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HEARING

BEFORE

SUBCOMMITTEE NO. 1

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETIETH CONGRESS

FIRST SESSION

ON

H.R. 475, H.R. 555, and H.R. 3596

TO CHANGE THE EXEMPTION FROM THE ENGLISH LANGUAGE
REQUIREMENT OF SECTION 312 OF THE IMMIGRATION AND
NATIONALITY ACT

AND

H.R. 3597

TO AMEND SECTION 301(b) OF THE IMMIGRATION AND
NATIONALITY ACT

MARCH 8, 1967

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IMMIGRATION

WEDNESDAY, MARCH 8, 1967

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 1
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:15 a.m., in room 2237, Rayburn Building, pursuant to notice and at the call of the Chair, the Honorable Michael Feighan (chairman of the subcommittee) presiding.

Present: Messrs. Feighan, Rodino, Dowdy, Moore, and MacGregor.

Also present: Garner J. Cline, counsel; and Donald Benn, associate counsel.

Mr. FEIGHAN. The subcommittee will come to order.

There are two issues before the subcommittee this morning. The first issue is whether section 312 of the Immigration and Nationality Act concerning exemption from the English language requirements should be enlarged.

Three bills are pending which would affect this section of the law: H.R. 475, by Mr. de la Garza, provides exemption from the English language requirement for applicants for naturalization who, on January 5, 1965, are over 50 years of age and have been living in the United States for periods totaling at least 20 years.

H.R. 555, which I have introduced, provides exemption from the English language requirements for those applicants for naturalization who, on the date of filing of their petition, are over 50 years of age and have been residing in the United States for periods totaling 20 years.

H.R. 3596, by Mrs. Mink, relieves applicants for naturalization from meeting the English language requirements who are over 50 years of age and who have resided in the United States for periods totaling 20 years.

The second issue is rather complex. H.R. 3597, by Mrs. Mink, provides that any person who is a national and citizen of the United States at birth under section 301(a)(7) of that Act shall not lose his nationality and citizenship if the alien parent is naturalized while such person is under the age of 16 years and such person begins residing in the United States permanently while under the age of 16 years.

(H.R. 475, H.R. 555, H.R. 3596, and H.R. 3597 follow:)

[H.R. 475, 90th Cong., first sess.]

A BILL To amend section 312 of the Immigration and Naturalization Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso to section 312(1) of the Immigration and Naturalization Act is hereby amended to read: "That this requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized, or to any person who on January 5, 1965, is over fifty

years of age and has been living in the United States for periods totaling at least twenty years;"

[H.R. 555, 90th Cong., first sess.]

A BILL To amend section 312 of the Immigration and Nationality Act to exempt certain additional persons from the requirements as to understanding the English language before their naturalization as citizens of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first proviso contained in paragraph (1) of section 312 of the Immigration and Nationality Act (8 U.S.C. 1423) is amended by striking out "or to any person who, on the effective date of this Act, is over fifty years of age and has been living in the United States for periods totaling at least twenty years" and by inserting in lieu thereof the following: "or to any person who, on the date of the filing of his petition for naturalization as provided in section 334 of this Act, is over fifty years of age and has been living in the United States for periods totaling at least twenty years".

[H.R. 3596, 90th Cong., first sess.]

A BILL To amend section 312 of the Immigration and Nationality Act to exempt certain additional persons from the requirements as to understanding the English language before their naturalization as citizens of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first proviso contained in paragraph (1) of section 312 of the Immigration and Nationality Act (8 U.S.C. 1423) is amended by striking out "or to any person who, on the effective date of this Act, is over fifty years of age and has been living in the United States for periods totaling at least twenty years" and inserting in lieu thereof the following: "or to any person who is over fifty years of age and has been living in the United States for periods totaling at least twenty years".

[H.R. 3597, 90th Cong., first sess.]

A BILL To amend section 301(b) of the Immigration and Nationality Act to provide that any person who is a national and citizen of the United States at birth under section 301(a)(7) of that Act shall not lose his nationality and citizenship if the alien parent is naturalized while such person is under the age of sixteen years and such person begins residing in the United States permanently while under the age of sixteen years

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 301(b) of the Immigration and Nationality Act (8 U.S.C. 1401) is amended to read as follows:

"(b) Any person who is a national and citizen of the United States at birth under paragraph (7) of subsection (a) shall lose his nationality and citizenship unless—

"(1) he shall come to the United States prior to attaining the age of twenty-three years and shall, immediately following such coming, be continuously physically present in the United States for at least five years: *Provided*, That such physical presence follows the attainment of the age of fourteen years and precedes the age of twenty-eight years; or

"(2) the alien parent is naturalized while the child is under the age of sixteen years and the child begins to reside permanently in the United States while under the age of sixteen years."

Mr. FEIGHAN. Our first witness will be our very able and distinguished colleague, Mr. de la Garza.

Would you proceed?

STATEMENT OF HON. ELIGIO DE LA GARZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. DE LA GARZA. Thank you, Mr. Chairman and members of the committee.

I welcome and greatly appreciate this opportunity to urge your favorable consideration of H.R. 475, a bill which I introduced on January 10, 1967, for the purpose of amending section 312(1) of the Immigration and Nationality Act.

Mr. Chairman, my bill is similar to H.R. 555, which you have introduced. The basic difference being that I have a cut-off date as of January 5, 1965, whereas your bill has a continuous provision in it.

Mr. Chairman, I feel that I am not acquainted too well with the bill by Mrs. Mink, but I feel that if we do anything we will have done something to help these people; and I urge the favorable action of the committee on any one of these pieces of legislation.

For the record I would like to submit a statement which I have prepared in behalf of my bill H.R. 475, Mr. Chairman.

Mr. FEIGHAN. We will be very happy to include that in the record. (The prepared statement follows:)

STATEMENT OF HON. ELIGIO DE LA GARZA, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

Mr. Chairman and members of the committee, I welcome and greatly appreciate this opportunity to urge your favorable consideration of H.R. 475, a bill which I introduced on January 10, 1967, for the purpose of amending Section 312(1) of the Immigration and Nationality Act. This section contains the general requirements that applicants for naturalization be able to speak, understand, read and write the English language, and an exemption from those requirements.

A provision comparable with Section 312(1) was first included in the naturalization statute on September 23, 1950, when legislation amending Section 304 of the Nationality Act of 1940 became effective. The amended provision, Section 304(1), also accorded an exemption from the English language requirements to those applicants who, on September 23, 1950, were over fifty years of age and had been residents of the United States for twenty years. Section 304(1) was substantially reenacted as Section 312(1) with a notable difference; namely, that the age and residence required to exempt an applicant from the English language requirements were to be computed as of December 24, 1952, the effective date of the Immigration and Nationality Act.

My bill, H.R. 475, merely updates the exemption provision of Section 312(1), for it provides simply that the age and residence required to exempt a naturalization applicant from the English language prerequisites will be computed as of January 5, 1965, rather than as of December 24, 1952. Thus, the proposed enactment in no way modifies the basic legislative concepts expressed in Section 312(1), and follows a pattern of legislation deemed both necessary and proper in the past.

Indeed, I respectfully submit that the contemplated amendment merely implements an existing Congressional policy which has become largely ineffective with the passage of time. It is safe to state that, during the interim period of the past thirteen years, the vast majority of aliens who could qualify for the English language exemption under Section 312(1), in its present context, have availed themselves of the benefit and, if otherwise eligible, have become naturalized citizens of the United States. Accordingly, to a very considerable extent, the exemption provision has a relatively negligible application at the present time.

On the other hand, among the more than three million aliens residing permanently in the United States, there are a very great many who were not eligible for the English language exemption in 1952, either because they then lacked a year or more of residence, or were one or more years under the age of fifty. Although otherwise worthy of citizenship, these deserving persons have been unable to achieve their desire to become citizens, because of their inability to satisfy the English language requirements. Within this large group are persons who have now lived in the United States for well over thirty years, and others who are more than sixty years of age. Logic and common sense should convince us, I think, that aliens who have accumulated lengthy residence and have arrived at an advanced age during the past thirteen years are no less worthy of the exemption than those who qualified for the benefit on December 24, 1952.

The aliens who will benefit from my bill are representative of diverse foreign nationalities, and live in all sections of the United States. I have been fortunate enough to meet, observe, and know personally many men and women in this elderly group. They are, for the most part, the fathers and mothers of a fine, representative generation of young American citizens, born and reared in this country. I am familiar with the extent to which these parents have sacrificed

themselves to educate their children, and bring them up in the traditional American manner. To me, these sacrifices show a spirit of loyalty and devotion to democratic ideals, and a dedication to the welfare of the United States, which betoken a sense of good citizenship in its highest form. Elderly longtime residents who have demonstrated their qualifications for citizenship in this fundamental manner should not be deprived of the opportunity to become citizens merely because they have been unable to learn the English language.

Of particular concern to me are the many members of this elderly group who have come from Mexico and other Spanish-speaking countries, and have been residing in my home State of Texas and other parts of the Southwest for many years.

I have visited these Spanish-speaking people in their homes, have watched them at work, and I know their problems well. In the past, I have taken the floor of the House to speak of the need for special measures to improve their living conditions and assure them better educational and job opportunities. Devoted as they have been to the solidarity of the home and the welfare of their families, their lives have been years of backbreaking toil, hardship, and poverty, years of constant struggle to earn the bare necessities of life for themselves and their children. Although their burdens have been far greater than those of other residents of foreign birth, who have been enjoying the good American life, these God-fearing people have withstood them with courage and forbearance, ever obedient to the law and loyal to the United States and the principles of its Government. The great majority, despite the heavy demands upon them, have successfully raised and educated children who have served this country well in agriculture, industry, the professions, and the armed forces. The cost of these accomplishments, however, has been a heavy one, for these elderly fathers and mothers have had to forego the opportunity to improve their lot by education. Throughout the years, few, if any of them, have had the time to attend citizenship classes where they could receive assistance in learning the English language. Moreover, with the passing of the years, the infirmities of advanced age and a diminished capacity to learn make it virtually impossible for them to acquire this knowledge.

My colleagues, I say to you with the utmost sincerity, that these elderly Spanish-speaking men and women, my neighbors and friends, have been good citizens in fact for many years. Above all, my meetings with them have disclosed their fervent, heart-felt yearning to become citizens in name as well. This privilege is being denied them solely because, in the twilight of a life of sacrifice, they have been unable to master the intricacies of the English language. I counsel you to remove this obstacle, and permit them to achieve full citizenship of the adopted country they have served so well. Indeed, how can we deny this assistance to them when, in some instances, their sons have surrendered their lives in the cause of freedom and justice upon battlefields abroad. H. R. 475 will materially assist many of these deserving persons to become citizens and, again, I strongly urge you to accord the measure early and favorable consideration.

MR. DE LA GARZA. I would be happy to yield to any question.

MR. MOORE. Mr. de la Garza, I assume that the introduction of the legislation is prompted by some of the inequities that have been brought to your attention as a result of the present law. Can you tell me to what extent these inequities have been brought to your attention, let's say, in your own congressional district? Do you have a number of individuals who cannot qualify because of the English requirement?

MR. DE LA GARZA. That is the basic problem, Mr. Moore, that the age limitation and the time limitation that the previous legislation had, or the present legislation has, has caught up with a substantial number of people that because of the age at the present time and the difficulties which they encountered because of the type of work or the areas where they lived and had to work, they were not able to pick up the English language basically in the reading or writing.

Most of them, I think, could get by if they had to, understanding or being able to make themselves understood in English; but reading and writing the English language is the difficult part. And it has just caught up with a substantial number.

The basic reasoning behind my putting a date is that I feel, from my perusal of the situation, about 10 years will ultimately take care of the situation where we will not need this legislation any more.

Mr. MOORE. Do you presently have pending any private legislation which seeks to waive the English-speaking requirement for naturalization?

Mr. DE LA GARZA. On any individual?

Mr. MOORE. Yes.

Mr. DE LA GARZA. No, sir; because then I would have to introduce thousands.

Mr. MOORE. That is what I am trying to gauge here. Apparently there are many, many instances in which if we were to give favorable consideration to this legislation, that there would be beneficiaries, and those beneficiaries would be in your congressional district.

Mr. DE LA GARZA. Right.

Mr. MOORE. Thank you very much.

Mr. FEIGHAN. Mr. MacGregor?

Mr. MACGREGOR. I have no questions. I thank you very much, Mr. de la Garza, for your appearance.

Mr. FEIGHAN. Did I understand that you feel this problem will solve itself within 10 years?

Mr. DE LA GARZA. I feel that in my district, Mr. Chairman, that it will not solve itself completely; but I feel that the trend is now that those who are coming in, basically from Mexico in my area, have either been braceros or have had links sufficiently that they will be able to understand; and it will be a little more difficult to read and write the English language, but I feel they will be better prepared, with all of the available present governmental programs of adult education and migrant adult education, I feel that in 10 to 12 years it will be basically alleviated to a great extent where it would be possible then, if exemptions be needed, that you could go on an individual basis.

And I could not do that now. There are so many.

Mr. FEIGHAN. Your observations are confined primarily to your own district?

Mr. DE LA GARZA. Only to my specific immediate area. I would not be able to make a statement regarding New York, California, Hawaii, or the other areas.

Mr. FEIGHAN. Thank you.

Any other questions?

Mr. MACGREGOR. None.

Mr. FEIGHAN. Thank you.

Mr. DE LA GARZA. Thank you.

Mr. FEIGHAN. Our next witness will be our very distinguished colleague, the Honorable Patsy Mink. We are happy to have you with us.

STATEMENT OF HON. PATSY T. MINK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII

Mrs. MINK. I have a prepared statement, which I have submitted to the committee counsel; and, with your permission, I would like to request that it be entered into the record at this time.

Mr. FEIGHAN. I will be very happy to have it included.
(The prepared statement on H.R. 3596 follows:)

STATEMENT ON H.R. 3596 BY REPRESENTATIVE PATSY T. MINK

Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to testify on behalf of H.R. 3596 which seeks to amend section 312 of the Immigration and Nationality Act.

This section now reads as follows:

REQUIREMENTS AS TO UNDERSTANDING THE ENGLISH LANGUAGE, HISTORY, PRINCIPLES, AND FORM OF GOVERNMENT OF THE UNITED STATES

SEC. 312. No person except as otherwise provided in this title shall hereafter be naturalized as a citizen of the United States upon his own petition who cannot demonstrate—

(1) an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language: Provided, That this requirement shall not apply to any person physically unable to comply therewith, if otherwise qualified to be naturalized, or to any person who, on the effective date of this Act, is over fifty years of age and has been living in the United States for periods, totaling at least twenty years: Provided further, That the requirements of this section relating to ability to read and write shall be met if the applicant can read or write simple words and phrases to the end that a reasonable test of his literacy shall be made and that no extraordinary or unreasonable conditions shall be imposed upon the applicant; and

(2) a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States.

The 82nd Congress by enacting PL 82-414 accepted the principle that aliens who were 50 years of age and who had resided in this country for at least 20 years could become naturalized citizens without meeting the requirement of being able to read, write, and speak the English language.

Hundreds of aliens in my State were able to qualify for American citizenship because of this provision in the law.

However this amendment was limited by the words, "as of the effective date of this Act". The net effect of these words is that only those aliens who were 50 years old and who resided 20 years in this country as of December 24, 1952, the effective date of PL 82-414, could receive any benefits from this amendment.

Thus all aliens whose birth date was after December 24, 1902, even though they have lived in this country for more than twenty years, could not benefit from this amendment.

This arbitrary cut-off date, I believe, has created an unnecessary barrier against American citizenship. As important as I believe the ability to read, write, and speak English is, I do not believe that we ought to require it of our foreign-born who came to the United States after their formal education years were over.

I believe that these aliens, regardless of their inability to read and write English, are sincere in their desire to want to become American citizens. A test of their understanding of the principles of our democracy in any language must come out in the same expressions of faith in freedom and democracy and in a reiteration of the concepts embodied in our Constitution.

I believe that the 20 years residence requirement is assurance enough that the alien will have had opportunities and experiences which give him a full and adequate understanding of America, even though he has not been able to learn the English language sufficiently to pass the examination when rendered in English.

I further believe that the 20 years residence coupled with the age requirement of 50 years limits the benefits of this waiver to those who need it.

For all others who seek to be naturalized, they can do so after five years residence provided they are versed in the English language.

The young immigrant has available to him all the public education that he can absorb. For him it is reasonable if he wishes his citizenship in five years that he learn the English language. For the adult immigrant who is studious and adept with languages it is also reasonable that he may qualify as soon as he has learned English with as little as only five years residence.

But the older immigrant who was born on January 1, 1903, and is now 64 years old and who came as an immigrant to this country in 1947, when he was 44 years old and has resided here for 20 years, may have great difficulty in meeting the

requirements of fluency with the English language. It must be recognized also that those whose native tongue is at least somewhat related to English have an easier lesson to master than those whose basic language is totally different.

Lastly, I believe that this bill is made even more compelling if we have concern for those aliens who nearing the end of their lives want so desperately to become American citizens, yet because of their age and environs, lack the ability to read, write, or learn English adequately enough to qualify for the naturalization examination.

The 89th Congress made great strides to increase the opportunities for new immigrants coming to this country. We showed great humanitarianism in reuniting these families. I believe that it is in keeping with this same spirit that we now allow as part of our laws all resident aliens who are fifty years old and who have lived here for at least 20 years, this opportunity to become citizens of the United States without an arbitrary cut-off date. We gave this privilege to those who were born before December 24, 1902. I believe that we should now extend this to all aliens who meet the age and residence requirements. Thank you very much.

Mrs. MINK. I differ somewhat from my colleague who just testified, in reacting to the question by Mr. Moore, on the matter of legislation with a cutoff date in solving the situation in my constituency.

The fact that the Congress, in its wisdom, in the 82d Congress saw fit to provide this exemption for persons 50 years of age and having resided here 20 years; and thus declaring that this was a proper type of exemption to provide for these individuals, compels me to argue before this committee that if at that time it was seen fit to be a proper exemption, that logically we should attempt to try to remove the cutoff date entirely.

If it was proper to give this kind of exemption to those persons who were born before December 24, 1902, and that is the effect of the legislation enacted by the 82d Congress, then it is wholly unfair to deny this same exemption to those who happen to have been born just a few months or years after that date.

To illustrate the problem as I did in my statement, the cutoff date currently denies individuals who at 44 years of age came into the United States, particularly to the State of Hawaii, as recently as 1947, and who have resided in the United States for 20 years, in applying for naturalization, to have the right, the same right that others had, to take the naturalization examination in their own native tongue, with which they are most familiar. I think that the extra requirement of 20 years' residence is enough of a special requirement to place upon these aliens.

All others who are competent, or who are versed in English, need to satisfy the requirement only by residence of 5 years. In my opinion, the 20 years' experience that they would have gained in addition to their age of 50 gives them the kind of understanding that I feel the Naturalization Act intended that these individuals should be possessed with, before being granted citizenship.

Therefore, I would like to urge upon this committee that they consider either my bill or the one that the chairman has sponsored, which, as I understand it, removes any cutoff date and simply grants this exemption to all aliens who are 50 years of age and who have resided in this country for more than 20 years.

Mr. FEIGHAN. Any questions?

Mr. MOORE. I have no questions.

Mr. FEIGHAN. You would like to address yourself also to the other bill?

Mrs. MINK. Yes. The other bill that I have introduced is a more complex situation. Before I begin, Mr. Chairman, I have also submitted a statement which I would like to request be entered into the record.

Mr. FEIGHAN. Without objection, so ordered.

(The prepared statement on H.R. 3597 follows:)

STATEMENT ON H.R. 3597 BY REPRESENTATIVE PATSY T. MINK

Mr. Chairman and Members of the Committee:

I want to express my appreciation for this opportunity to discuss with you the purposes and objectives of my bill, H.R. 3597.

H.R. 3597 amends Section 301(b) of the Immigration and Naturalization Act by providing an alternative way in which a child born overseas of one citizen parent may become a full-fledged American citizen. Under current law such a child, although born a citizen of the United States, is subject to certain requirements which he must personally meet in order to retain his birthright. The law now requires that such a child must return to U.S. soil sometime between the ages of 14 and 23 years and remain in continuous residency within the United States for a period of five years. If he fails to fulfill this requirement of five years physical presence within the United States, he loses his American citizenship.

The effect of the present law is to create different classes of American citizens among children who are born overseas where only one parent is an American citizen. Many of these children affected by this requirement are born of a U.S. parent who is in the employ of the U.S. government overseas. Therefore, the anomaly is that while such a parent is overseas serving his country and there marries an alien, his children do not have the same rights as other "native" born U.S. citizens. If such a man wants to be with his adult children and provide them a home until they are themselves married, he must quit the employ of his government overseas or seek a transfer home before his oldest child reaches his 23rd birthday, unless he is willing to send them out one at a time whenever each child approaches the cut-off date of 23 years of age, and then require that they remain in the U.S. continuously for five years!

There is a further requirement for even this conditional citizenship status for such a child, to wit, that the citizen parent must have lived in the United States at least ten years. Thus, in order for a child born overseas of only one U.S. citizen parent to become an American citizen at birth (subject to these retention rights of continuous 5-year presence between ages 14 and 28), it must further be shown that the U.S. citizen parent prior to the birth of this child must have been physically present in the U.S. or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age of 14 years: (provided that honorable military service counts as physical presence).

Thus, a U.S. citizen parent without the ten years total "physical presence" in the U.S. before the birth of this child of an alien spouse cannot convey U.S. citizenship at birth to his child. Such a child would be an alien. However, Section 320 of the Act provides that in such a case, if the alien parent becomes a naturalized citizen before the child reaches his 16th birthday and the child begins to reside permanently in the U.S., the child acquires citizenship at that time of naturalization of the alien parent without any further requirement of permanent physical presence for five continuous years.

A child, alien at birth, ineligible for derivative U.S. citizenship, acquires under our present law permanent unconditioned U.S. citizenship upon the naturalization of the alien parent prior to the child's 16th birthday and provided only that the child begin to permanently reside in the U.S.

My bill does not amend this portion of the existing law. However, this provision suggests the real inequity in the current law which I seek to correct.

Since the law already allows such a child, not a citizen by birth because his citizen parent lacked the ten years residency in the United States, to automatically become a citizen upon the naturalization of his alien parent, provided only that he begins to reside in the United States before his sixteenth birthday, why should not this same provision make it possible for such full citizenship for that child who became a citizen by birth in a foreign country, subject only to the same proviso, to wit, the naturalization of his alien parent prior to his sixteenth birthday and assumption of residency in this country at that time?

As the law now stands we require more of the child whose citizen parent did meet the ten years residency in the United States and was by law able to convey citizenship upon his child born overseas, than we do of the child similarly born overseas whose citizen parent did not meet the ten year residency requirement. I do not believe that this is a fair provision in the existing law, for it gives greater rights to the "stateless" child as compared to the child who became a citizen by birth under similar circumstances.

My bill does not seek to take any rights away from the child born overseas of one alien parent where the citizen parent did not meet the residency requirement. It seeks only to grant these same rights to the child who became a citizen by birth overseas so that similarly upon the naturalization of his alien parent before his 16th birthday and upon the assumption of residency in the United States, he can become a full-fledged American citizen without meeting the further requirement of five years continuous physical presence within the United States.

I do not question the policy of the Naturalization law in requiring that an American parent must have lived in the United States for at least ten years in order to transmit American citizenship status to a child born of an alien spouse. Neither do I question the policy as it relates to those children born overseas whose alien parents do not seek to become naturalized before the 16th birthdays of their children. For these children the requirement of returning to the United States remains as well as the 5 years continuous presence before reaching the age of 28 years.

What I do question is the equity for these two classes of children whose alien parents do become naturalized citizens. These two classes should be treated the same. Certainly the child whose citizenship was in "limbo" should not attain citizenship automatically upon the naturalization of the alien parent, while the child who was regarded a citizen by birth still be further required to show five years continuous physical presence even though his alien parent has also become naturalized. Rather, this latter child should have greater rights, and not less, as he appears to have under the present law.

My bill is limited to the correction of this one inequity. Thus, under my bill, when both parents become American citizens by virtue of the naturalization of the alien parent, then the child automatically becomes a full-fledged American citizen with the only limitation being that this naturalization shall have been before the child's 16th birthday and with the child in actual physical presence and residence within the United States at that time.

I hope that this Committee will give favorable consideration to this bill which, if enacted into law, will provide greater equity for our children born under these circumstances and place the burden of the perfecting of their rights as American citizens upon their parents, by providing an optional course of full citizenship for their children by the timely naturalization of the alien parent.

Mrs. MINK. This bill has to do with the children that are born overseas, where only one parent is an American citizen and the other parent is an alien.

Currently section 301(b) of the Immigration and Naturalization Act provides if the citizen parent has lived in the United States for 10 years, and that includes military service, that the child born overseas, with one alien parent and one American citizen parent, qualifies at birth as an American citizen, subject to what we call retention rights, which means that the child must come back to American soil sometime between the ages of 14 and 23 and remain here for 5 continuous years in order to retain his American citizenship.

Now, I am sure that the policy behind this rule was to make sure that these youngsters who were born overseas have some exposure to American life and have some contact. And for this reason this requirement was placed in the statute.

The inequity which I want to address myself to relates to the situation where this same kind of child, born overseas of one American parent and one alien parent, where the American parent has not had 10 years' residency in the United States and therefore could not convey to that child American citizenship by birth; that child currently under the law is a stateless citizen.

For that kind of a child, born under those circumstances, if the alien parent should come to this country and become naturalized before the child is 16 years of age, the child automatically becomes a full-fledged American citizen without any requirement of continuous 5 years' physical presence in the United States.

Mr. FEIGHAN. Excuse me. The child does not automatically become a citizen.

Mrs. MINK. He must be present here, together with the alien parent who makes the application for naturalization.

In other words, all the statute requires of that child, as I understand it, is that he begins to reside permanently in the United States; but there is no subsequent requirement that he remain here for 5 continuous years.

And so we have a dilemma, I think, of treating such a child with lesser status, in essence, with greater privilege than the child who was by birth an American citizen, who, even if his parent, alien parent, becomes naturalized, does not have this same privilege and prerogative of citizenship merely by being attached to a naturalization proceeding by his alien parent.

So all my bill attempts to do is to provide this same privilege for that child who was by birth an American citizen born of one alien parent, saying to him that if his alien parent comes to this country and becomes naturalized, that the only requirement as to him will be the same as to that other stateless child; that is, beginning to reside permanently within the United States.

Mr. FEIGHAN. Questions?

Mr. MOORE. Why do you say that the child born in any one of a number of foreign countries is a stateless person?

Mrs. MINK. Because he does not acquire American citizenship by birth.

Mr. MOORE. He does not acquire American citizenship; but does he not acquire citizenship of another country? A stateless person is one who is not a citizen of any country in the world.

Let's take France. Anybody that is born in France, regardless of the division between parents, is considered a French citizen. As a matter of fact, they even draft our boys that may have left France and come back to the United States, where they have had a U.S. parent and a French parent.

So it is not quite correct to say that the individuals in this set of circumstances are stateless persons, because they do have citizenship in some country, but not the United States.

Mrs. MINK. That is correct. I use the phrase rather liberally, Mr. Moore, mainly to express the frustration of so many individuals that have written to me about this other problem of not having met the 10-year requirement of residence, and having children born overseas of one alien parent, and writing to me and saying that "I deeply desire to have my child considered an American." However, this is not possible, and they have constantly, in correspondence with my office, used that terminology only with reference to the fact that they would like American citizenship for their children; but, under the law, this is not possible.

But that is not the section that I am attempting to amend by my bill.

Mr. MOORE. I see.

Mr. Chairman, if I understand correctly, we did touch this problem, not in this particular area, but we took care of the grandchildren, I think, in the last session. This was the diplomatic problem that we had. We did not go as far as this bill suggests.

Mr. MACGREGOR. Mrs. Mink, you indicated that a number of people had written to you expressing a deep desire that their son or daughter not be discriminated against in this respect. Would you tell us a little bit about the factual situation of a typical case that has come to your attention, so that we might have some idea of how widespread the problem is?

Mrs. MINK. Yes. I think that the principal area which has come to my attention is those persons who are serving the Government of the United States overseas in the military branches, either as a member of the service, but more particularly as employees of the military overseas. Most of my correspondence comes, obviously, from the Asian area, where they have been working in a civilian capacity in various military installations in Japan, Okinawa, and elsewhere, having gone there as single persons, subsequently married nationals of that area to which they were sent.

And then, of course, children were born and they find it now necessary to either send their children, one by one, home in order to comply with this 5-year requirement of continuous residence, or terminate their employment with the Government, or, in some cases, with private companies, private American companies who are overseas; and they feel that this is a very harsh burden which they are being asked to carry.

They would like to continue their service; but they also feel a great sense of obligation to keep the family together and to protect the citizenship rights of their children.

And I think that they make a very strong case, since the parent who does not convey citizenship has this other route of simply sending the spouse home, going through the naturalization proceedings, perhaps staying here for a while, but not requiring that they be here for 5 continuous years. And I think that it is this discrepancy of the two situations that highlights the conflict that they see; and they feel that when the alien parent becomes naturalized, they are indeed both then American citizens, and this has been so stated eloquently by the Supreme Court, that we can not establish a second class of citizens called naturalized citizens and give to them any different rights than native-born citizens have had—although I do not make that statement with reference to this bill.

I see some analogies that can be raised in that regard, that we have here two sets of children, born almost under identical circumstances. The only difference is that the one American parent did not have 10 years' residence. For that child, his route to a complete, full-fledged, unequivocal American citizen is much easier than to the child who is born an American citizen because his parent had the ten years' residence; and this is the inequity that my bill searches to try to correct.

Mr. MACGREGOR. Thank you.

Mr. FEIGHAN. Mr. Dowdy.

Mr. DOWDY. I have no questions.

Mr. FEIGHAN. Thank you very much.

Mrs. MINK. May I just make one closing comment. My bill did not address itself to the retroactive feature; and I think that this is a matter which should be considered by the committee. I do not know quite how to approach the subject; but I think that the committee ought to give some consideration to the parent who has followed this procedure already, whose child was born an American citizen overseas and whose alien parent has been naturalized before the 16th birthday of the children, to try to accord them some immediate relief through the filing of certificates and so forth, so that their citizenship may be confirmed now without the requirement of 5 years' continuous residence, if the committee should see fit to report out my bill.

Mr. FEIGHAN. Thank you very much.

Mrs. MINK. Thank you very much.

Mr. FEIGHAN. We next have a statement from Mr. Rudnick.

We are very happy to have you with us. Mr. Rudnick is the Assistant Commissioner for Naturalization, Immigration and Naturalization Service.

STATEMENT OF EDWARD RUDNICK, ASSISTANT COMMISSIONER FOR NATURALIZATION, IMMIGRATION AND NATURALIZATION SERVICE

Mr. RUDNICK. I should like to address myself first, Mr. Chairman, to the bill pertaining to the retention requirements, and I have a prepared statement that I would like to read at this time.

Mr. FEIGHAN. You may proceed.

Mr. RUDNICK. Our laws have always recognized the doctrine of automatic acquisition of citizenship by descent and, under it, have have extended nationality to children born abroad to U.S. citizen parents.

The prescribed prerequisites, until recent years, limited the right of descent to children whose fathers were U.S. citizens who had resided in the United States prior to the birth of the children. This was extended in 1934 to include children of U.S. citizen mothers, as well as U.S. citizen fathers. Citizenship could, therefore, descend through either parent.

Beginning with the Act of May 24, 1934, and continuing under succeeding statutes to the present time, Congress has drawn a distinction between a child born of two U.S. citizen parents and a child born of one citizen parent and one alien parent. The citizenship acquired by operation of law by the child born of two U.S. citizen parents was, and is today, full and complete. No further actions or formalities after acquisition are required on the part of the child as a condition for continued enjoyment of the status. Not so with respect to the child of mixed citizenship parentage.

The child of one citizen and one alien parent, although vested with citizenship at birth, was subject to divestiture of his status if he failed to take up residence in the United States or its outlying possessions for a continuous period of 5 years immediately preceding his 18th birthday. The Nationality Act of 1940 amended this retroactively to permit compliance with the 5-year resident requirement to take place between ages 13 and 21 years. The current Immigration and Nationality Act made further changes which I shall touch upon shortly.

It should be noted that, under the Nationality Act of 1940, different conditions for descent of citizenship to a child were prescribed for the first time on the basis of the citizenship status of the child's second parent, or on the basis of the child's place of birth abroad. However, despite these differences, it was only in the case of a child born of one citizen and one alien parent, with certain exceptions, that Congress has attached conditions subsequent for the retention of the child's citizenship.

The current provisions for retention of citizenship applicable to the citizen-alien parent combination are to be found in section 301(b) of the Immigration and Nationality Act, and are made applicable by section 301(c) of that Act to children born abroad after May 24, 1934. The citizen child subject to its provisions is required to come to the United States prior to the attainment of the age of 23 years and to thereafter be continuously physically present in the United States for at least 5 years between the ages of 14 and 28 years. This means that the child must come to this country no later than age 23 years if he is to preserve his citizenship.

H.R. 3597 would add an exception to section 301(b), to provide that the child shall not lose his citizenship if the alien parent is naturalized while the child is under the age of 16 years and the child begins to reside permanently in the United States while under the age of 16 years. Since the provisions of section 301(b) are applicable to persons born abroad subsequent to May 24, 1934, the provisions of this bill would also be applicable to those born abroad after that date. The bill would thus exempt a citizen at birth from complying with the retention requirements of the existing law if he entered the United States to reside permanently before he was 16 years of age, and if the alien parent was naturalized before the child became 16 years of age.

Brief reference to the provisions of section 320 of the Immigration and Nationality Act will explain the significance of the proposed amendment. That section provides that a child born outside the United States of a U.S. citizen parent and an alien parent shall become a citizen when the alien parent is naturalized while the child is under the age of 16 years and the child becomes a permanent resident of the United States while under 16 years of age.

No conditions for retention of citizenship so derived are prescribed, nor have any of the earlier statutes governing derivation of citizenship through the naturalization of a parent qualified the status or made it contingent upon further actions.

The child contemplated by section 320 is one who did not acquire U.S. citizenship at birth because the U.S. citizen parent lacked the physical presence requirements for transmission of citizenship under section 301(b) of the Immigration and Nationality Act.

Under existing law, therefore, the child who acquired citizenship at birth is in a less favorable position than the child who derives citizenship after birth. H.R. 3597 would remedy this inequity by making section 301(b) of the Act harmonious with section 320 insofar as retention requirements are concerned. This is a desirable objective which the Department of Justice favors.

Thank you.

Mr. FEIGHAN. Thank you, Mr. Rudnick.

You stated that certain classes of persons were exempt under the Nationality Act of 1940 from the retention requirement applicable

to the citizen-alien-parent combination. What were these classes, and how are they treated under the Immigration and Nationality Act?

Mr. RUDNICK. Well, the similar provision in the Nationality Act of 1940 involving the alien-citizen-parent combination also had retention requirements that differed somewhat from present requirements. There was a residence requirement, rather than a physical presence requirement, as in the present statute; but it made an exception in the cases of parents who, at the time of the child's birth, were in the employ of the U.S. Government or were employed by American commercial, educational, religious, financial, philanthropic, or scientific organizations.

If the parent was so employed at the time of the child's birth, retention requirements were completely inapplicable. The child was vested with citizenship with no conditions subsequent.

Under the present Act there is no similar provision and parents so employed today, whose children are born under circumstances that would have exempted the child from retention requirements under the 1940 Act, are in the same position as any other child born of a U.S. citizen and an alien parent, and retention requirements have to be complied with.

Mr. FEIGHAN. In what respects do the requirements for the acquisition and retention of citizenship at birth abroad to other than a one citizen parent and one alien parent differ from the citizen-alien parentage combination?

Mr. RUDNICK. Well, this again is a carryover from the 1940 Act. The 1940 Act, for the first time, drew a distinction between various combinations of parentage. Up until that time, beginning with the 1934 Act, you could acquire citizenship at birth abroad through a U.S. citizen father or a U.S. citizen mother. That was all that was necessary to determine whether or not the citizenship is vested in the child.

Now, the 1940 Act, and the current Act provides that when a child is born abroad of two U.S. parents, the child is a citizen at birth if either one of the U.S. citizen parents had a residence in the United States prior to the birth of the child.

There is no fixed period as to the length of residence and citizenship is vested without any conditions subsequent.

With two citizen parents, you are a citizen no matter how briefly your citizen parents may have resided in this country.

Mr. FEIGHAN. In other words, there is no further action required by the child born abroad of two U.S. citizens?

Mr. RUDNICK. Yes, sir. It is full and complete; with no further conditions.

Mr. DOWDY. That is true now?

Mr. RUDNICK. That is true now. Another class differentiated from the alien and citizen combination in the current law is a child born of a U.S. parent and a noncitizen national parent. The U.S. citizen parent must have been physically present in the United States for a continuous period of 1 year preceding the birth of the child.

If those conditions are met, again there are no retention requirements on the part of the child; but citizenship will not vest unless the citizen parent has had a continuous physical presence in this country before that child is born.

Mr. MOORE. For 1 year?

Mr. RUDNICK. For the 1 year.

Mr. DOWDY. Will the gentleman yield?

I will probably expose some ignorance. What is a noncitizen national?

Mr. RUDNICK. A noncitizen national is a person who owes allegiance to the United States, but does not have citizenship. He is a national, owing allegiance. A person born in Swain's Island today is a national of the United States, but not a citizen of the United States. He owes allegiance to the United States.

Mr. DOWDY. Because we have sort of supervision over the island?

Mr. RUDNICK. Yes.

Mr. DOWDY. I understand.

Mr. FEIGHAN. Where is Swain's Island?

Mr. RUDNICK. That is near Samoa. Samoa and Swain's Island are defined in the Immigration and Nationality Act as "outlying possessions," and birth in an outlying possession gives noncitizen nationality. It is in the South Pacific.

Shall I continue?

Mr. MOORE. Please do.

Mr. FEIGHAN. May I ask, what can a child born in Swain's Island further do with reference to citizenship?

Mr. RUDNICK. He can derive or get naturalized.

Mr. MOORE. Provided that citizen parent has been 1 year, preceding the birth of this child, a resident of the United States?

Mr. RUDNICK. Yes. If the citizen parent has the necessary physical presence, this child is a citizen. If, for some reason, as I understand your question, he is born there and does not become a citizen, how does he become a citizen?

Mr. FEIGHAN. Yes.

Mr. RUDNICK. He could come here as though he were an alien and apply for naturalization, or if his parents became naturalized—a national can be naturalized—he could derive citizenship.

If that did not happen, he could have a parent, if the parent came here, apply for judicial naturalization for him. He can become a citizen as though he were in the position of an alien.

Mr. FEIGHAN. He would have to have the 5-year requirement?

Mr. MOORE. No.

Mr. RUDNICK. Not for derivation. He could either derive under section 320 or, if the events did not lead to derivation, he could come over here and become naturalized in his own right.

Mr. MOORE. After the expiration of the 5 years.

Mr. RUDNICK. Comply with the regular naturalization requirements.

Mr. FEIGHAN. That was my original question. He would be required to come to the United States and go through the 5-year requirement?

Mr. RUDNICK. Yes; he would, if he did not acquire citizenship either at birth, because he did not have the proper parentage, or his parents did not become naturalized and thereby confer derivative citizenship upon him. Then he could come and comply with the ordinary naturalization requirements in his own right and become a citizen through naturalization.

Mr. MOORE. Which is the same as any other——

Mr. RUDNICK. Yes.

Mr. MOORE. He has no class difference.

Mr. RUDNICK. That is right.

Mr. DOWDY. Well, I thought probably there was nobody in the world that was born a stateless citizen, but perhaps we have got one here in these islands. They would be noncitizen nationals. Is that a stateless person?

Mr. RUDNICK. He is not stateless. He is what we recognize as a person owing allegiance to this country. He is a national. That is the definition of the term, and he has some relationship to the United States, short of citizenship.

Mr. DOWDY. That is almost a stateless person?

Mr. RUDNICK. It is close to it. It is somewhere in between.

Mr. MOORE. Is it? Is he in any different class than an individual who is here as a permanent resident of the United States and has not pursued his application for citizenship, the answer is "No"?

Mr. RUDNICK. That is right.

Mr. DOWDY. A person who has not pursued an application for citizenship is still a citizen of a nation from which he derived, is he not?

Mr. MOORE. No.

Mr. RUDNICK. Not necessarily. There are lots of people in this world who are stateless, who are born in countries that do not recognize the *jus soli* doctrine of acquisition of citizenship and are born in countries that do not confer citizenship.

A parent may be visiting in some countries which do not confer citizenship on children in that country unless the parents are citizens of that country. Consequently, that person might be born without any citizenship.

Mr. DOWDY. Of course, there has been a time in the history of this country that certain nations—and I think at one time England was one of them—that did not recognize naturalization of their citizens.

In other words, an English citizen in the United States would be naturalized, but the English would not recognize it and would still press him into service in their army or navy.

Mr. RUDNICK. On the other hand, there are countries who would recognize, as we do, that the performance of certain acts would cause forfeiture of citizenship in that country, and by the time the person comes in, he is coming in as a stateless person, has no citizenship. There are any number of ways that he could lose his citizenship and be stateless.

Mr. DOWDY. I was just talking about born stateless. That is what my question was originally, born stateless, not something they did later on that might raise a question.

Mr. FEIGHAN. A child born in Swain's Island or a possession of the United States, can that child become a U.S. citizen in, say, Swain's Island or in the possessions, or must he come to the United States?

Mr. RUDNICK. Must come to the United States. Now, a child born in an outlying possession, such as Swain's Island, who has a U.S. citizen father, the citizen father having had a continuous physical presence in the United States for 1 year without regard to the citizenship status of the spouse, is born a citizen of the United States, although born in Swain's Island.

Mr. MOORE. That is derivative citizenship?

Mr. RUDNICK. Acquisition at birth.

Mr. MOORE. Acquired at birth?

Mr. RUDNICK. Yes; at birth.

Now, this brings us to the section of the bill to which 301(b) is related, and that is the alien-citizenship combination. And there we have this rigid retention provision of physical presence in the United States during a particular period for 5 years, and this is what this bill is attempting to eliminate.

Mr. FEIGHAN. To eliminate.

Mr. RUDNICK. Yes; it is a substitution. It still remains here; but if another contingency comes into existence, that would be a substitute for it.

Mr. MOORE. Do I understand, the way this bill is constructed, there are two events which must occur; that is, 16—the child comes here prior to the time he is 16 years of age—and the alien parent becomes naturalized also. Both these events have to take place in order for that child of mixed citizen and alien parentage to take citizenship.

Mr. RUDNICK. Yes, sir, that is the suggestive formula which is taken from 320, and that is exactly what 320 requires as a condition for derivation.

Mr. MOORE. Right. I have got that, I think; but today the only requirement is that the child return to the United States by his 16th birthday.

What does the present law require? We have two events which must take place under this bill; that is, take up residence in the United States by the time that child reaches 16 years of age, plus the naturalization of the alien parent.

What is the present law requirement?

Mr. RUDNICK. That is the present law for derivation.

Mr. MOORE. Right. What does this bill propose to do?

Mr. RUDNICK. This bill proposes to treat a child who does not derive under section 320 but who acquired, rather, at birth; and therefore, if he acquired at birth, it would make no difference that his mother, the alien, was naturalized at a later date. He is still stuck with section 301(b) retention requirements.

Mr. MOORE. Of coming to the United States within a specified period of time?

Mr. RUDNICK. That is right, and remaining here for 5 years continuously.

Mr. MOORE. Let me ask you this question, if I may. We have a child born in any one of a number of nations of the world of an American father and a Chinese mother. The American father never comes back to the United States, and the Chinese mother naturally does stay with the American citizen husband. The child continues to make his home with his parents, and reaches the age of 21 or 22 and marries and never comes to the United States, lives for 95 years, and dies.

This bill would provide that that individual would be a citizen of the United States?

If it does not, tell me why.

Mr. RUDNICK. We have never had any laws, and we do not have any laws today, that would permit the transmission of citizenship from a second-generation parent who has never been in this country. That does not happen.

Mr. MOORE. I am talking about a U.S. citizen parent, father, who lives here for 20 years before he goes overseas, and he goes overseas

and he marries a Chinese girl, and he spends the rest of his life there, and they have one child. That child never comes to the United States. He lives to be 95 years of age and dies. Does he die a U.S. citizen under this bill?

Mr. RUDNICK. He would not die a U.S. citizen today without this bill although he had the proper parentage.

Mr. MOORE. He has retention rights which he never exercises under the present law; and if he does not exercise the retention rights, then he loses those rights.

Mr. RUDNICK. But this bill is not going to give him anything.

Mr. MOORE. Why will it not?

Mr. RUDNICK. Because he either has to comply with the retention requirements or if his mother ever gets here and sits around for 5 years and becomes a citizen, and he is 15 years of age, you are going to forget about retention requirements; that is the substitute for the retention requirements.

So if he remains there and never complies with the retention requirements, and his Chinese mother never comes here, he is just going to lose citizenship when he reaches age 23. That is the end of it. He lost on that date if he never made it.

Mr. MOORE. Under the present law?

Mr. RUDNICK. That is the present law. And this allows a substitute for the present law if he fails to make it, only if his mother is naturalized, he is here as a permanent resident and is under 16. Those three conditions have to exist before he gets anything or any benefit under that law.

Mr. FEIGHAN. May I ask, in any event the child has got to come to the United States?

Mr. RUDNICK. Yes, sir. Not only come here, he must come here as a permanent resident. He cannot visit here. He has got to come as a permanent resident.

His mother would have to come here and remain for the necessary period of residence. She would have to come in as an immigrant and comply with all the normal requirements for naturalization; and then if, as, and when she ever became a citizen, then you turn and look at the child and say, where is he? How old is he? And so on.

Mr. MOORE. If he is under the age of 16, he has met the requirements for retention of citizenship.

Mr. RUDNICK. Yes.

Mr. MOORE. After the age of 16 he must be here a period of 5 years.

Mr. RUDNICK. Then he is on his own, judicial naturalization.

Mr. FEIGHAN. He must be physically present in the United States before he is 16 in order to acquire that full citizenship?

Mr. RUDNICK. Yes, sir. And he must have that physical presence on the basis of a lawful admission for permanent residence. That is a little different from retention, because you do not have to be a lawfully admitted permanent resident to retain. The law says "Come here." Now, you can just come here as a citizen.

Mr. FEIGHAN. What procedure must a child who is here under 16 follow then to get all full rights of American citizenship?

Mr. RUDNICK. Are you referring to what this bill is suggesting as an alternative?

Mr. FEIGHAN. Take it under the present law, and what the bill would do.

Mr. RUDNICK. If a child would come here, let's say at age 15, and if his alien mother—the example that we have been discussing—if his alien mother became naturalized before his 16th birthday, he would not have to do anything whatsoever.

The law confers citizenship upon him automatically.

Now, let's assume that he is 17 years of age when his mother becomes a citizen, if she becomes one at all. He cannot do anything on his own to become a citizen, because the law requires that he must be at least 18 years of age in order to petition for naturalization. He is only 17. But the law does allow his citizen parent, the father in this instance, to file a petition for naturalization in a naturalization court and petition the court for the naturalization of his 17-year-old son.

There are no residence requirements in connection with that; but he does need a lawful admission for permanent residence. He cannot be a person who might be deportable. He cannot be a member of a subversive organization. He must not be a person who claimed exemption from military service.

And if those conditions are met, the 17-year-old child is naturalized through the petition of his parent, and he becomes an ordinary naturalized citizen by judicial action.

Mr. MOORE. What is the situation in the event the U.S. citizen parent is deceased?

Mr. RUDNICK. The law allows posthumous children to take citizenship through whatever status that deceased parent had.

Mr. MOORE. This bill?

Mr. RUDNICK. Your present law allows that.

Mr. MOORE. The present law permits that. This bill would not change that?

Mr. RUDNICK. No.

Mr. DOWDY. You were not talking about just posthumous children, you were talking about any children?

Mr. RUDNICK. What would be the situation? This bill only relates to a person born of a U.S. citizen, nobody else. That is all we are talking about. His mother is alive. She may be the citizen. The father may have died. The father may have been an alien before he died.

Therefore, this child would be subject to retention provisions.

Mr. MOORE. What provisions are we making for the U.S. illegitimate children born throughout the world today from American soldiers.

Mr. RUDNICK. There is a provision in the current law for acquisition of citizenship under these varying conditions that I outlined before—

Mr. MOORE. Does this take an affidavit or statement on the part of the U.S. citizen father?

Mr. RUDNICK. Paternity would have to be established by legitimation—perhaps in a court of competent jurisdiction. The law today states that if an illegitimate child is born of a U.S. citizen mother, who had a year's physical presence in the United States before the child was born, that child is a U.S. citizen.

Mr. MOORE. We have no problem there.

Mr. RUDNICK. No.

Mr. FEIGHAN. Mr. Rudnick, I am thinking of a situation where an 18-year-old U.S. citizen would go abroad, get married, and have a

child. Now, are there any steps that this U.S. citizen parent can take to confer U.S. citizenship upon his foreign-born child, who did not acquire U.S. citizenship at birth or after birth?

Mr. RUDNICK. Yes. The provisions that I mentioned a few moments ago. You have naturalization section 322 that allows a U.S. citizen parent to institute proceedings in a naturalization court to confer citizenship upon his child. So that if, as, and when that U.S. citizen parent who did not transmit citizenship to the child comes to the United States, and brings the child with him or the child subsequently enters for permanent residence, on the basis of that permanent residence entry, a petition can be filed.

The child can be naturalized if he is still under 18 years of age, and he would be a citizen by naturalization.

Mr. FEIGHAN. Mr. Dowdy.

Mr. DOWDY. An interesting thing struck my mind, from a statement I understood to be made here. If an alien is married to a U.S. citizen and the child is born overseas and has his retention rights and so on, as you mentioned; now I understood you to say that if a woman, an American citizen, has an illegitimate child abroad, it is an American citizen regardless of his father's citizenship.

Did I understand you correctly?

Mr. RUDNICK. No, I was referring to a U.S. citizen mother. The child is illegitimate.

Mr. DOWDY. That is what I asked. In other words, you can have an alien father if it is a marriage, but if it is an illegitimate child—

Mr. RUDNICK. Does not have a father.

Mr. DOWDY. I have known but one virgin birth in history, and I sort of thought maybe there was a parentage somewhere down the line—

Mr. RUDNICK. I meant in contemplation of law, has no father—

Mr. DOWDY. I was just wondering why there was a distinction. It seems like it is putting a penalty upon legitimacy.

Mr. RUDNICK. In a sense there is. The illegitimate child of a citizen woman gets an advantage over the legitimate child who has to rely upon the citizenship status of his parents, and retention requirements of 301(b).

Mr. DOWDY. That is all. I was not sure I correctly understood you awhile ago; but I do now.

Mr. FEIGHAN. What effect would that recent amendment to section 301(a)(7) of the Immigration and Nationality Act have upon the children covered by the bill now under consideration?

Mr. RUDNICK. The section 301(a)(7) amendment of November 6, 1966, took care of the physical presence requirements necessary on the part of the parent for transmission of citizenship; and what this bill did is to permit a parent who has served in the Armed Forces of the United States honorably, or has been in the employ of the U.S. Government or is in the employ of an international organization, to count the time that was spent abroad in those capacities in calculating the physical presence requirements.

But that, Mr. Chairman, solely relates to transmission of citizenship, in the first instance, to the child.

But we do not have in section 301(b) any similar provision which allows for the utilization of so-called constructive physical presence on the part of the child, for example, who was engaged in these capacities

after birth. There is no similar provision so that the change of November 6, 1966, would not have much bearing upon this child's situation. It would just remain as it is under today's law.

Mr. FEIGHAN. Mr. Rodino.

Mr. RODINO. Mr. Rudnick, you make reference to the date of May 24, 1934, when the Congress drew a distinction between a child born of two U.S. citizen parents and a child born of one citizen parent and one alien parent; and since this bill apparently would affect children born after that time of May 24, 1934, would you not say that many of these children have already lost their U.S. citizenship through a failure to fulfill these requirements, the retention requirements?

Mr. RUDNICK. Yes, sir, Mr. Rodino. There are probably a large number of children who lost citizenship under the provisions of the Nationality Act of 1940, which were also applicable to births subsequent to May 24, 1934. Under that law there was a residence requirement which would have required these children to come to the United States by at least 16 years of age, so that any child who failed to come to the United States by age 16 would have lost citizenship normally; and then of course the children under this present Act who failed to comply with retention requirements also have lost their citizenship.

However, this amendment of section 301(b) would make applicable to it section 301(c) in the present law, which states that the retention requirements described in section 301(b) are applicable to children born after May 24, 1934.

Now, if this becomes law, you would go back to any child born during this intervening period and retroactively recognize that, if the parent complied with this alternate procedure in the proposed bill, such child did comply with the alternate retention requirements.

Mr. RODINO. I am trying to follow you now, trying to get what the effect of this bill would be on those children who would fail to fulfill these retention requirements under this bill.

Mr. RUDNICK. Well, I believe that this bill would restore citizenship to those children; and the reason I say that is that we have experienced something very similar to this when the current Act was passed, the Immigration and Nationality Act, and children had already lost for failure to comply with retention requirements under the 1940 Act.

Now, section 405(c) contains a provision that, except as otherwise provided in this Act, citizenship lost shall not be restored by the repeal of a statute; and the question that had to be decided was whether or not those children who had already lost under the 1940 Act could, nevertheless, take advantage of the 1952 Act and meet those retention requirements.

The issue arose in the case of Lee You Fee and reached the Supreme Court. The answer was in the affirmative, that these children could take, even though they had already lost, the savings clause having been construed as not applicable to the situation, and that section 301(b) was an exception to the prohibition against restoring citizenship.

Mr. RODINO. So you are suggesting that under this bill the effect on these children who had failed to fulfill these retention requirements would be to restore citizenship to them?

Mr. RUDNICK. To recognize them as citizens if, as, and when they complied with the requirements of this bill.

Only if they did, and not completely——

Mr. RODINO. Yes, I see.

Mr. RUDNICK. As I say, by analogy to the position and the interpretation that was taken in this other situation, that is very close to this. And if there is any doubt as to the——

Mr. RODINO. Do you think that this is clear enough to set out as a rule of law that would be followed without definitely stating it?

Mr. RUDNICK. It would, I think, certainly be much clearer if a sentence was added to this, as was done with the November 6, 1966, act, the last sentence, which indicated that that amendment or that proviso was to be regarded as though it had been passed as of 1934. That would remove any doubt.

Mr. RODINO. Do you think that would be more beneficial to the purposes of the bill if included?

Mr. RUDNICK. I think it would.

Mr. RODINO. Is it a hard-and-fast rule, Mr. Rudnick, that the law which requires 5 years of continuous physical presence in the United States as a condition for the retention of citizenship under section 301(b), so hard and fast so there is no flexibility at all, and that such a child could not depart from the United States during that period of time without jeopardizing the citizenship? Is there any flexibility?

Mr. RUDNICK. Yes, there is flexibility. The Act of September 11, 1957, although it did not amend the Immigration and Nationality Act, provided in separate legislation that in the administration of the provisions of section 301(b) a child subject to those retention requirements was at liberty to be absent from the United States for an aggregate period, not exceeding 12 months, during the period for which continuous physical presence was required.

So that if a child arrived here at age 18 and started accumulating the necessary 5 years of physical presence, he is at liberty to leave and return up to 12 months and not break continuity of physical presence. So there is sufficient flexibility under the present law.

Mr. RODINO. Thank you.

Mr. FEIGHAN. Mr. Rudnick, in your statement you say——

The bill would thus exempt a citizen at birth from complying with the retention requirements of the existing law if he entered the United States to reside permanently before he was 16 years of age and if the alien parent was naturalized before the child became 16 years of age.

Is that all that this bill would do? In other words, it would refer only to the retention provision?

Mr. RUDNICK. Yes, sir. Refers only to the retention provisions and what it is saying, in effect, is that but for the fact that you were born a citizen, you would have been able to derive under section 320, and you would not have been required to comply with any retention provisions. We are going to treat you as though you were not born a citizen. We are going to treat you as though you were born an alien. So that if your other parent, your second parent, is naturalized, you automatically derive citizenship without any further conditions.

This is all this does.

Mr. MOORE. Provided it is before the child reaches the age of 16?

Mr. RUDNICK. Yes, under the conditions of section 320.

Mr. FEIGHAN. In other words, the child born of a U.S. citizen and an alien, if that alien becomes naturalized before the child is 16, the child can get citizenship; is that correct?

Mr. MOORE. Already is. It is automatic.

Mr. RUDNICK. The child became a citizen at birth because he had a citizen father and alien mother, and the father had enough physical presence.

Now he comes over here and he starts accumulating physical presence——

Mr. MOORE. He has citizenship at that point.

Mr. FEIGHAN. He has citizenship at birth.

Mr. MOORE. But he has to do certain things to retain it.

Mr. RUDNICK. That child comes here. He is a citizen. He comes here to live because he has to meet retention requirements. This says to him, if you are still under 16 years of age, if you are a permanent resident, if your alien parent becomes a citizen while you are a permanent resident, while you are under 16, forget about retention requirements; you do not have to meet them any longer. That is all it says to him.

Mr. MOORE. He has been a citizen from birth?

Mr. RUDNICK. That is right.

Mr. FEIGHAN. Well now, what would be the situation if the child came here before he was 16 and the alien parent did not become naturalized?

Mr. RUDNICK. He is going to have to meet your present retention requirements. He is going to have to comply with them.

Mr. FEIGHAN. This just puts that child in the category of those who were not citizens at birth?

Mr. RUDNICK. That is correct, exactly.

To put it another way, it substitutes for these retention requirements the naturalization of his mother or his father, whoever was the alien, and his permanent residency here, and the fact that he is under 16 years of age, because were it not for the fact that he was born a citizen, that naturalization of his parent would have made him a citizen at age 15, 14, or 13, automatically, if he was under 16 and a permanent resident.

All this is saying is that we are going to let you have the identical status that you would have had, had you not been born a citizen. So what does he have? He has two citizen parents, one of whom was naturalized, and one that had that status at birth. And it lets him, in effect, derive and thereby removes him from the retention requirements.

That is what that does.

Mr. MOORE. What sort of scope, as to numbers, would this bill involve?

Mr. RUDNICK. Well, that is difficult to gauge, Mr. Moore, because we have never inquired into the question of whether or not the alien parent ever became a citizen.

Mr. MOORE. If they have already pursued and retained their citizenship, it would not make a bit of difference?

Mr. RUDNICK. That is correct. They would normally apply to us for a certificate for citizenship as evidence of citizenship acquired at birth.

Mr. MOORE. That is right.

Mr. RUDNICK. All we would have to look into is, did he have a citizen parent when born, what was the other parent; and we would not look to see whether, 5 years later, the alien parent became a citizen. It was not material.

I would expect a considerable number of these alien parents do become naturalized, and probably do become naturalized prior to the child reaching the 16th birthday; and I would say that a large number of children are probably affected by this.

Mr. MOORE. Well, if the child of an alien parent—that child I assume comes into the United States, he has to if he is going to retain his rights, and he is already a citizen, is this bill not going to help him?

Mr. RUDNICK. Yes; he can come and go.

Mr. MOORE. He cannot go out until——

Mr. RUDNICK. Yes, sir. That is 5 years of physical presence. That is what that relieves him of. He can travel all over the world.

Mr. MOORE. Now, I think we are getting down to what may be the purpose of the bill, and this is what I think has made us ask so many questions that seemed to not be on the point. What else will it permit that child to do?

Mr. RUDNICK. He is a U.S. citizen, as you or I, free to do as he pleases, and free to move in and out of the country. Without this, he could not move in and out of the country as he pleases. He must remain here for 5 years continuously.

Mr. MOORE. You mean to tell me, then, that there are a considerable number of people in the United States in that category?

Mr. RUDNICK. Yes. There are thousands of children acquiring citizenship at birth right now, born of one U.S. citizen parent, one an alien, who has to meet these requirements. They have got to get here. They have plenty of time. They have got until age 23 to make it. But there are such children all over the world. And we get inquiries constantly from individuals whose circumstances are such that the child is close to age 23 and they cannot get here. They are having problems.

Mr. MOORE. Then the other parent, the alien parent, has already been naturalized?

Mr. RUDNICK. Possible, yes.

Mr. MOORE. If the alien parent has not been naturalized, it does not make a bit of difference whether he gets here or not. I do not see how in the world it is going to touch too many people. It will in some specific cases.

Mr. RUDNICK. It will help every single serviceman, for example, who is married to an alien, who has a child overseas. The serviceman ultimately returns to the United States with his family.

Mr. MOORE. Go on.

Mr. RUDNICK. That child, after he gets here, must comply with the retention requirements for physical presence.

Mr. MOORE. Not if the alien parent becomes naturalized.

Mr. RUDNICK. Yes; he does, without this bill.

Mr. MOORE. Not if he is under the age of 16 years of age.

What if the child is brought here at the age of 1, 2, or 3, and the alien parent becomes a naturalized parent, you mean to tell me that child does not take citizenship?

Mr. RUDNICK. He certainly does not. He is already a citizen.

Mr. MOORE. What are you relieving him of?

Mr. RUDNICK. Retention requirements.

Mr. MOORE. He stays in the United States the rest of his life.

Mr. RUDNICK. Then he has complied with the United States—supposing he does not want to remain in the United States the rest of his life?

Mr. DOWDY. Maybe he does not want to be a citizen?

Mr. RUDNICK. He has to go away to school, for example, in a foreign country.

Mr. MOORE. How do you vest citizenship in this 1-, 2-, or 3-year-old child? His retention rights do not begin to run against him until he reaches the age of 16, as I understand it, and he should then remain in the country for a period of 5 years. Right?

Mr. RUDNICK. Well, he has to get here by at least age 23.

Mr. MOORE. All right. Let's say you use the example of a military person, a U.S. citizen, married to an alien. They have a child. They come back to the United States. And nobody in the family leaves until that child is 18 years of age. The alien mother submits herself for naturalization after she has been here a period, if she is the wife of a U.S. citizen, and after 3 years here in the United States, physical presence, petitions for citizenship, and becomes a U.S. citizen. The child is now 4 years old.

Mr. RUDNICK. Still has to meet retention requirements.

Mr. MOORE. Let's say the child becomes 19 years of age, he is drafted into the U.S. Army and shipped overseas for 5 years. Does he lose his citizenship?

Mr. RUDNICK. Not if he is in the U.S. Army, shipped overseas.

Mr. MOORE. He goes independently overseas at the age of 18 or 19 under present law, both parents are now citizens of the United States and have been for 15 years.

Mr. RUDNICK. He has got 5 years' continuous physical presence in?

Mr. MOORE. Yes.

Mr. RUDNICK. He has complied with your retention requirements. He has just met them.

Mr. MOORE. Not the way I understood you to explain it initially.

Mr. DOWDY. That is involuntary. In other words, he has no voluntary choice in the matter.

Mr. MOORE. That is right.

Mr. RUDNICK. The fact that—let me try to explain it this way, Mr. Moore—the fact that the alien parent is naturalized—forget this bill for a moment—under today's law, does not take this child out of the requirement to comply with retention provisions. It does not take him out of it. This bill is trying to take him out of it.

Mr. MOORE. It see.

Mr. RUDNICK. And the formula used is, if your alien parent is naturalized, while you are a permanent resident under age 16 years of age, we will take you out of the retention requirements. Without this bill, he is still required to comply with retention requirements.

Mr. MOORE. The bill would take care of the question I posed?

Mr. RUDNICK. No. You are hypothecating a case in which the child lives here approximately all his life. He has already met them. He has no problem.

Mr. MOORE. No, he has not, because up to today he has to be here 5 years after the age of 14.

Mr. RUDNICK. So he is 19 and he leaves.

Mr. MOORE. I am getting him on the other side of the 5 years.

Mr. RUDNICK. If he is 18, he is out of luck. He has got to get it in. He is going to be out of luck if he leaves at age 18. This bill will allow him to leave at age 18.

Mr. MOORE. Yes. How do you practically administer section 301(b) today? If a person claims his citizenship, who raises the question of physical presence and age requirements?

Mr. RUDNICK. How does it arise?

Mr. MOORE. Yes.

Mr. RUDNICK. Well, these persons in this class may apply to the Immigration and Naturalization Service for a certificate of citizenship evidencing this type of citizenship, and then inquiry into that phase of the case must be made.

Mr. FEIGHAN. A child that is born a citizen at birth, comes over here 1-year-old and stays here until he is 13½ and then leaves. He is not a citizen?

Mr. MOORE. Even though his alien parent has become naturalized.

Mr. RUDNICK. When he comes over here in that instance—but he will lose it unless he gets those 5 years of continuous physical presence here after age 14.

Mr. MOORE. Regardless of the naturalization of the other alien parent.

Mr. RUDNICK. That is correct; regardless of the naturalization of the alien. You see, he cannot derive under section 320, because you are talking to a citizen.

Mr. MOORE. That is correct.

Mr. FEIGHAN. Any further questions?

Mr. MOORE. I have no further questions.

Mr. FEIGHAN. Mr. Dowdy?

Mr. DOWDY. I am wondering, under some provision or suggestions here of what the law would be at least, a person would become automatically a citizen if his alien parent is naturalized before he reaches age 16. You say he would automatically become a citizen, is that correct?

Mr. RUDNICK. Yes, sir. Derivative.

Mr. DOWDY. Under this bill?

Mr. RUDNICK. Yes, sir.

Mr. DOWDY. Now, if he does not have to do anything, he is a citizen, how is he going to prove it?

Mr. RUDNICK. He comes to us.

Mr. DOWDY. He has got to get something on record then?

Mr. RUDNICK. He does not have to. He can go along producing any kind of evidence he sees fit, showing "I am x; this is my age; my father; I am a citizen." He does not have to get this document.

Mr. DOWDY. Well, for all practical purposes, I would, as an attorney, tell him to do it. I know people that are born in the United States and have been citizens all their lives and sometimes they have difficulty proving they exist, even, because they did not have a birth certificate recorded.

Do you not get down to some sort of problem like that? In this instance, should not perhaps the alien, when becoming naturalized—should they not put the children's names in the judgment that makes her a citizen, to show that their children are citizens?

I hate to leave loose ends dangling, and it looks like that is what we are doing.

Mr. RUDNICK. As I indicated, Mr. Dowdy, we do have a procedure; and we issue these certificates at the rate of about 35,000 a year, year in, year out, to these children coming to us. They are given a document saying unquestionably you are a citizen of the United States, and this is how you became one.

So there is a record for those who wish to take advantage of this privilege.

Mr. DOWDY. Under this proposed law here, that would no longer be necessary, as I understand?

Mr. RUDNICK. Yes; it would be necessary. These children are citizens. We issue certificates to children who have not yet complied. They have not lost yet. We will give them a certificate from the moment of birth, if necessary, so there is ample protection for them. And there are ample official records that would establish their status if they wanted to come to us.

Mr. DOWDY. That is taken care of under this proposed amendment to the law?

Mr. RUDNICK. It will take care of these children, too.

Mr. DOWDY. I was afraid something was being overlooked.

Mr. MOORE. Can I ask this question? The individual who has all these ingredients of citizenship, but does not come to INS and seek to obtain the document which you refer to, is there any presumption in the law that he must have an alien registration—must he have one or the other?

Mr. RUDNICK. If an individual fails to register, and the proper authorities become aware of it, and they inquire into it and they ask why, and the man says, "Why, I am an American citizen," he is going to have to prove it.

Mr. MOORE. The presumption is he must have one or the other, he must have either the document which indicates that he has fulfilled the requirements of citizenship by birth, and following through, if he is a retention case, or he must have an alien registration card, and if not he has to explain it to somebody?

Mr. RUDNICK. That is right. But you cannot go so far to as say that he must have the certificate of citizenship.

Mr. MOORE. No, but must have one or the other explained—

Mr. RUDNICK. Either have to have an alien registration card or prove he is a citizen. He can prove it through any number of ways other than through the certificate of citizenship. This is a convenient official document, so that no question can be raised about it.

It has the same force and effect as the certificate issued by a court of law.

Mr. MOORE. This is not needed unless the issue is raised?

Mr. RUDNICK. That is true. I mean if no one ever questions, there is no problem.

He may want to vote. He may want to hold public office, or any number of things.

Mr. MOORE. That was the situation in the case of a Baltimore mayor.

Mr. RUDNICK. It is an excellent document for these children to obtain. As I say, 35,000 of them obtained them year in and year out.

Mr. DOWDY. This may not be directly applicable to the bill here; but as we have talked, I wondered about having a time for election—I do not know who should make the election. It first occurred to me

perhaps when a man marries an alien, from whatever country, that the wife's citizenship should follow the husband's unless they opted the other direction.

Mr. RUDNICK. That used to be the law of this country, Mr. Dowdy. It went out of existence in 1922.

Mr. DOWDY. What was the reason for that?

Mr. RUDNICK. I suppose the independence of women then and their capacity to transact legal business.

Mr. DOWDY. Is it not normal that a woman would want to live where her husband lives, and makes a living?

Mr. RUDNICK. That is true.

Mr. DOWDY. Now, given the right to opt in the other direction, if the woman is making the living, and he wants to live in her country or opted—that is, the husband would opt in that direction——

Mr. RUDNICK. She is at liberty to live in a foreign country, and whether or not she could acquire the citizenship of that country——

Mr. DOWDY. I am talking about her nation, where she was born. If an American citizen marries an alien and wants to choose, they choose to be the citizen of this country or vice versa——

Mr. RUDNICK. That is a matter that the individual has to decide for himself, as to whether he wants to retain his American citizenship or whether they decide between them that they should have one citizenship and choose which one it will be, the U.S. or the foreign; but that would be an individual choice.

Mr. DOWDY. Or if you do not want to put the option or the choosing up to the parents, the child, when he reaches a limited age, when he reaches 21, can choose——

Mr. RUDNICK. Well, our laws have never required that child, the derivative child, to make such a choice. Our laws have never required that.

Mr. DOWDY. Unless he meets the requirements of the law, he loses his chance to become an American citizen.

Mr. RUDNICK. That is true.

Mr. DOWDY. That is all.

Mr. FEIGHAN. Mr. Rudnick, thank you very much.

Now would you address yourself to the provisions of H.R. 555 and, in doing so, I would like to ask you: Can you give us some indication of the extent to which aliens interested in becoming citizens fail to reach their goals because of the inability to meet literacy and educational requirements?

Mr. RUDNICK. Yes, Mr. Chairman. There are a considerable number of individuals that come to the Immigration and Naturalization Service from time to time evincing an interest in becoming naturalized, and upon discussions with representatives in our various offices find that they are required to read, write, and speak the English language; and consequently would either have to acquire the necessary skills or forfeit the opportunity of applying.

Now, we refer these people normally to the public school authorities, where citizenship classes are being conducted, and we keep some statistics on the number of these people that we refer, and they run close to maybe 90,000 a year of actual referrals to the public schools.

Mr. FEIGHAN. By that you mean those who make application before——

Mr. RUDNICK. Either in the form of application or just come to the office and inquire, "What do I have to do to become a citizen?" As I

say, these large numbers do not have the necessary qualifications, and it is necessary for us to tell them where they may possibly acquire it.

Now, in addition to that, we have applications submitted, and the questions in the application itself inquire as to whether or not the individual is able to read, write, and speak English; and very frequently the answer is "No." So we have to reject those applications and explain to the applicants that this is a necessary requirement and that they would have to comply with it.

And then there are individuals who feel that they do have the necessary skill. They feel that they do speak enough, or are able to write simple words and read simple words in the English language and will insist upon proceeding all the way into the court, and those cases are, of course, disposed of in a formal hearing before a naturalization court. And they run, 300 to 400 a year, actual denials on the merits, the person does not have the ability.

So with that background, I would say that, by and large, there are literally thousands and thousands of people interested in becoming citizens who do not meet the requirements, are not able to meet them, or do not meet them sufficiently to pass the examination.

Others who are aware of the requirements, I must assume, do not even come near an Immigration and Naturalization office, because they realize it would be hopeless.

So there is that potential in the alien population, particularly in the Southwest with the Spanish-speaking people.

There is a large illiterate group there, and I think there are over 600,000 Spanish-speaking people in the Southwest, of which many, of course, are not literate in the English language. So that would be the potential, and the group that would benefit perhaps under this advanced date, or whatever new date is selected—

Mr. FEIGHAN. As you pointed out, the literacy-exempt alien is not similarly exempted from demonstrating a knowledge of the principles and form of government of the United States under the administration of the present requirement.

How is the candidate's knowledge on the subject determined?

Mr. RUDNICK. The law does not exempt anybody from demonstrating knowledge of the form and principles of our Government.

Now, the literacy-exempt alien, of course, is privileged to institute naturalization proceedings through an application; and since he is exempt from the requirement of speaking, reading, and writing English, but not from the knowledge of Government, we are obliged to converse with him in his native tongue, or whatever language he is able to speak. So, of necessity, we have to conduct a naturalization examination in its entirety, including the examination on his knowledge of Government, through interpreters. And that is how that knowledge is determined, through the answers given to the questions asked of the applicant by the interpreter and translated for us.

Mr. MOORE. What sort of administrative problem are you going to incur here in supplying courts, in their inquiry, the necessary interpreters to make examinations in the native tongue, because the court does have certain questions he might want to ask to satisfy himself? He would have to have an interpreter, unless the court itself were bilingual.

Mr. RUDNICK. That is true, Mr. Moore. However, most of our people who conduct these examinations, particularly in the Southwest,

are able to speak the language, and in most instances they can do this without the need of any other interpreter. In other instances, some unusual language would require that we have an interpreter present, and we have not found any real difficulty in meeting that need.

Mr. MOORE. And there have been instances under the present law where geography would have made that apparent if it had been a real problem, I assume.

Mr. RUDNICK. Yes.

Mr. MOORE. Simply by updating it, it is not going to aggravate the situation materially?

Mr. RUDNICK. No. It would simply just give us more of the same; but I do not think it would be in such volume because of the number of courts in which we operate. There are more than 600 of them that would not present any real problem.

Mr. MOORE. Geography usually controls the greatest flow in this particular area, and you are fully equipped now to handle it there?

Mr. RUDNICK. Yes.

Mr. FEIGHAN. The Immigration and Naturalization Service, I understand, approves H.R. 555; is that correct?

Mr. RUDNICK. Well, of the three bills, I believe there are, they vary somewhat, one from the other. One, Mr. de la Garza's bill, has a fixed calendar date. I think H.R. 555 relates to determining the age and residence as of the date of filing the petition, and the third one is silent. It just has the requirement of 50 years of age and living in the United States for 20 years, which could be interpreted as meaning as of the date that that amendment is added to the Act, or possibly at the time of naturalization.

And any of those would be satisfactory to the Department of Justice.

We are in agreement that the date should be moved up to whatever point in time, this committee, of course, sees fit to move it to.

Mr. FEIGHAN. Would it be advisable to have it, say, at the date of application, so that all of this would be current?

Mr. RUDNICK. That would avoid the necessity for doing what we are doing today, considering whether or not we should move it up another 10, or another 10. It would have that advantage. The fixed date would allow the individual to determine once and for all that this is the cutoff, but that he would not be qualified for the exemption by the mere expiration of time.

Mr. MOORE. Having a date, Mr. Rudnick, does this in any way really encourage this alien maybe to exert an extra effort to become conversant with the English language? I assume there is a reason for this being in here.

Mr. RUDNICK. There would be. If he is anxious to become a citizen and he realizes that he must—if you have a fixed date—must meet the requirements of literacy and knowledge, he is going to have to equip himself to meet that test.

So there is unquestionably an incentive on the part of the alien with the fixed date.

Mr. MOORE. No further questions.

Mr. FEIGHAN. If you have the fixed date, though, those who have not fulfilled the requirements of the 50 years of age and 20 years' residence would be excluded?

Mr. RUDNICK. Yes; you would have another class left out in the cold, as the class we are dealing with now has been left out in the cold;

whereas, the continually progressive date would qualify these people as time went along.

Mr. DOWDY. Mr. Chairman, I do not know whether this is really material. It may not apply to very many people. I remember several years ago, before I came to Congress—several years before I came to Congress—there was a woman about 70 who came from one of the Germanic countries, I believe, when she was a small child. She never did learn how to read and write but she raised a lot of children that were American citizens, of course, born in this country. And she wanted to die an American citizen, and we found a sympathetic judge, and she became a citizen before she died.

Now, I see no harm in that. I do not know whether there are enough of those to be of interest to us.

Mr. MOORE. If the gentleman will yield, if she found a sympathetic judge, she also found a sympathetic INS officer some place along the line.

Mr. FEIGHAN. There is still the requirement of literacy in some language under the provisions of section 312?

Mr. RUDNICK. Not for naturalization purposes, under the English exemption, no requirement.

Mr. CLINE. An illiterate person can be naturalized under the proviso in section 312?

Mr. RUDNICK. Yes, sir.

Mr. MOORE. That meets this particular requirement—under the present law—an illiterate person that is 50 years of age and been in this country 20 years previous to 1952, illiterate, can be naturalized?

Mr. RUDNICK. Yes, sir.

Mr. MOORE. Well, that is no different than what has been done in several other respects.

Mr. RUDNICK. I have a statement in this connection that I would like to read.

Mr. MOORE. I think you are a very knowledgeable person in this area.

Mr. FEIGHAN. Would you care to read that statement?

Mr. MOORE. Just let him enter it in the record.

Mr. RUDNICK. It is five pages. It will take 10 minutes.

Mr. MOORE. You covered everything in your oral submission, did you not?

Mr. RUDNICK. Yes.

Mr. FEIGHAN. Section 312, now says:

Provided further, That the requirements of this section relating to ability to read and write shall be met if the applicant can read or write simple words and phrases * * * and no unreasonable conditions can be imposed upon the applicant.

Mr. RUDNICK. That is the nonexempt alien. If he gets out of that, then he does not have to be literate in any language, if he is an exempt alien. The rule you just read relates to the nonexempt. He must meet that condition.

Mr. FEIGHAN. If you will, just submit your statement then.
(The document referred to follows:)

STATEMENT OF MR. RUDNICK CONCERNING AMENDMENT OF THE IMMIGRATION AND NATIONALITY ACT RESPECTING THE LITERACY REQUIREMENTS FOR NATURALIZATION

Thank you for the opportunity to present to you the views of the Department of Justice on the bills pending before you to amend section 312 of the Immigra-

tion and Nationality Act to enlarge the classes of persons eligible for exemption from compliance with the literacy requirements of the naturalization laws.

The Naturalization Act of June 29, 1906, fixed responsibility for naturalization in the Federal Government, and was the first Act to include basic educational requirements. It required the candidate for naturalization to speak the English language and to sign his name in his own handwriting. A showing of attachment to the principles of the Constitution was a further requirement—one that was interpreted as requiring a reasonable knowledge of our form of government. An exception to the speaking requirement was made in the cases of aliens physically unable to comply therewith.

These requirements continued unchanged as part of our naturalization laws until the amendment of the Nationality Act of 1940 by the Internal Security Act on September 23, 1950. Since that date, by explicit statutory injunction, rather than by judicial fiat as was the case in some courts, applicants for naturalization have been required to read and write simple words and phrases in common usage in the English language. That Act added to the exception from the literacy requirements by reason of physical disability a proviso that the requirements were inapplicable to persons who, on the date of approval of that Act, were over 50 years of age and had been legally residing in the United States for 20 years. This relief was incorporated into the law to facilitate the naturalization of many otherwise desirable aliens in the older-age groups, who could not hope to become citizens because of their inability to acquire the needed literacy skills. No similar exemptions have been granted from the statutory requirements that an applicant demonstrate knowledge and understanding of the fundamentals of the history and principles and form of government of the United States.

Both the literacy requirements and the exceptions thereto contained in the 1950 legislation were carried over into the present Immigration and Nationality Act with slight modification. The exception for elderly persons under the earlier law was conditioned, in part, upon legal residence in the United States for 20 years. The current law substituted for that prerequisite the less-stringent requirement that the applicant be living, rather than legally residing, in the United States for periods totaling at least 20 years. Additionally, the date fixed for calculating both the qualifying age and residence was advanced from September 23, 1950, to the effective date of the Immigration and Nationality Act, December 24, 1952.

H.R. 555 would amend section 312(1) of the Immigration and Nationality Act (8 U.S.C. 1423; 66 Stat. 239) in such manner as to exempt persons from the requirement of understanding the English language, including an ability to read, write, and speak it, if they were over 50 years of age and had been living in the United States for periods totaling at least 20 years on the date of filing their petitions.

H.R. 3596 would grant similar exemptions to persons who are over 50 years of age and have been living in the United States for periods totaling at least 20 years.

H.R. 475 similarly seeks to liberalize the exemptions from literacy requirements by merely substituting for the cutoff date of December 24, 1952, in the present law, the new date of January 5, 1965.

The proposed legislation presents no new question of policy. The Immigration and Nationality Act resolved in the affirmative the question whether persons over 50 years of age with 20 years of residence, who are otherwise qualified for naturalization, should be excused from the test of their ability to read, write, and speak English.

Fourteen years have elapsed since the cutoff date prescribed in the 1952 legislation. Those who could claim the exemptions today would have to be at least 64 years of age and have lived in this country for as much as 34 years. Those who reached age 50 or who completed the 20 years of residence after 1952 remain ineligible for the exemptions, even though they may now be over age 60 and have lived here for as much as 30 years. We know of no reason why the policy expressed in the 1952 legislation should not apply to the latter group. We believe that failure to afford similar treatment to them deprives them, without apparent reason, of an opportunity for citizenship. Accordingly, we favor the relief which the proposed legislation would afford.

The three bills under consideration are designed to meet the needs of these favored groups. They differ only with respect to the date or time from which the prerequisite age and residence should be calculated.

H.R. 475 advances the exemption by 12 years, so that those born before 1915, rather than before 1902 as at present, would qualify.

H. R. 3596 freezes the benefits to those persons who possess the age and residence qualifications as of the date of its enactment, although the provisions are susceptible of a construction that eligibility for the exemption is calculated as of the date of naturalization.

The provisions of H. R. 555 offer a flexible formula that would permit eligibility for the exemption to be achieved at an indefinite date in the future through the mere passage of time.

In the selection of one of the suggested approaches, attention is invited to the provisions of section 332(b) of the Immigration and Nationality Act which authorizes the Attorney General to promote instruction and training in citizenship responsibilities of applicants for naturalization. This includes the sending of names of candidates for naturalization to the public schools, and preparing and distributing citizenship textbooks to candidates who are receiving instruction in preparation for citizenship within or under the supervision of the public schools. To the extent that the date for qualifying for the exemption is advanced, applicants made eligible for the exemption will not find it necessary to participate in that program.

Mr. FEIGHAN. On behalf of the subcommittee, I want to express our deep appreciation for your very splendid presentation.

Any further questions? (No response.)

Mr. FEIGHAN. We will go into executive session.

(Whereupon, at 11:55 a.m., the subcommittee went into executive session.)



It is 3206 because it refers to those persons who possess the age and residence qualifications as of the date of its enactment. Although the provisions are retrospective, the question of eligibility for the exemption is calculated as of the date of enactment.

The language of H. R. 555 does not say that it would permit eligibility for the exemption to be determined as of the date of the law, through the mere passage of time.

In the opinion of one of the lawyers who approached the question relating to the retroactive effect of the enactment, the exemption would be available to those persons who were in the United States at the time of the enactment. The inclusion of the word "at the time of the enactment" in the bill is not a mere formality, but it is a statement of the fact that the exemption is available to those persons who were in the United States at the time of the enactment. It is not a statement of the fact that the exemption is available to those persons who were in the United States at the time of the enactment.

MR. EATMAN. In behalf of the subcommittee, I want to express our deep appreciation for your very splendid cooperation.

Any further questions? (No response.)

MR. EATMAN. We will go into executive session.

(Whereupon, at 1:15 a. m., the subcommittee went into executive session.)

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