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In the

Supreme Court of the United States

ROBERT REID AND NADIA ALICE REID,

Petitioners,

v.

IMNIGRATION AND NATURALIZATION SERVICE,

No. 73-1541

Washington, D.C.
January 20, 1975

Pages 1 thru 49

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IN THE SUPREME COURT OF THE UNITED STATES

ROBERT REID AND NADIA ALICE REID, Petitioners	:	
v.	:	No. 73-1541
IMMIGRATION AND NATURALIZATION SERVICE	:	

Washington, D. C.

Monday, January 20, 1975

The above-entitled matter came on for argument at 11:05 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

BENJAMIN GLOBMAN, ESQ., 915 Asylum Avenue, Hartford, Connecticut 06105
For the Petitioners

MRS. JEWEL S. LA FONTANT, Deputy Solicitor General, Department of Justice, Washington, D. C. 20530
For the Respondent

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-1541, Reid against Immigration and Naturalization Service.

Mr. Globman, you may proceed whenever you are ready.

ORAL ARGUMENT OF BENJAMIN GLOBMAN, ESQ.

ON BEHALF OF PETITIONERS

MR. GLOBMAN: Mr. Chief Justice and may it Please the Court:

Mr. and Mrs. Reid, who are Petitioners in this specific case, are natives of British Honduras. They are citizens of British Honduras.

Both of them entered the United States through a port of entry at Chula Vista, California. They each, in individual cases, presented themselves before the immigration authorities, inspectors, and announced themselves as U. S. citizens.

They were admitted and entered the United States and took up their life here in the United States.

Subsequent to their entry, they became parents of two American-born children, citizens of the United States.

QUESTION: Did they ever report to the Immigration Service their true status, from the time they entered until the time this litigation arose?

MR. GLOBMAN: Litigation arose by a voluntary action upon the part of the Reids. They presented themselves to the Immigration Service at Hartford, Connecticut, voluntarily.

QUESTION: After they had the two children?

MR. GLOBMAN: Yes. Yes, after they had the two children they presented themselves in Hartford before the Service and since that date they have filed their annual report.

Now, they presented themselves, submitted to the authority of the Service and were placed on charges.

They were charged with having entered under false claim of citizenship and without inspection. They --

QUESTION: Do you remember the date when that was done?

MR. GLOBMAN: I believe that goes back --

QUESTION: Three or four years -- three or four years after their entry?

MR. GLOBMAN: No, about two years after their entry. Mr. Reid entered in 1968 in November and Mrs. Reid entered in '69, either January or February and after the birth of the first child and while Mrs. Reid was pregnant, they reported to the Service.

The hearing before the SIO, the Special Inquiry Officer, I believe was held in 1970 or '71.

QUESTION: Does the record show either why they

happened to come in at Chula Vista or how they ended up in Connecticut?

MR. GLOBMAN: The record does not show.

In any event, the Reids went through the entire hearing process before the Immigration Service. At their hearing, deportation hearing, they requested termination of proceedings based upon Section 241 (F) of the Immigration and Nationality Act.

Now, this section has been adjudicated by this Court in the Errico case.

Now, at the hearing, they were denied this termination of proceedings based upon the Attorney General's decision in the Lee case.

This decision of the Special Inquiry Officer who entered an order of voluntary departure and an ultimate order of deportation was appealed to the Board of Immigration Appeals and the Board of Immigration Appeals once again, on the basis of the Lee case, denied the appeal and entered the same order as the Special Inquiry Officer.

Then this case came before the Second Circuit in New York and we are presently here on the matter today.

Now, in the record, it is spelt out that both Mr. and Mrs. Reid have never been arrested, have never been a member of any subversive organization or communist organization and that they have -- I might say for the benefit of the

Court that ever since their entry into the United States, they have been gainfully employed and have always supported each other and their children, have never been upon the welfare rolls of any agency of government nor any private agency.

QUESTION: What have they been employed in, what kind of occupation?

MR. GLOBMAN: They are working in factories, bench hands, machine hands and they have been gainfully employed at all -- throughout the period.

QUESTION: How long have they been in Hartford? Have the been in Hartford the whole time?

MR. GLOBMAN: They are in Danbury, Connecticut. They have been there since very shortly after their entry.

QUESTION: Because they entered --

MR. GLOBMAN: They entered at Chula Vista, Southern California.

QUESTION: -- through California from Mexico, did they not?

MR. GLOBMAN: That is correct.

QUESTION: And does the record show what brought them up to New England?

MR. GLOBMAN: The record does not show. But they have had friends in the area and after they entered, they decided that they would make their life in the Connecticut

area where they had friends.

QUESTION: Exactly what was the fraud?

MR. GLOBMAN: That they were -- claimed to be U.S. citizens when, in fact, they were not U.S. citizens and on the basis of their claim, they were admitted.

QUESTION: They claimed that to the Immigration authorities?

MR. GLOBMAN: Yes, they presented themselves to the U.S. Immigration authorities at Chula Vista and announced themselves as U.S. citizens and were then admitted.

QUESTION: I suppose there is no official contemporaneous record of that, is there, because that would have just been an oral representation.

MR. GLOBMAN: That is correct, oral representation.

QUESTION: So what we have is their statement that that is how they got in.

MR. GLOBMAN: That is correct.

QUESTION: Is that it?

MR. GLOBMAN: That is correct but this has been found in the record by the Special Inquiry Officer that they were --

QUESTION: That that is, in fact, how they --

MR. GLOBMAN: That is correct, yes.

QUESTION: -- entered the United States.

QUESTION: Now, if they had disclosed at that time

that they were citizens, British citizens of Honduras, then what would have happened to them at the time?

MR. GLOBMAN: Then they probably would not have been admitted. They would have been sent back to go through the allocation route.

QUESTION: They'd have to go back to the consul and --

MR. GLOBMAN: To the U. S. Consul in Honduras.

QUESTION: In Honduras and try to get a visa.

MR. GLOBMAN: That is correct.

QUESTION: They would have to show that they either had employment assured here or that they had means of support here and a great many other things would have to be demonstrated, would they not?

MR. GLOBMAN: Yes. Let me say for the record that they probably could never have entered the United States if we are talking about coming by means of a labor certification, which means that they had obtained a certificate from the Labor Department saying that they were needed in the American economy because there were no other laborers available to fill the specific job for which an employer had sought them. They would never have entered the United States because the quota was backed up for years.

So had they had a labor certification, they could not have obtained a visa at that time.

Now they are here, having gone through the entire procedure and we are confronted this morning with their right to remain here under the statute.

This Court has faced this particular section of the statute, Section 241 (F) in the Errico case and made its pronouncements in that specific area.

The Government here this morning says that the judgment of the Court should be confined strictly only to quota discussion on the Section.

Their claim is that the Reids are not entitled to the 241(F) exception or exemption from deportation because they failed to submit to inspection.

They say that this is not an inspection and they say also that -- they claim because they did not have a visa.

The Government says that there are two requirements, that, first of all, that there be a visa in the possession of the intending entrant and secondly, that in presenting this visa at the port of entry, he announce himself as an alien and then be put through the examination procedure, whatever it might be at that time.

Now, the examination at the port of entry can be either rigid or be perfunctory. If a person comes in with a visa, regardless of whether this visa was obtained legally and without fraud and submits himself at the port of entry to an immigration officer, the immigration officer can do one

of two things. He can merely take the man's passport, open it up to the visa page, see that it is stamped and feeling assured in his own mind that this is a genuine visa, that it is not a forgery or a phoney, admit him and this would be the entire inspection procedure at the port of entry.

Or he can go the entire gamut and, once again, take out the papers, go through it question by question, where were you born, produce the birth certificate to show it and the status of your health.

If he wanted to at that time, he could require him to have a new physical examination. He could require that any documents which he might have in his possession showing that he would not become a public charge be updated and do any one of these things that the consul has already done prior to his arriving at the port of entry.

For the most part, however, examinations at the port of entry are strictly perfunctory. The Immigration officer opens the passport, sees the visa stamped in the passport and if he feels assured that this is a genuine passport, this is about the sum of it. He takes his papers and that is the answer.

Now, we claim here that any person coming into the United States under claim of U. S. citizenship and meeting the other requirements being otherwise admissible and having, in this specific case, U.S. children, is --

QUESTION: How were the Petitioners otherwise admissible for purposes of the statute?

MR. GLOBMAN: In the record --

QUESTION: You told us earlier that they could not possibly have qualified for visas, even if they had had laborers certificates.

MR. GLOBMAN: Only on the laborer certification, that they would have had to wait for a visa until sometime late in the future.

But at the factual situation at the time of their entry, the quota fixed preference, they had to come in under the subquota of Great Britain and there are only 200 visas issued annually under the subquota.

They would be in the 6th preference had they had a labor certification. This would be their only disqualification, if you want to call it that, that they didn't have a labor certification.

QUESTION: But the requirement of the section is, they must not alone have children, but also be otherwise admissible.

MR. GLOBMAN: Yes, qualitatively.

QUESTION: Now, tell me again how they were otherwise admissible at the time of entry.

MR. GLOBMAN: Yes. Yes. First of all, there was no moral question. The SIO, the Special Inquiry Officer,

found that they had the moral qualifications, they had the physical qualifications. They were not members of any subversive organization, no criminal record and were therefore, under 212(A), admissible.

QUESTION: Notwithstanding the backed-up quota.

MR. GLOBMAN: Quota, yes.

QUESTION: And that is the Errico case, isn't it? I mean, that --

MR. GLOBMAN: Yes.

QUESTION: They were on the same track in the Errico case.

MR. GLOBMAN: Under quantitative admissibility, yes.

QUESTION: And there was a dissenting opinion that was -- well, it was a dissenting opinion that said that otherwise admissible meant more than --meant more than what the Court decided their --

MR. GLOBMAN: That is correct.

QUESTION: Right.

QUESTION: Are the two cases parallel in terms of the quota aspects?

MR. GLOBMAN: They are parallel, yes.

QUESTION: Parallel or the same or --

MR. GLOBMAN: They are the same, the same because of the actual fact of the quota at the time and as a matter

of fact, the quota today is still backed up in British Honduras.

QUESTION: Well, you had indicated in your earlier response that for all practical purposes, they should never have been admitted to the United States, except for the fraud.

MR. GLOBMAN: Yes, based on the quota.

QUESTION: Mr. Globman, I'd like to ask you a question about the statute which I guess is set forth at page 2 of the Government's brief and it is probably set forth in your brief, too.

MR. GLOBMAN: Yes.

QUESTION: When you get down to the language, "An alien otherwise admissible at the time of entry who is the spouse, parent or a child of a United States citizen or of an alien lawfully admitted for permanent residence."

Isn't at least a permissible construction of that statute that at the time of entry you have to have been the parent or the spouse?

MR. GLOBMAN: No, I don't believe that is so at all. I think the statute -- the enactment to the statute was basically for the purpose of correcting situations that had already taken place.

QUESTION: That the man gets in and then it subjects him --

MR. GLOBMAN: Yes, that is correct, that the purpose

of this statute was to protect certain small groups of individuals who found their way into the United States and that the statute comes into effect long after the breach has been committed, the violation has been committed.

It is a remedial statute and it was introduced to soften the harsh provisions of the statute. This is not --

QUESTION: But, of course, if your construction that you urge in this case is right, isn't it pretty much just an open door policy if you can just get through in some way and you have a child that you are okay?

MR. GLOBMAN: Only, your Honor, if the entry, actual entry, is gained by fraud. The statute says, procure entry by fraud.

It gives many and they are all in the disjunctive. It is not a conjunctive qualification. It is disjunctive, meaning, giving individuals in each of these categories the protection of the law.

QUESTION: But, presumably, those are the only ones who need relief; the ones who get in here lawfully don't need to worry about deportation.

MR. GLOBMAN: Then you have the problem --

QUESTION: The ones who get in here by fraud, that do.

MR. GLOBMAN: Right.

QUESTION: Well, this statute does not cover those smuggled in.

MR. GLOBMAN: No.

QUESTION: Those who get in surreptitiously and that is the very large group of illegal immigrants in our country.

MR. GLOBMAN: That is correct. This is to procure entry by fraud or misrepresentation and to --

QUESTION: I gather, though, in Errico, it was obtaining a visa by fraud.

MR. GLOBMAN: That is correct.

QUESTION: Or false misrepresentation.

MR. GLOBMAN: That is correct and --

QUESTION: And whereas here you didn't obtain a visa -- your clients evaded the requirement.

MR. GLOBMAN: That is correct.

QUESTION: And your argument --

QUESTION: And you obtained your --

MR. GLOBMAN: Pardon?

QUESTION: And you obtained your entry by fraud.

MR. GLOBMAN: That is correct.

QUESTION: Under the statute.

QUESTION: Well, your argument, I gather is that there can't be any difference in light of the literal --

MR. GLOBMAN: Translation of the statute.

QUESTION: -- wording of the statute.

MR. GLOBMAN: That is correct.

QUESTION: How about the legislative history? How far does the legislative history go?

MR. GLOBMAN: Let me say this -- the Court in the Second Circuit admitted that under the literal translation, literal interpretation of this statute that the Reids are entitled to this relief.

Now, in the history of the statute, the Errico case I think is complete on the history. There is very little involved. It traces the history from the Refugee Acts, the Displaced Persons Acts and it takes it to 1952 with the McCarron Act, which was a harsh law and then takes it back to the present act, this specific section in 61.

Now, perhaps if I could refer to the material on the Errico -- the Court, in the Errico decision said, "The misrepresentation section was not the only provision of the 1952 legislation that was widely thought to be unnecessarily harsh and restrictive and in 1957, Congress passed legislation alleviating in many respects restrictive provisions of the earlier legislation.

"The purpose of the 1957 Act is perfectly clear from its terms, as well as from the relevant House and Senate Committee reports.

"The most important provisions of the Act provide

for a special nonquota status for the adopted children or illegitimate children of immigrant parents and for orphans who have been or are to be adopted by United States citizens."

And then it goes on to say, "The intent of the Act is plainly to grant exceptions to the rigorous provisions of the 1952 Act for the purpose of keeping family units together.

"Congress felt that in many circumstances it was more important to unite families and preserve family ties than it was to enforce strictly the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country." Now --

QUESTION: Mr. Globman, if we uphold your position here, what is to prevent any number of people from coming in surreptitiously and then testifying two or three years later, yes, I did go to the customs agent at Chula Vista and I said I was an American citizen.

And, presumably, if it is an informal contact, no one will be able to say no to that, and then just get in under this provision.

MR. GLOBMAN: Then I think you are involved in the credibility of the individuals as --

QUESTION: Well, with someone who would commit fraud in the first place, I presume, we may have doubts as to his credibility in general.

MR. GLOBMAN: I think you take the whole person. In the specific case, when he -- when the person becomes involved with the immigration authorities, he goes through an exhaustive investigative process by the investigation department before charges are brought.

There is an investigation of the applicant or, in this case, the alien and upon the basis of the investigation made by the investigators in the Immigration Service, charges are brought.

Now, then, these charges are tried before what is presently known as an immigration judge, formerly the special inquiry officer and at this hearing, the burden of proof is upon him to prove himself.

In other words, the credibility of the individual is considered by the immigration judge.

QUESTION: Well, but that has all been bypassed here. There is no problem about credibility here. You have conceded that your clients got in by falsely representing that they were American citizens.

MR. GLOBMAN: Yes.

QUESTION: Now, how does credibility come into play in a situation like this or the hypothetical that Mr. Justice Rehnquist postulated?

MR. GLOBMAN: My answer is that, in answer to Mr. Justice Rehnquist's question -- hypothetical question --

is that there is the opportunity for a judgment of credibility. The justice asked -- now, three or four years after a man gets into the country, no matter how he gets in, if he then says before the department or the service that he presented himself as a U. S. citizen at an entry point, my answer is that you take the total person.

It is a question of credibility. He proves himself out.

QUESTION: He proves that he committed fraud.

MR. GLOBMAN: He proves that he has committed fraud, but he also proves what the fraud is.

QUESTION: Not voluntarily, however. He has done it under the compulsion of being deported if he doesn't do some explaining.

MR. GLOBMAN: No question.

QUESTION: Well, now, going back to this language that someone else asked about. I am following the exact language of the statute, 241(F) -- "Shall not apply to an alien otherwise admissible at the time of entry who is the spouse."

Now, do you say that cannot be read or has meaning that he was the -- is the spouse, parent or child of a citizen at the time of the entry?

MR. GLOBMAN: I say that is how the Errico case read it because that is how the --

QUESTION: You are talking about the language of the statute now.

MR. GLOBMAN: Yes. I suppose it can be read that way. I mean that even the clearest language means different things to different readers.

To me it doesn't read that way.

QUESTION: Well, but it is understandable that a person might have a parent in the United States or a child in the United States and come from another country, present himself for admission and be otherwise admissible in all respects, but at the very time that the misrepresentation is made, have this qualifying condition of having parent or child on the other side -- on our side of the border.

MR. GLOBMAN: I think if that is what the Section is saying, I think it would say it in this manner, "Who is, at the time of entry, a spouse, parent or child."

To me, that would be lucid in carrying out your question.

QUESTION: Well, you have got "at the time of entry" just preceding it.

MR. GLOBMAN: Yes.

QUESTION: And you'd want it to -- you say it should be repeated again. "Otherwise admissible at the time of entry -- who is at the time of entry." You'd want that repeated again to have the meaning that I suggest.

MR. GLOBMAN: Umn hmn.

QUESTION: And the Court of Appeals, the Second Circuit, read it somewhat the way I suggested it.

MR. GLOBMAN: Now,"at the time of entry", as I read this, or "excludable at the time of entry --"

QUESTION: Yes, right.

MR. GLOBMAN: I take the other tack to that.

It would be lucid if it stated that, to follow out your thought, to carry out your thought or your construction of the statute, it should read, "Who, at the time of entry is" or "Who is, at the time of entry --"

QUESTION: "Was" is what you want, because everything else is in the past tense.

Your strongest argument is that everything else is in the past tense. They "Were excludable at the time of entry," or "have procured visas or other documents." See? If it was talking about the time of entry, it is in the past tense or the perfect tense and this is in the present tense.

And the statutory provision has to do with deportation of aliens within the United States and since this is the present tense, it would seem that you would argue that it means now that they have spouses or children who are citizens.

MR. GLOBMAN: I --

QUESTION: See, if it is talking to the time of

entry, that statutory --

MR. GLOBMAN: Yes.

QUESTION: -- provision, it is always either in the past tense or the perfect tense, not in the present tense, see?

MR. GLOBMAN: Well, but I feel that if this is what the meaning is --

QUESTION: I know what you feel the meaning is, and that --

MR. GLOBMAN: Right.

QUESTION: -- to make it mean what the Chief Justice suggested it might mean, you would argue that the is would have to be a was.

MR. GLOBMAN: Well, I say, what the statute is saying who "Shall not apply to an alien otherwise admissible at the time of entry," and then it says, "Who presently is the spouse, parent or child of a United States citizen."

I think I am consistent in my argument that this present tense carries out, at the time of --

QUESTION: Deportation.

MR. GLOBMAN: The time of deportation, yes and bringing it up to the time when the Government is calling to account the alien.

QUESTION: But I understood you to say earlier that he was not otherwise admissible if he had told -- he

would not have been otherwise admissible had he told the truth.

MR. GLOBMAN: Had he told the truth --

QUESTION: He would not have been admitted.

MR. GLOBMAN: He would not have been admitted, no.

QUESTION: So that is the first hurdle that you have to get over, isn't it?

MR. GLOBMAN: Yes.

However, we are saying that we are in the same situation --

QUESTION: Why, under the statute, isn't a person who just is smuggled in entitled to the benefits of the statute?

MR. GLOBMAN: A smuggler doesn't overtly orally present himself for inspection and commit a misrepresentation.

QUESTION: Well, he doesn't present himself for inspection if he says, "I am a citizen of the United States," either.

MR. GLOBMAN: He does.

QUESTION: Well, he doesn't. As an alien, he doesn't submit himself to inspection as an alien.

MR. GLOBMAN: Under the statute -- under the Immigration Act --

QUESTION: Under the prior law, prior to this, when people misrepresented their nationality, they had to show that

it wasn't -- that it was for the purpose of avoiding some kind of persecution in some country which -- and I suggest -- I suggest that the contrary argument is that the statute intends the alien to have submitted himself as an alien.

MR. GLOBMAN: The language --

QUESTION: Because submitting of -- saying he is a citizen is just like -- is not submitting himself as an alien at all.

MR. GLOBMAN: The Act does not say that he presents himself as an alien.

QUESTION: I know, it says "entering."

MR. GLOBMAN: Yes.

QUESTION: Entry is defined as an entry by an alien.

MR. GLOBMAN: No, the coming -- yes -- see, every Immigration inspector has the right to examine any individual, whether he claims to be a citizen or whether he claims to be an alien and even citizens can be held and made to prove their citizenship. They can be held, detained and held until such time that they sustain the burden of proving that they are U. S. citizens.

QUESTION: I understand. I understand that. I am just suggesting that perhaps the statute should be construed to mean that its benefits are extended to those who enter as aliens. And, in the process, commit fraud, a

fraudulent visa or some other kind of false documentation.

MR. GLOBMAN: I think explicitly the statute does not read that way. I think on an explicit interpretation of the statute --

QUESTION: Well, I don't know. That doesn't necessarily follow.

QUESTION: On your theory, the person who affirmatively commits the fraud of lying about his American citizenship is in a better position than the fellow who doesn't affirmatively commit any fraud, just walks across the border at some isolated spot on the Canadian woods or --

MR. GLOBMAN: But that is correct because he has given the Service an opportunity of checking his statements.

Now, the fellow who crosses at a border where there is no border-crossing point or who comes in the trunk of an automobile or is a stowaway at a point of embarkation never presents himself before a U. S. Immigration Inspector.

QUESTION: And you say because this man presented himself under the false colors of an American citizen, he is in a better position than the fellow who just walked across the border?

MR. GLOBMAN: He is.

QUESTION: Suppose that Mr. Reid had had a forged American passport. Would that make the case different?

MR. GLOBMAN: A forged American passport?

QUESTION: Yes. Let's assume if he bought it himself or forged it himself and he simply presented it at the port of entry. In this case, as I understand it, he had no papers. Nobody asked him any questions because he said, "I am a U. S. citizen." Of course, he hands him a passport which says on its face that he is a U. S. citizen but it is a fraudulent document.

MR. GLOBMAN: I say yes.

QUESTION: You say the statute does apply?

MR. GLOBMAN: Yes.

QUESTION: Exactly like Mr. Reid.

MR. GLOBMAN: Exactly, because he has presented himself for inspection.

QUESTION: And he would be all right after he got out of jail for having a forged passport, I guess.

MR. GLOBMAN: He would definitely be convicted, yes.

Thank you.

MR. CHIEF JUSTICE BURGER: Mrs. LaFontant.

ORAL ARGUMENT OF MRS. JEWEL S. LaFONTANT

ON BEHALF OF RESPONDENT

MRS. LA FONTANT: Mr. Chief Justice and may it PLease the Court:

I'd like to review the facts very briefly again.

Petitioners who are citizens of British Honduras

and married to each other entered the United States at Chula Vista, California, which is on the Mexican border by falsely stating that they were citizens of the United States.

The husband arrived in November '68 and his wife followed January '69 and nine months thereafter gave birth to her first child and in '71 gave birth to a second child.

Of course, the children are American citizens.

Three years after Mr. Reid's arrival, he was -- they were served with petition to show cause, an order to show cause why they shouldn't be deported because they entered the United States as aliens, deportable under 241 (A)(2) as aliens who had entered the United States without inspection as aliens, claiming to be citizens of the United States.

They admitted that they had entered fraudulently by claiming United States citizenship. They admitted that they had not secured a visa upon entry and they also admitted that they did not present themselves to the Immigration Office for inspection as aliens.

However, they denied the legal conclusion that they are deportable, contending that Section 241(F) of the Act waives deportation in the case of aliens otherwise admissible at the time of entry who have procured entry to the United States by fraud or misrepresentation and have close family ties in the United States.

The Special Inquiry Officer upheld the charge that

they were deportable and the Board of Immigration Appeals dismissed their appeal, claiming that aliens who circumvent the entire visa issuance process and inspection process are not eligible for relief under 241(F).

The Petitioners then applied for the privilege of voluntary departure and claimed that they would be willing to leave under the conditions and at the time set forth.

And I might add at this point, Mr. Justice Brennan, this is the point where the Special Inquiry Officer for this purpose found them of good moral character and granted their petition.

No Special Inquiry Officer found them of good moral character at the time of entry. It was only in reference to this petition for voluntary departure.

QUESTION: Ms. La Fontant --

MRS. LA FONTANT: They did not depart.

QUESTION: Looking over the decision of the Special Inquiry Officer -- and I just looked over it for the first time on the Bench -- I must say I don't find any finding by him that these people presented themselves to an immigration officer in Chula Vista.

MRS. LA FONTANT: No, there is no finding at all that they admitted or showed themselves to an immigration officer in the finding of the Special Inquiry Officer, none whatsoever. Of course, the --

QUESTION: What is meant by, "each entered the United States by falsely claiming to be U. S. citizens"? Where were they -- where did they do that?

MRS. LA FONTANT: They falsely claimed United States citizenship. They claimed at Chula Vista, on the border of Mexico, when they entered.

QUESTION: But to whom?

MRS. LA FONTANT: So they must have said it to someone but there is no finding. In other words, I don't -- I don't think you can tell from this record whether they swam across or came over in a trunk and then later said, we came, claiming United States' citzenship. It seems to be taken for granted they did.

QUESTION: Well, the finding is that they procured their entry by falsely claiming to be United States' citizens.

MRS. LA FONTANT: Yes.

QUESTION: And that doesn't say surreptitiously swimming across.

MRS. LA FONTANT: No, but I -- what I am inferring is --

QUESTION: It means that they entered by way of that false claim.

MRS. LA FONTANT: I think that is something you must accept but I am also saying that it ties in very well

with Mr. Justice Rehnquist's question, what is to prevent people who happen to come in by some other means, to come in and admit and say, "I entered by saying I was of United States citizenship."

QUESTION: That's right. That's right.

MRS. LA FONTANT: A citizen when they, in fact, did not.

QUESTION: Because there is no --

MRS. LA FONTANT: But I think we should have to accept the fact that they entered at the Mexican border and claimed when they came through, we are Americans, yes.

QUESTION: In spite of the fact that a Special Inquiry Officer did not so find.

MRS. LA FONTANT: I think it is assumed but there is no finding of that.

QUESTION: It is the necessary implication of his finding.

MRS. LA FONTANT: Yes.

QUESTION: It is what he did find.

MRS. LA FONTANT: Yes.

QUESTION: But your -- certainly your argument is valid that there is no contemporaneous record of that --

MRS. LA FONTANT: Yes.

QUESTION: -- since this is all oral --

MRS. LA FONTANT: Yes.

QUESTION: -- at the border -- just at the -- Canadian, the Mexican border and therefore, when these people get here, all you have is their sayso.

MRS. LA FONTANT: Correct.

QUESTION: And therefore, somebody who might, in fact, have swum across or waded across the river could later say, well, I didn't do that. I got here by falsely claiming I was a citizen.

MRS. LA FONTANT: Yes.

QUESTION: And that is your argument.

MRS. LA FONTANT: Yes.

QUESTION: Because all we have is their sayso.

MRS. LA FONTANT: That is correct, your Honor.

Although the privilege of voluntary departure was granted, Petitioners did not leave but, instead, filed a petition for review and the United States Circuit Court of Appeals for the Second Circuit affirmed the deportation order.

Since this decision is in direct conflict with two decisions of the Ninth Circuit, Lee Fook Chuey and Echeverria, the Government did not oppose the petition for certiorari and feels that this issue should be resolved by this Honorable Court.

Petitioners, in contending that they are not deportable under Section 241(F), rely very heavily on the case of Immigration Service versus Errico.

Errico really involves two cases that were consolidated because of the one issue involved.

We respectfully submit that Errico is limited -- is distinguishable from this case and is limited to its own facts and stands for the proposition that quantitative limitations -- that is, quota restrictions -- cannot preclude an alien from being otherwise admissible within the meaning of 241(F).

In one of the cases, Mr. Errico, a native --

QUESTION: Is it distinguishable because it is limited to its own facts or -- I think you put it in the conjunctive -- I take it --

MRS. LA FONTANT: And.

QUESTION: -- they are not very happy with the Errico decision.

MRS. LA FONTANT: Very -- not happy at all. But still, we feel that, even though, in spite of our displeasure with Errico that it can be distinguished from this present, the instant case.

In the -- a Mr. Errico, a native of Italy, in order to get a higher quota preference, deliberately misrepresented to the Immigration authorities that he was a skilled mechanic, experienced in the repair of foreign automobiles.

He was granted his first preference quota. He

was lawfully admitted as a permanent resident and he and his wife entered the United States in 1959 and thereafter a child was born.

Mr. Errico had gotten an immigrant visa.

In the other case, a Miss Scott, a native of Jamaica, entered into a -- in order to get a nonquota status, entered into a sham, bogus, proxy marriage with an American citizen with whom she never lived and with whom she never intended to live.

She thereafter had an illigitimate child in the United States, after having been admitted here in 1958.

In both Scott and Errico, in seeking entry, they not only admitted their alienage, that is, put the immigration authorities on notice that here we are, two aliens coming into the United States. They had to present valid, unexpired immigrant visas and prior to the issuance of that visa, they both had to complete background questionnaires which went into the -- covered the birth records, the military records, if anything, criminal records and whathaveyou.

Not only did they have to do that, but they submitted photographs of themselves. They submitted to physical and mental examinations. They were registered and they were fingerprinted and they were also investigated by the American Counsel,in Italy in the case of Errico and in Jamaica in the case of Scott.

And after that and only after that, a passport was issued and thereafter, they both were inspected at the port of entry into the United States.

Now, when it is said by Petitioners that the Reids, the Petitioners here, were actually inspected at the border, that is impossible because they have admitted that they falsely claimed that they were citizens and although we don't have any definition of inspection in the Immigration Act, we can just look at Black's Law Dictionary and see what inspection means and we can use it.

Inspection is a critical examination, a close or careful scrutiny, a strict or prying examination or an investigation.

In the instant case, the Petitioners concealed their alienage completely and thus avoided any investigation by the authorities.

Since citizens coming into the United States are not required to go through inspection, Petitioners were able to evade any investigation.

And Mr. Justice White is perfectly correct when he states that entry concerns aliens. A United States citizen really cannot make an entry under the Immigration and Nationality Act and I turn to Section 1101 of the Immigration and Nationality Act that defines entry as "any coming of an alien into the United States -- any coming of an alien

into the United States from a foreign port or place or outlying possession.

Now, the purpose of the two-step inspection process, that is, the visa issuance on one hand and the inspection at the border is for the main purpose of determining whether or not an alien is admissible or excludable and it also serves the purpose of keeping tab on or keeping track on aliens once they come into this country and it is crucial to a lawful admission that an inspection be made.

Section 1225 of 8 United States Code requires that all aliens shall be examined by Immigration officers at the discretion of the Attorney General but no such mandate was enacted as far as United States citizens are concerned.

Now, let's look at the language of Section 241(F) itself, which provides in pertinent part, "The provisions of this section relating to the deportation of aliens on the ground that they were excludable at the time of the entry as aliens who have procured entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is a spouse, parent or child of a United States citizen."

The Government submits that Section 241(F) is not intended to apply to Petitioners and, as the language indicates, is quite limited in scope.

It doesn't waive all grounds for deportation of

persons who are closely related to United States citizens but only waives deportability on the ground that they were aliens excludable at the time of entry for having procured documents of entry through fraud.

Furthermore, it applies only if the aliens were otherwise admissible at the time of entry and what does that mean?

If an alien avoids the entire visa-issuance inspection process, how can it be determined that he is otherwise admissible at the time of entry?

Were we dealing with simple objective facts that could be easily ascertained years afterwards, we wouldn't have so much of a problem and that was the situation in Errico.

But I submit it would be virtually impossible, years later, to determine whether or not the Petitioners were, in fact, otherwise admissible at the time they entered this country in '68 and '69.

The important phrase is, I submit, Mr. Chief Justice, is that the time of entry applies to "otherwise admissible," rather than whether or not the Petitioners are the parents of children or married to an American citizen at the time of entry.

It refers, the "otherwise admissible," refers to aliens otherwise admissible at the time of entry.

QUESTION: You say they were not otherwise admissible.

MRS. LAFONTANT: That is correct. Well, and I am saying that it had to be determined at that time because, with the passage of time --

QUESTION: You are saying there is no way to know whether they were otherwise admissible.

MRS. LA FONTANT: That is right and then to try to reconstruct it six years later, in this case, would be an impossible task because we know that evidence dissipates, witnesses move or die and we also have to remember that this information would have to be gotten from the aliens' homeland.

QUESTION: Of course, in the Errico case, it wasn't that there was no way to know that they were otherwise admissible. There was a way to know and the fact is, they were not otherwise admissible and yet the Court held the statute applied to them.

MRS. LA FONTANT: They didn't -- they did not find that they were not morally, physically, or mentally or otherwise admissible.

QUESTION: No, but it was clear that they were not within the quota and they were not otherwise admissible.

MRS. LA FONTANT: So they -- they had no way -- they didn't have to go any further. They said that the quota restriction -- they could determine that and --

QUESTION: And under that, they were not otherwise admissible.

MRS. LA FONTANT: Yes, but they also, in the Errico case -- they also tied in the charge with the fraud and when they said "otherwise admissible," they meant otherwise in not being eligible for the quota which means, in my interpretation of it that they meant "otherwise admissible" to apply to the qualitative part, that is, whether or not they were mentally, morally and physically admissible at the time of entry. But the quota, they took on its face that -- and I -- I am not carrying a brief for Errico, but --

QUESTION: No, I am not, either but I just -- we are just agreeing to see where it would help.

MRS. LA FONTANT: Where it is similar, yes.

QUESTION: Well, I gather, Mrs. LaFontant, basically, in any event, your argument is that this statute can apply only to aliens who presented themselves as aliens --

MRS. LA FONTANT: Yes.

QUESTION: Even though, at the time of presenting themselves as aliens, they misrepresented some facts.

MRS. LA FONTANT: Yes.

QUESTION: Which then led to their admission and, in Errico, I guess it is true. He did present himself as an alien, he just falsified facts and reasons to get admission.

MRS. LA FONTANT: Yes.

QUESTION: Well, the Errico certainly didn't deal with a person who misrepresented his nationality.

QUESTION: No.

MRS. LA FONTANT: That's -- that's -- and to me, that is the big distinguishing -- one of the big distinguishing factors.

QUESTION: The '57 Act didn't forgive people who misrepresented their nationality, did it?

And I thought this new law, the present law, wasn't intended to change that, the subsequent law.

MRS. LA FONTANT: That's -- that's true. And even in the --

QUESTION: I read that in a footnote in the dissent.

MRS. LA FONTANT: Because even when we were trying to help the refugees with the Displaced Persons Act and the Refugee Relief Act of '53, I believe, even in those cases where we were trying to help, it was definitely stated that anyone who misrepresented his nationality or made any misrepresentations would be forever barred from coming into this country and then, later, because of the rigidity of that, there was an alteration made, but even then it said -- they always had in there, the "otherwise admissible" alien so that they have never --

QUESTION: The Second Circuit seems to have never distinguished Errico on the grounds that the fraud was made there to avoid the quota restrictions and --

MRS. LA FONTANT: Yes.

QUESTION: -- not to avoid the examination at the border.

MRS. LA FONTANT: That is true.

QUESTION: On the fraud, at least with respect to the --

MRS. LA FONTANT: That was a fraud. Well, the main fraud --

QUESTION: There were two companion cases --

MRS. LA FONTANT: -- case, they relied --

QUESTION: Well, one of them went into a fraudulent marriage.

MRS. LA FONTANT: Right.

QUESTION: And that was not the Errico case. There were two companion cases. One misrepresented his occupational skills --

MRS. LA FONTANT: Well, when I refer to Errico, Scott, it was consolidated with Errico --

QUESTION: That's right.

MRS. LA FONTANT: -- so it --

QUESTION: Mr. Errico misrepresented his occupational skills.

MRS. LA FONTANT: Correct.

QUESTION: He said he was a skilled mechanic on foreign automobiles.

MRS. LA FONTANT: Right you are.

QUESTION: And thereby got himself qualified to enter.

MRS. LA FONTANT: First quota place.

QUESTION: And the companion case, the woman in that case went through a fraudulent marriage with an American citizen and she never saw him again after the ceremony.

MRS. LA FONTANT: Right you are.

QUESTION: And then got into this country and then very soon thereafter had an illigitimate baby and now, therefore, she had a -- she was related to that baby who was born in the United States and, of course, she was related to a United States citizen and the Court held she could not be deported, despite the fact of her fraudulent entry.

That is correct.

MRS. LA FONTANT: That's true.

QUESTION: I mean, those are the facts of those cases.

MRS. LA FONTANT: That's true. But the charge brought against them was -- let's see -- the exact charge in Errico was fraudulently entering -- not being eligible for a quota. I don't know how it was worded.

QUESTION: Well, by representing himself falsely as a skilled mechanic, et cetera, he --

MRS. LA FONTANT: Got the preference, right.

QUESTION: -- avoided the quota restrictions, not in this country, but in getting the visa from the U. S. Counsel where he --

MRS. LA FONTANT: Well, he still had to go through all of the examinations and all. He lied on one point about his abilities but he did not evade the whole system and he was found qualified for admissibility on the basis of being physically, morally and mentally fit.

QUESTION: And that he possessed skills needed in this market, this labor market.

MRS. LA FONTANT: Yes, so he --

QUESTION: That was the key factor that avoided the quota restriction, was it not?

MRS. LA FONTANT: Right. Right. And the key factor in the Scott case was that she entered the marriage and was the wife of an American so that is how she avoided the quota restriction. But I interpret Errico in discussing the otherwise admissible still did not reach the admissibility requirements that I am discussing now --

QUESTION: Communicable disease or prison record or--

MRS. LA FONTANT: Right, or mental or prostitute --

QUESTION: -- or mental --

MRS. LA FONTANT: They have 31 --

QUESTION: Right.

MRS. LA FONTANT: -- grounds for exclusion.

QUESTION: Different disqualifications.

MRS. LA FONTANT: I am not sure if I answered the question or not.

QUESTION: Yes, that it was the quota restriction misrepresentation that led to his entry and his getting the visa.

MRS. LA FONTANT: All right.

QUESTION: But even after the visa, as you pointed out, he still had to run the gauntlet of all these questions.

MRS. LA FONTANT: Yes.

QUESTION: The visa was merely the starting point. These people, by lying at the point of entry -- if, indeed, they ever, in fact, made such an entry -- avoided all of these inquiries and didn't give the Government an opportunity to check them until many years later, a good many years.

MRS. LA FONTANT: Yes. I'd like --

MR. CHIEF JUSTICE BURGER: We will resume there after lunch, Mrs. LaFontant.

[Whereupon, a recess was taken for luncheon from 12:00 o'clock noon to 1:04 o'clock p.m.]

AFTERNOON SESSION 1:04 p.m.

MR. CHIEF JUSTICE BURGER: Mrs. LaFontant, you have about eight minutes left.

MRS. LA FONTANT: Mr. Chief Justice and may it please the Court:

Last week during the argument of a case before this Honorable Court, Mr. Justice Blackmun asked the Solicitor General of the United States a question that went something like this:

"Would it be a disaster if this Court ruled opposite to your argument?"

If same question were asked of me today, my answer would be yes, it would be a disaster.

Certainly the sky would fall in on the Immigration and Naturalization Service and yes, such an adverse ruling would cause a paralysis in international travel, especially for the 260 million people who enter the United States.

That is the number of people who entered the United States in 1973.

It would be -- represent a paralysis for all of the United States citizens, 100 million or more who enter this country every year.

It would be impossible for the Immigration and Naturalization Service to inspect all of these people. And I might remind the Court that 232 million of these people who

enter the United States each year come over the Canadian and the Mexican borders.

If Petitioners' position was sustained, aliens would be free to claim United States citizenship falsely and have an unassailable right to remain here forever.

Indeed, it is quite possible that, as we have alluded to before, aliens --

QUESTION: Well, it is only if they --

MRS. LA FONTANT: Apply for 241(F) relief.

QUESTION: Yes, which means that they have to have close relatives who are United States citizens.

MRS. LA FONTANT: Yes. Yes. And if you rule that "otherwise admissible" doesn't mean anything, it would open the floodgates from these borders for the people to come in.

QUESTION: Well, it wouldn't be everybody. It would just -- they would have to have --

MRS. LA FONTANT: Close relatives, those who have-- who are parents --

QUESTION: Children here.

MRS. LA FONTANT: Right.

QUESTION: Who are United States citizens.

MRS. LA FONTANT: Definitely. Definitely.

QUESTION: But you would -- I take it your point is that you would have to do a much closer check on every

person who crossed the border claiming to be a United States citizen.

MRS. LA FONTANT: And that is an impossibility.

QUESTION: And that would be over 100 million people, if, in fact, you undertook to do it.

MRS. LA FONTANT: Yes. It would be 100 million American citizens but you have to inspect all 250 million who come in, 232 million who come over the border.

It would be an impossible task, we submit.

QUESTION: Well, they don't all -- all of that additional 132 million don't claim to be American citizens, do they?

MRS. LA FONTANT: No.

QUESTION: No. So your check would be -- presumably you already check, the Government already checks people who do not claim to be United States citizens.

MRS. LA FONTANT: That is true. So it would be another --

QUESTION: This sort of a check would be --

MRS. LA FONTANT: -- definitely 100 million who are bona fide American citizens. We don't know how many more.

QUESTION: And whatever the difference is between that and the 232 million.

MRS. LA FONTANT: Right.

QUESTION: Wasn't something like that tried at the Mexican border that created an international incident within the past year or two?

MRS. LA FONTANT: Yes, where traffic was backed up for miles and miles and miles. I don't remember --

QUESTION: And the Mexican Government -- I don't know whether we judicially notice what appears in newspaper accounts but it was that the Mexican Government made representations to the State Department of the United States.

MRS. LA FONTANT: And, as we have alluded to before, these aliens, with the required child or spouse, could -- well, he could slip over in a car, say, in the trunk of a car and then acquire a spouse or a child and then say, I came in as a United States citizen and therfore, if Petitioners' position would be sustained, would be able to say, I am entitled to 241(F) relief because I lied about being a United States citizen.

This would produce a severe enforcement problem and, as is obvious, because there are hundreds of thousands of illegal aliens that enter the United States yearly.

Another major enforcement difficulty would be presented to those who enter as non-immigrants. That is, visitors who come in as a non-immigrant, saying they are going to stay just for a temporary period of time and then a year later say, well, when I came in, I really intended to

stay forever, so, therefore, I am entitled to 241(F) relief also.

Indeed, aliens who entered innocently could reasonably press for an equal and absolute right to remain on the theory that it would seem unfair to treat the innocent less favorably than the guilty.

Finally, it would make a mockery of Congress' numerical limitations, which we have to presume were reached after careful study and which also are supposed to tell us how many people this country can safely absorb.

So we would be doing away with the numerical limitations completely.

QUESTION: All of these arguments, or most of them, were made in the dissenting opinion in the Errico case.

MRS. LA FONTANT: That might be one of the reasons that I am repeating them here, Mr. Justice Stewart and I --

QUESTION: It seems to me that that was a dissenting opinion and I have said before up here, I had a professor at law school that used to tell us that dissenting opinions were subversive literature.

MRS. LA FONTANT: In closing, we might -- we want to ask this Court to consider Errico in its limited fashion, construe it narrowly and we also would like to ask the Court that to rule that Section 241(F) certainly does not apply to

aliens posing as citizens who evade the complete Immigration inspection process and, as Mr. Justice Stewart stated in the dissent in Errico, there is nothing to indicate that Congress enacted this legislation to allow wholesale evasion of the Immigration and Nationality Act or as a general reward for fraud.

Therefore, it is respectfully submitted that the judgment of the court, the Second Circuit Court of Appeals, should be affirmed.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Thank you, Ms. La Fontant.

Thank you, Mr. Globman.

The case is submitted.

[Whereupon, at 1:08 o'clock p.m., the case was submitted.]