UNITED STATES DEPARTMENT OF JUSTICE
Executive Office for Immigration Review

File: A8 194 566 - New York, NY

Date: June 30, 1983

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In the Matter of :

Boleslaus MAIKOUSKIS :

IN DEPORTATION PROCEEDINGS

- Respondent - :

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ON BEHALF OF RESPONDENT:

Invars Berzins, P.C.
484 West Montauk Highway
Babylon, NY 11702

ON BEHALF OF SERVICE:

Richard D. Sullivan, Esq.
Jeffrey N. Mausner, Esq.
General (Trial) Attorneys
New York District

CHARGES:

I - I&N Act - Section 241(a)(1) - Excludable - (1924 Act) Fraud;
II - I&N Act - Section 241(a)(1) - Excludable - DP Act Section 10 - misrepresentation;
III - I&N Act - Section 241(a)(1) - Excludable - (1918 Act) - Entry Prejudicial;
IV - I&N Act - Section 241(a)(1) - Excludable - Section 13, 1924 Act;
V - I&N Act - Section 241(a)(1) - Excludable - DP Act Section 2, 10 & 13;
VI - I&N Act - Section 241(a)(19) - Participated in persecution under Nazi or associated government;
VII - I&N Act - Section 241(a)(1) - Excludable - DP Act Section 13 - Hostile movement member or participant.

APPLICATIONS:

I&N Act - Section 241(f) - (8 USC §1251(f) - Termination;
I&N Act - Section 208 - (8 USC §1158) - Asylum;
I&N Act - Section 243(h) - (8 USC §1253(h) - Withholding of deportation to Soviet Union;
I&N Act - Section 244(a)(1) - (8 USC §1254(a)(1) - Suspension of deportation;
I&N Act - Section 244(e) - (8 USC §1254(e) - Voluntary departure.

DECISION OF THE IMMIGRATION JUDGE

I

The respondent is a 79 year old, married male alien, a native and citizen of the Republic of Latvia, who entered the United States at New York, New York on or about December 22, 1951. He was then admitted as a displaced person under the Act of June 25, 1948 as amended. At that time, the respondent presented an immigrant visa, issued to him November 14, 1951 in Hamburg Germany.

Deportability of the respondent is charged under seven separately stated charges made by the Government during this proceeding, which was instituted by issuance of an Order to Show Cause on October 13, 1976. The allegations and charges upon which the Government finally relies are set forth in the original Order to Show Cause,[1] a superceding Order to Show Cause dated December 21, 1976,[2] and five Notices of Additional Charges, filed from time to time during the course of the proceeding.[3] To avoid confusion as to exactly what charges are made by the Government, and what allegations are relied upon as the ultimate facts bringing the respondent within each of the specific charges, a conference was convened on April 28, 1983. As a result of that conference, with the trial attorneys and the respondent's representative, the issues have been clarified so that we may foreshorten the discussion of the extensive record of proceedings compiled over the past six and one-half years.

DISCUSSION OF THE CONDENSED ALLEGATIONS AND CHARGES

II

In the course of this proceeding, the Government issued two Orders to Show Cause

[1] Exhibit A
[2] Exhibit 1
[3] Exhibit 3, 18, 21, 22 and 23.

and five Notices of Additional Charges containing 31 separate allegations of fact. These 31 numbered allegations, as set forth in Exhibits A, 1, 3, 18, 21, 22 and 23 are condensed and restated in 16 separate numbered paragraphs which are now a part of the record as Exhibit 133. At the hearing held on April 28, 1983, the Government agreed that the 16 paragraphs represent the factual allegations upon which it relies with one modification,[4] which I do not regard as being substantial. The 16 factual allegations are the basis for the seven separately stated charges under which the respondent is deportable under rationale employed by the Government. With regard to these charges, the Government has now stated its position on each of the charges and the allegations upon which it relies as proof of these charges.

In order to provide a ready reference to the allegations and the charges, I have annexed a chart which sets forth the Government's position with regard to the allegations required to establish each of the charges on the theories which the Government has employed. Examination of that chart will show that Charges I, II and VII as set forth in Exhibit 134, rely on allegations 1, 2, 3 and 4 (and in the case of Charge number I and II on allegations 5 and possibly 7). The main thrust of the Government's case comes in allegation 6 to establish the Charges I, II and VII. Therefore, it is the Government's position that it need not prove allegations 8, 10, 11, 12, 13, 14, 15 or 16 in order to establish deportability under the first, second or seventh charge as set forth in Exhibit 134. Under that rationale, the Government is not required to establish that the respondent performed, participated or acquiesced in activities or conduct, as alleged in allegations 9 through 16 with some degree of specificity or as alleged in allegation number 8 as a generality.

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[4] (See item number 7 listed by the Trial Attorney in his admission of proof, filed April 28, 1983. Number 7 page 4. This allegation is essentially an argument as to the relevance and materiality of the concealment alleged in paragraph six).

As a corrolary, it would follow that Charge III and V involving excludability at entry and Charge VI under Section 241(a)(19), relating to deportability, unrelated to the time of entry, each require proof of all or some of the allegations involving personal participation, performance, advocacy or, at least, acquiescence in conduct contemplated by either the IRO constitution, the 1918 Act and the regulatory provisions relating to war crimes under 8 C.F.R. 175.53 or the recently enacted deportation provision in Section 241(a)(19). Charge IV has no life of its own.

III

EXCLUDABLE: INELIGIBLE DISPLACED PERSON

- A -

On the basis of the foregoing, we can deal with the first phase of the Government's case by taking the first, second and seventh charge brought by the Government and considering them together in relation to the specific allegations upon which they are based. As I already indicated there is no issue of substance as to the first four allegations relating to alienage or the status under which respondent entered the United States. We are then confronted with only three factual allegations made by the Government, now numbered 5, 6 and 7 in Exhibit 133. Only one of these three allegations requires extensive discussion. Allegation number 5 speaks only of the respondent's representation in the documents submitted to the IRO, the Displaced Persons Commission and the American Consul, concerning his prior employment. The information that the respondent was employed as a bookkeeper during the period from December, 1941 to 1944 was obviously false. There is no genuine issue that during a substantial part of the relevant period, the respondent was employed full time as a captain of police in the Second Precinct in the town or district of Rezekne in Latvia. The representation then was a false representation which, if

material, would support the Charge I and II, so that the visa which the respondent presented would be invalidated.

The Government urges that the allegation number 7 is also an ultimate fact upon which the Charge I and II should be sustained. In my view of the case, however, I do not believe that the Government would be required to prove that allegation, to sustain either Charge I or II. With regard to Charge I, I do not find any specific provision in the 1924 Act relating to advocacy or assistance of persecution which would make such a representation, even if false, a material one. With regard to Charge number II, I believe that a false swearing as to advocacy or assistance in persecution would be a material representation in relation to Section 10 of DPA. However, on the record before me, I cannot find that it has been established by clear, convincing and unequivocal evidence that the statement on Form I-144 (affidavit as to membership in organizations and movements) which contained a signature of the respondent, constitutes a false sworn statement. The Form, which is in evidence as Exhibit 39 does not contain an executed jurat. It is impossible to state from the document itself, that the statements contained therein were sworn to before anyone at anytime. The date, on which the Government alleges the statement was executed, is the date shown on the Admission stamp which was apparently used by the arriving inspector. The stamp was affixed to that particular page, but there is no evidence whatsoever that the statement was in fact executed before an officer, on that date. The visa with which the respondent entered the United States was issued on November 14, 1951. The document to which allegation number 7 speaks, the Form I-144 "executed on December 22, 1951," could not have been a factor on which the visa had been issued a month earlier.

In view of those conclusions it is unnecessary to reach the question of whether proof of allegations numbered 10, 14, 15 or 16 would also be necessary to

establish that the statements contained of Form I-144 were false statements regarding advocacy and assistance in persecution; nor is it necessary to decide if the contents of the statement in the English language was known to the respondent at the time he signed it, or that it was translated to him. Although I find that the Government has failed to establish the truth of allegation number 7, I also find that the allegation was not essential to establishing Charge number I or II.

- B -

I turn then to allegation number 6, which is a multi-faceted allegation, consisting of three parts: First, that the respondent was a policeman in the Rezekne region of Latvia in 1941 through 1943; second that he failed to disclose that he had been a member of the police department and, finally, that his failure to disclose his membership was knowingly and intentionally done. This raises a variety of questions as to the significance of each of those three parts of allegation number 6. Under Charge I and Charge II, the Government must establish that the respondent was not only a member of the police department, but that he wilfully and knowingly concealed that fact. The Government argues first that such a representation was material, in that membership in the police department, in and of itself, pro se membership, would have made him an ineligible displaced person without any further inquiry. Failing that, the Government takes a second position that disclosure would have triggered a line of inquiry which might have led to a finding that the respondent was an ineligible displaced person.

A finding that the respondent was an ineligible displaced person would rest on one or another of two alternatives. The first position would be that mere membership in an organization, a proscribed organization if you will, would make that member ineligible as a displaced person regardless of any personal activity

in which he may have been involved, so long as the organization itself advocated or was responsible for specific actions or activities included within the anathema of Section 13 of the Act under Charge VII.

The second alternative would be that the concealment foreclosed inquiry which would have led to discovery of specific acts or personal participation, acquiescence or the commission of specific acts which would foreclose admission under Section 2, 10 or 13 of the Displaced Persons Act.

In this latter category, however, we would be dealing with an alien who also fell within Charge V as well as Charge VII. Moreover, under Charge V relying only on allegation number 6, the Government contends that it would be unnecessary to prove one or more of the allegations involving personal participation.[5]

The minimum required to establish allegation 6 and inadmissibility under Charge I, II or VII would be wilful concealment of membership pro se or membership with proof of organizational involvement in proscribed activity or the advocacy of persecution.

PRO SE MEMBERSHIP

The Government's position is that the respondent's membership in the police or auxiliary police of the Second Precinct in the Rezekne in or of itself made the respondent an ineligible displaced person. Under that theory, all members of the police, regardless of rank, station or personal participation in any activity were ineligible. In support of this proposition, the Government has produced as witnesses, the Consulate Officer, Rosemary Carmody, who issued the visa to the respondent on November 14, 1951, and the Displaced Persons Commission Official, Conan, who was partly responsible for the review of the documents submitted by or on behalf of the respondent in connection with the Displaced Persons processing.

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[5] See Hearing Transcript pp. 20-30 - April 28, 1983

Each of these witnesses indicated that they would not have approved the respondent's application had they known that he was a member of the police in Latvia. In addition, the Government had produced certain Exhibits 100, 104, 102 and 103, purporting to be rejections of certain DP applications by persons who were found ineligible.

However, the respondent has also produced evidence by other witnesses who were involved in the DP screening process to the effect that mere membership in the police of Latvia or any of the other Baltic countries would not have resulted in a denial, although it might have triggered further inquiry which may or may not have resulted in a rejection. See the testimony of Imants Lesiuskis, Exhibit 131, the testimony of Robert G. Printz, Exhibit 123 and testimony of Brigitta Borcheas, Exhibit 125.

The Government produced Exhibit 132, a visa issued to one Zlamars Sprogis at the same consulor section where the respondent's visa was issued. That visa shows that Sprogis had disclosed his membership in the police, and employment during the period of time from 1941 to 1944 as chief of police in another village in Latvia.

The Government has also produced a list (Exh. 75) which was a classified list of organizations, membership in which was considered inimical to the best interest of the United States. However, that list does not list the regular police of Latvia, although it lists SS police formations. The list does, however, include the Aizsargi of which the respondent was a member. As a result of his membership in the Aizsargi, and its inclusion on the inimical list, the respondent was temporarily denied a DP clearance. Subsequently, the Aizsargi was removed from the inimical list. As a result, the respondent was cleared for the issuance of the visa. It is clear then that the respondent may have been declared temporarily ineligible because the inclusion of the Aizsargi on the inimical list. Respondent's membership in the Aizsargi was known to the officials in the Displaced Persons Commission.

As a result, his case was scrutinized and may have been rejected permanently but for the removal of the Aizsargi from the inimical list. However, it has not been shown that membership in the Aizsargi was a basis for barring the respondent from eligibility without further inquiry. Indeed, the documents submitted by the Government suggest that where membership was found then the nature of the membership, that is: whether or not it was voluntary, whether it was forced, whether it was under duress - were matters which would be considered before a person was rejected. At a minimum, however, it would appear that membership in the Aiszargi would have alerted the Displaced Persons Commission reviewing officer to at least question the respondent, and conduct whatever further inquiry may have been possible at that point. See, for example, the testimony of Mr. Printz, which has been accepted in large measure by the Government, and indeed, relied upon regarding membership in the police. The Government has produced no evidence to show that had the respondent disclosed his membership in the police, such disclosure would have triggered any more complete inquiry than that which should have been triggered by his membership in the Aizsargi. Certainly the inclusion of the Aizsargi on the list of the inimical organizations would suggest that the activities of that organization were known to the Government. The record before me shows that not only the respondent, but many other persons who were members of the Aizsargi were later - the same people who were recruited for or made members of the auxiliary police. Indeed even the Government's witnesses produced by the Soviet prosecutor in Latvia indicate that they were members of the Aizsargi. Some of them were apparently members of the Aizsargi before they were blanketed into the police or auxiliary police or other security forces. With that background, it is certainly not clear that the mere disclosure of membership in the police department of a local town in Latvia, would have triggered any investigation more comprehensive than that suggested by Printz: That is whatever investigation he might have conducted at the site.

The scope of any such investigation would seem to have been questioning of the respondent, and perhaps questioning any persons who might have had some familiarity with situations in Latvia, who were available at the particular camp where the investigation officer was functioning.

Despite the relatively large number of documents presented by the Government, I do not find and the Government has not pointed to any documents in which mere members of the police of any of the Baltic countries, seized after the Soviet invasions in 1940 were declared to be ineligible displaced persons, unless they were also found to be part of the security forces used by the Germans after 1941. The so-called inimical list refers to SS Police Regiments. If all the police were included, it would seem to be superflous to refer to SS Regiments of the police. A similiar distinction was drawn by the Government's witness, Dr. Schefler.[6] The documents, to which he refers, and other testimony included in the record make distinctions between the different police groups - Group A, Group 5, Group C and so forth. I find no documents where the police as such are identified as an organization, in which mere membership disqualified any person from eligibility as a displaced person.

In Exhibit 25, Dr. Schefler states "It was the task of Einsatzgruppe A to liquidate the Jews of Latvia. As a result of the shortage of German manpower, members of the Latvian Auxiliary Police were required to assist in this task." In Exhibit 26, Dr. Schefler opines that Rezekne District Police participated in the shooting of 30 inhabitants of the village. In Exhibit 27, Dr. Schefler states "It is my opinion that the Auxiliary Police in Rezekne was incorporated into the District Police in Rezekne. As far as the German Police Force was concerned, the

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[6] Schefler distinguished between Latvian Auxiliary Police of about 1000 and 7000 Latvians in Police Service. See e.g. p. 73 et seg. He also refers to security police as apparently a separate group. See testimony of Mezale, Exh. 31 p. 28-29

Latvian Police Forces fell under the umbrella term "Schutzmannschaften." But the documents to which he refers, make clear that Schutzmannschaften covered all security personnel such as local police, the fire departments, and apparently, the volunteer firemen as well (See Exhibit 24-13).

The witness, Conan, relied on the fact that the Schutzmannshaften appeared on the Inimical List and that all policemen were "probably" members of the Schutzmannschaften. However, the Government has not charged the respondent with having been a member of the Shutzmannshaften. There is no allegations that respondent was a member of an organization on the inimical list.[7]

Even if it were charged and proven that the respondent was a member, the Shutzmannshaften was, as Dr. Schefler said, an umbrella organization. Some of the components were not only apolitical, but essential and beneficial - the fire department - the local police function, etc.

On the basis of the entire record, I do not find that the Government has established that membership in the police, in and of itself, made the respondent an ineligible displaced person. Further, I do not find that the Government has established the Administrative practice of the Commission or the Consular Officers at the time by clear, convincing or unequivocal evidence. Obviously visas were issued to policemen and the Government cannot say that policemen were invariably rejected.

ORGANIZATIONAL INVOLVEMENT

The next question is whether the Second Police Precinct of the Rezekne County Police Department, as an organization, was so involved in proscribed activity or advocacy of persecution that it would sweep all its members as a class into Section 13 of the DP Act.

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[7] See page 28 of the Transcript, April 28, 1983.

This, I believe, could only be shown by demonstrating actual involvement by participation, performance or acquiescence in activities constituting persecution of persons because of race, religion or national orgin.

In short, proof of specific instances of such activities by the organization would seem to be essential. However, the only specific activities charged against the Police of the Second Police Precinct of Rezekne are those charged against the respondent personally. Those charges are set forth in the allegations of specific activity in allegations numbered 10, 11, 12, 13, 14 and 15.

There has been no attempt to show that the organization was conceived, organized, or functioned solely or even principally to advocate or assist in persecution. The essence of the charges would seem to be that the respondent had some voice or control in effectuating such a purpose in concert with the German overlords in Latvia. At the very least, the charges would seem to require tacit culpable acquiescence in such an objective by the organization, as such, to convert it into a "hostile movement."[8]

Beyond that then, personal participation, advocacy or acquiescence would seem to be a sine qua non. But that is the gravamen of the specific allegations numbered 10 through 16. Proof of some or all of those, coupled with number 6, would support not only Charge I, II, V and VII, but possibly IV and VI.

I find the evidence of organizational complicity is not sufficently clear, convincing or unequivocal to support a conclusion of deportability resting solely on allegations 1, 2, 3, 4, 5 and 6. I, therefore, proceed to a discussion of the evidence relating to specific personal participation, performance. advocacy or acquiescence - to wit: allegations 10, 11, 12, 13, 14, 15 and 16.

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[8] The indigenous police authorities of the Republic of Lativa, a government recognized by the United States, would not seem to fall within the term "movement hostile to the United States." In the summer and autumn of 1941, even the German Army was not at war with the United States.

IV

Actrocities

- A -

The Eyewitnesses

The Government's case places total reliance on the Soviet prosecution witnesses to establish the factual allegations of participation in proscribed activity. Initially, it had relied on witnesses brought from Israel to testify in support of cruel or inhuman treatment of individuals. The witnesses from Israel and Latvia were apparently procured and identified by prosecution authorities in their respective countries to provide the Justice Department with witnesses against the respondent. The testimony elicited through both sources is not radically different in any way. In each case, the witnesses are relatively old; they are describing events remote in time and place; memory is disoriented as to the sequence of events.

In other respects there are sharp differences. The Israeli witnesses were alert, in most instances, responsive to questions, to the questioner, to the Court. Although, it now appears all of those Israeli witnesses were giving false testimony, it was not obvious at the time that these personal identifications were without any basis in fact. I have no reason to believe that the Israeli government procured the testimony of those witnesses, knowing the testimony to be false. However, I am now called upon to accept testimony taken under the eye and supervision of the prosecutor installed by the Soviet invaders of the Republic of Latvia.

Beyond the obvious infirmities which are dramatized by the inevitable contrast between Israel and the enslaved Latvian state, the transcripts and videotapes are unconvincing as testimonial evidence on their face. The picture that emerges is of craven victims acting out a badly scripted scenario. There is a total lack of spontaneity. The picture quality is poor. The sweep of the camera's eye is confined

and unvarying. Except for the names, the other participants are faceless inquisitors. The spark of life and truth is absent. Such testimony cannot support the burden the Government must bear.

In reaching my conclusion on the weight to be accorded the Soviet witnesses, I have not accepted respondent's contention that the accusations against the respondent, were part of a Soviet campaign to smear and discredit activist emigree individuals living in the West as a counterploy against charges of anti-semitism and other human rights violations in the U.S.S.R.

- B -

Kaunata

Allegation number 10 charges participation or acquiescence in the execution of a number of Jews in Kaunata, Latvia in August or September, 1941. The Trial Attorney cites the testimony of two of the Soviet witnesses, Kalnish and Mezale. Without assaying a detailed examination of the testimony, it sufficies to say that the testimony lacks details as to time, place and the exact role of the witness. Kalnish portrays himself as a blameless conduit passing on orders from respondent. On the basis of that testimony, and there is nothing else, I cannot find that the allegation number 10 has been proven.

- C -

The Audrini Massacre

Allegations 11 - 12 - 13

The fate of the village of Audrini, involving the arrest of some 200 Latvians, the burning of the village and the shooting of at least 30 of the villagers in a

public act of official terror is not open to serious doubt. The respondent testified concerning it and numerous exhibits presented, touched upon it. [9]

The respondent concedes that "reasonable men cannot differ that this crime was a crime against humanity." However, he argues that there is no reliable evidence that the respondent participated in it. The Government charges the respondent participated in the arrest of the villagers, [10] and the burning of the village. [11] There is no real issue as to either event. The arrest took place after the shooting of some Latvian police in the village. [12] The respondent testified on the burning of the village and the public executions of 30 of the inhabitants.

The respondent denies knowledge of or complicity in the deaths of the remaining villagers. The Government charges complicity in the death of those allegedly killed in the Anchupani Hills, but not those murdered in the town square.

While the facts concerning the fate of the 200 villagers who were not shot in the square have not been proven, it seems probable the most if not all were actually shot secretly in the hills. Assuming that to be so the respondent's connection and complicity has not been shown. The arrest and public executions were ordered by the German Security Police. [13] The actual shooting of the 30 hostages was apparently carried out, in part, by Latvian Police of the First Precinct, [14] not the Second Precinct. However, the only link to the other killings comes from the Soviet prosecutor's witnesses, which I find not to be clear, convincing and unequivocal evidence.

I therefore conclude that the Service has not proven allegation number 13 by

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[9] See, for example, Exhibit 114, Exhibit 24-10, respondent's testimony, p 368 (Sept. 1, 1981) 10 - Allegation # 10 11 - Allegation #11 12 - Transcript p. 370 13 - The Betehlshabercler Sieberheitspolizei (Exhibit 24-10).

[14] See Exhibit I, Statement of Eichlis referred to by Dr. Schefler in Exhibit 26.

showing respondent's participation or acquiescence in the killings of the Audrini villagers, which took place in the Anchupani Hills in January 1942.

- D -

The Executions of Jews in the Anchupani Hills

The Government charges respondent with participation or acquiescence in the murder of jews in the Anchupani Hills in the Autumn of 1941. It relies on the testimony of Dr. Schefler and three Soviet prosecutor witnesses, Zhukouskis, Miglinieks and Shalayev. It also cites Exhibit 85, and parts of Exhibit 24.

Dr. Scheffler was produced by the Government to establish that "The Latvian Auxiliary Police in Rezekne and the self defense unit in Rezekne ***[participated in] ***the murder of jews." [15] He was not produced to show what the respondent's role, if any, was. His testimony and opinions then are not evidence of the respondent's personal actions or activities.

The same observation applies to the documents which form the basis of Dr. Scheffler's opinions.

In order to fix personal culpability, the Government necessarily relies on the three Soviet prosecutor witnesses, to involve the respondent in the shooting of prisoners in the Anchupani Hills. The Trial Attorney cites twenty pages of testimony by Zhukousis, Miglienieks and Shalayev taken in May 1981 as being probative of allegation number 14.

I find the cited testimony and the record as a whole unpersuasive of the proposition urged. I, therefore, find that the truth of allegation number 14 has not been established.

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[15] Transcript p. 39-40 April 28, 1983

- E -

Gypsies

The allegation that all gypsies in the respondent's area were arrested and sent to Rezekne, standing alone, is meaningless. The testimony cited by the Government to support allegations 15 and 16 is devoid of substance.[16]

V

- DEPORTABILITY -

I return then to the Service theory of the case. The Government has established that the respondent concealed his police employment in order to obtain his visa. The Government has not establish that such employment disqualified the respondent as a displaced person. The Government has not proven allegations number 7, 8, 10, 13, 14, 15 or 16. The Government has proven allegations 1, 2, 3, 4, 5, 6, 11 and 12. Under the Service theory those findings of fact would sustain Deportability under Charge I, II, III and VII. The Government also states the findings would sustain Deportability under Charge V and VI without proof of any of the specific allegations of participation or acquiescence in proscribed conduct.

In the circumstances here, I find the Government must establish not only a misrepresentation which cut off a relevant line of inquiry, but one which would have led to a proper determination that he was ineligible for a visa. This they have not done.

The Government has not established that he was a member or participant in a movement hostile to the United States under Section 13 of the D.P. Act.

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[16] Usne: "I really don't know." p. 12
Kalnish: "I do not know anything about their fate." p. 20.

All that has been shown is that respondent was a Chief of Police in Rezekne. Charge VII is, therefore, not sustained.

The Government has not established that the respondent was excludable under Sections 2, 10, or 13 as one who advocated or assisted in persecution. It has been shown that he particpated in the arrest of the Audrini villagers and in the burning of the village under orders of the German invaders of Latvia, as a reprisal against the killing of one or more Latvian policemen. That event ultimately led to the Audrini massacre. There has been no suggestion (that) of racist motivation in that atrocity. On this record, the respondent's complicity has not been shown to have gone beyond the arrests and the burning of the village. The ultimate violation of the laws of war which followed has not been shown to be either predictable, planned or inevitable. Charge V and Charge VI are therefore not sustained.

There remains one more substantive charge arising out of the 1918 Act, which involves entry prejudicial to the United States under former Section 175.53, Code of Federal Regulations. The Government makes that charge without any evidence or claim of prospective prejudice to the United States at time of entry.[17] Assuming that to be appropriate, it requires proof of the allegations of conduct which would bring him within the regulatory classification of crimes contrary to human decency. The allegations which I found to have been proven do not reach that level of depravity. The proven allegations, number 11 and 12 cover only the arrest of the Audrini villagers and burning of the village. Excludability at the time of entry under the 1918 Act has not been established. Charge III.

Charge I and II have not been established because it has not been shown that the respondent was, in fact excludable. Charge IV has not been established since it has not been shown that the respondent's visa was invalid.

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[17] The Board of Immigration Appeals has said "The basic question, therefore, is not whether the respondent comes within the purview of certain defined classes but rather whether his entry would be prejudicial to the interests of the United States. Matter of Agh, A6 801 064 (1961).

VI

Conclusion

The foregoing discussion is dispositive of the issue of deportability. It obviates determination of the requests for discretionary relief under Sections 208, 241(f), 244(a)(1) and 244(e). 8 U.S.C. 1158, 1251(f), 1254(a)(1) and 1254(e).

Pursuant to Section 243(a), 8 U.S.C. 1253(a), the respondent had designated Switzerland as the country to which deportation should be directed. The Government agreed with respondent on April 28, 1983, that the Republic of Latvia was the only alternative place to which deportation should be ordered. Even if deportation were found, it would not have been necessary to consider relief pursuant to Section 243(h) because the only country to which deportation could be ordered was Switzerland.

ORDER: IT IS ORDERED that the proceedings be terminated.

Francis Lyons

IMMIGRATION JUDGE
Francis J. Lyons