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Introduction

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Volume Two of **Immigration and Nationality Law Review** continues to represent a centralized annual forum for the paramount articles--in both original and reprint format--concerning our immigration laws and their enforcement. This **Review's** goal remains that of providing the practicing lawyer and legal researcher with a single source for noteworthy articles.

In addition to the law review articles selected by the editor for inclusion in this second volume, we are featuring two original essays by practitioners in immigration law. Mark Mancini of Wasserman, Orlow, Ginsberg & Rubin in Washington, D.C. examines excludability (see 8 U.S.C. 1182) for lack of a valid labor certification as a species of fraud by commenting upon reported cases where Section 212 (a) (14) or Section 212 (a) (19) are relied upon as the basis for exclusion. A review and discussion of recent changes regarding nonimmigrant and immigrant visas for workers, businessmen, managers and investors as authorized under 8 U.S.C. 1101 is provided by Dan P. Danilov of the Seattle, Washington bar.

During fiscal year 1975 a total of 386,194 immigrants were admitted to the United States, a two percent decrease from fiscal year 1974. Of the total, 303,161 obtained immigrant visas abroad and were admitted to the U.S., and 8,745 entered conditionally as refugees under the seventh preference. The remaining 74,288 were already in the United States and had their status adjusted to that of aliens lawfully admitted for permanent residence.

Litigation challenging administrative decisions continued before the courts at a pace similar to the prior year. In the district courts of the United States there were 83 petitions for writ of habeas corpus and 305 declaratory judgment actions, nearly the same number as in fiscal year 1974. The district courts decided 45 habeas corpus cases favorably to the Government and 4 unfavorably. Eleven cases were withdrawn or otherwise closed. In the U.S. courts of appeals, 366 petitions for review of deportation cases were filed under Section 106 of the Immigration and Nationality Act, as amended, 8 U.S.C. 1105 (a), an increase of 69 percent over fiscal year 1974. The number of cases disposed of by the courts of appeal during the fiscal year 1975 was 244; of those 204 were favorable to the Government, 6 were unfavorable, and 34 were withdrawn or otherwise closed.

The Supreme Court decided a number of important cases in immigration and nationality matters in fiscal year 1975.

In **Reid v. INS**, 420 U.S. 619, March 18, 1975, the Supreme Court narrowly limited the availability of relief under Section 241(f) of the Act. The Court held that immunity from deportation based on the existence of a U.S. citizen child is not available to an alien who, though he did commit a fraud in gaining entry, is charged with entry without inspection by means of a false claim to citizenship.

In **Saxbe v. Bustos**, 419 U.S. 65 (and **Cardona v. Saxbe**, 419 U.S. 65), the Supreme Court upheld the legality of the commuter system as to both daily and seasonal workers.

Four decisions were issued resolving questions arising out of the Supreme Court's 1973 decision in **Almeida-Sanchez v. United States**, 413 U.S. 266.

In **United States v. Brignoni-Ponce,** 422 U.S. 873, June 30, 1975, the Supreme Court held that it was a violation of the Fourth Amendment for a roving patrol, without a warrant, to stop a vehicle away from the border for questioning of the occupants under Section 287(a) (1) of the Immigration and Nationality Act merely because they appeared to be of Mexican descent. The Court said the officer must be aware of specific articulate facts from which he drew a reasonable suspicion that there were illegal aliens in the vehicle.

In **United States v. Ortiz,** 422 U.S. 891, June 30, 1975, the Supreme Court held that, in the absence of probable cause, it was a violation of the Fourth Amendment for Border Patrol agents at a traffic checkpoint away from the border to search an automobile without consent or probable cause. The Supreme Court stated that it was leaving undecided a number of questions, including whether checkpoints and roving patrols must be considered the same for all purposes, how far a checkpoint "inspection" of an automobile might go before it constituted a "search", and whether a warrant could issue approving checkpoint searches based only on information about the area as a whole.

In **United States v. Peltier,** 422 U.S. 531, June 25, 1975, the Court ruled evidence seized during a Border Patrol roving patrol search of an automobile would not be suppressed even though the search was illegal under the rule in **Almeida-Sanchez v. United States,** 413 U.S. 266, decided June 21, 1973, if the search occurred before the date of the decision.

Bowen v. United States, U.S.S.C. 73-6848, June 30, 1975, held that **Almeida-Sanchez** (supra), did not apply retroactively to fixed checkpoint searches.

In two cases the Supreme Court denied certiorari leaving undisturbed circuit court decisions which rejected a contention by overstayed seamen claiming to be refugees that they could not be deported under Article 32 of the United Nations Convention Relating to the Status of Refugees: **Kan Kam Lin et al. v. Rinaldi,** 419 U.S. 874 (C.A. 3, 493 F. 2d 1229) and **Chim Ming and Lam Yim Yim v. Marks,** 421 U.S. 911, April 14, 1975 (C.A. 2, 505 F. 2d 1170).

Im v. Saxbe, 419 U.S. 1048, December 10, 1974, leaves undisturbed the unreported decision of the Third Circuit Court, which affirmed the dismissal of an action by minor U.S. born children of alien visitors to enjoin deportation of their parents on the ground that deportation would constitute defacto deportation of the children in violation of their constitutional right to enjoy the benefits of U.S. citizenship.

Denial of certiorari in **Barbour v. District Director,** 419 U.S. 873, left undisturbed the Fifth Circuit Court's decision that the Service had the right in deportation proceedings to detain an alien without bond in reliance on confidential information that he represented a threat to national security.

In **DiMattina v. INS,** 419 U.S. 1088, denial of certiorari left undisturbed the decision of the Third Circuit which had rejected petitioner's contention that it was unconstitutional for the statute to bar adjustment of status for natives of the Western Hemisphere but not the Eastern Hemisphere. The court held that Congress has plenary power to determine immigration policy.

In **Cartier v. Secretary of State,** 421 U.S. 947, April 28, 1975, denial of certiorari left undisturbed the decision by the Court of Appeals for the District of Columbia (506 F. 2d 191), which rejected Cartier's contention that the Attorney General was bound to follow a decision by the Secretary of State on loss of citizenship.

A petition for certiorari filed by the Government on June 11, 1975, in **U.S. v. Martinez-Fuerte** (Supreme Court 74-1560), requested the Supreme Court to review the Ninth Circuit's holding (514 F. 2d 308) that the Fourth Amendment requires suppression of evidence obtained by Border Patrol agents at a fixed checkpoint under a "warrant of inspection" authorizing vehicle stops for interrogation without founded suspicion.

The editor wishes to express his appreciation to those law reviews and authors who contributed to this volume. To those practitioners who contacted me with comments and suggestions, I express my thanks for your thoughtfulness in assisting me in making improvements. We trust this forum will continue to be a useful service to the immigration attorney.

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