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Aliens - The Secretary of State May Revoke the Visa of an Alien Even After an Alien Has Entered the Country (Knoetze v. U.S.)

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RECENT DEVELOPMENTS

ALIENS — THE SECRETARY OF STATE MAY REVOKE THE VISA OF AN ALIEN EVEN AFTER AN ALIEN HAS ENTERED THE COUNTRY — *Knoetze v. United States*, 634 F.2d 207 (5th Cir. 1981).

In an action to permanently enjoin the Secretary of State from revoking his non-immigrant visa, appellant contended that the Secretary had acted without authority and violated his right to due process of law. Nikolaas Knoetze, a South African world-class boxer had come to the United States on a non-immigrant visa to take part in a prize fight. The Secretary of State revoked Knoetze's visa after concluding that he had been convicted in South Africa of a crime corresponding to an American felony involving moral turpitude. The Immigration and Nationality Act renders such foreign convicts ineligible for a visa of entry into the United States.¹

The district court held that the Secretary had acted lawfully and refused to permanently enjoin the Secretary from revoking Knoetze's non-immigrant visa.

On appeal, appellant argued that section 1201(i) dealt with the power to revoke visas *prior* to entry into the United States. He supported this argument by stating that (1) the area of the statute in which section 1201(i) is found outlines only the procedures for visa issuance to aliens upon initial entry² and that (2) the Attorney General, not the Secretary of State, has primary responsibility over foreigners already in the country.³ Consequently, he urged that he was entitled to

1. 8 U.S.C. § 1182(a)(9) (1976).

2. 8 U.S.C. §§ 1151-1230 (1976 & Supp. IV 1980).

3. *Id.* §§ 1231-1260.

the procedural safeguards⁴ accorded to those aliens subject to the deportation authority of the Attorney General.

The court of appeals affirmed the district court's decision. On the issue of the Secretary's authority, Judge Hatchett noted: "Congress has entrusted *deportation* to a different department of government, the Attorney General . . . [but] [w]e accept the argument of the government that § 1201(i) means exactly what it says: the Secretary may revoke an alien's visa 'at any time'. . . even after he has entered our country."⁵

The court next considered whether the revocation of Knoetze's visa complied with due process rights guaranteed by the Constitution. Knoetze had argued that by denying him a working visa, the government effectively denied him the ability to remain in this country. The court held that fifth amendment protection attaches only when the government sues to deny a liberty or property interest and "revocation of an entry visa issued to an alien already within our country has no effect upon the alien's liberty or property interests."⁶

ASSIGNMENTS — COUNTERCLAIMS — ACT OF STATE — *Empresa Cubana Exportadora De Azucar Y Sus Derivados v. Lamborn & Co.*, 652 F.2d 231 (2d Cir. 1981).

The Republic of Cuba filed a contract action in the Southern District of New York against Lamborn & Company, Inc., a Delaware corporation and the assignee of Craig, a New York partnership with offices in New York and Havana. Cuba alleged that Lamborn, as assignee, failed to make payment on a contract to purchase sugar from Banco Cubano del Comercio Exterior, an independent juridical entity wholly owned by the Cuban state. The Republic of Cuba was permitted by the district court to amend its complaint so as to substitute Empresa Cubana Exportadora de Azucar y Sus Derivados (Cubazucar) as plaintiff.¹ In response to this amendment, Lamborn asserted a counterclaim against Cubazucar and a third party claim against the original

4. *Id.* § 1252(b).

5. *Knoetze v. United States*, 634 F.2d 207, 210, 212 (2d Cir. 1981) (emphasis added).

6. *Id.* at 212.

1. *Republic of Cuba v. Lamborn & Co.*, No. 61 Civ. 1847 - CLB (S.D.N.Y. Nov. 1, 1979).