IN THE MATTER OF G——

In EXCLUSION Proceedings

1403–17906

Decided by Board April 9, 1953

Polygamy, 1917 Act—Visa procured by fraud and misrepresentation, 1924 Act.

(1) In order to sustain a charge under section 3 of the Immigration Act of 1917 that the individual is a polygamist, it must be shown that the alien subscribes to the historical custom or religious practice called "polygamy." It is not sufficient that an alien should, in fact, have had more than one spouse at a given time by virtue of a second marriage undertaken without benefit of divorce. In immigration law, the terms "bigamy" and "polygamy" are neither synonymous nor interchangeable.

(2) The fact that an applicant for an immigration visa failed to volunteer information in addition to that requested in the visa application does not establish a conscious concealment or fraud and misrepresentation.

EXCLUDED:

Act of 1917—Polygamists (both aliens).
Act of 1917—Admits crime prior to entry—Bigamy (female).
Act of 1924—Visas invalid as procured by fraud and misrepresentation (both aliens).
Act of 1924—No immigration visa (female alien).
Executive Order 8766—No passports (both aliens).

BEFORE THE BOARD

Discussion: These cases are before us on certification of the Assistant Commissioner dated September 12, 1952, affirming the excluding decision of the board of special inquiry. Appellant L—— R—— de V—— and appellant C—— V—— G—— sought admission to the United States at Laredo, Texas, on April 2, 1952. Appellant L—— was allegedly returning to a domicile in this country, while appellant C—— sought permission to enter the United States to reside permanently with his wife, appellant L——. Both appellants are natives and citizens of Mexico; appellant L—— is 53 years old and appellant C—— is 51 years old.

According to the record, appellants were married in Houston, Tex., in 1920 and lived as husband and wife in that state until

1931. Appellants then lived as husband and wife in Mexico from 1931 to 1935 or 1936, when appellant C—— left his wife for an unknown destination. Between this latter date and 1942, appellant L—— said that she occasionally heard from her husband by letter, although she really had little knowledge of his activities. Both appellants agree that their marriage has never been terminated by divorce.

On March 8, 1940, appellant L—— went through a marriage ceremony with T—— G—— M—— in Nuevo Laredo, Tamaulipas, Mexico. They lived together as husband and wife in Mexico for a little more than 2½ years. On November 17, 1942, appellant L—— applied at the American consulate at Nuevo Laredo for and was issued a nonquota immigration visa (section 4 (c), act of 1924) as a Mexican. She was listed as the wife of T—— G——, a native of Mexico. The following day, appellant L—— was admitted to the United States for permanent residence upon presentation of this visa. On that occasion, she was accompanied by her new "husband." Appellant L—— and T—— G—— lived together as husband and wife in Texas from 1942 to 1947, when the latter left appellant L——, who said that she has only heard indirectly of the second husband's whereabouts since that time.

On November 20, 1942, appellant C—— married A—— E—— in Comales, Tamaulipas, Mexico. They lived together in Mexico until the latter's death in 1948 or 1949. On April 2, 1952, appellant C—— applied for a nonquota immigration visa at the American consulate. Having recently been in touch with appellant L—— by letter, appellant C—— stated in his application that he was coming to join his wife, appellant L——. Although appellant C—— did not reveal the complications in his marital status during the past 16 or 17 years, appellant C—— was not specifically asked any questions relating to these facts in the application.

The initial ground of exclusion arose under section 3 of the act of 1917. The pertinent provision of the statute reads as follows:

> The following classes of aliens shall be excluded from admission into the United States:
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> * * * polygamists, or persons who practice polygamy or believe in or advocate the practice of polygamy, * * * (8 U. S. C. 136 (f)).

According to the legislative history of the 1917 act (H. R. 10384, 64th Cong.),[1] the words "polygamists" and "polygamy" refer to the historical custom and religious practice, which the Mormons had typified in this country[2] until the statutory abolition of

[1] The polygamy clause was derived from sec. 3 of H. R. 6060, 63d Cong., 3d sess. (1914).

[2] Congressional Record, vol. 52, pt. 1, pp. 808, 809, 810, 811.

polygamy in the latter part of the 19th century.[3] Prior to 1882, the practice of polygamy (plurality of wives [4]) was a recognized Mormon custom and a requirement of their religious belief, with disobedience being severely penalized under Mormon Church rules. In *Reynolds* v. *United States*, 98 U. S. 145, 25 L. Ed. 244 (1879), the Court stated:

> Polygamy has always been odious among the northern and western nations of Europe and until the establishment of the Mormon Church was almost exclusively a feature of the life of Asiatic and African people * * * from the earliest history of England polygamy has been treated as an offense against society. * * *
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> From that day (December 8, 1788) to this we think it may safely be said that there never has been a time in any State of the Union when polygamy has not been an offense against society, cognizable by the civil courts and punishable with more or less severity. In the face of all this evidence, it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. * * *
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> In our opinion the statute immediately under consideration (R. S. 5352, defining crime of bigamy for United States Territories) is within the legislative power of Congress. It is constitutional and valid as prescribing a rule of action for all those residing in the Territories, and in places over which the United States have exclusive control. This being so, the only question which remains is, whether those who make polygamy a part of their religion are excepted from the operation of the statute. * * * Laws are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinions, they may with practices. * * *
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> So here, as a law of the organization of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed (pp. 165, 166).

Therefore, in order to sustain this charge in the present case, it must be shown that an alien subscribes to the historical custom or religious practice called "polygamy." It is not sufficient that an alien should in fact have had more than one spouse at a given time, by virtue of a second marriage undertaken without benefit of divorce.[5]

During the hearing, appellant C—— stated that he did not know the definition of polygamy; had never before heard the word; and did not believe in having plural wives. Appellant L—— was not questioned about her knowledge of the custom of polygamy or her belief in this practice. The term "polygamy" was

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[3] By the act of July 1, 1862 (R. S. 5352), the crime of bigamy was defined for the Territories of the United States. R. S. 5352 was amended by the act of March 22, 1822, to make polygamy a crime in the Territories. *Reynolds* v. *United States*, (*supra*); *Murphy* v. *Ramsey*, 114 U. S. 15, (1885).

[4] Cf., *Cannon* v. *United States*, 116 U. S. 55 (1885); *Snow* v. *United States*, 118 U. S. 346 (1886).

[5] In immigration law, the terms "bigamy" and "polygamy" are neither synonymous nor interchangeable.

mentioned to her only once in a question, in which it was used incorrectly as a synonym for bigamy. Hence, it is clear that neither appellant subscribes to the custom or practice of polygamy; nor has it been established that they are polygamists. This ground of exclusion is not sustained.

The second ground of exclusion is that appellant L—— admitted the commission of the crime of bigamy in Texas prior to entry (sec. 3, act of 1917). Appellant L—— said that she did not know that she had committed a crime or was guilty of any wrongdoing when she married T—— G—— and then lived as his wife in Mexico and Texas. In addition, section 490a was not explained to appellant L— and the record indicates that she did not clearly understand the import of this statute.

During the hearing, counsel concedes that appellant L—— was guilty of bigamy, by virtue of the provisions of section 490a of Vernon's Penal Code of Texas, 1952,[6] when she and her second husband lived together as husband and wife in that State after their bigamous marriage in Mexico. However, appellant L—— was not asked whether she admitted the crime and counsel could not bind her by his concession of guilt. Hence, the record clearly reveals that the requirements of a valid admission, set out in *Matter of J——*, 56038/559, 2, I. & N. Dec. 285 (Sol. Gen., 1945), have not been fulfilled. For this reason, this ground of exclusion is not sustained.

The third ground of exclusion is that the visas presented by appellants are invalid, because they were procured by fraud and misrepresentation (sec. 13 (a), 14, act of 1924). In the case of appellant C——, the nonquota visa application question asked if he was married and he said yes. The board of special inquiry held that appellant C——'s failure to disclose his complicated marital situation to the American consul constituted concealment of facts and misrepresentation. However, we cannot agree with the board of special inquiry in this regard, for appellant C—— gave an accurate and correct answer to the questions posed in the visa application.

The fact that he failed to volunteer additional information does

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[6] *Section 490. Bigamy.*—Any person who has a former wife or husband living who shall marry another in this State shall be confined in the penitentiary not less than 2 nor more than 5 years. Acts 1887, p. 37.

Section 490a. Cohabiting in this State; bigamy.—Every person, having a husband or wife living, who shall marry another person, without this State, and shall afterward live with or cohabit with such other person within this State, shall be adjudged guilty of bigamy, and punished in the same manner as provided in art. 490 of the Penal Code of the State of Texas. Acts 1931, 42d leg., p. 10, ch. 9, s. 1.

not establish a conscious concealment or fraud and misrepresentation. Hence, this ground of exclusion is not sustained.

On the other hand, appellant L—— stated on her 1942 nonquota visa application that she was married and that her husband was T—— G——, a native and citizen of Mexico. According to the record, appellant L—— was acting in good faith in so replying, since she was under a delusion that this second marriage was somehow valid. This view, advanced by way of excuse, may have been induced by the apparent aura of validity, which the second marriage ceremony gave to a relationship considered illicit under United States legal standards. Since appellant L——'s statement on her visa application was false, we must determine whether such a statement was material to her admission for permanent residence as a nonquota immigrant.

In similar situations, we have previously held that such false statements are not material (*United States ex rel. Leibowitz* v. *Schlotfeldt*, 94 F. (2d) 263 (C. C. A. 7, 1938)).[7] In addition, it is noted in passing that because she was a native of Mexico, appellant L—— was entitled to admission as a nonquota immigrant regardless of the identity of her husband and thus obtained no advantage from the false statement. Therefore, this ground of exclusion is not appropriate.

The board of special inquiry has also excluded appellant L—— as an alien failing to present a valid visa when seeking entry into the United States, contrary to section 13, act of 1924. Since it has been determined that appellant L—— did not procure her visa by fraud and misrepresentation in 1942, this visa was valid and authorized her admission as a permanent resident. Consequently, she is therefore a *bona fide* returning resident in possession of a resident alien's border-crossing identification card, which was issued to her in 1950. Unfortunately, this border-crossing card expired on March 13, 1951, prior to her application for admission. Hence, since appellant L—— was not in possession of a currently valid entry document, this ground of exclusion is sustained (sec. 13, act of 1924).

The final ground of exclusion is that appellants failed to present passports as required by Executive Order 8766. According to the record, appellant C—— presented a Mexican passport, valid until January 18, 1953, at the time he applied for admission. Since appellant L—— was not entitled to exemption from the passport requirement (8 C. F. R. 175.44) this ground is sustained.

[7] See also *Matter of N——*, A—3156660, 2, I. & N. Dec. 206 (B. I. A., 1944); *Matter of G——*, 56041/599, 1, I. & N. Dec. 217 (B. I. A., 1942); *Matter of De B——*, A—7695007 (B. I. A., Sept. 4, 1952); *Matter of A—— G——*, A—7480602 (B. I. A., Sept. 11, 1952).

However, by virtue of the provisions of section 211(b) of the act of 1952,[8] the documentary requirements may be waived for appellant L——. In view of her long residence in the United States of over 20 years, we will direct the granting of this waiver. The appeals are accordingly sustained.

Order: It is hereby ordered that documentary requirements be waived for L—— R—— de V—— under section 211 (b) of the act of 1952 and that the appeal be sustained as to C—— V—— G——.

[8] Sec. 211 (b) Notwithstanding the provisions of sec. 212 (a) (20) of this title, in such cases or in such classes of cases and under such conditions as may be by regulations prescribed, otherwise admissible aliens lawfully admitted for permanent residence who depart from the United States temporarily may be readmitted to the United States by the Attorney General in his discretion without being required to obtain a passport, immigrant visa, reentry permit or other documentation. (8 U. S. C. 1181).