Naturalization Cases of Asian Immigrants from *In re Ah Yup* to *United States v. Ozawa* and *United States v. Thind*

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Introduction

The history of Asian immigrants' naturalization into the United States around the turn of twentieth century has conventionally been told as a history of exclusion, culminating in *United States v. Ozawa* and *United States v. Thind*. These two cases, as a pair, have been regarded as the epoch-making cases in the history of Asian immigration to the United States. These cases, both at the Supreme Court level, are important in the sense that the former denied the naturalization of the Japanese and the latter denied the naturalization of Asian Indians. The story usually goes that firstly the naturalization of the Chinese was prohibited in 1882 after vehement anti-Chinese movements, then, Japanese immigrants came in place of the Chinese, which caused anti-Japanese movements, and finally the total exclusion of Asian immigrants was successfully completed with these two Supreme Court cases. However, the story did not in fact run smoothly and uniformly. In fact, some Japanese were naturalized and there were not a few cases in which Asian Indians were admitted to citizenship. Placed in the broader context of the whole history of U.S. naturalization cases, the far from linear history of the naturalization trials of Asian immigrants becomes even more significant.

This paper examines the history of both the successful and the unsuccessful attempts made by Asian immigrants to be naturalized, emphasizing the way in which court decisions contributed to the definition of "race," the connotation of which was changing greatly during those years. It emphasizes the point that the court decisions exerted great influence on this process of the construction of race. By defining race, the court not only fixed the boundaries between races, but also defined people's identities and social status.

Most important is that the court decisions reveal the great lack of uniformity in determining the meaning of the word "white." In their decisions, judges often chose to use one of two main terms (and their equivalents), depending on their purpose: "science," on the one hand, and "common knowledge," on the other. The court often relied on contemporary scientific evidence, such as the work of Dr. A. H. Keane.[1] Since most scientific works in those days categorized East Asians as Mongolians and peoples in West and South Asia as Caucasians, judges relied on this scientific argument when they wanted to exclude the Chinese and the Japanese and when they wanted to include peoples like Asian Indians and Syrians. "Common

[1] *In re Najour*, 174 F. 735 (N.D.Ga. 1909).

knowledge" rationales were based on the common sense of a hypothetical average American. For example, the decisions in *In re Ah Yup* referred to the fact that the words "white persons" "have undoubtedly acquired a well settled meaning in common popular speech, and they are constantly used in the sense so acquired in the literature of the country." Another decision similarly stated that "the average man knows perfectly well that there are unmistakable and profound differences between [the blond Scandinavian and the brown Hindu]."[2] The frequency of the use of this latter argument increased as time went by.

The first half of this paper will survey the cases of East Asians, especially Chinese and Japanese, before the Ozawa case in 1922. Since the naturalization of the Chinese was denied by express statute in 1882, it will mainly focus on the Japanese immigrants' quest for citizenship. Yuji Ichioka's pathbreaking work pressed scholars to modify the perspectives of the previous studies that had viewed Japanese immigrants as passive victims.[3] His work, still the most significant study on the Ozawa case, shows that Japanese immigrants were far from passive and tried hard, though in vain, to obtain citizenship. Following Ichioka's approach, this work delves into Japanese immigrants' attitudes regarding issues such as their understanding of the term "white" and their thinking on the matter of white elites' attitudes towards race and naturalization. In so doing, this study will reveal how unstable were the Japanese concepts of "race" and "white." Moreover, while Ichioka's study concentrates on Japanese cases, this paper places the Japanese immigrants' quest for naturalization in a broader context of other naturalization cases.

The later half of this paper will examine the cases of West and South Asians such as Asian Indians and Syrians. Their cases were more complex than those of East Asians, partly because of the fact that they were categorized as Caucasians by contemporary ethnologists. By scrutinizing a series of inconsistent court decisions regarding naturalization applications made by immigrants from West and South Asia, the paper will emphasize the significance of the Thind case and reveal the legal trends behind the decisions and what kind of society those judges wanted to make on behalf of the contemporary white elites.[4]

The half century or thereabouts studied in this paper was the critical period in which the previously vague distinction between white and non-white became greatly clarified by the functions of legal decisions and other mechanisms. Historian Matthew Frye Jacobson successfully demonstrated the process by which Jewish people and others whose racial status was not clear came to be categorized as whites while Asians whose status was also vague came to be clearly categorized as non-whites.[5] The examination of the cases up to the Ozawa case

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[2] *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923).

[3] Yuji Ichioka, "The Early Japanese Immigrant Quest for Citizenship: The Background of the 1922 Ozawa Case," *Amerasia* 4, no. 2 (1977): 1–22.

[4] James H. Kettner, *The Development of American Citizenship* (Chapel Hill, 1978); Ian F. Haney López, *White by Law: The Legal Construction of Race* (New York, 1996).

[5] Matthew Frye Jacobson, *Whiteness of a Different Color: European Immigrants and the Alchemy of Color* (Cambridge, MA, 1998).

and the Thind case, which together ended the vagueness in the process of Asian immigrant naturalization, will shed useful light on our understanding of the dynamic interaction as well as the gaps between the ruling class and Asian minorities in this period.

1. East Asians

It is not difficult to find records showing that more than a few immigrants from East Asia were admitted to U.S. citizenship. There were at least a few naturalized citizens of Asian ancestry as early as the mid-19th century. In 1854, a Chinese person applied for U.S. citizenship. During an abnormal period between July 1870 and February 1875, when the word "white" was accidentally omitted from the U.S. naturalization law, more than a few Asians were admitted to citizenship. It was reported that a Chinese person was naturalized in New York in 1873.[6]

The number of Chinese immigrants greatly increased, and anti-Chinese movements were prospering, when the significant first case was decided. In 1878, Circuit Judge Sawyer declared that the Chinese were not white, and therefore, ineligible for citizenship. We can find all possible kinds of arguments in this case except the legal precedent argument. At the beginning, Judge Sawyer acknowledged "Ah Yup, a native and citizen of the empire of China, " was a member of the "Mongolian race." Then he asked, "Is a person of the Mongolian race a 'white person' within the meaning of the statute?" Judge Sawyer answered in the negative on the basis of three reasons. First and most importantly, he used the "common popular speech" argument. He argued that no persons are "literally white," but rather that people recognize whiteness through "a well settled meaning in common popular sense." This reasoning would have lasting effects on the debates on naturalization ahead. Second, he used the "science" argument, quoting Blumenbach's categorization of human beings into five kinds; "The Caucasian, or white race, . . . The Mongolian, or yellow race, . . . The Ethiopian, or Negro (black) race, . . . The American, or red race, . . . and . . . The Malay, or Brown race." Third, he looked into the debates in Congress and concluded on the basis of that research too that the Chinese were not white.[7] In 1882, the so-called Chinese Exclusion Act had prohibited not only the entry of Chinese immigrants but also the naturalization of Chinese already resident. *In re Ah Yup*, along with the 1882 Chinese exclusion act, closed the door to Chinese naturalization, leaving little room for further argument.

As to the transition of how elite Americans understood the population to be constituted, the categorizations used in the U.S. Census are suggestive. Since the number of immigrants from Asia was negligible, the 1850 Census divided the population into three categories: Whites, Free Colored, and Slaves. In the 1860 Census, Asians were included within the white population. The 1870 Census divided the population into four categories: White, Colored, Chinese, and Indians. As this placed the Chinese firmly outside the racial categories eligible

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[6] Sydney L. Gulick, *American Democracy and Asiatic Citizenship* (New York, 1918), 59.

[7] *In re Ah Yup*, 1 Fed. 223 (C.C.D.Cal. 1878).

for citizenship, a clear path had been laid towards their eventual fate. So was that of the Japanese too, because they were included under the Chinese in this Census. The 1880 Census was basically the same on this point.

Already, before the Ozawa decision, in both the judicial and the administrative branches, the policy with regard to Japanese applicants was already determined. All that was up to the judges was what kinds of argument should be used from those available.

The equivalent case of *In re Ah Yup* for the Japanese was *In re Saito* of 1894, which was decided by a federal court in Massachusetts. The applicant's fate was quickly decided when Circuit Judge Colt declared that "The Japanese, like the Chinese, belong to the Mongolian race." The naturalization of a Japanese applicant was denied on the basis of four reasons: the three reasons applied to *In re Ah Yup*, plus legal precedents, including *In re Ah Yup* at the top.[8)]

However, the Chinese exclusion act did not in fact say anything about the Japanese, and there was no equivalent act to the Chinese exclusion act for the Japanese, which means that while the Chinese were denied naturalization by express statute, the Japanese were denied or admitted by the interpretation of law. Since the eligibility of the Japanese for naturalization depended on the lower courts, to which the immigrant filed an application for naturalization and which retained the decision whether or not to admit naturalization, more than a few Japanese were admitted to citizenship all over the United States. Masuji Miyakawa, a resident of Monroe, Indiana, was naturalized in 1905. Takuji Yamashita was naturalized in Tacoma, Washington, in 1906. Tamematsu Matsuki was naturalized in Pensacola, Florida, in 1907. Most noticeable among those naturalized was Shinsei Kaneko, who obtained his first paper in Redlands, California, in 1892, secured his second paper in March, 1896 and was naturalized in June 1896. He served as a juror, a tax collector, and a member of a municipal assembly. He also exercised his citizenship by voting in elections, and he traveled abroad using the U.S. passport issued to him.[9)] Those cases were well-known among the Japanese immigrant communities and encouraged those who wanted to be naturalized. *Rafu Shimpo*, a major Japanese daily in Los Angeles, argued that the successful cases showed that the Japanese were an excellent and civilized people and not inferior to white people.[10)]

However, it seems that the number of the Japanese who were admitted to naturalization decreased as time passed by. According to the Census of 1910, four hundred and twenty Japanese had been admitted to U.S. citizenship. Although most of this number were presumed to be those who had been admitted to citizenship in Hawaii before its annexation in 1898, one of the authors of the census report did not conceal his astonishment at this large number.[11)] Public opinion became more critical and turned against Japanese naturalization. A reporter in

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[8)] *In re Saito*, 62 F. 126 (C.C.D.Mass. 1894).

[9)] Shiro Fujioka, *Minzoku Hatten no Senkusha* (Tokyo, 1927), 107–108.

[10)] *Rafu Shimpo*, February 13, 1919.

[11)] U.S. Bureau of Census, *Chinese and Japanese in the United States, 1910* (Washington DC, 1914), 10–11.

the *New York Times* published an article entitled "Laxity in Naturalization" which criticized a minor court for admitting four Japanese to citizenship.[12] The federal government gradually took an exclusionary attitude against Japanese applicants and in 1906 it introduced stricter supervision on naturalization matters by creating the Bureau of Immigration and Naturalization and by ordering federal courts not to issue naturalization papers to Japanese applicants. In 1911, the Bureau of Immigration and Naturalization issued an order that clerks of courts should not receive declarations of intention or file petitions from aliens other than "white persons" and Africans.[13] After 1911, there are few cases on record in which Japanese applicants were admitted into citizenship.

Meanwhile there were abundant cases in which Japanese applications for naturalization were denied by the courts. To take one instance, in 1908, *In re Buntaro Kumagai* showed clearly the court intention that what was under scrutiny was not personal quality but race. Judge Hanford regarded the applicant, Buntaro Kumagai, as "an educated Japanese gentleman" and pointed out the fact that he had served in the U.S. army and been honorably discharged, declaring that "There appears to be no objection to his admission to citizenship on personal grounds." Nonetheless, he denied his application for citizenship "on the single ground that Congress has not extended to Japanese people not born within the United States the privilege of becoming adopted citizens of this country." Based on the legal precedents, including *In re Ah Yup* and *In re Saito*, the court concluded that the application must be denied.[14] Similar negative decisions were declared after this decision, including *Bessho v. United States, In re Knight*, and *In re Young*. Before the Ozawa case, and especially after 1911, East Asians were consistently defined as "non-white" and "ineligible to citizenship." In this sense, the Ozawa case was not the first test case regarding whether the Japanese could be naturalized.

2. United States v. Ozawa

A review of the major cases regarding Japanese naturalization before *United States v. Ozawa* seems to suggest there was no hope for success in the courts. However, using a different logic, some Japanese still saw some possibility of success. In fact, it might have been reasonable for some Japanese immigrants to take an optimistic view regarding the possibility of Japanese naturalization because it was not difficult to find American opinions favoring Japanese naturalization at that time.

Facing a Japan which had emerged as the strongest power in the West Pacific after its victories in the Sino-Japanese and Russo-Japanese wars and attaching considerable importance to U.S.-Japan relations, President Theodore Roosevelt regarded the Japanese immigration issue from a different perspective. In December 1906, President Roosevelt, in his annual

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[12] *New York Times*, October 13, 1903.

[13] Roy Malcolm, "American Citizenship and the Japanese," *The Annals of the American Academy of Political Social Science* (May, 1921): 79; After 1911, with the exception of Japanese veterans, no immigrants from Japan were admitted to citizenship.

[14] *In re Buntaro Kumagai*, 163 F. 922 (W.D.Wash. 1908).

message, recommended "to the Congress that an act be passed specifically providing for the naturalization of Japanese who come here intending to become American citizens."[15] The President placed his emphasis on how civilized the people in Japan were, rather than their skin color, a view that was welcomed by elite Japanese. K.K. Kawakami, a famous Japanese publicist, responded to Roosevelt's message quickly. Kawakami advocated the admission of desirable Japanese to U.S. citizenship. He argued that the Japanese would not seclude themselves into ghettos as the Chinese did, and claimed that it was "unfair and unmanly to close [to the Japanese] the door of Americanization."[16] In a move related to Kawakami's argument that the United States should naturalize the desirable Japanese, the Japanese government asked the U.S. government for naturalization privileges in exchange for curtailing labor immigrants from Japan. This proposal was rebuffed by the U.S. government, but it suggests that the Japanese government shared Kawakami's view that civilized Japanese should be treated in the same way as other foreign nationals from Europe.[17]

Etsujiro Uehara, a Japanese Congressman and professor who spent eight years in the U.S. around the 1900s, was another example of a Japanese elite sharing these views. He wrote that Americans did not have much racial prejudice. He argued that if any immigrants, including the Japanese, spoke English, led an American way of life, and could develop mutual understanding with Americans, then racial prejudice would vanish. He urged Japanese immigrants to acquire American culture and socialize with Americans, and emphasized the necessity of discarding the bird-of-passage mentality.[18]

Uehara's argument was quite similar to those advocated by Japanese immigrant leaders in the days when the Americanization movement prospered. Believing that the more Americanized they were, the more they would be accepted by American society, Japanese community leaders had adopted various tactics. They had signboards at Japanese shops originally written in Japanese rewritten in English. They advocated taking a day off on Sundays on the grounds that working on Sundays looked very un-American. One of the top priorities was an anti-gambling campaign. In those days, gambling had always been associated with the Chinese. In Japanese it was usually called *Sina tobaku*, Chinese gambling, because the gambling sites were usually run by the Chinese. The Japanese immigrant leaders tried to dissuade their countrymen from patronizing those gambling sites, because indulging in gambling looked, they thought, un-American. Japanese immigrant leaders identified the creation of distance from the Chinese with getting closer to American-ness. The Japanese immigrants believed that emphasizing their difference from the Chinese, who were the only

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[15] *Wall Street Journal*, December 5, 1906.

[16] K.K. Kawakami, "The Naturalization of Japanese: What It Would Mean to the United States," *North American Review* 185, no. 4 (June 21, 1907): 394–402.

[17] *Nihon gaiko bunsho*, 1907, 345.

[18] Eiji Oguma, *"Nihonjin" no Kyokai* (Tokyo, 1998), 220–225; Etsujiro Uehara, "Beikoku Kinji no Hainichi Mondai," *Taiyo* 26, no. 10 (1920): 56–69; Etsujiro Uehara, "Hainichi no Shinso to sono Kaiketsusaku," *Taiyo* 26, no. 13 (1920): 2–28.

people whose naturalization was denied by express statute, might contribute to the realization of their hope of Japanese naturalization.[19]

A few lawyers expressed optimistic views too. While worrying that the question of Japanese eligibility for naturalization might be declared moot simply on the grounds of a technicality, George Wickersham, former U.S. attorney general, took an optimistic view of the case.[20] It must also have been reassuring for Japanese immigrants to find a legal expert like John H. Wigmore writing that, while the Chinese were not "white persons," it was clear that the Japanese were. He wrote in the *American Law Review*:

> The connection of the Japanese with the typical "yellow" peoples is so slender, so lacking in vitality, so lost in the preponderance of the "white" element, that the fullest force should be given to the index of color. Having as good a claim to the color "white" as the southern European and the Semitic peoples, . . . the statute should be construed in the direction indicated by American honor and sympathy [to allow the naturalization of Japanese persons].[21]

In this atmosphere, the Ozawa naturalization case, originally submitted in Hawaii, was transferred to the Supreme Court. The Japanese immigrant community was doubtful whether it was the most opportune time to file an action, but since Ozawa was determined not to quit, the majority opinion was that there was no option but to support him. *Shin Sekai*, a major Japanese newspaper in San Francisco, argued that though it might be impossible to decide whether the present moment was the best time to take the fight for Japanese naturalization to the Supreme court, no one would deny that the present time was opportune.[22] Shiro Fujioka, a Japanese immigrant leader, summarized the grounds for those hopeful views at a lecture meeting. The cases in which a Mexican and an Asian Indian had been admitted to naturalization were emphasized. Regarding other arguments that the Japanese were qualified for naturalization, one of his points was also to do with pigmentation. Since not only Southern Europeans who were "dark white" were qualified for naturalization but also Mexicans and Asian Indians were admitted to naturalization, he believed that the Japanese should be treated likewise. He also pointed to the American spirit of freedom and equality.[23] *Shin Sekai* also introduced the point that it could be argued that the Japanese should not be classified as

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[19] Izumi Hirobe, "Amerikanizeishon to 'Beikaundo'," in *Shintosuru Amerika, kobamareru Amerika*, eds. Daizaburo Yui and Yasuo Endo (Tokyo, 2003), 72–88.

[20] "Kika sosho jiken narabini Beikoku gunmu ni fukushitaru honpojin no kika mondai ni kansuru ken," December, 1919, in Beikoku ni okeru hainichi mondai zakken: Kika ken oyobi do sosho kankei, vol. 1, The Diplomatic Record Office of the Ministry of Foreign Affairs of Japan [hereafter cited as kika mondai].

[21] John H. Wigmore, "American Naturalization and the Japanese," *American Law Review* 28 (1894): 818–827.

[22] *Shin Sekai*, May 8, 1918.

[23] *Rafu Shimpo*, September 16, 18 and 19, 1917.

[24] *Shin Sekai*, May 13, 1918.

Mongolians because Mexicans, whose skin color is similar to that of the Japanese, were qualified for naturalization.[24] *Rafu Shimpo* also expressed the optimistic view that this case would be decided favorably, on account of the present U.S.-Japan relations.[25]

Ozawa's brief submitted to the court included all the available supporting arguments noted above, some of which show that the "race" concepts used by the Japanese side were also fluid. First, before dealing with the legal arguments, he tried to prove his own good personal character. For example, he explained his own moral standing on the basis that he would never gamble. This might be connected to the fact that while emphasizing their similarity with Mexicans and Southern Europeans, who were qualified for naturalization, the Japanese immigrant leaders tried to keep their distance from the Chinese, who were denied citizenship by express statute. Ozawa emphasized that he was an American-educated, civilized person. This was a favorite argument put forward by elite Japanese who believed that the Japanese were civilized enough to be naturalized.[26]

Despite the hopes of Japanese immigrants for success, the Supreme Court denied Ozawa's application. All the court had to do was to quote the trite argument that the Japanese were categorized not as Caucasians but as Mongolians. The case was just another extension of preceding decisions.[27] A couple of reasons could be pointed out regarding why the Japanese immigrants had held on to false hope. First, they failed to perceive both the legal and the judicial trends that had moved fatally toward the negative side sometime during the 1900s and 1910s. Second, Ozawa's argument that he was an ideal citizen with good character was not to the point once the Japanese were categorized as Mongolians. Third, they got a false idea that the Japanese might be naturalized because Mexicans, whose status and complexion were similar to theirs, were admitted into citizenship by *In re Rodriguez*. However, the ruling admitted naturalization in that case because of the treaty between the United States and Mexico and the history of Texas and Mexico. In the end, it became clear that the Ozawa case was not going to make the first definitive answer to the question of whether the Japanese could be naturalized or not. It simply made the previous assurance doubly sure.

3. Western and Southern Asians

Unlike the decisions regarding East Asians, the decisions concerning whether Western and Southern Asians could be naturalized or not appeared to be more indecisive. The number of the cases contesting the eligibility to citizenship for Western and Southern Asians began to increase drastically around 1909, which might mean that their eligibility had not tended to come into question before then.

Since most contemporary ethnologists categorized the peoples of Western and Southern Asia, such as Syrians and Asian Indians, as Caucasians, judges tended to decide that peoples

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[25] *Rafu Shimpo*, June 3, 1917.

[26] Takao Ozawa, "Naturalization of a Japanese Subject," in kika mondai.

[27] *United States v. Ozawa*, 260 U.S. 178 (1922).

from those areas were white, therefore, eligible to naturalization. Judges whose world views contradicted that scientific view and who therefore did not want to admit them to citizenship could not take advantage of the "science" argument, because the peoples from those areas were usually categorized as the Caucasians.

The first major decision testing the eligibility of Asian Indians gives a glimpse of this confusion and the undecided nature of the question. In 1909, Circuit Judge Lacombe reached a contradictory decision in which it was recognized that while Asian Indians might not be white, the Asian Indian applicant could still be naturalized.[28)]

Compared to this inconsistent decision, District Judge Newman in a federal court in Georgia held that Costa George Najour, a Syrian, was white. It was easy when the judge admitted naturalization only on the basis of current science. Despite the applicant's dark complexion, Newman argued that "free white person" referred to "race, rather than to color." Newman was relying on the work by Dr. A. H. Keane which categorized humans into four groups:

> Negro or black, in the Sudan, South Africa, and Oceania (Australasia); Mongol or yellow, in Central, North, and East Asia; Amerinds (red or brown), in New World; and Caucasians (white and also dark), in North Africa, Europe, Irania, India, Western Asia, and Polynesia.[29)]

In conclusion, Newman, regarding "Syrians as a part of Caucasian or white race," held that Najour should be admitted to citizenship.[30)]

The first few cases involving Syrians following *In re Najour* also admitted them to naturalization. About two weeks after *In re Halladjian*, Judge Lowell decided on a similar case. Admitting that the applicant, this time named Mudarri, was not an Armenian but a Syrian, he relied on *In re Halladjian* on the grounds that "Syrians are to be classed as of the Caucasian or white race." As a result, the court admitted Mudarri to citizenship.[31)] In the same year, District Judge Wolverton in Oregon admitted another Syrian to naturalization.[32)]

It is more difficult to find consistency regarding the cases of Asian Indians. While *In re Balsara* of 1909 held that a Parsee was not white, *United States v. Balsara* of 1910 concluded otherwise. The court admitted, while "there is no difficulty in saying that the Chinese, Japanese, and Malays and the American Indians do not belong to the white race," it was difficult to decide whether Parsees were white or not. After declaring the necessity for Congress to "settle them down by more specific legislation," the court opined, "Parsees do belong to the

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[28)] *In re Balsara*, 171 F. 299 (C.C.S.D.N.Y. 1909).
[29)] *In re Najour*, 174 F. 735 (N.D.Ga. 1909).
[30)] Ibid.
[31)] *In re Mudarri*, 176 F. 465 (C.C.D.Mass. 1910).
[32)] *In re Ellis*, 179 F. 1002 (D.Or. 1910).
[33)] *In re Sadar Bhagwab Singh*, 246 F. 496 (E.D.Pa. 1917).

white race and the Circuit Court properly admitted Balsara to citizenship."

Regarding Hindus, the decisions continued to go in both directions. On the one hand, *In re Sadar Bhagwab Singh* held that Singh could not be naturalized, on the grounds of the "common knowledge" argument and legal precedent. District Judge Dickinson even argued that if the court used the terms "white" and "Caucasian" laxly, they might have to admit "a man from Mars" to naturalization.[33] On the other hand, District Judge Bledsoe admitted Mohan Singh, a Hindu, to naturalization, relying on ethnological arguments and legal precedents.[34] The judges' confusion and concern appeared in the fact that several of them wrote of their desire for more concrete legislation about definitions of race.

It was in this context that Bhagat Singh Thind came on stage. District Judge Wolverton held that the applicant, Bhagat Singh Thind, a Hindu, born in Punjab, was qualified for naturalization. Wolverton basically relied on legal precedents such as *In re Mohan Singh, In re Halladjian*, and *United States v. Balsara*, which used ethnological argument as rationales.[35] The United States quickly appealed. The Supreme Court, which had relied on the ethnological argument that the Japanese were not categorized as Caucasians only a few months before, now discarded this argument. The court instead opined, "the average man knows perfectly well that there are unmistakable and profound differences between [the blond Scandinavian and the brown Hindu] today," and denied Thind's naturalization.[36] This Supreme Court decision liberated judges from their dilemma.

Different from views on East Asians, views on West and South Asians were still unstable until the Thind case. The decisions favorable to Asian Indian applicants were based on scientific arguments and legal precedents. However, when judges did not want to admit Asian Indians into citizenship, they simply resorted to another argument; common knowledge. Syrians and Asian Indians were positioned along the borders of naturalized citizenship. The world views held by different judges differed slightly one from another, but on the whole they agreed that the critical line dividing white from non-white should be drawn somewhere to the west of India.

Conclusion

The situation regarding who could be naturalized was very unstable from the mid-nineteenth century to the 1920s. First it was the Chinese who were denied naturalization in 1882. The status of the Japanese was not decided for another a couple of decades. The major difference in naturalization cases brought by the Chinese and those brought by the Japanese around the turn of the twentieth century was that, while the former were made ineligible to citizenship by express statute, the latter became so through the interpretation of law. After the Chinese eligibility for naturalization was completely denied by immigration law in 1882, more

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[34] *In re Mohan Singh*, 257 F. 209 (S.D.Cal. 1919).

[35] *In re Thind*, 268 F. 683 (D.Or. 1920).

[36] *United States v. Thind*, 261 U.S. 204 (1923).

than a few naturalization papers were given to the Japanese by lower courts. Those sporadic issuances could be observed until 1911, when the Bureau of Immigration and Naturalization issued an order that clerks of court should not receive declarations of intention or file petitions from aliens other than "white persons" and Africans.

After a series of unsuccessful trials, one case reached the Supreme Court. While some Japanese were pessimistic about the result of the case, some had reason to be positive. Japanese immigrant leaders who actively supported Ozawa's efforts to obtain naturalization through judicial channels tended to believe in the objectivity of laws and in the possibility of success in their efforts if they only succeeded in persuading the judges logically. Some tried to find some hope in the fact that the Japanese were the most civilized nation in Asia, and some emphasized the light complexion of the Japanese.

Regarding East Asians, their status as ineligible for citizenship had already been decided before the Ozawa case. There were no court rulings which overruled the *In re Ah Yup* of 1878 and *In re Saito* of 1894, which continued to exert a deadly influence on later cases. Since the Japanese had been categorized as Mongolians along with the Chinese, the fate of the Japanese was also decided then, as was expressly stipulated by *In re Saito*. No cases regarding Japanese naturalization thereafter overruled *In re Saito*, which had become insurmountable as the legal precedent.

Despite this trend, some Japanese remained hopeful. The court where an immigrant filed an application for naturalization retained the decision whether or not to admit naturalization, which meant that there were no standardized criteria regarding naturalization at the locations which dealt with the applications at first, at least until 1906. Therefore, even after *In re Saito*, there were some cases in which Japanese immigrants were admitted to naturalization, which led some Japanese to misunderstand the trend of American naturalization policy. If the Japanese leaders had scrutinized those cases and legal trends more carefully and much less optimistically, they might have understood the American court's firm intention that the Japanese were ineligible to citizenship, exactly as were the Chinese, and that the admittances were exceptional.

Moreover, since, unlike China, Japan was diplomatically far from powerless, the United States was not quick enough to enact an exclusion law equivalent to the anti-Chinese act of 1882. What blurred the eyes of the Japanese immigrant leaders was the fact that they considered themselves very much different from the other Asians who were the only nationals denied naturalization by express statute. The Japanese thought of themselves as the nationals of a first-class country and superior to other Asians. They identified more with Anglo-Saxon Americans than with their Asian neighbors.

In contrast, the court was more indecisive in dealing with the cases of immigrants from Western and Southern Asia. Similar cases more often than not resulted in totally different rulings. Since they were categorized as Caucasians by contemporary scientific works, the courts were not able to use the argument that they were not Caucasians in order to deny their applications for naturalization, and so the use of "common knowledge" argument as a tool to

exclude them increased. This common knowledge, held by average men, was of course exactly that of the judges, who were not only a part of American society but also active members who were keen on leading it. Unlike the cases of East Asians, science and common knowledge produced contradictory positions in the cases of Western and Southern Asians.

It is true that the concept of "white persons" was fluid in the early twentieth century, but it was not East Asians such as the Chinese and Japanese whose identity was in question during the period. It was Western and Southern Asians such as Syrians and Asian Indians whose racial definition was at stake during that period. In the end, it was the Indians who were finally dropped outside the "white" zone.