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IMMIGRATION UPDATE

Aliens may claim pay in illegal job

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It is seldom nowadays to read a court decision upholding the rights of undocumented aliens. This is apparently due to the anti-alien atmosphere that has been created since the time when aliens were made scapegoats for the worsening US economy. A typical judicial attitude is stated in a US Supreme Court case which characterized the employment of "illegal aliens" as depriving citizens and legal residents of jobs, depressing wage scales and working conditions and diminishing the effectiveness of labor unions.

The situation has contributed to widespread charges of exploitation. Farm workers and industrial laborers have complained of low wages and substandard working conditions. Filipinos, more particularly nurses without state license, have made allegations that they are being made to work like professional nurses, yet receiving, under threat of deportation, the wage of nurse's aide.

The stigmatized alien has recently got a considerable relief with the recent decision by a Supreme Court in New York. The court held that an alien who works without immigration authorization is entitled to be paid for the services he rendered.

The novel issue as presented before the court was whether or not an alien possessing a visitor's visa may recover wages under an employment contract even though the contract was illegal. The court in *Nizam*

muddowiah v. Bengal Cabaret, Inc. answered the question in the affirmative premising recovery on the theory of unjust enrichment.

The alien involved was a citizen of Bangladesh who entered the United States to work for Nirvana Restaurant. The employment agreement called for an apprentice period of about three months without salary, at the end of which he would receive a waiter's salary, and eventually, become the manager of the restaurant.

The restaurant owner took care of the visa and travel arrangements for the alien. When the alien was already here, he made several demands for payment of wages pursuant to their employment agreement, but all to no avail. The alien had also made frequent inquiry regarding his immigrant visa which the restaurant owner had promised to obtain for him. But the restaurant owner evaded all the questions through "devious tactics."

In making its decision, the court was confronted with a lot of conflicting public policies and equitable doctrines. The dilemma that it had to grapple with involved the well settled principle that "generally, a party to an illegal contract cannot recover damages for its breach."

Under this principle, the alien's case should have been dismissed outright because the employment agreement was illegal, the alien having entered the US with a visitor visa with no authorization to work. Fortunately for the alien, the court chose to rule

on the case not only in terms of its economic consequences for the nation but also in terms of its impact on the alien's rights. In fact even as the court was more explicitly interested in stopping the employer's conduct that posed serious economic problems, the decision was more commendable for its intimations on human rights.

In its motion to dismiss, the restaurant owner claimed that an alien on a visitor's visa was subject to deportation once he got employed. The court, however, while not disputing this contention, was not persuaded by the argument. It stated that there were exceptions to the general rule governing non recovery of damages in illegal contracts.

Citing legislative history, the court noted that prior to 1952, the Immigration law expressly made employment contracts entered into prior to migration by undocumented aliens void. Subsequently, the Congress determined that "the exclusion of certain aliens from admission to the United States was a more satisfactory sanction than rendering their contracts void, and thus unjustifiably enriching employers of such alien laborers."

In addition, the court said that allowing employers to knowingly put excludable aliens in their employ and then with impunity denying them of compensation for their services does not advance the interest of American labor. The court went on to say that even under the repealed section of the Immigration law it has

been New York law that an alien could recover for a work contract entered into after entering the United States.

Our special significance was the court's assertion that "aliens do have certain rights under our laws and access of our courts to redress certain wrongs.... To deny an aliens such redress," the court emphasized, "would, in the court's opinion, violate his right to equal protection under the Fourteenth Amendment of the Constitution."

The court in holding that the alien was entitled to the payment of the minimum wage plus liquidated damages and attorney's fees decided that although the alien violated the immigration law by working without authorization, this violation was "overshadowed by defendant's (restaurant owner) entire course of deceptive conduct."

Stern was the court's admonition: "Plaintiff (alien) does not come into court with 'clean hands' as he clearly violated the Immigration Laws by working after his arrival.... However... it is the defendant who is the main perpetrator, intent on evading and taking advantage of the Immigration Laws. It appears that the plaintiff was not the first 'friend' that the defendant has manipulated into working for his restaurant with grandiose promises but without remuneration, and unless this court takes action to prevent its continuance, will not be the last."