

⊕ IN THE MATTER OF K



BEFORE THE BOARD

Discussion: The special inquiry officer directed that the proceedings be terminated and certified the case to this Board for final decision. *595

The respondent is a 48-year-old married male, native of Poland and claiming to be now stateless, who last entered the United States on September 4, 1956, when he was admitted as a returning resident following an absence of 2 days in Canada. He has resided in the United States since his lawful admission for permanent residence on December 13, 1950. The special inquiry officer held that the charge in the order to show cause was not sustained because the respondent had, at no time, admitted the commission of rape. With respect to the lodged charge, the special inquiry officer found that on April 16, 1953, the respondent had admitted committing acts which constituted the essential elements of the crime of rape but that these admissions were not valid because the respondent had not been given a definition of the offense. The sole issue to be determined is whether the special inquiry officer’s action in terminating the proceeding was proper.

The respondent was questioned by an officer of the Pennsylvania State Police and signed a statement on April 16, 1953, which was to the effect that on 4 occasions during March and April 1953 he had attempted to have sexual intercourse with his 13-year-old stepdaughter. Sufficient penetration appears to have occurred during 3 of these attempts to constitute rape under the judicial decisions of Pennsylvania, in which State the offenses were committed. Both charges mentioned above were based entirely on the admissions made by the respondent in the statement of April 16, 1953.

The respondent and his wife, who is the mother of the stepdaughter previously mentioned, have continued to live together. The stepdaughter remained with them until the end of the school term in June 1953 and since that time has lived with her father. Regardless of whether or not the respondent made a valid admission that he committed statutory rape or the essential elements of that crime, he would not have been amenable to deportation if he had remained in the United States. This proceeding arises because of his 2-day absence in Canada and the fact that it is asserted that he was excludable at the time of his reentry by virtue of the provisions of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9).

During the oral argument, the respondent stated that he was detained at the police station from April 16, 1953, until the following Tuesday (April 21, 1953) when he was released and the judge told him his case was dismissed. Exhibit 6 is a letter from the Assistant District Attorney which contains the statement that the respondent was arrested on April 16, 1953, and charged with statutory rape and that a hearing was held on April 21, 1953, at which time his stepdaughter refused to testify against him. However, there is nothing in that letter nor in the record of the immigration hearing to show precisely what disposition was made of the criminal charge, and ⁵⁹⁶ this is a material omission in view of our decisions that dismissal of a criminal charge under certain conditions precludes the admission by the alien of that particular crime (*Matter of G---*, 56064/847, 1 IN Dec. 96 (/case/in-the-matter-of-g-60) (Atty. Gen., 1942); *Matter of C----* Y---- C----, A-5124278, 3 IN Dec. 623 (/case/in-the-matter-of-c-y-c) (1950)).

Section 4721, Title 18, Purdon's Pennsylvania Statutes Annotated, relates to rape by force and to what is frequently termed "statutory rape." The pertinent statutory language relating to the latter is as follows:

* * * or whoever, being of the age of sixteen (16) years and upwards, unlawfully and carnally knows and abuses any woman child under the age of sixteen (16) years with or without her consent, is guilty of rape, a felony * * *.

Upon the trial of any defendant charged with the unlawful carnal knowledge and abuse of a woman child under the age of sixteen (16) years, if the jury shall find that such woman child was not of good repute, and that the carnal knowledge was with her consent, the defendant shall be acquitted of rape, and be convicted of fornication.

Since the record indicates that the carnal knowledge was with the consent of the respondent's stepdaughter, the latter portion of the statute indicates that, if she was not of good repute, he was required to be acquitted of rape and be convicted merely of fornication. We find no admission by the respondent that his stepdaughter was "of good repute."

The statutory provision involved in this case is section 212 (a) (9) of the Immigration and Nationality Act (8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9)) which provides for the exclusion of (1) aliens who have been convicted of a crime involving moral turpitude, (2) aliens who admit having committed such a crime, or (3) "aliens who admit committing acts which constitute the essential elements of such a crime; * * *." The special inquiry officer's decision was based upon the proposition that the respondent was not given any explanation or definition of the crime of rape and that this was a requirement for a valid admission in accordance with our decisions in *Matter of E---- V----*, 1610-9315, 5 IN Dec. 194 (/case/in-the-matter-of-e-v) (1953), and *Matter of G---- M----*, A-8948706, Int. Dec. No. 762 (Atty. Gen., 1956). Pursuant to the request of the Service and in the light of the examining officer's brief and the argument of the Service Representative before us, we have reconsidered the question of whether a definition of the crime must be given to an alien where the charge is based on the third clause of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9).

It is asserted by the Service that the respondent's admissions were made to a police officer and that the latter had no reason to give the respondent a definition of the offense and was not aware that this Board had held that a definition was a requirement for a valid admission. The respondent was questioned by an officer of the Service on November 30, 1953. It would seem that he could have been given ⁵⁹⁷ a definition of the crime on that occasion and questioned whether he admitted the commission of rape or whether he admitted committing acts which constituted the essential elements of rape.

The Service contends that there is no requirement under the third clause of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9) that an alien be given a definition of the crime. There is also no specific requirement under the second clause, nor was there any such requirement under the previous statutory provisions, that is, sections 3 and 19 (a) of the Immigration Act of 1917, as amended (8 U.S.C. 136 and 155 (a), 1946 ed.). These sections provide for the exclusion and deportation of aliens who admit the commission, prior to entry, of a crime involving moral turpitude. Hence, if we relied solely on the statutory language of these provisions, it would seem that no more was required than a simple statement of the alien that he admits that he committed perjury or robbery or any other crime involving moral turpitude. However, certain principles governing such admissions were laid down in *United States ex rel. Castro v. Williams*, 203 Fed. 155 (S.D.N.Y., 1913), and *Howes v. Tozer*, 3 F. (2d) 849 (C.C.A. 1, 1925), and from the date of the latter decision until our decision of March 1, 1945, in *Matter of J----*, 56038/559, 2 IN Dec. 285 (/case/in-the-matter-of-j-3), there had been a gradual evolution of certain additional rules. In *Matter of J----*, *supra*, the rules to be observed were set forth and there was also a restatement of the rules by the Solicitor General on May 29, 1945. Since that time, we have held that a valid admission of a crime for immigration purposes requires that

the alien be given an adequate definition of the crime, including all essential elements, and that it be explained in understandable terms. The rules which were promulgated were not based on any specific statutory requirement but appear to have been adopted for the purpose of insuring that the alien would receive fair play and to preclude any possible later claim by him that he had been unwittingly entrapped into admitting the commission of a crime involving moral turpitude.

In *Matter of E---- V----*, *supra*, in which we were discussing the third clause of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9), we stated that the requirements set forth in *Matter of J----*, *supra*, still prevail with the exception that an alien need no longer admit the legal conclusion that he has committed the particular crime. In other words, under the prior law and under the second clause of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9), relating to aliens who admit having committed a crime involving moral turpitude, an admission by an alien that he had committed all the acts which constitute the essential elements of perjury, for example, would be insufficient unless the alien also admitted the legal conclusion that he committed perjury. It is the necessity for the admission of the legal conclusion which has been dispensed with by the third clause of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9). *598

The Service has stated that it does not regard *Matter of G---- M----*, *supra*, as determinative of the question of whether a definition is required under the third clause of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9). It is true that the Attorney General, in approving the Board's order, made no reference to this particular question, and we agree with the Service that the question was not involved in that case. Nevertheless, the Service there had vigorously argued in its motions of August 18, and October 5, 1955, that a definition of the crime was unnecessary to support an admission under the third clause of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9) and requested that this specific question be certified to the Attorney General. For that reason, we discussed the matter fully in that case. Upon reconsideration, we adhere to the views stated at that time. Since the respondent was not given any definition of the crime of rape and was not advised concerning the essential elements of that offense, we hold that he has not made an admission valid under the second or third clauses of 8 U.S.C. 1182 (/statute/8-usc-1182-inadmissible-aliens) (a) (9). It follows that the action of the special inquiry officer was correct.

Order: It is ordered that the special inquiry officer's order of April 16, 1957, terminating the proceedings, be approved. *599