

that the Arajs Kommando was subject to Dr. Lange of the SD and Sicherheitsdienst (30-31). Gennadij Murnieks estimated that membership in the Arajs Kommando was about 200 when he joined and grew to 6 or 7 hundred by the end of 1941 (39).

As a member of the Arajs Kommando, Gennadij Murnieks participated in three operations where he transported prisoners from the central prison to the Bikernieki forest where the prisoners were shot (11). Gennadij Murnieks noted that the first prisoners were Jews (43). He stated that both Germans and members of the Arajs Kommando did the shooting (44). Gennadij Murnieks also stood guard at the December 1941 liquidation of the Riga Ghetto, where Jews had been quartered subsequent to the German armed forces' arrival in July of 1941. Gennadij Murnieks stated that on this one day operation 20,000 Jews were marched from the ghetto to Rumbula where they were stripped and shot (49-52). Viktors Arajs, Dr. Lange, and a German officer Krause from the SD were present at these operations, and all three gave orders (45-48).

Gennadij Murnieks also participated in an Arajs Kommando action with Viktors Arajs and German officers against a synagogue on Gogolu street in Riga. Gennadij Murnieks testified that the synagogue was burned down, and that he heard screams coming from the basement of the building (12, 17-23, 35). Gennadij Murnieks served as a guard at a second ghetto for Jews at Jumpravmuiza in early 1942 (57-61). Beginning in June or July 1942 Gennadij Murnieks was sent to Byelorussia and then to Vileika where he served as a guard at Arajs Kommando headquarters (71-77).

Gennadij Murnieks testified that served he as an exterior guard at the Salaspils camp from summer to fall of 1943 (63). He had orders to shoot anyone who tried to escape. There were 30-40 exterior guards, all members of the Arajs Kommando, at the camp. The external guards did not go inside the

camp. Only the German internal guard unit led by Krause and his assistant had contact with the prisoners inside the camp (67-70). Gennadij Murnieks stated that Araj's Kommando guards did escort prisoners on work details to Sauriesi (68-69).

Ernests Karklins (Ex. 87CT, 9-19-87)

Ernests Karklins served as a junior investigator in the Department of Latvian SD. His supervisor was Herberts Teidemanis (8). Ernests Karklins testified that he met Viktors Araj's once and does not know Kalejs (10). Ernests Karklins stated that the action against the Jews was headed by the German SD "Operation Division" under the command of Dr. Lange. In Ernests Karklins' opinion, the Araj's Kommando was not involved in this operation (15-16).

Osvalds Elins (Ex. 88CT, 9-19-87)

Osvalds Elins supervised a transport of vehicles for the Araj's Kommando in a garage on Krisjana Borona Street and later on Kalnu Street in Riga. His service apparently began in 1941 and lasted until the end of the war. He stated that there were 150-300 men in the Araj's Kommando at the time he joined (36). Osvalds Elins testified that he knew Viktors Araj's well. He also named several other Araj's Kommando members including Tobias, Eglitis, Liepins, Svikers, Elmuts, Ozols and Smalkais. However, Edgars Jurgitis did not remember Kalejs from this period (12-14, 34, 37). Osvalds Elins testified that in the second part of 1941 all the members of the Araj's Kommando who were not on specific duty were engaged in actions of shooting civilians in the forests near Riga (27-28). He stated that one could get more ration cards if one was a member of the Araj's Kommando (35).

Leonids Jansons (Ex. 91CT, 9-22-87)

Leonids Jansons testified that he joined the Araj's Kommando at the beginning of July 1941, and that sometime in July he met Kalejs at Araj's

Kommando headquarters on Valdemara Street in Riga (7-8). Leonids Jansons did not mention any activities involving Kalejs and testified that he does not remember what Kalejs looked like (34). He remained at Arajs Kommando headquarters for about 1-2 months (59). At Arajs Kommando headquarters, Leonids Jansons assisted in producing identification certificates and distributing armbands for the organization (12). As an Arajs Kommando member, he assisted in making arrests of Jews, transporting prisoners to Bikernieki where they were executed by Arajs Kommando members, and acting as a guard at the burning of a synagogue in the Moscow section of Riga. (14-20). He testified to the existence of a board of concentration camps formed under German supervision by more moderate members of the Arajs Kommando who did not condone the executions (60). This organization administered a camp at Vidzeme Barracks near Riga (65-73). In December 1941 Leonids Jansons resumed study in the university in the civil engineering department and continued to work in one Zeldner's office (10). He recalled that he did submit proof of military service in order to enter the university (33).

E. Respondent Konrads Kalojs

The following is a brief summary chronology of events taken from the respondent's direct examination, cross-examination, and 1984 interview with Jeffrey Mausner.³ The respondent's testimony is further addressed in part IV below.

³ The March 1984 interview (Ex. 17) was admitted over objection from the respondent. The Government presented the interviewer, Jeffrey Mausner, a former trial attorney with the Office of Special Investigations, who identified the respondent as Konrads Kalojs from prior contact with the respondent including the interview (Tr. 869-74). Mr. Mausner and Lori Judd, a certified court reporter, identified Exhibit 17 as the original transcript of the interview (Tr. 871, 891-93). Ms. Judd testified that Exhibit 17 is a true and correct transcription of the sworn statement taken on March 1, 1984 (894-899). She also identified the respondent as the interviewee and Mr. Mausner as the officer who conducted the interview (892-94). The record reflects that the respondent had prior notice of the scheduled interview (Ex. 17 at 7, 9, Ex. 1 to interview; Tr. 887-89, 1194). I find that the notice was adequate, and that the interview was not coercive or otherwise conducted in violation of the respondent's due process rights.

The respondent testified that he is Konrads Kalejs, born June 26, 1913, in Latvia (Tr. 1140; Ex. 17 at 6-7). He studied at the Latvian Military Academy from 1934-37 where upon graduation he served in the Latvian Army until 1940 (Tr. 1141; see Ex. 5 to Ex. 17, Ex. 17 at 19). He stated that he was at the Salaspils camp several times between 1937 and 1941, prior to German occupation, when the camp was a Latvian army summer camp (Tr. 1171-72; Ex. 17 at 64-65). From March to September of 1940 the respondent attended a Latvian army staff college.

The respondent testified that during 1940 the Russian army occupied Latvia. The respondent served in the "Red Army" from 1940 to the end of June 1941 (Tr. 1141). During part of this period the respondent was stationed at the home of a pastor named Namgauds in Nurmuiza in Talsi (1142). He was in service "at regimental headquarters" with the Red Army when the German forces invaded at the beginning of June 1941 (Tr. 1143).

The respondent joined a "self-defense" unit for about one week, the first week of July 1941 (Tr. 1145, 1228, Ex. 17 at 25). He arrived in Riga in mid-July 1941 (Tr. 1145). There he registered with other Latvian officers at the Latvian Society Building on Merekela Street (Tr. 1145-46) in response to announcements over the radio and in the newspapers (Tr. 1260). He traveled to his summer home and then returned to Riga where he worked two to three weeks in a clothing store (Tr. 1145). The respondent testified that several times during the period July thru September 1941 he went to Nurmuiza where he did farmwork, cared for horses, and assisted the pastor at whose farm he had been stationed as a member of the Red Army (Tr. 1146-47, 1266-67). In late October or early November 1941 the respondent enrolled in classes at the university at Riga (Tr. 1148, 1150-51).

In January of 1942 the respondent met with German officer Schroeder in Riga. A few days later, at the end of January or early February 1942, the

respondent took command of a ski patrol company and was given orders to fill up the German front in eastern Latvia. The respondent's company headed by train and/or truck to Cholm, and then was rerouted southward to Dno (Tr. 1151-59).

The respondent testified that in March 1942 he participated in the battle where German General Stahlecker was fatally wounded. The respondent estimated that this battle took place somewhere between Dno and Welike Luki (Tr. 1157-60; Ex. 17 at 28-30, 75-82).

In September or October 1942 the respondent was relieved of his command because of illness due to ulcers (Tr. 1162). He returned to Riga where he was examined at the Riga hospital. He reported to Schroeder who presented the respondent with a "close combat" award (Tr. 1259-60). He then took up residence at his family's Riga apartment and resumed studies at the university (Ex. 17 at 31-32). The respondent estimated that during the subsequent period to the end of 1944 he spent approximately 50% of his time in Riga and the rest in Nurmuiza, Gulbene, or Blavinas performing mostly farmwork or attending to his studies (Tr. 1164; Ex. 17 at 89-91). He continued to receive a salary from the German army (Tr. 1230). In March of 1943 he was married (Tr. 1164).

The respondent stated that in the summer of 1944 he was called up by the Latvian Legion Recruiting Office (Tr. 1166; Ex. 17 at 23). He left for Germany at the end of November 1944 and arrived in Germany on December 1, 1944 (Tr. 1172). The respondent fought in the Latvian Legion until sometime in 1945 when he was wounded in battle near Danzig (Tr. 1172). He was sent to Germany and then, after he had recuperated sufficiently, to Denmark (Tr. 1172). The respondent was in Denmark when the war ended on May 8, 1945 (Tr. 1172).

The respondent remained in Denmark until sometime in 1947 when he went to a displaced persons camp in Rotenburg, Germany (Tr. 1173). In October 1950 he

traveled to Australia where he acquired citizenship (Tr. 1177-78). On February 6, 1959, the respondent immigrated to the United States (Tr. 1183; Ex. 17 at 10).

III. Statutory Standard for 241(a)(19)

Section 241(a)(19) of the Act provides for the deportation of any alien

* * * who during the period beginning on March 23, 1933, and ending on May 8, 1945, under the direction of, or in association with --

(a) the Nazi government in Germany,

(b) any government in any area occupied by the military forces of the Nazi government of Germany,

(c) any government established with the assistance or cooperation of the Nazi government of Germany, or

(d) any government which was an ally of the Nazi government of Germany,

ordered, incited, assisted, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion.

The statute requires that the persecution have taken place because of the victim's race, religion, or other specified characteristic. The statute does not require that the persecutor have any personal animus toward the object of his attacks. Maikovskis v. INS, 773 F.2d 435 (2d Cir. 1985); Matter of Kulle, Int. Dec. 3002 (BIA 1985), aff'd, 825 F.2d 1188 (7th Cir. 1987). Persecution under the statute is not limited to physical harm. H. R. Rep. No. 95-1452, 95th Cong., 2d Sess. 3, reprinted in 1978 U.S. Code Cong. & Ad. News 4704. See also cases cited in Government's Post-Trial Brief at 89-90).

The respondent argues that the Government must show he actively assisted in persecution. Respondent's Post-Hearing Brief at 66-67, citing United States v. Sprogis, 763 F.2d 115 (2d Cir. 1985); Laipenieks v. INS, 750 F.2d 1427 (9th Cir. 1985). This "active assistance" standard is not controlling in the Seventh Circuit. In the case of a concentration camp guard, Schellong v.

INS, the Seventh Circuit directly held that no personal involvement in atrocities was necessary for an individual to have assisted in persecution under section 241(a)(19). 805 F.2d at 661 (following the Supreme Court's decision in Fedorenko V. United States, 449 U.S. 490 (1981), and rejecting the positions of the Second and Ninth Circuits in Laipenieks and Sprogis). See also Kulle v. INS, 825 F.2d 1188, 1192-93 (7th Cir. 1987).

IV. Discussion of 241(a)(19) Charge

The first six allegations in the amended Order to Show Cause are established by the respondent's admissions and supporting documentation. The respondent stated that he is Konrads Kalejs and that he was born in Latvia on June 26, 1913. He stated that during the war and until December 1944 he resided in Latvia. Four witnesses testifying on behalf of the respondent -- Erna Namgauds, Arvids Elguts, Balva Kula, and Ernest Ozolins -- confirmed the respondent's presence in Latvia at various times from 1940 to the end of 1944. The respondent testified that he is an Australian citizen and identified Exhibit 63 as his Australian Passport. (Tr. 1221-1224; see testimony of forensic expert Gideon Epstein). The respondent stated that he immigrated to the United States on February 6, 1959, which is confirmed by his Immigrant Visa and Alien Registration application, Exhibit 16.⁴ He has not

⁴ I find that Exhibit 16 is the respondent's Application for Immigrant Visa and Alien Registration as argued by the Government. The respondent testified that the photograph on the visa was his own (Tr. 1218). He stated that the applicant signature on the application reads "Konrads Kalejs." He stated that he signed the visa application he submitted (Tr. 1220-21). The Government presented signature expert Gideon Epstein who testified that the applicant signature on Exhibit 16 is the respondent's based on comparisons to other documents contained in the respondent's A-File, to Exhibit 63 which the respondent admits is his Australian Passport, and to Exhibit 43 on which the respondent identified his own signature (Tr. 604-49; see Government's Post-Trial Brief at 52-54; Tr. 1226 (Respondent's identification of signature on Ex. 43)). The respondent further testified that he signed his visa before a male consul (Tr. 1281-84). The Government presented Jack Liebof, the vice-consul whose signature appears on the application. Mr. Liebof testified that he countersigned Exhibit 16, and that the applicant would have signed the application in his presence (Tr. 787, 863-65).

subsequently obtained U.S. citizenship (Tr. at 1217; see Exs. 95 and 96; Tr. at 932-42 (testimony of Michael Goldstein)).

A. Self-Defense Unit (Allegations 7 and 8).

The respondent admitted that he was a member of a self-defense unit during the first week of July 1941 subsequent to his membership in the "Red Army." His membership in a self-defense unit in Litene is confirmed by Exhibit 74 presented by the Government and acknowledged by the respondent. However, the Government has not shown that as a member of this self-defense unit the respondent assisted or participated in the persecution of persons on the basis of their political opinions as alleged in allegation 8 of the Order to Show Cause. The Government presented varied documentary evidence supplemented by the testimony of Dr. Hilberg indicating that certain self-defense units had been organized by the German forces, and that the activities of these groups involved persecution (Ex. 20T at 3, 12-15, 21T at 2; 22T at 14-18, 22; 34T at 3; Tr. 131, 135-36 (Hilberg)). This general documentary evidence does not indicate that the group to which the respondent belonged was organized under German direction, and the evidence does not rule out the possibility that self-defense units may have formed independently of direct German influence. Background evidence suggests that Latvian soldiers would willingly band together against the Soviet invasion. See Respondent's Post-Hearing Brief at 2-4. The Government has not alleged or presented evidence of specific acts of persecution performed by the respondent as a participant of this group or by the group as a whole. Exhibit 74 apparently was signed on 25 November 1941, an opportune time to claim one took part in "terrorizing and pursuing" Communists, whether or not the claim was grounded in fact. The Government itself has argued elsewhere that claimed alliance with the German army against "Communists" was attendant with certain

privileges. See Government's Post-Trial Brief at 10. The respondent's purpose in contacting the partisan chief for this document was to take advantage of one such privilege, entry into the University (Tr. 1149-50). Finally, the respondent testified that his participation in this unit was as a soldier fighting retreating Russian troops (Tr. 1145, 1266, Ex. 17 at 25, 59-64).

B. Arajs Kommando (allegations 9-14, 17).

The Government has presented ample evidence to prove the existence of the Latvian Security Auxiliary Police, or "Arajs Kommando," as a Nazi-subordinated organization which assisted in persecuting racially undesirable persons or political enemies of Nazi Germany (Exs. 20T-22T, 26T-28T, 32T-36T). The deposition witnesses (with the uncorroborated exception of Ernests Karklins) testified that members of the Arajs Kommando assisted in persecution which took place in the Riga Ghetto, the forests surrounding Riga, at Salaspils and other concentration or labor camps, and on the eastern front of Latvia. These witnesses confirmed that the Latvian Security Auxiliary Police was led by Viktors Arajs who was directly responsible to the German officer Dr. Lange. Dr. Hilberg testified to the existence of the Arajs Kommando, its subordination to Nazi officials including General Stahlecker, and its persecutory actions (see also Ex. 19). His testimony was supplemented by that of the survivor witnesses Winter, Servos and Ilberg. The SD and SS were declared to be criminal organizations by the International Military Tribunal at Nuremberg, Germany, as were parts of the Security Police. 6 F.R.D. at 136-43. Viktors Arajs was convicted and sentenced to life imprisonment for his actions in leading the Arajs Kommando (Ex. 22T). Based on this evidence, I find that allegations 9 thru 14, and the second sentence of allegation 17 which alleges the murder of thousands of Jews in the forests surrounding Riga, have been established.

C. Respondent's alleged membership in the Arajs Kommando

(allegations 15-21).

The Government raises four key areas of the respondent's alleged activity in the Arajs Kommando: (1) the period from July 1941 thru December 1941; (2) the respondent's role as a company commander on Latvia's eastern front from January to November of 1942; (3) the respondent's role as the company commander of a guard company and anti-partisan unit in 1943; and (4) the respondent's role as the company commander of the exterior guard unit at Salaspils and Sauriesi.

(1) July thru December 1941

The respondent testified that he does not remember Viktors Arajs and never served in the Arajs Kommando (Tr. 1212; Ex. 17 at 43, 46). The Government asserts that the respondent joined the Arajs Kommando on July 29 or 30, 1941 (allegation 15). These dates are based on two certificates offered by the Government. Exhibit 23 is signed by Viktors Arajs and E. Ruda and states that Kalejs was a member of the Latvian Security Auxiliary Police from July 29 to the date of the certificate, November 8, 1941. Exhibit 25 is a certificate signed by Ozols, Assistant Head of the Latvian Security Section, in which Ozols confirms that First Lieutenant Konrads Kalejs, born on 26 June 1913 was in the service of the Latvian Security Section since 30 July 1941 (to the date of the letter, November 5, 1942) and was at the eastern front between 14 Feb 1942 and 27 April 1942. The respondent testified that these certificates are false and were obtained by him from friends so that he could enter the university (Tr. 1243; Ex. 17 at 36, 43-45, 56, 95). I do not find the respondent's explanation to be credible. The respondent testified that he registered at the Latvian Society Building in July of 1941 upon return to Riga. He responded to announcements by radio and newspaper. Gennadij

Murnieks testified that he also responded to a radio announcement and that the call was to register with the Latvian Security Auxiliary Police (Ex. 86CT at 32). The respondent testified that he returned to the Latvian Society Building several times expecting word that he was to be mobilized. There is no evidence to support an assertion that such mobilization would not be in conjunction with, or under supervision of, the Nazi forces. Moreover, Leonids Jansons testified that he met Kalejs at Arajs Kommando headquarters on Valdemara Street in Riga in July 1941 (Ex. 91CT at 7-8), and Rolands Bahsteins testified that Kalejs was one of the first to join the SD in July 1941 (Ex. 89CT at 47). In sum, I do not find the respondent's self-serving explanation of Exhibits 23 and 25 to rebut the evidence that he was at least nominally enrolled in the Latvian Auxiliary Security Police between July of 1941 and January of 1942.

However, I do not conclude that the respondent's mere registration with the Security Police is sufficient to make a finding of assistance in persecution even under the Fedorenko standard. As noted by the Board of Immigration Appeals in Matter of Fedorenko, Int. Dec. 2963 at 17 (BIA 1984), the "objective effect of the respondent's conduct" must "in some small measure" assist the Nazi's in persecution. The Government argues that, due to the shortage of manpower, the Germans enrolled all available Latvians in the Arajs Kommando and required all members to participate in persecutory acts. Therefore, the Government deduces, the respondent must have participated in persecutory acts. The Government argues by this logical deduction because they have no facts specific to the respondent. No witness, including Leonids Jansons and Rolands Bahsteins, the only witnesses to identify Kalejs as a member of the Security Police during this period, and no documentary evidence presented, identified the respondent as holding some position with the Arajs

Kommando prior to January 1942. Dr. Hilberg estimated that the Arajs Kommando began with approximately 50 members and totalled only about 300 by the end of 1941. Yet despite this small number, the respondent, whose alleged participation in the Arajs Kommando was repeatedly described as that of a company commander of at least 100 men, is not placed by any of the witnesses at any of the numerous arrests and shootings, the synagogue burnings, or the atrocities associated with the Riga Ghetto during 1941. As noted in the preceding paragraph, the evidence reflects that the respondent signed his name to the rolls of the Arajs Kommando in July. There is no evidence of participation or assistance beyond this act until he was called up by Schroeder in January of 1942. I find these facts significantly different than the facts in Fedorenko, supra, or, for example, in the case where an individual could be deemed to have assisted in persecution based on "his position and occupation and for no other reason." Matter of Blach, A10 629 292 (Imm. Ct., Los Angeles, April 27, 1987) at 24-25 (cited in Government's Post-Trial Brief at 90). Moreover, unlike other points in the Government's case, the Government cannot rely on the respondent's own admissions to support the claim that his involvement in the Arajs Kommando exceeded simple registration prior to 1942. The respondent throughout the hearing and in the March 1, 1984, interview maintained that he was not active in military or police service between July 1941 and January 1942 (Tr. 1228). I find that the Government has failed to sustain its heavy burden of proof in establishing that the respondent participated in persecution as a member of the Arajs Kommando prior to 1942.⁵

⁵ In reaching my findings on this and all other issues in the hearing I have given no weight to either party's alleged interview with Viktors Arajs (see (Government's) Ex. 98⁰, testimony of Thomas Fusi, and Ex. 107; (Respondent's) Ex. 102 and testimony of Georg Buerger). Neither interview was transcribed verbatim and the circumstances under which they were taken render them without value. See Respondent's Post-Hearing Brief at 23-28; Government's Post-Trial Brief at 60-62.

(2) Respondent's activities on Latvia's eastern front in 1942

The respondent testified that he volunteered for service in conjunction with German forces in Riga in January 1942. He stated that he was appointed company commander of a ski patrol unit by German officer Schroeder and sent to the eastern front in February 1942. The respondent testified that at the front he participated in the battle where German General Stahlecker was fatally wounded (Tr. 1157-62; see also Respondent's report in "Laikmets," Ex. 42). However, the respondent maintains that he was not under the jurisdiction of the Arajs Kommando in his capacity as a company commander, and that he functioned as a soldier, not as one who persecuted civilians (Tr. 1161, 1170, 1244-48, 1252-60; Ex. 17 at 83, 95). He testified that some villages were burned and some civilians may have died, but only as a result of combat, not as an act of reprisal or purpose (Ex. 17 at 77-82). The respondent testified specifically that in the battle where Stahlecker was wounded, prisoners were handed over to the Germans, not executed (Tr. 1160, 1280-81).

The respondent's testimony is insufficient to rebut the convincing evidence presented by the Government. Deposition witnesses Rudolf Soms and Karlis Rozkalns testified that Kalejs was a company commander in the Arajs Kommando, subordinate to the German SD, on Latvia's eastern front in 1942. Both witnesses testified, as noted above, that villages were burned and civilians killed in battles where Kalejs participated. Rudolf Soms stated that, based on word from members of Kalejs' own unit, inhabitants of the villages near Zabolotye and Sanniki were exterminated. He testified that the killing of villagers at Sanniki was a reprisal for the death of Stahlecker. Kalejs' company was the group who entered the villages on each occasion. Karlis Rozkalns also testified that the civilians in the village where Stahlecker was wounded were killed. Dr. Hilberg testified that such action

against civilians at the front was typical of the detachment units under the SD (Tr. 267-73). See also Ex. 20T. Rudolf Soms identified two photographs which he had identified in an investigation in 1983 as photographs of Kalejs (Ex. 81CT at 53, Government's Dep. Ex. 1; compare photographs in Exs. 5 and 6 to Ex. 17). Karlis Rozkalns also identified his prior choice of Kalejs' photograph (Ex. 92CT at 25). Mr. Soms also identified a photograph presented by the respondent's attorney (Respondent's Dep. Ex. 19) which I believe corresponds to the respondent's graduation photograph from the Latvian Military Academy as presented in Exhibit 108 at 35 (81CT at 74).⁶

The Government introduced several documents relevant to the respondent's participation on the front. Exhibit 37 confirms his participation with the "Loknja Detachment" at Nasva, Sanniki, and Rogova in early 1942, and was issued by the Security Police and SD, Einsatzgruppe A. See also Exhibit 25. Exhibit 45 is a note signed Kalejs, dated 15 May 1943, to the Registrar's Office of the University and states: "I hereby inform you that I am in the service of the Commander of the Security Police and SD of Latvia - in the Latvian Security Section as a company commander." The respondent testified that he submitted this note along with Exhibit 23 to the university in conjunction with a request for a program transfer. The respondent explained that he did not in fact belong to the Latvian SD as he indicated in Exhibit 45, but that he characterized his duty at the front under the German Ostland Police in this fashion in order to obtain his program transfer (Ex. 17 at 30-42, 95-96). However, while proof of military service may have been required for the university, the respondent gives no credible reason as to why membership in the Latvian Security Police would suffice for the university,

⁶ I do not give significant weight to the inconsistencies in physical descriptions of Kalejs by the deposition witnesses for the reasons stated in the Government's Post-Trial Brief at 28 n.17.

but command of a Latvian company under direct supervision of General Stahlecker, commander for the entire SD of the Ostland region, would not. Moreover, the respondent's statement that he submitted documents which were convenient to him at the time does not address Exhibit 45 since he wrote that himself (Ex. 17 at 98).

After careful consideration of the evidence, I find that the Government has shown by clear, convincing and unequivocal evidence that the respondent was a member of the Arajs Kommando under the supervision of the German SD on the eastern front of Latvia from January thru fall of 1942, that persecution against individuals based on race, religion, national origin, and political opinion was committed by the Arajs Kommando and German SD during this period at the front, and that the respondent assisted and participated in this persecution.

(3) Respondent's role in Porkhov and Skaune in 1943

Karlis Strazds testified that he served under Kalejs in Porkhov between June and August 1943. He stated that as a member of Kalejs' company in Porkhov he guarded a labor camp consisting of 200 Latvian Jews. Karlis Strazds also testified that his platoon guarded the site where 20-30 Gypsies were executed by Germans. In August both Karlis Strazds and Kalejs returned to Riga, the company was reorganized, and Karlis Strazds was sent as a member of Kalejs' company to Skaune. Karlis Strazds related that in Skaune a woman prisoner was required to serve as a charwoman for the officers. Karlis Strazds lacked detailed information on this woman or how she was treated as a prisoner. The testimony of Karlis Strazds is the only evidence that the respondent was present in Porkhov or Skaune in 1943. However, his testimony is consistent in itself and does not conflict with dates given by other witnesses as to the respondent's location at this time. Karlis Strazds served

under Kalejs at Salaspils, Porkhov and Skaune. He also read about Kalejs in "Laikmets" in 1942. He testified that the individual depicted in "Laikmets" was the same person that he served under. He identified the photograph on Respondent's Deposition Ex. 19 which corresponds in likeness to the photograph of Konrads Kalejs in Ex. 108. This identification is consistent with that of Rudolfs Soms. Karlis Strazds also verified and adopted his prior photo identification of Kalejs.

The respondent testified that he did not serve with a police or military unit in 1943. As noted by the Government, it is questionable that he would continue to be paid, as he said he was, absent active duty. The respondent's witnesses were not certain as to the dates they may have seen the respondent in 1943 in Riga or Nurmuiža and their testimony does not indicate that the respondent could not have served in Porkhov or Skaune in 1943. The respondent's marriage places him in Riga in March 1943. Karlis Strazds testified that the Kalejs unit did not travel to Porkhov until June of 1943.

Based on Karlis Strazds' testimony, I find that in association with the Nazi army the respondent was the company commander of a guard unit at a camp for Latvian Jews in Porkhov, and that members of his company participated in the execution of 20-30 Gypsies in Porkhov. I therefore find that the respondent assisted in the persecution of individuals based on race, religion, national origin or political opinion in Porkhov in 1943.

(4) Salaspils and Sauriesi Camps

The Government also has established that the respondent was the company commander of the exterior guard unit at Salaspils and that details from this unit guarded the camp at Sauriesi. Karlis Strazds, Rolands Bahsteins and Viktors Ennitis all testified that they served as exterior camp guards under the command of First Lieutenant Kalejs at Salaspils. Karlis Strazds was

personally appointed by Kalejs to Sauriesi in Dec of 1942. Georgs Pimanis also places Kalejs at the Salaspils camp in contrast to the respondent's testimony that he never visited the camp subsequent to the German invasion of Latvia. That Gennadij Murnieks did not see Kalejs at the Salaspils camp in the fall of 1943 is consistent with the testimony of Karlis Strazds who stated that about this time Kalejs was transferred back to the front. The testimony of these individuals concerning the role of the Kalejs exterior guard unit at Salaspils and Sauriesi, the company's subordination to the Araj's Kommando and German SD, the type of prisoners -- including Jews and political prisoners, and the atrocities which took place is credible and consistent with each other, Dr. Hilberg, and the former inmates Winter, Servos and Ilberg. Based on the evidence noted in detail above, I find that the respondent was the company commander under the Araj's Kommando and German SD of the armed exterior guard unit at Salaspils and Sauriesi, and that these camps were forced labor camps containing, among others, Jews and political prisoners. Consistent with the Court's decision in Fedorenko, I find that the respondent's position and activities at Salaspils and Sauriesi constituted assistance and participation in persecution in the persecution of individuals because of race, religion, national origin, or political opinion.

The respondent's proscribed activity occurred between March of 1933 and May of 1945. His action on the eastern front in 1942, his role at the Salaspils and Sauriesi camps, and his participation at Porkhov and Skaune in 1943 were under the leadership of the Araj's Kommando in association with the Nazi military and civil authorities responsible for the occupation of Latvia. The incarceration, forced labor and brutal treatment of the Jews and political prisoners at Salaspils, Sauriesi and Porkhov, the killing of civilians at the

front, and the execution of Gypsies at Porkhov were acts of persecution because of race, religion, national origin, or political opinion. The respondent assisted and participated in this persecution. Therefore, I find that the respondent is deportable under section 241(a)(19) of the Act as charged. Therefore, he is not eligible for any form of relief from deportation.

V. Inadmissibility under section 212(a)(19) of the Act

The respondent did not disclose his wartime activities when applying for a visa to immigrate to the United States. In the March 1984 interview of the respondent, the respondent indicated that he did not disclose his service during the war because he believed the true facts might disqualify him from obtaining his visa (Ex. 17 at 87-88). Witness Jack Liebof, the consular officer who issued the respondent's visa, testified that had the respondent revealed his involvement with German authorities in Latvia he would have referred the application to his supervisor for an advisory opinion. Thomas Valenza, retired State Department officer who rendered such opinions, testified that anyone who collaborated with the Nazis in Nazi-occupied Europe, or who had cooperated as a civilian official in the Nazi war efforts and policies regarding Jews and political dissidents, would have been rejected under section 212(a)(27) of the Act (Valenza Deposition at 16, 26). Based on this evidence, I find that the respondent's failure to reveal his wartime activities when applying for his U.S. visa was a wilful and material misrepresentation. Kungys v. United States, 108 S.Ct. 1537 (1988); see also Matter of Bosuego, 17 I&N Dec. 125 (BIA 1980). Therefore, I find that the respondent is deportable under sections 241(a)(1) and 241(a)(2) on the underlying grounds of 212(a)(19) and 212(a)(20) as charged in the Order to Show Cause.

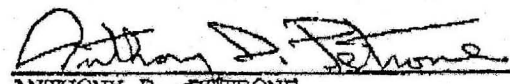
Accordingly, the following orders are entered:

ORDER: IT IS ORDERED that all motions to terminate the proceedings be and the same are hereby denied.

IT IS FURTHER ORDERED that all applications for discretionary relief be and the same are hereby denied.

IT IS FURTHER ORDERED that the respondent be deported from the United States to Australia.

NOV 1 1988
DATE


ANTHONY D. PETRONE
IMMIGRATION JUDGE