

The Honorable David G. Estudillo

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ILAI KANUTU KOONWAI,

Plaintiff,

v.

ANTONY BLINKEN, Secretary of State;
U.S. DEPARTMENT OF STATE;

Defendants.

CASE NO. 3:21-cv-5474-DGE

DEFENDANTS' SUPPLEMENTAL
BRIEFING

Noted for Consideration on:
February 18, 2022

I. INTRODUCTION

Plaintiff incorrectly cited the Immigration and Nationality Technical Corrections Act of 1994 (the “Act”) as an example where a person is “conferred” some type of status that in fact relates back in time. Dkt. No. 18, Pl. Question No. 6(a). The Act provides a way for persons who lost citizenship for failure to meet physical presence retention requirements to regain citizenship after taking an oath of allegiance. Immigration and Nationality Technical Corrections Act of 1994, Pub. L. 103–416 § 103, 108 Stat 4305 (codified at 8 U.S.C. § 1435(d)(1)). But like the statute at issue in this litigation, it

1 explicitly limits its retroactive application with the use of the term “confer.” Pub. L. 99-
2 396, § 15(b), 100 Stat 837 (1986) (“§ 15(b”).

3 II. ARGUMENT

4 The Act does not support Plaintiff’s position that 8 U.S.C. § 1408(4) applies
5 retroactively to birth in relation to derivative U.S. national status for persons born prior to
6 1986. Plaintiff presented the Act to this Court because of its use of “confer.” The Act
7 states, “Nothing in this subsection or any other provision of law shall be construed as
8 *conferring* United States citizenship retroactively upon such person during any period in
9 which the person was not a citizen.” 8 U.S.C. § 1435(d)(1) (emphasis added). While
10 Congress did not use the same framing to express their intent as to the limited retroactivity
11 of the statute when amending § 1408(4) and adding § 15(b) in 1986, the context makes it
12 clear. A plain reading shows that Congress’s use of “confer” in the Act is consistent with
13 Defendant’s interpretation of its use in § 15(b).
14

15 The only reasonable interpretation of the Act’s use of “conferring” means to grant
16 or bestow something. 8 U.S.C. § 1435(d)(1). Through the Act, Congress provided a path
17 to citizenship for persons who were U.S. citizens at birth but lost citizenship due to physical
18 presence requirements. *Id.* However, Congress clearly excluded retroactive application of
19 citizenship during any period in which that person was not a citizen. *Id.* Specifically,
20 Congress did not intend for § 1435(d)(1) to “be construed as conferring U.S. citizenship
21 retroactively” to periods when a person was not a citizen. *Id.* The use of “conferring” can
22 only mean as granting U.S. citizenship – not some sort of procedural hurdle or scheme to
23 present orderly claims for citizenship.
24

1 This supports Defendant’s interpretation of § 15(b)’s use of “conferred” to mean to
2 grant U.S. non-citizen national status. Specifically, Congress stated that:

3 In the case of a person born before the date of the enactment of this Act –
4 (1) the status of a national of the United States *shall not be considered to be*
5 *conferred upon the person* until the date the person establishes to the
6 satisfaction of the Secretary of State that the person meets the requirements
7 of section 308(4) of the Immigration and Nationality Act.

8 *Id.* (emphasis added). Using this meaning, Plaintiff’s mother was granted non-citizen
9 national status after 1986, which was well after Plaintiff’s birth in 1967. Both statutes use
10 the term “at birth” but limit when a person’s nationality status is actually “conferred” or
11 granted. This demonstrates that even with Congress providing paths to regain citizenship
12 or obtain non-citizen national status, the use of “at birth” does not mean that this status
13 applies retroactively from birth. While Congress expressed its intent in different verbiage
14 in 1986 and 1994, the intent remains the same – to *confer* nationality on a person upon the
15 meeting of certain conditions. Congress could have added these statutes with other “at
16 birth” acquisition provisions, Instead, Congress explicitly delineated these distinct
17 retroactive sections from the remainder of the statute, thereby manifesting its clear intent
18 to differentiate them. People born before 1986 may become nationals when they meet all
19 the conditions of the statute – just as people who lost their nationality before 1994 may
20 become nationals again when they meet the conditions of the statute.

21 Although Congress lessened the parentage requirements in 1986 for derivative U.S.
22 nationality for children born abroad, Congress specifically did not provide for the
23 retroactive application of 8 U.S.C. § 1408(4) to those born prior to 1986, including Plaintiff
24 Ilai Kanutu Koonwaiyou’s mother. *See* Pub. L. 99-396, § 15(b), 100 Stat 837 (1986).

1 | Instead, § 15 provides a special path to be conferred nationality for those born before it was
2 | passed. Plaintiff's mother did not become a non-citizen national until years after Plaintiff
3 | was born. Accordingly, Plaintiff was born abroad to two parents without any U.S.
4 | nationality *at the time of his birth*, and thus has no statutory entitlement to U.S. nationality
5 | by virtue of his mother later becoming a U.S. national.

6 | **CONCLUSION**

7 |
8 | For the foregoing reasons, Defendants respectfully request that the Complaint be
9 | dismissed with prejudice in its entirety.

10 | DATED this 18th day of February, 2022.

11 | Respectfully submitted,

12 | NICHOLAS W. BROWN
13 | United States Attorney

14 | *s/ Michelle R. Lambert*

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