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Aliens - Denaturalization - Requirement that the Governmnet be Deceived in Naturalization Proceeding as Basis for Denaturalization

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RECENT DECISIONS

ALIENS—DENATURALIZATION—REQUIREMENT THAT THE GOVERNMENT BE DECEIVED IN NATURALIZATION PROCEEDING AS BASIS FOR DENATURALIZATION— Defendant Umberto Anastasio, arrived in this country as a deserting seaman in 1917. A certificate of registry was granted in 1931 upon the fraudulent allegation in his application and testimony before an immigration inspector that he had never been arrested.[1] After filing other papers necessary for naturalization, defendant was issued a certificate of arrival in 1933 based on the certificate of registry. Before obtaining citizenship, however, defendant executed an affidavit which revealed his criminal record and filed a consent of dismissal of his petition for naturalization in 1935. In 1942, while in the United States Army, defendant applied for naturalization and fully revealed his previous criminal record. A new certificate of arrival was issued in 1943 based upon the 1931 certificate of registry. In 1943, the Common Pleas Court of Lebanon County, Pennsylvania, admitted the defendant to citizenship upon the recommendation[2] of an Immigration and Naturalization Service examiner who had interviewed the defendant, was aware of his previous criminal record, had a file containing the 1931-1935 naturalization proceeding, but lacked the registry file. In a denaturalization proceeding in 1952, defendant's certificate of naturalization was cancelled and the order admitting him to citizenship revoked on the ground that the certificate of arrival granted in 1943 was based upon the void certificate of registry issued in 1931 and that the use of the latter certificate in the 1943 naturalization proceeding was fraud on the court.[3] On appeal, *held,* reversed, one judge dissenting. Although the defendant had concealed his criminal record in a prior naturalization proceeding, his disclosure in the 1942 proceeding estopped the government from claiming that citizenship has been granted because of the practice of fraud or illegality. *United States v. Anastasio,* (3d Cir. 1955) 226 F. (2d) 912, cert. den. (U.S. 1956) 76 S.Ct. 787.

[1] The record indicated that defendant had been arrested five times prior to the filing of the Application for Registry. Principal case at 913-914.

[2] The examiner based his recommendation upon the defendant's commanding officer's approval of the application for citizenship and because the arrests disclosed had occurred ten years prior to the defendant's petition. For a holding that false statements, knowingly made prior to the statutory period and before the date of the petition, are relevant to a determination of good character during the period required by law, see Stevens v. United States, (7th Cir. 1951) 190 F. (2d) 880. Under the present law, the court is not limited to a consideration of petitioner's conduct during the five years immediately preceding the filing of the petition but may consider conduct at any time prior to that period. 66 Stat. L. 243 (1952), 8 U.S.C. (1952) §1427 (e).

[3] United States v. Anastasio, (D.C. N.J. 1954) 120 F. Supp. 435.

Although Congress exercised the power given it by the Constitution[4] to establish a uniform law of naturalization in 1790,[5] it was not until 1906 that there was a specific legislative provision for denaturalization.[6] In contrast to most European denaturalization statutes, which revoke citizenship only because of acts occurring subsequent to naturalization,[7] the American statute was based upon the theory that naturalized citizenship is void *ab initio* when obtained by fraud or illegality. Our statute deprives the naturalized citizen of the citizenship that was never rightfully his because he obtained it by fraud or because he failed to comply with the mandatory statutory provisions to perfect it. Thus, the American statute is not ex post facto when applied to naturalization proceedings initiated prior to its enactment.[8] The present denaturalization action was part of the attorney general's drive to deport prominent criminals[9] and was brought under the Naturalization Act of 1940.[10] The majority in the principal case reached its decision by two steps: (1) that a denaturalization proceeding is essentially an action for rescission and, thus, the government must prove not only that the defendant was guilty of fraud, but also that it relied upon his fraudulent representation and was deceived thereby, and (2) that the government had constructive notice of the defendant's fraud because its examiner had knowledge of defendant's criminal record

[4] U. S. CONST., art. I, §8.

[5] 1 Stat. L. 103 (1790).

[6] 34 Stat. L. 596 (1906). As to prior methods of denaturalization, see Roche, "Prestatutory Denaturalization," 35 CORN. L. Q. 120 (1949).

[7] See the collection of foreign statutes in 44 COL. L. REV. 740, n. 14 (1944).

[8] The statute under which the proceeding involved in the principal case was brought permitted cancellation of certificates of citizenship "on the ground of fraud or on the ground that such certificate of citizenship was illegally procured." 34 Stat. L. 601 (1906), re-enacted as 54 Stat. L. 1158 (1940), 8 U.S.C. (1946) §738. The Supreme Court, in upholding the statute's constitutionality, declared: "The act imposes no punishment upon an alien who has previously procured a certificate of citizenship by fraud or other illegal conduct. It simply deprives him of his ill-gotten privileges. . . ." Johannessen v. United States, 225 U.S. 227 at 242, 32 S.Ct. 613 (1912). For criticism of this view, see Justice Rutledge's concurring opinion in Schneiderman v. United States, 320 U.S. 118 at 167, 63 S.Ct. 1333 (1943), in which he says that this creates "two classes of citizens, one free and independent, one haltered with a lifetime string tied to its status." See also 50 COL. L. REV. 674 (1950). See, generally, Roche, "Statutory Denaturalization: 1906-1951," 13 UNIV. PITT. L. REV. 276 (1952).

[9] For judicial recognition of this program, see Shaughnessy v. Accardi, 349 U.S. 280 at 281, 75 S.Ct. 746 (1955).

[10] 54 Stat. L. 1158 (1940), 8 U.S.C. (1946) §738. The denaturalization proceeding was instigated on December 10, 1952. The Immigration and Nationality Act of 1952 did not come into effect until December 24, 1952. One of the reasons for beginning the action prior to the effective date of this new statute might have been that it eliminated illegal procurement as a grounds for denaturalization and replaced fraud with "concealment of a material fact or by willful misrepresentations." 66 Stat. L. 260 (1952), 8 U.S.C. (1952) §1451 (a). For a holding that the government cannot maintain proceedings under the 1952 act to cancel certificates illegally but not fraudulently procured prior to 1952, see United States v. Stromberg, 24 U.S. LAW WEEK 2237 (1955).

when defendant applied for naturalization. This is vulnerable to attack on both levels. The act under which the denaturalization proceeding was brought had two distinct and severable grounds for denaturalization, fraud and illegality.[11] Assuming that there was no fraud established (which is highly doubtful[12]) the naturalization was nevertheless illegally procured because there was not complete adherence to the prescribed requirements of the statute.[13] The Nationality Act of 1940 required that a certificate of arrival be attached to all petitions for naturalization,[14] and since defendant's certificate was based upon his fraudulent registry record (and therefore void) he failed to comply with the statute.[15] Further, to use estoppel[16] to prevent the government from denaturalizing the defendant injects into denaturalization law a slippery concept the net effect of which is to defeat the legislative intent of preventing one who practices fraud from obtaining citizenship.[17] Not only does this present a problem of separation of powers[18] but estopping the government because of the negligence or error in judgment of a minor member of the executive branch could prevent the

[11] See note 8 supra.

[12] The defendant told the examiner, under oath, that he had not been absent from the country, whereas in his personal history statement filled out in conjunction with his application for citizenship he revealed that he had visited Canada frequently. Petition for rehearing, p. 6.

[13] In United States v. Ginsberg, 243 U.S. 472 at 475, 37 S.Ct. 422 (1917), the Court, in holding that there is no right to naturalization unless all statutory requirements are complied with, said that a certificate of citizenship was illegally procured because the judge gave the oath in his chambers instead of in open court as required by the act. In Schwinn v. United States, 311 U.S. 616, 61 S.Ct. 70 (1940), denaturalization was sustained because of the failure of a witness to meet the statutory qualifications even though the defects were unknown to the petitioner.

[14] Although defendant was naturalized under an amendment to the Nationality Act of 1940, which liberalized the requirements as to declaration of intention, period of residence, English language, etc., the necessity of attaching a certificate of arrival to the petition was not eliminated as one of the requirements. 56 Stat. L. 182 (1942), 8 U.S.C. (1942) §1001.

[15] "Filing the certificate of arrival being a matter of substance, it is clear that no power is vested in the naturalization court to dispense with it. . . . Naturalization granted without the certificate having been filed is, therefore, 'illegally procured'." United States v. Ness, 245 U.S. 319 at 324-325, 38 S.Ct. 118 (1917). See also Maney v. United States, 278 U.S. 17, 49 S.Ct. 15 (1928).

[16] The majority said that the examiner, being aware of defendant's criminal record, must have realized that defendant had fraudulently concealed it in his registry proceeding in 1931 or else he would not have been given a certificate of registry. But see United States v. Accardo, (D.C. N.J. 1953) 113 F. Supp. 783, affd. (3d Cir. 1953) 208 F. (2d) 632, cert. den. 347 U.S. 952, 74 S.Ct. 677 (1954), where the court refused to charge the government with knowledge of the defendant's concealment of a conviction because it was known to the State Department, a separate branch of the Immigration office, and the United States Probation Office.

[17] The defendant did not reveal his fraud in obtaining the certificate of registry.

[18] See the dissenting opinion of Chief Judge Biggs in the denial of the petition for rehearing (principal case at 923) in which he states that it is difficult to see how an error of judgment committed by the executive branch can be imputed to the judicial branch.

government from correcting the errors of its many employees.[19] The decision in the principal case seems to reward deceit. It repudiates the doctrine that an alien seeking citizenship has a duty to make full disclosure.[20]

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[19] Even those who urge that the government should be bound by estoppel or constructive notice make a distinction between the case of a minor employee and the authorized administrative head who has the power to speak for the agency he represents. See, generally, Berger, "Estoppel against the Government," 21 UNIV. CHI. L. REV. 680 (1954).

[20] It is hard to see why the principle adopted by the court in United States v. Accardo, note 16 supra, that the alien seeking naturalization has the duty of making full disclosure in order that the government may investigate, is not applicable.