4 I. & N. Dec. 217 (BIA), Interim Decision 223, 1950 WL 6646

United States Department of Justice

Board of Immigration Appeals

IN THE MATTER OF G----- P-----

In EXCLUSION Proceedings

A-7828235

Decided by Central Office December 28, 1950

****1 *217 Status-Immigrant or nonimmigrant-Section 3 of the Immigration Act of 1924-Test as to whether a temporary visitor for business.**

An alien who, while continuing to reside in Mexico, comes across the border almost daily to pick up scrap paper here for which he pays, and who returns on the same day to Mexico where he sells the scrap paper, earning his living by such transaction, may be found under the circumstances in this case to be admissible as a nonimmigrant, i. e., a temporary visitor for business, within the meaning of section 3 (2) of the Immigration Act of 1924.

EXCLUDED BY BOARD OF SPECIAL INQUIRY:
Act of 1924-No immigration visa.

BEFORE THE CENTRAL OFFICE

Discussion: The appellant, a native and citizen of Mexico, applied for temporary admission to the United States, as a section 3 (2) nonimmigrant visitor for business. On the basis of a record of a hearing conducted by a board of special inquiry at El Paso, Tex., on July 15, 1950, the board found the appellant to be a nonquota immigrant, and ordered his exclusion on the ground that he was not in possession of an immigration visa. From that order he takes this appeal. The district adjudication officer, in the capacity of acting district director, recommended that the appeal be sustained. However, he stated no reasons or grounds for the dissent from the action taken by the board of special inquiry. Counsel for the alien filed a brief.

The appellant, who resides in Juarez, Mexico, is the operator of a truck, daily except Sunday. He drives from Juarez to El Paso, Tex., every morning to buy paper scrap from the persons who have control over the material in various stores, such as the Popular Dry Goods Co. and El Paso Newspaper Binding Corp., also other stores and business places. He pays for the privilege of having the material gathered and saved for him. The appellant assists in loading the truck. When the truck is loaded, the appellant drives it to Juarez, paying customs duty to the Mexican authorities while en route. He exhibited receipts showing that he had paid such import duty on at least two occasions, also receipts for money he had received from various janitors ***218** in El Paso for scrap paper he had purchased. Upon arriving in Juarez, the appellant sells the paper scrap to one T----- L----- who sorts, bales, and ships the scrap to a paper company in Chihuahua, where it is ground up and used over again. The money the appellant receives constitutes his sole income, which he estimated to be about 200 pesos a week. He has engaged in this pursuit for the past year, and apparently intends to so continue indefinitely.

The appellant does not own the truck he operates. It belongs to one S----- N-----, who permits the appellant to use the truck in the hope that the latter will eventually purchase it. The department of sanitation in the city of El Paso recently decided to require garbage haulers to be licensed, but so far the appellant has not been required to procure a license.

**2 About 7 o'clock on the morning of July 1, 1950, while proceeding on his way to El Paso, the appellant was stopped by an inspector of this Service at the Santa Fe Street Bridge. After questioning the appellant, the inspector took away the appellant's border-crossing card. When the appellant later called to get the document he was held on July 15, 1950, for a hearing before a board of special inquiry regarding his right of entry on that date.

The issue presented is whether the appellant may properly be regarded under the circumstances as qualified for admission to the United States under section 3 (2) of the Immigration Act of 1924 (8 U. S. C. 203), as a temporary visitor for business.

At the outset, it is to be observed that the applicant is a sole proprietor. If it be found that his activity partakes of the commercial character which qualifies him as a visitor for "business," the incidental manual labor which he performs would not adversely affect his status in that respect. A native of Mexico, who bought green peppers in Mexico, and brought this commodity to the United States by truck, thereafter making deliveries to this country, performing the incidental manual labor as a sole operator, was not thereby removed from the category of a visitor for "business": *Matter of G-----,* A-7182159 (July 1, 1949, C. O.). In that determination reliance was had upon earlier administrative rulings that employees of truck operators, as well as the latter, who entered the United States for the purpose of loading or unloading commodities in this country, are admissible as visitors for "business." (*Matter of D-----,* 55976/55 (1937 B. R.); Central Office letter, February 12, 1948, file 56036/739). [a1]

We confront no difficulty in this case, therefore, upon the score that the applicant's activity, as an incident to his operation as a sole *219 proprietor, may involve manual labor. It is not the manual labor performed which is compensated; it is the purchase, collection, and eventual sale of used paper stocks which affords the applicant a revenue.

The immediate question, then, is twofold: (1) whether applicant's activity may properly be regarded as intercourse of a commercial character in the international field, and (2) if so, is it of a "temporary" nature within the meaning and intent of section 3 (2) of the Immigration Act of 1924.

It is believed that an affirmative finding is required in both respects.

(1) *Applicant's activity qualifies him as a visitor for "business."* The activity of the applicant seems to be within the limited definition of "business" as stated by the Supreme Court in 1929 in *Karnuth et al.* v. *United States ex rel. Albro,* 279 U. S. 231, 241; namely, that the term "business" as used in section 3 (2) is limited in application to intercourse of a commercial character: *Matter of M-----,* 2, I. & N. Dec. 240, 241 (January 19, 1945, B. I. A.).

By regulation, this concept has been somewhat broadened. 22 C. F. R. 42.134 (d) provides, in pertinent part, as follows:

**3 The term "business" is construed as including not only intercourse of a commercial character but also any other legitimate activity of a temporary nature classifiable within the ordinary meaning of the term "business," but not classifiable as pleasure or labor.

It has already been observed that the appellant's activity is more and other than manual labor, and it seems proper to regard the buying and collecting of refuse paper as "business" within the foregoing regulation.

It is not perceived why the purchase and sale of this commodity should be viewed differently than engaging in the sale of fish and fruit (*Matter of S-----,* A-7118993 (1949 C. O.)); green peppers (*Matter of G-----* above); bananas (*Matter of N----- Y-----,* A-6149811 (1947 C. O.)); general merchandise (*Matter of McC-----,* A-7134304 (1949 C. O.)); advertising (*Matter of S-----,* A-6877300 (1948 C. O.)); potatoes (*Matter of C-----,* A-6811403 (December 15, 1948, 3, I. & N. Dec. 407)); hay (*Matter of H-----,* A-7142296 (June 17, 1949, B. I. A.)); (*Matter of G-----,* A-7142287 (June 22, 1949, B. I. A.)); or engaging in customs brokerage (*Matter of A-----,* A-7176002 (July 28, 1949, B. I. A.)); exhibiting moving pictures (*Matter of H-----,* A-5960372 (July

26, 1949, B. I. A.)), all of which, as indicated, have been found to constitute "business" within section 3 (2) of the Immigration Act of 1924.

(2) *The nature of the applicant's "business" is such as to render him a temporary visitor for "business."* This consideration has apparently presented the principal source of confusion in this case. The applicant ***220** has been engaged in almost daily trips to the United States from Mexico for a period of a year, and plans to continue to do so indefinitely. Does this necessarily deprive him of the status of a "temporary visitor"? We think not.

There is no indication that the applicant intends to abandon his residence in Mexico or sever his connection with his domicile there. His close and immediate family ties remain in Mexico. He returns thereto nightly. With respect to the individual or separable entries of the applicant into the United States in pursuit of his business, there remains no question concerning the temporary character of each. There is no showing that the applicant has ever sought, or has reason to seek, to enter the United States for permanent residence. The showing is complete that the applicant, following each temporary entry, returns to Mexico within the allotted time, and indeed, must do so in order to pursue his business activity.

These considerations are material because, by regulation, 22 C. F. R. 42.135 (a) and (b), entitled "Evidence of temporary-visitor status," the factors noted are stressed as significant in determining whether the visitor's status may be regarded as "temporary."

But not only is the applicant's presence in the United States not required for any continuous extended periods, it also seems clear that the actual profits of his transactions accrue in his native country and not in the United States. In this sense, it may not be found that the alien is principally engaged in business in the United States; his business partakes essentially of an international character, with its principal situs or base in Mexico and not the United States. Hence, in this respect, it is to be observed, he is not engaging in a business consummated in this country in competition with our citizens under the guise of being an alien visitor.

****4** The two foregoing aspects of the present case, it is believed, bring it in line with prior administrative rulings noted above, and also distinguish it from those instances where an opposite conclusion has been reached.

Where a Mexican national was found admissible to pursue the selling of green peppers in the United States, at frequent intervals, seasonably, the continuing character of this activity was held not to deprive the applicant of the status of a temporary visitor, *Matter of G-----,* above, since "the major portion of his time is not spent in the United States nor his major source of income earned in the United States."

In the *S-----* (A-6877300) case, above, the sales representative of a Canadian advertising firm, established 6 years, was admitted as a temporary visitor for business to solicit accounts of long standing which would continue indefinitely in the future. In other words, the business, as to duration, was not temporary.

***221** In the *McC-----* (A-7134304) case, above, a Candian national, as the proprietor of a general trucking business, who entered the United States to unload fish, which he had been doing for eight years, and proposed to continue, was found to be qualified as a temporary visitor, the determining consideration being, that with respect to each day's entry, a relatively short part of the working day was spent in the United States. Hence, it was concluded, as seems to follow in the present instance, "the transaction was of a temporary character."

In the *S-----* (A-7118993) case, above, the business activity by a Canadian firm operating 11 trucks comprised the sale of Canadianbought fish in New York with return loads of fruit bought in New York, at twice weekly intervals. The continuing or "permanent" character of this activity did not render the truck operators other than temporary visitors for business.

The *N----- Y-----* (A-6149811) case, above, involved a Mexican national engaged as sales agent for a Mexican banana exporting firm, who entered frequently for 60-day periods to work with an American company to whom his firm sold bananas, the arrangement having existed for two years, and was expected to continue. The agent had a telephone listing in Texas; he

maintained hotel accommodations there on an annual basis. His temporary visitor status was recognized on the ground that no intention was shown on his part to abandon his residence in Mexico or sever his domicile there.

The Mexican national, in *Matter of C-----,* above, was a trucker and peddler by occupation, who, seasonably, bought potatoes in Colorado for resale in Mexico. He had entered on some 20 occasions within a brief period before the decision was made, and expected to so continue thereafter, if permitted. He was held to be admissible as a temporary visitor for business.

The Mexican customs broker in the *A-----* (A-7176002) case, above, had subleased part of an office in the United States, displayed his business association on the window, kept office equipment there, in connection with spending several hours a day in the United States as a convenience to shippers in connection with exportation of United States goods to Mexico. He maintained his principal place of business as a licensed Mexican customs broker in Mexico, where he and his wife and children were domiciled. This was held to comport with the status of a temporary visitor for business.

****5** To sum up, it will be observed that there are present in all of these cases three significant considerations heretofore stressed in respect of the present case: (1) There is a clear intent on the part of the alien applicant to continue the foreign residence and not abandon the existing domicile; (2) the principal place of business, and the actual place of eventual accrual of profits, at least predominantly, remains in the foreign country; (3) while the business activity itself need not be ***222** temporary, and indeed, may be long continued, the various entries into the United States made in the course thereof must individually or separately be of a plainly temporary nature, in keeping with the existence of the two preceding considerations.

Contrasted with those instances where the foregoing elements are present may be noted the three following cases. In *Matter of C-----,* A-6022743 (December 16, 1944 B. I. A.) the status of a temporary visitor for "business" was refused to a magazine dealer who, for a period of 10 years on several days a week, brought in foreign magazines to deliver and sell in the United States, such activity apparently being a major source of his income. It is to be noted that here the accrual of revenue occurred in the United States, and some portion of the business in this country partook of the nature of a local vendor, having no relation to international trade.

Of a similar nature was the case of an alien whose business pursuit in this country comprised both the buying and selling of limes in the United States; he was held not to be a temporary visitor for business, *Matter of G-----,* 56107/744 (October 9, 1942 B. I. A.).

A dancer, a citizen of Canada, seeking to enter the United States under a six-months' contract, after having completed 4 weeks under such contract in the United States, was found to be engaged in work which is "of a permanent rather than a temporary character": *Matter of M-----,* 2, I. & N. Dec. 240, above. Here, the first consideration noted was at issue; namely, the applicant's alleged "business" activity in the United States involved a severance of foreign domicile over extended periods, and the continuance of foreign residence was not necessary, or perhaps even probable, in the furtherance of the applicant's dancing career in the United States.

Consistent with the determinations which have heretofore been made, therefore, it is concluded that the applicant is qualified for admission to the United States as a temporary visitor for business under section 3 (2) of the Immigration Act of 1924, and accordingly the appeal will be sustained.

Order: It is ordered that the appeal be sustained and the alien admitted as a temporary visitor for business for periods not exceeding 24 hours at any one time.

Footnotes

a1 *Editor's note.*-Cf. as to contract labor feature, *Matter of R-----,* A-7177141, B. I. A., September 29, 1949 (Int. Dec. #97). Also, as to status, see *Matter of L-----,* A-7367939, B. I. A., April 10, 1950 (Int. Dec. #139) (telegraph operator), and *Matter of M-----,* A-6751981, C. O. September 16, 1947 (Int. Dec. #5) (domestic).

4 I. & N. Dec. 217 (BIA), Interim Decision 223, 1950 WL 6646