4 I. & N. Dec. 684 (BIA), Interim Decision 378, 1952 WL 7298

United States Department of Justice

Board of Immigration Appeals

IN THE MATTER OF P-----

In DEPORTATION Proceedings

A-6401882

Decided by Board July 22, 1952

****1 *684 Evidence, admission of unsigned statement-8 C. F. R. 151.3 (b)-8 C. F. R. 150.1 (c)-Warrant of arrest-sufficiency of charge-Immigration visa-materiality of false statement-false statement as to marital status.**

(1) A statement made by an alien in a preliminary investigation that was not offered for signature (8 C. F. R. 150.1 (c)) is nevertheless properly admissible in evidence at the deportation hearing under a regulation which permits hearing officer to enter of record any written or recorded statement or satisfactory evidence of any admission made by the alien (8 C. F. R. 151.3 (b)) (cf. 1, I. & N. Dec. 408).

(2) A charge set forth in the warrant of arrest is sufficient, if it follows the language of the statute.

(3) A willful failure to disclose true marital status, in connection with application for a nonquota immigration visa, the issuance of which was dependent upon such status, is material, so as to invalidate visa as one procured by fraud or misrepresentation. (cf. 2, I. & N. Dec. 206.)

CHARGES:
Warrant: Act of 1924-Not a nonquota immigrant as specified in visa.
Act of 1924-Visa procured by fraud or misrepresentation.

BEFORE THE BOARD

Discussion: This case is before us on appeal from a decision of the Assistant Commissioner dated February 13, 1952, directing that the alien be deported.

The respondent is a 30-year-old married male, native and citizen of Italy, who arrived in the United States on August 19, 1946. He was excluded on the ground that he was a quota immigrant and not a nonquota immigrant as specified in his visa. This was because he was almost 25 years of age at that time. On appeal, it was determined that his failure to come to the United States while under 21 years of age was due to the war. His appeal was sustained and he was admitted for permanent residence on September 5, 1946.

The respondent's application for a nonquota immigration visa contains the statement that he was then single. There was attached to ***685** the visa a certificate issued by the Italian authorities dated May 6, 1946, to the effect that the respondent was then unmarried. At the hearing before a board of special inquiry on August 23, 1946, the respondent had testified that he was single. Actually, the respondent had been married in Italy on June 13, 1943, and one child was born of the marriage. This marriage has not terminated. In a sworn statement of August 9, 1949, the respondent admitted that when he applied for his immigration visa on June 27, 1946, he stated to the American consular officer that he was single and that he made this statement because he knew that a visa would not have been granted to him if the consular officer had known that he was married. At the hearing on January 30, 1951, under the immigration warrant of arrest, the respondent testified that he was not asked by the American consular officer whether he was married or single; that he was confused and did not understand the question when he testified before the board of special inquiry on August 23, 1946, that he was single; and that he did not remember testifying on August 9, 1949, that he had stated to the American consular officer that he was single and that his reason for doing so was that he knew that otherwise he would not have received an immigration visa.

****2** When counsel was heard on April 22, 1952, he did not advance any additional argument but requested that the case be considered on the basis of the exceptions which he had previously submitted to the Commissioner. His first exception is that

the transcript of the respondent's testimony on August 9, 1949, was improperly received in evidence because the officer taking the statement did not request the respondent to sign it. The transcript shows that the investigating officer identified himself; that the alien was informed that any statements made should be voluntary; and that the alien was warned that such statements might be used against him. He was also permitted to have a friend present while the statement was made. The officer who questioned the respondent on August 9, 1949, was called as a witness at the hearing on January 30, 1951, and testified that he conducted the examination on August 9, 1949, but that he did not have any independent recollection as to whether he did or did not request the respondent to sign the statement. The respondent testified that he does not remember making some of the statements appearing in the transcript of testimony but he had not denied making such statements. There is nothing to indicate that the respondent and his counsel raise any question that the transcript of testimony dated August 9, 1949, does not accurately set forth the respondent's testimony at that time.

The applicable regulation relating to the conduct of deportation hearings (8 C. F. R. 151.3 (b)) provides that the hearing officer may ***686** enter of record any written or recorded statement or satisfactory evidence of any admission made by the alien, and there is no requirement in that section that such statement must have been signed by the alien. If the respondent had been asked to sign the statement, he would not now be in any better position, whether he had signed it or refused to sign it. While it is true that the regulations provide that the investigating officer shall ask the person interrogated to sign the statement, we fail to perceive how the respondent was in any way prejudiced because of this. We conclude that there was no error in admitting this statement in evidence and that it is to be weighed against the other testimony of the respondent.

Counsel's second and third exceptions are to the effect that section 13 of the Immigration Act of 1924 does not specifically provide that an immigration visa procured by fraud or misrepresentation is invalid; that section 14 of the same act does not specifically provide for the deportation of a person whose visa was procured by fraud or misrepresentation; and that the immigration warrant of arrest was improperly admitted into evidence because it does not set forth the statute violated. The warrant of arrest contains a specific statement that both the charges are based on the Immigration Act of May 26, 1924. Sections 13 (a) and 14 are the particular sections involved. The first charge follows the language of section 13 (a) (3). With respect to the second charge, section 14 of the act of May 26, 1924, provides for the deportation of any alien who at any time after entering the United States is found to have been at the time of entry not entitled under that act to enter the United States. The second charge in the warrant of arrest is phrased in the language of section 14, and the addition of the statement "for the reason that the immigration visa which he presented was not valid because procured by fraud or misrepresentation" is merely for the purpose of informing the alien, with greater particularity, as to the exact basis of the charge against him. We find no merit, therefore, in these exceptions of counsel.

****3** Counsel has cited *Matter of R-----,* 56071/174, 1, I. & N. Dec. 118, decided June 13, 1941. That case arose in preexamination proceedings and involved the question of whether the alien was inadmissible under the Immigration Act of 1917 as one who admitted the commission of a crime involving moral turpitude; namely, fraud. We held that he was not inadmissible on that ground because there is no statute which defines fraud, of itself, as a crime. This case has no application to the respondent's case since he is not charged with being deportable under the Immigration Act of 1917, and there is no question involved as to whether he admits the commission of a crime involving moral turpitude.

***687** Counsel's remaining exceptions do not require extended discussion. We see no error in admitting in evidence the respondent's immigration visa since he had identified his signature and photograph appearing thereon. Counsel also took exception to the hearing officer's denial of his request for adjournment of the hearing. He had requested this adjournment because he desired to attempt to secure information from the Department of State or from the files of the Immigration and Naturalization Service relating to an application for immigration visa allegedly made by the respondent about 1939 or 1940. Assuming that this evidence is available and could be produced, we fail to perceive how such evidence could possibly assist the respondent in establishing that he is not amenable to deportation. We are satisfied, therefore, that the request for an adjournment of the hearing was properly denied.

It is not disputed that the respondent was married in Italy in 1943; that the marriage has not terminated; and that the respondent was a married person at the time he applied for admission to the United States on August 19, 1946. Section 4 (a) of the Immigration Act of 1924 provides in part that a nonquota immigrant means an immigrant who is the unmarried child under 21 years of age of a citizen of the United States; section 13 (a) (3) of that act expressly provides for the exclusion of an alien who is not a nonquota immigrant if specified in the visa of his immigration visa as such; and section 14 provides for the deportation of any alien who was not entitled under that act to enter the United States. Since the alien was not entitled to nonquota status, he was excludable at the time of entry because he did not present a quota immigration visa. Under these provisions of law, the respondent is clearly deportable on the first charge stated in the warrant of arrest.

The respondent admitted in his statement of August 9, 1949, that when he applied for his immigration visa on June 27, 1946, he stated to the consular officer that he was single and that he made this statement because he knew that a visa would not have been granted to him if the consular officer had known that he was then married. The fact that the respondent was well aware that he would have had difficulty in entering the United States, if he had revealed to the American consular officer that he was married, is corroborated by his statement to the board of special inquiry on August 23, 1946, that he was single and by

his affirmative answer to a question of his counsel at the hearing on January 30, 1951, which question was whether he knew in 1946 that married children over 21 years of age were not entitled to nonquota visas. In addition, the respondent submitted to the American consular officer a certificate that he was not married. In view of these circumstances, we do not place any credence in the respondent's present ***688** claim that he was not asked by the consular officer whether he was married or single.

****4** Even disregarding the testimony of August 9, 1949, we would find it necessary to hold, as we did in *Matter of C-----,* A-3257468, decided January 11, 1950, that the respondent's failure to reveal his true marital status to the American consular officer, at the time he applied for his immigration visa in 1946, amounted to misrepresentation in the procurement of the visa since his marital status was material to his eligibility as a nonquota immigrant. We, therefore, conclude that the second charge stated in the warrant of arrest is also sustained and will dismiss the appeal.

Order: It is ordered that the appeal be and the same is hereby dismissed.

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