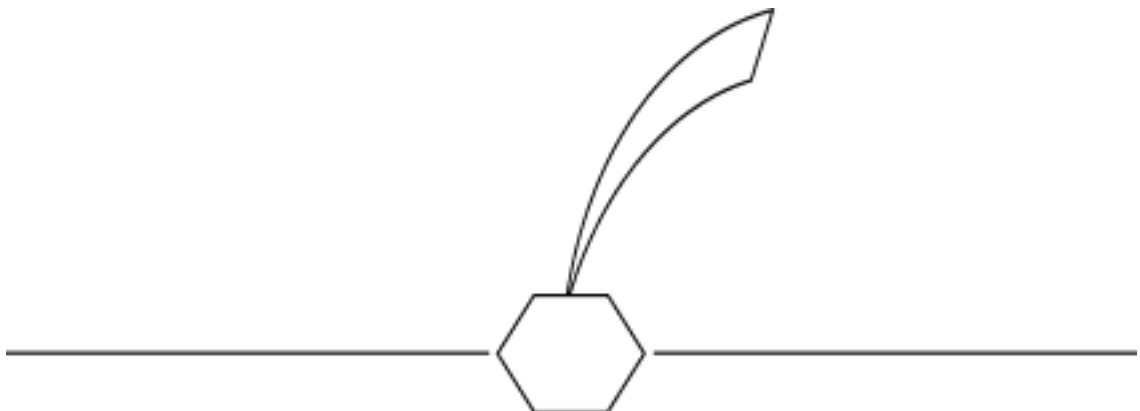


United States Immigration Law

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Instructor's Manual and Test Questions



INTRODUCTION

The following case is provided so that it may be introduced to the students to spark classroom discussion regarding immigration law, or it may be used as the basis for a take-home examination. The questions and answers following the case touch upon the essential issues raised in each of the eight chapters of this text. These questions are submitted by the author, only as a guide to assist the instructor in teaching the course. These questions can be supplemented with the questions that appear at the end of each chapter and with issues raised in classroom discussions.

Immigration law is growing and evolving and, consequently, the instructor should keep abreast of changes in government regulations and current judicial decisions that affect the practice of immigration law. These new issues can be introduced into the classroom discussion and may form the basis for additional exam questions.

Please feel free to forward any comments on how the teaching of immigration law could be improved to Jeffrey A. Helewitz at Pearson Publications Company; 9614 Greenville Avenue, Dallas, Texas 75243 or e-mail at pearsonpub@aol.com.

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SUPPLEMENTAL JUDICIAL DECISION

Lebrun v. Thornburgh
777 F. Supp. 1204 (D. N. J. 1991)

Introduction

Plaintiff, born in France, the daughter of an American World War II soldier, has been denied United States citizenship. Plaintiff's parents were unmarried, and her father returned to the United States after the war. Plaintiff's mother, a French citizen, remained in France with her daughter.

In order for plaintiff to have been eligible for citizenship, it was necessary that she be recognized and acknowledged by her father before she became 21. Plaintiff was not, "legitimated" by her father until 1981, the year that he died, at which time she was then 35 years old. In addition to the legitimacy requirement, under the then-applicable law, plaintiff could not become a citizen unless she had already resided in the United States for five years between the ages of 13 and 21 or five years between the ages of 14 and 28. Not unsurprisingly, plaintiff did not meet these requirements, because her father had not acknowledged his parenthood. The requirements no longer exist, but nonetheless they have been applied to deny plaintiff's application for citizenship. Thus, in effect, plaintiff's father, by his delay in acknowledging his parenthood of plaintiff, has denied her the opportunity for citizenship in this country, and the Immigration and Naturalization Service ("INS") has condoned his conduct by denying plaintiff's application.

The court concludes that the applicable law discriminates against "illegitimate" children, and thereby violates the Equal Protection Clause of the United States Constitution. The law as it then existed and as applied in this matter served to make the citizenship of children born out of wedlock to American fathers, particularly those serving in the armed forces, subject to the personal vagaries and consciences of their fathers. Those who chose to act with honor could confer such citizenship, and those who chose not to, could deny citizenship to their offspring. Even the dilatory father, as in this case, could defeat his child's claim to citizenship merely by delaying the recognition of his responsibility, until it was too late to satisfy the residency requirements. Those who have no choice in the marital state of their parents should not be so penalized or stigmatized, and their rights to citizenship should not be dependent on the moral fortitude (or lack thereof) of one of their parents. The unfairness is exacerbated by placing such power solely in the hands of the male parent. The law was thus discriminatory in its impact upon children born out of wedlock and sexist in making citizenship dependent upon the acquiescence of the male parent only.

Background

Before the court is defendants' motion for summary judgment.

Plaintiff was born on August 3, 1945, in Paris, France. Her natural parents, who were not legally married at the time, were Renee Foucher, a citizen and national of France, and Frank Pasek, Jr., a citizen and national of the United States. Amended Complaint, paras. 5-7; admitted in Answer. According to the Department of State Passport Agency, records indicate that plaintiff's father acknowledged paternity in correspondence to plaintiff's mother dated November 15, 1945. See Amended Complaint, Exh. D1. It was not until April 10, 1981, that plaintiff's natural father filed an acknowledgment of his paternity of plaintiff in France, thereby "legitimizing" plaintiff

in accordance with the laws of his domicile, New Jersey. Amended Complaint, para. 9. Four months later, Frank Pasek, Jr., died on August 20, 1981.

In November, 1985, plaintiff filed for a Certificate of Citizenship. Plaintiff's application was denied by the INS, District of New York, on November 20, 1986. Amended Complaint, Exh. B. On December 3, 1986, plaintiff appealed the denial to the Regional Commissioner; on July 29, 1987, Thomas W. Simmons, Chief of the INS Administrative Appeals Unit ("AAU"), denied the appeal. Id., Exh. C. Plaintiff had also applied for a passport, in 1986. That application was denied by the Regional Director for the U.S. Passport Agency on March 31, 1987. Id., Exh. D.

An exclusion proceeding which was begun earlier was adjourned several times pending plaintiff's application for a Certificate of Citizenship. Administrative Law Judge ("ALJ") Elstein, on March 7, 1989, terminated the exclusion proceedings against plaintiff, and ordered that she be admitted to the United States as a temporary visitor for business or pleasure, until June 30, 1989. See Def. Reply Brief, Exh. A, at 5. On March 21, 1989, plaintiff appealed to the Board of Immigration Appeals ("BIA"). The BIA denied plaintiff's application on July 18, 1990.

On August 13, 1990, plaintiff filed the instant action. In the First Count of the Amended Complaint, plaintiff asks that she be admitted to citizenship, that §301 of the Immigration and Nationality Act of 1952 (the "Act"), 8 U.S.C. §1401, not be applied to her, and/or that §301 be declared unconstitutional. Id. at Exh. E. That section requires a citizen born abroad to reside in the United States for a certain period of time in order to retain citizenship rights. Plaintiff challenges these retention requirements as violative of her Equal Protection and Due Process rights.

Plaintiff raises an additional challenge to the denial of her citizenship rights in the Second Count of the Amended Complaint. Plaintiff alleges that when she was 19 years old she went to the U.S. Embassy in Paris, France, to find out what she had to do to come to the United States.

Plaintiff was told by an agent employee at the U.S. Embassy that she had nothing to worry about; that the United States takes care of its "war babies." She was told that she was a citizen and that she would have no problem going to the United States when she was ready.

Relying on this information the plaintiff never sought to enter the United States within the then retention period. Had she been told accurately, it is urged here that she would today be a full fledged United States Citizen.

Amended Complaint, Second Count, paras. 2-4.

Defendants now move for summary judgment, asking this court to dismiss the complaint.

Statutory Framework

In plaintiff's applications for a Certificate of Citizenship and a passport, her claim has been interpreted under the following provisions of the relevant statutes.

The residency requirements for the retention of citizenship for a foreign born citizen that was initially applicable to plaintiff was contained in the Nationality Act of 1940. §201(i), codified at 8 U.S.C. §605, was enacted July 31, 1946.

§201. The following shall be nationals and citizens at birth: . . . (i) A person born outside the United States and its outlying possessions of parents one of whom is a citizen of the United States who has served or shall serve honorably in the armed forces after December 7, 1941, and before the date of termination of hostilities in the present war as proclaimed by the President or

determined by the joint resolution by the Congress and who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of twelve years, the other being an alien: Provided, that in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, that, if the child has not taken up residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years his American citizenship shall thereupon cease.

§201(g) of the Nationality Act does not apply to plaintiff, as by its own terms it "shall not apply to a child born abroad whose American parent is at the time of the child's birth residing abroad solely or principally in the employment of the Government of the United States," as plaintiff's father was. Furthermore, the requirement in §205 of legitimization by age 21 is not applicable to §201(i). See *Y.T. v. Bell*, 478 F. Supp. 828, 831 (W.D. Pa. 1979).

The Nationality Act was repealed by the Immigration and Nationality Act of 1952, and §301(b), codified at 8 U.S.C. 1401(b), changed the applicable retention requirement to five years of residence in the United States or its territories between the ages of 14 and 28. In 1972, the law was again modified to require two years physical presence in the United States or its territories between the ages of 14 and 28. P.L. 92-584 (October 27, 1972). On October 10, 1978, Congress repealed the retention requirements entirely for any foreign born citizens who had not yet reached her 28th birthday. P.L. 95-43 (October 10, 1978).

§309 of the Immigration and Nationality Act, codified at 8 U.S.C. §1409, provided that the relevant subsections of §301 apply to a person born out of wedlock if the person is "legitimated" under the age of 21 years, under the law of that person's residence or domicile.

The State Department and Department of Justice, in commenting upon the proposed repeal of §301, noted that the retention requirements "should be repealed retroactively to May 24, 1934." Letter of Patricia M. Wald, Ass't. A.G., to Peter Rodino, Chair of the House Comm. on the Judiciary (Dec. 12, 1977), Plt. Exh. D1. Unfortunately for plaintiff and others in her situation, the repeal was only enacted prospectively.

Previous Appeals

Plaintiff's various applications for a Certificate of Citizenship and a passport were each decided on different grounds, in some cases applying different sections of the Act. The INS applied §309 of the Act; the Passport Agency applied §201; and the BIA primarily discussed, and rejected, plaintiff's estoppel argument. The ALJ's ruling relied upon the earlier decisions in plaintiff's case.

The INS, in its July 29, 1987, decision by the Chief of the Administrative Appeals Unit ("AAU"), denied plaintiff's appeal on the grounds that she did not meet the requirements set forth in §309 of the Act. Under that section, an "illegitimate" child born on or after January 13, 1941, and prior to December 24, 1952, must have been "legitimated" before age 21 under the laws of the father's domicile; the father must have had the required residence in the United States at the time of the child's birth; and the child must have complied with the residence requirements for retention of citizenship, which mandate physical presence in the United States for periods totaling five years between the ages of 13 and 21 (§201) or two years between the ages of 14 and 28 (§201 as amended by §301). While it is unchallenged that plaintiff's father met the required residence, the INS-AAU found that plaintiff had not been properly "legitimated" under the laws

of New Jersey. The AAU further found that because plaintiff first entered the United States in July 1980, when she was almost 35 years old, she could not have met the retention requirements.

The Department of State Passport Agency denied plaintiff's application for a passport based on a different section of the Act, §201(i). That section provides that a person is a citizen at birth if born outside of the United States to parents one of whom serves in the United States armed forces after December 7, 1941, and the other of whom is an alien. In order to retain such citizenship, under the statute, the child must reside in the United States for five years between the ages of 13 and 21 years.

The Agency found, following *Y.T. v. Bell*, 478 F. Supp. 828, that the requirement articulated in §205, that an applicant must have been legitimated by age 21, does not apply as an additional requirement under §201(i). However, the Passport Agency found that plaintiff had failed to meet the retention requirements of §201(i). The Agency further noted that plaintiff failed to meet the requirements of §201 of the Act as amended by §301(b) of the Immigration and Nationality Act of 1952. Under the amended Act, to retain citizenship rights a person must be physically present in the United States for a period of five years between the ages of 14 and 28.

In its July 18, 1990, denial of plaintiff's application, the BIA dismissed plaintiff's estoppel argument, stating that: while the United States Supreme Court has not resolved the issue of whether there may be any circumstances in which the government may be estopped from denying citizenship because of the conduct of its officials, it has made clear that consideration of this issue will not lie absent a showing of "affirmative misconduct."

Amended Complaint, E1 (citations omitted). The court found that plaintiff's allegations, if true, did not establish affirmative misconduct. The court noted that even if plaintiff had received misinformation from the Embassy, plaintiff did not show detrimental reliance, since she testified that she never had the funds to travel to this country between 1964 and 1974. Amended Complaint, E3, citing Tr. at 56. The decision by the Board also stated that "neither the immigration judge nor this Board has any jurisdiction to consider challenges to the constitutionality of the laws that we administer." Amended Complaint, E1 (citations omitted).

Discussion

In order to prevail on a motion for summary judgment, the moving party must show that there are no genuine issues of material fact and that, viewing the facts in the light most favorable to the non-movant, the movant will prevail as a matter of law. Fed. R. Civ. P. 56. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 91 L. Ed. 2d 265, 106 S. Ct. 2548 (1986); *Wisniewski v. Johns-Manville Corp.*, 812 F.2d 81, 84 (3d Cir. 1987).

The court will address the parties' arguments in turn.

Dismissal as to Secretary Baker

Plaintiff's amended complaint seeks a declaration of citizenship and a declaratory judgment holding the retention requirements in the Act unconstitutional. Plaintiff does not seek redress from the Secretary of State regarding the denial of her application for a passport. Accordingly, the court will grant defendants' motion to dismiss the amended complaint as to the Secretary of State for failure to state a claim.

Defendants further argue that plaintiff's action should be dismissed as to the Secretary of State for lack of subject matter jurisdiction. Because of its dismissal as to the Secretary for failure to state a claim, the court need not reach this argument. The court notes that defendants concede that subject matter jurisdiction exists as to defendant the Attorney General, pursuant to the

Administrative Procedure Act, 5 U.S.C. §704, which gives this court jurisdiction to hear appeals from the BIA. See Def. Brief at 22 n.10, 23.

Standing

Defendants argue that under 8 U.S.C. §1503(a), plaintiff lacks standing to bring this suit. That section of the statute provides that a person within the United States who claims the right of citizenship and is denied, may institute an action against the head of the department or agency denying her that right, except that no such action may be instituted where the issue of the person's status as a national of the United States (1) arose by reason of, or in connection with an exclusion proceeding, or (2) is an issue in such a proceeding. Defendants argue that because plaintiff's application for citizenship in 1985 grew out of the exclusion proceedings initiated against her in 1985, she cannot maintain a suit under this action.

The court has declined, on the instant motion, to consider plaintiff's application solely as one for citizenship; rather, the court construes the instant action as a challenge to the constitutionality of the Immigration and Nationality Act, as applied to plaintiff. Defendant concedes that plaintiff has standing to bring the constitutional challenge. See Reply Brief at 5 n.5.

The Supreme Court has allowed constitutional challenges to be maintained by illegal aliens, see, e.g., *Plyler v. Doe*, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982); *McNary, Commissioner of Immigration and Naturalization v. Haitian Refugee Center, Inc.*, No. 89-1332, 111 S. Ct. 888; 112 L. Ed. 2d 1005; so too constitutional challenges brought by persons who may in fact be citizens, and the denial of whose citizenship rights is in question, should be permitted to go forward. The Fourteenth Amendment provides that "no State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Emphasis added). The Supreme Court has held that whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.

Plyler, 457 U.S. at 210 (citations omitted). Thus plaintiff, who is not clearly an alien or a noncitizen, should be guaranteed the equal protection of the laws. See *Y.T. v. Bell*, 478 F. Supp. 828, 832 (W.D. Pa. 1979) (distinguishing level of scrutiny for constitutional challenges to statutes by plaintiffs who are "clearly noncitizens" and plaintiffs who have a strong claim to citizenship).

Moreover, plaintiff has met the conditions for standing, as articulated in *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 153, 25 L. Ed. 2d 184, 90 S. Ct. 827 (1970), to challenge the statute under which she has been denied citizenship. She has demonstrated both injury in fact and that she is within the zone of interests to be protected or regulated by the statute.

Estoppel

Plaintiff argues that the government is estopped from denying her citizenship rights because in failing to meet the retention requirements she was relying on the misinformation given her in the United States Embassy when she was age nineteen. Plaintiff's estoppel argument must fail. While citizenship is not automatically lost where a person was misled by the action of a government official whose duty it was to inform that person, see *Matter of S —*, 8 I. & N. Dec. 226 (BIA 1958), plaintiff relies for her estoppel argument on a conversation with an unidentified employee of the American Embassy in Paris. While plaintiff was allegedly told that she was an American

citizen and that she would not encounter any problems entering the United States at a later date, the record does not show that the person with whom plaintiff spoke was a government official.

Nor can plaintiff base her estoppel argument on a theory of government “affirmative misconduct.” Whether “affirmative misconduct” by the government would estop it from enforcing the laws is unsettled in the caselaw. See *Heckler v. Community Health Services, Inc.*, 467 U.S. 51, 67, 81 L. Ed. 2d 42, 104 S. Ct. 2218 (1984) (“We have left this issue open in the past, and do so again today.”); see also *United States Immigration & Naturalization Service v. Hibi*, 414 U.S. 5, 38 L. Ed. 2d 7, 94 S. Ct. 19 (1973) (government’s failure to fully publicize rights accorded those seeking naturalization or its failure to make available authorized naturalization representatives did not constitute “affirmative misconduct”). Plaintiff’s allegations as to a conversation with an unidentified individual in the United States Embassy about general citizenship rights is not sufficient to establish “affirmative misconduct” on the part of the government.

Finally, plaintiff cannot claim to fall under the exception to the strict application of the retention requirements by arguing that she was unaware of any claim for citizenship. Indeed, plaintiff’s assertion that she went to the United States Embassy to inquire about her citizenship rights precludes such an argument. See *Rucker v. Saxbe*, 552 F.2d 998 (1977), cert. denied, 434 U.S. 919 (1977, 98 S. Ct. 392, 54 L. Ed. 2d 275).

Constitutional Claims

Plaintiff has challenged the constitutionality of the relevant statutes under the Fourteenth Amendment.

The Supreme Court has recognized that any person within the jurisdiction of the United States, including illegal aliens, may claim the benefit of the Fourteenth Amendment’s guarantee of equal protection. *Plyler*, 457 U.S. at 215. Under well established doctrine, distinctions in the law that disadvantaged “illegitimate” children must be examined by the courts with a close scrutiny. Tribe, *Constitutional Law*, 277-283 (1978).

In *Trimble v. Gordon*, the Court established a standard for examining statutes that distinguish between “legitimates” and “illegitimates,” under which the question is whether the statute “is carefully tuned to alternative considerations.” 430 U.S. 762, 772, 97 S. Ct. 1459, 52 L. Ed. 2d 31 (1977) (citations omitted). The Court took into account “the lurking problems with respect to proof of paternity,” but noted that while those problems “are not to be lightly brushed aside, . . . neither can they be made into an impenetrable barrier that works to shield otherwise invidious discrimination.” *Id.*, 430 U.S. at 771 (citing *Gomez v. Perez*, 409 U.S. 535, 538, 35 L. Ed. 2d 56, 93 S. Ct. 872 (1973)). While this standard of review is somewhat “narrow,” see *Fiallo v. Bell*, 430 U.S. 787, 796, 52 L. Ed. 2d 50, 97 S. Ct. 1473 (1977), (citing *Mathews v. Diaz*, 426 U.S. 67, 81-82, 48 L. Ed. 2d 478, 96 S. Ct. 1883 (1976)), courts must ensure that the rights guaranteed by the Fifth Amendment have not been violated. *Plyler*, 457 U.S. at 210; *Fiallo*, 430 U.S. at 809-10 (Marshall, J., dissenting), and authorities cited therein. Under the standard in *Rogers v. Bellei*, 401 U.S. 815, 831, 28 L. Ed. 2d 499, 91 S. Ct. 1060 (1971) (discussed *infra*), this court must ensure that the statute is not unreasonable, arbitrary or unlawful.

The court concludes that §309 is not “carefully tuned to alternative considerations.” Even under a minimum rationality standard, the distinction made in §309 of the statute must fail. Moreover, under the standard articulated in *Rogers v. Bellei*, the distinction is not only unreasonable and arbitrary, but it is also, under the Equal Protection Clause, unlawful.

The statute conditions the retention of citizenship upon an official act by the father of “illegitimate” children. Courts have long recognized, however, that the rights of one cannot be made contingent upon the act of another. An individual keeps his citizenship “unless he voluntarily relinquishes it.” *Afroyim v. Rusk*, 387 U.S. 253, 262, 18 L. Ed. 2d 757, 87 S. Ct. 1660 (1967). Not only can the plaintiff not be said to have voluntarily relinquished her citizenship, but she has not even been given the chance of retaining it or relinquishing it; her citizenship rights are controlled by the acts of another individual.

In *Plyler v. Doe*, 457 U.S. 202, 72 L. Ed. 2d 786, 102 S. Ct. 2382, the Supreme Court invalidated a Texas statute which withheld from local school districts any state funds for the education of children who were not legally admitted into the United States, and which authorized local school districts to deny enrollment to such children. The Court held that the statute violated the Equal Protection Clause of the Fourteenth Amendment, stating that children, who were the plaintiffs in the case before it, “can affect neither their parents’ conduct nor their own status.” *Id.* at 220, citing *Trimble v. Gordon*, 430 U.S. 762, 770, 52 L. Ed. 2d 31, 97 S. Ct. 1459 (1977). The Court held that to punish children for the conduct of their parents “does not comport with fundamental conceptions of justice.” *Id.* The Court went on to cite its ruling in *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175, 31 L. Ed. 2d 768, 92 S. Ct. 1400 (1972):

“Visiting condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the . . . child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the . . . child is an ineffectual — as well as unjust — way of deterring the parent.”

457 U.S. at 220. See also *Levy v. Louisiana*, 391 U.S. 68, 20 L. Ed. 2d 436, 88 S. Ct. 1509 (1968).

The government has offered neither a compelling state interest for maintenance of the statute, nor even a minimally rational one. Administrative costs cannot be offered by the government as justification, nor a fear of involvement with foreign laws and records. *Fiallo*, 430 U.S. at 813-814 (Marshall, J., dissenting). These justifications, even if they had been offered by the government, are insufficient to justify the statute.

Indeed, there can be no compelling or rational government interest for applying the statute in the instant case. Where it is undisputed that one parent of a foreign born child is a United States citizen, there is no reason to require that the citizen parent file a formal acknowledgment of the child before she reaches majority in order for the child to be considered a citizen. In the case at bar, plaintiff’s father acknowledged in correspondence that he was plaintiff’s father. Because he nevertheless failed to file a formal acknowledgment, thus “legitimizing” her, before she reached the age of 21, under the Act plaintiff cannot be considered a citizen. If she is his daughter — and in the instant case there is no dispute that she is — why should her citizenship rights depend upon his saying so? It is wrong for a father to have the unilateral ability to confer or deny citizenship to his daughter.

The second requirement of the Act that plaintiff has also failed to meet is the residence retention requirement. The constitutionality of this requirement must be analyzed in light of the court’s earlier discussion as to the “legitimization” requirement. As applied to an “illegitimate” child, the residence retention requirements constitute a denial of equal protection to “illegitimate” children, and therefore must likewise be invalidated.

There is no compelling, or even rational justification for the residence retention requirement. Indeed, in the congressional debate surrounding the repeal of §301(b) in 1978, members of Congress indicated that the purpose of the Act, of ensuring that future citizens have a strong tie to this country and preventing a long line of foreign born citizens who have never been in the United States, is fulfilled by the residence requirements placed upon the citizen parent. As one member of Congress noted during the debate on the repeal of §301(b), a U.S. citizen may not transmit citizenship to his children born abroad unless the parent has previously resided in the United States [for the requisite period of time]. H.R. 13349 does not change these transmission requirements.

Sept. 19, 1978, congressional Record-House at 30130, Plt. Exh. B1. The Members of Congress further asserted that the residence retention requirements placed on the children creates bureaucratic havoc for the agencies, hardships on families of foreign born citizens, and is not necessary to fulfill the purposes of the Act. See *id.* “the Judiciary Committee does not believe that this residence requirement is necessary for the proper administration of our naturalization laws. . . . These provisions no longer have any significant operative effect.” Members of the House of Representatives further noted that the Departments of State and Justice had reported that the section had been difficult to administer, and that its application had resulted in hardships in some cases. *Id.* at 30131. The Members urged repeal of the Section in order to “correct an inequity which has developed in our citizenship law.” *Id.* at 30130.

As applied to “illegitimate” children, the requirement is even more unjustifiable. As a factual matter, it is unlikely that a child not recognized by her citizen father would or could travel to this country in order to retain her citizenship rights. Moreover, without the emotional and perhaps financial support of a parent in this country, it is unlikely that a foreign-born child would manage to arrive and thrive in the United States at the young age and for the significant period of time required by the Act.

Furthermore, it would be very difficult for that child to enter this country in order to fulfill the retention requirements: Without a citizen-parent’s formal acknowledgment and backing, how would she be able to attain a visa? While some of the cases before the courts under §309 have involved children who arrived in this country on a student visa, a statute cannot make the retention of citizenship rights contingent upon the possibility that a foreign-born citizen will obtain a student visa from the INS for a sufficient number of years, consecutively, during the requisite ages under the Act. In other words, while the Act requires a foreign-born citizen to reside in this country in order to retain that citizenship, there is little chance that an “illegitimate” foreign-born citizen could meet those requirements.

In *Rogers v. Bellei*, 401 U.S. 815, 28 L. Ed. 2d 499, 91 S. Ct. 1060, the Supreme Court emphasized that Congress’ discretion in enacting laws governing the citizenship rights of persons born abroad are very broad. The Court upheld the power of Congress to confer conditional citizenship under §309. The Court concluded that Fourteenth Amendment rights of citizenship did not extend to persons not literally naturalized in the United States, and thus upheld the congressional condition as “not unreasonable, arbitrary, or unlawful.” *Id.* at 831.

However, the instant case is distinguishable. The issue presented by the instant case is a challenge to the constitutionality of the provisions regarding “illegitimates,” rather than a challenge to the constitutionality of the conditionality of Congress’ grant of citizenship to foreign-born persons. *Y.T. v. Bell*, 478 F. Supp. 828, 832 (W.D. Pa. 1979). In *Bellei*, the petitioner challenged §309 under the Fifth, Eighth and Ninth Amendments to the United States Constitution; in the instant case, the challenge is under the Equal Protection Clause of the Fourteenth Amendment. The instant case presents a situation that is “unreasonable” and “arbitrary,” as well as “unlawful,” under the Equal Protection Clause, in contrast to the Court’s holding in *Bellei*.

The discrimination in §309 between persons on the basis of “legitimacy” is an archaic reminder of past discriminatory treatment of individuals in society, both in terms of the stigma of the label “illegitimate” with which it branded the children of unwed parents, and in terms of the sex discrimination that was reflected in the law that a man could “legitimate” a child, whereas a woman could not. In addition to being inhumane and unfair in this way, a distinction on the basis of “legitimacy” is also an impractical distinction in today’s society, where unwed mothers abound, and single parenthood has become a norm. As such, not only is the explicit “legitimate/illegitimate” distinction in the Act unreasonable and unlawful, but also the residence retention requirement in §301 of the Act is unlawful as applied to “illegitimates,” because it promotes the efficacy of the “legitimate/illegitimate” distinction.

Accordingly, the court concludes that the distinction in the Act between “legitimate” and “illegitimate” children is an unconstitutional violation of the Equal Protection Clause. The court further holds that the residence retention requirements in the Act are an unconstitutional violation of the Equal Protection Clause as applied to “illegitimates,” because those requirements ultimately sanction and perpetuate a discrimination in the law against “illegitimate” children which the court has found unconstitutional.

The court concludes that, whether plaintiff’s citizenship application is analyzed under §201, §301, or §309, both statutes are unconstitutional as applied to “illegitimate” children. §309 is unconstitutional because of its requirement that a foreign-born child of a United States citizen be formally “legitimated” by the age of 21, and §201 and §301 are unconstitutional because the retention requirements are essentially impossible for an “illegitimate” to meet. Accordingly, plaintiff’s case is remanded to the INS for proceedings consistent with this opinion.

**HISTORY AND ADMINISTRATION
OF U.S. IMMIGRATION LAW**

1. *What is meant by the term “immigrant?”*

The term “immigrant” refers to persons who wish to leave their homelands to resettle permanently in a new country.

2. *What was the purpose of the Immigration Act of 1875?*

The purpose of the Immigration Act of 1875 was to exclude known prostitutes, convicts and persons who sought admission for lewd and immoral purposes from entering the country.

3. *What is a coolie labor contract?*

A coolie labor contract was an agreement whereby workers from China were hired at low wages, primarily to build the railroads on the West Coast, thereby taking jobs away from American citizens.

4. *What was the purpose of the Chinese Exclusion Act?*

The purpose of the Chinese Exclusion Act was to exclude from entry into the country persons of Chinese nationality as well as convicts, prostitutes, lunatics, and idiots.

5. *What was the Bureau of Immigration?*

The Bureau of Immigration was the forerunner of the Immigration and Naturalization Service that was created in 1891 to have jurisdiction over immigration.

6. *What was the Asiatic Barred Zone?*

The Asiatic Barred Zone was created in 1917 to prohibit immigration of persons who lived in certain areas of Asia.

7. *What is the immigration quota and when did it come into existence?*

The immigration quota was a limit that was put on the number of persons who could enter the United States as immigrants for certain countries. The quota was introduced in 1921.

8. *Describe the operation of the National Origins Formula.*

The National Origins Formula was a form of quota that limited immigration based on the national heritage of persons already in the United States. The total number of immigrants was divided according to nationalities already in the country.

9. *How does the preference system differ from the quota system?*

The preference system operates on a priority basis, giving priority to aliens based on their family relationships to persons already in the United States and their particular job skills. It is not based on national origins in order to limit the entrance of certain races.

10. *When was the National Origins Formula abolished?*

1965.

11. *What is the Immigration Marriage Fraud Act?*

The Immigration Marriage Fraud Act is a federal statute that makes it a crime to enter into a sham marriage for the purpose of taking advantage of the immigration laws with respect to the admissibility of spouses of U.S. citizens.

12. *What is the current numerical limitation for immigrants subject to numerical ceilings?*

675,000.

13. *Define "employment creator."*

An employment creator is an alien who wishes to become an immigrant, who promises to invest a minimum of \$1,000,000 (\$500,000 in areas of high unemployment) in a business in the United States and to employ at least ten U.S. citizens or lawful permanent residents.

14. *What was the purpose of a diversity visa?*

To encourage emigration from countries whose nationals are underrepresented in the general U.S. population.

15. *Briefly discuss IRCA.*

IRCA was passed in 1986 in an attempt to discourage illegal immigration to the country. As part of the IRCA provisions, the government granted amnesty to illegal immigrants who had been in the United States for a statutorily defined period of time with the introduction of a registry program for these persons.

16. *Distinguish between deportation and exclusion.*

Deportation refers to removing aliens who are in the United States without proper documentation. Exclusion refers to the process of denying admission to aliens who wish to enter the country.

17. *What is the role of the Department of State with respect to immigration?*

The Department of State oversees U.S. embassies and consular offices overseas where aliens apply for visas to enter the country.

18. *What is the role of the Department of Labor with respect to immigration?*

The Department of Labor grants or denies labor certificates for aliens who wish to enter the country under an employment-related category.

19. *What role does the paralegal play with respect to immigration law?*

The paralegal assists the attorney in preparing all immigration forms on behalf of aliens and in assisting the attorney in the representation of aliens at removal hearings.

20. *What is an immigration court?*

An immigration court is an administrative agency that has jurisdiction over removal hearings.

21. *What is the role of the Department of Justice with respect to immigration law?*

The Department of Justice oversees the Immigration and Naturalization Service and implements the immigration laws.

22. *Which category of persons is affected by the 1996 Act?*

Noncitizens and nonpermanent residents residing in the United States without documentation.

23. *What is the function of the Board of Immigration Appeals?*

It is the administrative review organ of the government that reviews decisions of the immigration judge.

24. *What was the purpose of establishing a head tax in 1882?*

The purpose of the head tax was to make immigration more expensive thereby limiting the number of poor people that could immigrate to the United States.

25. *Which is the primary statute governing immigration law?*

The Immigration and Nationality Act of 1952 as amended.

CITIZENSHIP AND NATIONALITY

1. Define "citizenship."

Citizenship means owing allegiance to a particular state or political subdivision thereof.

2. Define "nationality."

Nationality is a subdivision of citizenship, owing allegiance to a subdivision of a state.

3. What are the two basic methods of acquiring citizenship?

By birth and by naturalization.

4. Briefly discuss the two methods of acquiring citizenship by birth.

The two methods of acquiring citizenship by birth are

- 1) *Jus soli*, being born within the geographic boundaries of a particular country, or by
- 2) *Jus sanguinis*, being born to a parent who is a citizen of a particular country.

5. Are all persons born in the United States citizens of the United States? Explain.

No. For example, the children born to diplomats stationed in the United States are not considered to be United States citizens.

6. What are the requirements to be a U.S. citizen by blood?

Both parents are U.S. citizens or one parent is a U. S. citizen and the child resides in the United States for a statutory period of time.

7. What is meant by "naturalization?"

Naturalization is the process whereby a person voluntarily decides to become a citizen of a particular country.

8. What are the requirements to become a naturalized citizen of the United States?

- a) **Residence in the U.S. for five years**
- b) **Age**
- c) **Literacy**
- d) **Good moral character.**

9. What is "constructive residence?"

Constructive residence is serving on a U.S. public vessel or a private vessel registered in the U.S. that satisfies the residency requirement for naturalization.

10. *Are any persons exempt from the literacy requirement?*

Yes. Persons over the age of 55 that have lived in the United States for at least 15 years and minors.

11. *Who are permitted “relaxed requirements” for naturalization?*

Children, spouses of U.S. citizens and persons who serve in the U.S. military.

12. *Which form does an immigrant complete to start the naturalization process?*

N-400.

13. *What is a Certificate of Naturalization?*

A Certificate of Naturalization is a government document that acts as proof of the citizenship of the person described therein.

14. *May a person lose his or her nationality?*

Yes by expatriation or denaturalization.

15. *How does one expatriate him or herself?*

- a) **Becoming a naturalized citizen of another country**
- b) **Swearing allegiance to another country**
- c) **Being employed by a foreign government**
- d) **Formal renunciation**
- e) **Act of treason (for naturalized citizens).**

16. *What are the grounds for denaturalizing a naturalized citizen?*

- a) **Concealment of a material fact or willful misrepresentation to obtain naturalization**
- b) **Illegal procurement of naturalization**
- c) **Abandoning the U.S. residence within one year of naturalization**
- d) **Refusing to testify at a congressional hearing**
- e) **Becoming a member of a subversive organization within five years of naturalization.**

17. *Define “alien.”*

A person who is not a U.S. citizen.

18. *Why is there a residency requirement for persons born outside the United States of U.S. citizen parents?*

To assure that the person has some nexus with the United States other than the citizenship of his or her parent.

19. *If a person who is a citizen by birth cannot lose his or her citizenship for subversive activities, why is the law different for naturalized citizens?*

Because naturalization is not a right; it is a privilege.

20. *Should an expatriated U.S. citizen be required to meet the requirements of naturalization if he or she wishes to regain U.S. citizenship?*

There is no specific answer to this question—it is a thought question.

IMMIGRANT CATEGORIES

1. *What are the preference categories for immigrants subject to numerical limitations?*

Family-sponsored, employment-related and diversity.

2. *Which family members fall into the category of family-sponsored immigrant subject to numerical limitations?*

- a) **Unmarried sons and daughters of U.S. citizens**
- b) **The spouse, minor and unmarried children of lawful permanent residents**
- c) **Married sons and daughters of U.S. citizens**
- d) **Siblings of U.S. citizens.**

3. *What is a lawful permanent resident?*

A lawful permanent resident is an immigrant who is in the United States pursuant to a lawful immigrant visa.

4. *Who qualifies as a “son or daughter” of a U.S. citizen?*

Adult children as opposed to minor children.

5. *What are the categories of persons who qualify for the employment-related immigrant category?*

- a) **Priority workers**
- b) **Professionals with advanced degrees and persons with exceptional abilities**
- c) **Skilled workers in short supply and professionals with bachelor degrees**
- d) **Special immigrants**
- e) **Employment creators.**

6. *What is a “priority worker?”*

A person :

- a) **With extraordinary ability in the arts, sciences, business, athletics**
- b) **Who is an outstanding professor or researcher**
- c) **Who is an executive or manager with a multinational organization.**

7. *What is a “special immigrant?”*

A special immigrant is a religious worker or a foreign employee of the U.S. government or international organization.

8. *What is a “commuter alien?”*

A Canadian or Mexican who comes into the United States to work each weekday but returns home each night and weekend.

9. *What is the purpose of a green card?*

A green card serves as evidence of the immigrant's right to work in the United States.

10. *What is a diversity visa?*

The diversity visa was created in 1995 to encourage immigration from areas whose nationals are not well represented in the general U.S. population.

11. *Which aliens are not subject to numerical limitations to obtain an immigrant visa?*

The spouse, children and parents of U.S. citizens.

12. *What is the burden of proof required to prove a person's marital status for immigration purposes?*

Clear and convincing.

13. *What is the conditional period for the visa given to the alien spouse of a U.S. citizen?*

Two years.

14. *Who qualifies as the "child" of a U.S. citizen?*

Children under the age of 21, legitimate or legitimized before attaining the age of 18 or adopted before attaining the age of 16, and unmarried.

15. *May a stepchild of a U.S. citizen qualify as a child to obtain a visa?*

Yes, if the citizen parent married the stepchild's parent before the stepchild attained the age of 18.

16. *Who qualifies as the parent of a U.S. citizen?*

Anyone who is the parent of a person who qualified as a child as indicated above.

17. *Define and discuss the purpose of a visa.*

A visa is a government document that grants an alien entry into the country. The purpose of a visa is to keep control over the number of persons who enter the United States.

18. *Why are adult children of U.S. citizens subject to numerical limitations whereas minor children are not?*

Because adult children can take care of themselves.

19. *Distinguish immigrant from nonimmigrant.*

An immigrant is an alien who wishes to resettle permanently in a different country. A nonimmigrant is an alien who wishes to reside temporarily in another country.

20. *Why are citizens of Hong Kong granted special treatment?*

Because Hong Kong was returned to China, a Communist country.

NONIMMIGRANT CATEGORIES

1. *How many categories of nonimmigrants exist?*

18.

2. *Who qualifies as a diplomat?*

Ambassadors, consuls, public ministers, career diplomats and their immediate families.

3. *For what period of time are the personal attendants of diplomats granted visas?*

Three years, renewable for two years.

4. *What is the length of time for a visa for a visitor in transit?*

Eight hours.

5. *May a crew member in the United States on a nonimmigrant visa renew the visa?*

No.

6. *What is a treaty trader?*

A treaty trader is an alien who comes to the United States pursuant to a treaty the United States has with his country in order to engage in trade with the U.S.

7. *What is a treaty investor?*

A treaty investor is an alien who comes to the United States pursuant to a treaty the United States has with his country for the purpose of locating an enterprise to invest in.

8. *May a student in the United States under an F visa work?*

Yes, for 20 hours per week, plus during holidays and for the purpose of practical training.

9. *Distinguish between Diplomats (A category) and Representatives to International Organizations (G category).*

A diplomat represents his country to the United States, and the G category nonimmigrant represents his country to an international organization such as the United Nations.

10. *What is a specialty occupation under the H category of temporary worker?*

A person with highly specialized knowledge.

11. *What is the effect of NAFTA on visas for specialty workers?*

NAFTA may create another method of acquiring a visa for residents of North America if the specialty visas are used up for a given period.

12. *What is the purpose of a labor certificate for the H category of nonimmigrant?*

The purpose of the labor certificate is to insure that the foreign worker is not taking jobs away from U.S. citizens and lawful permanent residents.

13. *For what period of time is the alien fiancé of a U.S. citizen permitted to remain in the country?*

90 days.

14. *Who qualifies as an intercompany transferee?*

Someone who has been employed by the company for at least one year in an executive or a managerial position.

15. *For how long may an intercompany transferee remain in the country?*

The visa is valid for five years but is renewable.

16. *What is a TN visa?*

A visa issued pursuant to the provisions of NAFTA.

17. *What is “culturally unique?”*

Culturally unique means being associated with a particular ethnic group.

18. *Under what category would an alien seeking medical treatment qualify?*

B category — temporary visitor.

19. *Distinguish between treaty investor and employment creator.*

A treaty investor is a nonimmigrant in the United States pursuant to a treaty agreement. An employment creator is an alien who wants to be an immigrant who agrees to invest a minimum amount of money in a U.S. business.

20. *May the spouse of a student in the United States under an F visa work?*

No.

ADMISSION TO THE UNITED STATES

1. *What is meant by “conditional status” with respect to alien spouses?*

The conditional status refers to the two-year period imposed on the alien spouse before his or her immigrant status becomes permanent. The purpose of this period is to make sure that the marriage was not a sham relationship.

2. *Why does the United States require a conditional status for alien spouses?*

The United States requires a conditional status for alien spouses to make sure that the marriage is not a sham relationship entered into to take advantage of the immigration laws.

3. *What are the requirements for an alien spouse to receive a hardship waiver of removal?*

There are three requirements:

- 1) A hardship would result if the spouse was removed**
- 2) The marriage was entered into in good faith**
- 3) The marriage was terminated because of the extreme cruelty of the citizen spouse.**

4. *What form is completed by a U.S. citizen or lawful permanent resident to apply for a family-sponsored visa?*

Form I-130, Petition for Alien Relation.

5. *What is the purpose of a green card?*

A green card serves as governmental proof of the right of the alien to work in the United States.

6. *Is there only one method for obtaining an employment-related category visa?*

No. There are two procedures, depending on whether the visa is applied for in or outside of the United States.

7. *For which category of alien may the Attorney General waive the job offer requirement for employment-related visas?*

The second employment-related preference category.

8. *What type of labor certificate may be issued for the employment-related visas?*

- a) Doctors, nurses and ministers**
- b) Unskilled labor.**

9. *Which agency has jurisdiction to review decisions of the INS that deny an employment-related visa?*

The Board of Alien Labor Certification Appeals.

10. *What documentation must an alien submit when applying for an employment-related immigrant visa?*

- a) **Police and military records**
- b) **Birth and marriage certificates**
- c) **Valid passport**
- d) **Photographs**
- e) **Evidence that the alien will not become public charge (for diversity visas).**

11. *To obtain a student visa, what evidence must be submitted by the alien?*

- a) **Sufficient funds for support**
- b) **That a residence will be maintained in the homeland**
- c) **That the student intends to return to the homeland at the completion of the course of study.**

12. *Which category of nonimmigrant must submit to a physical examination?*

Fiancé(e)s, Category K.

13. *What is meant by the term “adjustment of status?”*

Adjustment of status refers to the process whereby an alien changes his or her visa category, usually from a nonimmigrant to an immigrant status.

14. *What form is filled out to start the adjustment of status process?*

Form I-485.

15. *Is there any exception to the requirement that an alien must have been lawfully inspected and legally admitted to the United States in order to adjust the alien’s status?*

Yes, if the alien is subject to the amnesty program.

16. *May a nonimmigrant adjust his or her status if an immigrant visa is not immediately available?*

No.

17. *How does private legislation affect admission procedures?*

Private legislation may make it possible for aliens who would normally be denied admission the ability to enter the United States legally.

18. *Why must a U.S. employer submit evidence of its unsuccessful attempt to find an American to fill an employment vacancy before an employment-related visa can be issued?*

The employer must submit such evidence to insure that U.S. citizens have not been denied a job opportunity in favor of a noncitizen.

19. *What is a visa?*

A visa is a government document that authorizes the person named therein to enter the United States.

20. *What results if the Attorney General does not grant an alien spouse's petition to change his or her status to a permanent immigrant status?*

Removal proceeding are commenced.

**REMOVAL PRIOR TO
ENTRY INTO THE UNITED STATES**

1. *What is meant by the term "exclusion?"*

Exclusion refers to the denial of entry of aliens into the United States. It is now called removal.

2. *What grounds are used to deny an alien admission into the United States?*

There are three general grounds that are used to deny admission:

- 1) Health factors**
- 2) Prior criminal activity**
- 3) National security risk.**

3. *What is the Visa Waiver Pilot Program?*

The Visa Waiver Pilot Program was enacted in 1996 to encourage citizens and nationals of 24 specified countries to enter the United States. These persons do not need to obtain a visa prior to entry.

4. *Which diseases constitute a health risk under the immigration laws?*

- a) Tuberculosis**
- b) HIV and AIDS**
- c) Syphilis**
- d) Gonorrhea**
- e) Leprosy**
- f) Other communicable diseases.**

5. *May the health requirements be waived for granting an immigrant visa?*

Yes, for humanitarian reasons by the Attorney General.

6. *What is meant by "crimes of moral turpitude?"*

Crimes of moral turpitude refer to those crimes that involve the character of the criminal, such as embezzlement and murder.

7. *Are there any exceptions to the denial of entry based on the alien's prior criminal record?*

Yes, for minor crimes and juvenile offenses.

8. *Is there any group whose members are automatically barred from entry into the United States?*

Yes. Nazis and Communists.

9. *Is there any exception to the exclusion of persons who belonged to the Nazi or Communist Parties?*

Yes, if the membership was mandatory or disavowed at least two years prior to applying for admission.

10. *May a stowaway be granted a visa once he or she arrives at the U.S. border?*

No.

11. *What is the procedure called for denying an alien entry into the United States?*

Removal proceedings.

12. *What constitutes the United States border?*

The geographical land limits of the United States plus any international transportation terminal located in the United States.

13. *What is parole?*

Parole is the process whereby an alien is permitted to physically enter the boundaries of the United States while awaiting a hearing to determine whether the alien should be legally admitted to the country.

14. *Is a person on parole legally in the United States?*

No. The person is physically present in the United States but legally the alien is still at the U.S. border.

15. *How does a removal proceeding commence?*

A removal proceeding commences with the issuance of Form I-220 to the alien.

16. *How may an alien challenge the conclusions of a removal proceeding?*

The alien may file a *Writ of Habeas Corpus* in a federal court.

17. *Do constitutional guarantees apply to aliens subject to removal proceedings prior to entry?*

No.

18. *What is interdiction?*

Interdiction is the authority of the United States Coast Guard to intercept ships at sea to determine whether the persons on board may enter the United States. Typically used with respect to Haitian refugees.

19. *Are removal proceedings prior to entry open to the public?*

No, unless the alien so wishes.

20. *May a devout Moslem who practices polygamy be granted admission to the United States?*

No.

**REMOVAL SUBSEQUENT TO ENTRY
INTO THE UNITED STATES**

1. *What is meant by “deportation?”*

Deportation refers to the removal of aliens who are in the United States without proper authorization. This is now called removal.

2. *Do removal proceedings apply to career diplomats?*

No.

3. *Which two general categories of offenses give rise to removal proceedings subsequent to entry?*

Acts committed prior to entering the United States and acts committed after entering the United States.

4. *Do ex post facto laws apply to immigration matters?*

No.

5. *Which categories of aliens are granted an exemption to removal based on acts committed prior to entry?*

- a) **Aliens who have a credible fear of persecution in their homelands**
- b) **Aliens who intend to apply for asylum**
- c) **Returning asylees**
- d) **Returning lawful permanent residents.**

6. *Give an example of an act prior to entry that would give rise to removal proceedings.*

Entering into a sham marriage.

7. *What is the period of the Statute of Limitations for immigration matters?*

There is no Statute of Limitations with respect to immigration matters.

8. *Which crimes are considered to be aggravated felonies?*

- a) **Murder**
- b) **Drug trafficking**
- c) **Firearm trafficking**
- d) **Money laundering**
- e) **Arson**

f) Crimes of violence that involve incarceration for at least five years.

9. *Do all crimes of moral turpitude give rise to grounds for removal?*

No. Only if the crime was committed within five years of entry for which the alien was sentenced to one or more years of confinement, or two crimes committed anytime after entry.

10. *An immigrant becomes a public charge six years after entering the United States. Is he removable?*

No. To be removable for becoming a public charge the alien must become a public charge within five years of entry.

11. *What factors may the INS officer use to make a decision at the border regarding an alien's right to enter the country?*

- a) Proximity to the border**
- b) Normal traffic patterns**
- c) Previous experience with aliens**
- d) Behavior of the driver**
- e) Appearance of the vehicle**
- f) General experience.**

12. *Is an alien entitled to a Miranda warning at a secondary inspection?*

No because the inspection is not deemed to be custodial.

13. *What is a secondary inspection?*

A secondary inspection is the inspection that takes place at the border when an INS officer checks an alien's visa and travel documents.

14. *May the INS make an arrest without a warrant?*

Yes.

15. *Does the INS have the authority to issue warrants?*

Yes.

16. *Who presides over a removal hearing?*

An immigration judge.

17. *Who may represent an alien at a removal hearing?*

- a) A licensed attorney**
- b) A law student under a supervised program**
- c) A representative of an organization recognized by the BIA**

- d) **An official of the alien's government**
- e) **A person who meets certain statutory requirements**
- f) **Anyone granted permission by the BIA.**

18. *What are the procedures for appealing an order of removal?*

The alien must first make a motion to reopen, then the alien may appeal to the BIA. If the alien is still dissatisfied, the alien may now seek redress in federal court.

19. *What is voluntary departure?*

Voluntary departure is a form of discretionary relief whereby an alien who has been ordered to be removed may leave the country voluntarily without having the stigma of a removal order on his or her record.

20. *What is cancellation of removal?*

Cancellation of removal is a form of discretionary relief for aliens who have been ordered removed but for whom removal would constitute an extreme hardship and who have been in the United States for at least ten years.

REFUGEES AND ASYLUM

1. *Which law governs refugees?*

The Refugee Act of 1980 and the Immigration and Nationality Act of 1952 as amended.

2. *Distinguish between refugees and asylees.*

A refugee is an alien who applies to enter the United States because of a fear of persecution in his or her homeland from outside the United States. An asylee is a person who qualifies as a refugee who applies for asylum from inside the United States or at a U.S. border.

3. *Who qualifies as a “refugee?”*

A person who has a credible fear of persecution in his or her homeland based on his or her race, religion, nationality, membership in a political or social organization, or because of the alien’s political opinion.

4. *What are normal flow refugees?*

Normal flow refugees are refugees who enter the United States under the annual numerical ceiling.

5. *What are refugees on special humanitarian grounds?*

Refugees on special humanitarian grounds are refugees who enter the United States not subject to the annual numerical limitations but under special circumstances based on humanitarian grounds.

6. *In addition to a well founded fear of persecution, what are the three requirements that an alien must meet in order to be permitted to enter the country as a refugee?*

The three requirements are:

- 1) The alien must be generally admissible to the united states**
- 2) The alien cannot permanently have resettled away from his or her homeland**
- 3) The grounds under which the alien seeks refuge must be of general humanitarian concern to the United States.**

7. *What form must the applicant complete to be classified as a refugee?*

Form I-590.

8. *Are there quotas for persons seeking asylum?*

No.

9. *How is one eligible to qualify for asylum?*

The alien must qualify as a refugee and apply for asylum inside the United States or at the U.S. border.

10. *Which government office has jurisdiction over refugees?*

The Central Office for Refugees, Asylum, Parole (CORAP), under the INS.

11. *What are the grounds for denying asylum?*

The grounds for denying asylum are:

- a) **Failure to qualify as a refugee**
- b) **The alien has permanently resettled**
- c) **The alien has participated in persecution of others in his or her homeland**
- d) **The alien has been convicted of a felony**
- e) **The alien committed a serious nonpolitical crime**
- f) **The alien poses a security risk to the United States.**

12. *What are the grounds for revoking asylum?*

The grounds for revoking asylum are:

- a) **Changed country conditions**
- b) **Fraud**
- c) **Commission of an act that constitutes grounds for denying asylum**

13. *What is Temporary Protected Status?*

Temporary Protected Status permits an alien who is subject to removal to remain in the United States because of unsafe conditions in the alien's homeland.

14. *What is the ABC Settlement?*

The ABC Settlement is a judicial decision that required a reconsideration of the denial of asylum to Salvadorans and Guatemalans because of unlawful discrimination against them on the part of the U.S. government officials making the asylum determinations.

15. *What is the function of the Alien Prescreening Office?*

The Alien Prescreening Office interviews prospective refugees.

16. *What is Extended Voluntary Departure?*

Extended Voluntary Departure is a form of discretionary relief from removal permitted for aliens who cannot immediately return to their homelands because of unsafe conditions. When the situation in the homeland improves, the alien must leave the United States.

17. *Is there a numerical limitation on the adjustment of status for refugees?*

No.

18. *Is there a numerical limitation on the adjustment of status for asylees?*

Yes. A visa must be immediately available.

19. *What is the thrust of the decision in INS v. Cardozo-Fonseca?*

The court held that the burden of proof of evidencing a clear probability of persecution does not apply to asylum applicants.

20. *How does an applicant prove a “well founded fear of persecution?”*

The alien can demonstrate a pattern of aggression toward a protected group and prove the alien has been identified as belonging to that group.