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Supreme Court of the United States

October Term, 1970

No. 727

WILLIAM P. SAILER, Individually and as Executive Director of the Philadelphia County Board of Assistance, and STANLEY A. MILLER, Individually and as Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania,

Appellants,

v.

ELSIE MARY JANE LEGER, BERYL JERVIS, by themselves and all others similarly situated,

Appellees.

On Appeal from the United States District Court for the Eastern District of Pennsylvania

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BRIEF FOR MIGRATION AND REFUGEE SERVICES, U.S. CATHOLIC CONFERENCE, INC.; LUTHERAN IMMIGRATION AND REFUGEE SERVICE, LUTHERAN COUNCIL IN THE U. S. A.; AMERICAN COUNCIL FOR NATIONALITIES SERVICE; CHURCH WORLD SERVICE, INC.; UNITED HIAS SERVICE, INC.; INTERNATIONAL RESCUE COMMITTEE, INC.; THE AMERICAN FRIENDS SERVICE COMMITTEE, INC.; TOLSTOY FOUNDATION, INC.; AMERICAN FUND FOR CZECHOSLOVAC REFUGEES, INC.; INTERNATIONAL SOCIAL SERVICE, AMERICAN BRANCH, INC.; THE AMERICAN COUNCIL FOR JUDAISM PHILANTHROPIC FUND, INC.

Amici Curiae.

The above named agencies, as *amici curiae,* file this brief pursuant to the Court's Rule 42 and upon the written consent of the parties. The agencies, representing religious, nationality, nonsectarian, welfare, and immigration interests in the United States, have for years participated in relief and rehabilitation programs in foreign countries and have also participated in immigration and resettlement services to refugees in the United States.[1] Some of the organizations have affiliates on the local and area levels throughout the United States, others work through parishes and churches. These organizations consider it their responsibility to eliminate all forms of discrimination, including discrimination against non-citizens residing in the United States and they are devoted to achieving the practical discharge of that responsibility in every appropriate manner. This brief is filed to urge the Court to declare unconstitutional the statutory discrimination against the non-citizens here involved.

FACTS

The essential facts, more fully set out in the brief for the appellees, are that the appellees are residents of the State of Pennsylvania but not citizens of the United States. Appellee Leger was lawfully admitted to the United States in May 1965 and is married to an American citizen. She has been a tax paying resident of the Commonwealth of Pennsylvania from the time of her arrival but both she and her husband were forced to give up their employment in 1969 due to severe medical disabilities. When the appellee and her husband applied for public assistance on October 3, 1969, assistance was granted to

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1. For description of the work of Voluntary Agencies in connection with immigration and resettlement of refugees, see *The DP Story,* report of the Displaced Persons Commission to the President of The United States of August 15, 1952, at 267; *Whom We Shall Welcome,* report of the President's Commission on Immigration and Naturalization of 1952, at 255.

him but denied to her solely because she is not a citizen of the United States. Similarly, appellee Jervis, a citizen of Panama, was lawfully admitted to the United States in March 1968 and has been a tax paying resident of the Commonwealth of Pennsylvania since that time. When she had to give up her employment in February 1970 due to illness, she applied for public assistance and such assistance was denied to her solely because she is not a citizen of the United States. The Court below granted a preliminary injunction because of the hardship caused to the appellees by the Pensylvania statute and on July 13, 1970 a three judge Court with one judge dissenting, declared the so-called general assistance program of the State of Pennsylvania[2] unconstitutional. The defendants below appealed to this Court.

ARGUMENT

The Pennsylvania Statute On Its Face And As Applied Deprives The Appellees And Others Like Them Of Liberty And Property Without Due Process Of Law And Denies Them The Equal Protection Of The Laws In Violation Of The Fourteenth Amendment Of The United States Constitution

It is a basic truth well stated in the opinion below that the fourteenth amendment extends protection to "all persons", and, therefore, includes the protection of citizens and non-citizens alike. *Yick Wo v. Hopkins,* 118 U.S. 356. 369 (1886); *Takahashi v. Fish & Game Commission,* 334 U.S. 410. 420, (1948); *Truax v. Raich,* 239 U.S. 33 (1915).

The United States is a country of immigrants. Some of its most prominent citizens are first generation Americans whose parents came from foreign countries and some of whom may not have achieved the status of citizenship because of their inability to read and write English. It is of interest that during

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2. §432 (2), Pennsylvania Public Welfare Code, 62 P. S. 432 (2). The text of this section can be found in the Joint Appendix of the parties.

the War of Independence foreigners played a vital role, that Charles Thomson, Secretary of the Continental Congress from 1774 to 1789, the man who recorded the proceedings leading to the Declaration of Independence, was born in County Derry, Ireland. Of the 56 signers of the Declaration of Independence, 18 were of non-English stock and 8 were first generation immigrants. The Pennsylvania Continentals, one of General Washington's toughest brigades, was often called, "the line of Ireland." There are innumerable examples of new immigrants who have significantly contributed to American welfare and culture, some of them famous scientists and Nobel prize winners. It is true that most of those persons who became so valuable to the country achieved American citizenship. However, if their contributions may be weighed against the funds which the State of Pennsylvania or other states with similar legislation have to dispense to indigent immigrants, there is no question that the assets brought by immigrants far outweigh the funds consumed by those who are unable to make it or who encountered sickness and other misery which made it necessary for them to apply for public help.

America has always been proud to welcome the poor "the huddled masses yearning to breathe free . . ." and thus it is believed that even those portions of the Immigration and Nationality Act which are cited in the dissenting opinion below can hardly be used to construe Congressional intent to preserve the assets of the United States or of the States at the expense of the non-citizens who in most cases probably made financial contributions to these funds before bad days fell upon them.

The Court below has fully distinguished *Dandridge v. Williams,* 397 U.S. 471 (1970), by pointing out that the classification devised in that case is not "inherently suspect as is one based on alienage;. ." nor did the State "completely exclude a particular group from all benefits . . ." The general legal aspects of the case have been briefed by the appellees and other *amici* but it behooves us to address ourselves specifically to

statements made in the dissent regarding the purpose of the exclusionary provisions of the Immigration and Nationality Act.

It is there mentioned that paupers, aliens who are likely at any time to become public charges and aliens who are certified as having any physical difficulty, disease or disability of such a nature that it may affect the ability of the alien to earn a living are excludable.[3] The dissenting judge apparently concludes that the Pennsylvania statute carries out the stated policy of the Federal law and the appellant in his brief suggests that the decision below is inconsistent with the Immigration and Nationality Act mentioned above. While it is true that Congress in establishing a selection system for potential immigrants has elected to prefer persons who can establish that they will not be likely to require public assistance, none of the provisions of the Immigration and Nationality Act give the slightest indication that once the immigrant has been accepted into the American community he should be treated differently from the American citizen born there or naturalized after entry. Sec. 241(a)(8) of the Immigration Nationality Act, 8 U.S.C. 1251(a)(8) specifically provides that an alien who becomes a public charge within five years after entry is deportable only if he cannot show affirmatively that the causes which made him a public charge have arisen after entry. Implicit in the provision is that if the causes existed prior to entry he was in fact excludable at the time of entry, but neither the Immigration and Nationality Act or any other law enacted in a humane society will deny relief to persons who become ill or who because of unforeseen circumstances not existing prior to entry were compelled to appeal for public funds.

Statistics published by the Immigration and Naturalization Service show that for the period from 1951 to 1960 of 129,887 persons deported, only 225 were deported because they became public charges for reasons which existed prior to entry. In the

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3. §212(a)(7), (8) and (15), 8 U.S.C. 1182(a)(7). (8) and (15).

period from 1961-1969 only 8 persons out of 79,481 were deported for the same reason. In 1969, 1966, 1964 and 1962 no aliens were deported on that charge. The remaining 8 were distributed over the balance of the decade.[4] To evaluate these figures in proper context, it should be noted that during January 1969, 4,002,668 aliens filed address reports with the Immigration and Naturalization Service.[5]

As was testified in the course of this case by a representative of the Nationality Service Center in Philadelphia—an affiliate of the American Council for Nationalities Service—most of the non-citizens denied general assistance have been in the United States for many years and their failure to become naturalized is not of their choice but in many cases, is caused by their inability to learn to read and write English sufficiently to pass the naturalization examination. According to the statistics furnished by the Immigration and Naturalization Service, a total of 2,043 petitions for naturalization were denied during 1969. Among those who did not achieve naturalization, 306 failed the English language test and 412 could not furnish witnesses for the five year period necessary for naturalization.[6]

It should be remembered that non-citizen residents have contributed to the funds which Pennsylvania seeks to preserve for its citizens. Non-citizens are subject to the draft and have to serve in the United States Army just like citizens. A resident alien bears all responsibilities of citizenship and except for the right to vote, he is protected by the same principles of fairness and equality which protect the citizen. The rights of resident

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4. Table 26 "Aliens Deported by Cause: Years ended June 30, 1908-1969"—*1969 Annual Report Immigration and Naturalization Service*, at 89.

5. *1969 Annual Report Immigration and Naturalization Service*, at 102.

6. *1969 Annual Report*, supra, at 30.

aliens should be guarded with special care because the alien has no political voice and is the only minority in the United States without official representation.

CONCLUSION

Whereby it is respectfully prayed that the decision of the Court below be affirmed.

Respectfully submitted,

Migration and Refugee Services, U.S. Catholic Conference, Inc.

Lutheran Immigration and Refugee Service, Lutheran Council in the U.S.A.

American Council for Nationalities Service, Inc.

Church World Service, Inc.

United Hias Service, Inc.

International Rescue Committee, Inc.

The American Friends Service Committee, Inc.

Tolstoy Foundation, Inc.

American Fund for Czechoslovac Refugees, Inc.

International Social Service, American Branch, Inc.

The American Council for Judaism Philanthropic Fund, Inc.

Amici Curiae

Edith Lowenstein,
Counsel for Amici Curiae