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October 29, 1942

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42 Broadway
New York City, New York

In re Mrs. Cornelia [redacted]

Dear Mr. McTague:

Judge Bartlett has suggested that I write you directly with reference to the above matter, rather than through him.

I returned to Nevada last week. The case which had been considered by me and to which I referred in our conversation in New York has no application to the instant matter for the reason that in that case the American citizen had married after 1922.

I have given considerable thought to this matter and you will find herewith a memorandum which presents my views.

After completing the same, I find that on August 4,

1939, the Department of Labor issued a circular letter, No. 355, a copy of which I enclose. It will be noted that it holds that an American born woman who married an alien prior to March 2, 1907 and departed the United States is entitled to the benefits of the Act of 1936, as amended. This overrules entirely the decision in the [redacted] case, with which you are familiar.

I have had an interview with the former Naturalization Examiner, and he advises that all Examiners follow the circular implicitly rather than the decisions of the courts. We have therefore determined to make an application to take the oath of allegiance to the United States under Section 317(b) of the Nationality Act of 1940. In this connection, we are required to accompany the application with the following evidence: -

1. Evidence of birth in the United States;
2. Evidence of marriage or marriages;
3. Evidence of the termination of marriage or marriages.

As to the evidence of birth in this country, I have in my possession the certificate from St. Bartholomew's

Church, giving the date of her baptism as May 11, 1882 and her birth as February 1, 1882. It is our opinion that this may be sufficient, but in this connection the instructions to the applicant read:-

> "You must submit with this application proof of your birth in the United States, preferably a civil birth certificate. If a civil birth certificate is not available, you may submit a baptismal certificate if same shows the date and place of your birth, or a sworn affidavit of either of your parents as to the date and place of your birth, or such a sworn affidavit of an older relative or friend who has personal knowledge of the date and place of your birth."

The baptismal certificate in our possession shows the date and place of baptism and the date of birth but does not show the place of birth. Judge Bartlett advises that he has called this matter to your attention and that you are engaged in obtaining an affidavit to supply the deficiency, if there is such. The former Examiner with whom I have conferred states that under the circumstances he would accept the present baptismal certificate as sufficient, but of course would prefer corroborative proof.

As to evidence of marriage, the French decree of divorce from [redacted] recites that the parties contract-

ed the marriage in accordance with the laws of New York on the 14th of January, 1903. This is the only evidence we have and, of course, this is secondary. I would therefore thank you to immediately obtain and send to me by air mail a certified copy of the marriage certificate, if available. We have a certified copy of the marriage certificate issued to Cornelia [redacted] and Reginald [redacted].

The applicant will be required to testify that she did not take any steps to expatriate herself other than by her marriage, and specifically that

(a) she did not apply for or obtain naturalization in any foreign country;

(b) she has not taken an oath of allegiance to any foreign country, and

(c) she never renounced American citizenship by any affirmative act.

Mrs. [redacted] advises that she may truthfully testify to the above.

I think it is important that this application be made prior to the commencement of the contemplated divorce ac-

tion. As you will understand, the jurisdiction of the Nevada courts to grant a decree of divorce is grounded entirely upon the fact that one of the parties is a bona fide resident of the State of Nevada. This will require Mrs. [redacted] to testify that she came to Nevada with the intention of making it her home and residence for at least an indefinite period of time. If the husband should contest the action, he might raise this jurisdictional question by contending that the wife could not acquire a bona fide residence for the reason that her stay in the United States was definitely terminated by the visitor's permit. This, of course, would be completely refuted by the fact that she had made application for restoration to citizenship. I am certain that the District Court will sustain our contention in the event that the action is contested.

As shown in the memorandum, while it is my private view that Mrs. [redacted] should apply for naturalization under subparagraph (a) of Section 317 (717(b) of the United States Code Annotated), I nevertheless feel that if the court shall enter an order authorizing Mrs. [redacted] to take the oath of allegiance that the order may be so

drawn as to constitute a final judgment which would not be subject to collateral attack and which should be sufficient for all purposes.

It can be much more expeditiously handled under 317(b) than under 317(a), as I am advised that under the latter the matter must go through San Francisco and Washington, D. C.

I will be pleased to keep you advised of the progress of this matter.

Very truly yours,

Wm. Woodbridge

WW/aa
Air Mail
Special Delivery
(Enclosure)

P.S. Judge Bartlett has just 'phoned me that he has had a telephone conversation with your Mr. Civiletti, who advises that an affidavit along the lines heretofore suggested, in corroboration of the birth of Mrs. [redacted], is in the mail. All we now need, as before stated, is a certified copy of the marriage certificate issued to Cornelia [redacted] [redacted] and H. L. G. [redacted] on January 14, 1903.

MEMORANDUM OCTOBER 24, 1942

IN RE - Petition for Naturalization of Mrs. Cornelia [redacted]

Mrs. [redacted], whose maiden name was Cornelia [redacted], was born an American citizen. On January 14, 1903, she married H. L. G. [redacted], a British subject and citizen. With him she lived abroad continuously from the date of her marriage until April, 1924, when she obtained a divorce in the civil courts in France. On the 21st day of July, 1924, she was married to Reginald [redacted], a citizen and subject of Great Britain, in London, and lived with him at Biarritz, France, until she and her husband succeeded in getting to America after the fall of France. Both husband and wife entered the United States on visitors' permits. The question is as to her present status; that is, whether she is an alien or a citizen of the United States and if an alien, what procedure is necessary to re-establish her American citizenship.

Mrs. [redacted]'s marriage occurring in 1903 was prior to the Act of Congress of 1907. The 1907 Act, as construed by the Supreme Court of the United States in the case of Mackenzie V. Hare, 239 U. S., 299; 60 L. Ed. 297, provided that a woman citizen of the United States would lose her citizenship by reason of her marriage to an alien whether or not she resided abroad subsequent to such marriage.

The situation of a woman who married an alien prior to 1907 has been the subject of a good deal of discussion in the lower Federal courts and there is a considerable conflict of authority.

There are three positions taken by the lower Federal courts:

1. That marriage to an alien prior to 1907 would not result in a loss of citizenship even though the wife lived abroad with her husband. This position is illustrated by a petition of Zogbaum, 32 Fed.(2d) 911, District Court District of South Dakota, 1929, wherein the court followed an early decision of the United States Supreme Court in Shanks v. DuPont, 3 Peters 242; 7 L. Ed. 666, wherein it was apparently held that the marriage of a native born woman with an alien produced no dissolution of the native allegiance of the wife. The court held in that case that the marriage of a native born woman affected her civil rights but not her political status. It is to be noted, however, that in that case the court did hold that if the wife continued to reside with her husband, who at that time was an enemy alien, her allegiance to the United States was thereby dissolved and her citizenship lost. The facts in the DuPont case are not particularly appropriate to situations arising in later cases since the Government of the United States was at the time of the marriage at war with Great Britain and the husband was a subject of Great Britain and a soldier in its army.

2. A second view of the courts is that a native born woman lost her citizenship by reason of marriage to an alien only if she resided with her husband abroad. This is a view taken by the District Court of the United States in Pennsylvania in the case of In re Wright, 19 F. S., 224, 1937.

3. The third view of the lower Federal courts is that as illustrated in the cases of In re Krausmann, 28 Fed. (2d) 1004, District Court, Eastern District of Michigan, 1928 and In re Wohlgemuth, 35 Fed. (2d) 1007, District Court, Western District of Michigan, 1929. In both of these cases, it was held that the 1907 Act, under which a native born woman lost her citizenship by reason of marriage to an alien regardless of residence, was merely declaratory of the common law existing prior to the date of its enactment and held that prior to 1907 a native born American woman lost her citizenship by reason of marriage to an alien even though she continued to live in the United States subsequent to such marriage. Their reasoning is based upon the language of the Supreme Court of the United States used in the case of Mackenzie v. Hare, supra, wherein the Supreme Court says that the identity of husband and wife is an ancient principle of our jurisprudence, which is neither accidental or arbitrary and that this relationship and unity is a matter of public concern which in many instances merges their identity and gives dominance to the husband. The court says that this identity has purpose, if

not necessity in purely domestic policy and that it has greater purpose and necessity in international policy and that the Act of 1907 merely confirmed this identity of husband and wife for the purpose of citizenship.

The higher courts of the United States - that is, the Circuit Courts of Appeal and the Supreme Court - never resolved the conflict between these three viewpoints since the Act of 1907 made the question almost moot. However, the view taken by the Michigan courts in 3 above would seem to be the better rule of law and would seem to be supported by the better authorities. In other words, our opinion would be that a native born American woman, who married an alien prior to the Act of 1907, lost her American citizenship whether or not she resided abroad.

If this be true, then paragraph (a) of Section 717 of Title 8, U.S.C.A. is clarified since the affirmative act referred to in that section must be an affirmative act other than mere residence abroad and must consist of either an express renunciation of American citizenship or the taking of an oath of allegiance to the foreign nation. Subdivision (b) of Section 717 is likewise clarified and the affirmative act must be an act other than residence abroad with her husband, as stated above.

The 1907 Act contained a saving clause providing that it should not restore citizenship previously lost or make an alien out of one who had not previously lost citizenship by

reason of marriage. The Act of September 22, 1922 likewise contains such a saving clause and did not attempt to restore citizenship to a woman who had lost it under the 1907 Act or prior thereto.

Mrs. [redacted] was, therefore, at the time of her divorce from her first husband and at the time of her marriage to her second husband, a citizen and subject of Great Britain and would at that time have been entitled to naturalization under the laws of the United States. Her status as a citizen and subject of Great Britain was not changed by her marriage in 1924 to another subject of Great Britain and she remained an alien who had lost her citizenship by reason of marriage prior to 1907. The consequence of her second marriage subsequent to the Act of September 22, 1922, was not to bring her within the provisions of that act since the saving clause contained in that act prevented any restoration of American citizenship previously lost by reason of marriage.

Although her marital status with respect to her first alien husband has been terminated, her second marriage was also a marriage to an alien at a time when she was an alien and her marital status with respect to her second marriage has not been terminated. Therefore, the provisions of subdivision (b) of Section 717 have no application to Mrs. [redacted]'s situation, and she would not be entitled to regain her citizenship merely by

taking the oath of allegiance prescribed by Section 735 of the Nationality Act of 1940. Only upon the termination of her married status with the alien to whom she is now married would she be entitled to take such oath, since, as pointed out before, at the time she married her second husband it was not a case of a native born American citizen marrying an alien but was a case of an alien marrying an alien. Mrs. [redacted] must, therefore, proceed under sub-division (a) of Section 717 of Title 8, U.S.C.A. and may file a petition for naturalization in any court having naturalization jurisdiction regardless of her residence and no declaration of intention and no certificate of arrival are required. Such a petition may be heard at any time after its filing if there be attached to it at the time of filing a certificate from a naturalization examiner, stating that the petitioner has appeared before such examiner for examination. From and after naturalization granted under the provisions of sub-division (a), Mrs. [redacted] would have the same status as that which she had prior to her marriage in 1903.

U. S. DEPARTMENT OF LABOR
Immigration and Naturalization Service
WASHINGTON

20/154

CIRCULAR LETTER NO. 355 August 4, 1939

TO ALL DISTRICTS,
IMMIGRATION AND NATURALIZATION SERVICE:

This Department has concurred in a ruling by the Department of State on the following three questions which have arisen in the administration of the act of June 25, 1936 (49 Stat. 1917), relating to the repatriation of native-born citizen women who have lost their United States citizenship solely by reason of their marriage prior to September 22, 1922, to aliens, and whose marital status with such aliens has, or shall have, terminated.

1. Whether the term "native-born citizen" as used in the Act is applicable to women born abroad of American parents who acquired at birth citizenship of the United States under Section 1993 of the Revised Statutes of the United States.

2. Whether an American-born woman who married an alien prior to March 2, 1907, and departed the United States is entitled to the benefits of the act.

3. Whether an American woman who lost her American citizenship by reason of her marriage prior to September 22, 1922, to an alien ineligible to citizenship is entitled to the benefits of the Act.

The pertinent portion of the act in question reads as follows:

> "That hereafter a woman, being a native-born citizen, who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, and whose marital status with such alien has or shall have terminated * * *."

The conclusion has been reached that each of these questions should be answered in the affirmative.

(Signed) JAMES L. HOUGHTELING
Commissioner

Index Under: Citizenship - Women Repatriation Marriage Act of June 25, 1936	Clarification of the repatriation status under the Act of June 25, 1936 (49 Stat. 1917), of a woman, native-born citizen of the U. S., who has lost her U. S. citizenship solely by reason of her marriage to an alien prior to Sept. 22, 1922, and whose marital status with such alien has terminated.