

THE ALIEN AND THE IMMIGRATION LAW—A STUDY OF 1446 CASES ARISING UNDER THE IMMIGRATION AND NATURALIZATION LAWS OF THE UNITED STATES. Under the direction of Edith Lowenstein. New York: Oceana Publications, 1958. Pp. xii, 388. \$7.50.

FOR more than thirty-five years, the Common Council for American Unity, a nonprofit, nonsectarian agency concerned with the problems of the immigrant and the alien and foreign-language groups in our country, has been steering its clientele through the maze of our immigration and allied laws. The legal aspects of this counseling have been directed in recent years by its dedicated and expert staff counsel, Miss Edith Lowenstein.<sup>1</sup> Miss Lowenstein's book is an analysis of the legal problems of all the unsolicited clients who turned to the Common Council for help since January 1, 1953, shortly after the effective date of the McCarran-Walter Act which codified our immigration, naturalization and nationality laws.

These cases represent, therefore, no selection or cross section to illustrate a particular problem, thesis or point of view, although the Council's location in New York City precluded adequate portrayal of the difficulties of the Latinos or wetbacks in the Southwest. But because the Common Council did not limit itself to an advisory role but frequently represented its clients in hearings before special inquiry officers of the Immigration and Naturalization Service, in arguments before the Board of Immigration Appeals and in many intercessions before executives of the Service—though not in the courts—the book presents a wealth of information about the administration of the McCarran-Walter Act. Identifying her clients only by their case numbers and without the slightest attempt to emphasize their fears or anguish, Miss Lowenstein has simply and concisely described their collisions with a statute infused with the sentiment, "nothing alien is human to me."

The cases are divided into five categories according to the problems involved: those who wished to enter the United States, temporary visitors who sought to change their status to that of permanent residents, deportation cases, naturalization cases and the nationality problems of those concerned with proving their American citizenship or preventing its loss. Within each category, the individual cases are further subdivided into "non-problem" cases, where the law permitted a solution favorable to the alien without difficulty, and "problem" cases, the core of the book, where a conflict occurred between the desire of the alien and the policy of the statute. The book itself is divided into five sections corresponding with these five categories, each section beginning with a compact analysis of the applicable law and the pitfalls besetting the alien.

Of the 1446 cases, almost one quarter involved deportation, the most terrifying problem to confront an alien, particularly since half the aliens concerned were married to American citizens and had one or more native-born

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1. A similar service is rendered to Catholic, Jewish and Italian applicants by sectarian or ethnic agencies.

children. Many of these aliens are still being confined in jail or, in New York City, in special detention quarters, despite the Service's proclaimed new policy of releasing such aliens on bail or parole. A wide variety of problems were handled by the Council, including charges of violating status after entry, obtaining visas by fraud, concealment of crimes, false identity, moral turpitude, narcotic act violation and mental illness. The Council apparently welcomed all clients, excluding no type of case on grounds of principle and apparently requiring no pauper's oath before it accepted a case. It sought on behalf of the alien all that he was entitled to under the law: release on parole, a full and fair hearing, voluntary departure instead of deportation, a suspension of deportation if deportation was ordered, and ultimately merely a stay to allow the alien to clear up his affairs. Miss Lowenstein concludes that many of her clients, although once guilty of criminal or immoral conduct, have demonstrated that they are now persons of good character and useful or outstanding members of their communities, and she pleads for a humanitarian approach to deportation.<sup>2</sup>

Of the 244 naturalization cases, the chief problems were establishing the statutory requirements of residence, literacy and good moral character. Before the McCarran-Walter Act, our courts, grappling with the effort to establish an objective standard of good moral character, created more or less flexible rules.<sup>3</sup> But the 1952 codification of our naturalization laws introduced rigidities—for example, the specific provision declaring that adultery within five years of the petition for naturalization disqualified the applicant.<sup>4</sup> Miss Lowenstein's cases demonstrate that good moral character is not a matter of rules and that a system is needed in which each case is judged on its merits.

In her final section, Miss Lowenstein recounts the difficulties of those who sought to protect their American citizenship. The scope of the problem is indicated by the 4987 persons who were expatriated in 1956. Since citizenship can be lost by mere inaction abroad and even sometimes by mere residence abroad, without any administrative or judicial proceedings, the unwary national is particularly in need of help and guidance. Miss Lowenstein concludes that the "increasing ease with which citizenship can be lost has given a sense of insecurity to naturalized citizens as well as to citizens born abroad of American parents and to dual nationals."<sup>5</sup>

*The Alien and the Immigration Law* reveals a great deal about the administration of that law, although Miss Lowenstein has preferred to let her cases speak for themselves, a reticence that places an undue burden upon her readers. The book suffers from the lack of a concluding chapter in which

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2. For an attack upon our deportation policies, see Maslow, *Recasting Our Deportation Law: Proposals for Reform*, 56 COLUM. L. REV. 309 (1956).

3. For a description of Judge Learned Hand's difficulties in this area, see CAHN, *THE MORAL DECISION, RIGHT AND WRONG IN THE LIGHT OF AMERICAN LAW* 300-10 (1955).

4. 66 STAT. 172 (1952), 8 U.S.C. § 1101(f)(2) (1952).

5. P. 367.

her recommendations about our statutory policies or their administration could have been set forth. The great failing of old-line social work agencies is that they are content to attempt to alleviate the misery of their "cases" without addressing themselves to the fundamental conditions that produced them. The Common Council has not adopted this ostrich-like posture. Its director, Read Lewis, has been in the forefront of those seeking to liberalize our immigration policies. It is therefore to be regretted that this study of an immigration agency's case load was not used to drive home the lessons implicit in its cases.

What does emerge from Miss Lowenstein's study is the inestimable value of a social agency championing with expertness and zeal the cause of those who cannot afford to hire lawyers but need legal service desperately. As our laws grow more and more complex—the McCarran-Walter Act runs in one edition to 197 pages—there is an ever-increasing need for free legal services for those whose lives are shaped by that law. A prosecuting agency like the Immigration and Naturalization Service cannot accommodate itself to the xenophobia of the House and Senate Judiciary Committees and simultaneously protect the alien from the Draconian severities and rigidities of that law. We must, therefore, continue to look to agencies like the Common Council to enforce the biblical command to vex not the stranger within our land.

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