

MARTINEZ v. BELL

United States District Court for the Southern District of New York

May 3, 1979.

77 Civ. 5964 (GLG)

Reporter: 1979 U.S. Dist. LEXIS 12614

JANET GILDA MARTINEZ, an infant, by her mother, MARIA J. RODRIGUEZ-SANCHES, and FRANCK MARTIN PERRAULT, an infant, etc. v. GRIFFIN BELL, etc. et al.

Opinion by: [*1] GOETTEL

Opinion

ENDORSEMENT ON MOTION TO AMEND DECISION & JUDGMENT

Defendants move for an order amending the decision and judgment of this Court dated April 10, 1979. They object to the portion of the decision which directs the Immigration and Naturalization Service to hold an administrative hearing to determine whether certain of the plaintiffs had established timely entitlement to priority status under the Immigration and Nationality Act. They raise three points:

- 1) That the Department of State, and not the Immigration and Naturalization Service, is the appropriate department to conduct such hearings;
- 2) that the Court lacks jurisdiction to direct either of the departments of the executive branch to conduct administrative hearings;
- 3) that, in any event, these hearings have already been conducted and that the determinations made are not subject to judicial review.

Defendants' first point is quite correct and the Court's order should have directed remand to the Department of State for the necessary hearings.

The defendants' next two points, however, are contrary to the position taken by them at the argument of the cross-motions for summary judgment. Counsel for the [*2] Government at that time contended that summary judgment was appropriate, despite unresolved factual questions, since the plaintiffs had not exhausted their administrative remedies (where the controverted factual matters could be determined by the appropriate officers of the Foreign Service). No proof was offered that these hearings had been held or that determinations had been made.

The other issue, that of whether this Court can review such an administrative determination, was not a matter before the Court at any time and, accordingly, no opinion is expressed as to whether or to what extent, the Court has jurisdiction to review a decision made in conformity with 22 C.F.R. § 42.62 and with the rules established by the Secretary of State. The fact that the courts do not have power to review the rules and regulations issued by the Secretary of State, under the authority granted to him by 8 U.S.C. § 1104, however, does not mean that this Court lacks jurisdiction to direct the Department of State to do that which it is both authorized and required to do. Consequently, the earlier order of this Court is amended only to the extent of directing that the Department of State conduct [*3] the necessary hearings, if it has not already done so.

As the other issues raised in the motion to reargue are not properly before this Court, the motion is, in all other respects, denied.

SO ORDERED: