

In the Matter of Certificate of Service No. E-560773
Issued to: SANTIAGO M. BARI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

347

SANTIAGO M. BARI

This appeal has been taken in conformance with 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1.

On 5 May, 1949, the Appellant was tried before an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, on a charge of misconduct supported by two specifications. The first specification alleges that while Appellant was serving as galleyman on board the American SS GULFBRAND, under authority of a duly issued Certificate of Service (E-560773), he aided and assisted Manuel De Jesus Rocha, on about 12 September, 1948, in stowing away on board the vessel without the consent of the master. The second specification alleges that while still serving in the above capacity, the Appellant aided and assisted the alien Rocha, on or about 18 September, 1948, in illegally entering the United States, contrary to 8 United States Code 144.

Appellant voluntarily waived the right to representation by counsel and entered a plea of "not guilty" to both specifications. Upon completion of the hearing, the Examiner found the first specification "not proved," and the second specification "proved", and entered an order revoking said Certificate of Service No. E-560773 and all other documents or certificates of service then

held by the Appellant.

In his appeal, Appellant states that he is really innocent of the charges and he gives his own version of the true facts of the case.

Appellant also pleads for clemency so as to permit him to earn a decent living for himself and his family.

Appellant is a United States citizen, twenty-seven years of age and has spent approximately six years at sea. He was admonished on 13 February, 1945, for being AWOL from the SS MORTON PRINCE and his document was suspended for six months in 1946 when he was found guilty of having taken ashore various items of ship's stores food.

FINDINGS OF FACT

On or about 18 September, 1948, Appellant was serving as a member of the crew in the capacity of galleyman on board the American SS GULFBRAND under authority of Certificate of Service No. E-560773.

On 31 January, 1949, the Appellant was found "guilty," in the District Court of the United States for the Eastern District of Pennsylvania, of having violated 8 United States Code 144 by knowingly and unlawfully having brought into and landed an alien in the United States at Philadelphia, Pennsylvania. The wording of the Information is substantially the same as that of the second specification.

There was no evidence offered at the hearing in an attempt to prove the first specification which alleges that Appellant helped the alien to stow away on board while the ship was at Puerto La Cruz, Venezuela.

OPINION

A copy of the Information and judgment of conviction in the Federal Court has been properly introduced in evidence and made a part of the record of these proceedings. The Information is based on acts which also form the basis of the charges in the second specification. It is stated in 46 Code of Federal Regulations 137.15-5 that, in such cases, the Federal court judgment of conviction is res judicata and conclusive in proceedings under 46

United States Code 239. Hence, despite Appellant's claim that he is really innocent, the finding of "proved" for the second specification cannot be set aside.

In view of the above, Appellant's record of previous violations and the serious nature of the offense involved, the order of revocation is not excessive and it must stand regardless of the failure to prove the first specification and despite any resultant personal hardship affecting the Appellant and his family.

CONCLUSION AND ORDER

The order of the Examiner dated 5 May, 1949, should be, and it is, AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 14th day of June, 1949.

***** END OF DECISION NO. 347 *****

[Top](#)