Ceballos Vs. Shaughnessy

Ceballos Vs. Shaughnessy

SooperKanoon Citation : sooperkanoon.com/99273

Court : US Supreme Court

Decided On : Mar-11-1957

Appeal No. : 352 U.S. 599

Appellant : Ceballos

Respondent : Shaughnessy

Judgement :

Ceballos v. Shaughnessy - 352 U.S. 599 (1957)
U.S. Supreme Court Ceballos v. Shaughnessy, 352 U.S. 599 (1957)

Ceballos v. Shaughnessy

No. 71

Argued January 16-17, 1957

Decided March 11, 1957

352 U.S. 599

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

SYLLABUS

1. In a suit by an alien in a federal district court against a District Director of Immigration for (1) a declaratory judgment that he is eligible for suspension of deportation under 19(c) of the Immigration Act of 1917, as amended, and (2) to restrain the District Director from taking him into custody for deportation, neither the Attorney General nor the Commissioner of Immigration is a necessary party. *Shaughnessy v. Pedreiro,* 349 U. S. 48 . Pp. 352 U. S. 603 -604

2. An alien was admitted to the United States during World War II for permanent residence. While his country was still a neutral, he applied to a local Selective Service Board for exemption from military service as a neutral alien. The Board took no action on that application. After his country had become a cobelligerent with the United States, the local board classified the alien as available for military service; he reported for a physical examination, but he failed to pass, and was reclassified as physically defective.

Held: by his application for exemption as a neutral alien, he was debarred from citizenship under 3(a) of the Selective Training and Service Act of 1940, and therefore he is not now eligible for a suspension of deportation under 19(c) of the Immigration Act of 1917, as amended. Pp. 352 U. S. 600 -606.

(a) The alien's voluntary act of executing, filing, and allowing to remain on file a legally sufficient application for exemption from military service as a neutral alien effected his debarment from citizenship under 3(a) of the Selective Training and Service Act of 1940, even though the local board never took any action on his application. Pp. 352 U. S. 604 -605.

(b) Section 315 of the Immigration and Nationality Act of 1952, which makes an alien permanently ineligible for citizenship only when he has both applied for *and received* exemption from military service or training, is not applicable to this case, because this alien's application for suspension of deportation was filed before enactment of that Act. Pp. 352 U. S. 605 -606.

229 F.2d 592 affirmed.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This declaratory judgment action was brought by petitioner in March, 1955, in the District Court for the Southern District of New York to obtain a judgment against the District Director of Immigration declaring that petitioner was eligible for suspension of deportation and restraining the Director from taking him into custody for deportation. [Footnote 1] The District Court dismissed the complaint, without reaching the merits, upon the procedural ground

"that the Attorney General [of the United States] and/or the Commissioner [of Immigration] are indispensable parties to the instant action. [Footnote 2]"

The Court of Appeals for the Second Circuit affirmed not only for the reason given by the District Court, but also upon the ground that, because the petitioner is "an alien who "has made application" to be relieved from military service," he is debarred from citizenship as a matter of law, and "hence is not eligible for an order suspending deportation." [Footnote 3] This Court granted certiorari. [Footnote 4]

Deportation proceedings had been instituted because petitioner had entered the United States on April 2, 1951, on a temporary visa and remained beyond the period for

which he was admitted. Petitioner was found deportable, but was given permission to depart voluntarily, in lieu of deportation. Petitioner's timely application for suspension of deportation under 19(c) of the Immigration Act of 1917, as amended, [Footnote 5] was denied by the Immigration and Naturalization Service because it found that petitioner did not satisfy a prerequisite for the application of that section -- eligibility for naturalization. His ineligibility was based on a finding that, in August, 1943, petitioner, as a citizen and subject of Colombia, then a World War II neutral, applied under 3(a) of the Selective Training and

Service Act of 1940, as amended, for relief from service with the United States armed forces. Section 3(a) provided that "any person who makes such application shall thereafter be debarred from becoming a citizen of the United States." [Footnote 6]

Page 352 U. S. 602

The petitioner was admitted to the United States for permanent residence in February, 1942, during World War II. On June 16, 1943, he executed Selective Service System Form DSS 304, "Alien's Personal History and Statement," which gave the alien a choice of inserting "do" or "do not" in the statement: "I . . . object to service in the land or naval forces of the United States." The petitioner inserted the word "do." The form contained this notice:

". . . If you are a citizen or subject of a neutral country, and you do not wish to serve in the land or naval forces of the United States, you may apply to your local board for Application by Alien for Relief from Military Service (Form 301) which, when executed by you and filed with the local board, will relieve you from the obligation to serve in the land or naval forces of the United States, but will also debar you from thereafter becoming a citizen of the United States. [Footnote 7]"

On August 26, 1943, the petitioner executed Form DSS 301, "Application by Alien for Relief from Military Service." The form contained the following paragraph:

"I do hereby make application to be relieved from liability for training and service in the land or naval forces of the United States, under the Selective Training and Service Act of 1940, as amended, in accordance with the act of Congress, approved December 20, 1941. I understand that the making of this application to be relieved from such liability

Page 352 U. S. 603

will debar me from becoming a citizen of the United States. . . . [Footnote 8]"

Selective Service Regulations required the local board to follow prescribed formalities to place a neutral applying for relief from service in Class IV-C and to notify the alien of the classification. [Footnote 9] The board did not comply with these regulations in petitioner's case. Its first formal action was taken after the Selective Service System notified the board, on December 20, 1943, that Colombia, on November 26, 1943, had changed its neutral status to that of a cobelligerent with the United States. On January 27, 1944, five months after the petitioner filed the Form DSS 301, the board notified the petitioner that he was classified I-A, available for military service, and ordered him to report for preinduction physical examination. He reported as ordered, but failed to pass the physical examination and, on March 2, 1944, was reclassified IV-F, physically defective.

The petitioner argues that neither the Attorney General nor the Commissioner of Immigration is a necessary party to this action. The respondent offers no argument in opposition. We hold that neither the Attorney General nor the Commissioner is a necessary party. This Court, in *Shaughnessy v. Pedreiro,* 349 U. S. 48 , held that determination of the question of indispensability of parties is dependent not on the nature of the decision attacked, but on the ability and authority of the defendant before the court to effectuate the relief which the alien seeks. In this case, the petitioner asks to have the order of deportation suspended and to restrain the District Director from deporting him. Because the District

Page 352 U. S. 604

Director is the official who would execute the deportation, he is a sufficient party. It is not a basis for distinction of *Pedreiro* that suspension of deportation, rather than deportation itself, is involved in this action. [Footnote 10]

The petitioner's argument on the merits challenges the holding of the Court of Appeals that the execution and filing of Form DSS 301 had the effect as a matter of law of debarring him from becoming a citizen of the United States. He contends that debarment could result only if the local board affirmatively granted the relief applied for by classifying him IV-C on its records and giving him notice of its

action. We hold that the petitioner's voluntary act of executing and filing, and allowing to remain on file, the legally sufficient application Form DSS 301 effected his debarment from citizenship under 3(a). [Footnote 11] The explicit terms of the section debar the neutral alien "who makes such application" for immunity from military service.

Legislative history shows this to be the effect contemplated by Congress. [Footnote 12] This same construction has been adopted in the few court decisions which refer to the section, [Footnote 13]

Page 352 U. S. 605

and administrative construction has consistently given the section this meaning. [Footnote 14] The neutral alien in this country during the war was at liberty to refuse to bear arms to help us win the struggle, but the price he paid for his unwillingness was permanent debarment from United States citizenship.

The petitioner argues that, in any event, 315 of the Immigration and Nationality Act of 1952, [Footnote 15] and not

Page 352 U. S. 606

3(a) of the Selective Training and Service Act of 1940, governs this case. Section 315 of the 1952 Act enacts a two-pronged requirement for the determination of permanent ineligibility for citizenship: the alien must be one "who applies or has applied for exemption," and also one who "is or was relieved or discharged from such training or service on such ground." That section has no application here. The 1952 law had not been enacted when the petitioner applied for relief from deportation in 1951, [Footnote 16] and, by its terms, is expressly made inapplicable to proceedings for suspension of deportation under 19 of the Immigration Act of 1917 pending, as here, on the effective date of the 1952 law. [Footnote 17]

Affirmed.

[Footnote 1]

The action was instituted pursuant to 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U.S.C. 1009, and the general jurisdictional provision of the Immigration and Nationality Act of 1952, 66 Stat. 230, 8 U.S.C. 1329.

[Footnote 2]

130 F.Supp. 30, 31.

[Footnote 3]

229 F.2d 592, 593.

[Footnote 4]

351 U.S. 981.

[Footnote 5]

Section 19(c) of the Immigration Act of 1917, as amended, provided in pertinent 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 (1) permit such alien to depart the United States to any country of his choice at his own expense, in lieu of deportation; or (2) suspend 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 . . . who is the spouse . . . or minor child of such deportable alien. . . ."

39 Stat. 889, as amended, 54 Stat. 671, 62 Stat. 1206, 8 U.S.C. (1946 ed., Supp. V) 155.

[Footnote 6]

Section 3(a) of the Selective Training and Service Act of 1940, as amended, provided in pertinent part:

"Except as otherwise provided in this Act, every male citizen of the United States, and every other male person residing in the United States, who is between the ages of eighteen and forty-five . . . shall be liable for training and service in the land or naval forces of the United States: *Provided,* That any citizen or subject of a neutral country shall be relieved from liability for training and service under this Act if, prior to his induction into the land or naval forces, he has made application to be relieved from such liability in the manner prescribed by and in accordance with rules and regulations prescribed by the President, but any person who makes such application shall thereafter be debarred from becoming a citizen of the United States. . . ."

54 Stat. 885, as amended, 55 Stat. 845, 56 Stat. 1019, 50 U.S.C.App. (1940 ed., Supp. II) 303(a).

[Footnote 7]

This form was authorized by Selective Service System Order No. 75, 7 Fed.Reg. 3424.

[Footnote 8]

This form was authorized by Selective Service System Order No. 54, 7 Fed.Reg. 1104.

[Footnote 9]

32 CFR, 1943 Cum.Supp., 622.43(b); 32 CFR, 1943 Cum.Supp., 623.1; 32 CFR, 1943 Cum.Supp., 623.61.

[Footnote 10]

The Court of Appeals made that distinction and held that not *Pedreiro,* but its decision in *De Pinho Vaz v. Shaughnessy,* 208 F.2d 70, controlled. 229 F.2d at 593.

[Footnote 11]

The petitioner's claim that he executed the application in the belief that he was required to do so to obtain assignment to a Latin American contingent of the United States Army was rejected, after hearing, by the Immigration and Naturalization Service. In fact, the Board of Immigration Appeals found that petitioner "fully understood the legal consequences of his action, and that he was not duly influenced by other considerations." *Cf. Moser v. United States,* 341 U. S. 41 .

[Footnote 12]

This appears in both the House and Senate Reports. The House Report states:

". . . In the case of citizens or subjects of any neutral country, special provision is made to enable them, upon application, to be relieved from the liability for service, but *the making of such application* will debar them from becoming citizens of the United States. . . ."

(Emphasis added.) H.R.Rep. No. 1508, 77th Cong., 1st Sess. 4.

The Senate Report states:

". . . Under the bill reported by the committee, aliens would be liable whether or not they had declared their intention to become citizens. However, aliens who are citizens or subjects of a neutral country would be relieved of liability upon making application in the manner prescribed by the President, but *the making of such application* will debar them from ever becoming citizens of the United States. . . ."

(Emphasis added.) S.Rep. No. 915, 77th Cong., 1st Sess. 2.

[Footnote 13]

Mannerfrid v. United States, 200 F.2d 730; *Navarro v. Landon,* 108 F.Supp. 922; *see Machado v. McGrath,* 90 U.S.App.D.C. 70, 74, 193 F.2d 706, 710. *See McGrath v. Kristensen,* 340 U. S. 162 , 340 U. S. 172 : "By the terms of the statute, that bar only comes into existence when an alien resident liable for service *asks* to be relieved." (Emphasis added.) *See Moser v. United States,* 341 U. S.

41 , 341 U. S. 45 : Section 3(a) "imposed the condition that neutral aliens residing here who *claimed* such immunity would be debarred from citizenship." (Emphasis added.)

[Footnote 14]

See quotations from Forms DSS 304 and DSS 301 in text. *And see* Selective Service Regulations, 622.43, effective March 16, 1942, 7 Fed.Reg. 2087. Section 622.43, as revised, effective October 1, 1943, 8 Fed.Reg. 13672, read:

". . . (a) In Class IV-C shall be placed any registrant: . . . (2) Who is an alien and who is a citizen or subject of a neutral country . . . and who . . . files with his local board an Application by Alien for Relief from Military Service (Form 301). . . ."

[Footnote 15]

The Immigration and Nationality Act of 1952, 315, provides:

"(a) Notwithstanding the provisions of section 405(b) of this Act, any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States."

"(b) The records of the Selective Service System or of the National Military Establishment shall be conclusive as to whether an alien was relieved or discharged from such liability for training or service because he was an alien."

66 Stat. 242, 8 U.S.C. 1426.

[Footnote 16]

The 1952 law became effective in December, 1952.

[Footnote 17]

The Immigration and Nationality Act of 1952, 405(a), provides:

"Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed . . . to affect . . . proceedings . . . brought, . . . or existing at the time this Act, shall take effect; but as to all such . . . proceedings, . . . the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. . . . An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended . . . which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection."

66 Stat. 280, 8 U.S.C. 1101, note.