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No. _____

In the Supreme Court of the United States

AXEL RIETSCHIN,

Petitioner,

v.

DOMINIKA RIETSCHIN,

Respondent.

On Petition for a Writ of Certiorari to the Washington Court of Appeals, Division One

PETITION FOR A WRIT OF CERTIORARI

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June 30, 2023
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QUESTION PRESENTED

Can a State civil Court assert jurisdiction in private matters over non-immigrant aliens admitted temporarily under 8 U.S.C. § 1184?

LIST OF PROCEEDINGS

Supreme Court of Washington

No. 101410-4

In The Matter of the Marriage of: Axel Rietschin, *Petitioner,* v. Dominika Rietschin, *Respondent.*

Date of Final Order: March 8, 2023

Court of Appeals of the State of Washington, Division One

No. 82473-2-I

In The Matter of the Marriage of: Axel Rietschin, *Appellant,* v. Dominika Rietschin, *Respondent.*

Date of Amended Final Opinion: September 6, 2022

Superior Court of Washington, King County

No. 19-3-03895-4 SEA

In Re: Dominika Rietschin, *Petitioner,* v. Axel Rietschin, *Respondent.*

Date of Final Decision: March 4, 2021

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PETITION FOR A WRIT OF CERTIORARI

Axel Rietschin respectfully petitions the Court for a Writ of Certiorari to review the judgment of the Washington State Court of Appeals, Division One.

OPINIONS BELOW

The 3/8/2023 order of the Supreme Court of Washington denying Axel Rietschin's petition for review is attached as App.1a.

The 9/6/2022 amended unpublished opinion of the Court of Appeals of the State of Washington, Division One, affirming the 3/4/2021 judgment of the Superior Court of Washington, County of King, is attached as App.3a.

The 7/11/2022 unpublished opinion of the Court of Appeals of the State of Washington, Division One, affirming the 3/4/2021 judgment of the Superior Court of Washington, County of King, is attached as App.11a.

The 3/4/2021 judgment (Findings and Conclusions) of the Superior Court of Washington, County of King, is attached as App.19a.

JURISDICTION

Axel Rietschin's Petition for Review to the Supreme Court of the State of Washington was denied on 3/8/2023.

Axel Rietschin invokes this Court's jurisdiction under 28 U.S.C. § 1257(a), having timely filed this petition for a Writ of Certiorari on June 6, 2023, within ninety days of the Supreme Court of the State of Washington denial.

By a letter dated and signed on the day of June 13, 2023, in Washington, D.C., the Clerk of the Supreme Court of the United States authorized a re-submission of this petition within 60 days of the date of the letter, notably to correct the formatting of the appendices. The present document is the amended version.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. VI, § 2

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Wash. Const. art 1, clause 2

The Constitution of the United States is the supreme law of the land.

8 U.S.C § 1184
Admission of Nonimmigrants

(a)(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States.

8 U.S.C. § 1101(a)(15)(L)
L Visa Classification

Subject to section 1184(c)(2) of this title, an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him.

9 F.A.M. § 402.12(U)
L Nonimmigrant Classification

b. (U) Section 1(b) of Public Law 91-225 of April 7, 1970, created a nonimmigrant visa (NIV) classification at INA 101(a)(15)(L) for intracompany transferees. The L nonimmigrant classification was created to permit international companies to temporarily transfer qualified employees to the United States for the purpose of improving management effectiveness, expanding U.S. exports, and enhancing competitiveness in markets abroad.

9 F.A.M. § 402.12-14(C)(U)
Limitations on Total Periods of Stay

a.(U) The total period of stay for L applicants employed in a specialized knowledge capacity may not exceed five years, including time in the United States in H status. The maximum allowable period of stay for an applicant employed in a managerial or executive capacity may not exceed seven years, including time in H status. No further extensions may be granted once these limits have been reached.

9 F.A.M. § 402.12-16(A)(U)-Derivative Classification

a.(U) The spouse and children of an L-1 nonimmigrant who are accompanying or following to join the principal applicant in the United States are entitled to L-2 classification and are subject to the same visa validity, period of admission, and limitation of stay as the L-1 applicant. For a general discussion of the classification of the spouse and children of a nonimmigrant, (*see* 9 F.A.M. § 402.1-4 and 9 F.A.M. § 402.1-5).

9 F.A.M. § 102.314(U)
Definition of Nonimmigrant

> d.(U) Nonimmigrant: A foreign born person who is coming to the United States temporarily for a particular purpose but does not remain permanently. *See* 9 F.A.M. § 401.1-2, Overview-Nonimmigrant Visa and Status.

9 F.A.M. § 402.2-2(D)(U)
Definition of the Word "Temporary"

> a.(U) Although "temporary" is not specifically defined by either statute or regulation, it generally signifies a limited period of stay. The fact that the period of stay in a given case may exceed six months or a year is not in itself controlling, if you are satisfied that the intended stay has a time limitation and is not indefinite in nature.

20 C.F.R. § 725.231(A)
Definition of the Word "Domicile"

> [. . .] the term "domicile" means the place of an individual's true, fixed, and permanent home.

8 U.S.C. § 1101(A)(31)
Definition of the Word "Permanent"

> The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

8 C.F.R. § 214.1(A)(3)(II)
Every Nonimmigrant Must Agree to Depart

> At the time of admission or extension of stay, every nonimmigrant alien must agree to depart the United States at the expiration of his or her authorized period of admission or extension of stay, or upon abandonment of his or her authorized nonimmigrant status, and to comply with the departure procedures at section 215.8 of this chapter if such procedures apply to the particular alien. The nonimmigrant alien's failure to comply with those departure requirements, including any requirement that the alien provide biometric identifiers, may constitute a failure of the alien to maintain the terms of his or her nonimmigrant status.

8 U.S.C. § 1621
Aliens Who Are Not Qualified Aliens or Nonimmigrants Ineligible for State and Local Public Benefits

> In general [. . .] a nonimmigrant [. . .] is not eligible for any State or local public benefit.

STATEMENT OF THE CASE

A. Introduction

On 6/3/2014, Axel RIETSCHIN was admitted temporarily to the United States as a nonimmigrant under L-1A status for a duration of three years under the provisions of 8 U.S.C. § 1101(a)(15)(L).

The Foreign Affairs Manual states verbatim under 9 F.A.M. § 402.12(U) that "The L nonimmigrant classification was created to permit international companies to temporarily transfer qualified employees to the United States."

The Foreign Affairs Manual further states verbatim under 9 F.A.M. § 402.12-14(C)(U) that "The total period of stay for L applicants [. . .] employed in a managerial or executive capacity may not exceed seven years" and that "no further extensions may be granted once these limits have been reached."

With Mr. RIETSCHIN came his spouse Dominika RIETSCHIN and their two minor children, A.R. (DOB: XX/XX/2010) and K. R. (DOB: XX/XX/2013), who were admitted as dependents under L-2 status following the provisions of 9 F.A.M. § 402.12- 16(A)(U), which states verbatim that "the spouse and children of an L-1 nonimmigrant who are accompanying or following to join the principal applicant in the United States are entitled to L-2 classification and are subject to the same visa validity, period of admission, and limitation of stay as the L-1 applicant."

The term "nonimmigrant" is defined by 9 F.A.M. § 102.3-14(U) as "a foreign born person who is coming

to the United States temporarily for a particular purpose but does not remain permanently."

9 F.A.M. § 402.2-2(D)(U) further defines the word "temporary" as generally signifying "a limited period of stay [that] has a time limitation and is not indefinite in nature."

In June 2017, the family left the United States just ahead of the expiration of their authorized period of stay.

In July-August 2017, the family was readmitted to the United States under the exact same provisions for a second (and last) period of stay of three years after Mr. RIETSCHIN obtained a new L-1A visa abroad, and after which his spouse

Dominika RIETSCHIN and their children subsequently obtained new dependent L-2 visas.

As stated in 8 C.F.R. § 214.1(a)(3)(ii), "every nonimmigrant alien must agree to depart the United States at the expiration of his or her authorized period of admission or extension of stay."

On 4/30/2019 Dominika RIETSCHIN filed for dissolution of her marriage.

On 3/4/2021 the Superior Court of Washington, County of King, entered a divorce decree, a permanent parenting plan, and a permanent child support order.

B. The Superior Court of Washington Never Had Any Form of Jurisdiction in Those Matters and Should Never Have Heard the Case

As temporary nonimmigrant aliens, neither Dominika RIETSCHIN nor Axel RIETSCHIN had the standing to invoke the Court's jurisdiction.

In civil matters, the domicile of at least one of the parties is determinant to establish a Court's jurisdiction.

The Court found that physical presence and Dominika RIETSCHIN's intent to make Washington State her domicile in the future was sufficient to establish the necessary judicial link.

No one admitted as temporary nonimmigrant in the United States can lawfully establish their domicile anywhere in the country. Dominika RIETSCHIN's intent was therefore immaterial as, as a nonimmigrant dependent, she had no path towards immigration and therefore no means of accomplishing that goal.

Furthermore, the dissolution of her marriage had the immediate effect of voiding her conditions of admission into the county.

20 C.F.R. § 725.231(a) defines the word "domicile" as "an individual's true, fixed, and permanent home."

8 U.S.C. § 1101(a)(31) defines the word "permanent" as being of "continuing or lasting nature."

No one can lawfully establish a permanent domicile in the United States while admitted to the country on a temporary basis.

By Wash. Const. Art 1, Clause 2, the Judges of the State of Washington are bound to the Constitution of the United States.

By U.S. Const. Art. VI, § 2, the Judges of the State of Washington are therefore bound to the U.S. Code, and the U.S. Code prevails over any State statute or constitution.

By ignoring the strict temporary nature of the period of stay of both parties, by ignoring that non-immigrant are required to agree to depart the country at the end of their authorized stay and nevertheless finding that Dominika RIETSCHIN had established her permanent domicile in Washington State by her mere temporary presence, the Courts of the State of Washington disregarded the U.S. Code to which they are bound and, from there, violated the Constitution of the United States.

State courts are not supposed to enforce immigration laws, but they cannot ignore said laws and proceed as if they were not subjected to them, as this Court previously indicated: where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations [*Hines v. Davidowitz*, 312 U.S. 52 (1941)]

The Court must use its supervisory power because a Court of Appeals sanctioned such a departure by a Lower Court.

REASONS FOR GRANTING THE PETITION

I. NATIONAL SIGNIFICANCE, WIDE APPLICATION

The case is of national significance and of wide application as it affects every nonimmigrant alien under any visa classification, including tourists and business visitors admitted for any length of time, however short. In FY 2019, 186.2 million foreign nationals were temporarily admitted into the United States for nonimmigrant purposes.[1]

II. COULD HAVE PRECEDENTIAL VALUE

If the case is allowed to remain, extensive ramifications are possible as it establishes a precedent where any temporary nonimmigrant, without a lawful immigration path, and admitted for any reason and for any length of time, can successfully claim having established a permanent domicile in any State merely by showing evidence of physical presence, which is trivially demonstrated, and stating their intent to stay, in violation of their conditions of admission and sworn promise to leave the country.

Establishing domicile has greater consequences than access to Family Law courts. For example, it could give access to State and local public benefits which are normally expressly denied to nonimmigrant aliens [8 U.S.C. § 1621]

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[1] The Department of Homeland Security (DHS) Office of Immigration Statistics.

State courts being demonstrably allowed to ignore the U.S. Code on such an important matter as immigration create a dangerous precedent whose ramifications are far reaching.

In this particular case, the Courts of the State of Washington allowed (and ruled in spite of) blatant immigration law violations, notwithstanding the relevant facts and statutes being pointed out *in extenso* and repeatedly on Appeal, twice on Reconsideration, and in a Petition for Review before the Supreme Court of Washington.

The message sent to the public is one of rare clarity: the Courts of the State of Washington could not care less about immigration laws, and from there it is not clear where it ends. The Court intervention is warranted.

CONCLUSION

For the foregoing reasons, Mr. RIETSCHIN respectfully requests that this Court issue a Writ of Certiorari to review the judgment of the Court of Appeals of the State of Washington, Division One.

Respectfully submitted,

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June 30, 2023