

3 I. & N. Dec. 20 (BIA), Interim Decision 153, 1947 WL 7015

United States Department of Justice

Board of Immigration Appeals

IN THE MATTER OF P-----

In DEPORTATION Proceedings

A-2395267

A-2559931

Decided by Board September 12, 1947

****1 *20 Prostitution—Managing house of; connected with management of house of—Timely service of warrant of arrest—Evidence—Effect of silence—Keeping house of ill-fame for prostitution purposes in violation of section 315 of the California Penal Code (1939) involves moral turpitude—Visa invalid because procured by fraud in not revealing criminal record—Alienage—Evidence.**

(1) Warrants of arrest were served on these aliens in 1945; she was convicted for keeping a house of ill-fame in 1943 (also in 1939 and 1941); they were married in 1940 and were connected with the above house from 1941 to 1945. Continuance of the proscribed conduct was presumed to have continued within a time reasonably proximate to the service of the warrants of arrest, in the face of their silence on the subject and in view of the evidence of record (See 2, [I. & N. Dec. 659](#)).

(2) The offense of keeping a house of ill-fame resorted to for the purposes of prostitution and lewdness in violation of that part of section 315 of the California Penal Code (1939) involves moral turpitude.

(3) The alien, when applying for her immigration visa, submitted police clearances under another name than that under which she was convicted in January 1939 in California, and when she executed her visa application thereafter under oath, she indicated she was not a member of the criminal class. Her immigration visa, which she presented when entering here in April 1939, was deemed invalid because procured by fraud.

(4) The visas of these aliens showed alienage at the time of this admission here (in 1938 and 1939, respectively), and in view of the evidence present, alienage was deemed clearly proved, though the aliens preferred to remain silent except as to their names.

CHARGES:

Warrant: Act of 1917—(Male respondent)—Found connected with the management of a house of prostitution.

Act of 1917—(Female respondent)—Found managing a house of prostitution.

Lodged: Act of 1917—(Female respondent)—Crime prior to entry: Keeping a house of ill-fame.

Act of 1924—Immigration visa not valid because procured by fraud and misrepresentation.

BEFORE THE BOARD

Discussion: The respondent, G----- B----- P-----, a native and citizen of Italy, 36 years of age, was admitted to the United States for *21 permanent residence at Calexico, Calif., on June 21, 1938, upon presentation of a quota immigration visa issued to him June 21, 1938, at the American Consulate, Mexicali, Mexico.

The female respondent, A----- J----- P----- (with aliases) was admitted to the United States on April 12, 1939, upon presentation of a quota immigration visa issued to her as a native of France.

Respondents were married August 27, 1940. They testified as to their names, but refused further testimony on advice of counsel. We concur in the finding of the Commissioner that on the basis of the evidence adduced in the respective records, alienage has been clearly proved (*U. S. ex rel. Vajtauer v. Comm'r of Imm.*, 273 U. S. 103).

**2 The sole charge against the male respondent is that—

He has been found connected with the management of a house of prostitution.

The female respondent has been charged with—

1. Found managing a house of prostitution.
2. Convicted of crime prior to entry, to wit: Keeping a house of ill-fame. ¹
3. The visa which she presented was not valid because procured by fraud and misrepresentation.

With respect to the charge against both respondents, namely, found connected with and found managing a house of prostitution, ² respectively, the total evidence consists of the following:

- (a) Copy of application for water supply dated July 22, 1941, in the name of J----- P-----, requesting that water be supplied at premises 1005 Larking Street, San Francisco, Calif.
- (b) Copy of record of water charges for service at said address, in the name of J----- P-----, for the years 1941 through 1945.
- (c) Testimony of E----- M----- T-----, agent of the property in question, to the effect he represented respondents in the purchase of said property and that title thereto is in the name of the female respondent. He described the property as consisting of stores on the ground floor, and 30 apartments above; that he handled the commercial phase as agent, and the apartments were managed by a third party.
- (d) Certified copies of convictions against the female respondent in 1939, 1941, and 1943, for keeping a house of ill-fame.

*22 The evidence clearly ties respondents to the premises at 1005 Larking Street, San Francisco, Calif. The female respondent was convicted as late as 1943 for keeping a house of ill-fame at said premises. Water supply for the premises was applied for in the name of male respondent, and he was billed for use of water thereat from 1941 through 1945.

Thus, respondents were married April 27, 1940. Their relationship continued. The wife was convicted as late as 1943 for keeping a house of ill-fame at 1005 Larking Street, San Francisco, Calif. Her fingerprints taken when she was registered as an alien were compared and found identical with those taken when she was arrested and convicted as aforesaid. The husband has been tied with the premises through the medium of water supply bills from 1941 through 1945. The warrants of arrest were served March 1, 1945.

Despite the fact respondents were confronted with the foregoing evidence, they elected to remain silent. They offered no testimony or evidence whatever in refutation, or explanation, of that brought forward by the Government. The proceedings here, of course, are not criminal, and, therefore, their silence may be considered evidence of the most persuasive character (*U. S. ex rel. Bilokumsky v. Tod*, 264 U. S. 149; *U. S. ex rel. Vajtauer v. Comm'r of Immigration*, supra). We may, therefore, presume from the silence of respondents that the conduct in this case, beginning some years past and until 1943, as evidenced by the convictions against the wife, continued within a time reasonably proximate to the service of the warrants of arrest, thereby rendering inapplicable the rule in the *Matter of P-----*, 2, I. & N. Dec. 659, A-1217330, November 7, 1946.

****3** There remain the two lodged charges against the female respondent. The first has reference to her conviction January 5, 1939, prior to her last entry, of keeping a house of ill-fame, in violation of section 315, California Penal Code. The two other convictions occurred in 1941 and 1943, subsequent to her last entry, and, therefore, do not form any basis for the conviction upon which this proceeding, in part, is predicated. Hence, the question presented is whether the 1939 conviction involves moral turpitude. The statute (see footnote 2) denounces two acts—(1) keeping a house of ill-fame resorted to for the purposes of prostitution and lewdness and (2) a person who wilfully resides in such house. The female respondent was convicted for violation of the first part, as shown by the complaint. The offense recited palpably involves moral turpitude (*Matter of M-----*, 56156/562, January 1, 1944).

The documentary charge is also established. When she executed the visa application under oath, she indicated therein she was not a member of the criminal class. It is true she made a part of said application letters from the police authorities in Canada, New York, *23 Los Angeles, and San Francisco, where she had resided, indicating they had no police record in the name of A---- J---- M-----, the name under which she obtained said letters; but the fact is that a record exists of her conviction in San Francisco, where she resided from 1932 to 1939, in the name of M----- D----- alias M----- D----- alias M----- D----- or M----- D-----, established by fingerprint comparison. It is obvious, then, she was able to obtain a negative letter from the San Francisco Police Department because she used a name under which she was not listed. The Government has established otherwise, and, as stated, she elected to remain silent at the time this evidence was introduced into the record.

Findings of Fact: Upon the basis of all the evidence presented, it is found:

- (1) That the male respondent is a native and citizen of Italy;
- (2) That the female respondent is a native and citizen of France;
- (3) That the male respondent last entered the United States June 21, 1938;
- (4) That the female respondent last entered the United States April 12, 1939;
- (5) That respondents presented quota visas at time of said entries;
- (6) That the female respondent was convicted in San Francisco, Calif., January 5, 1939, prior to her last entry, of the offense of keeping a house of ill-fame;
- (7) That the female respondent, when she executed application for the visa which she presented, omitted therefrom the fact of said conviction;
- (8) That the male respondent has been found connected with the management of a house of prostitution;
- (9) That the female respondent has been found managing a house of prostitution.

Conclusions of Law: Upon the basis of the foregoing findings of fact, it is concluded:

(1) That under section 19, Immigration Act of 1917, the male respondent is deportable on the ground that he has been found connected with the management of a house of prostitution after entry;

**4 (2) That under section 19, Immigration Act of 1917, the female respondent is deportable on the grounds—

(a) That she has been found managing a house of prostitution after entry;

(b) That she has been convicted on January 5, 1939, prior to entry, of an offense involving moral turpitude, to wit: Keeping a house of ill-fame.

*24 (3) That under section 14, Immigration Act of 1924, the female respondent is deportable on the ground that the visa which she presented was not valid because procured by fraud and misrepresentation.

Order: It is ordered that the alien G----- or J----- B----- P----- be deported to Italy, at Government expense, on the ground that after entry he has been found connected with the management of a house of prostitution.

It is further ordered that the alien, A----- J----- P-----, be deported to France, at Government expense, on the following charges:

The Immigration Act of 1917, in that she has been found managing a house of prostitution after entry;

The Immigration Act of 1924, in that the visa which she presented was not valid because procured by fraud and misrepresentation.

The Immigration Act of 1917, in that she has been convicted of a crime involving moral turpitude prior to entry, to wit: Keeping a house of ill-fame.

Footnotes

1 Section 315, California Penal Code, provides: Every person who keeps a house of ill-fame in this State, resorted to for the purposes of prostitution and lewdness, or who wilfully resides in such house, is guilty of a misdemeanor; * * *

2 A house of ill-fame or prostitution may be a tent, a flat-boat with a cabin on it, a room in a dwelling house, or one room of a steamship, or a single room. A lodger who let her room for prostitution was held guilty of keeping a house of ill-fame as much as if she were the proprietor of the whole house. In short, the term “house” is used in a generic sense (*State v. Power*, 36 Conn. 77; *Killman v. State*, 2 Tex. App. 222, 28 Am. Rept. 432; *State v. Garity*, 146 N. H. 61; *State v. Smith*, 15 R. I. 24, 22 Atl. 1119).

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