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Hintopoulos Vs. Shaughnessy

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Court : US Supreme Court

Decided On : Mar-25-1957

Appeal No. : 353 U.S. 72

Appellant : Hintopoulos

Respondent : Shaughnessy

Judgement :

Hintopoulos v. Shaughnessy - 353 U.S. 72 (1957)
U.S. Supreme Court Hintopoulos v. Shaughnessy, 353 U.S. 72 (1957)

United States ex rel. Hintopoulos v. Shaughnessy

No. 205

Argued March 4, 1957

Decided March 25, 1957

353 U.S. 72

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

Petitioners, husband and wife, entered the United States in 1951 as alien seamen, and remained unlawfully after expiration of their limited lawful stay. In November, 1951, a child was born to them -- an American citizen by birth. In January, 1952, petitioners applied for suspension of deportation under 19(c) of the Immigration Act of 1917, which conditionally authorizes suspension of a deportation which "would result in serious economic detriment to a citizen . . . who is the . . . minor child of such deportable alien." The Board of Immigration Appeals found that petitioners were eligible for relief but, as a matter of administrative discretion, denied suspension of deportation, relying mainly on the fact that petitioners had established no roots or ties in this country.

Held: there was no error in the decision of the Board. Pp. 353 U. S. 73 -79.

(a) The Board applied the correct legal standards in deciding whether petitioners met the statutory prerequisites for suspension of deportation. P. 353 U. S. 77 .

(b) Suspension of deportation under the statute is a matter of discretion and of administrative grace, not mere eligibility; discretion must be exercised even though statutory prerequisites have been met. P. 353 U. S. 77 .

(c) It was not an abuse of discretion to withhold relief in this case, since the reasons relied on by the Hearing Officer and the Board were neither capricious nor arbitrary. P. 353 U. S. 77 .

(d) It was not improper or arbitrary for the Board, in exercising its discretion, to take into account the congressional policy underlying the Immigration and Nationality Act of 1952, though that Act was inapplicable to this case. P. 353 U. S. 78 .

(e) The conclusion that the Board, in exercising its discretion, may take into account the current policies of Congress is fortified by the fact that 19(c) provides for close congressional supervision over suspensions of deportation. Pp. 353 U. S. 78 -79.

233 F.2d 705, affirmed.

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MR. JUSTICE HARLAN delivered the opinion of the Court.

This is a habeas corpus proceeding to test the validity of an order of the Board of Immigration Appeals denying petitioners' request for suspension of deportation.

Petitioners are husband and wife, both aliens. Prior to 1951, both worked as seamen on foreign vessels. In July, 1951, the wife lawfully entered the United States as a crew member of a ship in a United States port. Being pregnant, she sought medical advice; subsequently, she decided in the interest of her health to stay ashore. A month later, on the next occasion his ship arrived in the United States, her husband joined her; he also failed to leave on the expiration of his limited lawful stay. [Footnote 1] In November, 1951, their child was born; the child is, of course, an American citizen by birth. In January, 1952, petitioners voluntarily disclosed their illegal presence to the Immigration Service and applied for suspension of deportation under 19(c) of the Immigration Act of 1917, which provides, in part:

"In the case of any alien . . . who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may . . . suspend

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deportation of such alien if he is not ineligible for naturalization . . . if he finds (a) that such deportation would result in serious economic detriment to a citizen or legally resident alien who is the spouse, parent, or minor child of such deportable alien. . . . [Footnote 2]"

Deportation proceedings were instituted in May, 1952, and a hearing was held. On the undisputed facts, both aliens were found deportable. As to the issue of suspension of deportation, the Hearing Officer, while finding petitioners eligible for

such relief, denied the request, stating as follows:

"Both respondents have applied for suspension of deportation on the ground of the economic detriment that would befall their minor son in the event they were deported. . . . Both disclaim having a criminal record anywhere, and both allege that they have been persons of good moral character. Evidence of record would tend to corroborate their testimony in this respect. Their only income is from the employment of the male respondent on two jobs. . . . Their joint assets consist of savings in the sum of about $500 and their furniture and other personal property, which they value at $1500. While it would seem that their son . . . would suffer economically if his parents should be deported, it is not believed that, as a matter of administrative discretion, the respondents' applications for suspension of deportation should be granted. They have been in the United States for a period of less than one year. They have no relatives in this country other than each other and their son. To grant both this form of relief upon the accident of birth in the United States of their son

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would be to deprive others who are patiently awaiting visas under their already oversubscribed quotas. It is noted also that neither respondent reported his and her presence in the United States at any time until January, 1952, when they filed applications for suspension of deportation just two months after the birth of their child. . . ."

The Board of Immigration Appeals heard petitioners' appeal, and, on March 18, 1954, upheld the Hearing Officer's recommendation and denied suspension of deportation. The Board stated:

"It is obvious that the American citizen infant child is dependent upon the alien parents for economic support, care and maintenance. Documentary and other evidence establish good moral character for the requisite period. The aliens have no connection with subversive groups."

"* * * *"

"As stated above, we have, in the instant case, a family consisting of two alien parents illegally residing in the United States and one American citizen child, age about two and one-half years. These respondents have been in the United States for a period of less than three years. Both arrived in this country as seamen. They have no other dependents or close family ties here. The record indicates that the male respondent may be able to obtain work as a Greek seaman and earn about $85 monthly."

"Notwithstanding the fact that . . . the deportation of these respondents would result in a serious economic detriment to an American citizen infant child, the granting or withholding of maximum discretionary relief depends on the factors and merits in each individual case, and is a matter of administrative

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discretion. We have carefully examined the facts and circumstances in the instant case, and we find that the granting of the maximum relief is not warranted by the record in the case. . . ."

Petitioners thereupon moved for reconsideration. On May 5, 1954, the Board denied the motion, stating:

"Counsel's motion sets forth no matters of which we were unaware at the time our previous decision was rendered. It is crystal clear that Congress intended to greatly restrict the granting of suspension of deportation by the change of phraseology which was used in Section 244(a) of the Immigration and Nationality Act [of 1952], as well as the Congressional comment at the time this provision was enacted. [Footnote 3] We indicated in our previous order that the deportation of the respondents would result in

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a serious economic detriment to their citizen minor child, and we do not question that the respondents have established the statutory requirements for suspension of deportation. . . ."

" * * * *"

"Upon our further review of the cases of the two respondents, we adhere to our previous decision that suspension of deportation should be denied as a matter of administrative discretion. . . ."

Taken into custody for deportation, petitioners instituted the present habeas corpus proceeding, alleging that the Board abused its discretion in denying their application for suspension of deportation. The District Court dismissed the writ, 133 F.Supp. 433, and the Court of Appeals, one judge dissenting, affirmed, 233 F.2d 705. We granted certiorari. 352 U.S. 819.

We do not think that there was error in these proceedings. It is clear from the record that the Board applied the correct legal standards in deciding whether petitioners met the statutory prerequisites for suspension of deportation. The Board found that petitioners met these standards, and were eligible for relief. But the statute does not contemplate that all aliens who meet the minimum legal standards will be granted suspension. Suspension of deportation is a matter of discretion and of administrative grace, not mere eligibility; discretion must be exercised even though statutory prerequisites have been met. [Footnote 4]

Nor can we say that it was abuse of discretion to withhold relief in this case. The reasons relied on by the Hearing Officer and the Board -- mainly the fact that petitioners had established no roots or ties in this country -- were neither capricious nor arbitrary.

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Petitioners urge that the Board applied an improper standard in exercising its discretion when, in its opinion on rehearing, it took into account the congressional policy underlying the Immigration and Nationality Act of 1952, the latter being concededly inapplicable to this case. We cannot agree with this contention. The second opinion makes clear that the Board still considered petitioners eligible for suspension under the 1917 Act, [Footnote 5] and denied relief solely as a matter

of discretion. And we cannot say that it was improper or arbitrary for the Board to be influenced, in exercising that discretion, by its views as to congressional policy as manifested by the 1952 Act. Section 19(c) does not state what standards are to guide the Attorney General in the exercise of his discretion. Surely it is not unreasonable for him to take cognizance of present-day conditions and congressional attitudes, any more than it would be arbitrary for a judge, in sentencing a criminal, to refuse to suspend sentence because contemporary opinion, as exemplified in recent statutes, has increased in rigor as to the offense involved. This conclusion is fortified by the fact that 19(c) provides for close congressional supervision over suspensions of deportation. In every case where suspension for more than six months is granted, a report must be submitted to Congress, and if thereafter Congress does not pass a concurrent resolution approving the suspension of deportation, the alien must then be deported. [Footnote 6] In other words, every such

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suspension must be approved by Congress, and yet petitioners would have us hold that the Attorney General may not take into account the current policies of Congress in exercising his discretion. This we cannot do.

There being no error, the judgment is affirmed.

Affirmed.

MR. JUSTICE WHITTAKER took no part in the consideration or decision of this case.

[Footnote 1]

Under certain conditions, alien crewmen are permitted to enter the United States for periods not exceeding 29 days. *See* 8 U.S.C. 1281-1287.

[Footnote 2]

8 U.S.C. (1946 ed., Supp. V) 155(c).

[Footnote 3]

Section 244 of the 1952 Act, 8 U.S.C. 1254(a), provides, in pertinent part:

"As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation . . . in the case of an alien who --"

" * * * *"

"(5) . . . has been physically present in the United States for a continuous period of not less than ten years . . . and proves that, during all of such period, he has been and is a person of good moral character; has not been served with a final order of deportation . . . , and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child, who is a citizen or an alien lawfully admitted for permanent residence."

A report of the Senate Judiciary Committee on this provision states:

"The bill accordingly establishes a policy that the administrative remedy should be available only in the very limited category of cases in which the deportation of the alien would be unconscionable. Hardship or even unusual hardship to the alien or to his spouse, parent, or child is not sufficient to justify suspension of deportation. . . ."

S.Rep. No. 1137, 82d Cong., 2d Sess. 25. (Footnote not in original.)

[Footnote 4]

United States ex rel. Kaloudis v. Shaughnessy, 180 F.2d 489; *United States ex rel. Adel v. Shaughnessy,* 183 F.2d 371. *Cf. Jay v. Boyd,* 351 U. S. 345 .

[Footnote 5]

Petitioners would clearly be ineligible for suspension under the 1952 Act. *See* note 3 *supra.*

[Footnote 6]

The statute provides:

"If the deportation of any alien is suspended under the provisions of this subsection for more than six months, a complete and detailed statement of the facts and pertinent provisions of law in the case shall be reported to the Congress with the reasons for such suspension. These reports shall be submitted on the 1st and 15th day of each calendar month in which Congress is in session. If, during the session of the Congress at which a case is reported, or prior to the close of the session of the Congress next following the session at which a case is reported, the Congress passes a concurrent resolution stating in substance that it favors the suspension of such deportation, the Attorney General shall cancel deportation proceedings. If, prior to the close of the session of the Congress next following the session at which a case is reported, the Congress does not pass such a concurrent resolution, the Attorney General shall thereupon deport such alien in the manner provided by law. . . ."

8 U.S.C. (1946 ed., Supp. V) 155(c).

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

This case, on its face, seems to be an instance of a deportation which would "result in serious economic detriment to a citizen," as those words are used in 19(c) of the Immigration Act of 1917.

The citizen is a five-year-old boy who was born here and who, therefore, is entitled to all the rights, privileges, and immunities which the Fourteenth Amendment bestows on every citizen. A five-year-old boy cannot enjoy the educational, spiritual, and economic benefits which our society affords unless he is with his parents. His parents are law-abiding and self-supporting. From this record, it appears that they are good members of the community. They do not seem to have done anything illegal or antisocial that should penalize their American son.

It would seem, therefore, that the maintenance of this young American citizen in a home in America is the way to effectuate the policy of the 1917 Act.

The Board did not treat the case that way. Instead, it imported into the 1917 Act the standard prescribed by the 1952 Act, which concededly is inapplicable here. That was the error which led Judge Frank to dissent below. 233 F.2d 705, 709, 710. I think Judge Frank was right. Prevailing congressional policy on the approval or disapproval of suspension orders in nowise affects the standards prescribed for administrative action under the 1917 Act.

The Board erroneously followed irrelevant standards instead of exercising its discretion under the applicable statute, *viz.* 19(c) of the 1917 Act.

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