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FORUM: BIRTHRIGHT CITIZENSHIP

Documenting Birthright Citizenship under Chinese Exclusion

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Following the *Wong Kim Ark* decision in 1898, ethnic Chinese, other Asians, and almost all individuals born on U.S. soil secured the right to *jus soli* birthright citizenship. They could not, however, secure *recognition* of their citizenship without documentation, the key that linked birth to birthright. At a time when birth registration was not common, ethnic Chinese were able to establish U.S. citizenship in two main ways: through an order by a U.S. District Court or certification by U.S. immigration authorities.[1] However, this documentation did not settle questions of the holder's identity, immigration or citizenship status. Immigration inspectors generally doubted testimony given in these cases and believed that it was used to obtain fraudulent documentation of lawful immigration or citizenship status.

Legally, the U.S. Supreme Court decisively ruled in *Wong Kim Ark* that individuals born in the United States were U.S. citizens. In practice, U.S. immigration officials expressed concerns that the decision would expand Chinese American citizenship, encouraging fraudulent claims that would undermine Chinese exclusion. As racial restrictions on Chinese migration were introduced in the late nineteenth century, U.S. officials subjected all ethnic Chinese to the same investigation process whether they claimed U.S. citizenship or noncitizen immigration status. Chinese Americans were described as "alleged" citizens even after securing court orders or immigration documents certifying their U.S. citizenship. They were interrogated, their families and colleagues were extensively interviewed, and their documents were closely inspected. Such investigations and documents were not required of European immigrants or U.S. citizens of European descent.[2] These investigations sometimes legally recognized U.S. citizenship and sometimes turned legally recognized citizens into alien noncitizens subject to deportation, undermining the stability of citizenship status. In addition to extensive investigations, U.S. authorities introduced new documents that blurred the boundaries between citizens and

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[1] *United States v. Wong Kim Ark,* 169 U.S. 649 (1898); *Annual Report of the Commissioner-General of Immigration* (Washington, GPO: 1904), 145–8 [hereafter *Annual Report*]; *Annual Report* (1905), 86; *Annual Report* (1906), 80, 90; *Annual Report* (1907), 96, 106; Brianna Nofils, "Policing, Profits, and the Rise of Immigration Detention in New York's 'Chinese Jails,'" *Law and History Review* 39, no. 4 (Nov. 2021): 649–677.

[2] Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882-1943* (Chapel Hill, 2003), 106–9; Anna Pegler-Gordon, *In Sight of America: Photography and the Development of U.S. Immigration Policy* (Berkeley, 2009), 70–80, 104–7.

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noncitizens. As Chinese exclusion consolidated in the early twentieth century, certificates proving rights to reside in the United States were required of both ethnic Chinese immigrants and U.S. citizens, obscuring people's different statuses under the law.

When Wong Kim Ark arrived in San Francisco in August 1895, he presented his documents to Customs Collector John Wise and applied for re-entry to the United States as a U.S. citizen. As part of a large case file containing evidence of his previous travels between the United States and China, Wong Kim Ark presented an affidavit testifying to his birth in San Francisco, which had been typed up prior to his departure and signed by three white witnesses. The affidavit contained a photograph of Wong Kim Ark in the center and stated that it was "created for the better identification of the said Wong Kim Ark, and in order to facilitate his landing upon his return."[3] According to Collector Wise, Wong Kim Ark's papers "were all straight."[4] In contrast to typical cases, Wise did not question the link between Wong Kim Ark's birth in the United States and his documentation testifying to that birth. Instead, U.S. officials challenged the link between his birth in the United States and his citizenship, claiming that the Fourteenth Amendment's guarantee of birthright citizenship to all persons born in the United States did not apply to those born to Chinese parents. In 1898, the U.S. Supreme Court rejected the U.S. government's argument and Wong Kim Ark prevailed against efforts to strip him of his birthright citizenship.

Despite Wong Kim Ark's success, U.S. citizen arrivals continued to be subject to the same investigations as noncitizens. The establishment of birthright citizenship did not alleviate but expanded officials' concerns about Chinese American citizenship, the transmission of citizenship to children, and rights that accrued to citizens. In 1904, the Commissioner General of Immigration Frank Sargent expressed anxiety about the increasing numbers of arrivals who claimed birthright U.S. citizenship and the likelihood that most claims were fraudulent. As Sargent stated, "the extent of the evil" was shown by the admission of almost one thousand "alleged natives" in 1904, almost all of whom were male and in their twenties. Given the small number of Chinese women in the United States twenty years prior, Sargent emphasized that these numbers were not credible. Sargent also emphasized that Chinese youth claiming U.S. citizenship "under the decision of the Supreme Court in the Wong Kim Ark case" was "by far the most serious feature of the administration of these laws."[5]

Between 1905 and 1940, the number of Chinese annually admitted to the United States varied from less than 3,000 to almost 10,000. However, as Sargent feared, the number of admitted U.S. citizens increased. In 1905, roughly one-fifth of all ethnic Chinese entrants were U.S. citizens; by 1940, this had increased to three-quarters of all arrivals. Initially, most were recognized as *jus soli* birthright citizens due to birth within the United States; however, after 1920, more claimed to be *jus sanguinis* birthright citizens as children of U.S. citizens.[6] Most of these arrivals, perhaps as many as ninety percent, were "paper sons," who purchased the fabricated identities of U.S. citizen children to allow them to immigrate to the United States despite Chinese exclusion laws. U.S. immigration officials had good reason to believe that many ethnic Chinese arrivals were not entitled to entry, but these reasons were intertwined with racist beliefs that all Chinese were unassimilable aliens, whether they were U.S. citizens or immigrants. In attempting to control the

[3]Wong Kim Ark Departure Statement, Nov. 5, 1894, In the Matter of Wong Kim Ark for a Writ of Habeas Corpus, Admiralty Case Files, 1851–1966, Records of District Courts of the United States, 1685—2009, Record Group 21, National Archives and Records Administration—Pacific Region (San Francisco).

[4]Lucy E. Salyer, "Wong Kim Ark: The Contest over Birthright Citizenship," in *Immigration Stories*, eds. David A. Martin and Peter H. Schuck (New York, 2005), 66.

[5]*Annual Report* (1904), 145–7.

[6]Lee, *At America's Gates*, 101–2; Madeline Hsu, *Dreaming of Gold, Dreaming of Home: Transnationalism and Migration between the United States and South China, 1882—1943* (Stanford, CA, 2000), 79–80.

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Figure 1. Wong Kim Ark duplicate certificate of identity. Wong Kim Ark Case File, Arrival Investigation Case Files, Records of the U.S. Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration—Pacific Region (San Francisco).

recognition and entry of ethnic Chinese as U.S. citizens, immigration officials increasingly turned to identity documentation.[7]

As they implemented exclusion between 1882 and 1943, U.S. immigration authorities required all people of Chinese descent within the United States to possess documentation. After the passage of the Scott Act in 1888, as Heather Ruth Lee shows, the rights of Chinese who were not required to carry certificates (*wu ce* in Chinese) were increasingly challenged.[8] In 1892, the Geary Act required all Chinese laborers to register their presence and obtain documentation of their lawful status. As many critics noted, these requirements meant that any ethnic Chinese person without a certificate, including *wu ce*, would be suspected of unlawful presence. Both the Scott Act and the Geary Act were met with massive resistance within Chinese communities, although they were upheld by the U.S. Supreme Court in decisions that continue to shape immigration and deportation law today.[9]

As the use of registration and identity certificates was expanded, the documentary boundaries between citizens and noncitizens began to dissolve. By 1909, the introduction of a single certificate of Chinese identity for both U.S. citizens and noncitizens visually elided the distinction between their different statuses. Although laborers were issued differently formatted certificates of registration, U.S. citizens of Chinese descent were issued certificates of identity that listed their status as laborers. Wong Kim Ark, for example, was identified both as "Native #13893/9-9" and as a "cook" (Figure 1). Noncitizen merchants, students, and wives were issued the same certificates as U.S. citizens. Those without documentation were made vulnerable to arrest and deportation, regardless of their legal status. As part of efforts to deny U.S. citizenship to racialized individuals who had secured their citizenship under *the Wong Kim Ark* decision, certificates of registration or identity were required to be held by all ethnic Chinese and only ethnic Chinese.[10]

Although these documents were supported by testimony, this testimony was never fully accepted, always open to investigation. Mar Sear Lock's documented birthright citizenship

[7]Anna Pegler-Gordon, *In Sight of America,* 27–41; Beth Lew-Williams, "Paper Lives of Chinese Migrants and the History of the Undocumented," *Modern American History* 4, no. 2 (July 2021): 111.

[8]Heather Ruth Lee, "The Right to Return: Chinese Merchants, the Scott Act, and Legal Knowledge in an Era of Exclusion," *Modern American History* doi:10.1017/mah.2025.10040.

[9]*Chae Chan Ping v. United States* 130 U.S. 581 (1889); *Fong Yue Ting v. United States* 149 U.S. 698 (1893); Pegler-Gordon, *In Sight of America*, 31–42; Kelly Lytle Hernandez, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771—1965* (Chapel Hill, 2017), 69–79.

[10]These certificates were introduced under the authority of the Act of Apr. 29, 1902 (32 Stat. 176) which regulated the presence within the United States not only of Chinese but also "persons of Chinese descent."

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began when he was discharged from the U.S. District Court in Northern California with a certified copy of the court order acknowledging his U.S. citizenship. It ended when, after visiting China and returning to San Francisco in 1895—just a few months before Wong Kim Ark—Lock's documents were rejected. Over four days in March 1895, Customs Inspector John Lynch traveled to San Francisco's Chinatown and interviewed Chow Lung Yee, Wong Wai, Joseph Kelly, Joseph Musto, Lawrence Sellinger, Conrad Troell (twice), Mr. Falk, Mr. Getz, Mr. Meyer, Mr. Pomeroy and Mr. Van Dergin. All these men worked on or near 727 Clay Street, where Mar Sear Lock's citizenship document stated that he had been born in 1866. Inspector Lynch placed summaries of these interviews into Lock's case file. The summaries do not provide direct evidence challenging Lock's birth twenty-nine years earlier, but they deny the presence of Chinese on Clay Street after his birth, including such phrases as: "there were no Chinese at 727 Clay Street twenty-five years ago," "there were no Chinese at said place twenty years ago," "there were no Chinese in No. 727 Clay Street twenty years ago." This general testimony suggests the sameness of all ethnic Chinese and implied that Lock was not born at 727 Clay Street. Lynch interviewed, but did not include, the testimony of Lawrence Sellinger in Lock's case file. Sellinger, a special policeman who had the longest familiarity with the building (having said "I have known 727 Clay Street for 28 years") clearly stated that he did "not know" whether Chinese people lived there when Lock was born. Excluding this information from his investigation, Inspector Lynch reported that he was "convinced that no Chinese lived at above location twenty-nine years ago, but am unable to find the white persons who lived there." In addition, Lynch compared the photo on file in the District Court with the applicant before him, stating he did "not think" they were the same person. Based on Lynch's claims, Lock's U.S. citizenship was denied and he was forced to return to China.[11]

The difference between the evidentiary requirements necessary to prove U.S. citizenship and the evidentiary requirements necessary to disprove U.S. citizenship is striking. Mar Sear Lock's citizenship documentation was supported by court order. He secured a photograph of himself from a San Francisco photographic studio and placed this image in the center of his citizenship document, with the typed testimony overlapping the photograph to secure both his image and identity in place (Figure 2). His documents, including his photograph, were similar to those provided by Wong Kim Ark and others. However, immigration officials overwrote this document with their own investigations and their unsubstantiated hunches. They suspected both that Lock had not been born in San Francisco and that the applicant before them was not Lock, effectively overruling the court order recognizing U.S. citizenship.[12] Under immigration law, Mar Sear Lock had the burden of proving his citizenship and, despite his documentation, he was not successful.

Although birth registration was rare and Chinese immigrant parents had good reason to document children's births after the *Wong Kim Ark* decision, U.S. officials were suspicious of such birth certificates. As states increasingly expanded birth registration, such registration became vital to citizenship documentation. At the time of Wong Kim Ark's legal fight, very few states had official birth registration programs, but by 1933 at least ninety percent of live births were registered.[13] California implemented statewide registration of births in 1905.[14] Perhaps in response to these developments or to the *Wong Kim Ark* decision, Chinese sought certificates of their children's births. In 1901, Ng Yee Sing and Lum See secured an elaborate certificate to

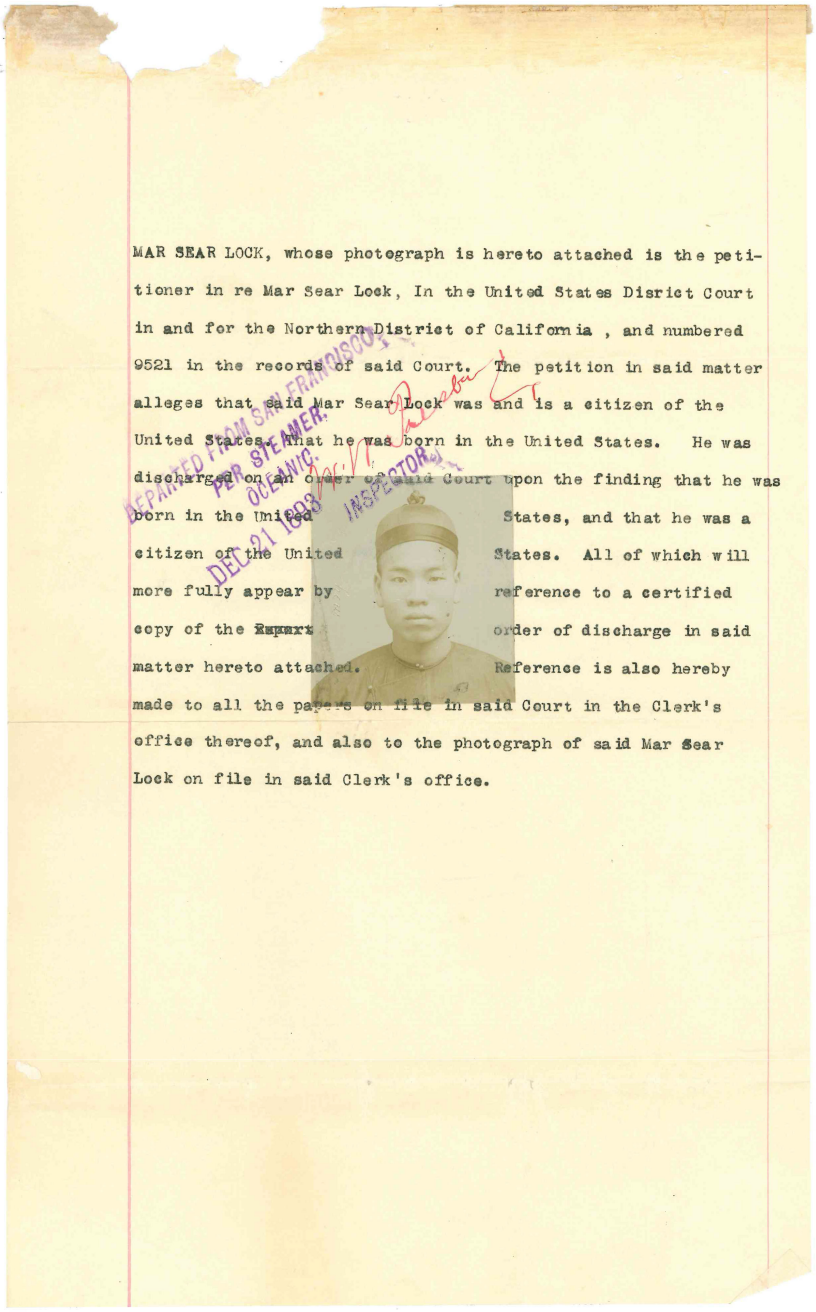
[11]Mar Sear Lock Case File 9465-30, Arrival Investigation Case Files, Records of the U.S. Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration—Pacific Region (San Francisco) [hereafter AICF].

[12]Mar Sear Lock Case File 9465-30, AICF.

[13]Susan J. Pearson, *The Birth Certificate: An American History* (Chapel Hill, 2021), 5.

[14]California Department of Public Health, Vital Records, *Birth Registration Handbook* (Sacramento, 2016), https://www.avss.ucsb.edu/MANUALS/Handbook.pdf, iii-iv (accessed Jan. 19, 2025).

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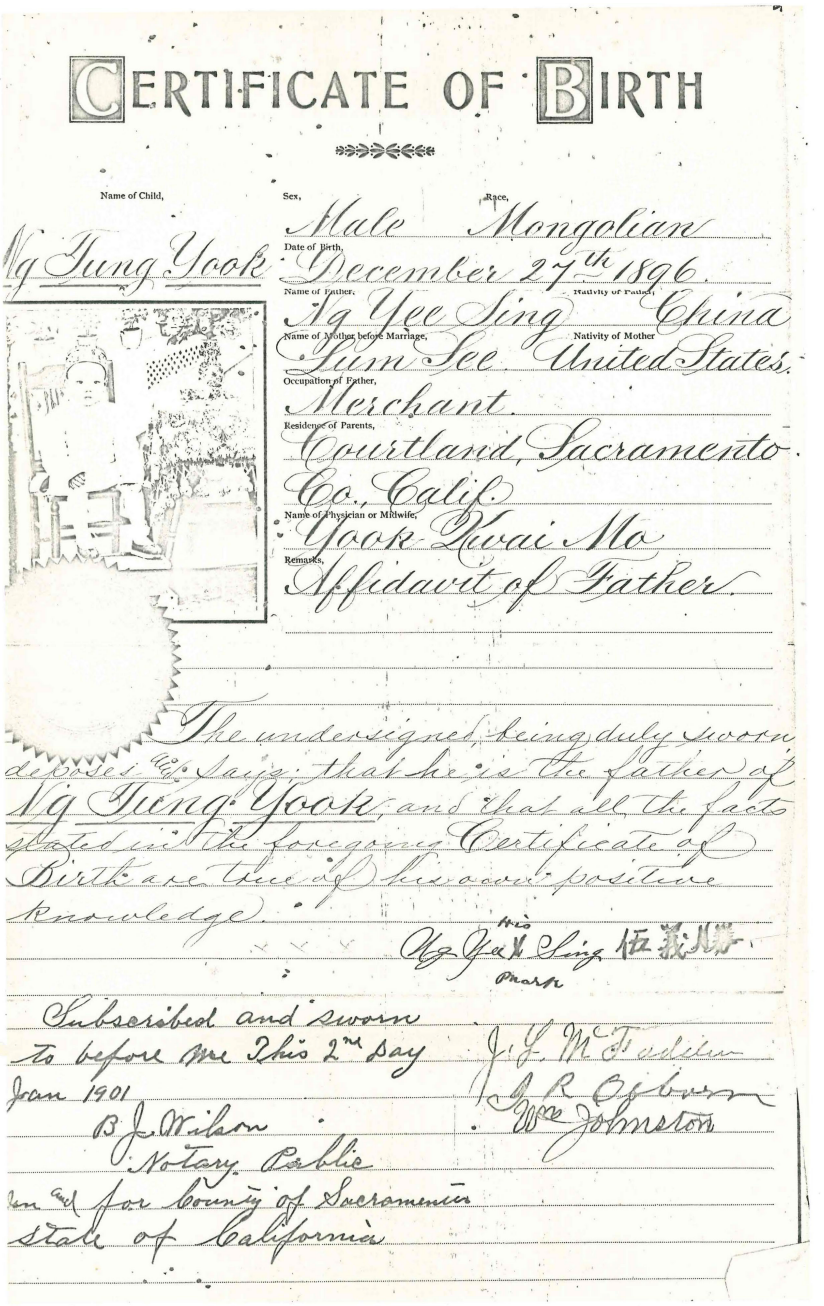


MAR SEAR LOCK, whose photograph is hereto attached is the petitioner in re Mar Sear Lock, In the United States District Court in and for the Northern District of California , and numbered 9521 in the records of said Court. The petition in said matter alleges that said Mar Sear Lock was and is a citizen of the United States. That he was born in the United States. He was discharged on an order of said Court upon the finding that he was born in the United States, and that he was a citizen of the United States. All of which will more fully appear by reference to a certified copy of the ~~Papers~~ order of discharge in said matter hereto attached. Reference is also hereby made to all the papers on file in said Court in the Clerk's office thereof, and also to the photograph of said Mar Sear Lock on file in said Clerk's office.

Figure 2. Mar Sear Lock Citizenship Document. Mar Sear Lock Case File 9465-30, Arrival Investigation Case Files, Records of the U.S. Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration—Pacific Region (San Francisco).

record their son Ng Tung Yook's birth (Figure 3). The document recorded key details in large, looping script: Name of Child, Sex, Race, Date of Birth, Name and Nativity of each parent, Occupation of Father, Residence of Parents, and the name of Physician or Midwife. Surprisingly, the certificate did not have space for the most salient information required for U.S. citizenship: Place of Birth. Under remarks, Ng Yee Sing signed a sworn affidavit that the facts of the certificate were correct. This statement was confirmed by the Sacramento County Notary Public

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CERTIFICATE OF BIRTH

Name of Child, Ng Tung Yook
Sex, Male
Race, Mongolian
Date of Birth, December 27th 1896.
Name of Father, Ng Yee Sing
Nativity of Father, China
Name of Mother before Marriage, Sum See
Nativity of Mother, United States.
Occupation of Father, Merchant.
Residence of Parents, Courtland, Sacramento Co., Calif.
Name of Physician or Midwife, Yook Kwai Mo
Remarks, Affidavit of Father.

The undersigned, being duly sworn deposes & says, that he is the father of Ng Tung Yook, and that all the facts stated in the foregoing Certificate of Birth are true of his own positive knowledge.

his
Ng Yee X Sing
mark

Subscribed and sworn to before me this 2nd day Jan 1901
B. J. Wilson
Notary Public
in and for County of Sacramento
State of California

J. L. McFadden
J. R. Osborn
Wm Johnston

Figure 3. Ng Tung Yook Certificate of Birth. Ng Tung You Case File 18431/5-11, Arrival Investigation Case Files, Records of the U.S. Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration—Pacific Region (San Francisco).

with three additional European names listed. Although the birth certificate was not subject to specific legal requirements, Ng Yee Sing followed the approach of immigration regulations that required non-Chinese witnesses to confirm claims of U.S. citizenship status. In practice, this meant white witnesses.[15] The information provided showed that Ng Tung Yook was born in

[15]Heather Ruth Lee, "The Right to Return"; Lee, *At America's Gates*, 91–92, 137.

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1896, five years before the certificate was issued. In this case, Ng Tung Yook's U.S. citizenship was accepted and never taken away.[16]

In a different case, officials viewed the extensive documents provided to substantiate U.S. citizen claims as a house of cards built on an unreliable birth certificate. In 1907, Lee He applied for entry to the United States at Portal, North Dakota. Lee He had been born in China but was applying for admission as the son of U.S. citizen Lee Yat. In support of Lee He's application, Lee Yat provided extensive documentation of his own U.S. citizenship. This documentation included an affidavit testifying to his birth in San Francisco in 1861, his birth certificate, a duplicate (Geary Act) registration certificate, original patents related to his real estate holdings where he lived in Louisiana, information about payment of his poll tax qualifying him as a voter in New Orleans, and his "PASS-PORT No. 14403, signed by JOHN SHERMAN, SECRETARY OF STATES, OF THE UNITED STATES, of date of APRIL 25th 1898." Notably, Lee Yat's passport was issued less than one month after the *Wong Kim Ark* decision. As Lee Yat lived in New Orleans, he forwarded this information from the U.S. Commissioner for the Eastern District of Louisiana to North Dakota Immigration Inspector Ansel Paine who was reviewing Lee He's case to determine whether he should be allowed entry to the United States as the son of a U.S. citizen. Paine forwarded the documents to his colleague H.C. Kennah in San Francisco. Kennah emphatically responded that Lee Yat's certificate "is not a regular birth certificate, which is filed by a physician or other person at the time of a child's birth, but is one gotten up by W.M. Dye, a Chinese broker." It was filed in 1895, recording an 1860 birth. "Numerous certificates of this kind were filed in the office of the County Recorder," Kennah noted, until inspectors informed the Records Office that the documents did not follow state law "as they were not recorded within the number of days following the birth required by law." No matter that state law did not require registration until 1905. Kennah continued that the "birth certificate should have no weight in deciding a Chinese case one way or the other, as the practice was to supply these certificates to any Chinese who would pay the expenses of making out the same."[17]

Although U.S. officials were generally skeptical about the documents provided by U.S. citizens of Chinese descent and conducted investigations to attempt to prove these documents were invalid, their investigations were often inconclusive. Kennah adamantly rejected Lee Yat's birth certificate. He explained that because San Francisco City Hall birth records were destroyed by the 1906 fire, he could not check the original records; he was unable to locate Lee Yam, who signed the birth certificate, "as no address is given, nor is there information there-in as to whether he is living or dead"; he made numerous inquiries among members of the Lee family with an interpreter "but could find no one who knew Lee Yam"; and noted that W.M. Dye "is now very ill, and will probably never recover . . . so it is impossible to secure any information from him." It is not clear from the case file what role Lee Yat's extensive documentation and Kennah's rejection of this documentation played in this case. Lee Yat's claimed son, Lee He, was initially denied entry through the North Dakota port. However, he appealed, and his father's and his own U.S. citizenship was recognized, and he was admitted.[18]

As these developments in immigration and citizenship documentation show, racialized identity rather than legal status shaped the ways in which U.S. identity documents were used to enforce exclusion law. U.S. citizenship was a valuable status, but it was never fully secure. U.S. officials required testimonies and documentation in support of ethnic Chinese applicants' claims to U.S. citizenship; at the same time, they doubted and investigated these materials. And their investigations were often unfair. The boundaries between citizenship and noncitizenship were not durable or fixed, as applicants previously recognized as U.S. citizens and their children

[16]Ng Tung Yook Case File 18431/5-11, AICF. See also: Fung Tin Yow Case File 18431/5—12, AICF.

[17]Lee He Case File 14610-189, Entry 132, Records of the U.S. Immigration and Naturalization Service, Record Group 85, National Archives and Records Administration, Washington, D.C. [hereafter Lee He Case File].

[18]Lee He Case File.

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were denied entry as U.S. citizens. The lack of clear boundaries between different legal statuses was manifested in the expansion of documentation to cover all ethnic Chinese citizens and noncitizens, as well as the increasing uniformity of their documents. Nonetheless, the number of U.S. citizen applicants for entry increased throughout the exclusion era. Linking birth to birthright, documented citizenship remains a valuable status.

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