

# A STUDY ON THE LAW OF EXCLUSION IN USA

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## INTRODUCTION

This is a study on the immigration law in the United States. The present writer is conducting a research project, as part of broader studies on the American immigration laws, which covers individually each of the following subjects: 1) the Admission to the United States; <sup>1</sup> 2) the Exclusion; 3) the Admission Procedures; 4) Reasons for Deportation; 5) the Deportation Procedures; and 6) the Judicial Review of Deportation Order. For a reflection on the legal status of aliens under the Japanese Constitution, a comparative study is imperative. It is, moreover, the immigration law that contains the most extensive and important elements of the legal system legislated for the treatment of aliens. The Japanese Immigration Law indeed took its contour from American legal system governing immigration. This is the reason why I chose to embark on a series of research on the United States Immigration Law.

I feel obliged to mention on this opportunity the names of persons who made this study possible as they rendered hospitality and help when I made a brief visit to them at the School of Law, University of California in 1976 Dr. James M. Diamond and his family; Professor Dr. Richard M. Buxbaum; Mr. John Ericson (attorney); Professor Dr. Sho Sato; Mr. Mao Yonemura (attorney); Mr. Donald Ungar (attorney); Mr. Siegfried Hesse (attorney); Mr. Gene Lani (attorney); and Mr. Fred Okland (attorney). I give my thanks to them. <sup>2</sup>

## ALIENS WHO ARE EXCLUDED AND THEIR PROBLEMS

The empowered authority of the American Congress to legislate laws and regulations governing the admission and departure of aliens is almost totalistic, to the extent that it is not to be hindered by the Constitution. Such is the generally established legal principle in the United States.<sup>3</sup> The U. S. Congress legislates very detailed immigration laws<sup>4</sup>, uncomparable to that of Japan. The administrative laws and regulations for executing these immigration laws<sup>5</sup> are even more detailed.

Under such laws, one of the first categories of aliens classified to be excluded from the United States is those who do not have a visa.<sup>6</sup> The following belongs to this category.

### A. *Aliens Without Visa*

#### 1. Non-immigrant Aliens

When a non-immigrant alien<sup>7</sup> applies for admission to the United States, the applicant should have a valid non-immigrant visa, a border-crossing pass, or a passport. The passport should be valid for six months or longer beyond the period during which the applicant intends to stay in the United States (Sec. 212 (a) (26)).<sup>8</sup>

The visa may be revoked, even after having been issued, if, when an unexpected emergency situation arises, the Attorney General or the Secretary of State deems it necessary to do so on the basis of the mutually preferred relationship with Canada, Mexico and their adjacent island territories, and for reasons of some special circumstances involving transportation which may be resulted from consultation with those countries (Sec. 212 (d) (4))

The revocatory authority is determined by regulation. The revocation may be applied to the Canadian citizen and the British subjects residing in Canada and its adjacent islands (8C. F. R 212.1)<sup>9</sup> The immigrants in the preference categories, too, are naturally with the application of this revocation regulation.

The Attorney General can, depending upon circumstances, authorize a temporary admission to an alien who is classified as excludable

disregarding the reasons for his or her excludability (Sec. 212 (d) (3)). However, the admission of the persons who are considered potentially dangerous of, or feared of, being engaged in espionage and sabotage activities after entry can not be authorized even if their admission appear to be in the public interest.<sup>10</sup>

## 2. Immigrants

A person in the immigrant category should present a valid immigrant visa or its equivalent when applying for admission (Sec. 211 (a)). The applicant should of course possess a valid passport for that (Sec. 211 (a) (20)). However, there are certain cases in which the requirement for presentation of a passport may be waived (22 C. F. R. 42.6, 8 C. F. R. 211, 2):<sup>11</sup>

(1) For instance, the following cases have been established as exceptions to the admission requirements: the American Indians born in Canada, members of U. S. Armed Forces, aliens born in Guam and children of native Puerto Ricans and Virgin Islanders. In these cases, whereas parents are required to have a visa and other appropriate valid documents, their children accompanying them are exempted from the requirement. (Secs. 211 (a) (1), 289, 284 and 212 (d) (7), 8 C. F. R. 211 1, 22 C. F. R. 42.5)

(2) The immigrant visa or its equivalent documents are as follows (Sec. 211 (b)): the alien registration card (form 1-151), or re-entry permit in place of a visa for the immigrants who seek re-entry. The alien registration card (known as the green card) is an identification card that an alien legally residing in the United States hold ( 8 C. F. R. 211. 1. (b)). The alien registration card becomes a valid document when its holder re-enters the United States within one year of his or her departure, provided that the alien establishes that he or she has not traveled in the country which is specifically prohibited to do so.<sup>12</sup>

The re-entry permit is good for two years, provided that, as in other cases, its holder will not travel in the specifically prohibited countries while he or she is out of the United States. The application for re-entry permit should be made at the Immigration and Naturalization Service at least 30 days in advance of one's departure (8C.F.R. 211.1(C) Form 1-131).

(3) The waiver of requirement for document. In some circumstances, requirement for documents may be waived at the time of one's re-entry. The law provides for two different kinds of such circumstances. These are described in detail by regulation. But in all cases, the granting of waiver is within the discretion of the Immigration and Naturalization Service.

First, according to Law 211(b), the waiver of the requirement may be granted to the person who, after a short period of travel abroad, is returning to the same place of residence, i.e., without abandoning the place of his or her lawful residence. (Sec. 211(b), 8 C. F. R. 211.1 (b) (3), Form 1-193). In other words, this is the case where the INS judges that there is a "good cause" for not having the document. If the Director of INS makes a decision on a person's travel abroad that involves the prohibited countries, the decision should be the one that has been approved by the Secretary of State. In the above instance, the Secretary of State may of course grant an entry permit with his own discretion to the person without a re-entry permit or other documents in possession.

For the admission procedures for the above, an application (Form 1-193) should be made to the district director of the INS who has the jurisdiction of the pertinent port of entry by presenting proper documents in accordance with the form. Such an alien may of course be subject to exclusion, change of qualification, or deportation at the time or after entry.

Second, in accordance with Law 212 (c), it has been established that the waiver of requirement for document is granted to the person who, without abandoning his or her place of residence where he had lived lawfully for more than seven years, is returning, after a short period of travel abroad, to the same place. The difference between this and the above provision Law 211 (b) lies in the fact that even the person who is excludable under Sec. 122 (a) (1) (25) (30) (31), can be granted an admission if he or she satisfies the conditions of Law 212 (c). However, this privilege may not be recognized for those who engage in subversive activities, espionage, or sabotage.

The legality of an alien's residence in the United States is defined by law (Sec. 101 (a)(20)).

To satisfy the condition of seven-year residence, a person must have lived in the United States for at least seven years counted from the day following his or her lawful entry to the day of his or her reentry.

(4) Procedures. An application should be made in accordance with the Form 1-191 and be filed with the Immigration and Naturalization Service. The application may be filed at the time of, before, or after, the entry (8 C. F. R. 212.3). In case of a person who is excludable, decision on whether or not a waiver of document requirement will be granted should of course be made before his or her departure by exclusion. If such a person is not granted a re-entry permit, the decision thereof should be served at the time of entry. In such an instance, however, the decision should necessarily be the one that has been made in compliance with regulations concerning change of qualification (disqualification) and deportation.

When a grant of waiver of document requirement is refused, an alien can appeal to the Board of Immigration Appeals.

#### B. *Fraud or Misrepresentation*

(1) The alien who acquired, or attempts to acquire, a visa or other document necessary to admission by fraud or misrepresentation, or who seeks to enter into the United States by similar fraudulent method may not be admitted (Sec. 212(a)(19)).

A fraud involves an act of acquiring necessary document. Acquisition of necessary document by fraud or an entry accomplished on the basis of document in such a way are all nullified. A misrepresentation includes an "act of not presenting important information on purpose." An attempted entry by misrepresentation is prohibited; but the prohibition affects only the entry that involves misrepresentation.

As regards a fraud, a distinction is made between an act done when an alien receives a visa and an act done when a document is issued.

In misrepresentation, being willful is a necessary condition. A *willful* misrepresentation is interpreted as an act of hiding the truth and stating false information with the *awareness* that the presentation lacks integrity. It appears that, in some decisions, even the *intention* to commit such an act is added to the condition that constitutes a

misrepresentation.<sup>13</sup>

The criteria for the "importance of the information," which is still another condition that constitutes a misrepresentation, has been established by the Attorney General in the following three ways:

First, when an alien misrepresents certain information asked, which, if given truthfully, would evidently result in his or her exclusion, this constitutes an act of not presenting deliberately the "important information."<sup>14</sup>

Second, when an alien should not be excludable even if the truthful information was given, such a misrepresentation is considered to have been made without involving the "important information."

Third, when, whereas an alien believes that a truthful statement of certain information asked would result in exclusion, it actually constitutes a ground for disqualification for visa, such a misrepresentation becomes that which is related to the "important information."<sup>15</sup>

(2) Relief of inadmissibility. Even the alien who is excludable on ground of fraud can at times be granted admission by the discretion of the Attorney General. The following is such a case: when the alien as a spouse, a parent, or a child of a United States citizen or a permanent resident, has reasons for being able to be admitted in some other way (Sec. 212(1)).

(3) A petition for relief of exclusion can be made by filing the Form I-501 and necessary documents required by the form with the Immigration and Naturalization Service.

If the petition is refused, an appeal can be made to the district Director of the Immigration and Naturalization Service (8 C. F. R. 212.7)

The person who is eligible for a waiver of document requirement can of course file an appeal to an appropriate authority when the petition is refused (Sec. 212(c)).

### C. *Aliens without Labor Certification* (Sec. 212(a)(14))

#### 1. Aliens Required to Have Labor Certification

Included in this category are the following persons. When the Secretary of Labor establishes that there exists a shortage of skilled or

unskilled labor, which could be supplied by immigrants and furthermore that the employment of immigrants to such an end would not adversely affect the conditions and wage of presently employed workers in the United States, the aliens who seek admission into the United States as immigrant for such purposes are required to obtain the Labor Certification from the Department of Labor.

The Labor Certification is required of the persons who seek admission on the following statuses:

First, immigrants in the third preference\* (those recognized as a member of profession) (Sec. 203(a)(2)).

Second, Immigrants in the sixth preference (recognized among those who seek jobs, skilled or unskilled, in the United States) (Sec. 203 (6)).

Third, non-preference immigrants whose purpose is to be employed (Sec. 203 (8)).

Fourth, immigrants from Western Hemisphere whose purpose is to be employed (Sec. 101 (a) (27)). But Parents, spouses or children of a United States citizen or a permanent resident do not belong to this category.

(1) The Labor Certification becomes invalid if the following is the case: 1) if the Labor Certification has been obtained by misrepresentation; 2) if the alien has no intention to do the work for which the Labor Certification has been issued; or 3) if the alien is found at the time of entry incapable of performing the work for which it has been issued.

If, however, the alien has an intention to do the work designated in the Labor Certification at the time of entry, he will not be excludable

\*Under the Immigration and Nationality Act, the numerically restricted immigrants are divided into two different groups: the natives of Western Hemisphere and those of Non-Western Hemisphere. To the latter, a system of preference is applied in which immigrants are classified into seven different preference categories. The United States, as a "Nation of Immigrants" (cf. John F. Kennedy), established this system with a view to meeting the practical necessity for putting some limitations on immigration for the interests of its people, while keeping the door widely open to foreign countries.

even if he subsequently changes his mind after entry.

(2) Procedures for Obtaining Labor Certification<sup>16</sup>

a) For the third preference immigrants. As distinguished from other categories of immigrants, the alien who believes to be eligible for the third preference can file an application for Labor Certification through the Immigration and Naturalization Service. Among them, any who obtained a job offer from an employer in the United States may apply for the Labor Certification directly with the Department of Labor.

When an applicant in the third preference category is recognized as a member of profession by the Immigration and Naturalization Service it will seek to obtain the applicant a Labor Certification from the Department of Labor. When the applicant is still in a foreign country, the application should be filed with the United State Consular office in the country, which will, then, forward it to the Immigration and Naturalization Service.

There are certain kinds of professions which the Department of Labor has listed to be in short labor (Schedule A). In such cases, the Immigration and Naturalization Service may well interpret those applicants belonging to these professions as the ones who have already obtained a Labor Certification.

When an applicant for immigrant visa in the third preference, whose occupation does not fall in the aforementioned Schedule A category, has been refused a Labor Certification from the Department of Labor, he may be advised to file a reapplication on the basis of an offer of employment (if he or she has obtained one from an employer in the United States) as it makes him eligible for admission.

If an alien cannot establish before the Immigration and Naturalization Service that he is member of a certain profession, he still can seek to obtain a Labor Certification as an applicant for immigration visa to the sixth or non-preference category.

b) Members of profession from Western Hemisphere. They should take the same procedures as the applicants for visa in the third preference category. But whereas the third preference applicant should file the petition with the Immigration and Naturalization Service, the member of profession from the Western Hemisphere may apply for

visa at the appropriate United States Consulate abroad with documentary proof of his professional qualification and with other supporting papers required by the petition form. The consular officer who receives the petition will take the same procedures as the Immigration and Naturalization Service does, namely that he will refer the petition to the United States Department of Labor for issuance of a Labor Certification under the Schedule A. When the alien has obtained a job offer from an employer in the United States, he would better file the petition directly with the Immigration and Naturalization Service.

c) Immigrants in sixth preference, non-preference immigrants, and natives of Western Hemisphere who are not members of profession. Persons falling under these categories may file a petition only when they are offered an employment. If a job is offered, the employer offering the job should file the petition with one of the local state employment offices.

The petition should be completed on two different forms. Form MA-750 B is to be signed by the employer or his or her representative. Form MA-750A requires the information regarding the applicant's biographical description and his or her educational and occupational background. The Form MA-750B requires the information about the work the applicant will perform, the wage he or she will receive, the terms of employment, and the status on which he or she will stay in the United States for the work.

If the applicant has a self-employed or a live-at-work job, the petition should be attached with an employment contract and supporting documents of his or her professional background in accordance with the additionally required Form MA-750C (29C. FR. 60.3 (c)).

d) Procedures with Department of Labor. When an immigrant in the third preference category and a native of Western Hemisphere without a membership of profession file a petition, the receiving Immigration and Naturalization Service immediately forwards it to the Regional Office of Manpower Administration. The decision on the petition rests with the office.

When a petition is filed by a person other than the third preference immigrant or the native of Western Hemisphere without membership of profession, the local employment office forwards it to the Regional

Office of Manpower Administration after the former decides, on the basis of investigation of labor markets, whether there exists a shortage of labor for the work the applicant applied for and that supplies of immigrant labor are demanded. The final decision on the petition rests with the Regional Office of Manpower Administration.

e) Issuance of Labor Certification. The petition form and required documents for Labor Certification should be filed with the Immigration and Naturalization Service. The immigrants in the sixth preference category are required to prepare the petition for Labor Certification and other documents necessary for change of qualification and visa.

f) Refusal to Issue Labor Certification. When the application for Labor Certification is refused, the applicant can obtain a review of the refusal by the reviewing officer in the local office of the Department of Labor (29 C. F. R. 60.4). The review should be requested within 90 days of the refusal. The refusal is notified to the Immigration and Naturalization Service while the applicant stays in the United States.

g) Judicial review. Unless a refusal to issue Labor Certification was made arbitrarily, the court will not review the case.<sup>17</sup> However, there have been some judicial precedents in which when it was found that the Department of Labor had made the decision solely on the basis of the reports and statistics compiled by the state or local offices of labor management without due assessment of them, refusals resulted therefrom were annulled.<sup>18</sup>

### (3) Validity of Labor Certification

An issued Labor Certification is valid indefinitely, except for some types of works specifically prescribed by regulations (including works such as teaching and house maid). (29 C. F. R. 60.5 (b)).

As a matter of course, a misrepresented Labor Certification is invalid. That is to say, a Labor Certification issued on the basis of "materially incorrect" information is not valid (29 C. F. R. 60.5 (g)).

### (4) Labor Schedules.

There are three different schedules: Schedules A, B, and C (29 C. F. R. 60.7). The Schedule A is for the type of occupations of which labor supply is insufficient, and an application for Labor Certification

for the purpose of taking a needed job in this category is accepted naturally. The Schedule B is for the type of occupations of which labor supply is not insufficient and which does not demand foreign labor force. Accordingly, an application for Labor Certification in this category is refused. The Schedule C is for the types of labor which is not under planning. Therefore, the demand of foreign labor force for this category is not clearly defined.

Persons who perform a religious mission belong to the Schedule A.

## 2. Aliens Not Required to Have Labor Certification

(1) A Labor Certification is required for the following persons:

a) A non-immigrant alien who seeks entry as a temporary worker other than as a qualified member of occupations of which labor supply is insufficient in the United States (Sec. 101 (a)(15)(H), 22 C. F. R. 41.55, 8 C. F. R. 214. 2(h)).

b) Immediate relatives (who are as natives of Eastern Hemisphere, parents or spouses of an American citizen).

c) Immigrants in the first, second, fourth, or the fifth category (those immigrants based on family relationship). <sup>19</sup>

d) As natives of Western Hemisphere, parents, spouses, or children of a United States citizen or a permanent resident.

e) Immigrants seeking employment (8 C. F. R. 212.8 (b), 22 C. F. R. 42.91 (a) (14)), namely immigrants performing skilled or unskilled labor.

(2) Labor Certification is not required by regulations for the following categories of immigrants.

a) Members of Armed Forces.

b) A spouse or a parent of the person who has a Labor Certification or who is not required to have it and spouses and children following them.

c) A fiancée of a permanent resident, who does not seek employment in the United States. As a matter of course, she requires a sponsorship from her fiancé who is a permanent resident.

d) A person who engages in commercial and agricultural business,

provided that the business is operated on the investments made by him or her. The investments should be more than \$10,000, and the investor should be a qualified person to perform the business with at least one year of training and experience in it.

#### D. *Criminals*

##### 1. Criminal Conduct Involving Moral Turpitude

(1) Crimes are divided into two types: those involving moral turpitude and those not involving it. The former is considered more liable for exclusion than the latter (Sec. 212 (a) (g)). An alien who committed the following crimes is excluded as a matter of principle. Both those who took part in the conduct of a crime and those who have something important to do with it are excluded in the same way.

It is difficult to define the concept of immoral conduct clearly.<sup>20</sup> In court decisions, the criterion for judging whether a criminal conduct is immoral or not seems to have been derived from the findings of whether such a conduct is consistent with the "common conscience of the community."<sup>21</sup>

The criminals referred to here includes those who committed a crime of: murder, man slaughter, aggravated assault, rape, kidnapping, theft, lewd conduct, bigamy, and fraud.

The question of whether a crime involves moral turpitude depends upon whether the conduct of the act, if established with proof, should be convicted or not. That is to say, it depends upon whether, viewed from statutory provisions and material allegations in accusatory pleading, the conduct, if established with proof, should be convicted or not.<sup>22</sup> This is because, in a necessary and fundamental sense, a crime is presumed to contain immorality in all cases.

The concept of conviction, the effect of a sentence and probation, and so forth will be discussed in the Deportation Section as they are more importantly related to that subject.

(2) Confession of Crime. If an alien seeking entry into the United States has committed a misconduct which constituted a crime, resulting in a conviction in the country where it took place, he or she is expected to confess the fact to the immigration officer. The alien should

explain fully about the "criminal conduct" in self-understandable plain terms. If the alien does not confess the crime, which he or she has actually committed, he or she may be asked to explain in detail all important facts relevant to it.

The confession of crimes should of course be a voluntary act.

(3) Persons not considered as criminal

a) Purely political offenders (Sec. 212(a)(9)). An offense committed from political motivation is considered as a common political offense, even if the offender has been accused on some non-political grounds.

b) Minors. When a person who has committed a single crime at the the age of 18 or below applies for admission into the United States after elapse of five years from the crime or release from confinement, he or she cannot be excluded on the ground of the crime. In so far as a crime is taken as a juvenile crime, it is not considered to constitute a ground for exclusion.

c) Petty offenses. There are two types of offenders which are to be under consideration here. Both are limited to the persons who have committed a single offense.

i) If a petty offense is classified a misdemeanor under Law I (3) (18 U. S. C. I(3)), its offender does not fall in the category of excludable alien on grounds of punished criminal conduct.

ii) Confession of crime. When the offense in question is classified into a misdemeanor under Law I(3)(18 U. S. C. I (3)), the person who has committed it, if he or she confesses about it, does not fall in the category of excludable alien on grounds of punished criminal conduct, even if he or she has been actually punished because of that offense(18 U. S. C. I(2)).

For the types of offenses similar to the above, which are not stipulated in the US Law Title 18 U. S. C., please refer to the District of Columbia Law 22. Aliens in any of these cases should be granted an admission into the United States.

d) Pardon. A pardon which is granted in the country where the offense was committed is not valid.<sup>23</sup> But a pardon or clemency which is granted by the United States for the offenses committed within the United States in such a way that it provides a relief from deportation

can be applied to waiver of exclusion on ground of criminal conduct. Such a pardon can also remove other legal barriers that an individual state set up on ground of criminal conduct.

## 2. Crimes Not Involving Moral Turpitude

Crimes not involving moral turpitude constitute weaker grounds for inadmissibility than those which contain elements of immorality. In other words, a single misdemeanor not involving moral turpitude does not constitute a ground for exclusion. If an alien is excluded on ground of criminal conduct, he or she must be the one who has committed the crime twice or more, or who has been sentenced to imprisonment for a total of five years or more.

## 3. Discretionary waiver of Exclusion

Even the aliens who have committed a crime can be admitted by the discretion of the Immigration and Naturalization Service. But such a discretion can be exercised when the following conditions are met: 1) when the alien is a spouse or a child of a United States citizen, or when the alien has a child or children who are United States citizens or permanent residents; 2) the exclusion of the alien would have significant effect on the future of his or her relatives who are United States citizens or permanent residents; and 3) the admission of the alien would not adversely affect the welfare and security of the United States.

The conditions for waiver of inadmissibility for the aliens who seek re-entry were discussed elsewhere<sup>24</sup> (Sec. 212 (c)).

### *E. Narcotic Violators (Sec. 212 (a)(23))*

Needless to say, narcotic violators fall under the category of exclusion. Regulations governing exclusion provide that any person who has been convicted of violation of or of conspiracy to violate any law or regulations relating to illicit possession of or traffic in narcotic drugs or marijuana be excluded regardless of when the crime was committed. Furthermore, any alien who the Consular Officer or the Immigration Officer knows or has reason to know is or has been an illicit trafficker in the aforementioned drugs is excluded.

Violators of narcotic laws and regulations are granted no waivers of exclusion as provided for in Law 212 (c).

Habitual users of narcotic drugs are absolutely inadmissible.

*F. Prostitutes, Pimps, and Those With Immoral Purposes*

(1) Those aliens listed below are excluded from the United States: prostitutes, former prostitutes, those seeking entry for the purpose of prostitution, pimps, those seeking entry for the purpose of pandering, employers of prostitutes, and those seeking entry for the purpose of engaging in organized immoral acts regardless of the methods to be used therefor (Sec. 212 (a)(12)).

A conviction of prostitution under laws and regulations governing prostitution is not a necessary condition for exclusion. Furthermore, even if any of those aliens listed above comes from a country or a region where prostitution is legally prohibited, he or she is still subject to exclusion.

A single crime of such immoral conduct is not implied in the concept of prostitution referred to here.

However, an alien who seeks entry into the United States for the purpose of engaging in "any immoral sexual activities" is excluded. Being an immoral person alone does not constitute a significant ground for exclusion. The necessary condition should be the immoral sexual activity for the purpose of which the alien is seeking admission into the United States primarily.

(2) Exceptions. Grounds for exclusion are sometimes waived in the following cases (Sec. 212 (?)): 1) if the alien is a spouse of a United States citizen or of a permanent resident; or if the alien is a child of a United States citizen or of a permanent resident. The waiver of exclusion is determined by the Immigration and Naturalization Service. The Immigration and Naturalization Service may grant admission to such an alien, if his or her exclusion would have a significant impact on his or her relatives who are United States citizens or permanent residents and when it is determined that his or her admission would not be against the public interests of the United States.

## *G. The Physically and Mentally Handicapped*

### 1. The Physically Handicapped

Excludable are those aliens who are afflicted with a dangerous contagious disease or whose physical handicap is considered such that it will limit their capability of earning livelihood (Sec. 212 (a) (6) (7)). The kinds of contagious diseases that make one inadmissible are listed in the regulations of the Public Health Service (42 C.F.R. 34.2 (6)). Broadly speaking, they are tuberculosis and venereal diseases. However, in the following cases, persons suffering from tuberculosis have been admitted (Sec. 212 (g)).

a) 1) If the alien is a spouse or an unmarried child of a permanent resident or of a person with an immigrant visa; or 2) if the alien has a child or children with a permanent residenceship or an immigrant visa.

b) When the alien consents to the conditions set forth by the Public Health Service. The conditions include the presentation of a proof that the alien is prepared to receive proper medical care or to be hospitalized for that purpose and the promise that he or she will regularly report on the state of his or her health to the Public Health Service.

The petition for admission of the physically handicapped should be filed with the United States Consular Office (8 C.F.R. 212.7(b)). The Consular Office will then forward the petition to the Immigration and Naturalization Service. The Form I-601 should be used for this petition attached with supporting documents showing the availability of medical care for the disease.

### 2. The Mentally Handicapped (Sec. 212 (a)(1)(2)(3) and (4))

The types of excudable aliens on grounds of mental health are as follows: those who are mentally retarded, are or have been insane (mentally deranged), psychopathic, sexual deviates, or have some other mental defects.<sup>25</sup>

A relief from exclusion may be granted only to the mentally retarded (Sec. 212 (a) (1)) and those who have been mentally deranged (Sec. 212 (a) (3)), if they are a spouse or an unmarried child of a United States citizen or a permanent resident, or if they have a child or

children with United States citizenship permanent residenceship, or an immigrant visa.

As a matter of course, to be relieved from exclusion, the aforementioned aliens should be free from excludability on any other ground. In addition, they should meet conditions stipulated by the regulations of the Public Health Service, which include: 1) A complete medical report from his or her doctor or hospital regarding the illness; 2) the arrival of a report by the Public Health Service; 3) A statement from a hospital or a doctor in the United States certifying that the alien, as a patient, will receive medical treatment for at least five years; 4) the proof that the alien has financial resources for paying for the treatment; and 5) he or she will report to the Public Health Service about the treatment on a regular basis.

In the case of the person who has had a mental derangement in the past, it should be confirmed by the Public Health Service that he or she has had sufficient time in recovering from the illness and that he or she has been completely recovered from it.

### 3. Aliens Likely to Become Public Charge

The alien who the Consular or the Immigration Officer considers is likely to be a public charge sooner or later is inadmissible (Sec. 212 (a) (15), 22 C.F.R. 42.91 (a)(15)).

As a matter of course, paupers, professional beggars, and vagrants are not admissible (Sec. 212(a)(8)).

In determining these, the Consular Office and the Immigration and Naturalization Service exercise a wide range of discretionary power. However, precedents show that the following criteria have been frequently used for decisions on exclusion: 1) there should be some specific indications that the alien is incapable of earning livelihood; <sup>28</sup> and 2) it should be established that there is no available means that can support the alien financially to the effect of nullifying the grounds for his or her excludability.

In practice, the Consular Officer requires a proof that the alien is offered a job in the United States. Thus, a visa would not be issued to the alien unless he or she is prepared for this. In order to satisfy the Consular Officer or the Immigration Officer regarding his or her fi-

nancial ability, the alien can deposit a sum of money which will secure him or her against a public charge (Sec. 213).

Procedures for admission of the physically or mentally handicapped are as follows: The alien may file a petition (Form I-601) and supporting documents required thereby with an appropriate United States Consular Office, which will forward them to the Immigration and Naturalization Service. If the alien is in the United States, he may file the petition directly with the Immigration and Naturalization Service.

For aliens in other than this category, a confirmation from the Public Health Service is essential.

#### H. *Communists and Subversives*

Those listed in the following, regardless of the timing of their activities, past or present, are all inadmissible (Sec. 212(a)(28)).

(1) Members of a communist party or its affiliated organization, those connected with a communist party or its affiliated organizations and members of subdivisions of a communist party or its affiliated organizations, or those connected with such organizations.

(2) Members of a totalitarian party. A totalitarian party here means a political party which advocates the establishment of totalitarian government in the United States.

(3) Advocates of communism.

(4) Members of a group which is recommended to be included in the list of the Subversive Activities Control Board.

(5) Advocates of overthrow of the United States government and of attacks and sabotage on its officials.

(6) Authors or publishers of the publications advocating forceful overthrow of the United States government, possessors of such publications, and members of organizations publishing them.

(7) Anarchists or advocates of anarchism.

Those whom the Consular Office or the Immigration and Naturalization Service considers as one of the following are also inadmissible: aliens seeking entry into the United States for the purpose of engaging in activities which would be prejudicial to the public interest, or endanger the public welfare, safety, or security of the United States; and those who the consular Officer or the Immigration and Naturalization

Service has "reasonable ground to believe would probably engage in such activities" (Sec. 212(a)(27) and(29)).

The membership of the aforementioned organizations should be the one that the alien has obtained on his or her own accord (Sec. 212 (a) (28)(1)).

A defector from a communist party is not admissible unless he or she is able to establish that he or she has denounced affirmatively at least for five years after defection.

No waiver of inadmissibility is available to a communist or a subversive who has been excluded under Law 212 (b).

#### *I. Draft Evaders and Those Relieved of Military Service*

There are two types of groups in this category (Sec. 212 (a)(23)).

(1) The alien who is ineligible for citizenship, that is to say, the one who was exempted from military service on account of his or her being an alien, is inadmissible. Such a person can of course seek entry into the United States as a non-immigrant.

(2) The person who, in time of a war or a national crisis, has departed from and remained outside the United States for the purpose of avoiding military service. However, the ground for excludability is not applicable if the person had a non-immigrant status at the time of his departure from the United States and now seeks an admission as a non-immigrant.

(3) A fuller discussion about the persons who are ineligible for citizenship is in order.

When we say a person is ineligible for citizenship, we refer to a person who has sought, or formally requested,<sup>27</sup> an exemption or discharge from military service on ground of his being an alien and was actually exempted or discharged therefrom (Sec. 315). The existence of such military records has a decisive meaning for this matter.

Among aliens ineligible for citizenship are included those who are permanently barred from acquiring a citizenship under military draft laws or under past immigration laws (Sec. 101(a)(19)).

Even in the case where an alien has applied for exemption from military service, however, if he did not have any legal obligation thereto, he is not subject to exclusion.<sup>28</sup> This is because an exemption from

military service cannot be made erroneously or illegally and because by nature a request for discharge from military service should be the one that is made clearly and voluntarily.

There is one caveat regarding the effects of military service. As a matter of principle, an alien, once exempted from military service, cannot reestablish the eligibility for citizenship even if he voluntarily joined the service later.<sup>30</sup>

In the following case, however, the person exempted from military service is not subject to deprivation of the eligibility for citizenship: when he completed his military service, or when the exemption from the service was not given on the ground of his being an alien.<sup>31</sup>

(4) Evaders of military service are those who have departed from and remained outside the United States for the purpose of avoiding military service. The object of this regulation is draft evading. That is to say, the regulation is applied to the person who, at the time of his departure, had, or had had, the intention to evade military service. The immediacy of his draft does not constitute a necessary condition.

#### *J. Smugglers of Aliens*

The person who, in any circumstances, being aware that an alien was seeking to enter the United States by illegal means, has helped his or her illegal entry for gains, is inadmissible (Sec. 212 (a) (31)). To help means to encourage, induce, assist, abet, or aid those who seek entry into the United States. Here, the fact that an act of smuggling is a criminal conduct is not important. The important point is the gains the smuggler aims to obtain. Gains are not necessarily limited to a monetary gain. It includes any profit resulted therefrom.<sup>32</sup> Any payments as against incurred expenses are considered a gain. An expected gain is also included in the gains.

#### *K. Previously Deported Aliens*

There are two types of aliens in this category:

(1) The alien who has been excluded and has been returned (Sec. 212 (a) (16)), namely, the one who was excluded after an inspection at port of entry and was set back to his or her country. Such an alien cannot be admitted within one year of the exclusion. This provision

is not applied, however, if the Immigration and Naturalization Service grants an admission.

(2) The person who has been arrested while staying in the United States and deported (Sec. 212 (a)(17)) cannot be admitted. Such is the alien who had once been admitted, but ended up with a deportation. Such an alien is permanently barred from entry to the United States, unless the Immigration and Naturalization Service grants an admission.

If the previous deportation order resulted from a misinterpretation of law, including a "gross miscarriage of justice," the alien's re-entry is not barred.<sup>33</sup> However, the misinterpretation of law contained in the previous deportation order does not automatically waive the requirement that the alien should obtain a grant of admission from the Immigration and Naturalization Service in order to re-enter the United States.

The re-entry permit can be obtained through filing a petition (Form I-212) with the local Immigration and Naturalization Service which issued the previous deportation order. If the petition is refused, the alien can appeal to the Director of the local Immigration and Naturalization Service.

#### *L. Other Inadmissible Aliens*

(1) Stowaways. Stowaways are absolutely excluded (Sec. 212 (a)). Exceptions are the cases in which the alien obtains a waiver according to Law 211 (b) (waiver of requirement for visa, passport, and re-entry permit by the discretion of the Attorney General) and to Law 212 (c) (the case of permanent resident).

(2) Former exchange visitors.<sup>34</sup> The inadmissibility of former exchange visitors in the United States is limited only to those upon whom the requirement of foreign resident is imposed. The requirement of foreign residence is a condition which a person who has visited the United States under the Mutual Educational Cultural Exchange Act is required to meet when he or she becomes desirous of staying in the United States permanently. When the exchange visitors' knowledge and skills are in great demand in the country of their citizenship, it becomes necessary that they should stay physically in the country for at least two years (Sec. 212(e), as amended by Sec. 2, Act of April, 1970 of

INS). The provision of this requirement is based on considerations of *bona fide* international relation.

(3) Illiterates. Aliens over 16 years of age who are not able to speak, read, and understand some language are excluded (Sec. 212 (a) (25)). But this provision has many exceptions.

(4) Aliens accompanying excludable aliens (Sec. 212 (a)(30)). An excludable alien who, being mentally or physically handicapped, needs help from his or her parent (s) or spouse who has the ultimate responsibility, is excluded.

(5) Polygamists and persons who practise or advocate polygamy are excluded (Sec. 212 (a)(11)).

(6) Aliens seeking entry into the United States after having been brought to a territory or an island contiguous to the United States by a nonsignatory airline or vessel are barred from entry (Sec. 212 (a) (24)).

#### SOME CONCLUDING REMARAKS

As mentioned at the outset, this report is only a part of the studies on the legal system of the United States immigration and naturalization. It is therefore improper to draw a conclusion from this report. However, a few points can be made:

First, there are considerable similarities between the United States immigration laws and ours. This is of course due to the fact we adopted the American legal system when Japan concluded a peace treaty with the United States. However, after the elapse of a quarter century from the time, our current immigration laws becomes incongruent with the reality. Proposals have been made for legislation of a new immigration law. As is known, this has become a subject of political debates.

Second, compared with our system, the United States immigration laws are marked by its openness to quite a substantial degree. Although the same principles of inadmissibility are taken (Immigration Regulation 4(1)(14)), the United States laws, as examined in Section C, provide in various form room for admission of unskilled workers, their engagement in jobs, and so forth.<sup>35</sup> A distinctive feature of U. S. system,

in comparison with ours, is that many excludable cases are granted waivers on grounds of family relationship. This may well signify that the United States is institutionally a "nation of immigrants."

Third, the mode of providing procedural assurances is clearly more advanced than ours. It may well be said that not only the American laws set for concretely and clearly the grounds for inadmissibility and the procedures therefor, but a sufficient number of judicial precedents provide criteria for decisions to see that conditions of exclusion are applied squarely and the procedural fairness is guaranteed.

#### NOTES

1. See my "Shimin Hogaku no Keisei to Tenkai" (The Formation of Nationality Laws and Their Development), in the *Anthology of Articles Contributed in Commemoration of Esq. Iwamura Detsu's Sixtieth Anniversary*, The Yuhikaku Publishing Co., 1978.
2. Further, this article has benefited from instructive information from the following works. Quotations of each individual work are avoided in this writing, however.  
Donald Ungar, *Immigration Law: Syllabus and Materials*, The School of Law of the University of California, 1976.  
Frank L. Auerbach, *Immigration Laws of the United States*, 3rd ed. by Elizabeth J. Harper, assisted by Roland F. Chase, The Bobbs-Merrill Co., Inc., 1975.  
Elmer Fried and Selma Arnold, *Sixth Annual Immigration and Naturalization Institute*, Practising Law Institute, 1974.  
Sugai Shuichi, "Beikoku Nyukan Ron" (On Immigration Laws of the United States) *Hogaku Ronso* (Collection of Essays on Law), Vol. 92, Nos. 4, 5, and 6 (combined issue), ff. 1.  
Still further, failure to mention the following works would be a breach of etiquette:  
Milton R. Konvitz, *The Alien and the Asiatic in American Law*, Cornell University Press, 1946; Konvitz, *Civil Rights in Immigration*, Cornell University Press, 1953; Marion T. Benett, *American Immigration Policies: A History*, Public Affairs Press, 1963; James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties*, Cornell University Press, 1956; John F. Kennedy, *A Nation of Immigrants*, Harper and Row, 1964; Kawahara Kenichi, "Amerika Gatshukokuni Okeru Gaikokujin Shutsunyu Kanri no Jitsushuteki Kenkyu" (An Empirical Study on Immigration Law in the United States), *Homukenkyu Hokokushyo* (Legal Studies Reports), Vol. 43. No. 5; and "Beikoku Taikyo Kyosaiho no Kenkyu" (A Study on Deportation Law of the United States), *ibid.*
3. *Kleindienst v. Mandel*, 408 U. S. 753 (1972). Against the argument that the exclusion

of an alien who appears as a communist is a violation of the right of the persons who seek to meet and get information from the alien—the right guaranteed under the First Amendment, the court decision shows that the United States Congress has the absolute discretionary power on matters concerning admission of aliens and an exclusion executed by the Executive Branch of the government which has the legally mandated authority is not against the interests of the Amendment.

This view has been established by all earlier court decisions: *United States v. Frederick*, O. C. Tex. 50 F. Supp. 769 (1943); *Head Money Cases*, 112 U. S. 580 (1884); *Nishimura Ekiu v. United States*, 142 U. S. 651 (1892).

4. Immigration and Nationality Act, Act of June 27, 1952 with Amendments (66 Stat. 163), Title 8 of the United States Code.
5. Particularly, Title 8 of the Code of Federal Regulations, and Title 22 of the Code of Federal Regulations.
6. The problem raised by the aliens without visa and so forth is that they are illegal aliens (who smuggled themselves into the United States). This has become a significant social problem. See, for example, a recently published work, *International Migration Review*, Vol XI, No. 2, Summer 1977. According to it, the following reports which came out of investigations on Mexicans in the United States point to the economic and social issues raised by their existence: Jorge A. Bustamante, *Undocumented Immigration from Mexico, Research Report*, p. 149 et seq.; Craig Jenkins, *Push/Pull in Illegal Mexican Migration to the U. S.*, p. 178 et seq.; Victoria F. Davison and Lyle W. Shannon, *Change in the Economic Absorption of a Cohort of Immigrant Mexican American and Negroes Between 1960 and 1971*, p. 215 et seq. The first report by J. A. Bustamante discusses particularly about illegal aliens from Mexico who live in the United States without visa and so forth. It points out that there has been extremely scant empirical research on this phenomenon. The report follows the opinions of some major newspapers as exemplified below, which are quite indicative of the problem: "an invasion of illegal aliens" (Withmore 1976) "a case of national crisis" (New York Times 1974); "a burden of 13 billion dollars for tax payers" (U. S. News and World Report 1976). The second report by Craig Jenkins indicates that the number of illegal aliens has been increased substantially in the past ten years, that the number of those smuggled into the country in 1975 alone reached 1,500,000 to 2,000,000, and that at present at total of 7,000,000 to 15,000,000 illegal aliens are staying in the United States.
7. Under the Immigration and Nationality Act, the incoming aliens are divided into two categories: immigrants and non-immigrants, and each of them is treated differently. See my article in the *Anthology*
8. Sec. 212 (a)(a)(26) stands for Immigration, and Nationality Act, with Amendments, 212 (a)(26). Hereinafter to be referred to in the same simplified terms.
9. 8 C. F. R. 212.1 stands for 212.1 of the Chapter 1 (Immigration and Naturalization Service, Department of Justice) of Title 8 (Aliens and Nationality of the Code of

Federal Regulations). Hereinafter to be referred to in the same simplified terms.

10. See my article in the *Anthology*... Immigrants are divided into groups in terms of restriction placed upon them: the unrestricted immigrants and those who are subject to various restrictions. The former includes immediate relatives of United States citizens and the latter includes persons who are pursuing occupations in the United States.
11. 22 C. F. R. 42.6 stands for 212.1 of the Chapter 1 (Department of State), Title 8 (Aliens and Nationality of the Code of Federal Regulations). Hereinafter the simplified terms will be used.
12. *Bilbao Bastida v. INS*, 409 F. 2d. 820 (1969). Those who re-entered the United States after travelling in Cuba are subject to deportation.
13. Ungar, *op. cit.*, p. 20.
14. *Fink v. Reimer*, 96 F. 2d 217 (1938). The case was adjudicated under the Law of 1917 as amended in 1924. The point of arguments in the case was the ambiguity of statements in the deportation order. But with the finding that the visa had been obtained by fraud and misrepresentation, i. e., the omission of important information, the validity of the deportation order was upheld.
15. *Ablett v. Brownell*, 210 F. 2d 625 (1957). The case was brought to the court by the alien who argued the invalidity of a deportation order he had received as there was no ground for his deportability. Nevertheless, the validity of the order was affirmed since it was found that he had obtained a visa by hiding the fact that he had committed a brothel offense.

*United States v. Rossi*, 299 F. 2d 650 (1962). This is the case in which the U. S. government's revocation of a Naturalization Certification was contested. The government lost the case in the initial court contest. But the validity of the revocation was upheld later by an upper court decision. The reason was that the fact that the contestant had misrepresented himself by replacing his name with that of his brother's in the document at the time of entry provided a sufficient ground for the action taken by the government.

*Landon v. INS*, 433 F. 2d 635 (1970). The court decision for this case shows that the alien who engaged in a full-time work two weeks after having been admitted as a non-immigrant tourist was considered to have obtained his visa by misrepresentation.

16. 29 C. E. R. 60 (As amended 2-4-71, 36 Fed. Reg. 2462-2467).
17. *Pesikoff v. Secretary of Labor*, 501 F. 2d 757 (1974). This is a case in which a refusal to issue a Labor Certification was sustained. The contestant was a prospective employer in the United States who had applied for Labor Certification for an alien seeking to work for him as a house maid. While the right of the employer to contest the refusal was recognized, the decision shows that the Secretary of Labor has the discretionary authority to refuse the issuance of a Labor Certification even in the case of a live-at-work house maid.

*Secretary of Labor v. Farino*, 490 F. 2d 885 (1973). This is an example of the cases where a judicial review rendered a decision in favor of an alien to whom the issuance of a Labor Certification was refused. In this instance, the case was found to have been processed arbitrarily as the refusal had been made without sufficient hearings thereupon.

18. *Seno v. U. S. Department of Labor*, 523 F. 2d 10 (1975). An example where a refusal of the Department of Labor to issue a Labor Certification was turned down both in the initial and appeals court proceedings on the ground that there had been arbitrariness in the Department's dealing with the case. The case involved a non-immigrant visitor from Korea to whom a Labor Certification was refused. The contestant in this case was a hospital as an employer who had filed an application for a Labor Certification in order to employ an X-ray technician with the Office of Human Resources Development in California. The Office, instead, recommended to the hospital two persons listed as technician in its waiting list for an interview, other than the Korean for whom the application was filed. The hospital accepted the recommendation. But one of the two candidates failed to show up on the day of interview, while the other, who was interviewed, was found to be an alcoholic. Such being the case, the application for Labor Certification for the Korean was turned down. The reason for the refusal was that there were eight to ten potentially employable X-ray technicians registered with the Office of Human Resources Development. Both the local court and the appeals court decided that the Secretary of Labor had been arbitrary in refusing to issue the certification simply by relying on the number of potential employees registered with its subordinate local office.
19. The first preference immigrants are unmarried children of a U. S. citizen; the second preference immigrants are spouses and unmarried children of permanent residents; the fourth preference immigrants are married children of U. S. citizens; and the fifth preference immigrants are brothers and sisters of U.S. citizens.
20. *United States ex rel. Iorio v. Day*, 34 F. 2d 920 (1929). This is the case in which it was decided that an alien's false statement before the U. S. Consular Officer at the time of reentry did not provide a ground for a deportation order after entry. The alien in question had been in jail on charges of possessing alcoholic liquor while staying in the United States before departure. The deportation order was due to the fact that the Person had not stated about this (i. e., misrepresented) when he sought re-entry. Nevertheless the court did not consider the contents of this misrepresentation to have elements of an immoral conduct.
21. *Jordan v. De George*, 341 U. S. 223, 95 L. ed 886 (1915). While deciding that the pocketing of taxable income earned from dealing with alcoholic beverage was an immoral offense, the three judges who presided this case, Jackson, Black, and Frankfather objected the deportation order for reason that the provisions of deportations regulations applied to this case was in want of clarity required by the Constitution. An immoral crime, the judges concluded, means a crime which the society believes

- to be fundamentally immoral at the time it occurs.
22. *Robinson v. Day*, 51 F. 2d 1022 (1931). The court declared that when a person is convicted of a crime which is necessarily immoral by definition, an immigration officer is not able to judge the immorality of the crime by taking into consideration the circumstances in which it is committed.
- United States ex rel. Zaffarino v. Corsi*, 63 F. 2d 757 (1938). The Court decision in this case was that the immigration officer and the court reviewing the case could not get into the judicial records concerning the alien's conviction in order to find whether the crime he had committed was immoral.
- For other examples, see *Pino v. Nicolls*, 215 F. 2d 237 (1954). The alien in this case was convicted of a petty larceny, probated and put under surveillance. The offense evidently involved some immorality.
- Marciano v. INS*, 450 F. 2d 1022 (1971). This is an example of a rape offense.
23. *Weedin v. Hempel*, 28 F. 2d 603 (1928). A pardon given in a foreign country (for an embezzlement in this case) did not prevent a deportation.
24. See my article in the *Anthology*....
25. *Boutilier v. INS*, 387 U. S. 118, 18 L. ed 2d 661, 87 S. Ct 1563 (1967). The alien who had had homosexual relationships an average of three or four times a year for five consecutive years before entry into the United States was considered to fall under the category of the mentally handicapped.
26. *Gegiow v. Uhl*, 239 U. S. 3, 40 L. ed 114 (1915). The court decided that the fact that there was a surplus of labor for the type of occupation the alien engaged in did not constitute a ground for his being "likely to be a public charge."
27. *Cellallos v. Shaughnessy*, 352 U. S. 599, 1 L. ed 2d 583, 77 S. Ct 545 (1957). A deprivation of eligibility for citizenship originated from application for exemption from military service. The court decided in this case that the Draft Board's refusal of the request did not provide a fundamental reason for disqualification for citizenship.
28. *McGrath v. Kristensen*, 340 U. S. 162, 95 L. ed 173 (1950). The alien who entered the United States as a temporary visitor, but could not return home because of the outbreak of World War II did not fall in the category of "aliens residing in the United States" under the Draft Law 3 (a). This law subjected only "aliens residing in the United States" to the obligation of military service. Accordingly, the court decided that the request made by the alien in this case for exemption from military service did not constitute a reason for his disqualification for citizenship.
29. *Moser v. United States*, 341 U. S. 41, 95 L. ed 729 (1950). A case of Swiss applicant for citizenship. The person in question claimed his exemption from military obligation when he was asked to join the army. Because of this, his petition for citizenship, which was filed later, was declined under the Draft Law 3 (a). After consultations between the Department of State and the Swiss Legation, the case was appealed to a judicial review. The Swiss Legation contested that the Draft

Law 3 (a) was in conflict with the Article 2 of the Treaty of 1850 between Switzerland and the United States, and therefore that the Swiss national could not be deprived of his qualification for citizenship. The Article 2 of the Treaty provided that citizens of each signatory, when residing in other country, should be exempted from military obligations in force there. Because of the existence of the U.S. Draft Law and the Treaty provision, the Swiss, when applying for the exemption, stated in the initial application document that he understood the application would result in a disqualification for citizenship, but later he omitted this statement in the subsequently corrected document. The supreme court's decision on this case was: 1) that the draft law did not conflict with the treaty provision; and 2) that the application for citizenship should not be disqualified. The reason for this decision was that under the circumstances, the applicant did not make a clear "intelligent election" about whether to abandon his qualification for citizenship.

*Machado v. McGrath*, 193 F. 2d 706 (1951). A case in which the eligibility for citizenship was recognized for the reason that the applicant for exemption from military obligation had signed the document inadvertently due to his language inability.

30. *Giz v. Brawnell*, 240 F. 2d 25 (1956). A case of an alien who entered the United States as a student. After registration with the Draft Board under the draft law, he applied for an exemption on the ground that he was a national of a neutral state. The court disqualified his eligibility for citizenship.

31. *Astrup v. INS.* 402 U. S. 509, 29 L. ed 2d 68, 91 S. Ct 1583 (1971). The alien in this case became a permanent resident on February 20, 1950. Being subject to military obligation, he passed the draft examinations. But he applied for an exemption on November 1, 1950. On June 19 the following year, waivers of military obligation for permanent residents were suspended. Accordingly, the alien was drafted, but subsequently exempted from service because of his physical deficiencies. The supreme court decided that he was not to be disqualified for citizenship because the second exemption he had obtained was due to his physical conditions.

*United States v. Hoellger*, 273 F. 2d 760 (1960). German nationals had been exempted from military service. However, later with a revision of the draft regulations they became subject to military draft. The German in this case was qualified for citizenship because he joined the military after the revision.

32. *Gallegos v. Hoy*, 262 F. 2d 665 (1958). A case of an alien who entered the United States illegally and soon after began to work for \$20-25 per month with free boarding. In the region where she was working (in Los Angeles), the prevailing terms of employment for women at the time was \$100 a month with free boarding. The court decided that under the circumstances the alien's employer had helped the woman who had smuggled herself into the United States "for gains."

33. *Steffner v. Carmichael*, 183 F. 2d 19 (1950). The decision show that although an alien who had been deported by a deportation order could not challenge the proceedings thereof afterwards, this did not apply if there had been a "gross miscarriage of

justice" involving the deportation order.

34. See my article in the *Anthology*...

35. This point seems to have become a controversial issue when the International Convention on Human Rights was ratified. See my "Kokusi Jinken Kiyaku to Nihonkoku Kenpo" (the International Convention on Human Rights and the Japanese Constitution) in *The Shosai no Mado*, No. 264, ff. p. 7

(translated by Kun Park)

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