April 10, 1973 CO 893.1

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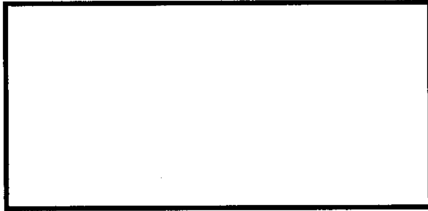

This refers to your letter to this Service concerning Mr. John Lennon.

The Special Inquiry Officer hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action looking toward Mr. Lennon's departure will be taken while the case is before the Board.

Sincerely,

E. A. Loughran
Associate Commissioner
Management

cc: D.D. New York - Your A17 597 321 John LENNON. For file.

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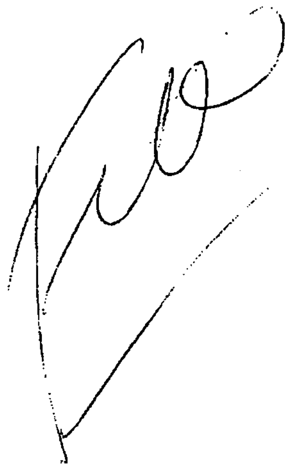
April 10, 1973 CO 893.1



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Sincerely,

E. A. Loughran
Associate Commissioner
Management

cc: D.D. New York - Your A17 597 321 John Lennon. For file.

SIGNED AND FORWARDED
APR 1973
Date
Detention and Deportation

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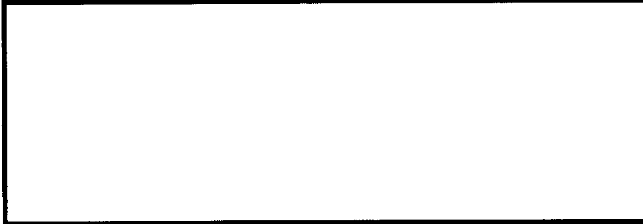

File

This refers to your letter (also signed by Linda Lang) concerning Mr. John Lennon.

The Special Inquiry Officer hearing Mr. Lennon's case found him deportable but granted him a period of sixty days within which to depart voluntarily from the United States. Mr. Lennon has appealed this decision to the Board of Immigration Appeals. The future action of this Service will be dependent upon the Board's decision. In the meantime no action looking toward Mr. Lennon's departure will be taken while the case is before the Board.

Sincerely,

E. A. Loughran
Associate Commissioner
Management

cc: D.D. New York - Your A17 597 321 John LENNON
For your information and file.

MAY 1973

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MAIL UNIT

LEON WILDES
ATTORNEY AT LAW
515 MADISON AVENUE
NEW YORK, NEW YORK 10022
(212) 753-3468

STEVEN L. WEINBERG
STEPHEN IRA TAMBER

CABLE ADDRESS
"LEONWILDES," N.Y.

October 26, 1973

Board of Immigration Appeals
521 12th Street, N.W.
Washington, D.C. 20530
Attention: Mr. Maurice Roberts, Chairman

Re: LENNON, John Winston Ono
A17 597 321

Dear Sir:

This will confirm our recent telephone conversations, commencing on Tuesday morning, October 22nd, at which time I requested a continuance for a period of approximately 60 days of the oral argument in the above case. The request was made in view of the extraordinary recent developments in the case, none of which were apparently known to the Board prior to my telephone call. On the same date, I forwarded, as agreed, copies of the relevant documents including the summonses and complaints which have been filed in two actions in the U.S. District Court, for the Southern District of New York. Today, I received your telephonic reply denying a continuance and I indicated that under the circumstances I was not prepared to attend and argue the case on the merits and would not be present at the oral argument, scheduled for Monday, October 29, 1973.

The Board has now granted me permission to appear on Wednesday, October 31, 1973 to state my position and make my request for whatever relief I desire.

I wish to confirm my position as stated, that although I desire oral argument on the merits, I am not in a position to do so at this time, and that my appearance is solely for the purpose of making a special request of the Board to defer its determination of the merits of the case until the record on appeal is properly completed, or for other appropriate relief consistent with my position that the thresh-hold issue of prejudgment must be disposed of prior to the Board's reaching a determination on the merits of the case.

The purpose of this letter is to eliminate any misapprehension as to the limited purpose of my appearance before the Board this coming Wednesday afternoon.

I thank you for your courtesy in allowing my appearance as stated above.

Very truly yours,

LEON WILDES

LW/ts
cc: Vincent A. Schiano, Chief Trial Attorney

cc: Appellate Trial Attorney, Washington, D.C.

CERTIFIED MAIL

124

(b)(6)

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway
New York, N.Y. 10007

Date: **March 23, 1973**

File: **A17 595 321**

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y.
and
Vincent A. Schiano, Esq.
Trial Attorney

NOTICE OF DECISION

MATTER OF **JOHN WINSTON ONO LENNON and YOKO ONO LENNON**

Dear Sirs:

☐ Attached is a copy of the written decision of the **Immigration Judge** ~~Special Inquiry Officer~~. This decision is final unless an appeal is taken to the Board of Immigration Appeals by returning to this office on or before **April 2, 1973** the enclosed copies of Form I-290A, Notice of Appeal, properly executed, together with a fee of twenty-five dollars ($25.00).

☐ Attached is an information copy of the oral decision of the Special Inquiry Officer made on ______

☐ Attached, as requested, is a transcript of the testimony of record, pages ______ to ______ which is being loaned to you on condition that no copy thereof will be made, that it will be retained in your possession and control, and that it will be surrendered upon final disposition of the case or upon demand by the Service.

☐ You are advised that on ______ the Special Inquiry Officer entered an order, which is final, granting the application for adjustment of status to that of a permanent resident under Section ______ of the Immigration and Nationality Act. A Form I-151, Alien Registration Receipt Card will be delivered in due course.

Very truly yours,

Loretta Barber

Special Inquiry Aide
Special Inquiry Section

3/23/73 9 45 am
Copy received
[signature]

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Form I-295
(Rev. 11-15-65)

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway
New York, N.Y. 10007

Date: **March 23, 1973**

File: **A17 595 321**

(b)(6)

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y.
and
Vincent A. Schiano, Esq.
Trial Attorney

NOTICE OF DECISION

MATTER OF **JOHN WINSTON ONO LENNON and YOKO ONO LENNON**

Dear Sirs:

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Very truly yours,

Loretta Barber
Special Inquiry Aide
Special Inquiry Section

3/23/73

IF:sk

2 Copies received · 9:45 A.M.

Leon Wildes

Form I-295
(Rev. 11-15-65)

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UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A17 595 321 - New York (1)
(b)(6) [redacted] " " (2)

MAR 23 1973

In the Matter of	)	
JOHN WINSTON ONO LENNON (1)	)	
and		IN DEPORTATION PROCEEDINGS
YOKO ONO LENNON (2)	)	
Respondents	)	

CHARGES: (Both) Section 241(a)(2) - I & N Act
nonimmigrant - remained longer than permitted

APPLICATION: (Both) Adjustment of Status
Section 245 - I & N Act

In Behalf of Respondents:

Leon Wildes, Esq.
515 Madison Avenue
New York, N. Y. 10022

In Behalf of Service:

Vincent Schiano, Esq.
Trial Attorney

DECISION OF THE IMMIGRATION JUDGE

DISCUSSION: The respondents are respectively a 32-year-old married male alien, a native and citizen of England and his 40-year-old alien wife, a native and citizen of Japan, who last entered the United States together at New York, N. Y. on August 13, 1971. At the time of their arrival they were admitted as nonimmigrant visitors for pleasure who were authorized to remain in the United States until February 29, 1972.

On March 1, 1972 the respondents were advised that their temporary stay in the United States as visitors had expired on February 29, 1972 and

that it was expected that they would effect their departure from the United States on or before March 15, 1972. They were advised that failure to do so would result in the institution of deportation proceedings.

On March 6, 1972 a further communication was addressed to the respondents advising them that the District Director for the New York District understood that they had no intention of effecting their departure by March 15, 1972 as previously authorized and that he was therefore revoking the privilege of voluntary departure as provided by existing regulations, Title 8, Code of Federal Regulations 242.5(c). That section provides for the revocation of a previous grant of voluntary departure prior to the commencement of deportation proceedings, where the District Director ascertains that the original application should not have been granted. The record before me does not reflect by what means the District Director acquired the understanding that the respondents had no intention of effecting their departure by March 15, 1972 but he might well have reached such a conclusion from the submission on March 3, 1972 of petitions to have the respondents recognized as entitled to a third preference under their respective quotas, a step which is normally taken as a preliminary to requesting permanent residence in the United States either through the obtaining of a visa outside the United States or through the medium of an application under Section 245 of the Immigration and Nationality Act. In any event the conclusion by the District Director that the respondents did not have the intention of leaving the United States on or before March 15, 1972

appeared to have been a correct one in the light of testimony by Mr. Lennon at page 24 of the record that he had no intention either way prior to March 15, 1972, that he and his wife were looking for her child and that they had not made up their mind either way about it but that they had no exact intention of departing. Furthermore, as of the date of their testimony on May 12, 1972 they were still unable to make up their minds, and stated that if an opportunity were given to them to depart perhaps within the next five or ten days they would not be willing to depart because they still did not know where the child was.

In view of this testimony, although the Immigration and Naturalization Service may have been somewhat precipitous in issuing the Order to Show Cause and beginning deportation proceedings on March 6, 1972 simultaneously with the revocation of the previously authorized permission to remain until March 15, 1972, I cannot see that the respondents were harmed since they were neither prevented from leaving pursuant to that original authorization, nor were they prevented from leaving voluntarily at any subsequent date. Technically speaking the Order to Show Cause would have been more accurate to state that they remained in the United States after March 6, 1972 without authority since that was the date on which their privilege of voluntary departure was revoked, but in the light of their continuing unwillingness to depart from the United States even as late as May 12, 1972, I find that the respondents are deportable under Section 241(a)(2) of the Immigration and Nationality Act as aliens who after admission as nonimmigrants remained in the United States for a longer time than permitted.

Counsel for the respondents devoted a considerable portion of his oral argument during the hearings in this matter, as well as in his extensive briefs to the issue that the Immigration and Naturalization Service did not permit the respondents to file an application for adjustment of status under Section 245 of the Immigration and Nationality Act prior to the commencement of deportation proceedings by service of an Order to Show Cause. Counsel's position is that this is contrary to the official position of the Immigration and Naturalization Service as stated in its published Operations Instructions.

An examination of 8 CFR 245.2 and 8 CFR 242.17 shows that the jurisdiction to consider applications for adjustment of status to that of a permanent resident of the United States under Section 245 of the Immigration and Nationality Act is divided between the District Director having jurisdiction over the aliens place of residence and the Immigration Judge, the former having exclusive jurisdiction prior to the issuance of an Order to Show Cause and the latter having exclusive jurisdiction either for an original application or after the District Director has denied an application, but only after the issuance of an Order to Show Cause. The nature of the Immigration Judge's jurisdiction is thus not only an original jurisdiction but also in the nature of an Appellate jurisdiction where a previous application has been denied by the District Director. The relevant Operations Instruction, Section 245.1 provides as follows: "an otherwise eligible alien who is unlawfully in the United States and who has not heretofore filed a Section 245 application shall normally be afforded an opportunity to file such an application prior to the institution of deportation proceedings". (underlining supplied)

Obviously, the District Director who believes that the prospective applicant for adjustment of status under Section 245 is not a "eligible alien" has no obligation to permit such alien to go through the empty gesture of submitting such an application to him when the inevitable result of such application will be a denial. Accordingly, the Operations Instructions gives the District Director the option of issuing the Order to Show Cause, commencing the deportation proceedings and relegating the alien to submitting his application for such relief to the Immigration Judge for adjudication. The only conceivable advantage to the alien in presenting his application to the District Director prior to the commencement of proceedings would be the one of delay since no appeal lies from the denial of such application by the District Director. On the contrary if such application is denied by the Immigration Judge, an appeal can be taken from such denial to the Board of Immigration Appeals and thereafter to the Courts.

A somewhat similar contention was made in the case of Lumarque v. USINS, C. A. 7, No. 71-1886, Decided June 12, 1972, as yet unreported, where the alien's petition for a third preference visa had been approved. The court noted that as a matter of grace, the United States often grants such a person an opportunity to depart voluntarily and leaves the time for such departure indefinite. Thus, as a matter of practice, beneficiaries of a third preference petition are often permitted to remain in the United States until a visa becomes available. The alien contended that the initial grant of such permission to remain coupled

with a subsequent revocation was discriminatory. The court stated however, that "a grace normally afforded does not become an enforceable right merely because it is described as a normal practice in an internal operating instruction."

The same principle is directly applicable to the instant proceedings. It was for this reason that I refused to issue a subpoena to Officials of the Immigration and Naturalization Service for the purpose of having them testify as to actions they might have taken in other cases involving approved third preferences, particularly since the request for the subpoenas did not request information on cases where the facts were substantially identical with the present one.

See also the decision by the Board of Immigration Appeals in Matter of Geronimo, Int. Dec. 2077 where the Board pointed out that the assertion that the District Director abused his discretion in refusing to permit the respondent to remain in the United States after approval of her visa petition presents no defense cognizable in deportation proceedings. It is within the District Director's prosecutive discretion whether to institute deportation proceedings against a deportable alien or temporarily to withhold such proceeding. Where such proceedings have been begun, it is not the province of the Immigration Judge or of the Board on Appeal to review the wisdom of the District Director's action starting the proceedings, but to determine whether the deportation charge is sustained by the requisite evidence.

It may well be that if these two cases had arisen separately, it would have been appropriate to permit the female respondent to file an application for adjustment of status under Section 245 prior to the commencement of deportation proceedings.

However, in view of the issues which the two cases have in common, and the stated objection by counsel for the respondents to have the two cases severed, it certainly was within the discretion of the District Director, who felt that the case of the male respondent should be heard by an Immigration Judge, to treat the case of the female respondent similarly.

One further circumstance requires attention, before proceeding to a consideration of the application for permanent residence, because it relates not only to that application but also to the deportability of the female respondent.

In the course of the hearing on May 12, 1972 (on page 18 of record) it was disclosed for the first time that the female respondent had been admitted to the United States for permanent residence at San Francisco, California on September 13, 1964. This fact was apparently as great a surprise to the Immigration authorities as it was to counsel for the respondent. The status of permanent residence in the United States once acquired is retained until lost by abandonment or deportation proceedings. If the female respondent had not lost her status as a permanent resident, her action in returning to the

United States as a visitor could have been remedied by granting her a waiver of the documents normally required for such return. An effort was made in the course of the hearing to explore the dates of all absences of this respondent from the United States since 1964, her purpose in leaving and all of the other factors which go to the question of relinquishment of her residence, but without noticeable success. Counsel for the respondent adopted a practical approach to this aspect of the case and agreed that he had no particular concern whether the female respondent were considered a person who had never relinquished her original lawful permanent residence in the United States or whether she was granted the privilege of permanent residence again under Section 245 of the Immigration and Nationality Act, as long as the final result was a grant of permanent residence in the United States.

As already indicated above, counsel for the respondent submitted applications in behalf of each of these respondents on or about March 3, 1972 to have them accorded a third preference under the quotas for their respective countries as persons who are of exceptional ability in the sciences or the arts and who by reason of that ability would substantially benefit the national economy, cultural interests or welfare of the United States. No final action was taken by the immigration authorities on such applications until May 2, 1972 when counsel for the respondent was notified of such approval when he appeared for argument before the Federal Court for the Southern District of New York in connection with his request for a temporary

restraining order against the immigration authorities from proceeding with the deportation hearings until a decision had been made on the application for a third preference. Copies of the notices containing such approval are contained in the record as Exhibits 8 and 9.

Although the reluctance of the respondents to the possible reaching of a different conclusion in their respective applications is understandable, their matrimonial unity can no more force a joint approval than it could compel a joint denial. The applications must be considered on their separate merits and counsel for the respondents so consented (page 20 of the record).

Directing myself to the application of Mrs. Lennon, it seems clear that the record contains no evidence indicating her ineligibility for adjustment. She has been examined by the United States Public Health Service and found to be medically admissible to the United States. A nonpreference quota number has been assigned for her use by the Visa Office of the Department of State, pursuant to the instructions contained in the current quota bulletins covering situations where the priority date under the third preference is such that visa numbers are not presently available under that preference.

Although this respondent does not appear to have regular employment in the United States, the problem of her support does not appear to be a serious one in view of the fact that the testimony of Mr. Lennon's business manager is to the effect that he is the owner of one quarter of a business enterprise which grosses in excess of fifty million dollars per year in the United States.

I find therefore that Mrs. Lennon has met the statutory requirements for adjustment of status in the United States and such relief will be granted as a matter of administrative discretion.

Turning now to a consideration of Mr. Lennon's application, we are confronted by Exhibit 10 which is a record of conviction on November 28, 1968 in the Marylebone Magistrates Court in London. The nature of the offense for which the respondent was found guilty is described as follows:

> "Having in his possession a dangerous drug to wit: Cannabis Resin without being duly authorized, at 34 Montague Square W. 1. on 18-10-68 Con to Regs. 3 Dangerous Drugs (2) Regs; Dangerous Drugs Act 1965."

The respondent has admitted that this record of conviction relates to him and it has also been admitted that the respondent pleaded guilty to this offense and was fined 150 pounds with 20 guineas as costs. The record of conviction also shows that he was charged with wilfully obstructing one Norman Pilcher, a constable of the Metropolitan Police Force who was exercising his powers under the Dangerous Drugs Act, but was found not guilty of this charge.

At the commencement to these proceedings in March 1972 counsel for the respondents requested an adjournment because action was contemplated in England directed to setting aside this conviction of the respondent on the ground that Constable Pilcher had acted improperly in connection with the respondent's arrest. Apparently some criminal proceedings are pending in England against Constable Pilcher in connection with his

activities relating to another defendant. See communication of December 1, 1972 and March 14, 1973 from respondents' attorney. However, almost a year has passed since these proceedings were commenced before me and there apparently has been no further progress towards setting aside the conviction described above, no any indication that the pending criminal proceedings are related to the conviction of this respondent, or will result in any modification of that conviction.

An alien who applies for adjustment of his status to that of a permanent resident of the United States under Section 245 of the Immigration and Nationality Act is required to establish that he is eligible to receive an immigrant visa and is admissible to the United States for residence. Section 212(a) of the Immigration and Nationality Act provides in part, as follows:

> "Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission to the United States:
> (23) - any alien who has been convicted of a violation of, or a conspiracy to violate, any law or regulation relating to the illicit possession of or traffic in narcotic drugs or marijuana, ...

It is the contention of the Immigration and Naturalization Service that the conviction referred to above on November 28, 1968 for having in his possession Cannabis Resin without being duly authorized is a conviction of a violation of law or regulation relating to the illicit possession of marijuana which renders this respondent ineligible to

receive a visa and excludable from admission to the United States and accordingly ineligible for adjustment of his status to that of a permanent resident of the United States.

It may be noted in passing that this claim by the immigration authorities was not unknown to the respondent who had sought admission to the United States on several prior occasions after his conviction and before his appearance before me and in order to be admitted to the United States for a temporary visit asked for and received a waiver from the immigration authorities under Section 212(d)(3)(A) of the Immigration and Nationality Act. Exhibit 14 is the original of such a waiver dated August 11, 1971 which was granted the respondent in connection with his last entry into the United States. It also shows clearly the limited terms under which the respondent was admitted to the United States pursuant to this waiver, namely to edit film, to consult with business associates, and to attend a custody hearing in the Virgin Islands on September 16, 1971. The waiver stated further that the period of temporary stay was to be six weeks on condition that the activities and itinerary of the applicant should be limited to those set forth in the waiver and that no extension of stay or change in activities or deviation of itinerary should be authorized without prior approval of the District Director in Washington, D. C.

It should be noted further that although such a waiver is possible under Section 212(d)(3) of the Act in connection with a temporary admission as a nonimmigrant, no such provision exists for a waiver in the case of a person who is seeking admission to the United States as a permanent resident.

Although Congress has provided for a waiver of excludability for persons seeking admission to the United States for permanent residence who may be excludable under Section 212(a)(9), (10), or (12) of the Act, where their exclusion would result in hardship to a citizen or lawful resident spouse or child, it has not seen fit to include excludability under Section 212(a)(23) of the Act among those grounds eligible for such a waiver.

It may be noted further that this difference of attitude towards, on the one hand those convicted of ordinary crimes and on the other those convicted of crimes relating to drugs and narcotics is also reflected in Section 241(b) of the Act. That provision of law provides that those persons who might be deportable by reason of their conviction for crimes may be excused from such consequences if they have been granted a full and unconditional pardon for such crimes or if the court sentencing such alien for such crimes makes at the time of first imposing sentence a recommendation to the Attorney General that such alien not be deported. The Section states specifically however, that these two provisions relieving the alien from deportability despite his conviction of a crime shall not apply in the case of any alien who is charged with being deportable from the United States under Section 241(a)(11), the deportation section which corresponds to Section 212(a)(23) governing exclusion from the United States, for narcotics offenses.

Before proceeding to the principle question at issue, namely whether the male respondent's conviction in England brings him within the ambit

of Section 212(a)(23) of the Act, one preliminary contention must be disposed of. Counsel for the respondent (at page 35 of his brief) states that it has never been very clear that a foreign conviction was intended by Congress to be included under Section 212(a)(23) of the Act. This contention has no merit whatsoever. Section 212 of the Act sets forth the grounds on which aliens shall be excluded from admission into the United States. Obviously it contemplates aliens who are coming from some country outside of the United States. The convictions that such persons would have, would, in the vast majority of cases, have occurred outside the United States. It is only in the unusual situation where an alien who has previously been in the United States has been convicted in the United States and departed and thereafter applied for a visa that the ground of excludability would be based on a conviction in the United States. Moreover, the Congressional history relating to Section 212(a)(23) shows clearly that it was the intention of Congress in enacting the original 212(a)(23) and 241(a)(11) to encompass foreign convictions relating to narcotics within the scope of those sections.

In Senate report #1515, 81st Congress, Second Session, (1950) at page 410 the following recommendation of the sub committee on the judiciary is to be found:

> "the sub committee recommends that the immigration laws contain specific provision for the deportation of aliens who have been convicted of any law pertaining to narcotics. Such aliens should

be deportable whether the conviction occurred prior to or after entry into the United States. The deportable class will include those convicted under any law in this country pertaining to narcotics <u>or under any such law of a foreign country.</u>"

The same page shows clearly that it was the intention of Congress to make deportable those who had been convicted merely of illegal possession of a narcotic drug, though it erroneously concluded that under the decided cases mere possession would result in deportability under the statute as originally drawn. The Congressional expectation was erroneous and necessitated the subsequent amendment of the statute to be described below.

The respondents' brief likewise states (page 55) that a thorough review of all the reported court decisions fails to disclose even one where a prior foreign conviction was used as a ground for exclusion under Section 212(a)(23). A more diligent search would have disclosed the decision in <u>Matter of Gardos</u>, 10 I&N Dec. 261, affirmed in <u>Gardos</u> v. <u>Immigration and Naturalization Service</u>, 324 F. 2d 179 (C. A 2, 1963).

In that case, which bears a close resemblance to the instant proceeding, the alien there concerned had been convicted in 1956 in Canada of the crime of unlawfully possessing marijuana in violation of Section 4, paragraph 1 of the Opium and Narcotic Drug Act and had been sentenced to imprisonment for six months. He did not enter the United States till August 4, 1959.

The Board of Immigration Appeals set forth the legislative history of the amendment to Section 212(a)(23) and 241(a)(11) which took effect

on July 14, 1960 and reached the conclusion that the purpose of amending Section 212(a)(23) and Section 241(a)(11) was to make it certain that a conviction of an alien for violation of any law relating to illicit possession of marijuana should render him excludable or deportable. It may be noted that since this amendment took place on July 14, 1960, the alien in Matter of Gardos was not even excludable from the United States at the time of his entry in 1959. Nevertheless, the Board of Immigration Appeals and the Court of Appeals for the Second Circuit found him deportable in 1963 under the statute as amended in 1960.

The additional legislative history relating to the amendment of Section 212(a)(23) and 241(a)(11) of the Act in 1956 and again in 1960 to specifically include "possession" in addition to offenses relating to the "traffic" in narcotic drugs is set forth by the Board of Immigration Appeals in Matter of M/V -, 7 I N Dec. 571, as well as in the briefs of the attorney for the respondents and the Trial Attorney for the government.

The conclusion is inescapable from that legislative history that Congress intended to and succeeded in making it a ground for exclusion and deportation that the alien was convicted of "possession" of marijuana or other enumerated drugs and that such "possession" did not have to be possession for purposes of sale or any purpose other than mere use to make the alien excludable or deportable. This is clear from the fact that the statute now reads specifically "illicit possession of or traffic in narcotic drugs or marijuana". The specific contrast by the statute of possession on the one hand and traffic on the other makes it clear that the possession which is penalized does not require any intent to engage in traffic or other activity.

The brief for the respondents contends at page 40 and thereafter that only those convictions for possession of marijuana which occur under circumstances which would enable the accused to traffic in the substance are included in Section 212(a)(23) of the Act. In reaching this conclusion counsel relies heavily on the decision of the Court in Varga v. Rosenberg, 237 F. Supp. 282 (S. D. Cal. 1964). In that case the government was seeking to deport an alien who had been convicted under a California statute of use or being under the influence of narcotics. As the Court pointed out, the narcotics in question were in the system of the alien.

The court stated as follows:

> "While Congress undoubtedly intended to close "every possible loophole where a person had been convicted of a crime relating to the possession of narcotics", the legislative history indicates that the Committee's aim was to eliminate traffic in narcotics as distinguished from use. . .
>
> Congress undoubtedly has aimed its attack upon possession which would give the possessor "such dominion and control as would have given him the power of disposal". . .
>
> Petitioner in the case at bar was convicted for use or being under the influence of narcotics. In other words, the narcotics were in his system. At this point the defendant was hardly in a position to traffic in the drug and can hardly be said to have possession which would give him such dominion and control as to include the power of disposition.
>
> Prior to amendment of 8 USCA 1251(a)(11), the statute referred only to possession "for the purpose of the manufacture, production, compounding, transportation, giving away, importation or exportation" of the narcotic.

> It is consonant with the aforementioned purpose of Congress to include a provision relating to possession alone to obviate the burden of proving possession for a specific purpose. Any disposable narcotic in the possession of anyone is potentially in the narcotic traffic. The object was to accomplish by the best means possible the elimination of the illicit traffic" (emphasis supplied).

In substance therefore, what the court was saying was that Congress was trying to reach the traffic in drugs, that it facilitated such object by making mere possession a deportable offense, but that possession implies such a dominion and control as would give the possessor of the power of disposal. Consequently it was reluctant to say that an alien who merely had the narcotics within his bloodstream where it might have been injected by some other person, had such dominion and control as would give him power of disposal. It is perfectly clear from the decision however that a mere possession without intent to traffic in drugs would be sufficient to bring the alien within the statute since he would have such dominion and control as would give him the power of disposal.

What then did Mr. Lennon admit by his plea of guilty? The provisions of the Dangerous Drug Act of 1965 and the regulations which were permulgated under the 1964 Act and continued in effect under the 1965 Act are included in the record herein and are set forth also in the brief of the respondent at pages 5 and 6. Section 3 of the regulations provides that a person shall not be in possession of a drug which is prohibited by the Act unless he is authorized or licensed to have such possession.

Section 20 of the regulations provides as follows:

> "For the purposes of these regulations a person shall be deemed to be in possession of a drug if it is in his actual custody or is held by some other person subject to his control or for him and on his behalf".

By pleading guilty to the charge set forth in Exhibit 10, the respondent conceded that he was "in possession" of a stated amount of cannabis resin, that such possession was not legally authorized, and what is more important that the drug was either in his actual custody or was held by some other person subject to his control or for him and on his behalf.

These are precisely the elements of dominion and control which the court in Varga (supra) emphasized.

I find therefore that even the court in Varga would find that a person who was convicted of possession under the Dangerous Drugs Act of 1965 would fall within the scope of Section 241(a)(11) of the Act by reason of the necessary finding of dominion and control.

As a kind of corollary to this argument the counsel for the respondent advances another thesis which is to the effect that under the cases decided in England relating to the criminality of the possession of narcotics, it was the established law that the guilt of the defendant could be established without reference to the proof of any particular mental state or so-called "Mens Rea".

I have carefully examined all of the English cases referred to by counsel for the respondent in his brief from pages 26 to 39 and the cited Law Review Articles as well. In addition, I have referred to the somewhat more recent article in The New Law Journal, September 28, 1972, page 844, entitled "Dangerous Drugs - Possession, by O. A. S. Owen, and the more recent cases of Regina v. Irving, (1970) Crim. L. R. 642, Regina v. Marriott (1971) Crim. L. R. 172, and Regina v. Buswell, (1972) Crim. L. R. 50.

The one element which all of the cases and authorities agree upon is the statement of Lord Parker C. J. in Lockyer v. Gibb (1967) 2 Q. B. 243 as follows:

> "in my judgement it is quite clear that a person cannot be in possession of some article which he or she does not realize is, for example, in her handbag, in her room, or in some other place over which she has control".

In other words, completely innocent and unknowing custody or potential control over a drug is not possession within the meaning of the act and regulations.

The court in Regina v. Marriott characterized the state of the law as of 1970 as follows:

> "not all members of the House of Lords expressed themselves in precisely the same way, but, for the purposes of this present appeal, the result of Reg v. Warner may, broadly speaking and we hope with accuracy, be stated in this way: If a man is in possession, for example, of a box and he knows there are articles of some sort