

FCC MAIL SECTION

Federal Communications Commission

FCC 97D-1

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DISPATCHED Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of) MM DOCKET NO. 96-172
)
MARIO LOREDO)
)
Order to Show Cause Why the)
Construction Permit for Station)
KZQD(FM) in Liberal, Kansas)
Should Not Be Revoked)

Appearances

Gerald Stevens-Kittner, Esq., on behalf of Mario Loreda; and *Jackie Ellington, Esq.*, on behalf of the Mass Media Bureau.

INITIAL DECISION
OF
ADMINISTRATIVE LAW JUDGE RICHARD L. SIPPEL

Issued: January 2, 1997

Released: January 6, 1997

PRELIMINARY STATEMENT

1. The Commission has ordered Mario Loreda ("Loreda") to show cause why the construction permit assigned to him for unbuilt Station KZQD(FM) in Liberal, Kansas, should not be revoked. Order To Show Cause and Notice of Apparent Liability, FCC 96-352, released August 27, 1996 ("OTSC").¹ An Application for Consent to Assignment of Broadcast Station Construction Permit or License was granted to Loreda on March 8, 1994. (MMB Exh. 1 and OTSC at Para. 3.)

¹ While this hearing is pending, the Bureau also is holding in abeyance the processing of application for extension of the construction permit and application for a minor modification of the proposed facilities. See OTSC at fn.1.

2. A Prehearing Conference was conducted on October 9, 1996, and a Hearing was held on November 14, 1996. Order FCC 96M-230, released October 1, 1996. It was ordered that Proposed Findings of Fact and Conclusions of Law be filed on December 20, 1996, and that Reply Proposed Findings of Fact and Conclusions of Law be filed on December 30, 1996. Order FCC 96M-254, released November 18, 1996. The Mass Media Bureau ("Bureau") concurs with the respondent and submits that there is no basis to revoke Loredo's license or to impose a forfeiture.

3. The issues set under the OTSC are as follows:

- (1) To determine whether Mario Loredo made misrepresentations to the Commission, and violated 47 C.F.R. Section 73.1015,² by stating in his assignment application (BAPH-930824GE), that he was a citizen of the United States and that he was not in violation of Section 310 of the Communications Act of 1934, as amended [the "Act"], when, in fact, he was a citizen of Mexico.
- (2) To determine, in light of the evidence adduced pursuant to the foregoing issue, whether Mario Loredo possesses the requisite qualifications to be and remain the permittee of KZQD(FM), Liberal, Kansas.

The OTSC also directs the Presiding Judge to determine in accordance with Section 503(b) of the Act whether an order of forfeiture should be issued against Loredo.

FINDINGS OF FACT

4. Loredo testified at the Hearing. He was cross-examined by Bureau Counsel (Tr. 25-40) and he was questioned by the Presiding Judge. (Tr. 36-37; 51-59.) Loredo is found to be a competent and credible witness.

5. Loredo was born on April 17, 1950, in Mexico. He has resided in the United States since the age of nine. He became a legal resident in 1970 and he has legally lived and worked continuously in the United States since that year. He has four adult children who are all United States citizens. His mother also is a United States citizen. (Loredo Exh. 1 at 1-4.) He was educated formally through the seventh grade at Travis Junior High School, McAllen, Texas. (Tr. 43; 57.) In August 1992, he received his high school equivalency (GED) certificate. (Loredo Exh. 3.) Loredo became a United States citizen on December 18, 1995.

² 47 C.F.R. §73.1015 provides that no person shall in any application make any misrepresentation or willful material omission bearing on any matter within the Commission's jurisdiction.

6. Loredo has been an ordained minister for the past 10 years. He is presently Pastor of a small congregation in Liberal, Kansas. (Tr. 26.) He plans to transmit Hispanic religious-oriented programming over Station KZQD(FM) to members of the Hispanic population who reside in the Liberal, Kansas community. (Loredo Exh. 1 at 2.) In order to achieve this goal, Loredo acquired the construction permit for KZQD for a purchase price of \$4,000. He negotiated the purchase/assignment from another minister through whom he came to retain as his attorney, Mr. Gerald Stevens-Kittner ("Stevens-Kittner") of the law firm of Arter & Hadden. After Loredo negotiated the purchase and signed a purchase contract, Stevens-Kittner sent Loredo a letter dated August 3, 1993, which forwarded a draft of a completed Form 314 for Commission consent to assign the permit to Loredo. The forwarding letter instructed Loredo to review the application carefully and to pay particular attention to the Assignee's portion. If no changes were required, Loredo was instructed to sign the Application and return it to Stevens-Kittner, which he did. (Loredo Exh. 1 at 2.)

7. The instruction to Form 314 provides that the Applicant must determine the citizenship of each officer and director. (Bureau Exh. 3.)³ Loredo did not recall receiving the printed instructions to Form 314 or discussing the individual questions with his attorney. (Loredo Exh. 1 at 2; Tr. 25-26.) Section II of Form 314 at question 4 asks for the affirmative disclosure of "citizenship" and provides a small box for the answer. Loredo's Form 314 reported "USA" for citizenship. (Bureau Exh. 1 at page numbered 4.) Loredo believed that the question asked for the place of his legal residence. (Tr. 30.) Question 13 requires yes/no answers as to (a) whether the applicant is in violation of Section 310 of the Act relating to "interests of aliens and foreign governments;" and (b) whether construction funds are to be provided by "aliens, foreign entities, domestic entities controlled by aliens, or their agents." (Bureau Exh. 2 at page numbered 7.) Since the question referred to "aliens" Loredo believed it did not apply to him because he had been a permanent resident of the United States since 1970. (Tr. 35-37.) Therefore, Loredo checked the answer "No" for each question. (*Id.*) Loredo signed the Application as an "individual" on August 17, 1993. (*Id.* at page numbered 9.)

8. The draft of Form 314 was submitted to Loredo by Stevens-Kittner as a completed document for review and signature as it was presented, if no changes were needed. Thus, the blank answers were already filled in. There would be a natural predisposition for Loredo to sign a seemingly correct form that was prepared by his communications counsel. Nonetheless, as instructed by counsel, Loredo did review the answers. The reasons for his erroneous answers are as set forth above. After submission of the Form 314 to the Commission, Loredo learned from an acquaintance that the Commission would issue broadcast licenses only to United States citizens. (*Id.*) Loredo again reviewed the Form 314, informed his attorney of the errors, and instructed his attorney to inform the Commission and correct the record. (*Id.* and Tr. 52-53.)

³ The evidence shows that Loredo did not receive and therefore never read Instruction C which states that "all applicants must comply with Section 310." See OTSC at fn.2.

9. At about the time that Loredo became aware of the erroneous disclosure, his attorney was preparing an Application for Extension of Broadcast Construction Permit on Form 307. (MMB Exh. 2 at 1; Loredo Exh. 1 at 3-4; Tr. 56-57.) The filing of the Form 307 presented an opportunity to disclose fully to the Commission on an official form the true and accurate information with respect to Loredo's citizenship. On May 3, 1995, Loredo executed and disclosed in the Form 307 at Exhibit 2 that earlier he had "inadvertently provided an incorrect answer" on Form 314 when he had "indicated that he is a U.S. citizen when in fact, Mr. Loredo was then and remains a citizen of Mexico." (*Id.*) It was also disclosed to the Commission that Loredo had applied for and received his United States citizenship.

10. Loredo would not have commenced broadcasting until the question of his citizenship was resolved. (*Id.*) Loredo has asked the Commission to consider certain public interest factors in acting favorably under the circumstances of an innocent mistake: (a) Station KZQD(FM) will be the only Spanish speaking radio in the Liberal, Kansas area which has a one third Hispanic population; (b) Loredo has located a new antenna site which will be more cost effective and closer to the Station's studio; and (c) lower costs associated with operating the Station will make the project more viable. (MMB Exh. 2 at 3.) Loredo has established by his testimony that he has never been denied a job or a government benefit because of his former Mexican citizenship. (Tr. 41.) As further evidence of Loredo's permanent status in the United States, the evidence shows that Loredo holds a domestic driver's license and pays federal taxes. (Tr. 42.) Therefore, as a legal resident for more than twenty years, there would be no predisposition for Loredo to focus on citizenship as a condition for the transfer of a construction permit.

11. The Commission has been fully informed of all subsequent developments. After filing the Form 307 in May 1995, Loredo made application for a minor amendment. The Form 301 was accompanied by a cover letter in which counsel provided a basis for waiving the citizenship requirement for ownership of a radio station in light of Loredo's particular circumstances.⁴ (Loredo Exh. 1 at 4.) A letter was filed with the Commission as an Amendment to the pending application for an extension of Station KZQD's construction permit, which reported that Loredo had been sworn in as a United States citizen on December 18, 1995. (*Id.*) And on February 23, 1996, Loredo filed a further Amendment to the pending application for an extension of Station KZQD's construction permit which attached a copy of a certificate of naturalization dated December 18, 1995, certifying to Loredo's citizenship. (*Id.*) Therefore, it is established that Loredo has not operated a broadcast station in the United States as a non-citizen and that presently he is basically qualified under Section 310 of the Act to hold a Commission construction permit and to receive a license to operate a broadcast station.

⁴ Loredo's argument that Section 310(b) of the Act does not apply to permittees is rejected. Primemedia Broadcasting, Inc., 65 Radio Reg. 2d (P&F) 27 (1988).

CONCLUSIONS OF LAW

12. The OTSC will be resolved in favor of Loredo by a preponderance of the evidence. Steadman v. S.E.C., 101 S.Ct. 999 (1981). From the facts found above and in the observation of Loredo as he testified, it is concluded that Loredo's admittedly erroneous information reported by him on Form 314 (i.e., that he was a United States citizen and that he was not in violation of Section 310 of the Act) was a result of his confused state of mind and unsophistication with the questions. It was that state of confusion that caused him to be mistaken. He had been a legal resident of the United States for many years, was gainfully employed, paid taxes, and erroneously formed a belief that his legal residency status was sufficient for ownership of a radio station. Item 13(a) of Form 314 could be confusing to someone of Loredo's limited experience with the Form because it does not define Section 310(a) of the Act or delineate between "interests of aliens and foreign governments" and the prohibition of non-citizen ownership. In reading Item 4(b), Loredo merely mistakenly believed that the question was asking about the legality of his status as a legal resident of more than 20 years rather than his citizenship. Afterwards, when the mistake was made evident to him, Loredo immediately initiated steps to have his attorney assist him in correcting the error.

13. These facts and circumstances negate any inference of an intent to mislead the Commission. The law is clear that without a finding of such an intent, the erroneous statements do not disqualify Loredo as a permittee or licensee. Fox River Broadcasting, Inc., 93 F.C.C. 2d 127, 129 (1983). A mere mistake in an application without evidence that shows an intent to deceive the Commission is not a disqualifying misrepresentation. High Country Communications, 4 F.C.C. Rcd 6237, 6238 (1989). See also Cannon Communications Corp., 5 F.C.C. Rcd 2695, 2700 (Review Bd 1990). Even carelessness is not a misrepresentation. Applications of Gary D. Terrell, 102 F.C.C. 2d 787 (1985). These precedents negate disqualification of Mario Loredo as a Commission permittee and licensee under the facts found in this case.

ULTIMATE CONCLUSIONS

14. Loredo made unintended mistakes when he answered questions on Form 314 with respect to citizenship. Loredo took steps to immediately correct the errors as soon as they were discovered. The evidence does not support a finding that he intended to mislead the Commission. Rather, the evidence establishes that the mistakes were unintentional and were reasonably explained. There is no disposition on Loredo's part to mislead the Commission in the future. See Character Qualifications, 102 F.C.C. 2d 1179, 1228 (1986) (Commission is concerned with future reliability and truthfulness). Loredo has never operated a broadcast facility as a non-United States citizen. In December 1995, Loredo became a United States citizen. He has taken affirmative steps to improve the project to better serve the Liberal, Kansas community.

15. Loredo has shown cause by a preponderance of the evidence that the Construction Permit for Station KZQD(FM) which was assigned to him should not be revoked. Also, in light of the absence of any willful and/or repeated violation of Section 310 of the Act and/or Section 73.1015 of the Commission's Rules, as well as his upright candor before the Commission in this proceeding, an Order of Forfeiture should not be issued against Loredo.

ORDER

Accordingly, IT IS ORDERED that the Construction Permit assigned to Mario Loredo for Station KZQD(FM) in Liberal, Kansas, SHALL NOT BE REVOKED.

IT IS FURTHER ORDERED that the pending Application for Extension of Construction Permit and Application for Minor Modification of Proposed Facilities should no longer be held in abeyance.

IT IS FURTHER ORDERED that there shall be no forfeiture assessed against Mario Loredo for the unintended mistaken disclosures of citizenship and compliance with Section 310 of the Communications Act.⁵

FEDERAL COMMUNICATIONS COMMISSION

Richard L. Sippel
Administrative Law Judge

⁵ In the event that exceptions are not filed within 30 days after the release of this **Initial Decision** and the Commission does not review the case on its own motion, this **Initial Decision** will become effective 50 days after its public release pursuant to Section 1.276(d) of the Commission's Rules [47 C.F.R. §1.276(d)].