

Naturalization--Good Moral Character as a Condition Precedent (Petition of Gani, 86 F. Supp. 683 (W.D. La. 1949))

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Under another and possibly out-moded viewpoint,¹⁰ relief will depend on facts extrinsic to the meaning acquired by the name. Here the test is: would a reasonably prudent purchaser probably be confused as to the source of the goods or services.¹¹ Here such elements as good faith, geographical location, relative size, the products or services involved and so on become important.

The court in the instant case applied the "prudent purchaser" test and based its decision on the ground that defendants' own name, coupled with its established reputation in the local restaurant trade, was sufficient to distinguish the two hotels and to obviate any reasonable possibility of local confusion. This conclusion was buttressed by taking judicial notice of the "undoubted" existence of other hotels named "New Yorker" and of the actual existence of other hotels which are operated in different cities although under substantially identical names.¹²

It is submitted that the addition of defendants' name, even with their local reputation as restaurateurs, is an insufficient distinction. They could as easily secure the benefits of that reputation to their hotel business without using plaintiff's name. With "all infinity" to choose from,¹³ why permit the use of "New Yorker" for a hotel in Kansas City when it is so flagrantly fictitious?¹⁴

Perhaps more cogent is the precedent established permitting any number of "Hotels New Yorker" distinguished only by the owner's name. The protection of plaintiff's name would then be so narrowly circumscribed both as to area and as to trade that plaintiff's property in its name would be virtually destroyed and its reputation necessarily injured.

C. J. M.

NATURALIZATION — GOOD MORAL CHARACTER AS A CONDITION PRECEDENT.—Petitioner, a tavern keeper, was a native Syrian, fifty-eight years old, a resident of the United States and Louisiana for forty-six years, married and the father of eight American-born chil-

¹⁰ See the opinion of Learned Hand, J., in *Ely-Norris Safe Co. v. Mosler Safe Co.*, 7 F. 2d 603, 604 (2d Cir. 1925).

¹¹ *American Steel Foundries v. Robertson*, 269 U. S. 372 (1926); *Howe Scale Company v. Wyckoff, Seamans and Benedict*, 196 U. S. 118 (1905). *Accord*, *Eastern Construction Co. v. Eastern Engineering Corp.*, 246 N. Y. 459, 159 N. E. 397 (1927).

¹² *But cf.* *Ritz Carlton Hotel Co., Inc., et al. v. Ritz Carlton Hotel Corp.*, 66 F. Supp. 720 (S. D. Fla. 1946) (a Florida hotel enjoined on behalf of a New York hotel).

¹³ *Florence Mfg. Co. v. J. C. Dowd and Co.*, *supra* note 9 at 75.

¹⁴ *See* *La Republique Francaise v. Saratoga Vichy Springs*, 107 Fed. 459 (2d Cir. 1901).

dren. He was denied citizenship on the ground of lack of good moral character because of six convictions for violation of state and federal liquor laws between the years 1923 and 1942. *Held*, judgment for petitioner. An alien who raised and educated a large and happy family which was well behaved and well thought of in the community, was of good moral character, despite convictions for violation of state and federal liquor laws more than five years before his application for citizenship. *Petition of Gani*, 86 F. Supp. 683 (W. D. La. 1949).

In accordance with its constitutional power¹ Congress has established the requirements for naturalization of aliens.² Obtaining citizenship through this established procedure is a "privilege" and not a "right."³ In addition to the standard procedures to be followed, petitioner must show that he is of good moral character.⁴ The burden of so proving is upon the petitioner⁵ and all reasonable doubts are resolved in favor of the United States.⁶

The standard of good moral character is not measured by conventional formality⁷ but rather according to the usages of the society in which the applicant lives⁸ and in fact need not be of the highest degree of moral excellence.⁹ What constitutes good moral character will vary with each succeeding generation.¹⁰ Starting with conduct which was first noted to be that of the "average man of the country"¹¹ it has later come to be known as the conduct of the "average man,"¹² or of the "average citizen of the community,"¹³ or defined by reference to the "living law."¹⁴

¹ U. S. CONST. Art. I, § 8(4): "The Congress shall have power . . . ; to establish a uniform Rule of Naturalization . . ."

² Nationality Act of 1940, 54 STAT. 1142 (1940), 8 U. S. C. § 707 (1946).

³ *United States v. Zgrebec*, 38 F. Supp. 127 (E. D. Mich. 1941).

⁴ Nationality Act of 1940, *supra* note 2: "(a) No person, . . . shall be naturalized unless such petitioner . . . (3) . . . has been and still is a person of good moral character. . ."; *Petition of Zele*, 140 F. 2d 773 (2d Cir. 1944).

⁵ *In re Jensen*, 11 F. 2d 414 (E. D. La. 1926).

⁶ *United States v. Manzi*, 276 U. S. 463 (1928).

⁷ *Petitions of Rudder*, 159 F. 2d 695 (2d Cir. 1947).

⁸ *Petition of R*, 56 F. Supp. 969 (D. C. Mass. 1944).

⁹ *In re Hopp*, 179 Fed. 561, 563 (E. D. Wisc. 1910): "It need not rise above the level of the common mass of people."

¹⁰ *In re Spenser*, 22 Fed. Cas. 921, No. 13,234 (C. C. D. Ore. 1878).

¹¹ *Ibid.* at 921: "The standard may vary from one generation to another, and probably the average man of the country is as high as it can be set."

¹² *In re Hopp*, *supra* note 9 at 563: "A good moral character is one that measures up as good among the people of the community in which the party lives; that is up to the standard of the average citizen . . . such a reputation as will pass muster with the average man."

¹³ *In re Mogus*, 73 F. Supp. 150, 152 (W. D. Pa. 1947): "Good moral character . . . results from acts and conduct of an individual, and is of such a character as measures up to the standards of the average citizens of the community. . ."

¹⁴ See note 8 *supra*. Would the community believe the act reprehensible?

Though good moral character can be defined generally, only the acts and conduct of an individual will ultimately give it meaning.¹⁵ An alien guilty of murder was denied citizenship despite good moral character during the immediately preceding five-year-period¹⁶ and so, too, was one found guilty of manslaughter.¹⁷ A petitioner married to the guilty party in a divorce action¹⁸ and another who committed but one act of adultery during the five-year-period preceding application¹⁹ as well as those generally guilty of adultery²⁰ have been denied citizenship. Among those applicants also considered not to be of good moral character are those guilty of bigamy,²¹ or those who have procured invalid rabbinical divorces,²² but an incestuous marriage²³ or being guilty of fornication²⁴ has been held not to be a bar. Further excluded from naturalization for the lack of good moral character are persons guilty of abandonment,²⁵ perjury,²⁶ being a "pimp,"²⁷ smuggling opium,²⁸ maintaining a house of prostitu-

¹⁵ *In re Paoli*, 49 F. Supp. 128 (N. D. Cal. 1943).

¹⁶ *In re Ross*, 188 Fed. 685 (C. C. P. A. 1911) (it is the court's duty to take into account the whole career and conduct of the applicant). *Contra*: *Repuille v. United States*, 165 F. 2d 152 (2d Cir. 1947); *In re Balestrieri*, 59 F. Supp. 181 (N. D. Cal. 1945) (the petitioner was convicted of murder in the first degree and later pardoned, was recommended solely on the ground of good moral character for five years); *In re Ringnald*, 48 F. Supp. 975 (S. D. Cal. 1943) (petitioner was guilty of negligent homicide).

¹⁷ *In re Caroni*, 13 F. 2d 954 (N. D. Cal. 1926). "The defense is more indicative of the applicant's true character than is any amount of precautionary and decorous conduct following on the heels of parole." *Contra*: *Daddona v. United States*, 170 F. 2d 964, 966 (2d Cir. 1948). "Good behavior during incarceration may be one indication of the fitness of the applicant to assume the duties of citizenship."

¹⁸ *Petition of Axelrod*, 25 F. Supp. 415 (E. D. N. Y. 1938). In New York under Section 8 of the Domestic Relations Law the guilty party in a divorce action is not allowed to remarry unless the divorce is modified by the court.

¹⁹ *Estrin v. United States*, 80 F. 2d 105 (2d Cir. 1935).

²⁰ *Petition of F*, 73 F. Supp. 655 (S. D. N. Y. 1947); *In re Falck*, 24 F. Supp. 672 (D. C. Cir. 1938); *United States v. Unger*, 26 F. 2d 114 (S. D. N. Y. 1928). *Contra*: *Petitions of Rudder et al.*, 159 F. 2d 695 (2d Cir. 1947).

²¹ *United States v. Intrieri*, 56 F. Supp. 374 (M. D. Pa. 1944); *United States v. Marafioti*, 43 F. Supp. 45 (S. D. N. Y. 1942).

²² *United States v. Zaltzman*, 19 F. Supp. 305 (W. D. N. Y. 1937); *In re Spiegel*, 24 F. 2d 605 (S. D. N. Y. 1928) (petitioner acquired a rabbinical divorce from his wife still in Poland and considered valid there and remarried. Under the New York Constitution the divorce was invalid and the petitioner was considered to be living in bigamy). *Contra*: *In re Schlaw*, 136 F. 2d 480 (2d Cir. 1943).

²³ *United States v. Francisco*, 164 F. 2d 163 (2d Cir. 1947); *Petition of Lieberman*, 50 F. Supp. 121 (E. D. N. Y. 1943) (petitioner married her uncle in New York, but remarried in Rhode Island where such a relationship is not considered incestuous).

²⁴ See note 8 *supra*.

²⁵ See note 13 *supra*; *In re Sigelman*, 268 Fed. 217 (E. D. Mo. 1920).

²⁶ See note 10 *supra*.

²⁷ *United States v. Raverat*, 222 Fed. 1018 (D. Mont. 1915).

²⁸ *Petition of Gabin*, 60 F. Supp. 750 (N. D. Cal. 1945).

tion,²⁹ concealing arrests,³⁰ making false statements under oath,³¹ bribing public officials,³² smuggling aliens,³³ violating national prohibition laws,³⁴ or other liquor laws,³⁵ or having a long list of arrests.³⁶ Even one's failure to support an illegitimate child³⁷ or having had a divorce decree entered against him for his "cruel and barbarous treatment"³⁸ has been deemed conduct unbecoming good moral character.

A search for a definite pattern or an absolute test in the above cases will prove fruitless. This is due to the fact that there is little precedent upon which the federal district and circuit courts can act because of the relatively few cases that have been before the Supreme Court despite the many problems provoked by individual petitions. Further, since these courts are not bound by each other's decisions, judges, when faced with the same or similar fact situations do not decide alike on the law. Individual mitigating circumstances are always considered and ultimately each case is decided upon the merits of its own fact situation.

A. B. F.

²⁹ *In re Kornstein*, 268 Fed. 172, 173 (E. D. Mo. 1920). "There are some offenses against morals that must be held to permanently bar an alien from citizenship." *United States v. Leles*, 236 Fed. 784 (N. D. Cal. 1916).

³⁰ *Del Guercio v. Pupko*, 160 F. 2d 799 (9th Cir. 1947); *United States v. Palmeri*, 52 F. Supp. 226 (E. D. N. Y. 1943).

³¹ *Petition of Ledo*, 67 F. Supp. 917 (D. C. R. I. 1946)

³² *In re De Mayo*, 26 F. Supp. 996 (W. D. Mo. 1938).

³³ *United States v. Clifford*, 89 F. 2d 184 (2d Cir. 1937); *In re Nybo*, 42 F. 2d 727 (6th Cir. 1930).

³⁴ *United States v. Villaneuva*, 17 F. Supp. 485 (D. C. Nev. 1936); *In re Bonner*, 279 Fed. 789 (D. C. Mont. 1922).

³⁵ *In re Trum*, 199 Fed. 361, 363 (W. D. Mont. 1912). "Defiance of the established order and of the mandates of legal tribunals declaratory thereof, constitutes bad citizenship, bad behavior and if wilfully persisted in, indicates a perverted moral character." *But cf.* notes 9 and 15 (applicant kept saloon open on Sunday in violation of liquor laws which were never enforced because they were adverse to public sentiment).

³⁶ *In re Taran*, 52 F. Supp. 535 (D. C. Minn. 1943). *But cf.* *United States v. Dwyer*, 170 Fed. 686 (C. C. D. Mass. 1909); *In re Bookschnis*, 61 F. Supp. 751, 753 (D. C. Ore. 1945). Petitioner was convicted of violating the I.C.C. Act on forty-two counts. "Distinctions between acts involving moral turpitude and economic policy, and between acts recognized as criminal at all times in all countries, and those which are simply violations of sumptuary, financial, or war regulations should be maintained. . . . there was no essential immorality involved in the actions of defendant."

³⁷ *United States v. Konevitch*, 67 F. Supp. 250 (M. D. Pa. 1946).

³⁸ *Application of Polivka*, 30 F. Supp. 67 (W. D. Pa. 1939).