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Legislation to protect aliens vs. bias needed

By REUBEN R. SEGURITAN

Have you lately been told by an employer when applying for a job that you cannot be hired because you are an alien? That is discrimination but you cannot, as a general rule, complain because there is no law that protects you. If you have had a police record instead and the employer rejected you solely on that basis, you can bring an action against the employer for committing what is commonly called racial discrimination.

You may ask: why the distinction and why should you be treated in such an inferior manner? The US Supreme Court would answer you this way:

Distinction explained

There is a proximate relation between police records and race for purposes of the enforcement of the equal employment opportunity laws. Statistics show that Negroes as a class are arrested and convicted substantially more frequently than Caucasians. Therefore, the foreseeable impact of an employer's pre-employment inquiry on police records is that a substantially disproportionate percentage of those persons rejected will be Negroes. Under such circumstances, the court's logic goes, the refusal to employ amounts to racial discrimination which is expressly prohibited by the nation's anti-discrimination laws, specifically Title VII of the Civil Rights Act of 1964.

On the other hand, a citizenship qualification is not prohibited even if it may identify the applicant's national origin. You may argue that national origin is punishable under the law and you are entirely right. A citizenship test may in fact be used by an employer to disguise what is actually a national origin discrimination. But that is not the point, according to the court in the case of Espinoza vs. Farah Manufacturing Co. The term "national origin" is limited to discrimination between US citizens only and that discrimination on account of citizenship is outside the protection of the Act.

The above distinction is difficult if not painful to comprehend. Why should the favored treatment accorded to a police character not be extended to aliens? It is even more unfair in light of the court's pronouncement that the law forbids not only overt discrimination but also practices that are neutral in form but discriminatory in operation.

Aliens previously protected

Prior to the Espinoza case, the Equal Employment Opportunity Commission (EEOC), the federal agency charged with the enforcement of anti-discrimination laws, had declared that discrimination on the basis of citizenship was a prohibited employment practice. Pursuant to such position, the EEOC issued the following guideline for employers to observe: "Because discrimination on the basis of citizenship has the effect of discrimination on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in the country may not be discriminated against on the basis of his citizenship."

The above quideline served as the controlling policy vis-a-vis the employment rights of aliens prior to the court ruling principally for two reasons: First, the EEOC was the leading administrative body in the field of equal employment and was entitled to "great deference" even by the Supreme Court. Second, the guideline was clearly logical and just. But, surprisingly, the Supreme Court in its Espinoza decision practically nullified the express intention of the EEOC statement. It declared that Title VII of the Civil Rights Act of 1964, the law which the EEOC sought to implement, was clear in not protecting non-US citizens and therefore the EEOC was not authorized to issue a stand contrary to the language of the Act.

The Espinoza case arose out of a complaint made by a Mexican citizen against a long-standing policy of the Farah Manufacturing Co. of excluding non-US citizens from employment. Mrs. Cecilia Espinoza, a lawfully admitted resident alien had been refused employment as a seamstress. She alleged discrimination on the basis of national origin citing Title VII of the Civil Rights Act of 1964 which in pertinent part provides: "It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire any individual . . . because of such individual's race, color, religion, sex, or national origin."

Espinoza argued among others that to interpret the above-quoted statute as excluding aliens would be wholly unsound and unreasonable. It would undermine the goals of the statute and contradicotry the goals of the statute and contradictory to the EEOC's interpretation. She urged the court that such interpretation "must be promptly repudiated to assure that this critically alien group is not left isolated from Title VII's protection."

In dismissing Espinoza's contention, the court said: "The question posed . . . is not whether aliens are protected from illegal discrimination under the (Civil Rights Act of 1964), but what kind of discrimination the Act makes illegal. Certainly, it would be unlawful for an employer to discriminate against aliens because of race, color, religion, sex, or national origin. Aliens are protected from illegal discrimination under the Act but nothing in the Act makes it illegal to discriminate on the basis of citizenship or alienage."

The court went on to explain that the term "national origin refers to the country where a person was born, or more broadly, the country from which his or her ancestors came." It doesn't embrace citizenship.

The decision was not without a dissent though from one of its members. Justice Douglas branded it "odd." His criticism, argued with convincing logic and based on practical considerations, insisted: "Discrimination on the basis of alienage always has the effect of discrimination on the basis of national origin. Refusing to hire an individual because he is an alien "is discrimination based on birth outside the United States and is thus discrimination based on national origin in violation of Title VII."

Now that the highest court has spoken, there is no alternative left for the aliens to correct this oppressive oversight but to pressure the Congress to pass the needed legislation. The alien community in the US must demand the inclusion of aliens among the categories expressly protected under the Civil Rights Act of 1964. Specifically, the law as amended, should read: "It shall be unlawful employment practice for an employer . . .to fail or refuse to hire any individual . . . because of such individual's race, color, religion, sex, national origin, or citizenship."

The reasons for such amendment are too obvious to detail. Suffice it to say that the history of alien employment in the US is a history of job discrimination. The warning notices: "None need apply but Americans" in the 1800s and "No Filipinos allowed" in the 1900s are dramatic documentations of their oppressed plight. Oscar Handlin, writing of the immigrants' hardship as early as the 1800s, narrated: "For want of alternative, the immigrants took the lowest places in the ranks of industry. They suffered in consequence from the poor pay and miserable working conditions characteristic of the sweatshops and homework in the garment trades and in cigar making . . . Discrimination against the newer ethnic groups grew even more intense, especially after the turn of the century."

In 1911 the Congressional Immigration Commission came out with a report depicting the occupational disadvantage of the foreing born. In 1928, an extensive survey revealed sweeping alien discrimination which was later confirmed by members of President Hoover's Economic Commission. From then on the pattern of exploitation continued. There are strong indications that it still exists. Should we let ourselves become victims of more employment discrimination during these hard times simply because of legislative default?