

I, Toshiro, being duly sworn, depose and say:

1. I was born on December 20, , in the city of Imaichi, Tochigi Prefecture, Japan.

2. I first came to the United States as a tourist, in 1973, and again in 1974; I then returned as a student, in 1976. Thereafter, on January 7, 1987, I re-entered the United States on an immigrant visa and was admitted as a permanent resident alien, Alien Registration No. A.. ... My port of entry was Atlanta, Georgia.

3. I currently reside in the United States at 123 Avenue, Apt. No. ..., New York, N.Y. 10010. My telephone number is 917/...-.....

4. I am making this affidavit in support of the Form N-400 application for naturalization that I filed, on August 21, 2002, with the U.S. Immigration and Naturalization Service (hereinafter, INS) Vermont Service Center in St. Albans, Vermont. On August 14, 2003, INS District Adjudications Officerinterviewed me at the New York District Office. On the basis of the fact that I had been arrested twice in my life, but did not disclose that information on my application form, Ms. questioned my moral character. On August 22, 2003, in an effort to support my contention that, despite the above circumstances, I am of good moral character, I mailed to Officer a cover letter accompanied by numerous letters of reference from former employers, all of whom knew me well from years of experience of working with me. These employers strongly attested to my non-criminal nature and to my good qualities as an ethical person and conscientious, hard-working employee. A decision on my application is still pending.

5. After waiting five months for a decision that did not arrive, in mid-January of this year I contacted a friend of mine, Mr. Oscar Abraham Jaeger, who is an immigration attorney. Mr. Jaeger and I were not close friends when I contacted him in January. We had spoken only once before, in August of 2003, just before my

naturalization interview. We had been introduced by a friend of mine, a woman who works with, and is friends with, Mr. Jaeger's wife at the United Nations; in this way I first met Mr. Jaeger at the United Nations, on the day before my INS interview. I told him of my interview, but, having just met him, I did not wish to burden him with my concerns, and so did not discuss them with him. He was very decent to me; but, not knowing that my case had potential problems, he just wished me good luck and gave me his business card, offering to help me if I ever needed help. By mid-January, I realized that I did.

6. For the past 3 years I have been applying for civil service jobs with the federal, state, and local city government. With respect to several of these employment opportunities, I have passed all the required preliminary examinations and interviews and so have reached the stage of being a serious candidate for these positions. These positions include work as a Correction Officer with the New York City Department of Correction; as a Correction Officer with the State of New York Department of Correctional Services; and as a Customs Inspector with U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

7. All of the above-mentioned civil service jobs to which I am applying have two features in common that are highly relevant to my reasons for making this affidavit. The first feature is the one most obviously and directly relevant: the candidate must be a U.S. citizen in order to become employed. That is to say, a job for which I am being seriously considered, or which I may even have been offered, for which I am otherwise fully qualified and approved, will be lost to me if, at the time the employer needs me to commence working, I have not become a U.S. citizen. Since I am in the final stages of being interviewed for a number of such jobs, the expeditious approval by INS – an agency that I understand was recently renamed the U.S. Citizenship and Immigration Services (hereinafter, USCIS) – of my naturalization application is vital to my success. As evidence of the urgency of the situation, I offer as an illustration the job offer that has been made to me with respect to the federal position of Customs Inspector, adverted to in paragraph 6 above. Attached to this affidavit as Exhibit 1, and made a part hereof, is a copy of a letter to me from U.S. Customs and Border Protection (CBP), dated January 6, 2004, informing me of a conditional offer of employment, "contingent upon successful completion of all preemployment requirements as listed below" (quoting from the 3rd paragraph on the letter's first page, and referencing the list appearing on the letter's second page). As

evidenced by the subsequent letter to me from CBP, dated March 30, 2004, a copy of which is attached to this affidavit as Exhibit 2 and made a part hereof, I passed the Structured Interview Examination that is the first, and most difficult to pass, of the "preemployment requirements" listed on the second page of this January 6, 2004, letter. However, as evidenced by the letter to me from CBP dated March 18, 2004, a copy of which is attached to this affidavit as Exhibit 3 and made a part hereof, with reference to the Background Investigation that is the second of the "preemployment requirements" listed on the second page of the January 6, 2004, letter, the Forms I submitted were returned to me as incomplete, because I indicated, accurately, that I was not a US citizen. If, upon receipt of the instant affidavit, USCIS does not act expeditiously to approve my application for naturalization, I am afraid I will lose this opportunity, and other opportunities as well, for the kind of work I eagerly desire to do, and for which I am otherwise completely qualified and ready to be approved.

8. Also relevant to why I am imploring you to approve my naturalization application, and to do so as soon as possible, is a second, less obvious, but no less important feature that these civil service jobs have in common: they are all decent-paying, secure jobs, offering immediate health care coverage, promotion possibilities, standard civil service job protections, standard tax shelters, and a pension plan. All of these job benefits are notably absent from the kinds of work that I have been doing for the past 17 years. Since my arrival at the United States, I have worked hard at various trades and professions, most notably as an actor, but also as a restaurant chef and tourist guide. I am proud of my efforts and successes and of the fact that I've always managed to survive without resorting to government welfare of any kind. But, as rewarding as these jobs have been personally, they have never been well-paid, secure jobs, with good benefits: I've always had to struggle and have always been poor. I have now gotten to the age where I've had to take stock, not only of my natural gifts, such as a good memory (a useful, even necessary qualification for a tourist guide and for an actor), but of the practical reality that I have spent the last 17 years in relative poverty, without medical coverage and economic security, and that it is time now to reconsider the kinds of work I have been doing and to apply myself in a different direction.

9. Personal and professional pressures in Mr. Jaeger's life have made it impossible, until now, for Mr. Jaeger to help me with the

preparation of the instant affidavit. Now that he finally has some free time, he has devoted it to helping me with my case. I am providing this information only to account for why I did not submit this affidavit earlier.

10. Briefly stated, the reason I did not reply in the affirmative to the question, on my naturalization application, of whether I had ever been arrested or had ever been convicted of any crime, despite the fact that I had been arrested twice, pleading nolo contendere and paying a fine in one instance and having all charges against me dismissed in the second instance, is that, at the time I completed this application, and continuing to this day, I believed I was not guilty of any crime at all, and I considered both arrests to have been false. I was not trying to mislead the INS, or USCIS, in any way; I was trying to wipe out from my memory two events that never should have happened, because they were so completely unfair and unjust, but which I now understand, having had a lot of time to think about it, nevertheless did happen. Not acknowledging that these events occurred was my way of trying to obliterate the misery that they caused me.

11. The first event occurred in 1988, in Atlanta, Georgia. During my residence in Atlanta, I had been working hard at a number of jobs, which I held simultaneously. I was working as a tour guide, as a professional actor, and as a waiter or cook at a number of Atlanta restaurants. I was single, unattached, and, like so many other residents of Atlanta at that time, one of the ways I sometimes relaxed after a hard day's work was by going to a bar or discotheque, socializing, and having a drink or two. I never drank to excess. That is why, when people I met in Atlanta told me stories of policemen out of control, who waited at parking lots outside of bars and discos, ready to give DUI tickets to customers exiting these bars and discos who were not even drunk, **and to ticket these customers even before they entered their vehicles**, I was skeptical of these stories. For one thing, I did not want to believe that there even existed such policemen, who were supposed to uphold the law but, instead, were perverting it. For another thing, I did not want to be at the mercy of such policemen, if they indeed existed: I needed my vehicle in the conduct of my various jobs, and therefore was not ready to accept the idea that I could have my car confiscated, or lose my driver's license, because a corrupt policeman wanted to fill a quota or make himself look good for a promotion. Accordingly, I did not believe these stories – until it happened to me.

12. After working all day, on the night of February 4, 1988, I went to a bar, where I spent a couple of hours, drinking, at the most, one or two glasses of beer. When I left the bar, very early in the morning of February 5, I began walking towards my car, which I had left in the parking lot outside the bar. As I approached my car, two policemen approached me and asked to see my driver's license, registration, and insurance. I showed them my license, which was in my wallet, but when I started to reach inside my car for the registration and insurance papers they stopped me and told me that they wanted to test my sobriety. I expected them to ask me to walk a straight line, and I expected them to conduct other such tests of my balance and hand-eye coordination – I had seen such tests on television shows and in movies – but they just brought out a primitive-looking machine and directed me to take a deep breath and to breathe into the machine forcefully. I did so. When they did not get the number they wanted, they asked me to do it again, only this time to breathe with more force. I complied, but they were still not getting the number they were after. They made me repeat this forceful breath six times. I remember the number of breaths vividly, because I thought the behavior of the police towards me was so strange, that I almost felt as if I were in a play, watching myself and the other actors from the outside. At this time, I was already a trained, experienced actor, so it was instinctive for me to memorize the event, in all its details, as if I were indeed participating in a performance.

13. After testing me in this way, the police placed me in the back of their car and drove to the local precinct. They took me inside the building to an office, where a man in a white laboratory coat, whom I will call a technician for want of a better term, tested me on a more sophisticated-looking machine. After the first test, the technician told the policemen that "this guy hasn't got the number." The two cops became angry; one said: "No, he should get the number." Then the cops made me breathe into the machine ten times, until they apparently got the number they wanted.

14. After this ordeal, my troubles were just beginning. The police booked me (picture, fingerprints) and put me in a holding cell; after some hours, they told me I could be released if I posted a \$500.00 bail. As I did not have the money on me, I telephoned my friend, who came and bailed me out. Another friend of mine recommended a local lawyer, Mr. Robert _____, whom I consulted and retained on

February 16, and who represented me in Traffic Court on April 8, 1988.

15. During my consultation with Mr. _____, I expressed to him my shock and indignation at the way I had been treated. I told him that I was innocent of the charge against me: driving while under the influence, or DUI. In the first place, as far as my level of blood alcohol was concerned, I told him how forced, so to speak, and therefore suspicious, the testing procedure had been. In the second place, how could I possibly be guilty of driving while under the influence, **when I wasn't even driving?** When stopped by the police, I had never been given the chance to get inside my vehicle, let alone to drive it. Mr. _____ was sympathetic, but then explained to me the facts of how Traffic Court worked in Atlanta, Georgia. These facts, I quickly understood, rendered my innocence a meaningless irrelevance.

16. What my attorney explained to me was harsh reality: when the time came for me to be arraigned in front of the Traffic Court Judge, if I pled not guilty the Court would take away my driver's license until the date set for a hearing on the merits, and my license would not be returned to me until and unless I prevailed at that hearing. I needed my license very much, because Atlanta at that time lacked adequate public transportation, and almost everyone depended on their cars for mobility. As a tour guide, I absolutely needed my car, in order to chauffeur my clients around the city, buy advance tickets for them at various shows, pick up their return airplane tickets, etc. As a waiter or cook at restaurants in different locations in the city, I also depended on my car to get me to and between these restaurants in an expeditious way. As an actor, I needed my car to get to the various regional theatres where I would perform. Mr. _____ told me that the only way I could keep my license was to plead nolo contendere at my arraignment: I would not be admitting guilt, but I would also not be fighting the charge against me.

17. Mr. _____ then explained another harsh reality to me: if I pled not guilty at my arraignment, at my trial it would be my word against the two policemen who arrested me. In the absence of witnesses, with just my word against theirs, Mr. _____ posed the following rhetorical question to me: "Who is the judge going to believe?" Finally, Mr. _____ pointed out that it would be far more expensive to prepare a case for trial, win or lose, than it would be to

plead nolo contendere at the arraignment and just pay the fine that attends such a plea.

18. It was under these circumstances, and with these pressures, that I decided to swallow my pride, forget my indignation, and take the practical way out: at my arraignment, on April 8, 1988, I pled nolo contendere and paid my fine of \$495.00. But, while I may have done what was practical, and maybe even what was best under all the circumstances, this entire event – the false arrest, the humiliating confinement in a holding cell, the failure to fight for my rights because the system encouraged the easy way out – left me with feelings of shame and regret, and a sense of outrage, that I now realize I never fully came to terms with, all these years. In my mind, all these years, I denied this event: if the event was unfair and unjustified, and should never have happened, then, to my way of thinking, it was fair and justified if I regarded it as a non-event, a nullity. That is the attitude that I had when I filled out my naturalization application. I now realize, of course, that I could have spared myself a lot of grief if I had simply acknowledged the factuality of this event, instead of pretending that I could utterly deny its existence.

19. This same attitude, the error of which has since been brought home to me with the force of a baseball bat across my head, led me to fail to acknowledge the second of my arrests, the one that ended in the dismissal of all charges against me. The second arrest, which occurred on May 1, 1998, in New York City, was as unfair, as unjustified, and as humiliating as the first; the only difference was that, at my arraignment on the second arrest, which occurred on that very same day, I was vindicated, since the charge against me was entirely dismissed, **on the prosecutor's own motion**, and the case was then sealed, whereas the official record with respect to the first arrest publicly indicates a conviction. However, the impact of this difference in outcomes between the first and second event was only to reinforce my mistaken belief that I could, if anything, even more justifiably deny the very existence of this second arrest, since even the official record rendered the second event a virtual nullity. As evidence that my rationale for denying the second event was not unreasonable, I offer an official record that I recently acquired: attached to this affidavit as Exhibit 4, and made a part hereof, is a Good Conduct Certificate from the Police Department of the City of New York, based on NYPD Records of activity within the City, showing that I have no criminal record. If the N.Y. City Police Department has determined that

I have no criminal record, have I been wrong all this time for agreeing with them?

20. I could explain, in abundant detail, the unjustified nature of my second arrest, as I have tried to do with respect to my first. But this would take up a good deal more of your time, and possibly try your patience. Instead, I am hoping that the facts of my exoneration - that the judge dismissed the charge against me; that the case for dismissal was made by the prosecutor's office itself, on its own motion; that the case was then sealed; and finally, that a recent search of NYPD Records discloses that I have no criminal record - will speak for itself and lead you to give me the benefit of the doubt, so that you do not draw any adverse inferences as to my moral character from the mere fact that I was arrested, or from the nature of the charge made against me. The charge was false, the arrest unwarranted, and the painful experience undeserved. This is true with respect to both events, in fact. But the main benefit of the doubt I am asking you to extend to me today is your understanding of why I acted the way I did, when I was not forthright in answering one of the questions on the N-400 application form. You might have thought it a sign of dubious moral character that I would act this way. I hope I have succeeded in demonstrating that, while I certainly understand now that I was wrong, I acted out of an abundance of principle, and not a lack thereof.

21. If you still have any doubts as to my moral character based on any of the circumstances attending my second arrest, please provide me with the opportunity to explain those circumstances in detail, before you make a final determination on this application. In addition, in defense of my character, I would like to make two final points, before concluding. The first point concerns my driving record for the past 16 years. The second concerns my professional associations since last coming to the United States, more than 17 years ago.

22. As to my driving record, I have already explained that my arrest in 1988 for driving while under the influence was unjustified and that my conviction, based upon a plea of nolo contendere, was a matter of expediency rather than a true reflection of the workings of justice. However, I am not naïve, and I realize that, in a sense, my Atlanta, Georgia conviction speaks for itself, just as I have argued my exoneration in New York City speaks for itself. That is to say, there is

the fact of this conviction, and while I can explain and argue all I want that I was innocent and that the conviction was undeserved, you may or may not believe me, and it would not be unreasonable if you chose, despite all of my explanations and arguments, to take the conviction at face value. For that reason, it is imperative, particularly if you give credence to the conviction in evaluating my character, to take careful note of the following set of facts.

23. After my arrest in Atlanta, Georgia, in February of 1988, and my conviction there in April of 1988, I continued to reside in Atlanta until August of 1989. During that time I had no further trouble with respect to my driving record: my record was perfectly clean, even with respect to parking violations, let alone with respect to moving violations. Furthermore, and much more significantly, because it involves a far longer duration of time, in August of 1989 I moved from Atlanta directly to New York City, where I have resided ever since. During all of these nearly fifteen years of residence in New York City, I have driven a motor vehicle, in some years extensively, in other years less so. In all of that time, however, I have maintained a spotless record: I have never so much as had a parking violation, let alone a moving violation of any kind. Most pointedly, and implicit in the fact of my clean driving record, in all of this time I have never been arrested for, charged with, or convicted of driving while under the influence of alcohol, or while under the influence of drugs for that matter, or of any alcohol-related or drug-related crime whatsoever. I cannot conclusively demonstrate my absolutely clean driving record for all of these past nearly sixteen years, because the records maintained by New York State do not go back in time sufficiently: these records only go back, at most, ten years. More specifically, as stated on page 2 of the New York State Department of Motor Vehicles Form MV-15 (5/00 edition), a copy of which is attached hereto as Exhibit 5 and made a part hereof, and which is entitled, in relevant part, Instructions For Requesting Driving Record Information,

"DMV does not keep records of convictions, accidents, suspensions or revocations indefinitely. In general, convictions and accidents remain on your record for the year they happened, and for the next three years after that. On January 1 of the fourth year after they occurred, they no longer appear on your record. Suspensions and revocations remain on your record for the year in which they are cleared or terminated, plus the next three years. Alcohol or drug-related convictions remain on your record for a minimum of 10 years from the conviction date."

It is instructive, nevertheless, to carefully consider my driving record for what it reveals, even with the limitations outlined above. As shown by the State's records – specifically, the N.Y. State Department of Motor Vehicles Abstract Of Driving Record, a copy of which is attached hereto as Exhibit 6 and made a part hereof – during the three years prior to the date I requisitioned this Abstract, that is, beginning in January of 2004 and going back to February of 2001, I took two accident prevention courses, which entitled me to a certain number of point reductions for any violations occurring in that time frame. As you can see if you examine my record carefully, the designation "N/A" follows with respect to each of these two point reduction eligibilities: there were no points to reduce! Furthermore, and most pointedly, going back in time ten years, from January 2004 through February of 1994, my record shows that I have no convictions for any alcohol-related or drug-related motor vehicle crimes.

24. Before leaving the subject of my driving record, I should add, in furtherance of my defense of having good moral character, that my driving record is not only clean, but, as is also indicated in Exhibit 6, I am qualified by New York State to drive a passenger bus and to transport hazardous materials. Attached to this affidavit as Exhibit 7, and made a part hereof, is a copy of the front and back of my Class B Commercial License, issued to me by the New York State Department of Motor Vehicles on April 1, 2003, with hazardous materials and passenger endorsements (the latter qualifies me for such activities as driving a coach, a bus for religious congregants, or a school bus). Although the commercial license to engage in such demanding and responsible activities is issued upon the satisfactory completion of rigorous technical courses, I assume that a character test must also apply, at least to the extent that the State of New York would not, one would hope, issue such an important license to someone whose driving record disclosed a chronic history of aberrant behavior.

25. Finally, turning to the subject of professional associations, I would like to point out that, for many years, I have been a member in continuous good standing of many such associations. The associations I focus on here are those for which I happen to have retained a record of membership which is complete at least with respect to the past 4 or more years. These associations relate to two of the principal kinds of work I have done since my arrival in the United States: as an actor and playwright, and as a tourist guide. I could not possibly maintain such an extensive and continuous record of professional associations if my character were in issue: that is to say, taking for example my work

as a New York City sightseeing guide, if I were violating professional norms when it came to such work, the City of New York Department of Consumer Affairs would not have been issuing and reissuing to me, for many years, licenses to engage in this work. Similarly, if I violated professional norms as an actor (and they exist, despite any inferences to the contrary that a person might draw from the personal behavior of some actors), the Actors' Equity Association would not issue and continuously renew, for many years, my membership in good standing therein. As some additional evidence of my good character, then, I would like to conclude by attaching to this affidavit, and making a part hereof, copies of the membership cards that I have retained with respect to the following professional organizations: Actors' Equity Association (Exhibit 8); American Federation of Television and Radio Artists (Exhibit 9); The Dramatists Guild of America (Exhibit 10); and the Screen Actors Guild (Exhibit 11); as well as licenses to be a Sightseeing Guide that were issued to me by the City of New York Department of Consumer Affairs (Exhibit 12).

Toshiro

Sworn to before me this
day of May, 2004

Notary Public