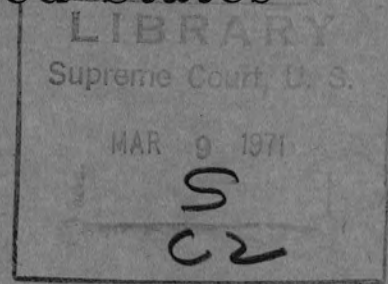


Supreme Court of the United States

OCTOBER TERM, 1970



In the Matter of:

Docket No. 156

----- X
GEORGE K. ROSENBERG, DISTRICT
DIRECTOR,

Petitioner,

vs.

YEE CHIEN WOO

Respondent
----- X

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Place Washington, D. C.

Date February 23, 1971

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C O N T E N T S

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ARGUMENT OF:

PAGE:

CHARLES GORDON, ESQ.
On behalf of Petitioner

4

GORDON G. DALE, ESQ.
On behalf of Respondent

25

1 IN THE SUPREME COURT OF THE UNITED STATES

2 OCTOBER TERM, 1970

3
4 -----
5 GEORGE K. ROSENBERG, DISTRICT
6 DIRECTOR,

7 Petitioner

8 vs.

9 No. 156

10 YEE CHIEN WOO

11 Respondent
12 -----

13 Washington, D.C.

14 Tuesday, February 23, 1971

15
16 The above entitled matter came on for
17 argument at 10:31, a.m.

18
19 BEFORE:

20 WARREN E. BURGER, Chief Justice
21 HUGO L. BLACK, Associate Justice
22 WILLIAM O. DOUGLAS, Associate Justice
23 JOHN M. HARLAN, Associate Justice
24 WILLIAM J. BRENNAN, JR., Associate Justice
25 POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HENRY BLACKMUN, Associate Justice

1 APPEARANCES:

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3 CHARLES GORDON, ESQ.

General Counsel

4 Immigration and Nationalization Service

Washington, D.C.

5 On Behalf of Petitioner

6
7 GORDON G. DALE, ESQ.

Santa Ana, California

8 On Behalf of Respondent

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments, the first on for this morning, in No. 156, Rosenberg against Yee Chien Woo. Mr. Gordon, you may proceed whenever you're ready.

MR. CHARLES GORDON, ESQ.: Mr. Chief Justice and may it please the Court.

In this case, an alien who has been an overstayed temporary visitor in the United States since 1965, has the right to remain under a statute which grants special benefits to refugees.

The issue concerns the construction of Section 203 (a) (7) of the Immigration and Nationality Act, which affords a haven for refugees who have fled persecution in communist countries, who are unwilling or unable to return and who are not nationals of the country or area in which their application is made.

Respondent unquestionably fled communist China in 1953. However, like hundreds of thousands of others his flight stopped at Hong Kong, where he was granted generous residence priveledges, established a home, was married and had a child, and continued to live for 7 years.

In 1959, Respondent came to the United States for the first time as a temporary visitor for business, stayed a few

1 months, and returned to his home in Hong Kong.

2 Q He had established a business in Hong Kong,
3 had he?

4 A A business...

5 Q What kind?

6 A Merchandising, and clothing. In 1960, the
7 Respondent again came to the United States as a business visitor
8 and left his wife in Hong Kong to operate the family business.

9 Q Was he, when he left Red China, communist
10 China, did he take his wife and child with him, or did he leave
11 alone?

12 A He left alone and was married in Hong Kong,
13 and the child was born in Hong Kong. He had previously been
14 married in communist China, and his wife had died. He had 5
15 children, whom he left there. He was married a second time in
16 Hong Kong, and had an additional child there.

17 After his coming to the United States in 1960, the
18 Respondent continued to remain in the United States. His wife
19 and child followed him to the United States in 1965, also enter-
20 ing as temporary visitors. The temporary stay of the entire
21 family expired in 1965, and they continued to remain here.

22 Deportation proceedings were brought against Respondent
23 and his wife and a Deportation Order was entered against them
24 without the privilege of voluntary departure.

25 Q Where did they live in this country?

1 A In California.

2 Immediately the Respondent filed an application for
3 benefits under a proviso to Section 203 (a) (7), which grants
4 refugee benefits to refugees who have lived in this country for
5 2 years.

6 That application was denied by the Immigration Dis-
7 trict Director and by the Regional Commissioner on the ground
8 that the Respondent was no longer a refugee, since he had firmly
9 established residence in the home in Hong Kong.

10 He then sought judicial review. The District Court
11 ruled in his favor, finding that he had not been firmly re-
12 settled in Hong Kong, because of his allegation that he had
13 never intended to remain there permanently, and that he harbored
14 an intention to come to the United States---.

15 The Court of Appeals affirmed. They found --- the
16 Ninth Circuit , the Ninth Circuit found that the question of
17 whether he was firmly resettled is irrelevant, the Courts said
18 that under the statute, once Respondent had been a refugee, he
19 was entitled to its benefits, even though he had established a
20 stable, new home in another country.

21 This con---

22 Q That was because, I gather, the statute had
23 been re-phrased---

24 A It had, and in a moment I shall argue---

25 Q Yes.

1 A ---develop that.

2 Q Yes.

3 A That conclusion, incidentally is opposed
4 by the later decision, of the Second Circuit, in Shen against
5 Esperdy, which is reported in 428 F. 2d.

6 Now admittedly, Section 203 (a) (7) of the statute
7 does not contain a specific disqualification of refugees who
8 have been firmly resettled, but I believe that the purpose to
9 exclude them, it clearly appears if we examine the history and
10 the purpose of the statute, after World War II, the United States
11 became deeply concerned with the massive problems presented by
12 millions of refugees left over from that war.

13 And it developed temporary programs to deal with those
14 problems. These programs were reflected in a series of measures
15 adopted from time to time. The first of these, the first major
16 statute, was the Displaced Persons Act of 1948.

17 Under this statute, in a 3½ year period, the United
18 States received approximately 400,000 refugees. That statute
19 did have specific language disqualifying refugees who were firm-
20 ly resettled. The next major statute was the Refugee Relief Act
21 of 1953, under which approximately 200,000 refugees were re-
22 ceived into the United States and again the statute specifically
23 excluded refugees who had been permanently resettled.

24 After that, the next statute was the Refugee Act of
25 1957. This was a temporary statute, again, for a limited purpose.

1 And the purpose was to assign approximately 18,000
2 visas that had been unused when the Refugee Relief Act had ex-
3 pired at the end of 1956. The 1957 law said that these visas
4 should be assigned to a group known as Refugee Escapees, and
5 in designating that group it did not mention firm resettlement.

6 The next of these temporary statutes was the so-called
7 Fair Share Act of 1960. Now this, again, was a temporary meas-
8 ure. It was designed to enable the United States to participate
9 in a world wide movement to enable the United Nations to close
10 the remaining refugee camps.

11 And under the terms of this statute the United States
12 undertook to receive what it considered its fair share of these
13 refugees in the camps, 25%. Now again, this statute said nothing
14 about refugees who had been firmly resettled.

15 Q Did these camps date back to World War II?

16 A World War II.

17 Q They weren't the products of the 1957 events
18 in Hungary, or anything?

19 A No, that's completely independent, and later.

20 The camps remained, as strange as it may seem, for all
21 the years between World War II and 1960---

22 Q Eighteen years after 1945.

23 A And the problem had not been liquidated
24 in 1960, 1959, the United Nations undertook a concerted drive
25 to close these camps and the United States cooperated with that

1 movement in so-called War Refugee ---- and adopted the 1960 Law
2 as part of that movement.

3 Q These were not part---this law was not con-
4 cerned with the refugee camps in the Middle East?

5 A No, specifically not, because the United
6 Nations mandate to which it was tied did not apply to the Mid-
7 dle East.

8 Again, as I said, this law, the 1960 law, didn't men-
9 tion firm resettlement, and it did add language which decreed
10 that it would not apply to those who were nationals of the coun-
11 try in which their applicaiton was made.

12 Now from these developments, the Ninth Circuit took
13 the position, came to the conclusion, that because of this chain
14 of events, and the changes in the language of the statute,
15 Congress had intended to make a change in the language of the
16 Court, this was a clear manifestation of Congressional intent
17 to change the criteria.

18 Q What was the specific language that they
19 arrived at?

20 A Two things. One, in the Refugee Relief Act
21 of 1953 and in its predecessor, the Displaced Persons Act of
22 1948, there was specific language barring refugees who had
23 been firmly resettled.

24 Second, in the 1960 Fair Share law, there was new
25 language saying that its benefits would not apply to those who

1 were nationals of the country in which the application was made.
2 The Court of Appeals for the Ninth Circuit concluded that this
3 addition of the language, "not a national", was intended to
4 be a substitution for the criteria for those firmly resettled.

5 No legislative history is cited by the Court of Ap-
6 peals to support this conclusion and I would suppose that if
7 Congress had intended such a marked departure from the previous-
8 ly established procedures, criteria, it would have expressed its
9 purpose in some clear manner. Yet nowhere in the legislative
10 history is there any indication that a change was contemplated.

11 Moreover, the Second Circuit in a very careful and a
12 very long and detailed opinion studied the legislative history
13 much more detailed than I must say the Ninth Circuit, they
14 came to the conclusion that no change had been intended.

15 I think the 1957 law furnished the key. The 1957
16 law was the first law which changed the language which elim-
17 inated the "firmly resettled". But in the House report, re-
18 porting this legislation, and you recall Your Honors, this
19 legislation was intended to take care of the group left over
20 from the previous law. The House Committee said that they in-
21 tended that in applying this law, the same criteria should be
22 utilized.

23 So it seems obvious that no change was intended.

24 Q The Second Circuit put it on the basis that
25 the man had to actually be homeless---

1 A Exactly.

2 Q ---and if he wasn't homeless he couldn't---

3 A That's exactly what I believe the statute
4 was intended to do.

5 Q Well, the Second Circuit held that---

6 A And of course we agree with the Second Cir-
7 cuit. But I think that as I'll develop my argument, I think
8 that the history of this legislation indicates quite decisively
9 that these statutes are intended to deal with homeless people,
10 to provide a haven for the homeless and the displaced.

11 I believe that the "not a national" language which
12 was inserted for the first time in 1960, had an entirely dif-
13 ferent purpose from that envisaged by the Ninth Circuit.

14 The Court, unlike the Second Circuit, which as I say,
15 considered this with great care, the Court below overlooked the
16 fact that the 1960 Act was tied to the mandate of the United
17 Nations. The United Nations High Commissioner for Refugees.
18 The mandate of the High Commissioner, which is incorporated in
19 a UN statute, specifically declares, among other things, that
20 his mandate shall not extend to refugees situated in the country
21 of their nationality.

22 So in adopting the criteria of the United Nations,
23 Congress followed that formulation. Now when that formulation
24 was carried over into the 1965 Act, which succeeded these laws,
25 I believe Congress had in mind the change in world conditions

1 that had occurred by that time, 1965.

2 In the original refugee laws, Congress confronted a
3 world, Europe particularly, that was shattered by war. The
4 countries of Europe even the countries which were relieving t
5 their own nationals, were unable to care for such nationals.
6 And therefore the United States pitched in and helped.

7 And in the earlier refugee laws, there was specific
8 provision for the reception of Greek, Dutch, German, and other
9 ethnic refugees who were situated in the country of their
10 nationality, Italians, I believe, was the other one.

11 Now by the time that the 1965 law was being considered,
12 the situation, as I say, changed. Congress, I believe, conclu-
13 ded that these nations were now able to care for their own
14 refugees, and therefore, it inserted this proviso that it
15 would not extend to refugees who were in their own countries,
16 the countries of their nationality.

17 Now particularly I call Your Honors attention to the
18 situation of West Germany, which may have been in the mind of
19 Congress, which previously had been the beneficiary of all the
20 refugee laws which had been previously enacted.

21 By the application of the "not a national" proviso.
22 Congress apparently was saying that West Germany had now re-
23 covered. The ethnic German refugees who were coming into Ger-
24 many could be cared for by their own country, and that was no
25 longer necessary for the United States to pitch in and help.

1 I think this is the basis for the adoption by Con-
2 gress of the "not a national" proviso, and it seems to me
3 completely without warrant to assume that Congress intended to
4 utilize this special statutory provision for the aid of ref-
5 ugees who didn't need immediate help, who were not homeless,
6 who were not displaced.

7 Our briefs recite the consistent administrative in-
8 terpretation which has found that benefits under these re-
9 fugee statutes are not available to refugees who have become
10 settled in stable new homes.

11 Q Mr. Gordon, on the Respondents' theory
12 would the refugee status once acquired continue forever?

13 A This is the way I would construe it.

14 Q Incidentally, now that I've interrupted
15 you, is there any distinction in the Immigration Law terminology
16 between the term national and the term citizenship?

17 A Yes, it's a slight difference. For instance
18 the present practice, national is a person who is holding per-
19 manent allegiance, to include citizens. It's a broader term
20 than the citizens. As used in our context today, I think it's
21 synonymous with citizens.

22 Now as I've said, the administrative interpretation
23 is consistently the point of view I'm arguing here today, for
24 example, when the 1957 Act was adopted, the State Department
25 immediately promulgated regulations which announced the "firmly

1 resettled" concept even though the law hadn't said anything
2 about it.

3 In addition, a series of reported administrative de-
4 cisions have expressed that concept. And finally, that concept
5 has been reflected in reports which are made by the Immigra-
6 tion Service to Congress every six months showing the operation
7 under Section 203 (a) (7), as required by Section 203(f) of the
8 statute.

9 Now Congress had never questioned that interpretation,
10 and indeed, no Court, other than the Court below has ever reached
11 a contrary conclusion. Respondent seeks to find support for
12 his interpretation in a statement made by Senator Kennedy dur-
13 ing the course of the debate of the 1955 law, in which Senator
14 Kennedy said that Section 203 (a) (7) refugees "must be currently
15 settled in countries other than their homelands."

16 This statement was a small part in an explanation by
17 Senator Kennedy of the many provisions of the 1965 law which
18 primarily was adopted to abolish the national origins quota
19 system.

20 I think Senator Kennedy was not addressing the concept,
21 he didn't say he was and it doesn't appear that he was ad-
22 dressing the concept of firm resettlement, in context, and read-
23 in the statements in entirety I think Senator Kennedy was speak-
24 ing of providing homes for the homeless, for the displaced. And
25 in our reply brief at page 6, we set forth some additional ex-

1 cerpts from Senator Kennedys statement.

2 For example, Senator Kennedy spoke of the need for
3 this country to remain "a haven for the displaced", and that
4 "the cases of the graatest need can be processed at nnce".

5 Later in the floor debate Senator Kennedy commented that the
6 bill "establishes what we mean by refugees. Those fleeing from
7 communist domination and from the other categories mentioned in
8 the statute.

9 I believe Senator Kennedys reference to those fleeing
10 is an accurate paraphrase of the statutory requirement that
11 speaks of those who have fled persecution.

12 Q To what other act were those remarks di-
13 rected? Specifically.

14 A Senator Kennedy, there was a colliquy with
15 Senator Kuchel who had questioned him about the scope of the
16 statutory provision, to what extent it would benefit refugees
17 and Senator Kennedy was responding.

18 Q What were they debating at that time?

19 A The 1965 law. This is the law which is in
20 question today.

21 Now, as---

22 Q What do you suppose the Senator did mean,
23 when he used the language quoted by your brother in opposition?

24 A I think, Your Honor, he wasmmmerely para-
25 phrasing the statute.

1 Q Must be firmly settled in countries other
2 than their homeland.

3 A The word settled nowhere appears in the
4 statute.

5 Q But it does appear---he did say it.

6 A He said it, but it wasn't reflecting what
7 was in the statute.

8 Q What do you suppose he did mean---

9 A As I understand it he was paraphrasing what
10 the statute said. The statute said that the refugee must not be
11 in the country of his nationality. So what he was saying is
12 that they must be in some other country.

13 Q Currently settled---

14 A Settled. And settled I think he must mean
15 by settled, he means situated.

16 Q Well---

17 A He didn't mean having a stable home, as I
18 understand it.

19 Q He could mean permanently settled---

20 A That's why I---

21 S Q Permanently there---

22 A And I don't think he was talking in that
23 context at all.

24 Q Had the Respondents given up their connec-
25 tions in Hong Kong?

1 A As far as I know they have, but they have
2 the right to return. They were given a certificate of identity
3 which gives them the right to return.

4 Q Is their child here with them in the United
5 States?

6 A Yes, sir. Not under order of deportation.

7 Q Did they---

8 A The order of deportation is against Re-
9 spondent and his wife and the child would go with them, if they
10 return, of course.

11 Q But the child is presently---

12 A In the United States.

13 Q The minor child---

14 A Yes. Sixteen years old.

15 Q Is he in business here now? This gentleman?

16 A I assume so, the record doesn't show.
17 He came here to attend a trade fair and to exhibit his goods
18 there. I assume he has continued in some business. Nothing in
19 the record tells us that.

20 Q Well, does the record tell us whether he
21 is still maintaining a business in Hong Kong?

22 A It doesn't but I assume that he does not.
23 His wife was conducting the business on his behalf and she came
24 here in 1965.

25 I call attention to one other facet of the legislative

1 history, and that is the remarks of Senator Hart, who was one
2 of the chief sponsors of this measure, as a matter of fact, his
3 name was the leading name and the primary name on the bill in
4 the Senate.

5 Now in describing the purpose of this legislation,
6 Senator Hart said its concern is with the homeless and the
7 oppressed. That's his language. And I think that's a correct
8 description of what the statute means.

9 Now Section 203 (a) (7) reserved 10,200 numbers for
10 refugees within its description.

11 Q Could I interlard just a moment, to the
12 records? What happened after his last temporary visa expired?
13 Did he apply for an extension or did he just stay?

14 A There were applications for extension until
15 1965, then his authorized stay expired and his wives did too,
16 and a deportation proceeding was brought and they were found
17 deportable.

18 Q But he didn't try to secrete himself, or
19 anything?

20 A No, no.

21 Now I've indicated that this is a small allotment,
22 10,200. The purpose of this small allotment, I think, is re-
23 vealed in its legislative history, is to afford, grant permanent
24 authority to deal with refugee emergencies, as they arise.

25 This---

1 Q 10,200 over, in what span of time?

2 A One year. This is an annual allotment.

3 Q An annual allotment.

4 A Part of the annual quota. 6%, which adds
5 out to 10,200.

6 Q Yes.

7 A Every year, 10,200.

8 Q Is it always over-subscribed?

9 A No, Your Honor, it has been for the last
10 2 years, there was a very heavy pressure on it, and indeed, in
11 1969, the chairman and 25 members of the House Judiciary Com-
12 mittee wrote the Attorney General, saying that we anticipate
13 that this will be oversubscribed, can't you admit additional
14 refugees under parole, and the Attorney General in 1970
15 agreed to do so.

16 Q How does he choose if the quota is over-
17 subscribed, first come, first serve ?

18 A First come first serve. It would have to
19 be that way. They are allocated on a monthly basis, incidentally
20 so that they try to space them out.

21 Q Your suggestion is that, I take it, that
22 this Court is too small to expand the statute to include people
23 who can stay somewhere else---

24 A I---

25 Q Who have resettled somewhere else.

1 A I was about to say that.

2 Q Your Honor, I think that's the most impor-
3 tant point I can make. The point is that this is a small al-
4 lottment, intended to deal with emergencies, and throughout the
5 legialative history, the sponsors of this measure and the
6 committees emphasized the need to keep this reserve authority
7 in the hands of the President and the Attorney General so that
8 they could deal with emergencies as the need arises.

9 Now---

10 Q Who were the sponsors?

11 A In the House, the principal sponsors were
12 Senator, excuse me, I mean Congressman Feighan and Congressman
13 Celler. In the Senate the princepal sponsors were Senator Hart,
14 and Senator Kennedy.

15 Q Assuming that you prevail in this case,
16 is there any authority in the Attorney General as a matter of
17 discretion to allow this man to stay in this country?

18 A Well, if there were, there are a number
19 of discretionary remedies, if---

20 Q I was wondering if there was any remedy,
21 I mean is there such authority, I'm not talking about whether
22 it would be exercised.

23 A I don't know whether there is in this case,
24 it seems to me that there wouldn't be, unless he can establish
25 that he is a refugee. And he doesn't claim that he has any right

1 or any eligibility for any discretionary benefit.

2 Now as I've said that is a small allocation and the
3 fact that the certainty that it was intended for emergencies is
4 underlined by the fact that the statute says that these per-
5 sons shall be granted conditional entry.

6 Q You mean emergencies in the sense for peo-
7 ple who haven't anyplace else to go, who can't stay anyplace
8 else?

9 A Right. And emergencies do arise.

10 Q Other countries won't take them.

11 A I'm sorry I didn't hear the last---

12 Q Other countries won't take them.

13 A Either they won't take them or they don't
14 have stable residence there. They'll let them stay there for
15 a short time. They'll permit them to remain. For example,
16 the Czechoslovak situation, many Czechoslovakian refugees crossed
17 the border and came into adjacent countries, they did not have
18 residence privileges.

19 Under the emergency authority which is granted in
20 this statute, the President and the Attorney General can admit
21 them immediately to this country as conditional entrants.

22 Now, in addition, the fact that this is designed for
23 emergency action, for keeping open the opportunity to deal with
24 emergencies is underlined by the statement in the House committee
25 report on the 1965 law, that this statute, and I quote from the

1 Committees report, "will permit the President to act immediately
2 if the situation so requires, to come to the aid of refugees as
3 defined in the Bill."

4 I believe the acceptance of Respondents interpretation
5 would defeat the statutory purpose. Approximately 2 million
6 refugees from China have settled in Hong Kong.

7 Q Your position is pretty well in the teeth
8 of the statute, isn't it?

9 A I don't believe it's in the teeth. The
10 statute doesn't cover this situation. But the statute does say
11 that the person who seeks his benefits must have fled. That's
12 the language of the statute. And Senator Kennedys expression,
13 I think is an apt one, we---

14 Q Yes, but you could only admit them under
15 the statute from countries other than the country from which
16 they fled.

17 A No, yes. But the statute then goes on to
18 say even if they have fled, they can't be admitted if they are
19 national of the---

20 Q If they're nationals, but all non-nationals
21 under the statute could be admitted---

22 A If they have fled.

23 Q Well, there's no question, then is it, about
24 this gentleman, is there?

25 A Well---

1 Q He fled and he's not a national in the
2 country in which he made application for entry---

3 A That would be perhaps a literal reading
4 of the statute.

5 Q That's what I say, your position that---
6 construction.

7 A That's a literal reading of the statute,
8 possibly, but I say such a literal reading would defeat the
9 statutory purpose and would be contrary to its purpose of
10 providing emergency authority do deal with the homeless, the
11 people who haven't got a place to go to.

12 Now---

13 Q I don't understand why you say he had
14 not fled.

15 A He had fled, but he was no longer a refugee.
16 And this is a statute to deal with refugees.

17 Q What was his status in Hong Kong?

18 A He was an authorized resident. He had gotten
19 a certificate of identity, which---

20 Q I've been there a number of times; I assume
21 that almost everybody is there on a very temporary basis.

22 A No, fifty---

23 Q He wasn't a national, was he?

24 A No. There's no Hong Kong nationality.

25 Q British, I thought.

1 A There is British nationality. And British
2 nationality is world-wide procedure which could be followed in
3 Hong Kong.

4 Q Then he wasn't a British---

5 A No, he never applied for that. He could
6 have applied but very few Chinese refugees have applied. But
7 he did get residence priveledges in Hong Kong, and he has a
8 certificate of identity---

9 Q Did he have a business there?

10 A Business. He established a business and
11 continued in that business for 7 years. He had a home there,
12 his family was there, he continued to reside there for 7 years.

13 Q If in the present posture, for some reason
14 or other, Hong Kong said that he had only 30 days to clear up
15 his affairs and get out, how would that affect---

16 A If he had no stable residence he might still
17 be a refugee, but Hong Kong does not say that, Hong Kong per-
18 mits the Chinese to remain there in residence indefinitely.
19 There is no suggestion that Hong Kong will expell a single one
20 of them.

21 Q Well, if in the future, and assuming you
22 prevail here, in the future he was so informed by Hong Kong,
23 and given 30 or 90 days to find a new place, would he then
24 resume in your view a refugee, a homeless status?

25 A It would be that he would then be considered

1 a refugee. Then he would have no home, he then would be dis-
2 placed, because of the event that went back to 1953 perhaps
3 and now were reinstated and then he could claim to be a refugee.
4 But now in our view he has a stable home, he is a person who
5 can return to his home, he is not one for whom the statute
6 was enacted.

7 Q Does the record show why he pulled up roots
8 in Hong Kong?

9 A Well the record shows that he had an avid
10 desire to come to the United States, and I can only assume that
11 coming here as a temporary visitor he intended to remain.

12 Thank you.

13 Q Thank you, Mr. Gordon. Mr. Dale?

14
15 ARGUMENT OF GORDON G. DALE, ESQ.

16 ON BEHALF OF RESPONDENT

17
18 MR. DALE: Mr. Chief Justice, and may it
19 please the Court.

20 Respondents position is that Congress knowingly, and
21 intelligently used the term "national" in excluding would-be
22 refugees under this Section 203 (a) (7). And we say when an
23 applicant qualifies under the literal terms of the statute,
24 unless he's become a national in an intermediate country he
25 is eligible for consideration under the law.

1 So when Respondent Harry Woo fled from Red China and
2 he went to Hong Kong, and he opened up his one-desk business of
3 getting orders in the United States for clothing, and was able
4 to live in an apartment, of one room, with his \$3 Hong Kong
5 money when he arrived in Hong Kong, and was able to make a
6 sufficient business so that he was able to get a trip to the
7 United States as a business visitor, and he was given by the
8 British government a certificate of identity, and that's all,
9 he had not become a British national, he's eligible under the
10 Act.

11 Q Isn't the status, as Justice Douglas sugges-
12 ted, that most of the people in Hong Kong, precisely that?
13 That is that they're there on a certificate of identity, which
14 has much the same function as a passport, I take it.

15 A That is basically true, Mr. Chief Justice,
16 except that a certificate of identity gives one no assurance
17 of its continuance. It is a certificate of identity, it has to
18 be renewed periodically, as a matter of fact, Respondents cer-
19 tificate of identity expired in 1967, at the request of the
20 Petitioner, the Immigration Service, he was directed to apply
21 for a renewal of his certificate of identity.

22 He did so, and was informed by the Hong Kong authori-
23 ties, he must apply in Los Angeles, at the office of the
24 British government there. The British Consulate. The British
25 Consulate said, "We're not interested. Your application has to

1 be made in Hong Kong."

2 So at the present time Harry Woo has a 4 year old
3 expired certificate of identity. We---

4 Q Well at the time he applied for renewal he
5 was situated over here, wasn't he?

6 A That is correct, Your Honor.

7 Q But notlegally in the United States.

8 A He was legally in the United States undil
9 1966 I believe, on a series of extensions granted by the Immi-
10 gration Service.

11 Q Yes.

12 A Of his original visit in---

13 Q But perhaps a better way to put it is that
14 he was here at the sufferance, very definitely---

15 A I would say that he has been at sufferance
16 since 1966 but he had a lawful extension of his business visi-
17 tors visa, each year from 1960 through 1 65,

18 We contend that Congress used this term "national"
19 because national is a well recognized term in international law.
20 We use that term in our Internationality Act of 1940, we've
21 used it again in our Act of 1952, the basic Immigration Act
22 under which we now operate.

23 Certain rights and obligations go with nationality.
24 Among them of course, the most important, military service to
25 the country of which you're a nation. And in turn the nation

1 provides the national with some protection abroad.

2 For example, could Harry Woo, the Respondent, expect
3 some kind of protection from the British government or the
4 United States? Not at all. They're not interested in him .
5 Do we provide protection for people who have permanent residence
6 in the United States if they're visiting abroad? Not at all,
7 we have enough problems with our own citizens abroad.

8 Q This is getting back to the legal question
9 for a moment, you've got a head on conflict between the Ninth
10 Circuit and the Second Circuit. That seems to be recognized.
11 Could you tell me where you think the Second Circuit went off
12 the track?

13 A Justice Harlan---

14 Q Do it at your own time if you---

15 A All right.

16 Q That's the legal question, if you---these
17 two decisions. The facts are simple, and understandable, no
18 dispute about them, and that's just a pure question of law,
19 which Circuit is right, isn't it?

20 A I think that is correct, Your Honor.

21 Q Now I'd like to know, at your convenience,
22 where you think the Second Circuit went off the track.

23 A In the Second Circuit the Court stated in
24 referring to the Fair Share Law, for example, the Fair Share Law
25 of 1960, the basic refugee act of that time, and they claimed

1 that this statute provided the necessary understanding for the
2 1965 statute. And quoted the language under the United Nations
3 High Commissioner for mandate and the Court used the language,
4 this particular statute which used the term not a national only
5 applies to those refugees who do not have the rights and obliga-
6 tions of nationals in the country in which they reside.

7 And the Court immediately picked this up and said it
8 seemed to prove the Ninth Circuits position and its claim ex-
9 actly it does indeed. But then the Court makes a leap back into
10 legislative history. We claim that legislative history has no
11 part in this case where the language is absolutely clear.

12 The Petitioner would have us completely topsy turvy
13 apply the statutory construction rule. The statute is plain, but
14 if you delve into the legislative history sufficiently, and
15 not only this act but the '48 act, the '53 Act, the '57 Act,
16 the '60 Act, the '62 Act, I assure you you can find sufficient
17 confusion that now you can ignore the finding of the statute.

18 Now you're in a position to look and decide what
19 would be a good standard to apply and that's exactly what the
20 Petitioner has done to this statute.

21 Q Ususlly don't you have to be a refugee?

22 A Yes, Your Honor.

23 Q Well from what country is Mr. Woo a refugee?

24 A A refugee from Red China.

25 Q Where did he come here from?

1 A He came here from Hong Kong.

2 Q And he wasn't fleeing Hong Kong, was he?

3 A He was not fleeing Hong Kong, but where---

4 Q He could have stayed in Hong Kong until
5 today.

6 A Conceivably he could have stayed in Hong
7 Kong---

8 Q And have run his business there until today.

9 A Conceivably he could have done that.

10 Q As far as you and I know he could go back
11 there tomorrow.

12 A Except that apparently he would have a great
13 deal of difficulty getting this so called certificate of iden-
14 tity we were directed to obtain---

15 Q Well assuming that was done he could go
16 back---

17 A If he had this---

18 Q The whole purpose of the Act was to protect
19 somebody from being sent back to where he had fled.

20 A That is incorrect---

21 Q I fail to see how he gets under the refugee
22 Court.

23 A We claim---

24 Q He's not homeless. He's homeless now, because
25 he gave up his home.

1 A We contend that where a refugee goes out
2 of Red China into Hong Kong, which now has the highest popula-
3 tion of any area in the world, where 2 million of the people
4 of 4 million are refugees, this is no haven.

5 This is a small piece of ground where true, he's
6 grieving and living.

7 Q Well don't we agree, you and I, that there's
8 no country in the world quite as good as the United States?

9 A Yes---

10 Q You don't want to use a comparative basis,
11 now, do you?

12 A No, no doubt about that belief about the
13 United States, Your Honor.

14 Q Well, he's not a refugee from Hong Kong,---

15 A I claim his refugee status did not terminate
16 merely because he had a place to put his feet in Hong Kong.

17 Q A place to live, marry, raise a child,
18 and run a business, is not a permanent place.

19 Q I claim---

20 Q What else do you need for residence?

21 A I think, pardon?

22 Q What else do you need for residence?

23 A I think similar protections that the Con-
24 gress intended by using the term "national". In other words,
25 some protection if you are brought far from your home country.

1 The right, for example, in a democratic country to
2 have something to do with voting, the election of officers,
3 hold office. A person with some citizenship rights, not just
4 somebody who barely exists.

5 Q Do you say a man with a business is barely
6 existing?

7 A I say the man was barely---

8 Q You say a man that's got a business that
9 he's got enough money to come running from Hong Kong over here
10 is barely existing when I don't have enough money to get from
11 here to Hong Kong. And he had money enough to get from Hong
12 Kong here.

13 A I don't know the source of his ability to
14 make that trip to the United States. I do know that the purpose
15 was to get orders for clothing which he then took back to his
16 one desk and parcel out to people to make the clothing.

17 Q There's nothing in this record that shows
18 that he was a pauper, is there?

19 A No, Your Honor, I can't deny the fact that
20 he got to the United States. There's no question about that,
21 But I---

22 Q Mr. Dale, let me ask of you the comment I
23 made to Mr. Gordon. On your theory is a man once a refugee,
24 always a refugee?

25 A No, Mr. Justice Blackmun, if he's become a

1 national of an intermediate country, as Congress said in the
2 statute, he's not qualified any longer for refugee status.

3 Q Do I take it that you do coalesce that term
4 National with Citizenship?

5 A Yes, Your Honor.

6 Q So if he'd been in Hong Kong running his
7 business, after 20 years you would have the same case?

8 A We would have the same case under my analy-
9 sis, yes, Your Honor.

10 I think that it seems to me that it might be fruitful
11 to consider the spectre that the Petitioner has raised of in-
12 undation of the United States by refugees unless his standard
13 is applied, and the Congressional standard of nationals---.

14 Q Could I interrupt you? Pursuing Mr.
15 Justice Blackmun's point, what is Hong Kong?

16 A It's a British Crown colony.

17 Q Crown colony, and you can't become a citizen
18 of Hong Kong, can you?

19 A There's no such thing, as I understand it.
20 You become a British national, if Great Britain chooses to
21 recognize---

22 Q You become a British---

23 A Subject, and you carry a British passport.

24 Q A British subject, and why didn't Congress
25 use the word citizenship, or citizen, or---

1 A I would suppose only that because the
2 term national was used in the 1952 basic Immigration Nationality
3 Act to determine, to describe a national as one who owes per-
4 manent allegiance and it was used again in the 1940 Nationality
5 Act.

6 So it's a term that has been used and I suppose that
7 it---

8 Q What is a permanent resident of the United
9 States? Is he a national?

10 A No, he's not. Permanent---

11 Q Not a citizen---

12 A Permanent resident merely has a right to
13 reside, he has certain obligations---

14 Q Well, I say, he owes allegiance in the
15 fact that he has to serve in the armed forces?

16 A Under our law he has to serve in the armed
17 forces, that's correct.

18 Q But you wouldn't call him a national?

19 A He's not a national.

20 Q Because you just defined national as a
21 citizen.

22 A Correct, I think that under our law there
23 are a couple of island areas where the natives are nationals.

24 For example, before the Phillippine Independence Act,
25 all the Phillippines were nationals of the United States, but

1 not citizens.

2 Q Well I just wonder if, what about that in
3 this case? People who are living there with certificates of
4 identity and who have been there quite a while, are they na-
5 tionals but not citizens?

6 A They're not nationals of the Crown Colony,
7 and they're not citizens. They have a certificate of identity
8 that identifies them as residing in Hong Kong, which can be
9 lifted, so there's no law that says that there's anything that
10 guarantees them anything like, for example, permanent residence
11 in the United States.

12 If you have a permanent resident certificate here,
13 so long as you do not become subject to a deportable offense,
14 you can remain here permanently, the law says you can. There's
15 nothing that assured for a person who lives in Hong Kong, with
16 a certificate of identity.

17 Q Mr. Dale, what do you have to say about the
18 governments argument that this statute, this whole scheme,
19 program, was generously conceived to take care of hardship
20 cases, and you agree that it is a hardship type of statute, how
21 do you fit your Respondent into the hardship category?

22 A Of course in the first place I do not
23 subscribe to the governments contention that this is primarily
24 a hardship statute. There is another section of the Immigration
25 Law that allows parole in the United States under Section 212.

1 Parole in the united States where there is a real
2 emergency, you can be assured that under this program of ad-
3 mission to the United States under 207 there is a long, careful
4 screening of each applicant who seeks to come in under this
5 statute, and nobody is just going to come drifting in under
6 203 (a) (7).

7 If there is a real emergency, section 212 I believe
8 would be used, which allows Attorney General to suddenly parole
9 people into the United States.

10 This is really---

11 Q You do not agree that the legislative his-
12 tory of this particular statute demonstrates that it had the
13 purpose of giving relief to oppressed people, refugees, home-
14 less people? Your don't agree with that?

15 A Yes, I agree that was the intention, Your
16 Honor, but of course I contand that that---

17 Q Well, then it's a hardship statute.

18 A And that a man in the position of Respondent
19 is in a hardship situation, contemplated by the statute.

20 Q Well, had he ever had any implications that
21 his right to stay in Hong Kong would be terminated by the Brit-
22 ish?

23 A He had not, at the time that he left, no.

24 I would like to refer to another point that we had
25 made, that the 1951 Convention on the Status of Refugees, the

1 signatories agree that they will not expell or compell refugees
2 who come into their territory to go back to the country from
3 whence their life or freedom might be threatened.

4 But when the United Kingdom acceded to the treaty
5 it had the option to include all the territories for whose
6 foreign affairs it was responsible. But the United Kingdom
7 chose to exclude Hong Kong from this agreement. They did the
8 same thing with the 1968 Protocol. Doubtless they had good
9 reasons. Might China not impose certain conditions off the
10 retention of the Crown Colony and say, "We want some of those
11 nationals returned."?

12 But the United Kingdom didn't want that treaty re-
13 stricting their freedom, and I wouldn't agree that Hong Kong
14 was included. Does that sound like a certificate of identity
15 holder like the Respondent could be assured that he had a night
16 safe, even in Hong Kong? We claim no.

17 We claim that this refugee had a place to stay, but
18 it was a very tenuous location indeed, and Congress contemplated
19 that this was a hazardous situation and did say when you're a
20 national, then you're disqualified.

21 Q Well Mr. Dale, I think that the governments
22 direction to this man to apply for a renewal of his certificate
23 of identity in Hong Kong, to Hong Kong, was not a gesture, or
24 a futile exercise but was for the purpose of seeing whether he
25 could be reinstated there. And if he could, if he now could be

1 reinstated in his former position in Hong Kong, would you still
2 claim he's within the reach of the hardship statute?

3 A I would claim that he's within the reach
4 of the strict construction as passed by Congress, Yes, Your
5 Honor.

6 Q Well it's still an assumption against fact,
7 that if Red China became a democracy next year, would he still
8 be a refugee?

9 A I think we might look to the protocol to
10 which the United States has prescribed---

11 Q Would he still be a refugee under this
12 Act? I understood you to answer my brother White that once he
13 left Red China he would be a refugee forever.

14 A If he can return to Red China which has be-
15 come a democracy and he's then no longer in fear of persecution
16 because of his race, or religion, or political opinion, by no
17 means can he still maintain refugee status.

18 Q Well what's the difference so long as Hong
19 Kong is concerned?

20 A I think again it's the difference between
21 protections given to a national by his home country, his stand-
22 ing in that country, as opposed to the mere temporary status of
23 one who is at sufferance in his intermediate country.

24 Q You claim he was a temporary resident of
25 Hong Kong?

1 A Yes, Your Honor, he had nothing as sub-
2 stantial as permanent residence in the United States where you
3 have a card that says this man has got a right to permanent
4 residence. He, all he has to do is file an address report card
5 once a year.

6 Q How long was he there, 7 years?

7 A He was there almost 7 years.

8 Q And raised a family, he was just tempor-
9 arily there.

10 A I contend that he---

11 Q How long was he in this country?

12 A Something over 10 years.

13 Q So he's three years more permanently here,
14 than in Hong Kong.

15 A I don't think we can contend that he had a
16 permanent residence here, despite the 10 years.

17 Q Mr. Dale, a little while ago I think you
18 were about to say something about quotas. If the quotas are
19 over subscribed, and he is here, then presumably there are a
20 lot of other eligible people who can't get in. You were going
21 to say something about quotas.

22 A Yes, Mr. Justice Blackmun, I wanted to
23 quote from the 1969 Visa Office Report on the numbers who have
24 applied and been accepted under this statute.

25 According to that report, in 1966, 3,991 were admitted

1 out of an allowed quota of 10,200. In 1967, 4,337, 1968, 6,325,
2 1969, 9,850. So that in none of the 4 years reported has the
3 entire quota been used. And I think it's interesting that in
4 one of the Immigration reports, referred to by Mr. Gordon,
5 there is a record of denials of applicants who sought to come
6 in and they denied them on the basis that they were firmly
7 resettled.

8 And the total number of denials for the whole year
9 1967, was 82, So I think it's unrealistic to imagine that we're
10 going to be innundated with refugees either applying abroad,
11 or applying here, under this statute. The facts just aren't
12 that way.

13 Q Does the record show why he didn't come
14 here originally out of China?

15 A Yes, it does. As soon as he arrived in
16 Hong Kong, according to the applications that were before the
17 Service, and were considered by the District Court, he indica-
18 ted he tried to come here and was told do you have a sponsor
19 there, and he said no I don't have a sponsor, "Do you have a
20 guaranteed job"? "I don't even know anybody there." "Well, you
21 can't go." so forget it.

22 Then he made applications to go to other countries
23 apparently just before he again applied to come to the United
24 States, he was told he could go to Indonesia, as a refugee, and
25 about the same time he then was told there's a great program

1 going on against Chinese in Indonesia so he didn't go there.

2 Q May I ask you, due to your familiarity
3 with the Immigration laws, are there any other methods by
4 which a man can be permitted to come here by any government
5 agency under circumstances like this except to go through the
6 Courts? What I mean is, is there a hard and fast and rigid
7 rule which the government officers are under oath bound to obey
8 that they must try to keep this man out?

9 A I don't see that this is an absolute rule,
10 but the odd thing is that the Petitioner admits that they have
11 decided every single refugee case in 1948, 1953, 1956, 1960,
12 1962 and this Act as if the language had never changed. All
13 them are turned down if, in the opinion of the Immigration
14 Officer---

15 Q Well, you're talking now about the rigid
16 application of the law. Does anybody have any authority in the
17 Immigration Department, all the way up to the President to make
18 a suspension in cases like this? To loosen and to relieve
19 hardships?

20 A Of course, we have the novel position of
21 arguing for strict construction of the statute, which---

22 Q I understand that.

23 A ---benefit our client.

24 Q I understand that. But I was just asking
25 you for your information about the other.

1 A There is a provision under the---

2 Q It seems a pretty bad thing to have a case
3 like that here before us. One man, he was living in Hong Kong,
4 but so far as I'm a judge is a delightful place to live, so
5 and reside, if your wife doesn't buy too many clothes, but it
6 is a delightful place, and he leaves.

7 Of course he's not a refugee from there, strictly
8 speaking, he's not a refugee from there. He's a refugee from
9 the other place and had found a place to light, like a bird in
10 a ---. But is there any other method, we have so many of these
11 cases, that present these type hardship cases, and this is
12 a hardship case, as it is now, whatever may be said about the
13 law, it's a hardship case.

14 And in living here, 7 years, is it?

15 A Ten.

16 Q Ten. And he'd have to go back to Hong
17 Kong. Is there any power in any agency, the Attorney General,
18 head of the Immigration Department, President, that could suspend
19 the operation of law as to this man and his wife and child,---

20 A Yes, Your Honor, there is, there's a pro-
21 vision under the Deportation Law that allows what's called
22 suspension from deportation, if he has resided in the United
23 States for in excess of 7 years. However, the instructions have
24 gone down that no applications will be approved where the time
25 has been built up either by Court action, or by private bills,

1 in Congress, or by when you came in as a student, or if you
2 came in as a visitor, or indeed if you came in in a legal cap-
3 acity.

4 Apparently the only way you could be assured that the
5 7 year rule might apply is if you were hiding out successfully
6 for about 7 years---

7 Q What about a private bill?

8 A Private bills are extremely difficult,
9 YOur Honor, because you have to have a Congressman who's ter-
10 ribly eager and willing to go to bat for you because it has
11 been abused---

12 Q How long has this case been pending now?

13 A We first filed, I think, in 1965, and for
14 the---

15 Q 1955?

16 A 1965.

17 Q 1965.

18 A And we, the Court decision was in 1968, I
19 believe, and the Court of Appeals decision in our favor was
20 in 1969.

21 Q Of course, you would agree that by the two
22 Circuits disagreed this way, that it's a pretty close case.

23 A Well I just think the Second Circuit is
24 wrong, Your Honor.

25 Q What?

1 A I just think the Second Circuit is wrong,
2 Your Honor. I would like to refer to the decision of the Su-
3 preme Court in Schwegmann Brothers v. Calvert Distillers Corp.
4 where the writere of the opinion said it's the business of
5 Congress to sum up its own debated in its legislation. More-
6 over, its only the words of the bill that have Presidential
7 approval where that approval has been given, it's not to be
8 supposed that in signing a bill, the President endorses the
9 whole Congressional Record.

10 And incidentally this record of hearings covers some
11 1500 pages that are referred to by the Petitioner, for us to
12 undertake to reconstruct an enactment from legislative history
13 is merely to involve the Court in political controversies
14 which are quite proper in the enactment of a bill but which
15 should have no place in its interpretations, and ending by
16 and large, I think our function is well stated by Mr. Justice
17 Holmes, "We do not inquire what the legislature meant; we ask
18 only what the statute means."

19 We believe that on the basis of the statute, our
20 client, Respondent, qualified under the statute should be con-
21 sidered and should therefore be eligible for such a visa, and
22 we ask that the desision of the Court of Appeals in the Ninth
23 Circuit be affirmed.

24 Q Could I ask you a quastion? You argued this
25 case, I suppose in the---

1 A Ninth Circuit.

2 Q Ninth Circuit.

3 A I did.

4 Q Did you put in an Amicus brief in the
5 Second Circuit?

6 A No, I did not. I wasn't even aware of it.

7 Q You weren't aware of it.

8 A No.

9 Q Thank you, Mr. Dale, thank you, Mr. Gordon,
10 the case is submitted.

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