728).

Conclusion.

The order naturalizing the appellee was erroneously granted. Since appellee failed to establish his admission for lawful permanent residence as required by the Naturalization laws, he was not eligible for citizenship.

It is respectfully submitted, therefore, that the judgment and order of the District Court, admitting him to citizenship, should be reversed.

Respectfully submitted,

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