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Citizens and Citizenship--Naturalization--Exemption from Military Service Oath on Basis of Religious Belief Upheld (In re Hansen, 148 F. Supp. 187 (D. Minn. 1957))

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read conjointly, it appears that the instant case is not one of testimonial compulsion and should have been decided on that ground.

It is submitted that legislation should be enacted to bring the testimony of any witness disclosing a communication between a lawyer and his client within the sweep of the attorney-client privilege, if it came to the knowledge of such witness in a manner not reasonably to be anticipated by the client.

CITIZENS AND CITIZENSHIP — NATURALIZATION — EXEMPTION FROM MILITARY SERVICE OATH ON BASIS OF RELIGIOUS BELIEF UPHELD.—An alien seeking naturalization petitioned to be exempted from taking the military service oath. He claimed to fulfill the statutory requirement of being opposed to service by reason of "religious training and belief." Although it was found that his belief was not based on any "religious training," the District Court granted the petition *holding* that petitioner need show only that his beliefs are in relation to a Supreme Being. *In re Hansen,* 148 F. Supp. 187 (D. Minn. 1957).

Before being admitted to citizenship, an alien is required by the Immigration and Nationality Act [1] to take an oath in open court. Petitioner seeks the conscientious objector exemption provided by the Act which would excuse him from swearing to perform military service and would require him to swear only "to perform work of national importance under civilian direction when required by law." [2] Conscientious objection is now recognized under both the Universal Military Training and Service Act and the Immigration and Nationality Act.[3] The definition of a conscientious objector is the same in both: a person who by reason of "religious training and belief" is opposed to any type of service in the armed forces. Further, the term

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[1] Immigration and Nationality Act § 337(a), 66 STAT. 258, 8 U.S.C. § 1448(a) (1952).

[2] *Ibid.*

[3] Prior to 1946, conscientious objectors could not become naturalized citizens since it was held that the oath of allegiance required, as a prerequisite to naturalization, that petitioner promise to bear arms in defense of the United States. United States v. Bland, 283 U.S. 636 (1931); United States v. Macintosh, 283 U.S. 605 (1931); United States v. Schwimmer, 279 U.S. 644 (1929). At that time the oath read: ". . . that he will support and defend the Constitution and Laws of the United States against all enemies, foreign and domestic and bear true faith and allegiance to the same." 34 STAT. 598 (1906). These cases were overruled by United States v. Girouard, 328 U.S. 61 (1946), which changed the accepted meaning of the oath so as to exclude the promise to bear arms in defense of this country. The act was amended in 1950 to read substantially as it does today. See note 1 *supra.*

"religious training and belief" is defined as "an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code." [4] The present case considers the meaning of the word "training" in that definition.[5]

An apparent conflict is developing among the federal circuit courts as to whether a registrant's "training" must be the basis for his "belief." In a tenth circuit case,[6] a registrant claimed a total exemption, *i.e.*, an exemption from combatant and non-combatant service, stating that his beliefs were based on the teachings of the Church of Christ and a certain minister in that church. When investigation disclosed that the minister taught that non-combatant service was not wrong, the registrant was denied a total exemption. In *Roberson v. United States* [7] decided in the same circuit, another member of the Church of Christ was denied a total exemption because of his indecision whether to accept non-combatant service or to insist on a total exemption. In its opinion resolving his uncertainty in favor of the government that court said, "we do not think his right to exemption under the law can rise above the tenets of his faith as taught by the church through which he finds spiritual expression." [8]

In the seventh circuit, a District Court held [9] that it was insufficient for the petitioner to show merely that he belonged to a church which would support him in his own individual belief whether he believed in military service or was a conscientious objector. The court stated that to allow exemptions to members of such a church "would open the door to chaos and fraud in the administration of the Selective Service Act and would in effect repeal the whole Act and leave military service upon a voluntary basis." [10]

In other circuits a different view is held. A District Court for the fourth circuit held that the denial of a conscientious objector's

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[4] *Compare* Universal Military Training and Service Act, 62 STAT. 612-13 (1948), 50 U.S.C. § 456(j) (1952), *with* Immigration and Nationality Act, 66 STAT. 258-59, 8 U.S.C. § 1448(a) (1952). This definition follows closely the famous definition of religion given by Chief Justice Hughes in United States v. Macintosh, 283 U.S. 605, 634-35 (1931) (dissenting opinion).

[5] Other courts have previously considered the definition. See, *e.g.*, United States *ex rel.* Phillips v. Downer, 135 F.2d 521 (2d Cir. 1943), which said opposition must be traceable to some religious training *or* belief, and United States v. Berman, 156 F.2d 377 (9th Cir. 1946), which commented that registrant had not shown *either* training *or* belief. Both cases were decided before Congress defined "religious training and belief" in the Selective Service Act of 1948. *But see* United States v. Delime, 121 F. Supp. 750 (D.N.J. 1954), *aff'd on other grounds*, 223 F.2d 96 (3d Cir. 1955), decided under the present draft law.

[6] Head v. United States, 199 F.2d 337 (10th Cir. 1952).

[7] 208 F.2d 166 (10th Cir. 1953).

[8] Roberson v. United States, 208 F.2d 166, 169 (10th Cir. 1953).

[9] United States v. Hein, 112 F. Supp. 71 (N.D. Ill. 1953).

[10] *Id.* at 75.

classification to a petitioner solely because he was a Catholic, without regard to his training and belief, was a denial of due process.[11] In the first circuit Judge Aldrich granted a motion for reconsideration of *In re Nissen*,[12] a naturalization case, in which he had held that just as ". . . training without belief is not enough neither is belief . . . without training." [13] In that case the petitioner, a member of the Lutheran faith, asserted he believed that it was wrong to bear arms. However, this belief was not due to any teaching or training that he received. It was his own belief rather than the doctrine of the church. After a re-examination of the problem Judge Aldrich, granting the motion for reconsideration, concluded that ". . . so far as Congress was thinking of training it regarded it as meaning no more than individual experience supporting belief; a mere background against which sincerity could be tested." [14] In the instant case,[15] the District Court for the eighth circuit, citing the *Nissen* case, held that "religious training and belief" was a *single concept* and not properly severable, and that petitioner need only show his beliefs were in relation to a Supreme Being.

A comparison of the views shows that under the rule in the *Roberson* case, if the petitioner did belong to a sect, it would have to be a pacifist sect to qualify him for an exemption. This would be a reversion to the 1917 draft law which allowed exemption only to members of recognized pacifist sects.[16] However, such affiliation has not been required since the draft law was changed in 1940 to make the registrant's *own* "religious training and belief" the test.[17] Still, the *Roberson* case would not be quite so narrow as the 1917 law in that a registrant who did not belong to any sect might qualify for an exemption. It is not clear how cases would be decided under the holding of the *Roberson* case where a registrant belonged to a church that had no policy on conscientious objection, or where the church, although not teaching conscientious objection, allowed it.

The holding in the instant case reduces the significance of the word "training" as used in the statute to a minimum. In construing the statute as a whole, this interpretation would seem to be necessary to give effect to the intent of Congress.

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[11] United States v. Everngam, 102 F. Supp. 128 (S.D. W. Va. 1951).

[12] *In re* Nissen, 138 F. Supp. 483 (D. Mass.), *reconsideration granted*, 146 F. Supp. 361 (D. Mass. 1956).

[13] *In re* Nissen, 138 F. Supp. 483, 485 (D. Mass. 1956).

[14] *In re* Nissen, 146 F. Supp. 361, 363 (D. Mass. 1956).

[15] *In re* Hansen, 148 F. Supp. 187 (D. Minn. 1957).

[16] 40 STAT. 76 (1917). The exemptions were given to ". . . any person . . . who is found to be a member of any well recognized religious sect or organization at present organized and existing and whose existing creed or principles forbid its members to participate in war in any form and whose religious convictions are against war or participation therein in accordance with the creed or principles of said religious organizations. . . ." *Id.* at 78.

[17] Selective Service Act of 1940 § 5(9), 54 STAT. 889, 50 U.S.C. APP. § 305(g) (1946). See also United States v. Bowles, 319 U.S. 34 (1943); United States v. Kauten, 133 F.2d 703, 708 (2d Cir. 1942).