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"GOOD MORAL CHARACTER" IN THE NATURALIZATION LAW OF THE UNITED STATES

ELMER PLISCHKE

IN THE United States an alien must meet various prescribed qualifications and perform certain positive acts before he can become a naturalized citizen. The procedural steps which such an alien must observe include the obtaining of a certificate of lawful entry into the United States for permanent residence, the making of a declaration of intention to become a United States' citizen, petitioning for such citizenship, and presenting himself for a final hearing in open court.

Among the negative qualifications which must be met by the alien are the following: He must renounce his former allegiance, he must prove that he is not a polygamist, he must satisfactorily show that he has no anarchistic ambitions or adherence, and he must expressly renounce any order or title of nobility.

There are also various positive qualifications, including, among others: Five years' continuous residence in the United States and six months' residence in the county in which the petition is filed, immediately preceding such filing; residence in the United States from the time the petition is made to the time of admission to citizenship by naturalization; and during such periods, attachment to the principles of the Constitution of the United States, a favorable disposition to the good order and happiness of the United States, and *good moral character.*

For an understanding of the naturalization laws one must also have an understanding of what constitutes "good moral character." This is, however, easier said than done, for the courts have never attempted a complete, comprehensive definition of this term.

Almost everyone has his own idea as to what constitutes "good moral character," and these concepts differ widely. This is understandable, for many people, rightly or wrongly, consider morality to be a purely subjective phenomenon. As a consequence, we find jurists also frequently contradicting each other in their interpretations of moral character within the meaning of the law. The point of differing juridical opinions is aptly, though briefly, presented in a study entitled *Conflicts in Naturalization Decisions,*[1] which was written under the direction of Harold Fields, who is chairman of the Committee on Judicial

[1] The study was published by the National Council on Naturalization and Citizenship, N. Y. 1936; reprinted from (1936) 10 Temp. L. Q. No. 3.

Decisions of the Naturalization Cases for the National Council on Naturalization and Citizenship, and executive director of the National League for American Citizenship of New York City.

Perhaps the best method of determining the legal meaning of "good moral character" is to review the various Federal and State court decisions rendered in cases which have involved such interpretation. Unfortunately a negative approach must be taken, determining what does not constitute "good moral character," rather than what does. However, both the positive and the negative aspects of the interpretation will be briefly considered.

On the positive side, in discussing the interpretation of that portion of the law which states that the alien, for a period of five years preceding the filing of his application for naturalization must have "behaved as a person of good moral character," District Judge Quarles of the United States District Court for Wisconsin declared: " . . . A good moral character is one that measures up as good among the people of the community in which the party lives; that is, up to the standard of the average citizen . . . So here, where the law says a good moral character, it means such a reputation as will pass muster with the average man. It need not rise above the level of the common mass of people."[2] But not all judges are of the same opinion, as is shown below.

In *United States* v. *Hrasky*,[3] Judge Moyers making a clear distinction between "character" and "reputation" held " . . . While the word 'character' is frequently used as synonymous with 'reputation,' strictly speaking, character is what a person is, while reputation is what he is supposed to be . . . 'Character consists of the qualities which constitute the individual; reputation the sum of opinions entertained concerning him . . .'."

In analyzing the nature of moral character, a distinction has been noted between acts evil in themselves *malum in se* and offenses that are merely law violations because they are prohibited *malum prohibitum*.[4]

Another aspect of the positive definition of "good moral character" to be considered is that moral character must be such as to result in worthy and beneficial citizenship. Circuit Judge Moorman, makes this point by saying: " . . . The aim of this statute is to admit to citizenship only those aliens who will make worthy citizens, . . . "[5] Again, it has been held that the character of the applicant is considered with refer-

[2] *In re* Hopp, 179 Fed. 561, 562-3 (E.D. Wis. 1910).
[3] 240 Ill. 560, 88 N.E. 1031 (1909).
[4] *In re* Spenser, 5 Sawyer 195, 22 Fed. Cas. 921, Federal Case No. 13.234 (C.C. Ore. 1878); *In re* Trum, 199 Fed. 361 (W.D. Mo. 1912).
[5] *In re* Nybo, 42 F. (2d) 727, 728 (C.C.A. 6th Mich. 1930).

ence to the probability of his citizenship resulting beneficially to the government,[6] or "the nation and its present membership, . . . "[7]

Furthermore, American citizenship and the procedure of naturalization are privileges rather than rights. District Judge Tuttle made this point very clear when he stated: "Citizenship is not a matter of right enjoyed by an alien, but is a reward given . . . to those aliens who are satisfactorily equipped and inclined mentally, and who, by consistent and continuous right living and obedience to law during the prescribed period prior to their admission, are found to be worthy of the high reward of citizenship . . . "[8] Again, in *Turlej* v. *United States*[9] District Judge Reeves maintained that naturalization proceedings "are not for the usual purpose of vindicating an existing right, but for the purpose of getting granted to an alien rights that do not yet exist . . . "

As a consequence it would seem to follow that it is the duty of the petitioner to prove his moral character and the fact that he has not violated the law. District Judge Henning declared that " . . . the burden is upon the petitioner for naturalization to establish by competent proof that he has fully met the requirements of the statute . . . "[10] However, the petitioner's testimony is not sufficient proof of such character.[11] More definite proof is necessary. Therefore the petitioner's statements as well as those of the witnesses are made under oath. The Field Inspectors of the Immigration and Naturalization Service also investigate the past lives of the petitioners.

On the negative side of the definition of "good moral character" it has generally been held that criminality renders an alien unworthy of American citizenship. The difficulty lies in the fact that few judges, even in naturalization proceedings, agree as to what constitutes criminality. For example, on the one hand District Judge Deady claims that " . . . whatever is forbidden by the law of the land ought to be considered . . . immoral, within the purview of this statute . . . ,"[12] while other judges have held that citizenship by naturalization should be denied only if aliens violate the *important* laws of the state or nation.[13] But which are these more important laws? The following para-

[6] *In re* McNeil, 14 F. Supp. 394 (N.D. Cal. 1936).
[7] *In re* Caroni, 13 F. (2d) 954 (N.D. Cal. 1926); see also Petition of Oganesoff, 20 F. (2d) 978 (S.D. Cal., 1927); Estrin v. United States, 80 F. (2d) 105 (C.C.A. 2d 1935); United States v. Gerstein, 284 Ill. 174, 119 N.E. 922, 1 A.L.R. 318 (1918); *In re* Nosen, 49 F. (2d) 817 (D. Wash. 1931).
[8] Petition of Nybo, 34 F. (2d) 161, 162 (E.D. Mich. 1929).
[9] 31 F. (2d) 696, 698 (C.C.A. 8th Wyo. 1929).
[10] Petition of Oganesoff, 20 F. (2d) 978, 980 (S.D. Cal. 1926; also United States v. Etheridge, 41 F. (2d) 762 (D. Ore. 1930); *In re McNeil,* 14 F. Supp. 394 (N.D. Cal., 1936).
[11] *In re* Bodek, 63 Fed. 813 (C.C. E.D. Pa. 1894).
[12] *In re* Spenser, 5 Sawyer 195, 22 Fed. Cas. 921, Federal Case No. 13,234 (C.C. Ore. 1878).
[13] United States v. Turlej, 18 F. (2d) 435 (D. Wyo. 1927).

graphs will give some indication as to the offenses which have been considered serious enough to bar an alien from naturalization in the past.

In several cases citizenship has been denied to persons who had committed homicide. One such petitioner was convicted of manslaughter in 1912 and was paroled in 1915.[14] Similarly, naturalization was denied a petitioner who had pleaded guilty to a charge of murder in the second degree and had served nine years at hard labor, although the petitioner had maintained good behavier during the five years immediately preceding his petition, as the whole character of the applicant must be taken into consideration.[15]

Petitioner McNeil had his petition for citizenship dismissed because he pleaded guilty to a charge of felonious embezzlement, although he had been sentenced and later paroled and pardoned. In this case District Judge St. Sure maintained that pardoning, though it removed legal guilt, did not alter the character of the petitioner.[16]

Non-support of one's minor children, whether they reside in the United States with the petitioner or not, constitutes sufficient reason for denial.[17] Bribing or attempting to bribe government officials, particularly those concerned in the naturalization proceedings, is also sufficient to render the alien unworthy.[18]

Another offense which is of such severity as to warrant denial is perjury.[19] Perjury may be committed either in the naturalization proceedings or in other legal proceedings. In the case of *In re Talarico*,[20] the petitioner gave a false reply when asked if he had ever been arrested. Another alien had his certificate of naturalization cancelled on the grounds of perjury regarding his age.[21] A petition was likewise denied for the misstatement by a petitioner of her name and marital status. Having been married the day before her departure for the United States, and having her passport and visa made out in her maiden name, she sought to preserve herself from the discomfort of explaining her change in name, and therefore used her maiden name in her certificate of arrival and declaration of intention.[22] Again, in

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[14] *In re* Caroni, 13 F. (2d) 954, 955 (N.D. Cal. 1926).
[15] *In re* Ross, 188 Fed. 685 (C.C. M.D. Pa. 1911).
[16] *In re* McNeil, 14 F. Supp. 394 (N.D. Cal. 1936); see *In re* Spenser, 5 Sawyer 195, 22 Fed. Cas. 921, Federal Case No. 13,234 (C.C. Ore. 1878). On the other hand, the United States Supreme Court, in the Garland Case, 4 Wall. 333 (1866) held that a pardon removed the guilt as well as the legal consequences of a law violation.
[17] *In re* Nosen, 49 F. (2d) 817 (D. Wash. 1931).
[18] Petition of Oganesoff, 20 F. (2d) 978 (S.D. Cal. 1927).
[19] *In re* Spenser, 5 Sawyer 195, 22 Fed. Cas. 921, Federal Case No. 13,234 (C.C. Ore. 1878).
[20] 197 Fed. 1019 (W.D. Pa. 1912).
[21] *In re* Guliano, 156 Fed. 420 (S.D. N.Y. 1907).
[22] *In re* Zycholc, 43 F. (2d) 438 (E.D. Mich. 1930).

United States v. *Etheridge*,[23] the denial was based upon the grounds of a fraudulent misstatement of the petitioner's name and date of entry. The petitioner, however, had also concealed a conviction for forgery committed in England, and had been convicted in New Jersey for obtaining money under false pretenses. On the other hand, citizenship was granted the petitioner in *In re Camaras*,[24] despite the fact that the petitioner had given a wrong name for one of his daughters and had misstated her place of residence, on the grounds that the petitioner had not attempted to conceal the parentage or identity of the daughter.

There were also several cases in which citizenship by naturalization was denied aliens because of violations of the National Prohibition Act and the liquor laws. The *Bonner* Case[25] showed that the maintenance of a common nuisance in which intoxicating liquors were unlawfully kept and sold was a sufficient reason. Other decisions show that not only the illegal possession of intoxicating liquor during the statutory period—despite the fact that it was claimed to be for personal use—was sufficient to result in denial,[26] but also the illegal manufacture of liquor during the five year period,[27] the sale of liquor in violation of an injunction,[28] and the illegal possession of a still, although no liquor was successfully manufactured.[29] In the cases of *United States* v. *Mirsky*[30] *and United States* v. *Turlej*[31] certificates of naturalization were cancelled because of liquor violations that had occurred prior to the granting of the certificates. In the latter case the cancellation was based upon one violation shortly before naturalization and three violations thereafter. Furthermore, in *United States* v. *Turlej*,[32] which was an appeal case brought by the alien, District Judge Reeves reaffirmed the cancellation of the certificate of the alien. A petition for naturalization was also denied in the case of an alien who operated a tavern in a Mexican city immediately across the border, at least partially for the purpose of serving liquor to visiting Americans during the Prohibition era. When the alien moved to the United States and applied for citizenship, he was denied for that reason.[33]

Opinion seems to be divided on the question of obeying unenforced Sunday closing laws. In *United States* v. *Hrasky*[34] and *United States* v.

[23] 41 F. (2d) 762 (D. Ore. 1930).
[24] 202 Fed. 1019 (D. R.I. 1913).
[25] 279 Fed. 789 (D. Mont. 1922).
[26] *In re* Raio, 3 F. (2d) 78 (S.D. Tex. 1924).
[27] *In re* Nagy, 3 F. (2d) 77 (S.D. Tex. 1924).
[28] *In re* Trum, 199 Fed. 361 (W.D. Mo. 1912).
[29] *In re* Phillips, 3 F. (2d) 79 (S.D. Tex. 1924).
[30] 17 F. (2d) 275 (S.D. N.Y., 1926).
[31] 18 F. (2d) 435 (D. Wyo. 1927).
[32] Turlej v. United States, 31 F. (2d) 696 (C.C.A. 8th 1929).
[33] Ex parte Elson, 299 Fed. 352 (W.D. Tex. 1924).
[34] 240 Ill. 560, 88 N.E. 1031 (1909).

Gerstein[35] cases, both of which are appeal cases arising in the State courts of Illinois, certificates of citizenship were cancelled. In the former, the petitioner had known of the Sunday closing law for two years but had kept his back door open for his patrons, and he declared that he would continue to do so despite the oath he would have to take to support the Constitution and the laws of the country. In the *Gerstein* case the petitioner had kept his saloon open on Sundays until three months before the filing of his petition, when it was made known that the closing law would be enforced. On the other hand, however, just the reverse was held by District Judge Quarles in the case of *In re Hopp*.[36] Since the Sunday closing law had never been enforced by either the state or the county, a certificate was granted.

In the case of *In re Spiegel*[37] the alien's petition was denied on the grounds of bigamy. The petitioner came to the United States, leaving his wife in Poland. Later they were divorced by a New York City rabbi, and the divorce was recognized in Poland. The petitioner thereupon remarried, but his petition for citizenship was denied because of bigamy, the New York courts recognizing divorce only when granted by due judicial proceedure. Adultery has usually been held to render one incompetent for citizenship.[38] The same is true of petitioners guilty of conducting or being associated with immoral houses.[39]

It is quite apparent why aliens who violate the immigration and naturalization laws of the United States have been denied citizenship by naturalization.[40] Similar denials take place in naturalization cases involving aliens guilty of violating the citizenship laws.[41]

Perhaps particularly interesting is the denial of naturalization in *In re Gnadt*[42] based upon desertion from the United States Army followed by court martial and a sentence of one year at hard labor, for this case not only indicates what does not constitute "good moral character," but it also brings to our attention the legal fact that desertion from the armed forces of the United States results in the loss of citi-

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[35] 284 Ill. 174, 119 N.E. 922, A.L.R. 318 (1918).
[36] 179 Fed. 561 (E.D. Wis. 1910).
[37] 24 F. (2d) 605 (S.D. N.Y. 1928); for an identical case see Petition of Horowitz, 48 F. (2d) 652 (E.D. N.Y. 1931).
[38] Nickovich v. Mollart, 51 Nev. 306, 274 Pac. 809 (1929); United States v. Unger, 26 F. (2d) 114 (S.D. N.Y. 1928); United States v. Wexler, 8 F. (2d) 880 (E.D. N.Y. 1925).
[39] *In re* Kornstein, 268 Fed. 172 (E.D. Mo. 1920); United States v. Leles, 236 Fed. 784 (N.D. Cal. 1916).
[40] Petition of Nybo, 34 F. (2d) 161 (E.D. Mich. 1929); denial reaffirmed in *In re* Nybo, 42 F. (2d) 727 (C.C.A. 6th Mich. 1930). See United States v. Clifford, 89 F. (2d) 184 (C.C.A. 2d, 1937).
[41] *In re* Centi, 211 Fed. 559 (W.D. Tenn. 1914); *In re* Di Clerico, 158 Fed. 905 (E.D. N.Y. 1908);
[42] 269 Fed. 189 (E.D. Mo. 1920).

zenship to nationals and forever bars one from becoming a citizen of the United States.[43]

It is also important to note that "good moral character" must not only be maintained during the statutory five-year period, according to Judge Bourquin of the United States District Court of Montana, but also during the interval between the filing of the petition for citizenship and the final court hearing.[44] In a few cases it has also been held that the conduct of the alien prior to the five-year period immediately preceding the filing of his petition must also be taken into consideration.[45]

The following are some of the more important conclusions which can be drawn from the foregoing paragraphs in arriving at a working definition of "good moral character":[46]

1. Citizenship is a privilege, and therefore the procedure by which it is obtained by aliens, namely, naturalization, is also a privilege.[47] They are not rights, and they are subject to the law.

2. Citizenship and naturalization are not open to criminals. Habitual violators of the law are customarily denied citizenship for obvious reasons. A distinction is made between perpetrators of violations of the law that are *malum in se* and those which are *malum prohibitum.* The former usually immediately and automatically disqualify the petitioner from naturalization. As to the latter the courts are divided. However, in the cases which have been cited in the preceding paragraphs, it has been noted that the following crimes have been considered sufficient to result in denial: homicide, non-support, bribery, perjury, embezzlement, violations of the National Prohibition Act and the liquor laws, bigamy, adultery, owning or operating immoral houses, violations of the immigration and naturalization laws, and desertion from the armed forces.

3. The granting or the denial of a petition on the basis of "good moral character" is founded upon character both of itself and in view of its manifestations. But, since character is an internal reality, it is easier and frequently necessary to base the granting or denial upon behavior. Opinion seems to be divided, however, as to whether the petitioner's behavior must be equal to or superior to the customary standards of the community in which he resides.

[43] Act of Aug. 22, 1912, c. 336, § I; 37 Stat. 356; R.S. § 1998; 8 U.S.C. § II.

[44] *In re* Bonner, 279 Fed. 789 (D. Mont. 1922); see *In re* Nybo, 42 F. (2d) 727 (C.C.A. 6th, 1930)

[45] *In re* Ross, 188 Fed. 685 (C.C. M.D. Pa. 1911); *In re* Spenser, 5 Sawyer 195, 22 Fed. Cas. 921, Federal Case No. 13,234 (C.C. Ore. 1878).

[46] All reported Federal and State court decisions dealing with the interpretation of the "good moral character" provisions of the Naturalization Law have been examined for this study.

[47] The United States Supreme Court has held this same view in Johannessen v. United States, 225 U.S. 227, 32 Sup. Ct. 613, 56 L.ed. 1066 (1912); United States v. Ginsberg, 243 U.S. 472, 37 Sup. Ct. 422, 61 L.ed. 853 (1917); United States v. Ness, 245 U.S. 319, 38 Sup. Ct. 118, 62 L.ed. 32 (1917).

4. Admission to citizenship, it is commonly agreed, should be granted only to those petitioners who would make worthy citizens and who would be a benefit to the United States.

5. The burden of proof in establishing a petitioner's eligibility for citizenship rests with the petitioner.

6. Good moral character must be proven not only during the five years immediately preceding the filing of the petition but also during the interval between the date of such filing and the final court hearing. Opinion is divided as to wether the life and acts of the alien prior to his coming to the United States, as well as to his period of residence in the United States prior to the five year statutory period, are to be considered in admitting or denying the petition.

7. Finally, several cases have been noted in which it was held that a pardon—whether partial or absolute—does not remove the petitioner's offense from the pale of consideration for naturalization, although it may exonerate him and remove his guilt from the legal viewpoint.

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