

# Filipino Reporter

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## Rights of aliens in INS interview

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To what extent may the Immigration and Naturalization Service investigate the bona fides of a marriage? What are the rights of the alien and his spouse during said investigation?

These and other related questions were answered by a Federal District Court in New York recently in a case of far-reaching significance. The case, *Stokes et al v. USA, INS et al.*, raised constitutional questions under the due process clause of the Fifth Amendment concerning the validity of the Immigration Service's procedure for the adjudication and investigation of I-130 immediate relative visa petitions of US citizens on behalf of their alien spouse beneficiaries.

Two American citizens, the petitioners in the case, had been each

married in civil ceremonies to aliens on non-immigrant visas visiting the United States. Shortly thereafter, each petitioned for his spouse to become an immigrant. Both couples underwent investigation by Immigration officers.

During the investigation, one of the petitioners withdrew his request on behalf of his wife. He claimed to have been compelled to do so by Immigration officers. After the withdrawal, a criminal investigation followed. The other applicant also received unfavorable action. He claimed that he did not understand the documents he signed, which withdrew his application.

Lawyers for the petitioners went to the court to challenge the Immigration action. They alleged among others: (1) that petitioners were fingerprinted, photographed, required to produce the contents of their pockets, and were frisked by immigration officers in violation of the constitutional prohibition against unreasonable searches; and (2) that the line of questioning pursued by the Immigration officers unlawfully invaded their marital privacy.

To these contentions the Immigration Service countered that such investigation was necessary to test the bona fide of the marriage. It invoked a government regulation which authorized the INS to require the submission of additional evidence, including blood tests, the taking of testimony, and making of any necessary investigation.

In the consent judgment issued by the court, the rights and privileges of the alien and his spouse were spelled out. Among these rights were: (1) Representation by attorney at all

times; (2) Opportunity to cross-examine adverse witnesses; (3) Prior warnings of the 5th Amendment privilege against self incrimination; (4) disclosure of investigative reports; (5) formal introduction at a hearing of all evidences on which the Immigration officials will rely; (6) Guarantee that denials of petitions will not be based solely upon the exercise of the 5th Amendment privilege, the existence of an interracial or interdenominational marriage, or differences in national origin or age; and (7) Deportation stays pending the processing of the petition.

In addition, the court underscored the need to give a reasonably advanced notice to the petitioner detailing the procedure to be followed and the rights available to him and his alien spouse.

The court also prescribed a general conduct to be followed by the Immigration officers. Immigration officers were prohibited from doing the following acts: (1) Searching the body or personal property of the petitioner or beneficiary without a lawful arrest; (2) Asking fingerprints or photographs from a U.S. citizen-petitioner in the absence of a bona fide question as to identity; (3) Posing questions regarding intimate details of the marital relationship (except as to whether the marriage was consummated); and (4) Encouraging withdrawals of petitions.

Finally, the need to adjudicate the matter with speed was noted in the judgment. Although it did not set a specific number of days within which a decision must be reached, it stated that a spouse petition shall be adjudicated within a reasonable time.