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ALIENS-NATURALIZATION PROCEEDINGS-IS ALLEGED COMMUNIST ATTACHED TO PRINCIPLES OF CONSTITUTION?

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RECENT DECISIONS

ALIENS—NATURALIZATION PROCEEDINGS—IS ALLEGED COMMUNIST ATTACHED TO PRINCIPLES OF CONSTITUTION?—Seeking citizenship status, petitioner filed a formal petition for naturalization, introduced affidavits of two citizens as to his character, and testified under oath that he would support the Constitution. The Immigration and Naturalization Service opposed his petition on the ground that he failed to show a proper attachment to the principles of the Constitution as required by the Nationality Act.[1] On hearing, proof was made that petitioner was a member and officer of the International Workers Order, an organization labeled by the House Committee on Un-American Activities as a Communist front. Testimony of an immigration inspector that petitioner had the reputation in his community of being a Communist was also introduced. On consideration of this evidence, the district court denied the petition for naturalization. *Held,* reversed; the evidence was insufficient to show a lack of attachment to the principles of the Constitution.[2] *Stasiukevich v. Nicholls,* (C.C.A. 1st, 1948) 168 F. (2d) 474.

The problems raised by the case concern the application and construction of the statutory condition that an alien be attached to the principles of the Constitution before he can be naturalized. Considering first the question of defining the substantive content of the requirement, it appears that the Federal courts have interpreted the statutory language to cover a variety of definitions. One limit is expressed in the statute: "No person shall hereafter be naturalized . . . who believes in, advises, advocates, or teaches . . . the overthrow by force or violence of the Government of the United States or all forms of law. . . ."[3] The opposite extreme in the meaning of the demanded attachment is established by a decision that an alien must prove that he is fully satisfied with our present Constitution and government.[4] More recent cases have been more liberal in setting the outer boundary of the requirement. The broadest test employed by the courts allows an alien to advocate changes in the Constitution provided he is willing to employ the recognized procedure of Constitutional amendment.[5] The majority of cases narrow this test by insisting that the alien must be attached to certain fundamental prin-

[1] 54 Stat. L. 1140 at 1142, §307 (1940); 8 U.S.C. §707 (1946). The statute requires that the petitioner be ". . . a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

[2] A second ground for reversal was the district court's use of testimony of reputation which the court condemned as hearsay of the worst sort.

[3] 54 Stat. L. 1141, §305 (1940); 8 U.S.C. §705 (1946).

[4] United States v. Tapolcsanyi, (C.C.A. 3d, 1930) 40 F. (2d) 255.

[5] Schneiderman v. United States, 320 U.S. 118, 63 S.Ct. 1333 (1943); dissent in United States v. Schwimmer, 279 U.S. 644 at 653, 49 S.Ct. 448 at 451 (1929). In neither decision was the question faced whether one who believed in destroying the guaranties of the Bill of Rights and free thought could be attached to the principles of the Constitution.

ciples of our present form of government which he cannot seek to modify.[6] In other areas the alien is permitted to advocate changes in either the government or the Constitution without subjecting himself to the charge that he is not attached to their principles.[7] The courts disagree as to what principles are to be considered as fundamental; one court emphasized the sanctity of private property,[8] but the trend is toward requiring an attachment to representative democracy buttressed by guaranties of individual liberty found in the Bill of Rights.[9] The second problem presented by the case is the standard by which the attachment demanded is to be measured. Is it subjective or objective? Older cases emphasized that attachment is a matter of personal belief,[10] but the recent tendency, exemplified by the consideration of petitioner's affiliations and reputation by the court, is to look to the conduct of the applicant to determine his attachment.[11] Finally there is the problem of applying the tests of attachment to the person involved. Does it make a difference whether he is an alien or a citizen for the purposes of formulating a test of attachment to apply to him?[12] Older cases have expressly denied to an alien the right to work to modify the Constitution,[13] but recently the courts have tended to subject both the citizen and the alien to the same substantive test of attachment.[14] The latter is the position of the principal case.

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[6] For an interesting list of the fundamental principles of our government see In re Saralieff, (D.C. Mo. 1932) 59 F. (2d) 436.

[7] United States v. Rovin, (D.C. Mich. 1926) 12 F. (2d) 942; dissent in Schneiderman v. United States, supra, note 5, at 170.

[8] Ex parte Sauer, (D.C. Tex. 1891) 81 F. 355.

[9] Dissent in Schneiderman v. United States, supra, note 5, at 170. This is the position of the principal case.

[10] ". . . [T]he quality of loyalty to the principles of the Constitution of the United States is a mental or emotional state which is required as a condition precedent to admission." In re Oppenheimer, (D.C. Ore. 1945) 61 F. Supp. 403. See also United States v. Schwimmer, supra, note 5, at 644; Allan v. United States, (C.C.A. 9th, 1940) 115 F. (2d) 804; In re Van Laeken, (D.C. Calif. 1938) 22 F. Supp. 145.

[11] ". . . [A]ttachment . . . which the law exacts at naturalization is not addressed to the heart; it demands no affection for, or even approval of, a democratic system of government. . . ." Judge Learned Hand in United States v. Rossler, (C.C.A. 2d, 1944) 144 F. (2d) 463 at 465; see also Schneiderman v. United States, supra, note 5.

[12] This question arises in an analysis of the cases because both petitions for naturalization and proceedings for denaturalization are discussed. It is necessary to distingiush the problem of the burden of proof for proving attachment or lack of attachment from the problem here considered.

[13] United States v. Tapolcsanyi, supra, note 4; In re Saralieff, supra, note 6.

[14] United States v. Rovin, supra, note 7; In re Oppenheimer, supra, note 10; and cases cited, supra, note 5.