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Case Digest

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CASE DIGEST

I. ALIENS

Contreras-Buenfil v. Immigration and Naturalization Service
712 F.2d 401 (9th Cir. 1983)

In May 1971, Florentino Contreras-Buenfil left Mexico and illegally entered the United States, leaving behind his wife and four children. He lived with Flora Lopez continuously since 1975. Together they supported two children—Flora's son, Jose, from a prior relationship, and a daughter, Carol, who was fathered by Contreras-Buenfil.

In 1979, Contreras-Buenfil came before an immigration judge in a deportation hearing. He conceded deportability, but contended that deportation would cause hardship, and therefore, should be suspended. The Immigration Judge held that, because Contreras-Buenfil and Flora were not married, he could not base his application for a suspension of deportation on the allegedly resulting hardship to either Jose or Carol. He appealed, stating that the court had erred in refusing to consider the hardship he would suffer resulting from the separation from his California family. The Board of Immigration Appeals dismissed the appeal stating that, except for his infant daughter, all his family ties were in Mexico.

The court of appeals in reviewing the case stated that although the grant of a suspension of deportation for hardship is discretionary, a court may reverse the Board's denial of relief if the exercise of its discretion was "arbitrary, irrational, or contrary to law."¹ Denial of relief is deemed arbitrary if important factors which are relevant to a hardship determination are not considered. Therefore, the Board of Immigration Appeals must state and support its reasons for denying relief.

The court of appeals, in remanding the case, stated that the Immigration Judge and the Board did not err in refusing to consider the potential hardship to Flora or Jose. This notion was premised on the fact that Flora was in the United States illegally and also because Jose was not Contreras-Buenfil's "child," as defined

1. *Santana-Figueroa v. I.N.S.*, 644 F.2d 1354, 1357 (9th Cir. 1981).

in 8 U.S.C. § 1101(b)(1)(c). Consequently, the Board should have considered the hardship that the separation from Flora and Jose would cause Contreras-Buenfil. Additionally, the Board failed to consider the effect of the separation upon Contreras-Buenfil's daughter, Carol.

Jean v. Nelson

711 F.2d 1455 (11th Cir. 1983)

This case involved an appeal from the United States District Court order releasing over one thousand Haitian immigrants held in detention by the United States Government. Pursuant to a new policy, Haitians were detained in camps and prisons pending a final determination of their rights to remain in this country. The district court held that the government has violated the Administrative Procedure Act by failing to engage in notice and comment rulemaking, thereby voiding the detention policy and reinstating a prior policy of parole. It further held that the plaintiffs had failed to prove their discrimination claim.

The court of appeals remanded the case, although the ultimate result remained the same, providing for such relief as was necessary to remedy the discrimination and effectuate the rationale of its decision. The court stated that the executive branch has full authority to protect and control the national borders. They continued by noting that Congress has empowered the executive to adopt policies necessary to this objective in the area of immigration. Therefore, the policy change from one of ready parole with limited exceptions, to detention with limited exceptions, was properly within the realm of executive decision-making.

The court affirmed the lower court's determination that notice and comment rulemaking was required. The individuals responsible for defining the scope of the policy had failed to do so, leaving those who implemented the policy to apply a "binding norm" of widespread detention of Haitians. The court of appeals then found the district court's conclusion that the enforcement of the new policy did not discriminate against the plaintiffs to be clearly erroneous. It was noted that although the executive branch has the power to protect the borders and ensure the orderly entrance of aliens, those policies must be administered in a non-discriminatory fashion.

In remanding the case, the court stated that the relief shall

include, but is not limited to: (1) an injunction against discriminatory enforcement of the new policy; (2) the continued parole of class members; (3) record keeping requirements so the district court may ensure the policy is effectuated in the future in a non-discriminatory manner; (4) such relief as is necessary to resolve the asylum and access issues; and (5) whatever further relief is necessary to ensure that all aliens, regardless of nationality or origin, are accorded equal treatment.

II. ANTIDUMPING LAWS

Zenith Radio Corp. v. U.S.

710 F.2d 806 (Fed. Cir. 1983)

On June 5, 1981, the United States Department of Commerce issued an annual review determination pursuant to section 751 of the Trade Agreements Act of 1979. These yearly determinations establish the margins used in calculating dumping duties and are used to estimate the amount that importers must deposit to cover entries after the review period. Zenith, a United States manufacturer of television receivers, challenged the determination for the 1979-80 review period which reduced the margins for assessing dumping duties on entries of Japanese television receivers.

Zenith moved for an injunction to prevent liquidation of the merchandise entries occurring during the 1979-80 period. The trial court denied the request on the sole ground that Zenith failed to demonstrate a likelihood of irreparable injury in the absence of the injunction. On appeal, Zenith claimed: (1) that the trial court abused its discretion in considering only irreparable injury as a factor for the injunction and (2) that irreparable injury would in fact occur. The United States Court of Appeals for the Federal Circuit reversed and remanded, concluding that liquidation of the entries would eliminate Zenith's only remedy, i.e., a correct margin on the 1979-80 entries. Noting that Zenith had a strong and competitive commercial stake in insuring that its competitors abide by all monetary sanctions, the court distinguished this case from others by asserting that an injury to the domestic television industry caused by the dumping of Japanese imports had already been established. In addition, the court recognized that the United States has a desire to continue enforcing American antidumping laws stringently. Having decided that irreparable harm would occur, the court remanded the case to the lower court to consider the

likelihood of success, the benefit to the public interest and the hardship to the petitioner in conjunction with irreparable harm.

III. CUSTOMS DUTIES

Industrial Fasteners Group, American Importers Assn. v. United States

710 F.2d 1576 (Fed. Cir. 1983)

An American importers association challenged the standard used by the International Trade Administration (ITA) to impose countervailing duties. Countervailing duties are duties imposed in an amount equal to the amount of the net "subsidy" paid by a foreign government, when export payments made by that government are determined to be subsidies rather than nonexcessive rebates of indirect taxes paid. The three-prong test set forth by the International Trade Administration was: (1) whether the foreign government's program operates for the purpose of rebating indirect taxes; (2) whether there is a link between eligibility for the payments and the payment of indirect taxes; and (3) whether the foreign government has reasonably calculated and documented the actual indirect taxes.

Using this test, the International Trade Administration found that the Government of India, through a Ministry of Commerce policy, provided subsidies to exporters of industrial fasteners. The Court of International Trade affirmed the ITA's duty determination and the importers association sought review of the decision. The two major arguments raised by the appellees were, first, whether the ITA test was reasonable and, second, whether the test deprived importers of due process.

The court of appeals affirmed both the ITA's imposition of countervailing duties and the decision of the Court of International Trade. It held that the test was a reasonable interpretation of the countervailing duty statutes. Specific directives by the ITA concerning the need for actual proof of the foreign government's calculations provided adequate notice of the requirements and did not deprive the importers of due process. The foreign government had not sustained its burden of proving that the calculations were reasonable by simply stating that the eligibility of exporters to receive a refund of indirect taxes paid was based upon a reasonable calculation. Consequently, the court concluded that the appellees did not provide adequate information to permit a determination

that the payments were not a subsidy and therefore, the payments were subject to countervailing duty treatment.

Maple Leaf Co. v. United States

566 F. Supp. 879 (Ct. Int'l Trade 1983)

An importer of frozen and breaded mushrooms brought an action for a reliquidation of entries and a refund of the supplemental duties actually paid. Pursuant to Presidential Proclamation No. 4801, October 29, 1980, granting import relief under the escape clause of the Trade Act, supplemental duties are applied when a domestic industry is threatened by the importation of competitive articles in increased quantities.

Plaintiff sought: (1) review of the International Trade Commission's finding that frozen mushrooms should be treated as canned mushrooms for import purposes under item 144.20 of the Tariff Schedule of the U.S.; and (2) a restriction of the President's Proclamation granting import relief to imported canned mushrooms only. The importer argued that assessing the same duties on both frozen and canned mushrooms was unlawful since there was no evidence to support the International Trade Commission's finding and that without such support, the President's Proclamation was ultra vires. In its motion to dismiss, the defendant raised the defenses of lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

In denying the motion to dismiss, the Court of International Trade held that it did have subject matter jurisdiction under 28 U.S.C. § 158(a), since the importer had filed protests against liquidations assessing duties and had sought reliquidation of such duties. The court considered the crucial question to be whether the exercise of discretionary authority conferred upon both the International Trade Commission and the President is subject to judicial review. The court found that in the absence of a statute precluding judicial review, such review is permitted, although limited to the question of whether the action conformed to the procedural requirements of statutory authority or whether there had been an administrative abuse of discretion.

IV. EXECUTIVE AGREEMENTS

Swearingen v. United States

565 F. Supp. 1019 (D. Colo. 1983)

Richard and Betty Swearingen filed suit to recover taxes illegally or erroneously assessed by the United States. The plaintiffs resided in the Panama Canal Zone during the 1979 tax year and they received income as a result of their employment with the Panama Canal Commission. The couple was taxed for the 1979 tax year. In 1980, they filed a refund claim for taxes assessed on those wages earned between October 1 and December 31. Their claim rested on two arguments and provisions of the Panama Canal Treaty (the treaty): (1) paragraph 9 of article III of the treaty, which states that the status of United States employees in Panama will be governed by the Agreement in Implementation of this article, and (2) paragraph 2 of article XV of the Agreement which, *inter alia*, purports to exempt citizen employees from any taxes on income received as a result of work for the Commission. Both parties filed motions for summary judgment.

On review of the motions, the district court held that the Agreement in Implementation was essentially an international executive agreement. As such, it is not recognized as the law of the land and is void when in conflict with a Congressional statute. The court found that section 61 of the Internal Revenue Code, which provides for the taxation of all income from whatever source derived, was the functional equivalent of a treaty since Congressional ratification was necessary for its implementation. An executive agreement, on the other hand, requires no ratification and is not authorized or described by the United States Constitution.

In addressing the question of whether the Agreement was incorporated into the treaty by reference, the court took notice that the President, if he had so intended, could have included the taxation exemption in the treaty. The court refused to substitute its judgment for that of the other two branches of government in deference to their prior resolutions of the issues in question.

V. FIRST AMENDMENT

Schneider v. Colegio de Abogados de Puerto Rico
565 F. Supp. 963 (D.P.R. 1983)

Members of Puerto Rico's integrated bar association brought suit under § 1983 U.S.C.A., challenging various Puerto Rican statutes which mandated that its members belong to, and financially support, an organization which promoted ideological causes contrary to its members' personal beliefs. The United States District Court for the District of Puerto Rico held that the statutes as applied and enforced violated the first amendment freedoms of speech and association. The statutes also violated the fifth and fourteenth amendment rights to be free from state coercion against the individual's right to support ideological or political causes.

The court stressed that the organization in issue, which was purportedly designed to aid in the administration of justice, unquestionably participated in ideological or political activities on a continuing basis. The court noted, however, that these activities had no relationship to the stated legislative purpose for which it was created. As such, the court enjoined Puerto Rican authorities from taking any action against persons refusing to associate with the organization. Likewise, the court enjoined officials from using any public funds on behalf of the organization until the organization ceased to engage in ideological activism. Because of the vague nature of the claim for damages, however, the court limited the award to nominal damages.

VI. JURISDICTION OF THE COURT OF INTERNATIONAL TRADE

Bally/Midway Manufacturing Co. v. Regan
565 F. Supp. 1045 (Ct. Int'l Trade 1983)

In January 1981, Plaintiff, Bally/Midway, owner of copyrights on "Pac-Man" video games, recorded those copyrights with customs. In early 1983, several importations of hand held games were released to an importer. These were suspected of being pirated copies of the forementioned copyrights. Bally/Midway examined the merchandise and informed customs that the games infringed their copyrights. The importer did not return the goods within the thirty days allowed by law, and was therefore assessed a penalty. The owner brought this action against the Secretary of the Treasury and the Commissioner of Customs in the Court of Interna-

tional Trade.

The defendant challenged the jurisdiction of the Court of International Trade and argued that under 28 U.S.C. § 1338, district courts have original jurisdiction in copyright cases and that such jurisdiction is exclusive. The owner claimed that the court had jurisdiction under 28 U.S.C. § 1581(h), on the grounds that the merchandise was subject to an embargo or other qualitative restrictions.

The court found that where goods have already been imported into the United States, reliance on § 1581 is misplaced because that section confers jurisdiction only in pre-importation rulings by the Secretary of the Treasury. Since no statute conferring exclusive jurisdiction was met, the court held that it lacked jurisdiction and ordered the cause transferred to the appropriate district court with instructions to proceed as if the cause had been initiated there.

VII. JURISDICTION OF THE IRAN-UNITED STATES CLAIMS TRIBUNAL

Itel Corporation v. M/S Victoria U (Ex Pishtaz Iran)
710 F.2d 199 (5th Cir. 1983)

A domestic corporation and its foreign subsidiary brought suit against another domestic corporation alleging a breach of leases for cargo containers and related equipment. The United States District Court for the Eastern District of Louisiana stayed the proceedings to permit the action to be heard before the Iran-United States Claims Tribunal. This result was premised on the fact that the defendant had a third party claim against Iran Express Lines for which it had allegedly acted, and which was deemed to be a necessary party. On appeal, the United States Court of Appeals for the Fifth Circuit vacated the stay to permit adjudication of claims not asserted against Iran Express Lines.

Noting that the tribunal was formed following the 1981 Iranian hostage crisis, the court stressed that only claims against Iran and claims of Iranian nationals against the United States fall within the Tribunal's jurisdiction. Accordingly, the court held that the Tribunal lacked jurisdiction over the action because neither the plaintiff nor defendant corporations were Iranian. In addition, the district court did not even determine that Iran Express Lines was an Iranian corporation or had been nationalized by Iran. The

court also held that Iran Express Lines was not a necessary party to the action because a judgment in its absence would not be prejudicial to that party.

VIII. TREATIES

Taylor v. United States

711 F.2d 1199 (3rd Cir. 1983)

Orville Taylor, a United States Navy ensign, was scheduled for discharge on December 30, 1979. In October of 1977, while stationed in Spain, Taylor was involved in an off-base automobile accident which resulted in the death of a Spanish citizen. When Spain refused to waive jurisdiction, Taylor was indicted by Spanish authorities for involuntary manslaughter. No military charges were filed. He was found guilty and sentenced to eighteen months in prison, whereupon Spain requested that the Navy surrender the serviceman to Spanish authorities so that they could begin his sentence. Although Taylor's enlistment had expired, he was not discharged. Instead, the Navy unilaterally and involuntarily extended the serviceman's enlistment pursuant to Article 3840260(5)(h) of the Bureau of Naval Personnel Manual.

On June 9, 1980, Taylor filed suit alleging that the extension constituted an unconstitutional detention. He therefore sought an injunction which would prevent his surrender to Spain and order his release. On July 15, 1980, the injunction was granted. The United States appealed the order, alleging that it had legal authority to extend Taylor's enlistment under 10 U.S.C. §§ 506 and 671(a) (1976) and article XVIII of the Agreement in Implementation of the Treaty of Friendship and Cooperation between Spain and the United States.² The United States Court of Appeals for the Third Circuit affirmed.

In considering the Government's claim under title 10, which expressly authorizes involuntary extensions of enlistments by the military during times of war, the court found that no mention is made of naval authority to involuntarily extend individual enlistments when a serviceman stationed in a foreign country is subject to that country's criminal prosecution. According to the language of the agreement, the court looked at whether a serviceman whose term has expired but has not yet received a discharge is a member

2. 27 U.S.T. 3095, T.I.A.S. No. 8361.

of the United States personnel in Spain who is legally subject to detention by the United States military authorities. It found that although the obligation to surrender the serviceman was not defeated by the expiration of his enlistment, the surrender could not be facilitated by an involuntary extension of his enlistment. The court did note, however, that the Navy should have surrendered Taylor to the Spanish authorities prior to the expiration of the enlistment.