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Limitation on Exemptions from Deportation (Reid v. Immigration and Naturalization Service)

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IMMIGRATION LAW

LIMITATION ON EXEMPTIONS FROM DEPORTATION

Reid v. Immigration and Naturalization Service

Section 241(f) of the Immigration and Nationality Act[1] exempts from deportation any alien who is the spouse, parent, or child of a United States citizen or permanent resident alien, and who, despite his securing entry into this country by fraud or misrepresentation, was "otherwise admissible at the time of entry."[2] In *Reid v. Immigration and Naturalization Service*,[3] the Second Circuit, in an opinion authored by Judge Mansfield,[4] limited the scope of section 241(f) by holding it inapplicable to aliens who procured entry by falsely representing themselves to be United States citizens. By so holding, the court refused to adhere to the liberal, humanitarian approach to interpreting the statute espoused by the Supreme Court and other courts of appeals.

The petitioners in *Reid*, a husband and wife who are natives and citizens of British Honduras, entered the United States at the California-Mexico border by falsely representing themselves as United States citizens.[5] Subsequently, Mrs. Reid gave birth to two sons who are native born citizens of this country. Two years after their illegal entry, however, the Immigration and Naturalization Service (INS) commenced deportation proceedings against the couple.[6] Although

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1 8 U.S.C. § 1251(f) (1970).

2 Section 241(f) provides:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

8 U.S.C. § 1251(f) (1970). An alien "means any person not a citizen or national of the United States." Immigration and Nationality Act (the Act), § 101(a)(3), 8 U.S.C. § 1101(a)(3) (1970). If the Government seeks deportation on grounds other than fraudulent entry, § 241(f) cannot be raised successfully by the alien. Castillo-Lopez v. Immigration and Naturalization Service, 437 F.2d 74 (5th Cir. 1971); Tsaconas v. Immigration and Naturalization Service, 397 F.2d 946 (7th Cir. 1968).

3 492 F.2d 251 (2d Cir.), *cert. granted*, 95 S. Ct. 39 (1974).

4 Judge Lumbard joined Judge Mansfield in the majority opinion.

5 Mr. and Mrs. Reid entered the United States on different dates, the former on November 29, 1968 and the latter on January 3, 1969. 492 F.2d at 252.

6 The plenary power of Congress to deport was first recognized by the Supreme Court in Fong Yue Ting v. United States, 149 U.S. 698 (1893). In *Fong Yue Ting*, the Court held that deportation is a civil, not criminal, penalty. "The order of deportation is not a punishment for crime. It is but a method of enforcing the return . . . of an alien who has not complied with the conditions upon the performance of which . . . his continuing to reside here shall depend." *Id.* at 730. *See* Note, *Immigrants, Aliens, and the Constitu-*

conceding the INS charge that they had entered without complying with appropriate procedures,[7] the Reids argued that deportation should be stayed by the application of section 241(f) since they were now parents of American citizens.[8] However, the INS held that section 241(f) was inapplicable and ordered deportation.[9] After their appeal was dismissed by the Board of Immigration Appeals, the petitioners sought and were granted review by the Second Circuit.[10]

The Second Circuit, in affirming, rejected a literal reading of the statute by which "one might conclude that as long as the alien was 'otherwise admissible' at the time of entry the species of fraud or nature of the entry is immaterial."[11] After analyzing the history and language of section 241(f),[12] Judge Mansfield reasoned that Congress did not intend to let aliens circumvent "the essential substantive and procedural steps" of inspection.[13] Emphasizing that the statutory exemption applies only when the fraud has been committed by one who gained entry as an alien, he concluded that

> [t]here is no evidence that Congress had in mind extending the waiver of deportation to an attempt to by-pass completely this im-

tion, 49 NOTRE DAME LAW. 1075, 1091-99 (1974), wherein the author sets forth the rights of aliens subject to deportation, the power of Congress to deport, and the consequences of deportation.

[7] An alien must normally apply for a visa to enter the United States. After obtaining approval for the visa, he must still be scrutinized and permitted admission by officials of the INS at the point of entry. *See* C. GORDON & H. ROSENFELD, IMMIGRATION LAW AND PROCEDURE, §§ 3.1-3.4 (rev. ed. 1974) [hereinafter cited as GORDON & ROSENFELD]. Section 235 of the Act, 8 U.S.C. § 1225(a) (1970), provides in part:

> All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe.

See also § 221 of the Act, 8 U.S.C. § 1201 (1970), pertaining to the issuance of visas, and § 211(b) of the Act, 8 U.S.C. § 1181(b), which concern the waiver of inspection for returning lawful residents.

[8] 492 F.2d at 252.

[9] The INS sought to deport them under § 241(a)(2) of the Act, 8 U.S.C. § 1251(a)(2) (1970), as aliens who procured entry without the proper inspection. In pertinent part, § 241(a)(2) provides:

> (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who —
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> . . . .
>
> (2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States . . . .

[10] The jurisdiction of the Second Circuit was predicated upon § 106 of the Act, 8 U.S.C. § 1105(a) (1970), which, by reference, adopts 28 U.S.C. § 2342 (1970), thereby placing exclusive jurisdiction in the courts of appeals to review final orders of the Immigration and Naturalization Service.

[11] 492 F.2d at 253.

[12] For a comprehensive examination of the legislative history of the section, see Note, *Immigration: The Criterion of "Otherwise Admissible" as a Basis for Relief from Deportation because of Fraud or Misrepresentation*, 66 COLUM. L. REV. 188 (1966). *See also* 34 GEO. WASH. L. REV. 351 (1965); 42 ST. JOHN'S L. REV. 118 (1967).

[13] 492 F.2d at 254.

> migration screening process and required "inspection" of aliens at the border.[14]

Accordingly, this statutory construction effectively frustrated the Reids who were granted entry as "citizens," thereby avoiding the normal alien inspection procedures.[15]

The petitioners argued that the vital determination of their status must focus upon the concept of "otherwise admissible." Applying this theory, the Reids proposed that since, at the time of entry, they were not excludable under section 212(a),[16] which delineates classes of aliens excludable by law, they were "otherwise admissible," and thus eligible for section 241 relief. Judge Mansfield countered this argument by stressing the necessity for pre-entry examination and the difficulty of a post hoc investigation after the fraud has terminated:

> [A] mere review of the numerous grounds . . . for excluding him upon attempted entry persuades us that a *post hoc* investigation would not be an adequate substitute for the exhaustive contemporaneous probe and examination required of the consular and INS services.[17]

The majority's position was sharply criticized in the thoughtful dissent of Judge Mulligan.[18] His contentions centered principally upon the proper interpretation of the purpose of section 241(f) as evidenced by the language of the Supreme Court in *Immigration and Naturalization Service v. Errico*.[19] The Court therein resolved an existing conflict between the Ninth Circuit's decision in *Errico*[20] and the Second Circuit's holding in *Scott v. Immigration and Naturalization Service*.[21] Furthermore, the Court was provided with its first opportunity to interpret the phrase "otherwise admissible."

Both cases involved aliens who, through the use of fraud, procured immigration visas and thus avoided immigration quota requirements.[22]

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14 *Id.* at 255.

15 *See* note 7 *supra*.

16 8 U.S.C. § 1182(a) (1970). This section sets forth those classes of aliens excludable from entry by law. The list includes those who have any dangerous, contagious disease, mental defects, or a history of insanity. Also excludable are aliens who are drug addicts, vagrants, draft evaders, anarchists, those convicted of certain crimes, paupers, professional beggars and polygamists. The Reids were never accused of being within any of these classes. For a general discussion of the exclusionary grounds, see Note, *Immigrants, Aliens and the Constitution*, 49 NOTRE DAME LAW. 1075, 1082-7 (1974).

17 492 F.2d at 257 (emphasis in original).

18 *Id.* at 260.

19 385 U.S. 214 (1966). For a general discussion of *Errico*, see 42 ST. JOHN'S L. REV. 118 (1967).

20 Errico v. Immigration and Naturalization Service, 349 F.2d 541 (9th Cir. 1965).

21 350 F.2d 279 (2d Cir. 1965).

22 Errico, by claiming he was a specialized mechanic, was able to obtain a preferred quota status. Deportation charges were initiated by the INS on the basis of his false

As in *Reid*, children were subsequently born to both aliens, bringing them within the purview of section 241(f). On appeal, the issue facing both courts was whether section 241(f) should apply to those whose fraud enabled them to evade "quantitative" restrictions,[23] such as a national quota, which would otherwise have been the basis for exclusion. The Ninth Circuit concluded that Congress had endeavored through section 241(f) to help such aliens. The court felt that the phrase "otherwise admissible" would be stripped of all "substantial meaning and purpose"[24] if construed to make the 241(f) exemption unavailable to aliens who failed to qualify for admission on a mere quantitative ground.[25] The court found that such a construction would aid the alien only if he had been independently admissible under a separate status or quota, therefore making the fraud unnecessary. The Second Circuit, however, held that "otherwise admissible" precluded "all grounds of inadmissibility . . . including quantitative standards,"[26] reasoning that "[a]ny other interpretation is likely to invite frustration and wholesale evasion of the quota system."[27] In so holding, the *Scott* court rejected the petitioners' claim that "otherwise admissible" refers only to qualitative grounds of admissibility. The court noted that its interpretation would not strip section 241(f) of its significance for it would still operate to save those aliens who would have been admissible initially whether or not they had perpetrated the fraud.[28]

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representation. Section 211(a)(4) of the Act, ch. 477, 66 Stat. 181 (1952), *repealed*, 79 Stat. 917 (1965), required that, to be admissable, an immigrant had to be "of the proper status under the quota specified in the immigrant visa."

In *Scott*, the alien, on the basis of a sham marriage to an American citizen in Jamaica, obtained a nonquota immigrant visa. Deportation proceedings were brought on the basis of § 211(a)(3) of the Act, ch. 477, 66 Stat. 181 (1952), *repealed*, 79 Stat. 917 (1965), which required that an alien be "a nonquota immigrant if specified as such in the immigrant visa" to be admissible. For a discussion of sham marriages and the family unity doctrine, see Comment, *Family Unity Doctrine v. Sham Marriage Doctrine*, 1 CALIF. W. INT'L L.J. 80 (1970).

23 The difference between quantitative and qualitative standards has been explained as follows:

> Quantitative restrictions in the immigration laws serve to limit the number of immigrants (*e.g.*, quota restrictions) while qualitative restrictions are intended to exclude those who are mentally, morally or physically unfit or undesirable.

Lee Fook Chuey v. Immigration and Naturalization Service, 439 F.2d 244, 246 (9th Cir. 1970). Qualitative grounds are generally specified in § 212 of the Act, 8 U.S.C. § 1182(a) (1970). *See* note 16 *supra*.

24 349 F.2d at 546.

25 *Id.*

26 350 F.2d at 283.

27 *Id.*

28 *Id.* The court continued:

> If "otherwise admissible" is limited to prevent invocation of the relief provision only by the insane, prostitutes, Communist Party members, and other qualitatively proscribed persons, the door will be opened for individuals from countries with

The Supreme Court, in affirming *Errico* and reversing *Scott*, construed "otherwise admissible" by analyzing the legislative history of section 241(f) and its predecessors. The Court concluded:

> Congress felt that, in many circumstances, it was more important to unite families and preserve family ties than it was to enforce strictly the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country.[29]

In light of this humanitarian intention, the Court applied a liberal construction to section 241(f), holding that the circumvention of a quota restriction should not prevent an alien from qualifying as "otherwise admissible" at the time of entry.

In *Reid*, Judge Mansfield attempted to distinguish the factual circumstances of *Errico*. He observed that the aliens in *Errico* had submitted to the immigration visa issuance process and had not totally avoided inspection. Consequently, Judge Mansfield argued:

> [T]he issue in *Errico* — whether a quota fraud (as distinguished from a fraud with respect to qualitative admissibility) precludes an alien from being "otherwise admissible" — was a limited one. The suggestion that the Supreme Court implied that § 241(f) might be available to deprive the consular service and INS of any opportunity to screen entering aliens reads too much into *Errico*.[30]

To the contrary, Judge Mulligan stressed the humanitarian considerations in the *Errico* decision. He reasoned that the *Errico* Court had rejected a literal interpretation of section 241(f) "because it would thwart the humanitarian purposes of the statute."[31] Accordingly, the dissent emphasized that a literal reading of the statute would not only support the petitioners' contention but would be consistent with the humanitarian intentions of the legislation.[32] Judge Mulligan further

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low but oversubscribed quotas easily to circumvent and thwart this country's immigration policy.

Id. The court believed that aliens could be saved from deportation for fraud itself, "but not for the underlying offense." *Id.* at 284.

29 385 U.S. at 220. The Court further elaborated:

It was wholly consistent for Congress to provide that immigrants who gained admission by misrepresentation, perhaps many years ago, should not be deported because their countries' quotas were oversubscribed when they entered if the effect of deportation would be to separate families composed in part of American citizens or lawful permanent residents.

Id. at 224-5. *See also* note 12 *supra.*

30 492 F.2d at 258.

31 *Id.* at 262.

32 *Id.* Judge Mulligan reminded the majority that

[t]he statute is not limited to fraudulent visa-bearers but in so many words applies to those persons who have "procured visas or other documentation, *or* entry into the United States by fraud or misrepresentation."

pointed out that the Supreme Court instructed that any question as to the proper construction of a deportation statute "should be resolved in favor of the alien,"[33] since deportation is often "the equivalent of banishment or exile."[34] He thus believed that any ambiguity in the statute must be construed in favor of the Reids.[35] Addressing the majority's concern as to possible frustration of the screening process, Judge Mulligan suggested that a tightening of security would be a better solution than the "mutilation of Section 241(f)."[36]

Judge Mulligan's position is supported by recent decisions in other circuits. In *Lee Fook Chuey v. Immigration and Naturalization Service*,[37] the Ninth Circuit, stressing the humanitarian approach of *Errico*, held the section 241 exemption applicable to an alien who had gained entry by making a false claim of citizenship.[38] Not surprisingly, the *Reid* majority cited the *Lee* case with disapproval, believing the procedural system designed to enforce the immigration laws to be of paramount importance.[39]

Shortly after *Reid*, the Fifth Circuit in *Gonzalez de Moreno v. Immigration and Naturalization Service*,[40] confronted the same issue

Id. at 260-61 (emphasis in original). His position is further supported by the definition of "entry" in § 101(a)(13) of the Immigration and Nationality Act. "The term 'entry' means *any coming* of an *alien* into the United States, from a foreign port or place or from an outlying possession, ..." 8 U.S.C. § 1101(a)(13) (1970) (emphasis added). A distinction is not drawn between an alien, such as Mr. or Mrs. Reid, and a "visa-bearing" alien, such as Errico.

33 492 F.2d at 261, *quoting* Immigration and Nationalization Service v. Errico, 385 U.S. 214, 225 (1966).

34 *Id.* The *Errico* Court had referred to its language in Fong Haw Tan v. Phelan, 333 U.S. 6 (1948), wherein it was stated:

> We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile. . . . To construe this statutory provision less generously . . . might find support in logic. But since the stakes are considerable . . . we will not assume that Congress meant to trench on his freedom beyond that which is required by the *narrowest of several possible meanings* of the words used.

Id. at 10 (emphasis added). *See also* Bridges v. Wixon, 326 U.S. 135, 154 (1945) ("[Deportation] visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom").

35 492 F.2d at 262.

36 *Id.* at 263. Judge Mulligan observed that INS officials are "not helpless" in the face of a false claim of citizenship by anyone entering the country, for inspection can easily take place. *Id.* at 264. His concern is that the "blunder of the constable" in not suspecting an alien will unjustly culminate in the deportation of the Reids. *Id.*

37 439 F.2d 244 (9th Cir. 1970). Petitioner, a native and citizen of China, falsely claimed United States citizenship and as a consequence was admitted into this country. He subsequently married and became a father. *Id.* at 245.

38 *Id.* at 248. The court also felt that the purpose of the phrase "otherwise admissible" was to guarantee that those aliens eligible for entry are physically, mentally and morally fit. The court noted that a post hoc investigation of the alien would still allow the government to determine his qualitative admissibility. *Id.*

39 492 F.2d at 258-59.

40 492 F.2d 532 (5th Cir. 1974).

in a similar fact situation.[41] Once again, the Government claimed that section 241(f) applies only if the alien has submitted to an inspection.[42] Nevertheless, the court, after noting the Second Circuit's agreement with the Government's view, found that

> [t]he interpretation proferred [*sic*] by the Government is not only contrary to the plain meaning of the words used by Congress, it is also without support in the legislative history of the statute.[43]

Interpreting *Errico* in precisely the same manner as had Judge Mulligan in *Reid*, the court remarked that "[w]e have no warrant under *Errico* to apply bizarre techniques of interpretation to restrict the scope of § 241(f)."[44] In so deciding, the Fifth Circuit was particularly concerned with the inequities of discriminating between aliens who misrepresent themselves at the immigration screening and those who take "the small additional step of entirely avoiding the procedure by asserting American citizenship."[45] It failed to see a distinction between a worthless investigation and no investigation at all.[46] The court shared Judge Mulligan's view that if section 241(f) is to have substance it must be construed as necessitating only that an alien satisfy "the physical, mental and moral standards" for entry.[47]

Those cases which have denied section 241(f) relief are clearly distinguishable from the factual situations in *Lee*, *Moreno*, and *Reid*. The majority of these decisions deal with the evasion of qualitative standards for entry and stand for the proposition that a mere claim of misrepresentation or fraud will not aid aliens who are not "otherwise admissible" on qualitative grounds.[48] Other cases have held section

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41 By misrepresenting herself as a citizen, the petitioner, whose husband and five children were American citizens, procured entry from Mexico. *Id.* at 535.

42 *Id.* at 536. *See* note 7 *supra*.

43 *Id.* The court noted, in particular, the exacting manner in which the section "provides relief for those who obtain 'visas or other documentation *or* entry' by means of fraud or misrepresentation." *Id. See* note 2 *supra*.

44 *Id.* at 537. The court stressed that § 241(f) is a "benevolent statute. Mercy and compassion are inherent in its ameliorative function . . . ." *Id.* at 538.

45 *Id.* at 537.

46 *Id.*

47 *Id.* at 538.

48 These cases involve the concealment of a wide spectrum of disqualifying offenses. *See, e.g.*, Hames-Herrera v. Rosenberg, 463 F.2d 451 (9th Cir. 1972) (criminal convictions); Jolley v. Immigration and Naturalization Service, 441 F.2d 1245 (5th Cir.), *cert. denied*, 404 U.S. 946 (1971) (draft evasion); de Vargas v. Immigration and Naturalization Service, 409 F.2d 335 (5th Cir. 1968), *cert. denied*, 396 U.S. 895 (1969) (re-entering the United States without permission following deportation); Loos v. Immigration and Naturalization Service, 407 F.2d 651 (7th Cir.), *cert. denied*, 396 U.S. 877 (1969) (military service relief); Velasquez Espinosa v. Immigration and Naturalization Service, 404 F.2d 544 (9th Cir. 1968) (draft evasion); Boutilier v. Immigration and Naturalization Service, 363 F.2d 488 (2d Cir. 1966), *aff'd*, 387 U.S. 118 (1967) (homosexuality); Langhammer v. Hamilton, 295 F.2d 642

241(f) unavailable to aliens who enter the country surreptitiously, thereby avoiding any contact with Immigration officials.[49] In the remainder of the cases, the fraud issue was not the primary concern of the courts and the decisions were premised on other grounds.[50]

Section 241(f), as interpreted by the Supreme Court in *Errico*, is

(1st Cir. 1961) (Communist Party membership); Ablett v. Brownell, 240 F.2d 625 (D.C. Cir. 1957) (conviction for brothel operation); United States v. Flores Rodriguez, 237 F.2d 405 (2d Cir. 1956) (criminal conviction); Jankowski v. Shaughnessy, 186 F.2d 580 (2d Cir. 1951) (criminal record); Daskaloff v. Zurbrick, 103 F.2d 579 (6th Cir. 1939) (prior deportation).

[49] *See* Monarrez-Monarrez v. Immigration and Naturalization Service, 472 F.2d 119 (9th Cir. 1972). The court therein stated:

> Fraud and misrepresentation cannot be equated to surreptitious entry without bending the language of sections 241(a)(2) and 241(f) into shapelessness and without ignoring the history of section 241(f) recited in *Errico*.

472 F.2d at 120. *See also* Gambino v. Immigration and Naturalization Service, 419 F.2d 1355 (2d Cir.), *cert. denied*, 399 U.S. 905 (1970) (stowaway).

[50] *See, e.g.*, Haghoosh Baronakian Pirzadian v. Immigration and Naturalization Service, 472 F.2d 1211 (8th Cir. 1973); Ferrante v. Immigration and Naturalization Service, 399 F.2d 98 (6th Cir. 1968); Tsaconas v. Immigration and Naturalization Service, 397 F.2d 946 (7th Cir. 1968); Ntovas v. Ahrens, 276 F.2d 483 (7th Cir.), *cert. denied*, 364 U.S. 826 (1960). In *Ntovas*, the court remarked:

> In the administrative proceedings the ground selected and relied upon by the government was not fraud or misrepresentation and plaintiff has not the power to substitute for his own convenience a ground not involved in the deportation proceedings. Whether or not he subjectively harbored an intent to commit fraud is a matter between him and his conscience.

276 F.2d at 484. *See also* Milande v. Immigration and Naturalization Service, 484 F.2d 774, 776 (7th Cir. 1973); Cabuco-Flores v. Immigration and Naturalization Service, 477 F.2d 108, 110 (9th Cir. 1973) (deciding the issue on overstay, not fraud, grounds). *But see* Vitalis v. Immigration and Naturalization Service, 443 F.2d 343, 344 (9th Cir. 1971), *vacated*, 405 U.S. 983 (1972), holding that a person being deported for overstaying a visitor's visa may rely on section 241(f). Petitioner claimed she secured the visa by fraud. The case was remanded for determination of this issue and a resolution of whether she was otherwise admissible.

Of similar import is Bufalino v. Immigration and Naturalization Service, 473 F.2d 728 (3d Cir.), *cert. denied*, 412 U.S. 928 (1973). Judge Mansfield cited this decision to support the proposition that an alien who has entered the country by a claim of false citizenship is not eligible for § 241(f) relief. 492 F.2d at 259. However, this conclusion is questionable. The primary consideration in deporting Bufalino was his violation of § 265 of the Act, 8 U.S.C. § 1305, requiring an alien to file address reports each year. 473 F.2d at 730-31. Bufalino had been held ineligible for § 241(f) relief because of a fraudulent claim of citizenship in Bufalino v. Holland, 277 F.2d 270 (3d Cir.), *cert. denied*, 364 U.S. 863 (1960), thirteen years earlier. Significantly, this was prior to the *Errico* decision. In the later *Bufalino* case, cited by Judge Mansfield, the court skirted the issue of the effect of a false claim of citizenship on the applicability of § 241(f). As noted in the concurring opinion of Judge Adams:

> INS v. Errico . . . sheds new light upon § 1251(f) which forgives illegal entries for aliens with close family ties where they are otherwise admissible at the time of entry. Because Bufalino is properly deportable for having failed to file address reports, it is unnecessary to determine whether, in view of . . . *Errico*, the Board abused its discretion in refusing to reopen the earlier deportation proceedings in which the petitioner was held deportable on other grounds . . . .

473 F.2d at 739 n.4.

Section 241(f) has also been held inapplicable where the fraud by the alien occurred *after* entry. Khadjenouri v. Immigration and Naturalization Service, 460 F.2d 461 (9th Cir. 1972) (the fraud related to an adjustment of status).

an important vehicle in exigent circumstances for granting relief from the strictures of our national quota policies. As indicated by the dissent in *Reid*, the consequences of deportation for those in the Reids' situation are grave.[51] Thus, a post hoc investigation, as advanced by Judge Mulligan,[52] would appear a viable alternative to satisfy the humanitarian purposes of section 241(f). Hopefully, the Supreme Court will adopt the position of the Fifth and Ninth Circuits and extend the statutory relief to those in the Reids' position*

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[51] 492 F.2d at 264. The remarks of Mr. Reid at the deportation hearing, as quoted in Judge Mulligan's dissent, poignantly describe the dilemma of the family:

> We have plenty reason why we shouldn't be deported. For one we have kids and if we are deported we ain't got no home to go back to. Everything we had was abandoned. Taking two kids back there like sending two kids to die from malnutrition.

Id. at 265.

[52] *Id.* at 264.

* *Editor's Note.* While this article was being printed, the Supreme Court affirmed the Second Circuit's decision. 43 U.S.L.W. 4387 (U.S. Mar. 18, 1975). The Court, per Mr. Justice Rehnquist, held that § 241(f) does not aid an alien who has entered the country without inspection, and that entry through a false claim of American citizenship is entry without inspection. Justices Brennan and Marshall dissented, finding no significant distinction between the instant case and the Court's prior decision in *Errico*.