Temporary Havens: Alaska and Virgin Islands

WRB
Box 47

PROGRAMS WITH RESPECT TO RELIEF AND RESCUE OF REFUGEES: TEMPORARY HAVENS (ALASKA AND VIRGIN ISLANDS)

Bx 47

TREASURY DEPARTMENT

INTER OFFICE COMMUNICATION

DATE February 3, 1944

TO Mr. Pehle

FROM Rella R. Shwartz

This is to bring to your attention some early governmental attempts to open certain territories for settlement and development by refugees.

In 1940 and 1941 a considerable amount of work was done by the Department of Interior on developing plans for refugee settlement in Alaska and the Virgin Isles. This work was done primarily by Mr. Felix Cohen of the Solicitor's Office of the Department of Interior.

The Alaska plan, which provided in substance for the permanent settlement of refugees in Alaska, was finally crystallized in the form of a bill introduced in both the Senate and the House in March of 1941. The Territorial Committee of the Senate held hearings on the bill. It died a "noble death." However, the history of the bill and the background information preliminary to drafting the bill can be made available to you.

The plan for settlement of the Virgin Isles contemplated a temporary refuge for the victims of Hitler. I understand that the plan was crystallized in the form of an Executive Order which was shelved after the State Department got wind of the situation. The details with respect to the State Department's handling of the plan are also available to us.

I am sure that Mr. Cohen and some of the persons not associated with the Government who worked with him on certain phases of the projects would be glad to talk to any members of our staff who are following this program at the present time. Mr. Cohen is sending to me the plan for the Alaska and Virgin Isle settlements which I shall turn over to you.

I understand from Mr. Cohen that he had occasion to discuss these plans with the Secretary some time ago. In fact, Mr. Cohen tells me that Mr. Morgenthau's son did a paper on this problem.

Attached are some documents which Felix Cohen just sent me. RRS.

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of the Solicitor
Washington

M. 31295. June 2, 1941.

The Honorable

The Secretary of the Interior.

My dear Mr. Secretary:

The Governor of the Virgin Islands reports that a serious labor shortage now exists in the Islands as a consequence of the national defense construction work now under way. The Naval Officer in Charge of Construction on the Island of St. Thomas reports that the Arundel Corporation, contractor for such construction, is employing approximately 250 aliens who have entered the Virgin Islands irregularly, coming from neighboring islands. In addition to the force now employed, the naval officer in charge of this construction work estimates that he will require 500 more unskilled laborers within the next few months and that he will be unable to obtain these laborers without employing aliens who have entered the Islands irregularly.

According to the advice of the Governor of the Virgin Islands and the resident naval officer in charge, if the employment of alien labor in the Islands is prohibited and the necessary action taken to deport aliens already there and to prevent others from entering the Islands, the national defense work now in progress will be disrupted and a very large increase in the present immigration enforcement personnel in the Islands will be required.

The Inspector of Immigration in the Virgin Islands suggests that in these circumstances the Governor exercise his power to regularize the admission of nonimmigrant aliens from neighboring islands under authority conferred by Executive Order No. 8430 which, so far as pertinent to the question here at issue, declares:

> "By virtue of and pursuant to the authority vested in me by the act of May 22, 1918, 40 Stat. 559, as extended by the act of March 2, 1921, 41 Stat. 1205, 1217, I hereby prescribe the following regulations pertaining to documents required of aliens entering the United States (which regulations shall be applicable to Chinese and to Philippine citizens who are not citizens of the United States except as may be otherwise provided by special laws and regulations governing the entry of such persons):
>
> Part I
>
> "1. Nonimmigrants must present unexpired passports or official documents in the nature of passports issued by the governments of the countries to which they owe allegiance or other travel documents showing their origin and identity, as prescribed in regulations issued by the Secretary of State, and valid passport visas, except in the following cases:
>
> * * * *
>
> "4. The Secretary of State is authorized in his discretion to waive the passport and visa requirements in cases of emergency for nonimmigrants, except that the Governor of the Virgin Islands is authorized in his discretion to waive the requirements in cases of emergency for nonimmigrant aliens applying for admission at a port of entry of the Virgin Islands." (Emphasis supplied.)

The proposed procedure raises questions concerning (1) the applicability, (2) the validity, and (3) the scope, of the foregoing provision.

These questions may be more precisely formulated in the following terms:

1. Whether the authority conferred upon the Governor of the Virgin Islands by Executive Order No. 8430 of June 5, 1940, to waive passport and visa requirements in cases of emergency for nonimmigrant aliens applying for admission at a port of entry of the Virgin Islands, is applicable to the situation of nonimmigrant aliens coming to the Virgin Islands from other parts of the West Indies to engage in work on defense construction projects.

2. Whether the said provisions of Executive Order No. 8430 are (a) legally valid and (b) currently in force.

3. Whether the authority of the Governor of the Virgin Islands, under the Executive Order cited, extends to (a) cases where the visitor intends to remain for a period in excess of 30 days; and (b) cases where the visitor has a pending application for an immigration visa.

1. The applicability of the Executive Order

The power vested in the Governor of the Virgin Islands by the cited Executive Order to waive passport and visa requirements in otherwise undefined "emergency cases" necessarily carries with it the responsibility of deciding what cases are emergency cases. The question of whether any particular case is to be considered an "emergency

case" is primarily an administrative rather than a legal question. A question of law arises only upon the claim that some particular exercise of administrative discretion is so unreasonable as to amount to an ultra vires act.

It may be argued that the term "emergency" cannot properly have reference to such a general situation as that created by the present defense construction and shortage of labor in the Virgin Islands, but must refer only to emergencies personal to the entering alien, such as birth on shipboard, shipwreck, or forced landing. Such a contention, however, will not withstand scrutiny. For these emergencies, which have no particular pertinence to the Virgin Islands, remedies have been devised which are not limited to these Islands. Thus emergencies arising out of births on shipboard are expressly provided for in section 1(c) of Part I of the order cited, and this provision applies to all parts and possessions of the United States and not simply to the Virgin Islands. Likewise, emergencies arising from acts of God, such as storm and shipwreck, are covered by special immigration regulations, which permit temporary entry of shipwrecked sailors at any point on the coast of the United States, and not merely at ports of entry in the Virgin Islands. (22 CFR 65.1(c).)

These arguments, of course, are purely negative, but in the absence of any affirmative evidence of an intention to limit the scope

of authority conferred by the Executive order upon the Governor of the Virgin Islands, the law requires that we accept the plain meaning of terms. The term "emergency" is not limited, either in common usage or by any logical process, to a particular class of emergencies arising in a particular geographical area. The very use of the term "emergency" in the Executive order indicates that the President did not pretend to foresee the characteristics of all future cases that might be presented to the Governor of the Virgin Islands. As if to emphasize this fact, the Executive order uses the term "discretion" in defining the power of the Governor.

The essential limitation upon the power of the Governor of the Virgin Islands lies not in the character of the emergencies which he may consider but in the character of the applications upon which he may pass. The Governor of the Virgin Islands has power only with respect to "nonimmigrant aliens applying for admission at a port of entry of the Virgin Islands," and it seems clear that his power extends only to admitting such individuals to such a port, to the exclusion of all other ports. This is the basic limitation upon the power created by the Executive order, and it is not necessary to invent an additional limitation by holding that the term "emergency" has a meaning in one part of the sentence quoted that is different

from its meaning in another part of the same sentence (where it is used with reference to the Secretary of State).

It is noteworthy that the section which confers power upon the Governor of the Virgin Islands does not confer parallel powers upon the Governors of Puerto Rico, Alaska, Hawaii, or any other Territories or insular possessions of the United States. If the emergencies considered had been simply emergencies arising out of relations with nearby islands and adjoining Territories inhabited by poor native populations, then it is reasonable to assume that the Executive order would have covered other islands and Territories similarly situated. The fact that the Virgin Islands alone was mentioned in this provision suggests that a clue to the intent of the entire provision may be found in conditions peculiar to the legal status and history of the Virgin Islands. Now the fact of the matter is that the Virgin Islands occupy a peculiar position in the law of the United States, a position which arises out of the peculiar international history of these islands. For many centuries these islands, containing what is perhaps the best port in the West Indies and owned since 1671 by the traditionally neutral country of Denmark, enjoyed an economic existence largely based on the fact that they offered a free port for the entry of European vessels even in time of war.

When the United States took over these islands in 1917 it recognized that to bring them under existing tariff laws would bring about the economic destruction of the island economy. Accordingly, the Virgin Islands were exempted, as a free port, from the provisions of the United States tariff. The result is that to this day a considerable part of the economy of the islands is based on the privilege of importing from Europe goods which, if imported into the United States proper, are subject to high tariffs. American tourists in the Virgin Islands, able to bring limited quantities of such goods to the Continent without payment of duties, make a substantial contribution to the local economy, particularly to that of the Island of St. Thomas.

Thus it is that the peculiar status of the islands derives primarily from their commercial position.

Commerce is impossible without the travel of human beings, and the same reasons which led to a relaxation of tariff restrictions led also to a relaxation of restrictions upon the entry of aliens. When the islands were purchased by the United States in 1917, quota restrictions upon immigration were not in force. There was, of course, no particular objection to those restrictions against the entry of anarchists, criminals and other excludable classes which were in force.

When the Immigration Act of May 26, 1924, was passed there was some doubt as to whether its exclusionary provisions applied to the

Virgin Islands. These doubts were settled a year later by a proclamation of the Governor of the Virgin Islands, issued on May 12, 1925, putting the provisions of the Immigration Act of 1924 in full force and effect in the Virgin Islands of the United States on and after June 1, 1925. (See State Dept., Admission of Aliens into the United States, Appendix F, page 142.) In order to guard, however, against difficulties arising from the application of general immigration laws to an island economy based on free trade, special leeway was allowed to dispense with the rigors of general restrictive legislation. Thus the regulations prepared by the Department of the Interior and transmitted to the Department of State on April 28, 1931, set forth various situations in which the rigors of existing law were relaxed by the local authorities, acting in cooperation with the Immigration and Naturalization Service. The provisions in question declare:

> "Because of the peculiar geographical situation of the Virgin Islands, surrounded as they are by numerous foreign islands, visaed passports or immigration visas are not required of alien visitors entering the Virgin Islands from places where American Consular Officers are not located.
>
> "In view of the medical facilities available in the Virgin Islands of the United States, the natives of the neighboring foreign islands frequently require hospitalization or medical advice in the Virgin Islands. In such cases, as well as in other cases, where the facts of the case appear to warrant such action, the Commissioner of Immigration may grant permission for temporary visits not exceeding thirty days, subject to renewal if necessary."1/

1/ State Department, Admission of Aliens into the United States, Appendix F, pp. 142-143. It should be noted that the "Commissioner of Immigration" referred to in these regulations is the

In actual administration, the Governor has exercised this power to waive visa and passport requirements not only in cases of residents of nearby islands but also in cases involving Europeans. For example, the power has been exercised on various occasions to permit the landing, for brief periods, of ship captains and of refugees proceeding to the Dominican Republic or other lands.

It is in the light of this peculiar legal history, involving a special free trade status and a series of relaxations of exclusionary immigration regulations, that the significance of the present Executive order can best be appreciated. Against this background, it is clearly not an unreasonable assumption to assume that the language of the Executive order means exactly what it says.

1/ cont'd.
Commissioner of Immigration of the Virgin Islands, an officer responsible to the Governor of the Virgin Islands.

Transmission of the foregoing regulations by the Interior Department was made pursuant to the following request of the Department of State:

"April 3, 1931.

"The Honorable
The Secretary of the Interior.

Sir:

With reference to the provisions of the Executive Order No. 5566 of February 27, 1931, placing the Government of the Virgin Islands under the supervision of the Department of the Interior, this Department has been informed by the Department of Labor that it is understood that the enforcement of the United States immigration laws in the Virgin Islands will be placed under the supervision of the Civil Governor.

What it says is that the Governor of the Virgin Islands shall have power to act in case of emergency. It is certainly not unreasonable for the Governor of the Virgin Islands to find that as a result of conditions which the President of the United States has officially characterized as constituting an emergency, and as a result of urgent construction activities and a pressing local labor shortage deriving from those conditions, it is convenient and proper to admit to the Virgin Islands, temporarily, certain nonimmigrant aliens who do not have passports or visas. I am of the opinion that such action by the Governor of the Virgin Islands is clearly authorized by the Executive Order cited.

1/ cont'd

The Department would appreciate receiving for its own information and that of its consular officers abroad copies of any administrative orders or regulations which may be promulgated by the Governor of the Virgin Islands with regard to the enforcement of the immigration laws in the Islands.

Very truly yours,

For the Secretary of State:

(Signed) Wilbur J. Carr,
Assistant Secretary."

2. The validity of the Executive Order

Having determined that the Executive order in question has application to the situation presented by the Governor of the Virgin Islands, we are bound to consider any arguments which may be directed against the validity of that portion of the Executive order which gives to the Governor of the Virgin Islands the authority to waive passport and visa requirements. Such arguments may relate either (a) to the validity of the order when issued, or (b) to the effect upon the order of subsequent legislation.

(a) The argument may be advanced that the President is without authority to provide for admitting an alien to one part of the United States while excluding him from other portions thereof. If this argument is valid, then the attempt to confer such a power upon the Governor of the Virgin Islands must be deemed ineffective.

It must be admitted at the outset that no existing statute specifically provides for such a limited permission. The basic question is thus raised: Must administrative authorities show specific statutory authorization for all conditions imposed upon the admission of temporary visitors to the United States, or are such authorities vested with a measure of discretion sufficient to warrant imposition of conditions not spelled out in the statutes?

The view that denies the existence of such discretionary powers and contends that specific statutory authority is necessary to justify the incorporation of geographical restrictions in the entry permit given to a visitor is a view which has important and wide-reaching consequences. In the first place, that view is inconsistent with the opinion, if not with the holding, of the United States Supreme Court in United States v. Curtiss-Wright Corp., 299 U. S. 304 (1936). In that case it was the opinion of the Court, expressed per Sutherland, J., that the President, in matters affecting the international relations of the country, is vested not only with specific statutory authority, but with

> " * * * such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations-- a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution. * * * " (pp. 319-320).

To deny that the President and the officers responsible to him have authority to limit a visitor to a restricted area, one would have to deny the soundness of the foregoing statement, for it is clear that the entry of aliens is as much a matter of international realtions as the export of commodities. Fong Yue Ting v. United States, 149 U. S. 698 (1893); Nakazo Matsuda v. Burnett, 68 F. (2d) 272 (C. C. A. 9th,

1933); Akira Ono v. United States, 267 Fed. 359 (C. C. A. 9th, 1920). Certainly no one could maintain that the powers of the President to lay conditions upon the entry of an alien are more narrowly circumscribed by the Constitution than his powers to lay conditions upon the export of commodities by a citizen of the United States.

Now it must be admitted that the assertion of the Supreme Court above quoted is broader than the facts of the particular case required, and it may thus be argued that the cited statement is "mere dictum."

This argument, however, would not suffice to justify the view that the President is legally powerless to fix geographical limitations upon the entry of a visiting alien, even with the alien's consent. For there are in fact a number of statutes which confer broad administrative powers upon the President and upon other subordinate officials with respect to the control of visiting aliens. Thus, one who contends that the President does not have power to affix a geographical condition upon the permission given an alien to enter the country temporarily must explain away not only the broad language of the Supreme Court in the Curtiss-Wright case, but also the broad language which Congress has used in defining the scope of Executive authority in the matter of visiting aliens.

The act of May 22, 1918 (40 Stat. 559), as amended by the act of March 2, 1921 (41 Stat. 1217, 22 U. S. C. 223, 227), provides that it

shall

> " * * * be unlawful--(a) For any alien to * * * enter * * * the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe; * * *."

In order to support the view that the President does not have power to prescribe geographical "limitations" or "exceptions" in permitting an alien to enter the country, one would have to read into the present law a proviso declaring in effect that the limitations and exceptions which the President is authorized to prescribe shall in no case limit the territory to which the alien is admitted or except from that territory any part of the United States.

The fact remains that Congress did not see fit to enact any such proviso restricting the Presidential power which it established.

The propriety of this broad congressional grant of power to the President has been repeatedly upheld and never successfully challenged. United States v. Phelps, 22 F. (2d) 288 (C. C. A. 2d, 1927), cert. denied 276 U. S. 630; United States ex rel. Komlos v. Trudell, 35 F. (2d) 281 (C. C. A. 2d, 1929); Goldsmith v. United States, 42 F. (2d) 133 (C. C. A. 2d, 1930), cert. denied 282 U. S. 837; United States ex rel. Faneco v. Corsi, 57 F. (2d) 868 (D. C. S. D. N. Y., 1932), aff'd 61 F. (2d) 1043 (C. C. A. 2d, 1932). Again it has been held in all of the cases cited that this grant of legislative power to the

President is not impaired by anything contained in the Immigration Act of 1924.

The Immigration Act of May 26, 1924 (sec. 15, 43 Stat. 153, 162, as amended, 8 U. S. C. 215), supplements the broad powers conferred upon the President with respect to the control of aliens by specifically authorizing regulations governing the admission to the United States of nonimmigrants (among whom is classified "an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure"). The governing statutory provisions, in title 8 of the United States Code, declare:

> "Sec. 203. 'Immigrant' defined. When used in this subchapter the term 'immigrant' means any alien departing from any place outside the United States destined for the United States, except (1) a government official, his family, attendants, servants, and employees, (2) an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure, (3) an alien in continuous transit through the United States, (4) an alien lawfully admitted to the United States who later goes in transit from one part of the United States to another through foreign contiguous territory, (5) a bona fide alien seaman serving as such on a vessel arriving at a port of the United States and seeking to enter temporarily the United States solely in the pursuit of his calling as a seaman, and (6) an alien entitled to enter the United States solely to carry on trade under and in pursuance of the provision of a present existing treaty of commerce and navigation. (May 26, 1924, c. 190, sec. 3, 43 Stat. 154.)
>
> "Sec. 215. Admission of persons excepted from definition of immigrant and nonquota immigrants; maintenance of exempt status. The admission to the United States of an alien excepted from the class of immigrants by clause (2),

> (3), (4), (5), or (6) of section 203 of this title, or declared to be a nonquota immigrant by subdivision (e) of section 204 of this title, shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed (including, when deemed necessary for the classes mentioned in clause (2), (3), (4), or (6) of section 203, the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed) to insure that, at the expiration of such time or upon failure to maintain the status under which admitted, he will depart from the United States. (May 26, 1924, c. 190, Sec. 15, 43 Stat. 162.)"

It is notable that the statute specifies that conditions so prescribed, in so far as they deal with the class of temporary visitors, may include, when deemed necessary, "the giving of bond with sufficient surety, in such sum and containing such conditions as may be by regulations prescribed." The statute leaves it entirely to the administrative officers to decide what conditions shall be included in such bond.

These broad grants of authority to control the admission of visiting aliens would, in effect, be rendered meaningless by the view that the President needs further express legislation in order to limit a visiting alien to the particular part of the territory of the United States which he asks permission to visit.

The fact of the matter is that any such narrow restriction upon Executive authority would be inconsistent with the long established practice of the Executive, which has been repeatedly ratified by the

courts. The Executive has repeatedly laid down conditions upon the entry of visiting aliens, citing as authority only the general statutes above quoted, and these orders and regulations have been repeatedly upheld by the courts. See, for example, Executive Order No. 8430; Executive Order No. 7865; Executive Order No. 6986; United States v. Phelps, supra; United States ex rel. Komlos v. Trudell, supra; Goldsmith v. United States, supra; United States ex rel. Faneco v. Corsi, supra.

If it is true that administrative authorities have no power to limit the residence of a visiting alien, then certainly they have no power to limit his occupation, for the statutes with regard to non-immigrants are as silent on the one topic as on the other. In fact, however, existing regulations contain various restrictions, not required by any statute, relating to occupations in which alien visitors may engage or even determining whether they may engage in any occupation at all. Thus, for example, existing regulations provide:

> " * * * A student whose parents or relatives are financially able to support him, or who otherwise has sufficient income to cover expenses, will not be permitted to work either for wages or for board and lodging." (8 CFR 10.1)

There are many other situations in which administrative authorities have imposed conditions upon the entry of visiting aliens. Thus, for example, existing regulations provide that a person applying for admission to the United States as a transit alien may be required to be

accompanied by such guards or attendants as will "ensure his passage in and out of the United States without unnecessary delay" (8 CFR 6.4).

Again, consuls have been authorized by the State Department to refuse visitors' visas to persons considered to be "morally delinquent," although there is no express statutory requirement covering the morality of alien visitors. (State Dept., Admission of Aliens into the United States, Revised to January 1, 1936, Note 17.) All such regulations would have to be classed as illegal if we should adopt the view that specific statutory authorization is required to justify any restrictions upon the entry of alien visitors.

In fact the foregoing regulations go much further than that which is here in question. The precise question at issue is whether an alien who expresses a desire to visit a particular insular possession or Territory of the United States may, in the discretion of the administrative authorities, be given permission to do precisely what he wants to do and no more. In order to deny such authority to administrative officials one would have to impugn the validity of a great mass of existing regulations.

It is to be observed that a good many existing regulations in this field require the nonimmigrant not merely to bring himself within the general categories prescribed by the statute, but to show specifically how he fits within such category, and to indicate with

particularity how he intends to spend the time allotted him for a temporary stay. Thus, for example, existing regulations provide:

> "Any alien admitted temporarily to the United States as a nonimmigrant under section 3(2) of the Immigration Act of 1924 (43 Stat. 154; 8 U. S. C. 203) shall be considered as having failed to maintain his status as that term is used in section 15 of that Act (47 Stat. 524; 8 U. S. C. 215) if after having been admitted as a tourist or visitor for pleasure he engaged in any business or occupation or employment, or if after having been admitted for business he engaged in any business or occupation or employment other than that given as a reason for his request for temporary admission." (8 CFR 25.14.)

A parallel situation is the case of the immigrant student who must not merely show that he intends to study at an accredited institution of learning but must specify the particular institution that he expects to attend. This statement becomes a condition of the status under which he is admitted, and existing regulations provide that if he is expelled from that institution or fails in his attendance he may be deported:

> "Any immigrant student admitted to the United States as a nonquota immigrant under the provisions of subdivision (e) of section 4 of the Immigration Act of 1924 (43 Stat. 155; 8 U. S. C. 204 (e)), as amended, who fails, neglects, or refuses regularly to attend the school, college, academy, seminary, or university to which admitted, or the accredited school, etc., to which he has lawfully transferred, or who is expelled or dropped from such institution, or who accepts employment except as authorized, or who fails to provide himself with a passport, or document in the nature of a passport acceptable under consular regulations, which will permit his voluntary departure to his own or some other country, or who fails or refuses to so depart, shall be deemed to have abandoned his status as an immigrant

student, and shall, upon the warrant of the Secretary of Labor, be taken into custody and deported." (8 CFR 10.3)

In these cases, the Government, without attempting, for instance, to restrict all business visitors to the purchase of machinery or to restrict all students to attendance at Harvard University, takes the position that if a visiting alien states, in applying for a visa, that he will engage in the purchase of machinery or study at Harvard he shall be taken at his word and thereby he subjects himself to deportation if he departs from the terms of his declaration. No one familiar with the problems of administration and enforcement of immigration laws can say that such insistence upon specificity is unreasonable.

What is true of the specifications of occupation and attendance in the foregoing cases is no less true of a geographical declaration which a nonimmigrant visitor may make. There appears to be nothing in the law to prevent consular officials or immigration authorities from asking an applicant for permission to enter the United States to specify the areas in which he intends to travel or reside and advising him that he will be taken at his word and will forfeit his status if he violates his declaration. Is that not, at the very least, a reasonable method of maintaining adequate supervision of alien visitors?

The fact is that the immigration visa forms now in use require the immigrant to declare where he intends to settle, and the immigrant who knowingly answers such a question falsely becomesliable to criminal penalties (act of May 26, 1924, sec. 22, 43 Stat. 153, 165, 8 U. S. C. 220), and thereupon to deportation (act of February 5, 1917, sec. 19, 39 Stat. 874, 889, 8 U. S. C. 155).

If an applicant for an immigration visa can be required to declare where he will reside, although the immigration laws do not expressly provide for any such declaration, then certainly an applicant for a temporary permit to enter can be required to make a similar statement, under the broad authority conferred by the statutes governing entry of alien visitors (act of May 22, 1918, 40 Stat. 559, as extended by the act of March 2, 1921, 41 Stat. 1205, 1217; act of May 26, 1924, sec. 15, 43 Stat. 153, 162, as amended by the act of July 1, 1932, 47 Stat. 524, 8 U. S. C. 215; act of June 28, 1940, sec. 30 Public No. 670, 76th Cong.). The same penalties for a false statement that apply to applicants for immigration visas apply equally to applicants for visitor's visas. (8 U. S. C. 220, 155.)

In view of these considerations I am of the opinion that it is clearly within the discretionary authority of the President to require an alien vistor to say where he is going and to hold him to

his word. I can see no valid distinction between thus restricting an alien visitor geographically and the time-honored practice of restricting him occupationally.

The narrow view which holds that administrative authorities must show specific statutory authorization for all conditions imposed upon the admission of temporary visitors to the United States is, in view of the foregoing considerations, incompatible with the clearly expressed views of the Supreme Court, with the broad definitions of Executive power in the relevant statutes of Congress, and with the unbroken practice of the President, the State Department and the immigration authorities, which has been repeatedly tested and upheld in the courts.

Conceivably, one may agree that the Executive is endowed by Constitution or by statute with a broad discretion in promulgating rules and procedures for the control of alien visitors and yet maintain that geographical considerations are entirely foreign to that discretion.

One who would attempt on purely legal grounds to limit Executive discretion in these fields and to say a priori that geographical considerations must always be disregarded has assumed a heavy burden. Clearly, as a matter of fact, a person desiring to reside on a remote island presents a problem of enforcement and supervision different

from that presented by one who will travel at will over the entire United States. One who seeks to exclude geographical considerations must then assert as a matter of law that considerations of enforcement and supervision are not within the scope of Executive discretion.

Again it is clear, as a matter of fact, that considerations of national defense involve geographical factors, so that dangers which exist when alien visitors ask permission to roam at will throughout the territory of the United States may be eliminated or minimized if the alien seeks a more modest living space. If this is the actual fact, can it be said, as a matter of law, that all such factual considerations must be excluded from the scope of Executive discretion? If this be the law, then one must indeed place a narrow interpretation upon the Executive authority which is embodied in Executive Order No. 8430 (June 5, 1940), which declares inter alia:

> "No passport visa, transit certificate, or limited entry certificate shall be granted to an alien whose entry would be contrary to the public safety or to an alien who is unable to establish a legitimate purpose or reasonable need for the proposed entry." (Executive Order No. 8430, Pt. I, sec. 5.)

Certainly a fair reading of this provision indicates that the scope of Executive discretion is broad enough to justify different treatment, for example, to three applicants for visitor's visas, one of whom wishes to spend his time in the Virgin Islands, another to

travel throughout the United States and a third to make a tour of factories engaged in national defense work.

These examples suffice to indicate the consequences that follow from the view that prospective residence of a visiting alien is a taboo subject into which administrative authorities may not inquire and upon which they may not rest any inference. Many other situations might be cited in which the absurdity of any such limitation upon Executive discretion would be apparent.

In the only reported Federal case which has been found in which this question is discussed, the court declared:

> " * * * It is urged that this amendment is beyond the power of the department to enact, and that an alien once landed in any territory, or other place subject to the jurisdiction of the United States, may freely go thence to any portion of the United States whether it be the mainland or any of its island possessions. With this conclusion I am unable to agree.
>
> "There may be reasons for rejecting an alien at continental ports which would not exist if he were applying to enter the Philippines. Labor and climatic conditions and standards of living are so diverse that one going to the Philippines who would not there be likely to become a public charge might well be likely to become such if he proceeded thence to the mainland. A more rigid test may therefore well be applied to those seeking admission to the mainland than that applied to those seeking admission to the Philippines. And as the amendment to the immigration rules, providing that the possession of a certificate of lawful entry into the Philippines should not be conclusive as to the holder's right to enter a continental port, was in effect at the time all of these petitioners sailed from Manila, the question was properly open for

> investigation by the immigration officers here as to whether or no, at the time these aliens were admitted to the Philippines, they were likely to become public charges if they proceeded thence to the mainland. This question was investigated upon their arrival here, and was decided adversely to the petitioners. As we have heretofore seen, this decision is final and not subject to review." (In re Rhagat Singh, 209 Fed. 700, 703, 704, D. C. N. D. Calif., 1913.)

There remains to be considered the possible argument that it would be contrary to public policy to prevent a visitor to one of the insular possessions of the United States from traveling to the continental United States. Far from there being a public policy against special treatment for our insular possessions, public policy today in fact subjects them to a great many special administrative regulations in establishing special classes of privileged visitors and immigrants in the various insular possessions. See, for example, 22 CFR 61.3 (Virgin Islands), 61.7 (Puerto Rico), 61.10 (American Samoa, Guam), 61.11 (possessions generally); 8 CFR 1.3(j) (possessions), 3.11 (Puerto Rico, Hawaii), 8.1 - 8.6 (insular possessions and Canal Zone), 11.1 - 11.10 (Hawaii), 30.3 - 30.14 (Philippine citizens in Hawaii), 36.1 (insular possessions and Canal Zone), 36.4 (Virgin Islands, Puerto Rico, Canal Zone, American Samoa, Guam). See also In re Rhagat Singh et al., 209 Fed. 700 (D. C. N. D. Calif., 1913).

In fact, the existing regulations on immigration are prefaced by these words of explanation (8 CFR, ch. 1, subch. A):

> " * * * Under the provisions of the [1924 Immigration] Act persons who are not citizens of the United States or citizens of the insular possessions coming from the insular possessions to the mainland or proceeding from one insular possession to another must undergo examination under each and every provision of the Act."

The special status of our territories and island possessions in immigration matters is further shown by various regulations authorizing the issuance of visas by governors of United States possessions. Thus, for example, Part III of Executive Order No. 8430, approved June 5, 1940, provides:

> "The Executive Secretary of the Panama Canal is hereby authorized to issue passport visas, transit certificates, limited entry certificates, and immigration visas to aliens coming to the United States from the Canal Zone. The Governor of American Samoa is hereby authorized to issue passport visas, transit certificates, limited entry certificates, and immigration visas to aliens coming to the United States from American Samoa. The Governor of Guam is hereby authorized to issue passport visas, transit certificates, limited entry certificates, and immigration visas to aliens coming to the United States from Guam."

Special treatment in immigration matters may be connected with special treatment in the matter of customs duties. Thus the Federal customs duties are not applicable to imports from foreign countries to the Virgin Islands but are applicable in certain cases, defined by statute, to imports to the United States from the Virgin Islands. (Act of March 3, 1917, secs 3-4, 39 Stat. 1133, 48 U. S. C. 1394-

1395.) For customs purposes, in effect, the Virgin Islands are not an integral part of the United States economy. Our tariff laws have been justified as protecting the American standard of living by restricting the sale, in our domestic markets, of the products of impoverished foreign workers. Our 1924 Immigration Law was justified as implementing these restrictions by limiting the entry of those impoverished foreign workers, who might, it was feared, pull down the tariff-protected American standard of living. The Virgin Islands, being outside our tariff walls and outside of any tariff-protected American standard of living, had no economic need for an immigration law to implement tariff bars. In effect, then, a major objective of the 1924 Immigration Law has no practical application to the Virgin Islands. These considerations make it clear that if special regulations, in immigration matters, are applied to such possessions as the Virgin Islands, it cannot be said that such application is arbitrary or whimsical. On the contrary, such special treatment has a basis in the historical, political, and economic considerations which underlie the whole scheme of our immigration legislation.

I am of the opinion, therefore, that if a visiting alien seeks permission to sojourn within a specified territory or possession of the United States, and the administrative authorities see fit to grant him such permission, they are not under a legal duty to permit the applicant thereafter to travel wherever he pleases in the United States.

Finally, I am of the opinion that the provisions of the Executive Order in question are authorized by the Constitution and statutes of the United States.

(b) Having reached the determination that the cited provision of Executive Order No. 8430 was valid when issued, we must consider the question whether this provision has been repealed by the Alien Registration Act of June 28, 1940, section 30 of which provides:

> "No visa shall hereafter be issued to any alien seeking to enter the United States unless said alien has been registered and fingerprinted in duplicate. * * *
>
> "Any alien seeking to enter the United States who does not present a visa (except in emergency cases defined by the Secretary of State), a reentry permit, or a border-crossing identification card shall be excluded from admission to the United States."

It will aid in analyzing this question to consider the two types of action which the Governor of the Virgin Islands was authorized to take by Executive Order No. 8430.

In the first place, the Governor was empowered by this order of the President to waive the usual passport requirements applicable to alien visitors. On this subject nothing is said in the Alien Registration Act. Therefore this power continues, unaffected by that act.

In the second place, the President authorized the Governor to waive the usual requirement that an alien visitor present a passport visa. This power could be exercised in either of two ways: (a) by admitting such visitors without any documentation, or (b) by admitting such visitors under some document other than a regular visa.

To follow course (a) after June 28, 1940, might be considered as threatening the comprehensiveness and integrity of the Alien

Registration Act. For that act provides for the registration and fingerprinting of all aliens in the United States on the date of its enactment and also seeks to provide for those hereafter entering. It does this by setting up the machinery of fingerprinting and registration at the two doors through which aliens may enter the United States: specifically, it provides for the registration and fingerprinting of visiting aliens who secure visas or border-crossing identification cards after June 28, 1940. Except for special cases defined by the Secretary of State and the reentry of aliens formerly lawfully admitted, the securing of visas or border-crossing identification cards is a condition of entry, and thus it is contemplated that all aliens hereafter entering the United States will be registered and fingerprinted. This scheme would be upset if the Governor of the Virgin Islands could admit visiting aliens without visas or border-crossing identification cards (as he could before June 28, 1940), because under such authority it would be possible for some aliens to come into an island possession of the United States without being registered or fingerprinted and without appearing on the special lists authorized under the act by the Secretary of State. Thus it may be argued, with some force, that the Alien Registration Act must be held to have abolished the power formerly vested by the President in the Governor of the Virgin Islands to admit visiting aliens without any documentary controls whatever. It does not appear, as a matter of fact, that any

such power has ever been exercised by the Governor of the Virgin Islands. Nor is any such power now claimed. Therefore it is unnecessary to consider whether this theoretical power has been theoretically abolished or whether it may be saved by the theory that the Alien Registration Act is not to be construed as affecting the President's discretionary powers, whether exercised directly or by delegation.

On the other hand, a question that has practical significance and requires answering relates to the second of the two courses open to the Governor in the waiver of visas, namely the course actually followed of issuing substitute papers for the purpose of identifying such alien visitors upon entry and of controlling their going and coming. Such identification papers were formerly termed "visitor's permits"; now the same documents, issued by the local authorities, have been designated by the State Department as "border-crossing identification cards." (See fn. 14, infra.) Persons receiving such cards are subjected to provisions of the Alien Registration Act respecting registration and fingerprinting. Therefore there is no room for argument that the issuance of these border-crossing identification cards by the Governor of the Virgin Islands will in any way threaten the comprehensiveness and integrity of the alien registration system. Nevertheless, a more subtle (though, I believe, fallacious) argument may be made to the effect that even the Governor's power to admit visiting aliens under border-crossing identification cards has been abolished by the Alien Registration Act.

The argument runs: (a) This statute limits entry into the United States to three classes of persons:

1. Those who have visas or to whom the Secretary of State has given an emergency dispensation from usual visa requirements;

2. Those who have reentry permits; and

3. Those who have border-crossing identification cards.

(b) The term "border-crossing identification card," it may be argued, is a definite "term of art" with an historically established and narrowly restricted meaning that excludes the purposes for which the Governor of the Virgin Islands seeks to apply it. (c) The statute, it is then argued, "froze" the historically established meaning of this term; otherwise, it is urged the statute contains a loophole which undermines its very purpose.

The first premise of the argument, in so far as it sets forth the effects of the statute in restricting entry to the three named classes, appears to me to be sound. The remainder of the argument consists of two propositions which deserve separate scrutiny.

Question A. Is the term "border-crossing identification card" a definite "term of art" with an historically established and narrowly restricted meaning that excludes the purposes for which the Governor of the Virgin Islands seeks to apply it?

This issue compels a preliminary inquiry: How has the term "border-crossing identification card" been defined in the past?

On this question we must note, in the first place, that there appears to be no statutory definition of the term. Certainly there is no such definition in the Alien Registration Act nor is there any definition of the term in any other statute that I have been able to discover. Nor do I find a definition of the term in any reported case or in any of the legal encyclopedias which usually define legal "terms of art." If, then, it is to be viewed as a "term of art" it must be such by virtue of a long-continued unvarying usage in administration. What, then, have been the administrative uses of this term?

Analysis of the administrative uses of the term "border-crossing identification card" is peculiarly difficult because of the comparatively informal character of the document itself and the fact that published regulations and orders often fail to refer specifically to the document in situations where it is actually utilized. This, coupled with the entire absence of reported litigation involving "border-crossing identification cards" and the inadequacy of governmental reporting of Executive orders and regulations prior to the establishment of the Federal Register and the Code of Federal Regulations in 1936 and 1938, respectively, lend added difficulty to the task of analyzing past usage of the term "border-crossing identification card." However, even an incomplete survey, based on the issues of the Federal Register, the State Department Bulletin, the regulations in titles 8 and 22 of the Code of Federal Regulations, the pamphlet of

the Immigration and Naturalization Service, "Immigration Laws: Immigration Rules and Regulations of January 1, 1930, as amended up to and including January 31, 1936," and the pamphlet of the Department of State, "Admission of Aliens into the United States: Supplement A of the Consular Regulations, Notes to section 361, revised to January 1, 1936," suffices to show that "border-crossing identification cards" have been used in a great variety of cases which have little in common.

A few factors we may venture to isolate as common to all the uses of this instrument that we have been able to discover. Other elements appear frequently, but not in all cases. The results of such an analysis may be briefly summarized:

1. Such a card is issued at the border by local authorities to an applicant actually present and seeking permission to cross the border rather than being issued to a person in a distant country by a consular officer abroad. 2/

2. Such a card is issued to authorize a crossing of the border which does not amount to immigration. 3/

2/ See 8 CFR 3.53; ibid 361 (August 23, 1940), 5 FR 3196.
It may be noted that while the Regulations of the Immigration and Naturalization Service for some years back include references to "border-crossing identification cards," there is no reference to such cards in the regulations of the State Department codified in title 22 (Foreign Relations) of the Code of Federal Regulations "having general applicability and legal effect in force June 1, 1938." Only recently, apparently, have State Department regulations provided for issuance of such cards.

3/ See 8 CFR 3.55; and see fn. 5, 9, 10, infra.

3. The card serves to identify the holder by containing photographic and descriptive matter, thus facilitating control over aliens entering the country illegally. 4/

4. The card is a comparatively informal document conveying only a temporary and revocable permission to the permittee. 5/

5. The use of the card is frequently, but not always, confined to the port of issue. 6/

6. The card generally permits only a visit for a period not exceeding 30 days. 7/ But this cannot be an essential characteristic, for there are some situations in which border-crossing identification cards have been utilized where no such limitation is placed upon the length of the visit, as, for example, where such cards are used by aliens permanently residing in the United States who have occasion

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4/ See 8 CFR 3.53; ibid 3.61 (August 23, 1940), 5 FR 3196.

5/ "Border-crossing cards; periodic inquiry; renewals. The status of holders of identification cards shall be inquired into periodically. Renewal will be evidenced by a notation bearing the date thereof and the initials of the validating officer.

"Border-crossing card; cancelation. An identification card may be taken up and canceled at any time, within the discretion of the proper immigration officials." 8 CFR 3.57, 3.58.

And see 22 CFR 61.101(d) (October 3, 1940), 3 State Department Bull. 280.

6/ "Border-crossing card; use. The use of an identification card shall be confined to the port of issue, unless it shall be established that the applicant has occasion to enter the United States from time to time through other ports of entry, in which event an unrestricted card may be issued to him, which shall be honored at other ports." 8 CFR 3.54.

7/ See State Department Order No. 874 (August 24, 1940), 3 State Department Bull. 176.

to return to the United States after leaving the country.[8] And various other regulations prescribing the use of such cards fail to include any fixed limitation upon the duration of visits.[9]

7. The card is often used to identify a person who wishes to cross a given border frequently.[10] But this cannot be an essential characteristic since border-crossing identification cards have been made available for such emergency needs as hospitalization, where there is no probability of repeated visits.[11]

8. The card is frequently used to identify a citizen or resident of an area immediately contiguous to the boundary crossed. But this cannot be an essential characteristic, since such cards are issued to various classes of aliens not citizens or residents of contiguous foreign areas, as, for example, aliens who have already been admitted to the United States and wish to reenter after a visit abroad,[12] and residents of various islands of this hemisphere which are not "contiguous" to American soil.[13]

8/ "Aliens who have been admitted into the United States for permanent residence with immigration visas and who have been issued border identification cards, do not require further documentation for reentry into the United States." Regulations Effective July 1, 1940, Relating to Entries from Canada and Mexico, 3 State Department Bull. 15. And see pp. 40-43, infra (use of card for irregularly admitted aliens).

9/ See 8 CFR 3.53-3.58. See also 8 CFR 11.83 (August 5, 1938), 5 FR 1951, which refers to "limited visits" but does not fix a specific limit.

10/ See 8 CFR 3.53, 3.56.

11/ 22 CFR 61.101(d) (October 3, 1940), 3 State Department Bull. 280. And see "Admission of Aliens into the United States; Supplement A of the Consular Regulations" page 143. See also fn. 5, supra.

12/ See fn. 5, supra.

13/ See State Department Order No. 874 (August 24, 1940), 3 State Department Bull. 176; 22 CFR 61.101(b) (August 24, 1940), 3 State Department Bull. 198; 22 CFR 61.101(d) (October 3, 1940), 3 State Department Bull. 280.

Of these characteristics, then, only the first four can possibly be considered essential in the sense of constituting essential elements in a "term of art." A definition limited to essentials would then declare, in substance, that a border-crossing identification card is a document, temporary and revocable, issued at the border by border immigration authorities authorizing a crossing of the border which, because of the temporary duration of the stay or other special conditions, does not amount to immigration. Other incidents of past administration involve too wide a variation to permit incorporation in a technical definition.

In the light of these considerations, the first question must probably be answered in the negative. In my opinion the term "border-crossing identification card" is not a term of art at all; as used in the statute it means just what it says: an identification card under which border-crossing is authorized. There is no departure from this common-sense meaning if such a card is used in the situation presented by the Governor of the Virgin Islands.

Question B. Did the statute "freeze" an historically established meaning of the term "border-crossing identification card"?

If, as I believe, the term "border-crossing identification card" is not a term of art with narrowly restricted meaning, then the Alien Registration Act could not possibly have resulted in "freezing" such a meaning, and there is nothing further to discuss.

So, too, if the only logical meaning that can be given to the term "border-crossing identification card" is a meaning which includes the use now in question, there is nothing further to discuss.

Assuming, however, for the sake of argument, that I am mistaken in my understanding and analysis of the past usage of the term "border-crossing identification card," and that in fact this term has been used only in situations basically different from that now presented, -- the question then arises: Does the Alien Registration Act "freeze" the definition of this term so as to prevent its application to new situations not formerly dealt with in this manner? If the act does not have this effect, then even a conclusive demonstration that cases A, B and C, in which such cards were used in 1937, 1938 and 1939, do not cover case D, in which it is proposed to use the card in 1941, would fail to show that extension of the technique to case D is illegal.

The argument against the validity of the proclamation may be summarized in these terms: When the statute refers to "border-crossing identification cards" it must have meant to limit the term to past usage, since otherwise, in the absence of any statutory definition, any kind of identification card held by an alien might be called a "border-crossing identification card." The alien holding such a card would then be allowed to cross any border, and the restrictive purposes of

the statute would thus be evaded. Thus be merely calling a document by a certain name immigration restrictions would be nullified. Congress, it is urged, could not possibly have intended such a result.

This argument involves two assumptions-- (a) that the purpose of limiting immigration would be defeated if the term in question did not have a narrowly limited and firmly fixed meaning, and (b) that the purpose of the statute is, in fact, to limit the entry of aliens. Both these assumptions are, I believe, false.

The argument as to the supposed defeat of Congressional intention by the inclusion of a flexible term would have considerable force if the question at issue were whether an alien holding, let us say, a registration identification card could, by calling it a "border-crossing identification card," secure admission to the United States. When the question is thus badly put, it is obvious that neither the alien's designation of a document nor even a designation conferred by popular usage could bring any particular document within the prescribed statutory category. But the fallacy in the argument lies in the assumption, without warrant, that Congress was unwilling to allow the term "border-crossing identification card" to be defined administratively, in the future as in the past, by specific regulations made in specific cases by immigration authorities responsible to the President of the United States. The broad powers over the admission of nonimmigrant aliens which have been vested in the President and immigration officials

responsible to him under the 1918 and 1921 acts cited in the Governor's proclamation have been carefully used in the past, and there is no suggestion in the legislative history of the Alien Registration Act that Congress was not entirely satisfied with the administrative machinery by which such terms as "border-crossing identification card" had been defined in case-by-case decisions.

The argument that fixed definitions are indispensable ignores the fact that fixed definitions are neither the only way nor the most effective way of safeguarding the enforcement of a law. In truth, the certainty conveyed by such fixed definitions is too often an illusory certainty. Any word can be misconstrued, and even if it is formally defined the very words of the definition can be misconstrued. Congress must rely upon administrative discretion to see that the purposes of Congressional enactments are carried out, and where Congress has invested the President of the United States with a broad measure of control over the temporary admission of alien visitors, as it has done in the 1918 and 1921 acts, there is no practical reason why Congress should draw an iron ring around the cases in which that discretion may be favorably exercised or the terms of the documents used as tools in such administration. It is under the Executive orders of the President that local immigration authorities, and the Governor of the Virgin Islands, act in defining special uses for "border-crossing identification cards."

Their every action in this field is subject to Presidential review and supervision. In this fact, rather than in an impossible series of frozen definitions, was the warranty that the acts of Congress would be faithfully administered. The legislative history of the Alien Registration Act is entirely devoid of any suggestion that Congress distrusted this discretion. There is no suggestion that Congress, in this act, sought to impose new restrictions upon the President, in the use of border-crossing identification cards, or upon the subordinate officials to whom he had entrusted administrative authority in this field.

The foregoing argument is strengthened by the use of the cards since the Alien Registration Act went into effect. As this act limited the documents under which nonresident aliens may enter the United States to visas and border-crossing identification cards, the Department of State has apparently used the cards as a general substitute in cases where a visa could not be issued but where, on the basis of present immigration legislation, the alien is admissible to the United States.

A typical example of this is the establishment of the card system on the Virgin Islands by regulation of the Secretary of State on October 3.[14/] The history of this regulation is quite illuminating. On September 13 the Governor of the Virgin Islands, through the Secretary

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14/ "Sec. 61.101 Waiver of passport and visa requirements for certain aliens.

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"(d) Aliens desiring to enter Virgin Islands for less than 30 days; resident aliens of Virgin Islands. Under the emergency provisions of section 30 of the Alien Registration

of the Interior, proposed that the Secretary of State establish a vice-consulate in St. Thomas for the purpose of issuing visas to aliens from neighboring islands who had been used to enter the Virgin Islands on a temporary visitor's permit, valid for six months and extended for such periods as the Governor saw fit. The Governor felt that, in order to avoid any legal question as to the status of these visitor's permits after the enactment of the Alien Registration Act, visas should be issued in these cases by an American consul located in the Virgin Islands. The Secretary of State replied that it was not permissible to establish consulates in United States Territories and that in view of the practical difficulties and expense which would be involved if the inhabitants of neighboring islands had to obtain visas from as distant a consulate as that in Barbados, a border-crossing

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14/ (Cont'd):

Act, 1940, and of Executive Order No. 8430, of June 5, 1940, British subjects domiciled in the British Virgin Islands and French citizens domiciled in the French island of St. Bartholomew, who seek admission into the Virgin Islands for business or pleasure for a period of less than 30 days on any one visit, may present a nonresident alien's border-crossing identification card issued by the immigration authorities of the Virgin Islands. Border-crossing identification cards may also be issued to aliens residing in the Virgin Islands who may have occasion to proceed temporarily to the British Virgin Islands or to the French island of St. Bartholomew. (Sec. 30, Public No. 670, 76th Cong., 3d sess., approved June 28, 1940; E. O. 8430, June 5, 1940)" [3 State Department Bull. 280-281.]

identification card system should be established in the islands for the use of inhabitants of neighboring French and British islands. While the use of these cards is somewhat different in details from that of visitor's visas, due to the inherent nature of the identification card system, it is clear that the cards are being used for a purpose which has been and usually still is served by visitor's visas, visas being ruled out simply because cards are practically a more convenient method of documentation. That this situation does not necessarily call for border-crossing identification cards, apart from the Alien Registration Act, is shown by the fact that Mr. George L. Brandt of the Visa Division in the Department of State, who came to the islands on an inspection tour in 1936, was advised of the temporary visitor's permits used there and at no time suggested that they should be replaced by border-crossing identification cards, as a more appropriate form of documentation.

As a matter of fact, the Department of State also stated in its letter of October 8 that the card system may be used to enable aliens who are illegally in the Virgin Islands because of the late application of the 1924 Immigration Act there, to return to the islands from visits to neighboring islands. Thus, the cards are being used to enable persons to return to the islands for permanent residence who otherwise, having left the islands on a trip and having no legal claim to permanent residence in United States territory, would have no right

or possibility to return. This, while a most desirable solution to a complex local problem of long standing, helps to show that the card system may be used as a general substitute wherever it is desirable to admit alien visitors to the United States who cannot obtain a visa or reentry permit and who could qualify for any of the many other types of documentation heretofore accepted by the immigration authorities but which have been reduced by the Alien Registration Act to the one type of border-crossing identification card.

It is thus clear that the State Department has given a contemporaneous construction to section 30 of the Alien Registration Act which leaves the term "border-crossing identification card" as used therein subject to the same process of administrative interpretation and development as existed before the act. That this is indeed reconcilable with the purpose of the statute will be plain when we turn to examine that purpose.

What has already been said is a sufficient answer to the argument that without a rigid freezing of terms the purpose of Congress would be defeated. But a more fundamental objection to this whole argument exists. The argument assumes that Congress intended, in section 30 of the Alien Registration Act, to erect immigration restrictions. That is not true. There is nothing in the letter or the spirit or the legislative history of the act which evinces any such purpose. It would indeed be a queer method of legislating if this paragraph 2 of

section 30, which was inserted in the bill one year after it had first been introduced and which was never as much as mentioned by any Committee report or in any debate on the floor of the Senate or the House and which was never presented to the Committee on Immigration and Naturalization of the Senate or the House, should now be considered to have radically modified and restricted the vast body of immigration legislation and regulation heretofore in force. This provision stands as part of Title III of the act, which relates to the registration of aliens, and is not a part of Title II of the act, which relates to exclusions and deportations. It appears as the second paragraph in a section which, in its first paragraph, makes registration a prerequisite to visa issuance. But linking registration to visa issuance would be meaningless, from the standpoint of achieving the statutory objective of complete alien registration, unless either visa issuance were a prerequisite to the admission of aliens or other methods of admission were noted and provision made in the statute for requiring registration in these other cases. This latter course was chosen by Congress, which recognized that border-crossing identification cards might be used in lieu of visas in certain cases and then went on, in section 32(c) of the act to authorize the Commissioner of Immigration, with the approval of the Attorney General, to issue special regulations to require registration of "holders of border-crossing identification cards."

Standing where it does, paragraph 2 of section 30 can most reasonably and simply be viewed as a pure requirement of documentation, leaving completely aside the entirely distinct question of who should issue these documents and in what cases. This question not having been dealt with at all in this act, there would be no basis for the fear that the issuance of border-crossing identification cards to any type of people could undermine the purpose of the statute. If the alien is not in a class admissible under general immigration legislation, he will be excluded by the provisions of such legislation without reference to paragraph 2 of section 30 of the Alien Registration Act.

It is my opinion, in short, that this provision, as well as the entire Title III of the Alien Registration Act, is a police measure and does not constitute immigration legislation proper. These provisions are designed to give the Government a more complete check on the movements of aliens without providing for any more restriction on admissions than there has been before. In other words, the entrance of aliens and their stay in this country is still subject to the immigration legislation and regulations heretofore in existence. All the Alien Registration Act intends to do is to improve the means of the Government to acquire information about the character, the residence, and the identity of such aliens. Paragraph 2 of section 30 especially does not presume to change the rules of admissibility of

aliens. It merely limits the types of documents which may be issued to them once they have been found admissible.

The Department of State in its regulation of October 3 has, it seems to me, fully recognized this character of the provision, for in cases where heretofore the Governor used to issue temporary visitor's permits, the Department in effect stated that such permits, being no longer acceptable under the Alien Registration Act, should be replaced by border-crossing identification cards, which are so acceptable. Had the Department of State considered this provision as restricting the entrance of aliens, it would have had to argue that, temporary visitor's permits no longer being acceptable under the act, aliens of a type who heretofore were issued such permits can no longer be admissible.

That such is indeed not the meaning of the act is furthermore shown by the fact that the State Department now also issues visas where heretofore "limited entrance permits" or similar papers were issued. Thus, the act did not "freeze" the definition of visas, either; for as long as the alien presents a visa the requirements of the act are satisfied and as long as he has a right to enter the United States -- with a limited entrance permit before or with a visa now -- the requirements of the immigration laws are satisfied too. As long as every person presenting himself at a port of entry of the United States can show either a visa or a special emergency waiver of a visa or a reentry permit or a border-crossing identification card, the purpose of the statute is

satisfied, as the alien will be identified by one of the four methods of identification acceptable under the act. It does not matter in what cases these cards are issued, because the degree of identification which is achieved with this card, and which is the real and sole purpose of the statute, will always be present, no matter for what purpose the card was issued. As to the cases in which border-crossing identification cards or, for that matter, visas or reentry permits may be issued and as to the authorities who may issue such documents, the statute is mute, clearly leaving these questions, which are questions of immigration, to the body of immigration legislation and regulation in force.

These considerations compel the conclusion that the Alien Registration Act of June 28, 1940, did not terminate the power which the President conferred upon the Governor of the Virgin Islands by Executive Order No. 8430 of June 5, 1940, to waive the usual visa requirements in emergency cases where border-crossing identification cards are issued to nonimmigrants seeking temporary admission only to the Virgin Islands.

3. The scope of the Executive order.

It is impossible, of course, to foresee the legal peculiarities and complexities of every case which may arise in the administration of the power conferred upon the Governor of the Virgin Islands by the President, and no attempt will be made at this time to pass upon all the

legal questions that may thus be presented. It seems appropriate, however, to consider the scope of the Governor's power with respect to two situations: (a) where the visitor intends to remain for a period in excess of 30 days; and (b) where the visitor has a pending application for an immigration visa.

(a) The first of the situations suggested is likely to arise generally in the application of the proposed procedure. Persons coming to the Virgin Islands to take employment on a job that will not be completed for some months cannot truthfully declare that they intend to leave the islands within 30 days, and therefore are not within the special situation affecting vendors of garden produce and other day-to-day visitors for whom special dispensation has already been made by regulation.15/ The alien visitors whose entry local naval and civilian officials desire to facilitate and regularize will expect to remain in the Virgin Islands until either the construction work now under way has been completed or the need for alien labor in that work has disappeared. These two conditions are related to a great national emergency the end of which cannot yet be precisely forecast.

It may be argued that one who wishes to reside in a Territory of the United States for a period which cannot be precisely fixed cannot

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15/ See page 40, supra.

be considered a temporary visitor, or nonimmigrant, within the meaning of the statutory definition (Immigration Act of 1924, sec. 3(2), 43 Stat. 153, 154, 8 U. S. C. 203: "* * * an alien visiting the United States temporarily as a tourist or temporarily for business or pleasure * * *").

Although the period for which a visitor's visa is granted has, in the past, usually been fixed at six months, this is purely an administrative matter. While the statute uses the term "temporary," this term has not been administratively construed as meaning "very short" but rather has been construed, quite properly, as meaning the opposite of "permanent." Thus it is possible for a visit to be "temporary but protracted," and in fact the instructions of the Department of State to consular officers authorize long-term visits by "aliens desiring to proceed to the United States for training in well-known banking or industrial institutions for a temporary but protracted period." (State Dept., Admission of Aliens into the U. S., Note 33.) Likewise in the case of candidates for religious orders, consuls are advised that "if the period of training will extend beyond one year applications for extensions of temporary stay will be considered annually and will ordinarily be granted upon a showing that the aliens are maintaining their status" (Ibid., Note 34). The recently promulgated regulations covering refugee children, approved by the Attorney General on July 13, 1940,

prescribe as the period for which admission is valid "a period of two years subject, however, to the power of the Attorney General to shorten or extend the period of admission." According to the State Department's Press Release of July 14, 1940, the purpose of these regulations is to care for a special problem for the duration of emergency conditions:

> "The Department of State and the Department of Justice announced on July 14 the adoption of simplified procedure which will make possible the admission of refugee children from the war zones in whatever numbers shipping facilities and private assurances of support will permit.
>
> "It is contemplated that visas and the necessary travel papers shall at all times during the period of the emergency be in the hands of at least 10,000 children in excess of those for whom shipping facilities are currently available. The plan is designed to facilitate evacuation of children regardless of their financial circumstances.
>
> "The new regulations apply only to children under 16 years of age who seek to enter the United States to escape the dangers of war. The regulations authorize issuance of visitors' visas to such children upon a showing of intention that they will return home upon the termination of hostilities. * * *"

Under these precedents it seems to me clear that the fact that the applicant for entry desires to remain within a possession of the United States for a contingent period which he cannot control or predict is not enough to exclude him legally from the statutory classification of "alien visitor." Referring again to the regulations on child refugees, one might object that the duration of the present war is unpredictable and that since it may possibly last a century visitors "for the duration" cannot be considered "temporary visitors." Yet the Secretary of

State and the Attorney General have not considered that this possibility must exclude application of the "visitor" category. From Aristotle to Cardozo it has been observed that in social problems the certainty of mathematics cannot be achieved. If those in whom power to act on behalf of the Federal Government has been vested are reasonably persuaded that certain conditions which now exist are temporary rather than permanent, then it is only fitting and proper that they class as temporary visitors those aliens who seek permission to remain within these island possessions of the United States during a period when their presence is urgently desired by the local naval and civilian authorities.

(b) There remains, finally, for consideration the question whether any applicants for temporary entry permits who have pending applications for immigration visas must be excluded on the ground that the pendency of such an application is incompatible with the acceptance of a "temporary visitor" status.

I am of the opinion that no such legal consequence is attached to the act of applying for an immigration visa. This view is in accord with a series of decisions of the Federal courts holding that a person may in good faith apply for, and become entitled to receive, a visitor's visa even though the applicant has a conditional intent to acquire a more permanent status if the law permits. Thus, in the case of

Chryssikos v. Commissioner of Immigration, 3 F. (2d) 372 (C. C. A. 2d, 1924), the decision of the Labor Department excluding the relator from entry as a temporary visitor, on the ground that she had testified that she wanted to stay in the United States permanently, was reversed in habeas corpus proceedings. The court held that a desire to obtain the right of permanent residence did not evidence bad faith in applying for a temporary visitor's permit, and that the exclusion of the relator was therefore not legally justified.

Again, in the case of United States v. Curran, 13 F. (2d) 233 (D. C. S. D. N. Y., 1925), the decision of the immigration authorities to exclude an alien claiming a temporary visitor's status, on the ground that he hoped later to achieve a quota-exempt student-immigrant status, was reversed by the court, on the authority of the Chryssikos case. The court declared:

> " * * * His exclusion was unjustified as a matter of law, because the statute gives him a present right to enter as a temporary visitor, and does not authorize the immigration authorities to exclude temporary visitors simply because they intend to learn our language and qualify themselves for admission to our colleges and universities. Whether this alien should be ultimately permitted to remain and pursue his studies in Stevens Institute is a question which does not arise at this time. It is sufficient that he is now entitled to enter as a temporary visitor. The case cannot in principle be distinguished from the decision of the Circuit Court of Appeals in this circuit in Chryssikos v. Commissioner of Immigration (C. C. A.) 3 F. (2d) 372." (p. 235.)

To the same effect is the decision in United States v. Reimer, 10 F. Supp. 992 (D. C. S. D. N. Y., 1935).

It is not intended, of course, to express a view on the question of fact which arises in every case as to whether the applicant for permission to take up temporary residence in a given Territory or insular possession of the United States intends in good faith to assume a merely temporary residence there. Cf. United States v. Commissioner of Immigration, 13 F. (2d) 943 (D. C. S. D. N. Y., 1925); Ex parte Menaregidis, 13 F. (2d) 392 (D. C. S. D. N. Y., 1925); United States v. Karnuth, 28 F. (2d) 281 (D. C. N. D. N. Y., 1928). All that is here asserted is the proposition which the absence of legislation suggests and which the decided cases make perfectly clear: that application for an immigration visa to enter the United States is not inconsistent with an intention that an interim visit to a designated Territory or insular possession shall be merely temporary, and does not legally preclude the applicant from the enjoyment of privileges accorded to other temporary visitors.

Other special circumstances which may raise legal questions as to the scope of the authority of the Governor to admit nonimmigrant aliens to the Virgin Islands in emergency cases will be considered as they arise, upon submission of the facts to the Department.

Respectfully,

(Sgd) Nathan R. Margold,
Solicitor.

Approved: June 2, 1941.

(Sgd) Harold L. Ickes,
Secretary of the Interior.

Transcribe from Dean Rusk

George Warren

Emigration Manual

Sections 400, 423, 423.2 - par. 5 Misc., Part A.

Section 442.8, Part 1, par. 5.

Section 442.6, par. 3.

Section 448.3, par. b5

Admission of aliens into U. S., Department of State Supplement A of the Consular regulations - Notes to sections 361 revised to January 1, 1936. - Section II note 31

EXCERPT FROM THE CONGRESSIONAL RECORD OF MARCH 13, 1940.

SETTLEMENT AND DEVELOPMENT OF ALASKA

Mr. WAGNER. Mr. President, on behalf of the Senator from Utah [Mr. KING], I ask consent to introduce a bill for that Senator providing for the settlement and development of Alaska. I also ask unanimous consent that a memorandum relative to the bill may be printed in the RECORD.

The VICE PRESIDENT. Is there objection?

There being no objection, the bill (S. 3577) to provide for the settlement and development of Alaska was read twice by its title and referred to the Committee on Territories and Insular Affairs.

The memorandum relative to the bill was ordered to be printed in the RECORD, as follows:

MEMORANDUM ON ALASKAN DEVELOPMENT CORPORATION BILL

I. PURPOSES

The Alaskan Development Corporation bill seeks to accomplish three interrelated purposes:

(1) To enlist private capital in the development of Alaskan resources.

(2) To encourage the settlement in Alaska of men and women who want to make Alaska their home and who are prepared to conquer the problems of an undeveloped country.

(3) To provide an adequate mechanism of Federal control over such development and settlement, so as to guard against the dangers of unrestricted exploitation of natural and human resources.

1. Sources of capital: The amount of capital available in Alaska for industrial development is negligible. American capital has in recent years shown little interest in Alaskan development. Some of the American concerns that have invested in Alaska have been interested only in taking raw materials out of the Territory, and such investment has made little contribution to the development of Alaska. At the present time, however, there are many American citizens who are sending substantial sums abroad for the relief of victims of war and persecution. Rather than pour these funds endlessly into lands where the recipients are not allowed to earn a living, the suppliers of these donations would consider it a privilege to establish permanent sources of livelihood in a territory where some of these victims might utilize their abilities and become self-supporting. As between the Territory of Alaska and other proposed lands of refuge in Africa and South America, the attraction of the American flag appears irresistible. It is hoped that persons and organizations interested in refugee settlement may be in a position to invest considerable amounts of capital in the development of Alaska. (The total capital of all Alaskan banks, at the present time is approximately $900,000.) Sums expended for the construction of homes, mills, canneries, and factories, for the improvement of land, and for the purchase of industrial and agricultural equipment would represent a permanent addition to productive capital in the Territory.

2. Character of settlers: The white population of Alaska has been almost stationary for three decades, and the practical cessation of foreign immigration under existing quota laws has removed what was in the past a principal source of new population. Even today, approximately one-third of the white population of Alaska is foreign-born. A certain number of Americans without jobs or resources drift to Alaska and intensify the winter relief problem of the Alaskan cities. Ordinarily, Americans with the capital and training that would be needed to meet the problems of Alaskan living do not have the urge to leave the United States and start life anew on the frontier. Therefore, the problem of populating Alaska depends in the first place upon encouraging foreign immigration of the proper sort under conditions which assure that immigration will make a positive contribution to the economic life of the Territory.

At the present time, immigration to the United States naturally tends toward localities where friends and relatives of the immigrants are located, where industries are established, and where the conveniences of civilized life are readily available. If, therefore, the highest type of immigrant is to be attracted to Alaska, some special incentive must be offered. The most effective possible incentive would be permission to enter Alaska in cases where because of quota limitations the immigrant could not enter the United States for many years to come.

Such immigrants, in meeting the problems of frontier life, would not be thinking of the comforts of life in the States that they had sacrificed, but in terms of the savagery and hopelessness of the conditions abroad from which they had been rescued. To such people the difficulties that seemed so fearful to some of the Matanuska settlers would appear trivial.

The proposed bill seeks to assure the highest possible type of immigration to Alaska by laying down rigid standards of physical, mental, and moral fitness, which are supplementary to existing immigration restrictions. The only immigration restrictions waived by the proposed bill, aside from quota restrictions, are the prohibitions against guaranteeing employment to immigrants and against contributing to their costs of passage.

The bill provides that with respect to at least 50 percent of the openings in any project, preference shall be given to American citizens. This provision is designed to insure against any of the proposed projects taking the appearance of foreign colonies, to assist assimilation and Americanization of the immigrants, and to guarantee that the program as a whole will, instead of depriving any Americans of jobs, actually create a substantial number of new jobs for citizens, based upon capital which would not otherwise be available for the creation of jobs on American soil.

3. Federal supervision: In this program of settlement and development, governmental control is important (a) in the interests of conservation; (b) in order to direct industrial development into lines of greatest national advantage; and (c) in order to make certain that the settlers are furnished with the equipment and materials they require for healthy living and self-support. The most effective way to accomplish these purposes appears to be through federally chartered corporations responsible to the Secretary of the Interior for the carrying out of specific undertakings with respect to the amount and type of capital investment per settler, the occupations to be pursued, the basis upon which settlers are to be selected, and other essential details of particular projects.

The bill sets forth specific limitations designed to insure that the proposed corporations will engage in enterprises, based upon the resources of Alaska, that will not compete with American industry or displace any workman in Alaska or the United States. The bill also imposes a rigid limitation upon the amount of profit that may be drawn from the Territory by stockholders and bondholders of the corporations.

The bill assures that there will be no "dumping" of penniless refugees in Alaska; that no corporation will be chartered until at least two and a half million dollars has been actually raised; that no corporate project will be authorized until the essential details of a practical course of development have been scrutinized and approved; and that no immigrant will be given a special visa until the funds are available and the plans approved to guarantee an opportunity for healthy living and ultimate self-support.

II. OPERATION OF THE PROPOSED LEGISLATION

If the proposed bill is enacted, the first step to be taken under it would be the organization of Alaska development corporations, under section 1 of the bill. Such corporations would be chartered by the Secretary of the Interior upon a finding that the articles of incorporation conformed to all the requirements of the law (secs. 2 and 3) and that shares of stock or debentures amounting to at least $2,500,000 had been subscribed to, in good faith (sec. 4). All stock must be paid for in cash and only citizens of the United States and settlers in Alaska may hold voting stock (sec. 5).

Such corporations may engage in specified industries, based primarily upon the unused resources of Alaska (sec. 6). In addition to the usual powers of commercial corporations, these Alaska development corporations may present for the approval of the Secretary of the Interior plans for a specific settlement projects (sec. 8).

Upon the approval of such a plan, the Secretary of Labor is empowered to pass on the qualifications of prospective immigrant settlers; such as are found to be qualified may receive special visas from the appropriate consular officers, similar to student or visitor visas, and entitling the recipient to travel to Alaska and to engage in the occupations which the bill authorizes (secs. 9 and 10). Violation of the conditions of the visa is made a punishable and deportable offense (sec. 14).

Settlers admitted under special visa will not be eligible to citizenship until they have been reclassified as quota immigrants (sec. 10). Such reclassification may be authorized by the Secretary of Labor in any year when the quota assigned to the country of the settler's origin is not otherwise filled (sec. 10). Admission to citizenship, after such reclassification, discharges the conditions of the settler's special visa.

Provision is made, along the lines of the China Trade Act of 1922, for the supervision of reports and records of the Alaskan Development Corporations (sec. 11), the conduct of investigation by the Secretary of the Interior (sec. 12), and court proceedings in the event that any such corporation infringes the conditions laid down in its articles of incorporation or violates any law of the United States (sec. 12). Alaskan Development Corporations, in view of their public purpose character, are exempted from requirements of the Securities Act, and gifts and bequests to such corporations are exempted from Federal taxation, but in their operations in Alaska the proposed corporations would be subject to Territorial taxes (sec. 13).

III. ANALYSIS OF POSSIBLE OBJECTIONS

Provision has been made in the proposed legislation to overcome the following objections:

(1) That the plan would deprive Americans of jobs: The guaranty of citizen preference (sec. 8) and the restriction of corporate enterprises to noncompeting industries (sec. 3) were specially framed to overcome this objection.

(2) That Alaska would be burdened with penniless refugees: The capital requirements prescribed (sec. 4), the prior scrutiny of corporate enterprises (sec. 8), the limitation of the number of special visas granted (sec. 9), and the requirement that sponsoring corporations give adequate guaranties that no settler will become a public charge (sec. 9), are designed to eliminate this danger.

(3) That immigrants would use Alaska as a stepping stone to illegal entry into the United States. Federal supervision of the affairs of these corporations and the system of special visas would make possible more effective control over immigrant settlers than is possible with respect to any other class of immigrants or nonimmigrant alien visitors under existing law. Furthermore, it should be noted that immigrants with guaranteed opportunities of livelihood in Alaska are not likely to want to become deportable aliens in the United States. Immigrants who seek to enter the United States illegally are likely to choose approaches closer to their routes of travel than Alaska—e. g., Canada, Mexico, or the West Indies.

(4) That admission to Alaska of immigrants who are not entitled to enter the United States would place Alaska in an inferior political status. In answer to this argument it should be noted that Hawaiians do not consider it a mark of inferiority that certain immigrants who are not entitled to enter continental United States may be admitted to Hawaii when the Secretary of the Interior decides that the needs of Hawaiian industry so warrant. Nor do the citizens of the Canal Zone, Puerto Rico, and other island possessions object to the law under which aliens in these territories may be refused admission to the United States. Neither do the inhabitants of New Haven consider themselves put in a position of inferiority when a student visa is issued restricting the bearer to attendance at Yale University.

(5) That the proposed legislation is a radical departure from past precedents. Each important feature of the proposed bill has been based upon legislation now in force. It has already been noted that the corporate features of the bill follow those of the China Trade Act.[1] The principle of according immigrants to a territory a status distinct from that of immigrants to continental United States finds ample precedent in the act of April 29, 1902,[2] section 1 of the act of February 20, 1907,[3] and section 8 of the act of January 17, 1933.[4] The granting of a quota-exempt status to immigrants whom, for reasons of national policy, we seek to encourage is supported by numerous statutes conferring such special status upon immigrants from Canada and Latin America and upon immigrant ministers, teachers, students, and various other classes.[5] Likewise, there is ample precedent in existing law for making the admission of immigrants dependent upon effective guaranties by third persons that such immigrants will not become public charges.[6] The constitutionality of legislation imposing special restrictions upon the residence or occupation of immigrant aliens is clearly established.[7]

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[1] 42 Stat. 849, as amended by act of February 26, 1925 (43 Stat. 996), and the act of June 25, 1938 (52 Stat. 1196).

[2] 32 Stat. 176, amended April 27, 1904 (33 Stat. 428) (prohibiting Oriental aliens in Hawaii from entering continental United States).

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WAR REFUGEE BOARD: DO NOT REMOVE

CHARGE-OUT CARD

DESCRIPTION OF FILE NUMBER	CHARGED TO	CHARGED OUT BY	DATE CHARGED
PERMANENT WITHDRAWAL	Bx 47		
	War Refugee Board, Program Files: "Temporary Havens in U.S.", Vols. 1-11		
	Secret (1 folder)		
	WRB Releases (1 folder)		
	Newspaper clippings, (1 folder)		
(16 items)	Material taken from Mr. Pehle's office (1 folder)		
	Sent on P.W. SD. 46798		
	~~Loaned~~ 10/17/45		
	Signed for by Miss Florence Hodel Foreign Funds control Treas. Dept. Dist. Riggs Bank Bldg. 1406 G St. NW. Room 919.		
	CF 5904		
	This card placed here in Room 410 at beginning of War Refugee Board files 24 March 1949.		
	1055F.		

WAR REFUGEE BOARD RECORDS

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