

## APPENDIX XV

### Transactions Between Lee Harvey Oswald and Marina Oswald, and the U.S. Department of State and the Immigration and Naturalization Service of the U.S. Department of Justice

From September 4, 1959, when he applied for his first passport, until shortly before the assassination, Lee Harvey Oswald had numerous dealings with the U.S. Department of State in Washington and with the American Embassy in Moscow. In connection with Marina Oswald's entry into the United States, the dealings also extended to the Immigration and Naturalization Service of the Department of Justice. During the course of these dealings, the Department of State and the Immigration and Naturalization Service were called upon to decide a series of legal and administrative questions which arose under the laws of this country. In order to determine whether Lee Harvey Oswald or his wife received any treatment not accorded others in similar positions, the Commission has examined the manner in which the transactions with the Oswalds were handled and the manner in which the relevant legal questions were resolved. In light of the facts then available and the applicable statutes, regulations, and practices in force at the time, the Commission has found no indication that the treatment accorded the Oswalds was illegal or different in any respect from the treatment that other persons similarly situated would have received.

#### ISSUANCE OF PASSPORT IN 1959

On September 4, 1959, while on active duty with the U.S. Marine Corps, Oswald applied for a passport before a clerk of the superior court at Santa Ana, Calif.<sup>1</sup> On the application Oswald stated that he intended to leave the United States for 4 months on approximately September 21, 1959, by ship from New Orleans, La., and that the purposes of his trip would be to attend the Albert Schweitzer College in Switzerland<sup>2</sup> and the University of Turku in Finland, and to visit Cuba, the Dominican Republic, England, France, Switzerland, Germany, Finland and Russia as a tourist. With the application, Oswald submitted a statement signed by a Marine officer that he was to be discharged from the Corps on September 11, 1959.<sup>3</sup> The passport, No. 1733242, was routinely issued on September 10, 1959.<sup>4</sup> At the time, the United States proscribed travel to none of the countries named in Oswald's application.

## OSWALD'S ATTEMPTS TO RENOUNCE HIS U.S. CITIZENSHIP

American officials in Moscow had no knowledge that Oswald was in Russia until October 31, 1959,<sup>5</sup> more than 2 weeks after he had arrived, since he failed to register at the U.S. Embassy, as Americans traveling through Russia normally did.<sup>6</sup> However, on October 31, 1959, a Saturday, Oswald presented himself at the American Embassy in Moscow.<sup>7</sup> He placed his passport on the receptionist's desk and informed her that he had come to "dissolve his American citizenship."<sup>8</sup> She immediately summoned the consul, Richard E. Snyder, who invited Oswald into his office.<sup>9</sup> In the room with Snyder was his assistant, John A. McVickar, who observed what ensued.<sup>10</sup> Snyder recalled Oswald as "neatly and very presentably dressed,"<sup>11</sup> but he also remembered his arrogance. Oswald seemed to "know what his mission was. He took charge, in a sense, of the conversation right from the beginning."<sup>12</sup>

Oswald stated at once that he was there to renounce his citizenship<sup>13</sup> and that "his allegiance was to the Soviet Union."<sup>14</sup> He said he had already applied for Soviet citizenship.<sup>15</sup> He said he knew the provisions of American law on loss of citizenship and did not want to hear them reviewed by Snyder.<sup>16</sup> Having taken his passport back from the receptionist, Oswald put it on Snyder's desk.<sup>17</sup> Snyder noticed that Oswald had inked out the portion which would have shown his address in the United States.<sup>18</sup> Oswald also presented Snyder with a note<sup>19</sup> which he had prepared in advance, which reads:

I Lee Harey Oswald do hereby request that my present citizenship in the United States of America, be revoked.

I have entered the Soviet Union for the express purpose of applying for citizenship in the Soviet Union, through the means of naturalization.

My request for citizenship is now pending before the Supreme Soviet of the U.S.S.R.

I take these steps for political reasons. My request for the revoking of my American citizenship is made only after the longest and most serious considerations.

I affirm that my allegiance is to the Union of Soviet Socialist Republics.<sup>20</sup>

Oswald told Snyder that he had not mentioned his intent to remain in the Soviet Union to the Soviet Embassy in Helsinki at the time he had applied for his tourist visa.<sup>21</sup> Oswald's passport, upon which his Soviet visa was stamped, shows that by the 31st of October he had already overstayed his visa, despite a 1-day extension which he had received.<sup>22</sup>

Oswald gave as his "principal reason" for wanting to renounce his citizenship, "I am a Marxist."<sup>23</sup> He stated that he admired the system and policies of the Soviet Union and desired to serve the Soviet

State, and that his intent to defect to the Soviet Union had been formed long before he was discharged from the Marine Corps.<sup>24</sup> Shortly after the interview, Snyder observed that Oswald had "displayed all the airs of a new sophomore partyliner."<sup>25</sup> At one point, Oswald alluded to hardships endured by his mother as a "worker" and said he did not intend to let this happen to him.<sup>26</sup> He stated that his Marine service in Okinawa and elsewhere had given him a chance "to observe American imperialism," and he displayed some resentment at not having been given a higher rank in the Marine Corps.<sup>27</sup> Oswald stated to Snyder that he had voluntarily told Soviet officials that he would make known to them all information concerning the Marine Corps and his specialty therein, radar operation, as he possessed.<sup>28</sup>

Snyder did not permit Oswald to renounce his citizenship at that time. He told Oswald that his renunciation could not be effected on a Saturday, but that if he would return on a day when the Embassy was open for business, the transaction could then be completed.<sup>29</sup> Snyder testified that his real reason for delaying Oswald was that he believed, as a matter of sound professional practice, that no one should be permitted to renounce his American citizenship precipitously; such an act has extremely serious consequences, and, once accomplished, it is irrevocable.<sup>30</sup> Snyder noticed that Oswald was young, apparently not well educated and obviously in a highly emotional state.<sup>31</sup> Snyder testified: "particularly in the case of a minor, I could not imagine myself writing out the renunciation form, and having him sign it, on the spot, without making him leave my office and come back at some other time, even if it is only a few hours intervening."<sup>32</sup> Snyder's decision was also influenced by his familiarity with a recent unfavorable incident in which an American citizen by the name of Petrulli had been allowed to renounce his citizenship hastily, without awareness that Petrulli was mentally ill at the time.<sup>33</sup> Snyder was able to persuade Oswald to tell him his home address and the name of his mother, however, by saying that no progress on his renunciation could be made without this information.<sup>34</sup> The State Department has advised that Snyder's treatment of Oswald "was in line \* \* \* with the general policy of the Department to discourage expatriation of American citizens."<sup>35</sup>

The same day, the Embassy sent a telegram to the Department of State, advising that Oswald had appeared there in an attempt to renounce his American citizenship, and setting out most of the details of the interview with Snyder.<sup>36</sup> Copies were immediately furnished to the FBI<sup>37</sup> and the CIA.<sup>38</sup> The telegram was followed on November 2, 1959, by an Embassy report addressed to the Department of State,<sup>39</sup> which concluded:

\* \* \* in view of the Petrulli case and other considerations, the Embassy proposes to delay action on Oswald's request to execute an oath of renunciation to the extent dictated by developments and subject to the Department's advice.<sup>40</sup>

Copies of this memorandum were also furnished both Federal security agencies.<sup>41</sup>

After having received the telegram of October 31, 1959,<sup>42</sup> but not the Embassy Despatch of November 2, 1959, the State Department on November 2, 1959, sent a telegram to the Moscow Embassy which read in part:

If Oswald insists on renouncing U.S. citizenship, Section 1999 Revised Statutes precludes Embassy withholding right to do so regardless status his application pending Soviet Government and final action taken Petrulli case.<sup>43</sup>

This telegram, like most of the communications from the Department regarding Oswald, was prepared in the Passport Office and cleared by the Office of Eastern European Affairs and the Office of Soviet Union Affairs.<sup>44</sup>

Oswald never returned to the Embassy.<sup>45</sup> On November 6, 1959, the Embassy received<sup>46</sup> a handwritten letter from Oswald on the stationery of the Metropole Hotel, dated November 3, 1959, which read:

I, Lee Harvey Oswald, do hereby request that my present United States citizenship be revoked.

I appeared in person, at the consulate office of the United States Embassy, Moscow, on Oct. 31st, for the purpose of signing the formal papers to this effect. This legal right I was refused at that time.

I wish to protest against this action, and against the conduct of the official of the United States consular service who acted on behalf of the United States government.

My application, requesting that I be considered for citizenship in the Soviet Union is now pending before the Supreme Soviet of the U.S.S.R. . In the event of acceptance, I will request my government to lodge a formal protest regarding this incident.<sup>47</sup>

The Embassy immediately informed the Department of the receipt of this letter and advised that it intended to reply to Oswald by letter telling him that, if he wished, he could appear at the Embassy on any normal business day and request that the necessary expatriation documents be prepared.<sup>48</sup> On the same day, November 6, the Embassy sent Oswald a letter so advising him.<sup>49</sup> From then until November 30 the Embassy attempted to communicate with Oswald on several occasions to deliver messages from his relatives in the United States urging him to reconsider, but he refused to receive the messages or talk to anyone from the Embassy.<sup>50</sup> The messages were therefore sent to him by registered mail.<sup>51</sup>

On November 16, 1959, Priscilla Johnson, an American newspaper-woman stationed in Moscow, interviewed Oswald at the Metropole

Hotel.<sup>52</sup> On November 17, 1959, she informed the Embassy of her interview, and the information was recorded in a file memorandum.<sup>53</sup> Oswald told Miss Johnson that he was scheduled to leave Moscow within a few days. She thought that Oswald "may have purposely not carried through his original intent to renounce [citizenship] in order to leave a crack open."<sup>54</sup> The Embassy accordingly informed the Department of State about 2 weeks later that Oswald had departed from the Hotel Metropole within the last few days.<sup>55</sup> According to his "Historic Diary"<sup>56</sup> and other records available to the Commission,<sup>57</sup> however, Oswald probably did not in fact leave Moscow for Minsk until about January 4, 1960. Miss Johnson's report of her interview with Oswald was the last information about him which the U.S. Government was to receive until February 13, 1961.<sup>58</sup>

On March 6, 1960, Oswald's mother asked Representative James C. Wright, Jr., of Texas to help her locate her son. The Congressman forwarded her inquiry to the Department of State, which in turn sent it to the Embassy.<sup>59</sup> In response, the Embassy in Moscow informed the Department on March 28, 1960, that they had had no contact with Oswald since November 9, 1959.<sup>60</sup> The Embassy went on to say that it had no evidence that Oswald had expatriated himself "other than his announced intention to do so." It believed, therefore, that since Oswald was presumably still an American citizen, the American Government could properly make inquiry concerning him through a note to the Soviet Foreign Office. The Embassy went on to suggest, however, that it would be preferable if Oswald's mother wrote a letter to her son which could then be forwarded by the Department to the Soviet Government.<sup>61</sup>

The Department replied on May 10, 1960, that no action should be taken in the case other than on a request voluntarily submitted by a member of Oswald's family.<sup>62</sup> On June 22, a second communication was dispatched, asking whether the Embassy had been able to contact Oswald.<sup>63</sup> On July 6, 1960, the Embassy replied that it had received no further communication with anyone on the subject of Oswald and that in view of the Department's memorandum of May 10, 1960, it intended to take no further action in the matter.<sup>64</sup> Mrs. Oswald apparently took no steps to follow up on her original inquiry.

Under the procedures in effect in 1960, a "refusal sheet" was prepared in the Department of State Passport Office whenever circumstances created the possibility that a prospective applicant would not be entitled to receive an American passport.<sup>65</sup> The records section of the Passport Office, on the basis of the refusal sheet, would prepare what was known as a lookout card<sup>66</sup> and file it in the lookout file in the Passport Office. Whenever anyone applied for a passport from any city in the world, his application was immediately forwarded to this office, and his name and date of birth checked against the lookout file.<sup>67</sup> If a lookout card was found, appropriate action, including the possible refusal of a passport, was taken.<sup>68</sup> Passport Office procedures

also provided that the lookout card would be removed from a prospective applicant's file whenever facts warranted an unquestioned passport grant.<sup>69</sup>

On March 25, 1960, the Passport Office had made up a "refusal sheet" on Lee Harvey Oswald, typed across which was the explanation that Oswald "may have been naturalized in the Soviet Union or otherwise \* \* \* expatriated himself."<sup>70</sup> An Operations Memorandum stating the reasons for which the card had been prepared was drawn up on March 28 and also put on file<sup>71</sup> and a copy sent to the Embassy. It advised the Embassy to take no further action on the Oswald case unless it came into possession of evidence upon which to base the preparation of a certificate of loss of nationality. Included in the operations memorandum was the following:

An appropriate notice has been placed in the lookout card section of the Passport Office in the event that Mr. Oswald should apply for documentation at a post outside the Soviet Union.<sup>72</sup>

Despite these indications that a lookout card was prepared, the Department of State on May 18, 1964, informed the Commission that "investigations, to date, failed to reveal any other indication or evidence that a lookout card was ever prepared, modified or removed." No such card was ever located, and certain file entries indicate that such a card was never prepared.<sup>73</sup>

The State Department has advised the Commission that as of October 1959 the Department had "developed information which might reasonably have caused it to prepare \* \* \* a lookout card for Lee Harvey Oswald."<sup>74</sup> The Passport Office employee who prepared the refusal sheet for Oswald has suggested as a possible explanation of the failure to prepare a lookout card that between the day she prepared the refusal sheet and the time the records section would normally have prepared the lookout card, Oswald's file was temporarily pulled from its place because the Department received some additional correspondence from the Embassy. When the file was returned, she suggested, it may have been assumed that the card had already been prepared.<sup>75</sup>

Had a lookout card been prepared on the ground of possible expatriation, it would have been removed and destroyed after the decision was made in 1961 that Oswald had not expatriated himself and thus prior to the time that he applied for a second passport in June 1963. Hence, the Department's apparent failure to prepare a lookout card on Oswald had no effect on its future actions. As of February 20, 1964, the Department issued additional regulations regarding the manner in which the lookout file is to be handled.<sup>76</sup> On March 14, 1964, a category was established for returned defectors, so that these persons automatically have lookout cards in their files, and on July 27, 1964, the Office of Security of the Department of State issued a procedural study of the lookout-card system, with recommendations.<sup>77</sup>

## RETURN AND RENEWAL OF OSWALD'S 1959 PASSPORT

### Negotiations Between Oswald and the Embassy

On February 1, 1961, as a result of a visit by Oswald's mother to the Department of State on January 25, 1961,<sup>78</sup> the Department sent a request to the Moscow Embassy as follows:

The Embassy is requested to inform the [Soviet] Ministry of Foreign Affairs that Mr. Oswald's mother is worried as to his present safety, and is anxious to hear from him.<sup>79</sup>

The inquiry went to the Embassy by diplomatic pouch and was received in Moscow on February 10 or 11.<sup>80</sup> On February 13, before the Embassy had acted on the Department's request,<sup>81</sup> the Embassy received an undated letter from Oswald postmarked Minsk, February 5. The letter stated:

Since I have not received a reply to my letter of December 1960, I am writing again asking that you consider my request for the return of my American passport.

I desire to return to the United States, that is if we could come to some agreement concerning the dropping of any legal proceedings against me. If so, than I would be free to ask the Russian authorities to allow me to leave. If I could show them my American passport, I am of the opinion they would give me an exit visa.

They have at no time insisted that I take Russian citizenship. I am living here with non-permanent type papers for a foreigner.

I cannot leave Minsk without permission, therefore I am writing rather than calling in person.

I hope that in recalling the responsibility I have to america that you remember your's in doing everything you can to help me since I am an american citizen.<sup>82</sup>

Despite Oswald's reference to his letter of December 1960, there is no indication that he had written to the Embassy previously.<sup>83</sup> Furthermore, his diary refers to his February 1 letter as his "first request" concerning his return to the United States.<sup>84</sup>

On February 28, 1961, the Embassy wrote Oswald that he would have to come to Moscow to discuss the passport and expatriation matters.<sup>85</sup> Then on March 20, 1961, a second letter from Oswald, dated March 12, was received by the Embassy. It read:

In reply to your recent letter. I find it inconvenient to come to Moscow for the sole purpose of an interview.

In my last letter I believe I stated that I cannot leave the city of Minsk without permission.

I believe there exist in the United States also a law in regards to resident foreigners from Socialist countries, traveling between cities.

I do not think it would be appropriate for me to request to leave Minsk in order to visit the American Embassy. In any event, the granting of permission is a long drawn out affair, and I find that there is a hesitation on the part of local officials to even start the process.

I have no intention of abusing my position here, and I am sure you would not want me to.

I see no reasons for any preliminary inquires not to be put in the form of a questionnaire and sent to me.

I understand that personal interviews undoubtedly make to work of the Embassy staff lighter, than written correspondence, however, in some cases other means must be employed.<sup>86</sup>

After receiving the first letter postmarked February 5, the Embassy on February 28 forwarded a despatch to the Department informing it of Oswald's letter and its reply to Oswald. At that time, the Embassy also inquired of the Department whether Oswald would be subject to prosecution on any grounds if he should return to the United States and, if so, whether Oswald should be so informed. The Department was also asked whether there was any objection to returning Oswald's 1959 passport to him by mail, since that might facilitate his application for a Soviet exit visa.<sup>87</sup> Upon receiving Oswald's March 20 letter, the Embassy again consulted with Washington. The Embassy proposed that it write Oswald repeating that he must come to Moscow if he wanted to discuss reentering the United States and pointing out that the Soviet government did not object to such visits by American citizens.<sup>88</sup> Such a letter was mailed to Oswald on March 24.<sup>89</sup>

In the meantime, the State Department was considering the Embassy despatch of February 28, 1961.<sup>90</sup> Although a different response was originally recommended by a staff member in the Passport Office,<sup>91</sup> the Department instructed the Embassy on April 13 that for security reasons Oswald's passport should be given to him only if he personally appeared at the Embassy and that even then he was to receive the document only after a full investigation had been made and the Embassy was satisfied that he had not renounced his American citizenship. Also, he was to present evidence that he had made arrangements to depart from the Soviet Union to travel to the United States, and his passport was to be stamped valid for direct return to the United States only. The Department also told the Embassy that Oswald could not be advised whether or not he would be prosecuted for any possible offenses should he return to the United States.<sup>92</sup> Matters remained in this posture for over a month. During the interim, Oswald met and married Marina Nikolaevna Prusakova.<sup>93</sup>

On May 26, 1961, the Embassy sent a despatch to the Department<sup>94</sup> advising that on May 25, 1961, it had received a letter from Oswald

postmarked Moscow, May 16, 1961.<sup>95</sup> In his latest letter Oswald said he wanted "to make it clear" that he was asking for full guarantees that he would not be prosecuted "under any circumstances" should he return to the United States. Oswald went on to say that if the Embassy could not give him these assurances, he would "endeavor to use my relatives in the United States, to see about getting something done in Washington." He also informed the Embassy that he was married to a Russian woman who would want to accompany him back to his native country, and he once again repeated his reluctance to come to Moscow. The Embassy suggested that it reply to Oswald by repeating that the question of citizenship could only be made on the basis of a personal interview, and by advising Oswald of the requirements and procedures pertaining to his wife's immigration. The despatch noted that Oswald's letter referred to his present Soviet internal passport in which he claimed to be designated as "without citizenship," and observed: "It would appear on this basis that Oswald has not yet expatriated himself under Section 349(a)(1) of the Immigration and Nationality Act." The Embassy inquired whether the Department considered Oswald entitled "to the protection of the United States Government while he continues to reside abroad under present circumstances in the absence of reasonable evidence that he has committed an expatriating act?"

The Department answered the despatch under date of July 11, 1961. It said that it was not entirely clear what the description "without citizenship" means, i.e., "whether he is without Soviet citizenship or without any citizenship." The instructions continued:

In any event in the absence of evidence showing that Mr. Oswald has definitely lost United States citizenship he apparently maintains that technical status. Whether he is entitled to the protection of the United States pending any further developments concerning his precise status is a matter which will be left to the Embassy's discretion in the event an emergency situation should arise. In a situation of this kind, not of an emergency nature, the facts should be submitted to the Department.

It is noted that the Embassy intends to seek the Department's prior advice before granting Mr. Oswald documentation as a United States citizen upon any application he may submit.

The Embassy's careful attention to the involved case of Mr. Oswald is appreciated \* \* \* 96

However, on Saturday, July 8, 1961, before the Embassy had received the response from Washington, Oswald appeared without warning at the Embassy in Moscow. Snyder came down to meet Oswald after Oswald called him on the house telephone, and after a brief talk, asked Oswald to return on Monday, July 10.<sup>97</sup> Later that day Oswald telephoned his wife and told her to come to Moscow, which she did the next day.<sup>98</sup> Oswald returned alone to the American Embassy on Monday, where Snyder questioned him about his life in Russia.

According to a memorandum which Snyder prepared shortly afterwards:

Twenty months of the realities of life in the Soviet Union have clearly had a maturing effect on Oswald. He stated frankly that he learned a hard lesson the hard way and that he had been completely relieved about his illusions about the Soviet Union \* \* \* Much of the arrogance and bravado which characterized him on his first visit to the Embassy appears to have left him.<sup>99</sup>

Oswald told Snyder that despite the statement he had given him in October 1959, he had never applied for Soviet citizenship, but only for permission to reside in the Soviet Union. He presented his Soviet internal passport, which described him as without citizenship of any kind. Oswald said that he had been employed since January 13, 1960, as a metal worker in the research shop in the Byelorussian Radio and Television Factory in Minsk. He claimed that he had taken no oath of allegiance of any kind, and that he had not been required to sign any papers in connection with this employment. He added that he was not a member of the factory trade union organization. Oswald said that he was earning 90 rubles (\$90) a month and that he had saved about 200 rubles (\$200) toward travel expenses to the United States. He denied that he had made any derogatory statements concerning the United States to radio, press, or TV in the Soviet Union, and he denied that he had turned over any information to the Russians as he had threatened to do in the 1959 interview with Snyder.<sup>100</sup>

During the course of the interview Oswald filled out an application for renewal of his American passport.<sup>101</sup> The renewal application was required since Oswald's existing passport would expire on September 10, 1961,<sup>102</sup> and it was extremely unlikely that he would be able to obtain the requisite Soviet departure documents before that time. The renewal application contained a printed statement which set forth, in the disjunctive, a series of acts which, if committed by the applicant, would either automatically disqualify him from receiving a passport on the ground that he had lost his American citizenship, or would raise a question whether he might be so disqualified. The printed statement was preceded by two phrases, "have," and, "have not," the first phrase being printed directly above the second. One carbon copy of the application indicates Oswald signed the document after the second phrase, "have not," had been typed over, thereby apparently admitting that he had committed one or more of the acts which would at least raise a question as to whether he had expatriated himself. Snyder was not able to remember with certainty to which of the acts listed on the statement Oswald's mark was intended to refer, but believed it may have been to "swearing allegiance to a foreign state."<sup>103</sup> He points out that the strikeout of "have not" may also have been a clerical error.<sup>104</sup> On the actual signed copy of the application kept in the

files of the Moscow Embassy, which is not a carbon copy of the copy sent to the Department, the strikeout is slightly above the "have;" therefore, since the "have" is itself printed above the "have not," the strikeout may have been intended to obliterate the "have."<sup>105</sup>

In any event, Oswald filled out the supplementary questionnaire which was required to be completed if the applicant admitted he had performed one or more of the possibly expatriating acts. He signed the questionnaire under oath.<sup>106</sup> Snyder testified that it was routine for any kind of "problem case" to fill out the supplementary questionnaire.<sup>107</sup> The Passport Office employee who processed the Oswald case in Washington testified that she routinely regarded the questionnaire rather than the application itself as the controlling document for expatriation purposes, so that she probably paid no attention to the strikeout.<sup>108</sup>

The pertinent questions included on the questionnaire, with Oswald's answers, read as follows:

- 2.(a) Are you known or considered in your community to be a national of the country in which you are residing? *No.*  
(Yes or No)
- (b) If your answer to 2(a) is "No," explain why not. *On my document for residence in the USSR my nationality is American.*
- 3.(a) Have you ever sought or obtained registration as a national of a foreign country, applied for or obtained a passport, certificate, card document or other benefit therefrom in which you were described as a national of a country other than the United States? *No.* (Yes or No)
- (b) If your answer to 3(a) is "Yes," did you voluntarily seek or claim such benefits? (Yes or No) If "No," please explain.  
*I received a document for residence in the USSR but I am described as being "Without citizenship."*
- 4.(a) Have you ever informed any local or national official of a foreign state that you are a national of the United States? *No. \* \* \**
- (b) If your answer to 4(a) is "No," explain why not. *On my document for residence in the USSR, my nationality is American.*
- 6.(a) Have you ever taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state? *No. \* \* \**
8. Have you ever accepted, served in, or performed the duties of any office, post or employment under the government of a foreign state or political subdivision thereof? *No. \* \* \**  
*I do not regard factory employment as state employment, as is meant in the question above.<sup>109</sup>*

On the basis of these answers, and on the basis of the statements Oswald made orally during the interview, Snyder concluded that Oswald had not lost his citizenship. Snyder therefore handed him back his passport. Pursuant to the instructions from Washington, it was stamped, "This passport is valid only for direct travel to the United States."<sup>110</sup>

In a despatch dated July 11, 1961,<sup>111</sup> the Embassy informed the Department of State of its conclusion that Oswald had not lost his American citizenship and requested that, if Washington agreed with the conclusion, "the Embassy be authorized to renew Oswald's passport at its discretion." The despatch, with which Oswald's application and supplemental questionnaire<sup>112</sup> were enclosed, informed the Department that Oswald was questioned at length at the Embassy and that no evidence was revealed of any act which might be considered as having caused the loss of his American citizenship.

The Embassy added in the despatch—

It is our intention not to renew it [the passport] without the Department's prior approval of the enclosed renewal application, and then only upon evidence of a present need for the renewal in connection with his efforts to return to the United States.<sup>113</sup>

Oswald appeared at the Embassy once again on July 11, 1961, this time accompanied by Marina, in order to complete the papers necessary to obtain permission for his wife to enter the United States.<sup>114</sup> In a letter dated July 16, 1961, Oswald informed the American Embassy about his and Marina's application to the Soviet officials for permission to leave Russia, and described the harassment which Marina was allegedly undergoing because of her attempts to leave the country.<sup>115</sup>

Based upon Snyder's recommendation and the information in its files, the Passport Office on August 18, 1961, concluded that Oswald had not expatriated himself.<sup>116</sup> Therefore, on that date, the Department of State sent a despatch to the Embassy in Moscow stating that they concurred in the Embassy's recommendation of July 11, 1961, with respect to Oswald's citizenship:

We concur in the conclusion of the Embassy that there is available no information and/or evidence to show that Mr. Oswald has expatriated himself under the pertinent laws of the United States.

The renewal of Mr. Oswald's passport, issued on September 10, 1959, is authorized upon his referenced application if no adverse reason is known, to take place upon his presentation of evidence that he needs such renewal in connection with his efforts to return to the United States as indicated in the final sentence on page 2 of Despatch 29. As requested in the final paragraph of the Despatch the Embassy may perform this citizenship function for Mr. Oswald at its discretion.

Any passport renewal granted to Mr. Oswald should be limited to his passport needs and, as stated in the second paragraph of the Department's A-173, April 13, 1961 his passport should be made valid for direct return to the United States. The additional precaution set forth in the same paragraph should be observed and his passport should be delivered to him on a personal basis only. When available, a report of his travel data should be submitted, as well as a report of any intervening developments.<sup>117</sup>

On October 12, 1961, the Embassy wrote the Department to inform it of four letters it had received from Oswald dated July 15, August 8, and October 4, and an undated letter received in August. With reference to these letters, the despatch noted:

\* \* \* that Oswald is having difficulty in obtaining exit visas for himself and his Soviet wife, and that they are subject to increasing harassment in Minsk. In replying to Oswald's latest letter, the Embassy pointed out that it has no way of influencing Soviet action on exit visas. It informed him that the question of his passport renewal could be discussed with him personally at the Embassy. In answer to Oswald's question, the Embassy notified him that the petition to classify his wife's status had not yet been approved.<sup>118</sup>

The Department on December 28, 1961, informed the Embassy that the Passport Office approved the manner of the Embassy's reply to Mr. Oswald with respect "to his receiving further passport facilities."<sup>119</sup> After a further exchange of correspondence between Oswald and the Embassy, dealing primarily with Oswald's difficulties in obtaining the necessary Soviet clearance, his impatience in receiving American approval for Marina's entry into the United States, and his efforts to obtain a repatriation loan,<sup>120</sup> the passport problem was finally concluded on May 24, 1962, when the Embassy renewed Oswald's passport for 30 days, stamped it valid for direct return to the United States only and handed it to him.<sup>121</sup> A week later he used it to return to the United States.<sup>122</sup>

The decision that Oswald was entitled to a new passport because he had not expatriated himself was made for the Embassy by the consul, Richard E. Snyder.<sup>123</sup> For the Department it was made initially by Miss Bernice L. Waterman, a worker in the Passport Office for 36 years, and was then approved by her area chief, by the head of the Foreign Operations Division, and by the Legal Division of the Passport Office.<sup>124</sup> Snyder and Miss Waterman have both testified that they reached their decisions independently and without influence from any other person.<sup>125</sup> The Director of the Passport Office and the Legal Adviser to the State Department both stated that after a review of the record they concluded that Oswald had not expatriated himself and that Snyder and Waterman, therefore, acted correctly.<sup>126</sup>

## Legal Justification for the Return and Reissue of Oswald's Passport

Since he was born in the United States, Oswald was an American citizen.<sup>127</sup> However, Congress has provided that by performing certain acts, a person may forfeit his American citizenship. Thus Oswald would have become expatriated while in Russia if he obtained naturalization in the Soviet Union, renounced U.S. nationality, took an oath of allegiance to the Soviet Union, or voluntarily worked for the Soviet Government in a post requiring that the employee take an oath of allegiance.

*Naturalization in a foreign state.*—Section 349(a)(1) of the Immigration and Nationality Act of 1952 provides that a U.S. citizen shall lose his nationality by “obtaining naturalization in a foreign state upon his own application \* \* \*”<sup>128</sup> Although Oswald applied for Soviet citizenship, he never received it.<sup>129</sup> Thus, Oswald did not expatriate himself under section 349(a)(1).

*Formal renunciation of U.S. nationality.*—Section 349(a)(6) of the act provides that a U.S. citizen shall lose his citizenship by:

\* \* \* making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State.<sup>130</sup>

In accordance with this statute, the Secretary has promulgated regulations prescribing the manner in which renunciation is to be effected.<sup>131</sup> The regulations provide, among other things, that 4 copies of the renunciation form are to be executed and the original and one copy sent to the Department. The Department must then approve the form and advise the appropriate consular official, who may then furnish a copy of the form to the person to whom it relates. The form itself requires the person to subscribe it in the presence of a consular official, and it must also be signed by this official.<sup>132</sup>

Though in 1959 Oswald clearly stated to officials at the American Embassy, both orally and in writing, that he desired to renounce his U.S. citizenship, he at no time took the steps required by the statute and regulations to effect his renunciation. Oswald did not execute the proper forms, he did not sign his letter of October 31 or November 3, 1959, in the presence of a consular official, and neither letter was signed by such an official.<sup>133</sup> Because section 349(a)(6) in terms requires compliance with the form prescribed by the Secretary of State, Oswald did not expatriate himself under that section.

*Oath of allegiance to a foreign state.*—Section 349(a)(2) of the act provides that a U.S. citizen shall lose his nationality by:

\* \* \* taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof.<sup>134</sup>

In his letter of October 31, 1959, Oswald wrote: "I affirm that my allegiance is to the union of Soviet Socialist Republics."<sup>135</sup> Both in this letter and in his letter of November 3, 1959, he stated that his application for citizenship in the Soviet Union was pending before the Supreme Soviet of the U.S.S.R.<sup>136</sup>

Oswald's letters no doubt were intended to express allegiance to the Soviet Union in a manner inconsistent with continued allegiance to the United States, as the statute has been held to require.<sup>137</sup> However, since 1940, it has been well established that in order for an oath of allegiance to a foreign state to work an expatriation from the United States, it must be given to an official of the foreign state, and not to a party unconnected with the foreign state.<sup>138</sup> This requirement can be viewed as a necessary corollary of the broader, but less clearly established, principle that the oath must be taken in accord with the requirements of the foreign state.<sup>139</sup> Although Lee Harvey Oswald wrote that his allegiance was to the Soviet Union,<sup>140</sup> there is no indication that he had ever actually taken an oath or declaration or that any such oath was taken before an official of the Soviet Government. He, therefore, did not expatriate himself under section 349(a) (2).

*Employment under the government of a foreign state.*—Section 349(a) (4) of the Immigration and Nationality Act of 1952 provides that a U.S. citizen shall lose his nationality by :

(a) accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof, if he has or acquires the nationality of such foreign state; or (b) accepting, serving in, or performing the duties of any office, post of employment under the government of a foreign state or a political subdivision thereof, for which office, post, or employment an oath, affirmation, or declaration of allegiance is required. \* \* \* <sup>141</sup>

While Oswald was employed in a state-owned factory in Minsk, he did not acquire Russian nationality, and there is no indication that he had to take any oath when he obtained this employment.<sup>142</sup> Furthermore, prior judicial decisions indicate that merely working in a government-owned factory does not result in expatriation even if an oath was required to be taken in connection with such employment.<sup>143</sup> Several cases decided under an earlier but similar statutory provision held that where a person took a government job in order to subsist, such employment was considered involuntary since it was based on economic duress, and thus it did not result in expatriation.<sup>144</sup> Thus, Oswald did not expatriate himself under section 349(a) (4).

The Commission therefore concludes that Lee Harvey Oswald had not expatriated himself by any acts performed between October 16, 1959, and May 1962, and concurs in the opinion of the State Department that his passport was properly returned to him in July 1961 and properly reissued in May 1962.

## AUTHORIZATION FOR MARINA OSWALD TO ENTER THE UNITED STATES

### Negotiations Between Oswald and the Embassy

On July 11, 1961, Oswald and his wife appeared at the Embassy in Moscow before John A. McVickar.<sup>145</sup> Together they executed papers to set in motion the procedures for her admittance to the United States as a nonquota immigrant under the provisions applicable to the wife of an American citizen.<sup>146</sup> The interview was routine. McVickar asked Marina whether she was a member of any Communist organization and she replied that she was a member of the Trade Union of Medical Workers<sup>147</sup> but she denied she was or ever had been a member of the Komsomol,<sup>148</sup> the Communist youth organization, or any other Communist organization.<sup>149</sup> Marina Oswald has since admitted to the Commission that at one time she was a member of The Komsomol, but was expelled, according to her testimony, when it was learned that she intended to accompany her husband to the United States.<sup>150</sup> The Embassy forwarded the papers pertaining to her application to the State Department on August 28, 1961.<sup>151</sup>

Marina Oswald's ability to obtain a nonquota immigrant visa depended on the favorable resolution of 3 questions. First, it had to be determined that she was the wife of an American citizen,<sup>152</sup> which depended on whether her husband had expatriated himself. Second, it was necessary to determine that she was not and had not been affiliated with a Communist organization on other than an involuntary basis.<sup>153</sup> Third, it had to be determined that she was not likely to become a public charge after she was admitted to the United States.<sup>154</sup> Section 243(g) of the Immigration and Nationality Act<sup>155</sup> presented a fourth issue. This section of the act prohibits the issuance of immigrant visas by American Consuls stationed in countries which have refused to accept or have unduly delayed accepting the return of persons sought to be deported from the United States. The Soviet Union had been designated as such a country in 1953. However, the sanctions of section 243(g) are often waived; and even if they were not waived in Marina's case, she could obtain her visa at an American Embassy in some other country on her way from the Soviet Union to the United States, if she were otherwise entitled to the visa.<sup>156</sup>

In a despatch dated August 28, 1961, the Embassy requested from the Department a security advisory opinion on Marina Oswald's application to enter the United States. The Embassy wrote:

A favorable advisory opinion and approval of \* \* \* [Mrs. Oswald's] petition is recommended together with a waiver of the sanctions imposed by section 243(g) of the Act. \* \* \*

In connection with her employment and her professional training, she has been a member of the Soviet Trade Union for Medical Workers since 1957. Such membership is routinely considered to be involuntary. \* \* \*<sup>157</sup>

The Department initiated a check on Marina Oswald with the CIA, the FBI, the Department's own Office of Security, and Passport Office.<sup>158</sup> The security check turned up no derogatory information on her, so that in early October 1961 the Department cabled Moscow that the available information concerning the applicant established her eligibility to enter the country as a nonquota immigrant.<sup>159</sup>

The Department's decision assumed that prior to obtaining her visa to enter the United States, Marina Oswald would provide some reasonable assurance that she was not likely to become a public charge after she had arrived there. The Department later encountered some difficulty in deciding that she had met this requirement. She knew no one in the United States other than the members of her husband's family, and they lacked the means to furnish any substantial financial guarantees. After considerable correspondence on the matter with Oswald<sup>160</sup> and with the Department,<sup>161</sup> the Embassy decided to accept Oswald's own affidavit to support his wife as sufficient assurance that she would not become a public charge. The Embassy's reasons were set forth in a memorandum dated March 16, 1962:

It appears that \* \* \* [Oswald] can find no one in the United States who is able and willing to execute an affidavit of support for his wife. Furthermore, Oswald has been able to obtain no concrete offer of employment in the United States. On the other hand, he is trained in a trade which should make him readily employable and he and his family will be able to live with his mother in Texas until he has found work and become otherwise settled. Taking into consideration the latter factors, Oswald's legal obligation to support his wife, and the unusual circumstances of the case which make it difficult for Oswald to provide the usual financial evidence, the responsible consular officer \* \* \* [is] willing to accept Oswald's unsubstantiated affidavit as sufficient to overcome the public charge provisions of the law.<sup>162</sup>

The necessity of relying solely upon Oswald's own affidavit, however, was eliminated somewhat later when the Department received an affidavit of support from the employer of Oswald's mother in Vernon, Tex.<sup>163</sup>

By law the Attorney General must also pass upon an applicant's eligibility, and this responsibility has been delegated to the District Directors of the Immigration and Naturalization Service.<sup>164</sup> The machinery to get approval of the Immigration and Naturalization Service for Marina Oswald's admission to the United States was set in motion on October 6, 1961. On that date the Visa Office of the Department of State sent a letter to the District Director of the Immigration and Naturalization Service in Dallas, Tex., requesting the Service to take action on her immigrant visa.<sup>165</sup> The letter transmitted her marriage certificate, a check for \$10 from Lee Harvey Oswald, and a "Petition to Classify Status of Alien For Issuance of Immigrant Visa." The petition was signed by Oswald and was on

behalf of Marina, asking that she be classified in "the status of the alien beneficiary for issuance of an immigrant visa as \* \* \* the spouse of a United States citizen."<sup>166</sup> The letter from the Visa Office stated:

Mrs. Oswald has been the object of an investigation by the Department and has been found, in the Department's opinion, not ineligible to secure a visa.<sup>167</sup>

On the basis of this communication, the Immigration and Naturalization Service at its Dallas, Tex., office instituted a field investigation on Lee Harvey Oswald.<sup>168</sup> Routine checks with the Federal security agencies and with local law enforcement authorities turned up no new derogatory information, and no evidence was uncovered that Oswald was ever a member of the Communist Party or other subversive groups.<sup>169</sup> A record check was made in New Orleans, La., and a birth certificate was found for Lee Harvey Oswald, proving that he was an American citizen by birth.<sup>170</sup> On October 17, 1961, an investigator from the Dallas office interviewed Oswald's brother, Robert, who expressed the view that Lee was just a "mixed up kid" who had emigrated to Russia because he had become embittered, possibly over something that had happened while he was in the Marine Corps.<sup>171</sup>

On January 25, 1962, the results of the field investigation in Dallas were consolidated in a report<sup>172</sup> which, with a covering memorandum,<sup>173</sup> was sent to the District Director of the Service in San Antonio the next day. The accompanying memorandum noted that the immigrant inspector who processed the case had endorsed it "approved," but the author of the memorandum overruled the decision of the inspector on the grounds that the sanctions under section 243(g) should not be waived.<sup>174</sup> The reasons for denying the waiver were stated as follows:

OI [Operations Instructions] 205.3, as you know, provides that the District Director may waive sanctions in an individual meritorious case for a beneficiary of a petition filed by a reputable relative where no substantial derogatory security information is developed. I am of the opinion that both of these restrictions are present in this case.<sup>175</sup>

On January 30, 1962, the District Director at San Antonio affirmed the decision of the Dallas office, including the decision that the sanctions imposed under section 243(g) not be waived.<sup>176</sup> He concluded that Oswald's recent statements to the American Embassy in Moscow to the effect that he had learned from his experiences in Russia were not sufficient to relieve the doubts which were raised regarding his loyalty to the United States by the arrogant, anti-American statements he made when he entered Russia in 1959.<sup>177</sup>

San Antonio forwarded its decision to Washington in a letter dated January 31, 1962, in which Marina Oswald's petition and all the

aforementioned memoranda and reports were included.<sup>178</sup> However, because Washington had previously indicated its impatience at not yet having received anything on the Oswald case, the San Antonio office also telegraphed its decision to Washington about a week later,<sup>179</sup> the telegram presumably being received by Washington before the letter of January 31. The Washington copy of this telegram has a handwritten note on the lower portion which indicates that on February 12 an officer in the Visa Office of the State Department informed the Immigration and Naturalization Service by telephone: "Political desk of opinion, we're better off with subject in U.S. than in Russia."<sup>180</sup>

Nonetheless, the Washington office of the Service concurred in the field decision that the provisions of section 243(g) should not be waived.<sup>181</sup> However, the Washington office pointed out that the correct disposition should be not to deny the visa petition as the field offices had proposed, but to grant the petition and indorse it to read, "Waiver of sanctions imposed under section 243(g) of the Act is not authorized."<sup>182</sup>

On February 28, 1962, the Dallas office of the Immigration and Naturalization Service notified the Department of State in Washington and the American Embassy in Moscow of this disposition. The communication from the Dallas office noted that Oswald "has been notified at his Minsk, Russia, address of the approval of the petition in his wife's behalf."<sup>183</sup> Oswald later told the Embassy that he had received the notice on March 15.<sup>184</sup> On March 9, 1962, the Department of State also notified the Embassy in Moscow that Oswald's wife was entitled to nonquota status but that the Immigration and Naturalization Service would not waive section 243(g) of the Act. The Embassy was told to inform Oswald of this fact if he asked about it. The memorandum indicated that the Embassy might suggest that Marina could proceed to some other country to file her visa application and thus avoid the sanction.<sup>185</sup>

The Moscow Embassy on March 16, 1962, asked the Embassy at Brussels if Mrs. Oswald could obtain her visa in Brussels.<sup>186</sup> The Brussels Embassy replied affirmatively and said a visa could be issued to Marina within 2 or 3 days of her arrival.<sup>187</sup> The Marina Oswald file accordingly was sent to the Embassy at Brussels.<sup>188</sup>

The plan to obtain the visa in Belgium was rendered unnecessary, however, when the Immigration and Naturalization Service reversed its position regarding the waiver of section 243(g). On March 16, the Soviet desk at the Department of State took initial action to attempt to secure such a change by sending a memorandum to the Visa Office within the Department, urging that the Immigration and Naturalization Service be asked to reconsider its decision.<sup>189</sup> According to this memorandum:

SOV believes it is in the interest of the U.S. to get Lee Harvey Oswald and his family out of the Soviet Union and on their way to this country as soon as possible. An unstable character, whose actions are entirely unpredictable, Oswald may well refuse to

leave the USSR or subsequently attempt to return there if we should make it impossible for him to be accompanied from Moscow by his wife and child.

Such action on our part also would permit the Soviet Government to argue that, although it had issued an exit visa to Mrs. Oswald to prevent the separation of a family, the United States Government had imposed a forced separation by refusing to issue her a visa. Obviously, this would weaken our Embassy's position in encouraging positive Soviet action in other cases involving Soviet citizen relatives of U.S. citizens.<sup>190</sup>

Soon thereafter, however, the Department of State notified its Moscow Embassy that the decision was under review and instructed it to withhold action pending the outcome of the reconsideration.<sup>191</sup>

The Visa Office first contacted the Washington office of the Immigration and Naturalization Service informally, and was advised, according to a contemporaneous notation :

\* \* \* that case had been carefully considered and decision made at Assistant or Deputy Associate Commissioner level. Therefore, although not wishing to comment on likelihood of reversal, [INS officer] felt that any letter requesting a review of the case should come from the Director or Acting Administrator.<sup>192</sup>

On March 27, 1962, such a letter was written from an acting administrator in the Department of State to the Commissioner of Immigration and Naturalization. The letter read in part :

I appreciate the difficulty this case presents for your Service, because of Mr. Oswald's background, and the fact that granting a waiver of the sanction makes it appear that this Government is assisting a person who is not altogether entitled to such assistance. However, if the Embassy at Moscow is unable to issue Mrs. Oswald a visa, it would appear that she and indirectly the Oswalds' newborn child are being punished for Mr. Oswald's earlier indiscretions. I might also point out that this Government has advanced Mr. Oswald a loan of \$500.00 for repatriation.

More important, however, is the possibility that if Mrs. Oswald is not issued a visa by the Embassy, the Soviet Government will be in a position to claim that it has done all it can to prevent the separation of the family by issuing Mrs. Oswald the required exit permission, but that this Government has refused to issue her a visa, thus preventing her from accompanying her husband and child. This would weaken the Embassy's attempts to encourage positive action by the Soviet authorities in other cases involving Soviet relatives of United States citizens.

Because of these considerations and because I believe it is in the best interests of the United States to have Mr. Oswald depart

from the Soviet Union as soon as possible, I request that the section 243(g) sanction be waived in Mrs. Oswald's case.<sup>193</sup>

The Immigration and Naturalization Service ultimately reversed its original position and granted the waiver on May 9, 1962. The letter reversing its initial decision states that the matter has been "carefully reviewed in this office" and that "in view of the strong representations" made in the letter of March 27, the sanctions imposed pursuant to section 243(g) were thereby waived in behalf of Mrs. Oswald.<sup>194</sup>

Actually, the Office of Soviet Affairs had informally learned on May 8 that the May 9 letter would be signed by the Immigration and Naturalization Service.<sup>195</sup> On the strength of the assurance that a written reversal would be forthcoming immediately, the State Department quickly telegraphed the Moscow Embassy reporting that the waiver had been granted.<sup>196</sup> Marina Oswald completed her processing when she, her husband, and daughter came to Moscow in May 1962 on their way from Minsk to the United States.<sup>197</sup>

### Legal Justification for the Decisions Affecting Marina Oswald

*Wife of a citizen of the United States.*—Section 205 of the Immigration and Nationality Act of 1952 provides for the admission into the United States of persons married to American citizens.<sup>198</sup> Once it was determined that Lee Harvey Oswald was born in the United States<sup>199</sup> and had not expatriated himself, his American citizenship was established. Marina Oswald submitted a marriage certificate to show that she was his wife.<sup>200</sup> This requirement was, therefore, satisfied.

*Assurance that Marina Oswald would not become a public charge.*—Section 212(a) (15) of the act provides that aliens will not be admitted to the United States if, in the opinion of the responsible Government official, they "are likely at any time to become public charges."<sup>201</sup> The pertinent Department of State regulations provide that a determination to exclude an alien for this reason must be "predicated upon circumstances which indicate that the alien will probably become a charge upon the public after entry into the United States."<sup>202</sup>

In 1962, Oswald was 22 years old and in good health. He had lived in the United States for 17 years before joining the Marine Corps and was, therefore, familiar with its language and customs. He had gained job experience by working 2½ years in a factory which produced electronic equipment. Under these circumstances the Department was not unreasonable in concluding that Oswald's own affidavit that he would support his wife was sufficient assurance that she was not likely to become a charge upon the public after her entry into the United States. The receipt of the affidavit from Marguerite Oswald's employer provided a possible alternative basis for reaching this decision, but since a favorable ruling had already been made on the basis of Oswald's affidavit, the Embassy had no reason to consider the sufficiency of the second affidavit.

*Membership in a Communist organization.*—Under section 212(a) (28) of the Immigration and Nationality Act, an alien will not be admitted to the United States if he is or was a member of, or affiliated with, a Communist organization unless:

\* \* \* such an alien establishes to the satisfaction of the consular officer when applying for a visa and the consular officer finds that (i) such membership or application is or was involuntary, or is or was solely when under sixteen years of age, by operation of law, or for purposes of obtaining employment, food rations, or other essentials of living and where necessary for such purposes \* \* \*<sup>203</sup>

At the time Marina Oswald applied for a visa she was a member of the Soviet Trade Union for Medical Workers.<sup>204</sup> According to the Department of State, the

\* \* \* long-standing interpretation [of the statute] concurred in by the State and Justice Departments [is] that membership in a professional organization or trade union behind the Iron Curtain is considered involuntary unless the membership is accompanied by some indication of voluntariness, such as active participation in the organization's activities or holding an office in the organization.<sup>205</sup>

Since there was no evidence that Marina Oswald actively participated in the union's activities or held an office in the organization, her union membership was properly held not to bar her admission to this country.

Although Marina Oswald declared that she was not a member of the Komsomol or any other Communist organization, she was in fact a member of the Komsomol, the Communist youth organization.<sup>206</sup> If this fact had been known to the State Department, Marina Oswald would not necessarily have been denied a visa, although a careful investigation into the nature of the membership would have been required.<sup>207</sup> However, had her membership in the Komsomol become known to the Department after her denial of such membership, it is possible that she would have been excluded from the United States on the ground of having willfully misrepresented a material fact.<sup>208</sup>

Judicial decisions are not in agreement as to what constitutes a "material fact" such that its intentional misrepresentation warrants exclusion of the alien.<sup>209</sup> Some cases indicate that a misrepresentation in an application for a visa involves a material fact even if the alien would not definitely have been excluded on the true facts;<sup>210</sup> others hold that a misstatement is material only if it referred to such facts as would have justified refusing the visa had they been disclosed.<sup>211</sup> The Visa Office of the Department of State has announced that it applies a "rule of probability" under which a misstatement will be deemed ma-

terial only if it concealed facts which probably would have resulted in a denial of a visa.<sup>212</sup>

*Waiver of the provisions of section 243(g).*—Section 243(g) of the Immigration and Nationality Act of 1952, by its terms, prevented issuance of a visa to Marina Oswald by the Moscow Embassy. The section provides that upon notification of the Secretary of State by the Attorney General that a country has refused or unduly delayed the acceptance of a deportable alien from the United States who is a subject or was a resident of that country, consular officers in such country are not to issue visas to citizens of the country. The section had been invoked against Russia on May 26, 1953. Nonetheless, although section 243(g) does not contain an express provision for waiver, the Justice Department has concluded that the Attorney General possesses such waiver powers.<sup>213</sup> Pursuant to this decision, the Department has granted waivers in over 600 cases from the Soviet Union since 1953.<sup>214</sup> The waiver procedures followed in 1962 were prescribed by the Immigration and Naturalization Service. The relevant provision reads:

Before adjudicating a petition for an eligible beneficiary residing in the USSR, Czechoslovakia or Hungary, against which sanctions have been imposed, the district director shall obtain a report of investigation regarding the petitioner which shall include an affiliation of a subversive nature disclosed by a neighborhood investigation, local agency records and responses to Form G-135a. \* \* \* If no substantial derogatory security information is developed, the district director may waive the sanctions in an individual meritorious case for a beneficiary of a petition filed by a reputable relative to accord status under Section 101(a)(27)(A) or Section 203(a)(2), (3) or (4). \* \* \* If substantial adverse security information relating to the petitioner is developed, the visa petition shall be processed on its merits and certified to the regional commissioner for determination whether the sanctions should be waived. The assistant commissioner shall endorse the petition to show whether the Waiver is granted or denied, and forward it and notify the appropriate field office of the action taken. \* \* \*<sup>215</sup>

State Department regulations are much less explicit.<sup>216</sup> The State Department's visa instructions for the guidance of consular officers provide, "The sanctions will be waived only in individual meritorious cases in behalf of a beneficiary of a petition filed by a reputable relative pursuant to [sections] of the act."<sup>217</sup>

Because Lee Harvey Oswald signed the petition on Marina's behalf, his character was relevant to whether the sanctions of section 243(g) could be waived for her. The file on Lee Harvey Oswald which was maintained by the Department of State and made available to the Department of Justice for purposes of passing on his wife's application contained the facts relating to Oswald's attempted expatriation. However, despite the derogatory material in the Oswald file, the Im-

migration and Naturalization Service regulations did not require automatic denial of the waiver; they provided only that if adverse security information were developed, "the visa petition shall be processed on its merits and certified to the regional commissioner for determination whether the sanctions should be waived." This procedure was followed in Marina's case and the factors considered in reaching the decision do not appear to be inappropriate. The State Department successfully urged that the original decision of the Immigration and Naturalization Service be reversed because this would be in the best interests of future United States dealings with the Soviet Union on behalf of American citizens, and because it seemed unfair to punish Lee Harvey Oswald's wife and baby for his own earlier errors.<sup>218</sup> Prevention of the separation of families is among the most common reasons underlying the frequent waivers of section 243(g).<sup>219</sup>

### OSWALD'S LETTER TO SENATOR TOWER

Sometime shortly before January 26, 1962, an undated letter from Lee Harvey Oswald was received in the office of the U.S. Senator from Texas, John G. Tower.<sup>220</sup> The letter reads as follows:

My name is Lee Harvey Oswald, 22, of Fort Worth up till October 1959, when I came to the Soviet Union for a residenaul stay. I took a residenual document for a non-Soviet person living for a time in the U S S R. The American Embassy in Moscow is familier with my case

Since July 20th 1960, I have unsuccessfully applied for a Soviet Exit Visa to leave this country, the Soviets refuse to permit me and my Soviet wife, (who applied at the U.S. Embassy Moscow, July 8, 1960 for immigration status to the U.S.A.) to leave the Soviet Union. I am a citizen of the United States of America (passport No. 1733242, 1959) and I bessech you, Senator Tower, to rise the question of holding by the Soviet Union of a citizen of the U.S., against his will and expressed desires.<sup>221</sup>

The letter was read in Senator Tower's office by a caseworker on his staff. According to the caseworker and the Senator's press secretary, the letter was forwarded as a matter of routine on January 26 to the Assistant Secretary for Congressional Relations, Department of State. The letter was forwarded with a cover letter, machine signed by the Senator, stating that he did "not know Oswald, or any of the facts concerning his reasons for visiting the Soviet Union; nor what action, if any, this Government can or should take on his behalf." The cover letter pointed out that Oswald's inquiry should have gone to the executive branch of the Government and that for this reason the Senator was forwarding it "for whatever action the Department may consider appropriate."<sup>222</sup> On February 1 an officer at the Department of State telephoned the Senator's office and spoke briefly

with the caseworker on the Oswald case. She made a memorandum of the call which notes, "Senator should not become involved in such case—therefore State will report to us the course which they follow regarding Lee Harvey Oswald [sic]." <sup>223</sup> About a week later the Department of State forwarded to Senator Tower copies of some of the correspondence which the Department had had with Oswald and informed the Senator that if he wished to be kept informed on further developments regarding Oswald he could contact the Department of State. <sup>224</sup> Neither the Senator nor any member of his staff contacted the Department again nor did they take any other action in respect to the matter. <sup>225</sup>

## THE LOAN FROM THE STATE DEPARTMENT

In a letter dated January 5, 1962, Oswald said that he would like to make arrangements for a loan from the Embassy or some private organization for part of the airplane fares. <sup>226</sup> The Embassy on February 6, 1962, replied that he would have to supply certain personal and financial data. <sup>227</sup> The letter also said that after repatriation he would not be furnished a passport for travel abroad until he had repaid the money.

Between February 6, 1962, and May 1, 1962, Oswald attempted to secure a loan from the Red Cross <sup>228</sup> and the International Rescue Committee <sup>229</sup> in the United States. The State Department on February 1 wrote Oswald's mother a letter asking whether she could advance the money. <sup>230</sup> Oswald later wrote both his mother and the Department advising each that his mother should not be bothered in reference to the loan. <sup>231</sup> Ultimately, after an exchange of communications between the Embassy and Washington, <sup>232</sup> the Department approved a loan to Oswald for passage to New York only, directing the Embassy to "Keep cost minimum." <sup>233</sup> On June 1 Oswald signed a promissory note for \$435.71. <sup>234</sup>

Statutory authority for making such a loan was conferred by title 5, section 170(a), of the U.S. Code, which authorizes the Secretary of State to "make expenditures, from such amounts as may be specifically appropriated therefor, for unforeseen emergencies arising in the diplomatic and consular service." Since 1947, the Department of State's annual appropriation act has included a sum for expenses necessary "to enable the Secretary of State to meet unforeseen emergencies arising in the Diplomatic and Consular Service. \* \* \*" <sup>235</sup> In recent years, the accompanying reports submitted by the Appropriations Committee of the House of Representatives have stated, "These funds are used for relief and repatriation loans to the U.S. citizens abroad and for other emergencies of the Department." <sup>236</sup> Out of the amount appropriated to meet unforeseen emergencies arising in the Diplomatic and Consular Service, the Secretary of State has annually allotted approximately \$100,000 to meet the expenses of indigent U.S. nationals, including those in the Soviet Union, who request

repatriation loans. From 1959 to 1963, 2,343 such loans were granted.<sup>237</sup>

Section 423.2-1 of the Department's regulations provides that repatriation loans may be granted only to destitute U.S. nationals:

- a. Who are in complete and unquestioned possession of their citizenship rights;
- b. Who are entitled to receive United States passports;
- c. Whose loyalty to the United States Government is beyond question, or to whom the provisions of Section 423.1-2(b) apply.<sup>238</sup>

Oswald undoubtedly satisfied the requirements of paragraphs (a) and (b), since he was determined to have been a U.S. citizen at the time the loan was granted and he had been issued a passport to return to the United States. There is a serious question whether he could have qualified under the first clause of paragraph (c). The Commission is of the opinion that in its application of this clause the Department should exercise great care in determining whether an applicant's loyalty to the U.S. Government is beyond question, particularly in the case of a defector like Oswald who has expressed hostility and disloyalty to our government and manifested a desire to renounce his citizenship. The Department chose instead to exercise its judgment under the second clause of paragraph (c), which refers to section 423.1-2(b). This section provides that loans to destitute nationals are authorized when:

- b. The United States national is in or the cause of a situation which is damaging to the prestige of the United States Government or which constitutes a compelling reason for extending assistance to effect his return.<sup>239</sup>

The Department decided that the provisions of section (b) were applicable to Oswald because his "unstable character and prior criticism of the United States" would make his continued presence in the Soviet Union damaging to the prestige of the United States.<sup>240</sup> In acting under this section, the Department was acting within its competence and the law. As required by another section of the regulations, the Department sought to obtain funds for the Oswalds' repatriation from private sources—his mother and the International Rescue Committee—before using Government funds.<sup>241</sup>

Regulations further provide that repatriation loans are authorized for the alien, wife, and children of the U.S. national receiving a repatriation loan in order to avoid the division of families.<sup>242</sup> However, loans are limited

To the minimum amount required to cover transportation and subsistence while enroute to the nearest continental United States port. \* \* \* When necessary, loans may include: expenses inci-

dent to embarkation, such as fees for documentation and minimum subsistence from the date of application for a loan to the date of departure by the first available ship. \* \* \* The cost of transportation shall be limited to third-class passage by ship.<sup>243</sup>

Oswald's loan was sufficient to cover no more than the least expensive transportation from Moscow to New York. His passport was stamped as valid only for return to the United States.<sup>244</sup> Oswald completed all necessary forms and affidavits to obtain the loan.<sup>245</sup>

According to its own procedures the Department of State should have prepared a lookout card for Oswald in June 1962 when he received the proceeds of the loan.<sup>246</sup> The promissory note which he signed contained a provision stating,

I further understand and agree that after my repatriation I will not be furnished a passport for travel abroad until my obligation to reimburse the Treasurer of the United States is liquidated.<sup>247</sup>

However, a lookout card was never in fact prepared. With respect to this failure the State Department has informed the Commission as follows:

On receipt of notice of the loan from the Embassy in Moscow, the Department's procedures provided that Miss Leola B. Burkhead of the Revenues and Receipts Branch of the Office of Finance should have notified the Clearance Section in the Passport Office of Oswald's name, date, and place of birth. If the Passport Office received only the name and not the date and place of birth of a borrower, it would not have prepared a lookout card under its established procedures because of lack of positive identification. (Among the Passport Office's file of millions of passport applicants, there are, of course, many thousands of identical names.) Mr. Richmond C. Reeley was the Chief of the Revenues and Receipts Branch of the Office of Finance and Mr. Alexander W. Maxwell was Chief of the Clearance Section. If the notice was received in the Clearance Section it would have been delivered to the Carding Desk for preparation of a lookout card on Oswald. It appears, however, that such a lookout card was not prepared. It may have been that the Finance Office did not notify the Clearance Section of Oswald's loan. One reason for this might have been the Finance Office's lack of information concerning Oswald's date and place of birth. On the other hand, the Finance Office may have notified the Clearance Section of Oswald's name only, in which case this Section would not have prepared a lookout card under its procedures. Since Oswald began repaying the loan in installments immediately after his return to the United States, it is also possible that the Office of Finance decided that it was un-

necessary to pursue the matter further. In any event, Oswald's loan was repaid in full on January 29, 1963, five months prior to his application for a new passport.<sup>248</sup>

### OSWALD'S RETURN TO THE UNITED STATES AND REPAYMENT OF HIS LOAN

On June 1, 1962, the same day that Oswald received his loan from the State Department, he and his family left Moscow by train destined for Rotterdam, The Netherlands.<sup>249</sup> They boarded the SS *Maasdam* at Rotterdam on June 4 and arrived in New York on June 13, 1962.<sup>250</sup> The Embassy sent word of the Oswalds' departure to the Department of State in Washington on May 31.<sup>251</sup> Consistent with its prior practice of keeping the Federal security agencies informed of Oswald's activity,<sup>252</sup> the Department notified the FBI.<sup>253</sup>

Frederick J. Wiedersheim, an officer of the Immigration and Naturalization Service in New York, interviewed the Oswalds upon their entry into the United States at Hoboken, N.J., on June 13, 1962, but made no written report. Mr. Wiedersheim recalled that he asked the Oswalds various questions which would determine the eligibility of both Oswald and Marina to enter the United States. The questions included whether Oswald had expatriated himself and whether Marina belonged to any Communist organization which would bar her entry. These questions were answered in ways which did not appear to raise any problems and therefore the Oswalds were admitted.<sup>254</sup>

After his reentry, Oswald repaid his loan without having to be reminded by the Department to do so. The early payments were very small because he first repaid the approximately \$200 he had borrowed from his brother Robert to apply against the expenses of his travel from New York to Fort Worth, Tex.<sup>255</sup> The schedule of payments is as follows:

Aug. 13, 1962-----	\$10. 00
Sept. 5, 1962-----	9. 71
Oct. 10, 1962-----	10. 00
Nov. 19, 1962-----	10. 00
Dec. 11, 1962-----	190. 00
Jan. 9, 1963-----	100. 00
Jan. 29, 1963-----	106. 00
Total -----	<sup>256</sup> 435. 71

### ISSUANCE OF A PASSPORT IN JUNE 1963

On June 24, 1963, Oswald applied for a U.S. passport at the Passport Office in New Orleans, La.<sup>257</sup> He said he was planning to visit England, France, Holland, U.S.S.R., Finland, Italy, and Poland, and that he intended to leave the country sometime during November or December 1963 by ship from New Orleans.<sup>258</sup> He stated further that

he was married to a person born in Russia who was not an American citizen. For occupation, the word "Photographer" was inserted on the application.<sup>259</sup>

On the same day a teletype was sent to Washington containing the names of 25 of the persons who applied for passports on that date in New Orleans, Oswald's name among them. On the right side of the Washington Passport Office copy of the teletype message, approximately parallel to his name, are the letters, "NO," written in red pencil.<sup>260</sup> Oswald was issued a passport on June 25, 1963.<sup>261</sup>

Since there was no lookout card on Oswald, the passport was processed routinely. Twenty-four hours is the usual time for routinely granted passports to be issued.<sup>262</sup> The handwritten notation, "NO," which appeared beside Oswald's name on the list of applicants from New Orleans, is a symbol for the New Orleans Passport Office that is routinely placed on incoming teletype messages by anyone of a group of persons in the teletype section of the Passport Office.<sup>263</sup> No one looked at Oswald's file previously established with the Department.<sup>264</sup> The Department, however, has informed the Commission that at the time the passport was issued there was no information in its passport or security files which would have permitted it to deny a passport to Oswald.<sup>265</sup> No lookout card should have been in the file based upon the Moscow Embassy's memorandum of March 28, 1960, which drew attention to Oswald's intention to expatriate himself, because the subsequent determination that Oswald had not expatriated himself would remove expatriation as a possible ground for denying him a passport.<sup>266</sup> And by January 29, 1963, the repatriation loan had been repaid, so a lookout card should not have been in the file on that basis.<sup>267</sup>

Oswald was entitled to receive a passport in 1963 unless he came within one of the two statutory provisions authorizing the Secretary of State to refuse to issue it.<sup>268</sup> Section 6 of the Subversive Activities Control Act of 1950, which has recently been declared unconstitutional,<sup>269</sup> then provided:

\* \* \* it shall be unlawful for any member of [an organization required to register], with knowledge or notice that such organization is so registered and that such order has become final—(1) to make application for passport, or the renewal of a passport, to be issued or renewed by or under the authority of the United States; or (2) to use or attempt to use any such passport.<sup>270</sup>

Pursuant to section 6, the State Department promulgated a regulation which denied passports to

\* \* \* any individual who the issuing officer knows or has reason to believe is a member of a Communist Organization registered or required to be registered under Section 7 of the Subversive Activities Control Act of 1950 as amended.<sup>271</sup>

Since there is no evidence that Lee Harvey Oswald was a member of the American Communist Party or any other organization which had been required to register under section 7 of the Subversive Activities Control Act,<sup>272</sup> a passport could not have been denied him under section 6.

Section 215 of the Immigration and Nationality Act provides that, while a Presidential proclamation of national emergency is in force,

\* \* \* it shall, except as otherwise provided by the President, \* \* \* be unlawful for any citizen of the United States to depart from or enter \* \* \* the United States unless he bears a valid passport.<sup>273</sup>

Because a proclamation of national emergency issued by President Truman during the Korean war had not been revoked by 1963, the Government has taken the position that the statute remains in force.<sup>274</sup> Pursuant to section 215, the State Department has issued regulations setting forth the circumstances under which it will refuse a passport:

In order to promote and safeguard the interests of the United States, passport facilities, except for direct and immediate return to the United States, shall be refused to a person when it appears to the satisfaction of the Secretary of State that the person's activity abroad would: (a) violate the laws of the United States; (b) be prejudicial to the orderly conduct of foreign relations; or (c) otherwise be prejudicial to the interests of the United States.<sup>275</sup>

The State Department takes the position that its authority under this regulation is severely limited. In a report submitted to the Commission, the Department concluded that "there were no grounds consonant with the passport regulations to take adverse passport action against Oswald prior to November 22, 1963."<sup>276</sup> Although Oswald's statement in 1959 that he would furnish the Russians with information he had obtained in the Marine Corps may have indicated that he would disclose classified information if he possessed any such information, there was no indication in 1963 that he had any valuable information.<sup>277</sup> Moreover, Oswald's 1959 statement had been brought to the attention of the Department of the Navy<sup>278</sup> and the FBI<sup>279</sup> and neither organization had initiated criminal proceedings. The Department therefore had no basis for concluding that Oswald's 1959 statement was anything more than rash talk.<sup>280</sup> And the State Department's files contained no other information which might reasonably have led it to expect that Oswald would violate the laws of the United States when he went abroad.

The most likely ground for denying Oswald a passport in 1963, however, was provided by subsection (c) of the regulation quoted above, which requires the denial of a passport when the Secretary of

State is satisfied that the applicant's "activity abroad would \* \* \* otherwise be prejudicial to the interests of the United States." In 1957 the State Department described to the Senate Foreign Relations Committee one category of persons to whom it denied passports under this provision:

Persons whose previous conduct abroad has been such as to bring discredit on the United States and cause difficulty for other Americans (gave bad checks, left unpaid debts, had difficulties with police, etc.).<sup>281</sup>

In light of the adverse publicity caused the United States by Oswald's prior defection to the Soviet Union, he could have been considered a person "whose previous conduct abroad had been such as to bring discredit on the United States." Indeed, the State Department itself had previously been of the opinion that Oswald's continued presence in Russia was damaging to the prestige of the United States because of his unstable character and prior criticisms of the United States.<sup>282</sup>

However, in 1958 the Supreme Court had decided two cases which restricted the Secretary of State's authority to deny passports. In *Kent v. Dulles*<sup>283</sup> and *Dayton v. Dulles*,<sup>284</sup> the Supreme Court invalidated a State Department regulation permitting the denial of passports to Communists and to those "who are going abroad to engage in activities which will advance the Communist movement for the purpose, knowingly and willfully of advancing that movement," on the ground that the regulation exceeded the authority Congress had granted the Secretary. The *Kent* opinion stressed the importance to be attached to an individual's ability to travel beyond the borders of the United States:

The right to travel is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the Fifth Amendment \* \* \* Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.<sup>285</sup>

The *Kent* opinion also suggested that grounds relating to citizenship and allegiance to illegal conduct might be the only two upon which the Department could validly deny a passport application.

The Department, though publicly declaring that these decisions had little effect upon its broadly worded regulation,<sup>286</sup> in practice denied passports only in limited situations. In 1963 the Department denied passports only to those who violated the Department's travel restrictions, to fugitives from justice, to those involved in using passports fraudulently, and to those engaged in illegal activity abroad or in conduct directly affecting our relations with a particular coun-

try.<sup>287</sup> Passports were granted to people who the Department might have anticipated would go abroad to denounce the United States, and to a prior defector.<sup>288</sup> State Department officials believed that in view of the Supreme Court decisions, the Department was not empowered to deny anyone a passport on grounds related to freedom of speech or to political association and beliefs.<sup>289</sup>

Since Oswald's citizenship was not in question and since there was no indication that he would be involved in illegal activity abroad, the only grounds upon which a passport might have been denied Oswald would have fallen within the area of speech or political belief and association. The Commission therefore concludes that the Department was justified in granting a passport to Oswald on June 25, 1963.

### VISIT TO THE RUSSIAN EMBASSY IN MEXICO CITY

In October 1963, the Passport Office of the State Department received a report from the Central Intelligence Agency that Oswald had visited the Soviet Embassy in Mexico City.<sup>290</sup> The report said nothing about Oswald's having visited the Cuban Embassy in Mexico City, a fact which was not known until after the assassination. Upon receipt of the information the passport file on Lee Harvey Oswald was reviewed by the Passport Office.<sup>291</sup> The CIA communication and the passport file were read by an attorney and a supervisory attorney in that office who found no basis for revoking Oswald's passport or for notifying the FBI or CIA that Oswald had been issued a new passport in June 1963.<sup>292</sup> The Department has informed the Commission that, "since the report indicated no grounds for determining Oswald was ineligible for a passport, a determination was made that no action by the passport office was required."<sup>293</sup> Travel to Russia was not proscribed in 1963. Moreover, the Soviet Union was one of the countries Oswald had listed on his passport application. Hence, the Commission agrees that Oswald's taking steps to enter the Soviet Union in 1963 was not a sufficient reason to revoke his passport.

Later, on November 14, 1963, the FBI sent the Department a report on Oswald's arrest in New Orleans, La. during August in connection with a fistfight in which he became engaged when passing out pamphlets entitled "Hands Off Cuba." No action was taken on the basis of the Bureau's report.<sup>294</sup> The Commission agrees that this incident was not grounds for revoking Oswald's passport.

### CONCLUSION

Investigation of Oswald's complete dealings with the Department of State and the Immigration and Naturalization Service reveals no irregularity suggesting any illegal actions or impropriety on the part of government officials. The Commission believes, however, that in ap-

plying its own regulations the Department should in all cases exercise great care in the return to this country of defectors such as Oswald who have evidenced disloyalty or hostility to this country or who have expressed a desire to renounce their U.S. citizenship and that, when such persons are returned, procedures should be adopted for the better dissemination of information concerning them to the intelligence agencies of the Government. The operation of the "lookout card" system in the Department of State was obviously deficient, but since these deficiencies did not affect Oswald or reflect any favoritism or impropriety, the Commission considers them beyond the scope of its inquiry.

Especially while he was in the Soviet Union, Oswald's manner to Government personnel was frequently insulting and offensive. As one 1962 communication between the Embassy and the Department of State observed, "It is not that our hearts are breaking for Oswald. His impertinence knows no bounds."<sup>295</sup> Nonetheless, the officials of the U.S. Government respected Oswald as a troubled American citizen and extended to him the services and assistance for which the agencies of government have been created. Though Oswald was known to be "an unstable character, whose actions are highly unpredictable,"<sup>296</sup> there was no reasonable basis in 1961 and 1962 for suspecting that upon his readmittance to the country he would resort to violence against its public officials. The officers of the Department of State and the Immigration and Naturalization Service, acting within the proper limits of their discretion, concluded that Oswald's return to the United States was in the best interests of the country; it is only from the vantage of the present that the tragic irony of their conclusion emerges.