1976

Introduction

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This introductory volume of Immigration and Nationality Law Review represents an attempt to provide a centralized annual forum for the leading articles — both original and reprinted — in this increasingly important area of our national law. Normally leading legal periodical articles on the subject of immigration, nationality, and alienage, are spread throughout various law journals. At best, materials germane to this subject area have occasionally appeared in special law review issues or symposium volumes published by the various American law schools. This Review's goal is to provide for the practising lawyer and legal scholar a single source for noteworthy articles on all aspects of immigration law.

The law of immigration and nationality is becoming an increasingly important topic in legal literature. The rise in litigation before the Immigration and Naturalization Service, the Board of Immigration Appeals, and before our courts, make this a timely subject upon which the legal writer may ruminate. Indeed, public policy variations are historically mirrored in the immigration field. Our national attitude toward aliens, whether affected by economic conditions or other considerations, inevitably have a noticeable impact on enforcement of policy, and on laws and regulations as promulgated by Congress and as enforced by the courts and our administrative agencies.

Over fifty years ago, scarcely a dozen lawyers could be identified who specialized in immigration and nationality practice. By comparison, hundreds of attorneys now participate in this speciality area with many being members of the Association of Immigration and Nationality Lawyers.

Increased active litigation and legal involvement is being experienced in this area of law. The Immigration and Naturalization Service reported that in 1974, 4,564,642 aliens were registered in the United States with 90% declared as permanent residents. It is further estimated by the Service that illegal entries into the United States totals at least six to eight million persons and possibly as many as ten or twelve million. Prosecution statistics for immigration and nationality violations between 1965 and June 30, 1974 equaled 82,382 cases litigated. In 1974 alone trial attorneys participated in 18,254 deportation hearings and 1,859 exclusion hearings.

In litigation challenging administrative decisions in the courts in immigration and nationality matters, there were 661 actions filed during fiscal year 1974. In the district courts of the United States there were 64 petitions for writs of habeas corpus and 326 declara-

tory judgment actions. The district courts decided 41 habeas corpus cases favorably for the United States. Sixteen cases were withdrawn or otherwise closed. In declaratory judgment actions, the Government received 53 favorable decisions, 8 unfavorable decisions, and 17 cases were withdrawn or otherwise closed. In the U.S. courts of appeals, 217 direct 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). Of the petitions for review decided by the courts of appeals during fiscal 1974, 161 were favorable to the Government and 5 were adverse. Ten cases were withdrawn or otherwise closed.

During fiscal 1974 the Supreme Court denied certiorari in a number of cases in the immigration and nationality area: —

— The denial of certiorari in *Mangabat v. INS*, 414 U.S. 841, left undisturbed the decision by the Court of Appeals for the Ninth Circuit, which held that a nonimmigrant found deportable for overstaying her temporary visit to this country is not entitled to relief under Section 241 (f) of the Immigration and Nationality Act.

— The denial of certiorari in *U.S. v. Wright*, 414 U.S. 821, left undisturbed a decision by the Court of Appeals for the Fifth Circuit, that an immigration officer who stopped a vehicle 11 miles north of the Mexican border was justified in opening the rear of a station wagon on the basis of his suspicion that the spare tire well inside might conceal an alien. The court held that marijuana discovered by the officer in plastic bundles was admissible and not a violation of the guarantee of the Fourth Amendment.

— The denial of certiorari in *Diaz-Aguilar v. INS*, 414 U.S. 853, left undisturbed the summary affirmance by the Court of Appeals for the Ninth Circuit of the Board of Immigration Appeals decision, holding that the birth of an infant in the United States does not give his parent a right to adjustment under the immigration laws or bestow upon him any preference or any right to remain.

— The denial of certiorari in *Alvarez-Rodriguez v. INS*, 414 U.S. 944, left undisturbed the summary affirmance by the Court of Appelas for the Ninth Circuit of the Board of Immigration Appeals decision, holding that an alien is deportable for entry without inspection even though he is a father of an infant U.S. Citizen child who might be caused extreme hardship by the deportation of the alien.

— The denial of certiorari in *Riva v. INS*, 414 U.S. 1024, left undisturbed the decision by the Court of Appeals for the Third Circuit, holding that the alien's contention that he

should have been deemed to have been issued an immigrant visa when he was issued a nonimmigrant visa is without merit. The alien's claim that he should be deemed a returning lawful permanent resident alien because he was misinformed or not informed of the consequences of his relinquishing his permanent residence status to avoid the draft had also been found to be without merit by the court of appeals.

— The denial of certiorari in *Yuen Sang Low v. Attorney General*, 414 U.S. 1039, left undisturbed the decision by the Court of Appeals for the Ninth Circuit, holding that suspension of deportation under Section 244 (a) of the Immigration and Nationality Act is not a right or privilege extended to aliens paroled into the United States, since such aliens are not "physically present" in this country and although "excludable", they are not "deportable under any law of the United States" without the meaning of Section 244 (a).

— The denial of certiorari in *Martinez-Martinez v. INS*, 414 U.S. 1066, left undisturbed the decision by the Court of Appeals for the Fifth Circuit, holding that for purposes of computing the 5-Year statutory period set forth in Section 142 (a) (13) of the Immigration and Nationality Act, an illegal entry made prior to a lawful entry as an immigrant will not be considered the beginning of the statutory period.

— The denial of certiorari in *Wurzinger v. INS*, 414 U.S. 1070, left undisturbed the decision by the Court of Appeals for the Seventh Circuit, holding that the determination of whether particular conduct proscribed under Section 241 (a) (4) of the Immigration and Nationality Act involves moral turpitude is a Federal question, and the crimes of burglary, theft, and aiding and abetting a robbery are commonly understood to involve moral turpitude. The court of appeals had also held that a court is not required to inform a defendant in a criminal proceeding that one of the results of a guilty plea will be deportation, since this is a collateral consequence.

— The denial of certiorari in *Preux v. INS*, 415 U.S. 916, left undisturbed the decision by the Court of Appeals for the Tenth Circuit, holding that a deportation order based on overstaying a visitor's visa did not bring into play the provisions of Section 241 (f) of the Immigration and Nationality Act, even though the claim was advanced that the visitor's visa was obtained by fraud.

— The denial of certiorari in *Hon Keung Kung v. INS*, 416 U.S. 904, left undisturbed the judgment by the Court of Appeals for the Eighth Circuit, affirming a decision in habeas corpus proceedings by the district court which declared that race may

be a relevant factor in various circumstances in determining whether to question a person about his immigration status.

— The denial of certiorari in *Santelises v. INS*, 417 U.S. 968, left undisturbed the decision by the Court of Appeals for the Second Circuit, holding that deportation does not constitute cruel and unusual punishment and does not deny equal protection of the laws.

— The Supreme Court granted petitions for certiorari in two cases, *Saxbe v. Bustos*, 415 U.S. 908, and *Cardona v. Saxbe*, 415 U.S. 945. In these cases teh Supreme Court agreed to review the decision by the Court of Appeals for the District of Columbia upholding the legality of the daily commuter system and holding the seasonal commuter system to be illegal.

In addition to the law review articles selected by the editor for inclusion in this first volume, we are pleased to feature three original articles by practitioners in the immigration law field. Attorney Jack Wasserman of Washington, D.C. has provided a survey of constitutional considerations as relfected in the Immigration and Nationality Act. Mr. Wasserman examines historical discriminations in our immigration laws and calls for the constitutional rights of aliens to be given full force by Congress and the courts. Mr. Mancini of the firm of Wasserman and Parker in Washington, D.C. discusses the excludability of aliens for offenses relating to marijuana under Section 212 (a) (23) of the Immigration and Nationality Act of 1952 as amended. Marijuana convictions for simple possession are foreseen as requiring minimal sanctions with the hope that Congress will amend the proper statute to obviate harsh consequences. Lastly, Mr. John F. Sheffield of the California Bar reviews the historical legal plight of the illegal alien in the United States. His essay examines the arguments for exclusion of illegally entered aliens and calls for an awareness of overlooked contributions made by these individuals to our modern American society.

The final arrangement of articles in this volume reflects the subject breakdown of current legal periodical literature. Several articles selected for inclusion dealt with more than one of the general subject areas, thus they were placed under the topic deemed most appropriate for reflecting their scope, the intent of their author, and their value to the lawyer. Many excellent articles originally selected for inclusion were omitted due to space limitations. It is our hope to include them as well as other original contributions in next year's edition of this annual publication.

The editor wishes to express his appreciation to all those law reviews and authors who cheerfully allowed us to include their

articles in this volume. It is their scholarship that is reflected herein. A special rememberance and thanks is due to the late William S. Hein who encouraged the undertaking of this project. Lastly, I wish to recognize the contribution of Margaret Goldblatt in assisting with the preparation of this manuscript.

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June 1976
St. Louis, Missouri