

D of the INO regulations.² This section provides that the immediate relative permit may be renewed "so long as the immediate relative status remains in effect." INO's initial issuance of an entry permit to Respondent and its subsequent renewals were based on her status as the spouse of Mr. Carl Lockhart, a U.S. citizen.

It is conceded by the Attorney General that the Lockharts are yet married and that the immediate relative status remains in effect. However, the INO and the Attorney General, for the first time, now read into Section 706.D an additional requirement. The INO and Attorney General contend this section also requires the Respondent's spouse to remain a resident of the Commonwealth in order for her immediate relative entry permit to be renewed.

In the instant case, Respondent's husband's business interests require him to be off-island for long periods of time. The INO denied Respondent's entry permit renewal application because in its opinion, the Respondent's husband was no longer a resident of the Commonwealth despite his sworn affidavit to the contrary. The Attorney General affirmed the INO's decision³ and maintains its decision is unreviewable by this Court.⁴

2/ See: Commonwealth Register, Vol. 7, No. 7. 7/22/85, at 3787.

3/ 3 CMC Div. 4, §4338(a) allows an alien denied entry to appeal the INO examiner's decision to the Attorney General

4/ 3 CMC Div. 4, §4338(d) reads in part "The decision of the Attorney General shall be final and unreviewable."

The parties have asked the Court to resolve a preliminary issue before proceeding with the deportation hearing. That issue is whether this Court has jurisdiction to review the Attorney General's decision affirming the INO's refusal to renew Respondent's immediate relative entry permit, notwithstanding the finality language of 3 CMC Div. 4 §4338(d).

After reviewing the parties' briefs and other relevant material and listening to the arguments of counsel, this Court finds as a matter of law that it does have jurisdiction to review the decision of the Attorney General notwithstanding the finality language of 3 CMC Div. 4 §4338(d). The Court bases its jurisdiction on legislatively mandated duties delegated to it under 3 CMC Div. 4 §4341.

The Court also grounds its jurisdiction on Respondent's meritorious claim that the INO and Attorney General have acted in contravention of the Commonwealth and U.S. Constitutions as well as plain statutory imperatives.

A hearing is afforded any alien who is the subject of a deportation petition.⁵ Only if there is clear and convincing evidence that the facts alleged as grounds for deportation are true will the deportation order issue. This determination is made with the benefit of any evidence presented by the Respondent. Of necessity, Respondent's presentation of evidence will attack the INO and Attorney General's grounds for denying the Respondent an entry permit. It logically follows then, that

5/ 3 CMC Div. 4 §4341(e).

unless this Court is expected to "rubber stamp" the decision of the Attorney General, it must exercise its own judgment, free from constraint, in determining the Respondent's deportability. In the exercise of this judgment, the Court must review the sufficiency of the grounds for deportation and ultimately the Attorney General's decision on that issue.

The Respondent in the instant case alleges a violation of her due process rights under the Commonwealth and U.S. Constitutions and charges the INO and Attorney General with failing to follow statutory requirements and 160 regulations. This Court finds Respondent's claims meritorious.

Where it is alleged that an administrative agency whose enabling statute contains a finality provision is operating under an undisclosed set of rules and in the process trammeling the constitutional rights of those who must come before it, this Court is not divested of jurisdiction. Indeed, jurisdiction is compelled. Ralpho v Bell, 569 F2d 607 (D.C.Cir 1976); Accord, Rodriguez v Donovan, 760 F2d 1344 (9th Cir. 1985).

NOW THZREFORE, it is found that this Court has jurisdiction to review the Attornev General's decision in the matter of Respondent's immediate relative entry permit renewal; and this matter shall proceed acccrdingly.

Entered this 15 day of December, 1989


Alexandro C. Castro
Associate Judge