Judicial proceedings were instituted by several hundred American citizens of Japanese ancestry against the secretary of state of the United States in an effort to obtain an adjudication of their claimed American citizenship in the federal district courts. They wished to establish whether, under Section 401, they should be deemed to have lost their American citizenship.

The strandees right to leave Japan to adjudicate this issue in the United States was made possible under Section 501 of the same Nationality Act of 1940.[2] Chapter V, Section 501 provided that "whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his American nationality," the consular officer certifies the facts upon which his belief is based to the secretary of state. The person may then institute an action against the head of the department or agency, in these cases, the secretary of state of the United States, in the district court of the United States. The American consular officer in the foreign country issues to such nationals a "certificate of identity," which states that his nationality status is pending before the court. The national is permitted to leave the foreign state and is then admitted into the United States to contest his denial of nationality. The national is subject to deportation if the court decides that he is not a national of the United States.

CASES INVOLVING NATURALIZATION IN A FOREIGN STATE

Strandee Meiji Fujisawa left Japan and was admitted into the United States to adjudicate the issue as to whether he had lost his citizenship under Section 401(a), "obtaining naturalization in a foreign state."[3] Fujisawa was born in Imperial County, California. He went to Japan in 1939 to study Japanese and to prepare himself for employment in the import-export business between the United States and Japan. Possessed of dual citizenship, he renounced his Japanese citizenship before he left the United States. In accordance with Japanese law, the names of all members of the family are kept in a family register (*Koseki*) at the municipal office of the birth place of the parents. Fujisawa's father caused the name of Meiji, the son, to be removed from the family register in Japan.

Fujisawa continued his education in Japan after the outbreak of war between the United States and Japan. He graduated from a Japanese university in 1943. Upon graduation, he sought employment. He could not be hired in Japan because his name did not appear in his family register. He then reapplied for his Japanese citizenship, whereupon his name once again appeared in the family records. During the war he

was employed by the Japanese government as an interpreter in a prisoner of war camp. After the surrender of Japan, he was employed as an interpreter by the United States Army of Occupation.

At his trial in the federal district court in Los Angeles, Fujisawa testified that he had remained loyal to the United States at all times. He had no intention of renouncing his United States citizenship, nor had he voted in any elections in Japan. He presented an affidavit executed by Thomas L. Blakemore, now a prominent attorney in Japan, who had lived in Japan for many years before he had returned to the United States prior to the outbreak of World War II. After the surrender of Japan, Blakemore was assigned to Japan to serve as chief of the Civil Affairs and Civil Liberties Branch under the Supreme Commander of Allied Powers (SCAP) during the military occupation of Japan. Blakemore's affidavit stated that Nisei living in Japan during the war years were subject to great hostility. They could not obtain employment or food rations unless their names were on their family register.

The court examined the forms submitted by Fujisawa to the municipal officer to recover his Japanese citizenship and found no evidence of allegiance to Japan or any intention of renouncing his United States citizenship. The court said the issue was whether Fujisawa had acted freely in recovering his Japanese citizenship. It held that Fujisawa had not acted freely and voluntarily in applying for his Japanese citizenship because of the coercive nature of the circumstances that compelled him to do so in order to find employment and to obtain food rations in order to survive. The court further noted his exemplary conduct in risking his own personal safety and incurring the wrath of the Japanese military authorities in charge of the prisoner of war camp when they discovered that he had assisted American prisoners and had protected and comforted them. His American citizenship was restored.

CASES INVOLVING SERVICE IN FOREIGN ARMED FORCES

Four cases involved the issue of whether strandees lost their United States citizenship under Section 401(c) by "entering or serving in the armed forces of a foreign state," in this instance, by serving in the Japanese army during wartime.

William S. Ishikawa[4] was born in Honolulu, Hawaii on July 1, 1916. He went to Japan in 1939 at the expense of the Japanese Foreign Office. During the war he was stationed in Nanking, China with the South Manchurian Railway Company. Being possessed of dual citizenship,

he was considered a subject of Japan. He was conscripted into the Japanese army on May 4, 1945 and was discharged from the military service one week after Japan's surrender in August 1945.

At his trial in Hawaii, it was stipulated before Federal District Court Judge J. Frank McLaughlin that, under the military conscription laws of Japan, all male subjects of Japan who attained the age of twenty years were compelled to register for conscription. If any subject attempted to evade or delay the conscription order, the subject was punishable by imprisonment. Ishikawa testified that he was compelled to enter the Japanese army because he could not escape into free China. He also testified to having witnessed tortuous treatment inflicted by the dreaded Japanese military police (*Kempeitai*) upon Japanese subjects who refused to obey the conscription orders.

Judge McLaughlin held that Ishikawa did not lose his American citizenship under these circumstances, as Ishikawa's induction into the Japanese army had been involuntary. Ishikawa's citizenship was restored.

> [Section 401(c)] . . . has been authoritatively construed as effecting expatriation only if the national of the United States entering or serving in the armed forces of a foreign state without express authority under the laws of the United States acted voluntarily and without legal or factual compulsion.

Federal District Judge Charles Cavanah, in Los Angeles, came to the same conclusion as Judge McLaughlin in Hawaii, in two companion cases, one involving Noboru Kato[5] and the other, George Y. Ozasa.[6]

Noboru Kato was born in Stockton, California in 1919. In 1933, when he was fourteen years old, he went to Japan to study. In 1940, when he had attained the age of twenty-one, he left college, intending to return to the United States. He did not return to America because his uncle with whom he was living, a Japanese army officer, informed him that he would be punished if he attempted to do so. Kato had received a deferment from the Japanese army to allow him to continue his education. He received his conscription order soon thereafter, and, for fear of being punished if he resisted, he entered the Japanese army. From August 1945 to 1948 he was a prisoner of war in a Russian prison. After his repatriation to Japan, he was employed by the United States Army of Occupation to educate the Japanese people concerning the American democratic system of government.

Judge Cavanah held that Kato had not lost his United States citizenship when he was drafted into the Japanese army. His conscription

"was not of his free and voluntary act but was the result of coercion."

George Y. Ozasa was born in Oregon in 1921. He went to Japan in 1932 to be educated, with the intention of returning to the United States afterwards. He had registered in Japan with the American consul every two years as an American citizen until the outbreak of war with Japan. He was then drafted into the Japanese army.

Ozasa testified at his trial that when he received his conscription notice, he complied because he was afraid of military imprisonment and punishment. When the war ended in August 1945, he was discharged from the Japanese army and was later employed by the United States Army at an air force base in Miho. Judge Cavanah held that Ozasa did not lose his American citizenship "where his Japanese Army service was coerced upon him and his obedience to the conscription order was not free and voluntary."

The Supreme Court of the United States then decided a landmark case that involved the issue of loss of citizenship. Mitsugi Nishikawa[7] was born in Artesia, California in April 1916. He graduated from the University of California with a degree in engineering. He resided in the United States until August 1939, at which time he went to Japan for further studies. His name was entered in the family register in Japan. In 1940, while in Japan, he submitted to a physical exam as required under the Military Service Law of Japan. On March 1, 1941, having attained the age of twenty years, he was inducted into the Japanese army. Under the Military Service Law, imprisonment was provided for evasion of conscription. He served as a mechanic at various air force bases in China, Indochina, the Philippines, and Manchuria. He was severely beaten by Japanese air force soldiers when he expressed the opinion that Japan had no chance of winning the war. He was discharged in September 1945.

The United States Government contended that Nishikawa had lost his United States citizenship under Section 401(c) of the Nationality Act of 1940 by "entering, or serving in, the armed forces of a foreign state." Chief Justice Earl Warren delivered the opinion of the Supreme Court, holding that Nishikawa did not lose his United States citizenship. He stated that "no conduct results in expatriation unless the conduct is engaged in voluntarily."

Chief Justice Warren held that there should be a strict standard of proof in all expatriation cases. Thus, where a citizen claimant proves his birth in the United States, or acquisition of American citizenship

in some other way, the burden of proof then shifts to the Government when the citizen contends that his loss of citizenship was involuntary. In the *Nishikawa* case the plaintiff stated that he was conscripted in a totalitarian country to whose conscription laws, with their penal sanctions, he was subject. The Government had the burden of persuading the "trier of fact by clear, convincing, and unequivocal evidence that the act showing renunciation of citizenship was voluntarily performed."

Nishikawa was held not to have lost his United States citizenship because the Government had not sustained that burden of proof on the record. Chief Justice Warren conceded that the Government assumed an "onerous" burden of proof in cases in which the basic right of citizenship is contended by the Government to have been lost by the citizen. But whenever the issue of voluntary action is contested by the citizen, the Government must, in each case, prove voluntary conduct by this "onerous" burden of proof, to the effect that the evidence of such conduct is "clear, convincing, and unequivocal." Otherwise the Government is deemed not to have sustained its burden of proof.

Justices Hugo Black and William O. Douglas concurred in the opinion. They stated that Nishikawa's American citizenship was his "constitutional birth right." Congress, therefore, "cannot involuntarily expatriate any citizen." Justices Felix Frankfurter and Harold Burton stated that "where an individual engages in conduct by command of a penal statute of another country to whose laws he is subject, the gravest doubt is cast on the applicability of the normal assumption—that what a person does, he does of his own free will."

CASES INVOLVING VOTING IN A FOREIGN STATE

Many other strandees returned to the United States from Japan after the end of the war with certificates of identity, issued by the American consul in Japan, for trial in the various federal district courts. These strandees were alleged to have lost their United States citizenship in Japan after World War II when Japan was an occupied country. General Douglas MacArthur had been appointed by the President of the United States to be Supreme Commander of Allied Powers of occupied Japan, with supreme authority to establish a new government for Japan and to regulate the defeated people of that country.

When these particular strandees applied for passports to return to the United States, their applications were denied by the American consul under the provisions of Section 401(e) that they had lost their

Six years later the Supreme Court of the United States, in *Nishikawa* vs. *Dulles*,[16] added an additional "onerous" burden upon the Government in United States citizenship cases by including the word "convincing." At the present time any person involved in matters that concern the loss of his citizenship must be attacked by "clear, convincing, and unequivocal" evidence. In most instances, this burden of proof is virtually impossible for the Government to produce.

While there are no statistics as to exactly how many strandees returned to the United States as a result of these decisions, it is safe to say that there were probably over a thousand such persons in Japan at the time the war ended. Many of them reentered the United States with certificates of identity and ultimately regained their citizenship. Several hundred others, by supplying facts related to duress, coercion, or inadvertence and mistake at the time of their questioned acts, were issued passports by the American consuls and departed from Japan for their homes in America.

A small number chose to remain in Japan after the war, with or without their American citizenship. These persons frequently had married, were raising families in Japan, or had obtained some suitable employment that they were reluctant to leave. They had adjusted to life in Japan and chose her as their adopted country.

STRANDEES CONVICTED AS TRAITORS

However, two persons of Japanese ancestry who held dual nationalities lost their American citizenships after being convicted of treason for their actions in Japan during World War II. Tomoya Kawakita and Iva Ikuko Toguri D'Aquino were tried for treason under Article III, Section 3 of the federal Constitution. The punishment upon conviction of treason can be drastic.

> Whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined not less than $10,000; and shall be incapable of holding any office under the United States.[17]

Tomoya Kawakita

Tomoya Kawakita, the son of a wealthy truck farmer and produce merchant, was born in 1921 in Calexico, California. His parents were born in Japan. In 1939, shortly before he turned eighteen, he went to

Japan with his father to visit his grandfather. As a United States citizen, he traveled on an American passport.[18] He remained in Japan after his father returned home, and in March 1941 he entered Meiji University. After completing his schooling in 1943, he placed his name in the family register.[19] In 1944 he obtained employment as an English interpreter with the Oeyama Nickel Industry Co., Ltd., where American prisoners of war were put to work in the mines and factory. He worked there throughout the war, until Japan's surrender.

In December 1945 he decided to return to the United States. He went to the American consul at Yokohama, stated that he was a United States citizen, and was issued a passport. He returned to California in 1946.

On a balmy September day in 1947, a giant department store in the eastern section of Los Angeles was bustling with customers. Sergeant William L. Bruce of Garden Grove, California brushed by a husky short man of Japanese ancestry. Something clicked in Bruce's mind. His memory flashed back to the days, only two short years before, when he was a prisoner of war at the Oeyama mine. Bruce recognized the man as the English interpreter who had mistreated his fellow soldiers. He followed him out of the store and jotted down the license number of his car. He then reported the man and the various acts committed by him to the FBI.

The FBI conducted a careful and intensive investigation of the accusations over the next several months. The information was submitted to the federal grand jury in Los Angeles, and an indictment was handed down, charging Kawakita with the crime of treason on fifteen counts relating to his treatment of the prisoners of war. The period of time covered by the indictment was between August 8, 1944 and August 15, 1945. The original number of fifteen counts was later reduced to thirteen. Kawakita, called "Meatball" by the prisoners of war, went on trial before a jury in a courtroom in Los Angeles presided over by Federal District Judge William C. Mathes.

Kawakita denied any mistreatment of the prisoners of war in the Oeyama mine. He also contended that he had expatriated himself of his American citizenship and offered as evidence the entry of his name in the family register, his change in registration at Meiji University from American to Japanese, his change of residence from California to Japan, his trip to China on a Japanese passport during wartime, and his avowed allegiance to the emperor of Japan. He insisted that he

could not legally be compelled to stand trial as an American citizen for acts committed in Japan.

On September 2, 1948, some twelve weeks later, after eight days of deliberations, the jury found Kawakita guilty on eight counts of treason. It also found that he had not lost his American citizenship. The death sentence was imposed on Kawakita by Judge Mathes.[20]

The Supreme Court of the United States in *Tomoya Kawakita* vs. *U.S.*, by a four to three decision, rejected Kawakita's contentions and upheld both his conviction and death sentence.[21] Justice William O. Douglas, in delivering the opinion of the Court, noted that although Kawakita had entered his name in the family register in Japan in 1943, after the war had ended he had applied for and was issued an American passport in 1945 upon taking an oath of allegiance to the United States. The entry of his name in the family register, said Justice Douglas, was merely a recognition of the Japanese citizenship that Kawakita had acquired at birth. This did not constitute an act of expatriation in spite of his later acts that were consistent with Japanese citizenship.

Justice Douglas held that under the Constitution, the crime of treason contained no territorial limitations. An American citizen living outside the United States who had not effectively expatriated himself under American law could still be guilty of treason. "He cannot turn it into a fair weather citizenship, retaining it for possible contingent benefits but meanwhile playing the part of the traitor. An American citizen owes allegiance to the United States wherever he may reside." Sufficient evidence was also found to show that Kawakita manifested "a long, persistent and continuous course of conduct directed against the American prisoners and going beyond any conceivable duty of an interpreter."

After the death sentence was imposed, Kawakita was remanded into the custody of the United States Marshal and transported to Alcatraz, the federal prison on an island in San Francisco Bay.

On November 2, 1953, President Dwight D. Eisenhower commuted his death sentence to life imprisonment. After almost sixteen years at Alcatraz, President John F. Kennedy, in one of his last official acts, granted Kawakita a presidential pardon on condition that he be returned to Japan and never seek entry into the United States.

Iva Ikuko Toguri D'Aquino

Iva Ikuko Toguri D'Aquino was born in Los Angeles, California on July 4, 1916. She attended public schools in Calexico, San Diego,

4. *William S. Ishikawa* vs. *Acheson*, 8 F.S. 1 (D.C.C.C. Hawaii), August 12, 1949.
5. *Noboru Kato* vs. *Acheson*, 94 F.S. 415 (D.C.S.D. Calif. C.D.), November 14, 1950.
6. *Ozasa* vs. *Acheson*, 94 F.S. 436 (D.C.S.D. Calif. C.D.), November 14, 1950.
7. *Mitsugi Nishikawa* vs. *Dulles*, 356 U.S. 129, March 31, 1958.
8. *Etsuko Arikawa* vs. *Acheson*, 83 F.S. 483 (D.C.S.D. Calif. C.D.), April 4, 1949.
   Miyoko Tsunashima vs. *Acheson*, 83 F.S. 483 (D.C.S.D. Calif. C.D.), April 4, 1949.
   Hatsuye Ouye vs. *Acheson*, 91 F.S. 129 (D.C.D. Hawaii), May 12, 1950.
   Yamamoto vs. *Acheson*, 93 F.S. 346 (D.C.D. Ariz.), June 23, 1950.
   Kuniyuki vs. *Acheson*, 94 F.S. 358, (D.C.W.D. Wash. N.D.), August 24, 1950.
   Haruko Furuno vs. *Acheson*, 94 F.S. 381 (D.C.S.D. Calif. C.D.), November 14, 1950.
   Haruko Kai vs. *Acheson*, 94 F.S. 383 (D.C.S.D. Calif. C.D.), November 14, 1950.
   Harumi Seki vs. *Acheson* and *Yada* vs. *Acheson*, 94 F.S. 438 (D.C.S.D. Calif. C.D.), November 22, 1950.
   Fumi Rokui vs. *Acheson*, 94 F.S. 439 (D.C.S.D. Calif. C.D.), November 22, 1950.
   Fujiko Furusho vs. *Acheson*, 94 F.S. 1021, (D.C.D. Hawaii), January 23, 1951.
   Akio Kuwabara vs. *Acheson*, 96 F.S. 38 (D.C.S.D. Calif. C.D.), March 5, 1951.
   Hichino Uyeno vs. *Acheson*, 96 F.S. 310 (D.C.W.D. Wash. N.D.), March 23, 1951.
   Kikukuro Okumura vs. *Acheson*, 99 F.S. 587, (D.C.D. Hawaii), September 12, 1951.
   Teruo Naito vs. *Acheson*, 106 F.S. 770 (D.C.S.D. Calif. C.D.), July 24, 1952.
   Minoru Furuno vs. *Acheson*, 106 F.S. 775 (D.C.S.D. Calif. C.D.), July 24, 1952.
   Fusae Yamamoto vs. *Dulles*, 16 F.R.D. 195 (D.C.D. Hawaii), September 21, 1954.
9. *Etsuko Arikawa* vs. *Acheson*, 83 F.S. 483 (D.C.S.D. Calif. C.D.), April 4, 1949.
   Miyoko Tsunashima vs. *Acheson*, 83 F.S. 483 (D.C.S.D. Calif. C.D.), April 4, 1949.
   Yamamoto vs. *Acheson*, 93 F.S. 346 (D.C.D. Ariz.), June 23, 1950.
   Haruko Kai vs. *Acheson*, 94 F.S. 383 (D.C.S.D. Calif. C.D.), November 14, 1950.
   Fumi Rokui vs. *Acheson*, 94 F.S. 439 (D.C.S.D. Calif. C.D.), November 22, 1950.
   Fujiko Furusho vs. *Acheson*, 94 F.S. 1021 (D.C.D. Hawaii), January 23, 1951.
10. *Kikukuro Okamura* vs. *Acheson*, 99 F.S. 587 (D.C.D. Hawaii), September 12, 1951.
    Hisao Murata vs. *Acheson*, 99 F.S. 591 (D.C.D. Hawaii), September 12, 1951.
11. U.S. Constitution, 14th Amendment, Sec. 1.
12. U.S. Constitution, Article I, Sec. 8.

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1. 66 Stat 163, June 27, 1952. For a full discussion of this law, see Frank L. Auerbach, *Immigration Laws of the United States* (New York: Bobbs-Merrill, 1955), pp. 17–19.
2. 80th Congress, 1st session, Senate Resolution 137.
3. 81st Congress, 2nd session, Senate Report 1515.
4. 82nd Congress, 2nd session, House of Representatives, House Document 520.
5. Japanese American Citizens League, "To Eliminate Racial Discrimination in Immigration," a brief in support of administration's immigration bill S. 500 and H.R. 2580, 1965, p. 32.
6. 43 Stat 153, May 26, 1924.
7. 1 Stat 153, March 26, 1790.
8. Japanese American Citizens League, op. cit., pp. 8 ff.
9. Ibid.
10. Bill Hosokawa, *Nisei: The Quiet Americans* (New York: William Morrow, 1969), p. 455.

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1. 66 Stat 634, July 15, 1952.
2. 54 Stat 1137, October 14, 1940.
3. *Acheson* vs. *Okimura*, 342 U.S. 899, January 2, 1952.
4. *Nishikawa* vs. *Dulles*, 356 U.S. 129, March 31, 1958.
5. *Dulles* vs. *Katamoto*, 256 F 2d 545 (C.A. 9), June 6, 1958.
   Kiyama vs. *Dulles*, 268 F 2d 110 (C.A. 9), April 27, 1959.
   Yukio Yamamoto vs. *Dulles*, 268 F 2d 111 (C.A. 9), April 27, 1959.
   Kozuki vs. *Dulles*, 268 F 2d 207 (C.A. 9), May 19, 1959.
6. 63 Stat 191, August 16, 1951. Public Law 114, H.R. 400, passed August 16, 1951, had previously provided an expeditious method of restoring citizenship to United States citizens of Italian descent who had voted in the elections in Italy in 1946 and 1949.
7. 68 Stat 495, July 20, 1954.
8. 32 Stat 389, June 17, 1902.
9. 70 Stat 131, May 10, 1956.
10. 70 Stat 513, July 9, 1956.
11. 50 U.S.C.A., Appendix 1984, Section 4(b).
12. Mike Masaoka, "Last Evacuation Claim," *Pacific Citizen*, October 22, 1965, p. 2.
13. 72 Stat 546, August 8, 1958.
14. California Legislature, Assembly Bill No. 941, introduced by Assemblyman Edward Elliott, January 19, 1955.
15. 7 Federal Register 8665, Sumitomo Bank, Ltd., October 23, 1942, Vesting Order No. 162.
    7 Federal Register 8813, Yokohama Specie Bank, Ltd., October 29, 1942, Vesting Order No. 170.
    8 Federal Register 2456, Mitsui Bank, Ltd., February 25, 1943, Vesting Order No. 912.