-AMERICAN INDIAN CULTURE AND RESEARCH JOURNAL 21:1 (1997) 131-154

The INS and the Singular Status of North American Indians

MARIAN L. SMITH

During the late 18th and 19th centuries, a body of United States law developed which not only treated Native Americans differently than U.S. citizens, but also differentiated them from all other aliens. After Congress' 1891 creation of what is now the U.S. Immigration and Naturalization Service (INS), the new agency faced questions of policy and procedure regarding the unique immigration and nationality status of North American Indians. Not until 1950 were all questions of the Indians' status resolved in a manner that preserved their singular rights under American immigration law.

The exceptional immigration status of North American Indians rests, obviously, on their being the only peoples of the world who did not immigrate to North America after Europeans laid claim to the continent. The difference of American Indians in this regard was recognized by the Jay Treaty, negotiated between the United States and Great Britain and signed November 19, 1794. Article III of the agreement guaranteed the right of British subjects, American citizens, and "also the Indians dwelling on either side of the said boundary line" to freely cross and recross the U.S.-Canadian Border.[1] While the right of British (Canadian) and American citizens to freely pass the border was annihilated by the War of 1812, the right of American Indians to do so under the Jay Treaty was not. Thus since 1794, for immigration purposes, Native Americans have not had to recognize the political line separating

Marian L. Smith is a historian with the U.S. Immigration and Naturalization Service

the United States and Canada.[2]

Native American immigration status posed few problems during the 19th century, even after 1891, when the federal government began to exercise its authority over immigration matters. Indians usually crossed and recrossed the U.S.-Canadian Border via inland waterways or over remote portions of the land border. In either case, they did not encounter U.S. Immigration or Customs officers nor did British officials interfere with their passage over the Canadian Border.[3]

The Immigration Act of March 3, 1891, provided the first general immigration law applying to all aliens entering the United States and established the U.S. Immigration Service. Yet the law and the Service focused, at that time, on persons "not a citizen of the United States or of Canada or of Cuba or of Mexico, who shall come by steam or sail vessel from any foreign port to any port within the United States."[4] While North American Indians were neither U.S. nor Canadian citizens, the law had little effect on them as they did not arrive "by steam or sail vessel," and their travel routes still seldom passed through official ports of entry. After 1893, when the United States and Canada concluded an agreement allowing both countries to establish control over their common border, no immigration law, rule, or regulation made specific mention of North American Indians. Perhaps because the law and rules neglected any reference to Native Americans' Jay Treaty rights, Indians who applied for admission at U.S. ports were treated as if they were Canadian citizens. Early 20th century INS correspondence instructed Inspectors to exempt North American Indians from the head tax, but to examine them as they would all other aliens. By law, only citizens of Canada, Mexico, Cuba, and later Newfoundland were exempt from the head tax.[5]

The first immigration legislation referring to Native Americans was the Immigration Act of 1917, which defined the term "alien" as "any person not a native-born or naturalized citizen of the United States," but qualified the definition by excluding "Indians of the United States not taxed." Under this section, an Immigrant Inspector on the Canadian Border might have inspected and, if excludable, denied entry to an untaxed Indian born in the U.S. or to a Canadian-born Indian. Such was the case, though this implementation of the law probably violated the Jay Treaty. Between 1917 and 1923, the Immigration Bureau accepted applications for waivers of the Alien Contract Labor law on behalf of Canadian-born Indians, and at least three Canadian Indians were

denied entry to the U.S. because they did not meet literacy requirements. The exclusion of illiterate aliens was another feature of the 1917 act.[6]

The conflict between Native Americans' Jay Treaty rights and U.S. immigration law became apparent upon implementation of the Immigration Act of 1924. To understand the application of this section to Native American Indians, one must review Native American nationality status under prior United States laws.

North American Indians' nationality status stemmed from Article 1, section 2 of the United States Constitution, which excluded Native American Indians from citizenship in the new republic. For the purpose of apportioning representation, the 1789 document defined citizens as "free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, [and] three fifths of all other Persons." This, in effect, limited U.S. citizenship to white persons. Racial ineligibility to citizenship is a common chapter in the history of African-Americans and Asian-Americans, including Indian-Americans. Yet the original exclusion of American Indians from citizenship was not based upon race alone, but also upon their membership in and being subject to "independent" tribes or nations. Only later would American immigration and nationality law exclude Native Americans specifically because of race.

Denied the ability to naturalize, treaties or special acts of Congress were the only avenue available for Native Americans to gain citizen status. Like Great Britain had earlier, the United States concluded treaties with Indian tribes and often used such treaties to promote assimilation of Native Americans. Most offered U.S. citizenship to those Natives who would assume property ownership and relinquish "allegiance" to their tribe. Even after the United States ceased treating with Indians in 1871, legislation granting citizenship to Native Americans followed the pattern established in earlier treaties. The Dawes Severalty Act of 1887, for example, promised citizenship to individual Indian property owners who severed all tribal relations.[7]

The definition of who was a U.S. citizen expanded following the Civil War to include "[a]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed." Subsequent amendment of U.S. nationality law in 1870 expanded those eligible to naturalize to include "aliens [being free white persons, and to aliens] of African nativity and to persons of

African descent." Thus racial qualifications for naturalization under U.S. law continued to exclude Native Americans from that process. Separate legislation, such as the 1882 act declaring Chinese persons to be ineligible to U.S. citizenship, further confirmed these racial requirements.[8]

Several U.S.-born Native Americans challenged their legal exclusion from citizenship. In the 1885 case *Elk vs. Wilkins*, the Supreme Court maintained the opinion that American Indians were born into allegiance to their tribe and therefore were not U.S. citizens. The court reinforced this position in the 1898 *U.S. vs. Wong Kim Ark* opinion, adding that though Indians born in the United States were subject to the United States, they were not born into allegiance to the nation and could not be considered U.S. citizens. This decision rendered American Indians not only noncitizens within the United States, but also, being subject to United States jurisdiction, rendered them non-aliens as well.[9] Canadian-born Native Americans also challenged their exclusion from citizenship during these years. The court considered Canadian Indians to be aliens, but denied them naturalization because they were neither "white persons" nor of "African nativity or African descent."[10]

When Congress assumed greater federal control over the naturalization process with the Basic Naturalization Act of 1906, Native American Indians remained excluded from those persons considered eligible to naturalize. Under new federal regulations issued for administration of the 1906 act, Clerks of Court could not accept naturalization petitions filed by Native Americans, just as they could not accept petitions filed by any other person racially ineligible to that process. Rule 21 of the naturalization regulations read as follows: "Clerks of courts shall not receive declarations of intention (Form 2203) to become citizens from other aliens than white persons and persons of African nativity or of African descent."[11]

A curious contradiction in the racial exclusions to U.S. citizenship is the case of Indian women married to U.S. citizens. While the law stated that any woman *herself eligible to naturalize* did become a citizen upon marriage to a U.S. citizen, an 1888 law extended this benefit to Indian women. Though she was still ineligible to naturalize, after 1888 a Native American woman's marriage to a U.S. citizen automatically made her a citizen as well.[12]

As racial bars to U.S. citizenship came under increasing chal-

lenge during the early 20th century, Clerks of Court came under pressure to accept naturalization petitions from those considered ineligible. The INS then amended Naturalization Rule 21 in 1909 to include the following provision: "Any alien, other than a Chinese person, who claims that he is a white person . . . should be allowed, if he insists upon it . . . to file his declaration or his petition, as the case may be, leaving the issue to be determined by the court."[13]

Aliens denied the ability to petition for naturalization, and those who petitioned but whose petitions were denied, appealed to the courts. In several cases argued between 1890 and 1920, persons of the Mexican, Parsee, and Syrian "races" were granted the right to naturalize. In other appeals of the same period, courts upheld the racial exclusion to naturalization. Among those were the cases of a native of Burma, a native South American Indian, and a British Columbian Indian.[14]

At the same time, and despite racial exclusions, Congress retained the power to grant citizenship to individuals or to groups of Native Americans through special legislation. Congress did so in 1919 with an act granting citizenship to those Indians who served in the U.S. Armed Forces during World War I. Under this law, mere proof of discharge was sufficient to obtain naturalization in a U.S. court. Similar to 19th century treaties and legislation which bestowed citizenship on Indians in exchange for taking up property or otherwise "assimilating," the 1919 act made a Native American veteran's U.S. citizenship a benefit of military service.[15]

Finally, on June 2, 1924, Congress passed an act granting U.S. citizenship to all non-citizen Native Americans born within the territorial limits of the United States. Departing from past practice, the 1924 law no longer required Indians to shift allegiance from their tribe to the United States. Rather, the law no longer recognized Indians' dual allegiance as a conflict. With this act, Congress settled the immigration and nationality status of U.S.-born Native Americans, but it did not address the status of North American Indians born outside the United States.[16]

Only a week earlier, on May 26, 1924, Congress passed the Immigration Act of 1924 permanently establishing immigration quotas based on the national origins system. Section 13(c) of that law denied entry to any immigrant considered to be an alien ineligible to citizenship, and Immigration Inspectors now began to deny entry to Canadian-born Native Americans under section

13(c).

By 1924, Native Americans who were not U.S. citizens commonly crossed the U.S.-Canadian Border at official ports of entry, either by automobile, train, or over international bridges. The Immigration Bureau had issued no specific instructions regarding Canadian-born Indians, but Inspectors on the Northern Border based exclusion of Native Americans upon correspondence between Bureau officials in Washington, D.C. and in Montreal. Those communications stated that "aliens of that class (natives of Canada of Indian race) may be considered as in the same category as Japanese, Chinese, and other races ineligible to citizenship."[17]

The exclusion of North American Indians born in Canada irritated many and threatened Native Americans' Jay Treaty rights. During the Spring of 1925, Immigration Bureau officers, the Secretary of Labor, and Congress began to receive letters of protest to the exclusion of Canadian-born Indians. Some Canadian Indians, residents of the United States but who visited Canada, were angry at now being prevented from returning home. Loud complaints came from fruit and hop growers of Washington State, who depended on Native Americans from British Columbia to migrate seasonally and work as "pickers" in the Washington fields. Furthermore, by July, 1925, Great Britain made formal complaints to the U.S. State Department regarding violations of the Jay Treaty.

In response to these protests, Labor Department and Bureau officials issued new instructions for administration of Section 13(c) of the 1924 act. While maintaining that Canadian-born Indians were excludable from permanent immigration to the United States because of their racial ineligibility to naturalize, the Department took the position that such Indians were admissible as temporary non-immigrants (visitors). Thus by August, 1925, INS officers admitted Canadian-born Indians as they had prior to the 1924 act. Meanwhile, Commissioner-General of Immigration Harry E. Hull and Acting Secretary of Labor Robe Carl White assured the Senate, the Washington State hop growers, and all U.S. and Canadian railroad companies that Canadian-born Indians would be admitted as temporary visitors.[18]

Not fully satisfied with this solution, several Indian tribes in New York and in Ontario formed the Indian Defense League of America to defend their Jay Treaty rights. The Indian Defense League, founded in 1925 by Chief Clinton Rickard, lobbied Congress to amend section 13(c) so as to remove any confusion about

its applicability to Native Americans. The organization also sponsored an exercising of Jay Treaty rights, at Niagara Falls, on the third Saturday of July, 1925.[19] The demonstration initiated an "Annual Border Crossing Celebration" continued to this day.[20]

Congress finally reaffirmed the Jay Treaty rights of Canadian-born American Indians four years later with the Act of April 2, 1928. The act exempted Canadian Indians from the Immigration Act of 1924. The 1928 exemption applied only to persons born as Indians in Canada, not to persons adopted by any Canadian Indian tribe.[21]

It should not be surprising that during the 1920's and 30's, when the national origins system succeeded in limiting immigration, Europeans often tried to take advantage of Indians' border crossing privilege. Southern Europeans frequently posed as North American Indians to avoid quota restrictions. By 1934, at the port of Buffalo, New York, such cases arose two or three times a month. Despite their "coaching" about Canadian Indian tribes and customs, Immigrant Inspectors easily exposed impostors with "trick questions" or by uttering Indian salutations.[22]

Additional complications regarding Canadian-born Indians' Jay Treaty rights arose following a 1933 amendment to Canadian Indian law. The amendment provided procedures whereby a tribal Indian, native to Canada, could become enfranchised as a British subject and Canadian citizen. Under the new law, "enfranchised" Canadian Indians would no longer be Indians, and would no longer enjoy the Jay Treaty rights afforded to Indians. The Canadian law raised a question for United States immigration officials: Did the 1928 act, exempting Canadian Indians from the immigration laws, refer to "Indian" as a race or as a political status? If the 1928 act referred to race, then all Native Americans born in Canada were exempt from U.S. immigration law regardless of enfranchisement. If the act referred to political status, then only those Native Americans born in Canada who had not enfranchised were exempt, and those who had enfranchised were excludable as a person racially ineligible to citizenship. On November 16, 1933, the Solicitor of Labor ruled that the 1928 act referred to "Indian" as a political status, and therefore "enfranchised" Canadians became subject to U.S. immigration law.[23]

It was initially left to INS District Directors on the Northern Border to decide what documents or evidence they would require of applicants to prove either their Indian or enfranchised status. Then, in March 1934, officials of the INS and the Canadian Indian

Lands Department agreed to a standard procedure: Those still considered Indians by the Canadian Government had their tribal identification card endorsed (stamped) by their Dominion Indian Agent, while the Indian Agent refused to endorse the cards of enfranchised Canadian citizens. Upon presentation of these cards at border ports, INS officers easily determined whether to admit the Indian under the Jay Treaty, or to inspect the Canadian citizen for temporary admission under the Immigration Act of 1917, as amended by the act of 1924.[24]

Enfranchisement of Canadian-born Indians brought their immigration into the United States under regulation of the immigration laws, which by the 1930's required a consular visa for entry. United States Consuls in Canada could issue temporary visas to enfranchised Canadians, but could not issue them permanent immigration visas because section 13(c) still excluded persons ineligible to citizenship. The U.S. Consul at Hamilton, Ontario, received several visa applications from persons of "half-Indian blood" during Summer 1934. The State Department then requested guidance from the INS regarding what percentage of Indian blood would be necessary for exclusion under 13(c).

In response, INS Deputy Commissioner Edward J. Shaughnessy discussed numerous court decisions where naturalization applicants were "part of eligible blood and part of ineligible blood." The conclusion drawn by the INS Law Division was that aliens of one-half or more "ineligible blood" could not naturalize, while those of less than one-half "ineligible blood" could naturalize.[25] As a result of this guidance, consuls had to obtain extensive information about the family tree of each questionable applicant. There is no evidence that anyone at the time questioned why the United States used a political definition of "Indian" to enforce the treaty while using a racial definition to enforce the immigration laws.

Native Canadians, whether Indian or citizen, remained ineligible to U.S. citizenship because neither met U.S. racial qualifications for naturalization. Yet many of their family members, often cousins born within the United States, became U.S. citizens in 1924. The contradictions inherent in this situation continued to draw criticism and complaints. As early as 1926, California Senator Hiram W. Johnson introduced a bill to make North American Indians born outside the United States eligible to naturalize.[26] Johnson's effort was also a response to the protests of Mexican-born Indians who—unlike Mexicans—were also racially

ineligible to naturalize. Many Mexican Indians in the United States joined an organized letter-writing campaign to Congress and the INS which lasted from 1926 into the 1930's.[27]

Additional, unrelated contradictions among and between the United States' myriad of nationality laws—and between U.S. nationality and immigration laws—received attention from newly elected President Franklin D. Roosevelt in 1933. By an Executive Order of June 10th, Roosevelt announced the consolidation of the Bureau of Immigration and the Bureau of Naturalization into the U.S. Immigration and Naturalization Service. By another Executive Order of April 25th, the President named the Secretary of State, Secretary of Labor, and Attorney General to a committee "to review the nationality laws of the United States, to recommend revisions, and to codify the laws into one comprehensive nationality law for submission to Congress." The three cabinet members then created a committee of advisors from their respective departments to perform all necessary research and studies, and to draft a proposed code. The advisory committee provided a report and draft code to the Presidential committee on August 13, 1935.[28]

The cabinet members reviewed and amended the draft for nearly three years, then submitted it to the President on June 1, 1938. Section 303 of the draft nationality law modified racial qualifications for naturalization to include not only white persons and persons of African nativity and descent, but also "descendants of races indigenous to the Western Hemisphere." In explanatory comments to the draft, the committee offered the following reason for section 303's departure from the racially exclusive policy maintained by Congress and the courts for nearly seventy years:

> In furtherance of the efforts which have been made to more firmly cement the ties of international friendship between the United States and the Pan-American countries, the proposed Nationality Code extends eligibility to naturalization to descendants of races indigenous to the Western Hemisphere. The highly desirable results which it is believed would follow such action are probably out of all proportion to the comparatively few persons who would likely be affected by this provision.[29]

Immigration and Naturalization Service files covering Native American matters during the 1930's contain no mention of

Roosevelt's Good Neighbor Policy. Rather, the files are full of domestic cases demonstrating the continued need to somehow reform or regularize the nationality status of "alien" Indians.

For example, in 1934, San Blas Indians in Florida and New York began to feel the effects of their unique status. These Native Panamanians had been resident in the United States before passage of the Immigration Act of 1924 but had no documents proving their legal status. Other legal residents who arrived after 1928 were issued Immigrant Identification Cards, and the San Blas Indians sought some similar card or certificate to protect them from "rough treatment" or deportation. Unfortunately, INS regulations did not allow issuance of any document proving the Indians' legal residence.

The San Blas Indians, and their attorney, appealed to the Bureau of Indian Affairs (BIA) as well as the INS for relief. Though the BIA had no jurisdiction over foreign-born Native Americans, officials there became concerned about how U.S. immigration and nationality policy affected "immigrant" Indians. Those in the United States could not have their legal status certified, nor could they obtain the benefits of naturalization. Those outside the United States were effectively barred from immigrating by the 1924 act's exclusion of persons ineligible to naturalize, despite the act's quota exemption for persons born in the Western Hemisphere.[30]

Naturalization rates among other aliens, those eligible to citizenship, increased during the Great Depression. This was partly due to economic conditions. Many public works projects as well as private employers hired only U.S. citizens or those who had begun the naturalization process. As unemployment grew, noncitizens encountered difficulties in getting or keeping jobs, and the INS expanded its program of deporting aliens who became "public charges." Canadian-born, Mexican-born, and other "foreign" Native Americans in the United States at the time resented their inability to naturalize, especially after 1934 when Congress granted U.S. citizenship to a group of Metlakahtla Indians who migrated from Canada to Southern Alaska prior to 1900.[31]

Meanwhile, the special status of North American Indians came into question again. When New York State attempted to dismiss a number of Canadian-born Mohawk Indian workers from a construction project at Attica State Prison, the Indians claimed the action violated their Jay Treaty rights. The case came before Federal Judge Harold P. Burke at Buffalo during 1938, and the

court ruled in favor of the State. Though the Jay treaty protected Indians' right to cross and recross the border, Burke could find no protection in the treaty for a non-citizen Indian's employment. While Native Americans born on both sides of the border protested Burke's ruling, the INS District Director at Detroit suggested the decision be "circularized" to all offices along the Northern Border and used to deny entry to Canadian-born Indian laborers. But Service officials in Washington refused to circulate the decision because the court upheld Indians' border-crossing rights and no "good purpose" could be served by attempting to block Native American entries.[32]

By 1938, when the new draft nationality code was submitted to the President, the INS took an even more relaxed position regarding naturalization of Native Americans born in North, Central, and South America. From the mid-1930's until 1940, the INS made every effort to help rather than prevent the naturalization of Indians. Though the courts had final authority in all naturalization cases, the INS began to recommend Native Americans for citizenship *without objection to their race.* As early as 1936, in a case involving the petition of an Indian, an INS Assistant Commissioner directed Examiners not to object to naturalizations on the basis of race:

> Mere conjecture or impression is not warranted and should not be indulged. Individuals are usually racially proud and sensitive and naturally resent any suggestion that they may be regarded as racially inferior. Unless it appears *prima facie* that the applicant is ineligible for naturalization, or unless the court holds him disqualified, no question should be raised upon the ground of race, and if otherwise eligible he should be recommended for citizenship.[33]

Two factors might have cause the INS to "bend" official policy. First, Service officers probably expected imminent passage of the draft nationality code extending naturalization rights to "alien" Indians. Second, official policy and the INS had become the targets of criticism from both the Social Security Administration (SSA) and the Bureau of Indian Affairs (BIA).

The Social Security Administration repeatedly identified worthy cases of Canadian-born Indians who were being denied Federal relief jobs or Social Security pensions because they were not U.S. citizens. Such cases occurred most frequently in the Dakotas, and both the SSA and BIA complained to Congressmen

from those states. Senators from Minnesota and Illinois became especially concerned over the dilemma of Canadian-born Indians denied benefits because they were not citizens while also barred from becoming citizens.[34]

In 1939 the INS again instructed field officers to allow Indians to proceed with the naturalization process. The District Director at St. Paul, Minnesota, even received instructions to recommend a certain Native American for citizenship despite his racial ineligibility, though he was not to conceal the fact of the petitioner's race. As always, the INS had a limited role in such proceedings. The Service could recommend or not recommend candidates for citizenship: The courts granted or denied each petition.

Yet this was a tenuous policy for the Service to hold as long as the law excluded all but white and black persons from naturalization. In many cases judges refused to overlook the applicant's racial ineligibility. Where a court or judge would not naturalize ineligible persons, Examiners thought it wrong to encourage, or mis-lead, Native Americans into paying the required fees for a "doomed" proceeding. Furthermore, many Examiners could not defend overlooking racial qualifications in the case of Native Americans while enforcing them in the cases of Chinese and others racially ineligible.[35] Thus the INS had reason, apart from foreign policy, to support the draft nationality law extending naturalization to foreign-born Native Americans.

The bill passed and became the Nationality Act of October 14, 1940. In keeping with its purpose to reconcile all past U.S. law on the subject, the 1940 Act contained a small section extending the right of naturalization to all Native Indians of South, Central, and North America. Section 303 limited eligibility to U.S. citizenship to "white persons, persons of African nativity or descent, and descendants of races indigenous to the Western Hemisphere."[36] Extending naturalization privileges to Central and South American Indians finally settled any question of their immigration status, but Jay Treaty considerations continued to complicate the status of North American Indians.

Earlier that Summer, before Congress voted on the new nationality law, events abroad led to passage of the Alien Registration Act of June 28, 1940.[37] A national security measure, the act required all non-U.S. citizens resident in or entering the United States to register with and be fingerprinted by the INS. Alien registration raised various issues and questions for North American Indians in the United States and in Canada. Of most general

and immediate concern were provisions of the act threatening Indians' Jay Treaty rights by requiring certain documents for entry into the United States.

As he had after passage of the Immigration Act of 1924, Chief Clinton Rickard of the Tuscarora Reservation again protested the violation of Jay Treaty rights. Augmenting the effort of Rickard's Indian Defense League of America were a group of Iroquois, and their attorney, who in the first week of January 1941 discussed the problem with Immigration Service officials in Washington, D.C. Within weeks the INS issued instructions clarifying North American Indians' compliance with the act. Instruction Number 9 of January 23, 1941 explained that neither the Alien Registration Act nor related Executive Orders could infringe upon Indians' Jay Treaty rights. Specifically, officers were "instructed to admit Indians whose cases fall within the terms of the 1928 Act without requiring them to possess passports, passport visas, or border crossing identification cards."[38]

The central provision of the Alien Registration Act, that all aliens register with the federal government, still applied to "alien" Indians. This exemption of Native Canadians from some requirements but not others led to further confusion for the Indians and the INS. For example, if Canadian Indians moved to the United States with the intention of residing permanently, were they subject to the head tax? Were Canadian-born Indians of the Fort Belknap Reservation true citizens under an act of March 3, 1921, or were they aliens required to register? Service officers in Washington wrestled with these and other questions throughout 1941 and for many years thereafter.[39]

Similarly, the Nationality Act of 1940's extension of naturalization rights to Native Americans raised as many questions as it answered. Naturalization law and regulations required applicants to submit a legal record of admission into the United States. Yet because they had never been subject to immigration law, Indians had never undergone the inspection procedure needed to create that record. On April 1, 1941, INS Legal Branch officers approved two methods for Canadian Indians to obtain arrival documents for naturalization purposes. If a Native American had entered (and remained in) the United States prior to July 1, 1924, the person could "register" his or her entry by proving their past sixteen or more years of continuous residence. Those who arrived on or after July 1, 1924, would have to depart and reapply for admission at a designated port of entry, where an Immigrant

Inspector would make a record of legal admission.[40]

As INS officers worked in the early 1940's to reconcile U.S. immigration laws with North American Indians' Jay Treaty rights, it became clear that some problems arose not from the treaty, nor from U.S. law, but from the United States' reliance on Canadian law to define the term "American Indians born in Canada." The issue became obvious in cases showing the effect of Canada's Indian Act on several women, wherein a Canadian citizen (white) woman gained the status and privileges of an Indian while several Indian women lost their Indian status.

During mid-July 1942, disagreement arose between the INS and the Board of Immigration Appeals over the case of a white Canadian citizen woman admitted as an Indian, simply by virtue of her marriage to a Canadian Indian. Originally excluded by the INS because she had no visa, the Board of Immigration Appeals admitted the woman as an Indian under the 1928 Act. Some INS officers worried that the Board's interpretation would allow women ineligible to immigrate—such as Chinese women—to evade U.S. immigration law. It seemed clear to the officers that a woman of Anglo descent was not an Indian. The Board's opinion prevailed, though, supported by INS Acting General Counsel Albert E. Reitzel. He argued that Indians' exemption from immigration laws rested on the Jay Treaty, and in the case of others admitted under treaty—such as the Chinese—all wives gained admission under their husband's status.[41]

Following the Board's decision, on March 1, 1943, Commissioner Earl Harrison signed Interpretation Number 20.[42] It contained a set of instructions specifying the classes of Canadian-born Indians entitled to admission without inspection under the immigration laws. The interpretation reinforced the decision that the Act of April 2, 1928 applied to "those persons, whether of Indian blood or not, who are recognized as 'Indians' by the Canadian Government." Paragraph 4 of the interpretation provided Canada's legal definition of an Indian, while paragraph 5 warned that any Indian considered "enfranchised" by Canada could not benefit from the 1928 Act.[43] The INS was thus recommitted to a political rather than racial definition of "North American Indians born in Canada."

Unfortunately, continued reliance on Canadian law led to situations which seemed to contradict the spirit of the Jay Treaty. Such cases troubled INS officers in the field and in Washington. Six months after issuance of Interpretation 20, Seattle District

Director John P. Boyd asked the Commissioner for guidance in the case of a Canadian-born Indian woman who, after moving to the United States, married a "U.S. reservation Indian." Under Canadian law, the woman lost Canadian Indian status through her marriage, and thus lost her border-crossing privileges. Boyd also raised the question of Canadian-born Indian women who lost Indian status through marriage to Canadian citizens or to Filipinos. Canadian authorities refused to admit such women without a U.S. border crossing card or a U.S. reentry permit. Yet Boyd could not issue cards or permits to persons who originally entered as Indians, because Indians could supposedly cross the U.S.-Canadian Border without papers or inspection.[44]

Responding to Boyd's request a few months later, the Reentry and Exit Permit Unit Supervisor explained that women who married a U.S.-born Indian had no need for travel papers. While technically no longer a Canadian Indian, she was the wife of a U.S. Indian and her husband still enjoyed Jay Treaty privileges. Just as all wives of Canadian Indians gained admission under Interpretation Number 20, so all wives of U.S. Indians should gain admission into Canada. Whether Boyd convinced his Canadian counterpart to accept this argument is unknown, but complaints about violations of the Jay Treaty did continue. In the Spring of 1944 the Superintendent of Tulalip Indian Agency in Washington State wrote the Bureau of Indian Affairs about INS reliance on Canadian law. He wrote on behalf of "full-blood Indians, denied the right to purchase liquor in this country by the same Department of Justice which, as to immigration, rules that they are not Indians under Jay's Treaty."[45]

As to the separate question of Native Canadian women who lost Indian status by marriage to a non-Indian, INS Central Office staff promised Boyd they would study the issue. More than a year later, St. Albans District Director Harry R. Landis took the question up with the Canadian Department of Mines and Resources. After conferring with Canadian officials, Landis told the Commissioner that Canada's definition of an Indian "includes persons who, in our opinion, were never intended to be included . . . It also excludes persons of Indian blood following the Indian mode of life merely because they have no treaty with the Canadian government . . .". Since reliance on Canadian law caused complications "never contemplated by the regulations or statutes and treaties," Landis suggested abandoning the Canadian definition and amending U.S. regulations.[46] Though adopting Landis' suggestion

might simplify Indian cases for the INS, the Service could only enforce—not interpret—the law. Until the courts or the Board of Immigration Appeals reversed their interpretation of the 1928 Act, the INS had to find another way to reconcile the law and the Jay Treaty.

Accordingly, INS General Counsel staff thoroughly reviewed the history of Indians' Jay Treaty rights. In a long decision memorandum of July 14, 1945, INS General Counsel L. Paul Winings considered "the epochal changes that have taken place in the American panorama since the Jay Treaty was concluded a century and a half ago." Then, tribes were independent nations straddling an invisible borderline. The United States at the time had no developed immigration policy, and no restrictions on entry. Thus "the treaty merely recognized an existing condition" wherein Indians moved about their lands unhampered by any "factitious border." In those days, Indians migrated primarily to hunt and fish.[47]

By 1945, neither Canadian nor U.S. Indian tribes remained independent. In each case, Indians generally lived on reservations located in one or the other nation. The U.S.-Canadian International Boundary Commission maintained a visible border, which Indians crossed "to visit, to work, or to establish homes among us." Nevertheless,

> [i]n the face of these vast changes in the scheme of life, the right of free passage guaranteed to the Indians has persevered. Perhaps the survival of this privilege is an anachronism, but to the Indian tribes it represents one of the last remaining jewels of a lost treasure. We have been content to permit them to retain this token, since it possesses such great value for them and has so little impact upon our over-all immigration policy.[48]

Despite his support for Indians' Jay Treaty rights, Winings relied on general U.S. immigration law rather than the treaty to protect women who lost Indian status under Canadian law. He reasoned that because the Indians' entry was "regular" under the treaty, and they subsequently established residence in the United States, such Indians were in fact lawful permanent residents. They were thus "entitled to readmission under conditions identical with those that are applicable to other permanent residents who return after temporary absence." It followed that the Indian

women could obtain resident alien border crossing cards.[49]

As a result of the General Counsel's decision, in late 1945 the INS issued two new Operating Instructions. The first contained procedures for documenting Canadian-born American Indians' acquisition of lawful permanent resident status. The second directed that an arrival record (manifest) be made whenever a Canadian Indian entered the United States for permanent residence. Though not required under treaty or law, INS wanted the manifests "to facilitate any dealings which the Service may later have" with Canadian Indians resident in the United States.[50]

Neither the Service decision nor the new instructions answered District Director Landis' call for a new definition of "North American Indians born in Canada." To do so required a new interpretation of the 1928 Act exempting Indians from U.S. immigration laws. As discussed earlier, the United States adopted Canada's definition of "Indians" for Jay Treaty purposes in 1933, and in doing so adopted a political rather than racial definition. Thus the extension of naturalization eligibility to North American Indians in 1940 had no effect on Jay Treaty enforcement. A Native Canadian's relationship with the Canadian Government remained the determining factor in his or her admissibility under U.S. immigration law.

Whether using Canada's political definition of a Canadian Indian served the purpose of the 1928 Act finally came into question in the 1947 case of *Goodwin v. Karnuth.* Dorothy Goodwin was a full-blooded Native Canadian who lost Indian status by her marriage to a Canadian citizen. The marriage in itself did not make Mrs. Goodwin a Canadian citizen, nor had she become enfranchised prior to entering the United States. When the INS moved to deport Mrs. Goodwin on the ground that she entered without inspection, she claimed that as an Indian she was exempt from inspection under immigration laws. The U.S. District Court upheld Goodwin's claim and ordered her released. Further, the court decided the term "American Indians born in Canada . . . must be given a racial connotation."[51]

Less than six months later, the U.S. Board of Immigration Appeals followed suit and adopted an "ethnological" definition of "Indian."[52] And in 1949, the INS revised its *Immigration Manual* to read:

> "The words 'American Indians born in Canada' found in the Act of April 2, 1928, must be given a racial connotation. Thus

> an alien born in Canada who is of American Indian race is entitled to the immunities of this section regardless of membership in an Indian tribe or political status under Canadian law."[53]

The extension of border crossing privileges to all persons of one-half or more Canadian "Indian blood" restored Native Canadians' Jay Treaty rights. It was this adoption of a racial definition of "North American Indian" in 1949 that finally reconciled Native Canadian's 18th century Jay Treaty rights with 20th century U.S. immigration and nationality law. The definition survives in Section 289 of the current Immigration and Nationality Act, and the Immigration and Naturalization Service still admits North American Indians under the Jay Treaty.[54]

It is perhaps ironic that the history of Native Americans' immigration and nationality status serves as an example of how United States' policy worked to limit immigration in the early 20th century. Native Americans had never been affected by Chinese Exclusion laws or by the Gentlemen's Agreement with Japan. Nor were American Indians subject to any of the quotas set by the Immigration Act of 1924. Only Section 13(c) of the 1924 Act excluded Native American immigration into the United States, and then only by restricting immigration to persons eligible for U.S. citizenship. The Jay Treaty protected North American Indians' temporary admission into the United States after 1924, but they did not become eligible for permanent immigration until the Nationality Act of 1940 declared them eligible to naturalize.

The Jay Treaty was nearly one hundred years old before Congress developed a national immigration policy and created the federal Immigration Service. Late 19th and early 20th century immigration laws made no mention of North American Indians' Jay Treaty rights, and the Immigration Service violated the treaty on occasion by denying entry to Canadian-born Indians. Immigration officers at the time seemed unaware of Indians' border-crossing privileges. Only when Canadian Indians protested their total exclusion under the Immigration Act of 1924 did a contradiction between the law and the treaty become obvious.

North American Indians insisted that the United States honor the treaty, and in 1928 the Indian Defense League persuaded Congress to reinforce the treaty's provisions with legislation. The Act of 1928 exempting Canadian Indians from U.S. immigration laws might have restored and protected Indians' Jay Treaty rights

had the United States considered all Native Canadians to be Indians. In 1933, however, the United States drew the Canadian distinction between Indians and Canadian citizens, and thereby restricted the immigration of Native Canadians who could claim neither Indian nor citizen status. The United States adopted the Canadian idea of separate status for Indians and citizens despite U.S. policy, since 1924, of recognizing U.S.-born Natives as both Indians *and* citizens.

As U.S. immigration policy became most restrictive toward North American Indians in the mid-1930's, the U.S. Immigration Service became less so. Whether acting on Roosevelt's Good Neighbor Policy or on the agency's continuing goal to bring all aliens under uniform rules, the INS recommended Native Americans for citizenship despite their ineligibility for naturalization between 1936 and 1940. And while the INS refused border-crossing rights to any Native Canadian who did not maintain Canadian Indian status, the Service pressed for a change in that policy. After the extension of naturalization rights to Native Americans in 1940, INS officers realized that the obstacle to Indians' Jay Treaty rights was not U.S. nationality policy. Rather, problems stemmed from reliance on Canadian nationality policy in the enforcement of U.S. immigration laws. It was the INS that first argued for a racial rather than political definition of Canadian Indians in 1942, and the Service continued to advocate that change until the Department of Justice agreed in 1948.

There were, finally, limits to the INS' defense of Jay Treaty "rights." In 1940, the Alien Registration Act offended Native Canadians by classifying them as aliens rather than Indians or citizens. The term "alien" not only implied a separate political status for Indians—like that so resented in Canada—it also associated Native Americans with immigrants from Europe or Asia. While not protesting registration, North American Indians protested their "alien" classification with an argument similar to that used in 1938 when Mohawk Indians claimed the Jay Treaty protected their right to work on either side of the border. The Indian Defense League now claimed that the Jay Treaty made North American Indians "'*ipso facto*' citizens of America." Yet just as Judge Burke found no Jay Treaty guarantee for Indians' right to work in 1938, the INS could find no treaty provision granting citizenship to North American Indians.[55]

The Immigration and Naturalization Service decision regarding Alien Registration of Canadian-born Indians was technically

correct, but Service correspondence at the time showed little understanding of the Native Americans' underlying grievance. True, some resistance to registering came from fear of job discrimination against aliens. And, given the internment of enemy aliens in the United States during World War II, some Native Americans might have been afraid of alien classification. But the Indians' widespread complaint about Alien Registration was, as Chief Clinton Rickard put it, that "the real Americans are paradoxically called aliens."[56]

NOTES

1. William M. Malloy, *Treaties, Conventions, International Acts, Protocols and Agreements* (Washington, DC: GPO, 1910), Treaty of Amity, Commerce, and Navigation (Jay Treaty), Article III. vol. 1, p. 592; and Raphael P. Bonham, "North American Indians," INS *Monthly Review*, IV:8 (February, 1947) 105.

2. *McCandless v U.S. ex rel. Diabo*, 25 F. 2d 71 (CCA 3, 1928); Bonham, "North American Indians," 106; A decision of the U.S. Court of Customs Appeals, March 31, 1977 (*Akins vs. U.S.* 551 F.2d 1222) affirmed the Tariff Act of 1897 in that the War of 1812 abrogated Indians' Jay Treaty rights to avoid customs duties, but did not affect Indians' Jay Treaty rights to enter the U.S. without undergoing inspection under the immigration law.

3. George P. Decker, "Rights of the Six Nations in Crossing the US-Canadian Border" [legal brief], February 25, 1926, 20. Exhibit to file 55466/182 (American Indians and the Immigration Law, hereafter referred to as NARA file 55466/182), box 354, Subject Correspondence, 1906-1932, Records of the Immigration and Naturalization Service, Record Group 85, National Archives, Washington, DC (hereafter referred to as NARA files).

4. Immigration Act of March 3, 1891 (26 Stat 1084), and *Immigration Laws and Regulations* [of March, 1903] (Washington, GPO, 1903) Rule 1, p. 3.

5. Ibid.; *Immigration Laws and Regulations*, August, 1903 (Washington DC: GPO, 1903); *Immigration Laws and Regulations of February, 1906* (Washington, DC: GPO, 1906); *Immigration Laws and Regulations of July 1, 1907* (Washington, DC: GPO, 1907, 1908); Subject Index to Correspondence & Case Files of the INS, 1903-1952, Microfilm Collection T-458 (hereafter referred to as "Subject Index"), reel 17 ("Indians"), entry of 1906-07 (50254/ 2), Record Group 85, National Archives, Washington, DC.

6. Immigration Act of February 5, 1917, section 1, 3; Subject Index, reel 17 ("Indians"), entries of March 23, 1918 (54234/79 and 54346/981), and June 29, 1923 (54848/43).

7. Dawes Severalty Act, also known as the General Allotment Act (of February 8, 1887) 24 Stat 388, 390; See also the Indian Territory Naturalization Act of May 2, 1890 (26 Stat 81, 99-100) sec. 43. Felix Cohen, *Federal Indian Law* (Washington, DC: GPO, 1958) p. 519-20. See the various U.S. treaties with the Cherokees, Choctaws, Wyandotts, Pottawatomies, and Kickapoos, 1817-1862.

8. Act of April 9, 1866, sec. 1992; Act of July 14, 1870, sec. 7 (16 Stat 256); Act of May 6, 1882 (22 Stat 61); see also H.L. Volker, "Naturalization Requirements Concerning Race, Education, Residence, Good Moral Character, and Attachment to the Constitution," *INS Lecture Series, No. 8* (March 26, 1934) p. 4, INS Historical Reference Library, Washington, DC.

9. *Elk v Wilkins*, 112 US 94; *U.S. v Wong Kim Ark* (169 US 649); Cohen, *Federal Indian Law* , 522. See also Frederick A. Cleveland, *American Citizenship* (New York: Ronald Press, 1927) p. 15.

10. *In re Camille*, 6 Fed 256 (1880); *In re Burton*, 1 Alaska 111 (1900).

11. *Naturalization Laws and Regulations of October, 1906* (Washington, DC: GPO, 1906) p. 20.

12. Act of August 9, 1888 (25 Stat 392); This benefit was only available until 1922, when the Cable Act recognized women's' nationality as distinct from her husband or father's. Act of September 22, 1922 (42 Stat 1021).

13. Green Haywood Hackworth, *Digest of International Law* (Washington, DC: GPO, 1942) vol. III, p. 37-38; *Naturalization Laws and Regulations, August 20, 1913* (Washington, DC: GPO, 1913) p. 27.

14. Admitted: *In re Rodrigues* (1897) 81 R. 337 (Mexican), *US v Balsara* (1910) 180 F 694 (Parsee), *In re Najour* (1909) 174 F 735 (Syrian), *In re Ellis* (1910) 179 F 1002 (Syrian), *In re Mudarri* (1910) 176 F 465 (Syrian), and *Dow v US* (1915) 226 F 145 (Syrian). Denied: *In the matter of San C. Po* (1894) 28 NYS 383 (Burmese), *In re Burton* (1900) 1 Alaska 111 (British Columbian), and *In re Geronimo Para* (1919) 269 F. 643 (South American). For a review of nationality decisions dealing with the definition of "white persons" after 1922, see *Matter of S*, 1 I&N 174 (1941).

15. Act Granting Citizenship to Certain Honorably Discharged Indians Who Served During the World War (Act of November 6, 1919) 41 Stat 350. Few Indians actually became citizens under this law. Cohen, *Federal Indian Law* (Washington, DC: GPO, 1958) p. 520, fn 22.

16. Act of June 2, 1924, Granting of Citizenship to Noncitizen Indians (43 Stat 253); See also Michael T. Smith, "The History of Indian Citizenship," *Great Plains Journal*, vol. 10, no. 1 (Fall 1970) pp. 25-35.

17. Decker, "Rights of the Six Nations," 20; See also correspondence dated January 25, 1925, from Buffalo District Director S.D. Smith, NARA file 55466/182.

18. See correspondence in NARA file 55466/182.

19. Chief Clinton Rickard, Grand President, Indian Defense League of America, to Senator Pat McCarran, February 13, 1954. File 55853/734 (Border Crossing Privileges of Canadian-born Indians, hereafter referred to as INS file 55853/734) accession 85-58A734, box 448 (16:27-49-2) Immigration and Naturalization Service, Washington, DC (hereafter referred to as INS files).

20. In recent years, the Native American Border Celebration has been organized on the Canadian side. Each July approximately 100 Native Americans enter the United States at Whirlpool Bridge (Niagara Falls) to exercise their continuing Jay Treaty rights. Telephone interview with INS Port Director Jeff Stevens, Niagara Falls, NY, September 15, 1992.

21. Ibid., and Act of April 2, 1928 (45 Stat 401).

22. *Buffalo Courier Express*, Buffalo, NY, April 20, 1934.

23. "Memorandum to the Solicitor" from Commissioner of Immigration Daniel W. MacCormack, November 3, 1933; and Assistant Commissioner A.R. Archibald to District Director, Detroit, November 28, 1933. Both in INS file 55853/734; See also Bonham, "North American Indians," 107.

24. Bonham, "North American Indians," 107.

25. Deputy Commissioner Edward J. Shaughnessy to the Secretary of State, November 9, 1934. INS file 55853/734.

26. S. 3998 and H.R. 488, 69 Cong., 1 sess.

27. The form-letter campaign was launched by the Native Sons of the Golden West. See correspondence in NARA file 55466/182.

28. *Nationality Laws of the United States. A Report . . . in Three Parts.* Part 1, Proposed code with explanatory comments (Washington, DC: GPO, 1939) p. V-VII.

29. Ibid., p. 21-22.

30. Harold David Emerson, President, Confederated Tribes of America, to Bureau of Indian Affairs Commissioner John Collier, January 3, 1934 and April 30, 1935; Collier to Emerson, February 20, 1934; Collier to INS Commissioner Daniel W. MacCormack, February 20, 1934; INS Assistant Commissioner W.W. Brown to Hugo E. Rogers, March 20, 1934, April 29, 1935, and July 24, 1935. INS file 55853/734.

31. H.M. Hirsch, New York State Department of Social Welfare, to Elmer F. Andrews, New York State Department of Labor, December 28, 1933; Rep. Mon C. Wallgren (WA) to INS Commissioner Daniel W. MacCormack, January 6, 1936, and Deputy INS Commissioner Shaughnessy to Rep. Mon C. Wallgren, January 9, 1934, all in INS file 55853/734; Act of May 7, 1934 (48 Stat 667); see also Bonham, "North American Indians," 107-108.

32. Detroit District Director John L. Zurbrick to Commissioner James L. Houghteling, April 6, 1938; Assistant Commissioner W.W. Brown to John L. Zurbrick, April 19, 1938. INS file 55853/734.

33. Assistant Commissioner Henry B. Hazard to District Director, San Juan, July 9, 1936, INS file 29/2 part 2 ("Indian Citizenship") accession 85-58A734, box 17603 (hereinafter referred to as "INS file 29/2 part 2).

34. M.G. Hatch (SSA) to Standing Rock Indian Agency Superintendent L.C. Lippert, February 27, 1939; Superintendent Lippert to Commissioner of Indian Affairs, March 13, 1939; Rep. William A. Pittenger (MN) to INS Deputy Commissioner Shaughnessy, April 18, 1939; Bureau of Indian Affairs Assistant Commissioner Fred Daiker to INS Commissioner James L. Houghteling, April 26, 1939; and other correspondence in INS file 29/2 part 2.

35. St. Paul District Director O.B. Olton to Commissioner of Immigration

and Naturalization, June 20, 1939. INS file 29/2 part 2.

36. Nationality Act of 1940 (54 Stat 1137); Chinese persons did not become eligible to naturalize until 1943 (repeal of Chinese exclusion, 57 Stat 601), and natives of the Philippines and India not until 1946 (60 Stat 416). The racial barrier to U.S. citizenship through naturalization did not fall completely until the Immigration and Nationality Act of 1952 removed all racial qualifications.

37. Alien Registration Act of June 28, 1940 (54 Stat 670).

38. Clinton Rickard to Attorney General Robert H. Jackson, October 15, 1940; Memorandum to File (Deputy Commissioner Edward J. Shaughnessy), January 7, 1941; Instruction No. 9, January 23, 1941. INS file 55853/734. See also Bonham, "North American Indians," 107.

39. Detroit District Director John L. Zurbrick to INS Commissioner, July 14 & August 21, 1941; Opinion, Deputy Commissioner Thomas B. Shoemaker, September 10, 1941; Memorandum, E.E. Salisbury, INS Certifications Branch Chief to Lemuel Schofield, Special Assistant to the Attorney General, October 21, 1941; all found in INS file 55853/734. Act of March 3, 1921 (41 Stat 1355); BIA Assistant Commissioner Fred H. Daiker to INS Assistant Commissioner Henry B. Hazard, February 4, 1941; Opinion, Deputy Commissioner Shoemaker, August 15, 1941; INS file 55853/596A, accession 85-58A734, box 446 (16/27:49-2).

40. Memorandum, E.E. Salisbury, INS Certifications Branch Chief to Lemuel Schofield, Special Assistant to the Attorney General, October 21, 1941. INS file 55853/734.

41. *Matter of S, et. al.*, October 1, 1942, 1 IN 309; Memorandum, Commissioner Earl Harrison to Attorney General, October 14, 1942; Memorandum, Acting INS General Counsel to Commissioner, December 16, 1942; Memorandum, Commissioner Harrison to Deputy Commissioner Allen Devaney, December 24, 1942. INS file 55853/734.

42. INS "Interpretations" were instructional material relaying operational guidelines to field officers based on recent court or board interpretations of the law.

43. Canadian law defined "Indians" as: 1) any male person of Indian blood reputed to belong to a particular band, 2) any child of such person, and 3) any woman who is or was lawfully married to such a person. INS Interpretation No. 20, March 1, 1943, 55853/734; Canadian Indian Act (Revised Statutes of Canada, 1927, Ch. 98, Section 2(d), and Sections 110-114.

44. District Director John P. Boyd to Commissioner, November 22, 1943, INS file 55853/734.

45. Opinion, Ralph Horner, Reentry and Exit Permit Unit Supervisor, February 26, 1944; O.C. Upchurch, Tulalip Agency Superintendent, to Commissioner of Indian Affairs [Chicago], March 3, 1944. INS file 55853/734.

46. St. Albans District Director Harry R. Landis to A.L. Jolliffe, Director of Immigration, Canada Department of Mines and Resources, May 8, 1945; Acting Director, Indian Affairs Branch, Canada Department of Mines and Resources, to Landis, May 15, 1945; Landis to Commissioner, May 19, 1945. INS file 55854/734.

47. Memorandum, General Counsel L. Paul Winings to Commissioner Ugo Carusi, July 14, 1945 (it appears that Charles Gordon actually wrote the memo, for Mr. Wining's signature). INS file 55853/734.

48. Ibid.

49. Ibid.

50. OI 114.6 II, September 11, 1945, (see also Leland W. Williams' "Memorandum for files 55873/734, 55817/645, and 56185/401A," August 6, 1945); Operation Instruction (hereafter referred to as OI) 107 XII, October 11, 1945. INS file 55853/734.

51. *U.S. ex rel. Goodwin v Karnuth*, 74 F. Supp. 660 (D.C., W.D., N.Y., Nov. 28, 1947).

52. *Matter of Bernier*, March 25, 1948, 3 I&N 191.

53. U.S. Immigration and Naturalization Service, *Immigration Manual for the Use of Officers and Employees of the Immigration and Naturalization Service* (Washington, DC: GPO, 1946) Section 862, p. 8003 (rev. June 22, 1949); Wives of Indians recognized as Indians by the Canadian Government continued to enjoy Jay Treaty protection. OI 114.6 I 4, (rev. June 22, 1949).

54. Immigration and Nationality Act of 1952, Section 289 (8 USC 1359); 8 CFR 289.1; and OI 289.1.

55. Clinton Rickard to AG Robert H. Jackson, Oct. 15, 1940; Acting INS Commissioner L. Paul Winings to Ira R. Cowdrick, May 23, 1944. INS file 55853/734.

56. Clinton Rickard to Attorney General Robert H. Jackson, Oct. 15, 1940. INS file 55853/734.