

MATTER OF A— M—
In DEPORTATION Proceedings

A-8870405

Decided by Board October 30, 1956

Burden of proof—Deportation proceedings—Alienage.

- (1) In deportation proceedings a person claiming United States citizenship who admits he was born abroad is *prima facie* an alien and must meet the burden of proof in establishing his claim to citizenship. Respondent was born in Mexico and claims United States citizenship through the birth of his mother in this country. As he has been unable affirmatively to establish that his mother was a United States citizen at the time of his birth, he has not met the burden of proof and is deportable as an alien.
- (2) Deportation proceedings against respondent's mother were terminated because she produced some evidence to support her claim to birth in the United States and the Government did not sustain its burden of proving that she was an alien.

CHARGE:

Warrant: Act of 1952—Section 241 (a) (1) (8 U. S. C. 1251 (a) (1))—No valid immigration visa.

BEFORE THE BOARD

Discussion: Respondent is 20 years old, single, male, a native of Mexico, whose last entry into the United States was at the port of San Ysidro, California, on or about September 5, 1952. He claims to have derived United States citizenship through the birth of his mother in the United States. He was deported from the United States on September 5, 1952, and testifies that he reentered the next day. He admitted at his hearing that his last entry was "illegal," in that he did not report for inspection, that he intended to remain in the United States and go to school, and that he was without documents. The special inquiry officer found that the Immigration and Naturalization Service had not produced reasonable, substantial, and probative evidence to establish the alienage of the respondent, and ordered the proceedings terminated. The examining officer appeals to this Board from that decision.

The record establishes that respondent was born in Mexico, the legitimate son of E— M—, now known as L— M— F—, and an alien father. In order to be a United States citizen by birth,

respondent must establish that his mother was a United States citizen at the time of his birth. The special inquiry officer found that it has been previously adjudicated that L— M—, respondent's mother, "is not an alien." It is this last finding upon which the examining officer bases his appeal. He claims that the prior adjudication of L— M—'s citizenship did not include a finding that she is *not* an alien, but only that her alienage was not established, and that, therefore, Finding No. 3 in the special inquiry officer's decision of May 24, 1956 (the instant proceeding) is incorrect.

The respondent testified that he has resided in the United States since he was 11 years of age, except for one day at the time he was deported in September 1952. Exhibit 2 is a copy of the record contained in the Civil Registry at Huanusco, Zac., Mexico, establishing respondent's birth on December 28, 1935, and showing that birth was registered by respondent's father on January 2, 1936. It states that respondent's mother was at that time 19 years of age.

It is necessary to discover the present state of the claim of respondent's mother to United States citizenship. The investigation in this case was exceptionally thorough, both on the part of the Immigration Service and on the part of L— M—, her present husband and her counsel. Her husband, F— F—, went with her to Mexico to seek evidence of her place of birth, wherever it might have been. Respondent and his mother have both testified variously that she was born in Mexico, and that she was born in the United States. All of the parole evidence and some of the documentary evidence is in derogation of L— M—'s claim to birth in the United States. We will describe first the evidence going to establish her birth in Mexico.

Exhibit 8 is the record of the religious ceremony of her first marriage in Mexico on June 22, 1933. This record shows birth in Huanusco, Mexico, in 1917 and states that she was baptized in the same place, also in 1917, but that there is no record of her baptism. This record shows her father to be E— M— and her mother to be M— R— C—. She has testified that she was 14 at the time of her first marriage and that the birth date shown in exhibit 8 is incorrect.

Exhibit 9 is a record of L— M—'s civil marriage, which took place on June 9, 1933, and shows no date or place of birth but shows that she was 14 years of age. Exhibit 9 shows her parents as E— M—, deceased, and her mother as R— C—.

Exhibit 3 is L— M—'s affidavit, written in longhand by an immigrant inspector, taken in the Ramsey County Jail, St. Paul, Minnesota, on March 12, 1954. At that time she stated she was born in Mexico, and entered the United States when 8 months of age. She

stated she had returned to Mexico at the age of 12 (1931), and that she reentered the United States in August 1947 with the baptismal certificate of her sister, A—, who was born in St. Paul, Minnesota. She returned to Mexico in 1952 for 3 months, again using A—'s birth certificate upon reentry. She returned to Mexico in February 1953, and reentered the United States in September 1953, again with A—'s birth certificate. She stated that she has one child, J—, born January 2, 1936, at Huanusco, Zacatecas, Mexico.

In her hearing on February 19, 1954. L— M— testified that her family was in the United States 11 or 12 years and returned to Mexico in 1931. Hence, they entered this country in 1919 or 1920. She stated repeatedly that she does not know where she was born. On page 51 she stated that her mother told her she was born in Mexico.

Exhibit 11 is a copy of the baptismal certificate, and translation thereof, of one E— M— born April 6, 1912, at El Plateado, Zacatecas, Mexico, and baptized on April 12, 1912. It is claimed by L— M— that this was an older sister who died before she, the second L—, was born. Exhibit 10 is a copy of the baptismal certificate of R— born on June 8, 1913, and baptized on June 13, 1913. R— is now deceased. L— M— claims that there were 5 children older than she born to her mother and father in Mexico, all of whom died in Mexico before her parents came to the United States.

Exhibit 12 is an affidavit of S— M— C—, brother of L— M— and uncle of respondent, taken by an immigrant inspector at Barstow, California, on March 26, 1954, wherein he stated that he was born in 1923 at Glendive, Montana, and that the family later went to St. Paul. He states that J— was born in St. Paul in 1924, A— in St. Paul in 1926, M— in Mankato, Minnesota, in 1928, and M— at Mankato, Minnesota, in 1929. He believes that both L— and R— were born in Mexico, and that there were no children who died in infancy. His recollection and information of the ages and movements of the family is quite consistent with the rest of the records.

Exhibit 13 is an affidavit made by A—, sister of L—, residing at Tijuana, Mexico. A— was born on April 26, 1928, at Madison Lake, Minnesota. She testified that L— and R— were both born in Mexico, that all the other children were born in the United States, and she believed there were no children who died in infancy. She and S— both testified that M— and M— died in Mexico after the family returned there. Her birth dates for the rest of the family are not accurate, according to the rest of the record, but she was aware that the family went to Montana before it arrived in Minnesota. Necessarily, the testimony of S— and A— is hearsay, because they were small children when the family returned to Mexico, younger

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Exhibit 3 of the present record relating to J—, is a sworn statement by an aunt of L— M—, L— C— M—, made at San Vicente, B. C., Mexico, on May 4, 1955. She testified that she was born in Mexico, that she is the aunt of L— M—, being the sister of L—'s mother. She named all of the right children of R— C— referred to above, stating that R— and E— were both born in Zacatecas and the others were born in St. Paul, Minnesota. She testified positively that E— was born on a ranch in the municipality of Nochistlan, Zacatecas, and that when R— C— went from Mexico to the United States, she took with her R— and E—.

Exhibit 4 is a sworn statement made by the present respondent, J— A— M—, on January 5, 1952, to an examining officer of the Immigration and Naturalization Service at Los Angeles, California. He testified that his mother was born in the State of Zacatecas, Mexico, that she is a citizen of Mexico, that she lived in Tijuana but, he did not know her address. He testified that he was then living with his uncle, S—, who gave the statement referred to above as exhibit 12. Respondent's testimony as to his mother's citizenship, of course, is only hearsay, in that respondent could not know of his own knowledge as to the birthplace of his mother. However, common knowledge and consistent opinion in the family that L— was born in Mexico must, necessarily, carry some weight.

As against all this testimony there are 2 documents showing respondent's birthplace as Minnesota. Exhibit 5 is a copy of a "Permanent Record," a school record showing that respondent's mother was born on November 4, 1919, at St. Paul, Minnesota, that she attended Lafayette public school in St. Paul, Minnesota, and was assigned in 1924 to Grade 1-B. It gives her father's name as A— M—, and shows that she left the school system in 1926. Exhibit 5 was obtained from the Division of Special Services, St. Paul Public Schools, Courthouse.

Another document was received after the hearings in the proceeding concerning L— M— were concluded on May 14, 1954. It is a photostatic copy of a Department of Commerce, Bureau of Census form dated June 3, 1954, of a census report taken as of April 1, 1930. It was obtained by L—'s attorney and attached to the record. It has no exhibit number. It shows that in 1930 the family of A— and M— M— were domiciled in Madison Lake, Minnesota, that the respondent's mother was then 12 years of age and was born in Minnesota. The census record corroborates the school record.

There is nothing but these 2 documents to establish that respondent's mother was born in the United States. We realize that the information on the census report and on exhibit 5 was probably given by her parents and that they may have concluded that it might be beneficial

to L—— to claim that she was born in the United States. A study of the wanderings of this family indicates that it is highly unlikely that they were in Minnesota in 1919 when L—— was born. Various members of the family have testified that after they left Mexico they went to Colorado, Montana, and Kansas before they finally landed in Minnesota. They appear to have left Mexico in 1919 and arrived in Minnesota about 1923 or 1924. S—— states that he was born in Montana in 1923 and that J—— was born in St. Paul in 1924. A——'s statement agrees with S——'s in this respect.

On the other hand, exhibit 5 and the census report are entitled to considerable weight. They were made 30 and 25 years ago, respectively, and the information contained therein was given by the parents of L—— M——. They are the people whose word as to where she was born is the most authoritative. They are records of government agencies made in the ordinary course of business, and hence entitled to substantial consideration.

We doubt that the baptismal certificate showing the birth of E—— M—— in Mexico in 1912 relates to the present L—— M——. Her school records and marriage certificates indicate that L—— is not 7 years older than she claims to be. Therefore, her story of being the second E—— in the family is entitled to some credence. We also note that there is a good record of the baptism of the first E—— and of R—— in Mexico, and the question arises if this E—— was also born in Mexico, would there not have been the record of her baptism also?

We have re-examined this record carefully, because respondent's claim to citizenship depends upon his being able to prove his mother's United States citizenship. The examining officer is correct that in the proceedings covering L—— M—— the burden was on the Government to establish alienage, since she produced some evidence to support her claim to birth in the United States. The Government did not sustain the burden of proving that she was an alien, and she was unable to prove that she is a citizen. There is persuasive evidence to refute her claim. Therefore, the proceedings as to her were terminated.

The burden of proof is on the Government in deportation proceedings, but one born abroad is, *prima facie*, an alien. His claim to United States citizenship must be supported by evidence. The respondent, J——, admits that he was born in Mexico, and that his father was a Mexican citizen and never lived in the United States. Therefore, the respondent must establish that his mother was a United States citizen. His own citizenship depends upon his establishing that fact. He has been unable affirmatively to establish either her citizenship or his own. The motion of the examining officer will be granted and the order of the special inquiry officer withdrawn.

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The respondent is not eligible for voluntary departure or any other form of discretionary relief. Although the only charge stated in the warrant of arrest is that he entered the United States as an immigrant not in possession of the necessary documents, the record establishes that he is at present confined to the Minnesota State Reformatory, at St. Cloud, Minnesota. He was convicted on February 26, 1955, for burglary, third degree, and for this offense, and for having had 1 prior conviction, he was sentenced to serve an indeterminate sentence of 0 to 10 years. The "prior conviction" was on April 26, 1954, in the District Court at St. Paul, Minnesota, for carnal knowledge. It is clear that respondent is unable to establish good moral character during the past 5 years in order to qualify for the privilege of voluntary departure from the United States.

Order: It is ordered that the order of the special inquiry officer of May 24, 1956, be withdrawn.

It is further ordered that the respondent be deported from the United States pursuant to law on the charge stated in the warrant of arrest.