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IN THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MARYLAND

PETITIONS FOR NATURALIZATION OF

SIMON SCHWAB	(No. 22160) :	Before
CAROLE FEIBELMAN	(No. 24122) :	His Honor
WILLIAM HENRY BUSCHKE	(No. 24181) :	JUDGE WM. C. COLEMAN
MARIE CHARLOTTE BUSCHKE	(No. 24182) :	
HEDWIG REGINA WEIGERT	(No. 24458) :	

Baltimore, Maryland
August 4, 1944

APPEARANCES:

Appearing for Petitioners: Messrs. Simon E. Sobeloff and Bernard M. Goldstein.

Appearing on behalf of Immigration and Naturalization Service:

C. R. Berg, Esq., Chief of Nationality and Status Section, Baltimore, Maryland, and

Mr. L. D. Schwartz, U. S. Naturalization Examiner

OPINION

Coleman, District Judge:

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While each of these five cases was heard separately, that is, testimony and arguments were had and a decision rendered orally in each case at its close (except that the cases of William Henry Buschke and his wife were considered and decided together), the basic facts in all are so similar as to require the same conclusion in all of them. Therefore, the court suggested, when the hearings in all the cases were completed, the desirability of consolidating all of its oral opinions in one written opinion, which now follows:

The important chronological facts in the several cases are as follows: All five petitioners were born in Germany and all were domiciled there at the time they came to the United States, except one petitioner, (William Henry Buschke) had been living in Switzerland for nearly five years. His parents may still be alive in Germany for aught that petitioner or any one testifying on his behalf knows. Four of the petitioners came to this country in 1937, three of whom declared their intention to become American citizens in 1938, one in 1937, and all four filed their petitions for naturalization in 1943. The mother of one of them is believed to be in a concentration camp in France. The remaining petitioner came to this country in 1936, declared his

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intention to become a citizen in 1937, and filed his petition for naturalization in 1942. He had been to this country on a visitor's vise in 1936, had gone back to Germany and returned to this country the same year.

The persons who testified on behalf of the petitioners were, for the most part, of German extraction or birth, and they knew little if anything about the petitioners until they came in contact with them when petitioners took up their residence here, as just set forth.

Counsel for petitioners, and likewise representatives of the Naturalization Bureau, appear not to quite understand the Court's attitude in cases of this kind. The Court has endeavored to make its position clear ever since Pearl Harbor. We are not now questioning the asserted loyalty of any of these petitioners. We are not questioning the good faith or the thoroughness of the examination made by the administrative authorities *in so far as they have been able to make it,* but the points which the Court is stressing, and which seem in the public interest to fully justify a postponement of final action in cases of this kind, are the following: First, the state of war, -- the fact that the persons seeking citizenship are nationals of a country with which we are at war. Congress has provided that, under certain circumstances, such persons may be admitted to citizenship. The law does not say that they *must* be. It pro-

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vides that they may be presented for citizenship if their declaration of intention has been existent for a given length of time, and there are other administrative requirements. All of those have been met. But it does not say that the state of war shall be swept aside from consideration by the Court, or the Bureau. It does not say that the Court is forbidden to take into account the inability to ascertain what normally should be ascertained about petitioners of this kind because of the state of war, and there is an almost complete inability to do so. Such ascertainment may add nothing. It may only increase the proof of loyalty. But the fact remains that <u>the war has shut the door upon a full, thorough investigation</u>. The petitioners' records in Germany, their proclivities and associations are undisclosed except by their own statements and those of their relatives resident in this country, and of their newly made friends in this country -- persons for the most part of German extraction or birth themselves who knew little if anything about the petitioners until, a few years ago, when they came to this country under the stress of war, or near-war conditions.

Secondly: While the law says that persons meeting the requirements set forth in the statute, even though nationals of enemy countries, <u>may</u> be naturalized, it does not say that the Court shall close its eyes to any emotional

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condition under which the applicant has come to, and taken up residence in this country, or the length of time which may affect a determination as to whether or not the applicant is able, -- not so much a question of whether he is willing but whether he is in fact able, -- to attach himself under these emotional and abnormal war conditions to this country. That is the second consideration to which the Court feels, in the public interest, it must give great weight. Apparently the Office of the Commissioner has given little or no weight to either of these considerations. The Commissioner's Office has simply set it down as routine that, because the law provides that so and so may be naturalized, therefore, he must be naturalized, if he has met the language, residence and other specified requirements, and if the Office has completed, with results favorable to the petitioner, all the investigations which it, the Office, considers necessary. That is not what the law impliedly says, because broad discretion still remains in the Court to determine whether further facts should be ascertained.

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This Court wants to repeat that it is not using, as any basis for its postponement of these cases, any racial or religious prejudice. It so happens that these unfortunate petitioners are of a class who have been persecuted or would, in all likelihood, have been persecuted had they remained in Germany, by the brutality of those in control of their native land. The Court has the greatest sympathy for them. The Court is glad that they have been able to find refuge and help in this free country, and their records appear to be eminently satisfactory from the point of view of law and order and as to their attachment, in so far as they are able up to the present time to be attached, to this country. The record on that score is not now being impugned, but the war has produced abnormal conditions and this Court does not think that Congress meant to say that, in time of war, every refugee from an enemy country, just because he or she meets the requirements with respect to residence and education, makes the normal professions of loyalty and the Naturalization Officials have no information adverse to such person, must, willy-nilly, be admitted to citizenship.

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What this Court believes is a proper, reasonable interpretation to give to the statute is that unless the residence and occupation of the applicant has extended over such a period of time in this country as to have developed family, business and other connections as will assure the kind of stable attachment to our country which is normally contemplated in peace time, and unless it can be ascertained beyond all serious doubt that such attachment is complete and not divided, then, in time of war, it is best to postpone final action in cases of those who are nationals of a country with which we are at war, until the war is ended.]

The Court has great sympathy for the refugee. The Court is happy if he can find employment, happiness and progress in this country, but none of the present petitioners have been here long enough, because of war conditions, to make it possible for this Court, or the Naturalization Bureau, or any other administrative arm, or the petitioners themselves, to be sure as to what these petitioners really should, can or will do with respect to this question of loyalty to their mother

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country as opposed to unqualified loyalty to this country, and the ability to attach themselves unreservedly to, and to understand our form of government. They are the victims not merely of misfortune abroad, but when they come here they are, through no fault of theirs, handicapped by conditions which the war has imposed. The Court is not now denying,-- never has denied -- to any of these applicants, the right to become citizens, but merely says that in the public interest, because of the war, their cases had best be postponed to a time when more can be known about their antecedents, their background, their true intentions and their ability to conform to our form of government. That is the position of the Court. The Court finds nothing contrary to that in the statute.

Claim has been made of an arbitrary rule laid down by the Court. It is true the Court has been guided by a general plan or classification, which is that, generally speaking, all applicants who have not come to this country prior to the beginning of the

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present Government in Germany, and who had not completed their naturalization requirements prior to Pearl Harbor, unless their failure was due to no fault of their own, should be put in a class of cases which would be separately considered by the Court on their own individual facts, and a determination made as to whether they should or should not be postponed. Four of the present applicants came to this country in 1937, the fifth in 1936. No doubt it is an anomaly to say, -- which is a fact, -- that we, the American people, are at war with the German people and, in the same breath, to say that, nevertheless, while at war, any German national shall be naturalized. But Congress has said they may be naturalized under certain conditions. Such was not permitted during the last war with Germany until near its end. The history of Congressional action on this subject is herein later given. This Court has naturalized hundreds of Germans in the last two years, but they have been cases either of civilians (over 400)

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who have had long residences here, -- who have gotten their roots, so to speak, into this country, -- and with respect to whom there was no handicap in ascertaining everything that it was desirable to know about them; or they fell in a class covered by an entirely separate provision relating to those in the armed forces, who are especially privileged, and rightly so.

This Court takes the position that since, under our Selective Training and Service Act, Congress has seen fit to draft aliens of all kinds and descriptions, -- enemy as well as non-enemy, --if they are serving this country honorably, are so certified by their commanding officers and otherwise meet the more lenient provisions of the special law passed in their favor, their naturalization should be accelerated, and it has been in several hundred such cases in this District. Certainly one who bears arms for this

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country, -- who risks his life for it, -- ought prima facie to be allowed to share fully in the government of the country. Furthermore, it is reasonable to assume that any harmful results that might follow, during the war at least, a too hasty or improper granting of citizenship to persons while in our armed forces would be greatly minimized if not in fact completely vitiated by virtue of the vastly more restricted status of such persons. But even in these cases there is close scrutiny. This Court does not accept, automatically, the recommendations that come from our armed forces, because while it has no disposition whatsoever to interfere, and has no right to interfere, with them in any respect, when the Army, for example, asks that A. B. be naturalized, it is asking this Court to do something not merely in aid of the war effort, but to give A. B. something which is presumably for his life time, i. e., extends beyond his status as a member of the armed forces. So, even to those cases, the Court gives careful scrutiny where enemy nationals are involved.

The provisions of the Nationality Code under

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which petitioners seek to be admitted are as follows:

"(a) An Alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war may be naturalized as a citizen of the United States if such alien's declaration of intention was made not less than two years prior to the beginning of the state of war, or such alien was at the beginning of the state of war entitled to become a citizen of the United States without making a declaration of intention, or his petition for naturalization shall at the beginning of the state of war be pending and the petitioner is otherwise entitled to admission, notwithstanding such petitioner shall be an alien enemy at the time and in the manner prescribed by the laws passed upon that subject.

"(b) An alien embraced within this section shall not have such alien's petition for naturalization called for a hearing, or heard, except after ninety days' notice given by the clerk of the court to the Commissioner to be represented at the hearing, and the Commissioner's objection to such final hearing shall cause the petition to be

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continued from time to time for so long as the Commissioner may require." (Sec. 326 (a) and (b), Act of October 14th, 1940; 8 U. S. C. A. Sec. 726 (a) and (b)).

Briefly stated, the legislative evolution of these provisions is as follows: As early as 1802, Congress declared that no citizen or subject of a country with which the United States was at war at the time of his application for citizenship, could be admitted during the war. (Act of April 14th, 1802, c. 28, 2 Stat. 153). In 1813, an Act of special grace in favor of British subjects during the War of 1812 was passed. (Act of July 30th, 1813, 3 Stat. 53, c. 36). These became part of Sec. 2171 of the Revised Statutes and were not repealed until 1918 (Act of May 9th, 1918, c. 69, sec. 1, 40 Stat. 545), although the provision enacted in favor of British subjects during the War of 1812 had become obsolete by its own terms; and by the Act of June 29th, 1906, c. 3592, Sec. 4, (34 Stat. 596), numerous changes, procedural and otherwise, were made in the naturalization laws. The 1918 Act is substantially the same as the present law except for a requirement that the declaration of intention be made not less than two nor more than seven years prior to the existence

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of the state of war. See Grahl v. United States, 261 Fed. 487; In Re Jonasson, 241 Fed. 723. See also United States v. Meyer, 241 Fed. 305.

It is to be noted that under the statute pursuant to which the present petitioners seek to be admitted (quoted above), the Commissioner is given an unqualified right "to cause the petition to be continued from time to time for so long as the Commissioner may require" (8 U. S. C. A. Sec. 726 (b)). It is not to be assumed that, although giving to the Commissioner such unqualified discretion as to indefinite continuance of cases of alien nationals during wartime, Congress, nevertheless, intended to take away from the court the broad discretion which it has, without interruption, always vested in the court itself, and which is reaffirmed in this very section of the law, under which the present petitioners claim admission, by the use of the words "may be", not "must be", naturalized. (8. U. S. C. A. Sec. 726 (a)). The debates in Congress at the time this part of the Nationality Code was being considered support this conclusion. See Congressional Record, Vol. 56, 65th Congress, 2nd Session, parts 2, 5 and 6; pp. 5151, 6007.

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It is further to be noted that under the provisions of the Act which govern hearings of petitions in general (Sec. 333, 8 U. S. C. A. Sec. 733), which apply in the present cases, the examiner, after his preliminary hearing, shall, at the final hearing, submit his recommendations as to whether the petition "be granted, or denied, or *continued*, with the reasons therefor." (Italics inserted). It is further provided that "The judge to whom such findings and recommendations are submitted, shall if he approves such recommendations, enter a written order with such exceptions as the judge may deem proper, by subscribing his name to each such list when corrected to conform to his conclusions upon such recommendations." Thus, such language clearly implies that whether or not the naturalization office has recommended continuance, if the judge feels that there is just ground for continuance, he may, of his own action, continue the case. That is precisely what is now being done.

This court, of course, recognizes that there must be some reasonable basis for continuance. It seems scarcely necessary to repeat that the present state of

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war, coupled with the relatively recent arrival in this country of the present petitioners from Germany, and the resultant total inability to verify information given by the petitioners with respect to their German background, are all reasonable bases for postponing final action in their cases until there can be a complete check of the limited information that is available.

As we have just seen, in any naturalization case in time of peace, the court may, in the exercise of its own broad discretion, continue a case, and this court has, in fact, frequently done so, if it feels that further investigation is desirable, even though the Commissioner's office may be firmly convinced that such is unnecessary or even unobtainable, provided only the court has reasonable ground for requiring such further investigation, as for example, where the court may not be completely satisfied as to the character or past good record of the petitioner, in spite of the fact that the evidence as presented does not in and of itself indicate any circumstances adverse to the petitioner. If this be true, clearly at least the equivalent precaution is fully warranted with

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respect to those of alien enemy nationality who have been part of the population of Germany during the Nazi regime, and who have taken up their residence in this country only a short time prior to the outbreak of war with Germany. This court is not itself creating or imposing the conditions which make it wise, in the public interest, to continue cases of this kind. It is the War itself which has produced those conditions. The public interest requires that the status, past and present, of <u>every person</u> coming here from Germany since the last war, and especially since the Nazi regime began, be subjected to the greatest scrutiny. Shortly following the last War, naturalization was too freely granted to German nationals in numerous instances, as witness the many naturalized Germans who have been proven to be traitors, and who have caused great interference with the successful prosecution of the War against Germany. The public press is constantly giving reports of official governmental information to this effect.

For the reasons stated, the Court concludes that these cases must be continued for the war period, or at least until such time as the Court may determine it is

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proper, in the public interest, to act finally in them. This conclusion is without prejudice to the petitioners to ask the Court, at any prior time, to reopen their cases, and to render a decision in them.