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YANG v. MAUGHN
68 F.3d 1540 (3d Cir. 1995)
United States Court of Appeals for the Third Circuit

I. FACTS

On June 6, 1993, the Golden Venture ran aground off the shore of Queens in New York City. Law enforcement officials first noticed a problem around 1:45 a.m., when many of the Golden Venture's passengers began congregating on the beach after swimming from the grounded ship.[1] By 2:19 a.m., an array of law enforcement officials descended upon the beach, which was eventually cordoned off. More than one hundred passengers remained on the beached vessel, while approximately two hundred swam to shore. About thirty passengers fled into the surrounding community before the police could set up barricades. The great majority of the passengers, who turned out to be illegal Chinese immigrants, waited for the police instead of attempting to flee inland.

The Board of Immigration Appeals ("BIA") instituted exclusion hearings against petitioners and the other passengers of the Golden Venture. The BIA entered a final exclusion order for petitioners, concluding that the aliens had not effected an entry. Effecting an entry would have afforded the petitioners a proceeding with the higher due process requirements of deportation rather than the more summary exclusion proceedings provided those who have not actually entered the United States. Applying § 1101 of the Immigration and Naturalization Act ("INA")[2] and previous cases dealing with the INA,[3] the BIA required three elements to be satisfied before recognizing that an entry had occurred.[4] First, the alien must have had an actual physical presence within the territorial limits of the United States. Second, he or she either must have been inspected and admitted by an immigration officer or must have actually and intentionally evaded inspection at the nearest entry point. Finally, he or she must have been free from official restraint.[5]

The BIA concluded that petitioners did not satisfy the entry requirements of the INA. Because petitioners had actually landed on the beach, they satisfied the physical presence element of the test for entry. However, petitioners prevailed on the second element of the entry test because the BIA inferred an intent to evade immigration officials. The BIA found that participation in a smuggling scheme, and arrival without travel documents which would have let petitioners stay in the United States, created an inference that intentional evasion would have occurred had the petitioner's transportation not been beached.[6] The BIA further stated that section 291 of the INA allowed the agency to shift the burden of proving the third element, freedom from official restraint, to petitioners.[7] At the exclusion hearings, several detainees either implicitly or explicitly stated that they had the opportunity to leave the beach. This alleged opportunity to leave, as well as the escape of approximately thirty passengers into the surrounding community, went directly to the question of freedom from official restraint.[8] The BIA, however, concluded that although some passengers were able to leave the beach, the police cordon established by law enforcement officials constituted official restraint.[9] The BIA held that petitioners did not meet the burden of proving the third element of the entry test, hence, that they had not entered the United States.

More than one hundred passengers, including petitioners, filed habeas corpus petitions challenging their detention in the United States District Court for the Middle District of Pennsylvania. Because the cases presented similar issues, the district court consolidated them. Several petitioners filed individual motions for partial summary judgement. One motion, petitioner Chung's, was granted when the district court held he had effected an entry into

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[1] *Yang v. Maughn*, 68 F.3d 1540 (3d Cir. 1995).

[2] 8 U.S.C. § 1101 (1994).

[3] *Correa v. Thornburgh*, 901 F.2d 1166 (2d Cir. 1990); *Matter of Patel*, 20 I. & N. Dec. 368 (BIA 1991).

[4] *Yang*, 68 F.3d at 1545.

[5] 68 F.3d at 1545 (citing *Correa v. Thornburgh*, 901 F.2d 1166, 1171 (2d Cir. 1990)).

[6] *Matter of G-*, 20 I. & N. Dec. 764 (BIA 1993).

[7] *Id.*

[8] Several petitioners said that they were too exhausted to move after reaching the beach. One petitioner said that he reached a fence, changed his clothes, and waited for the police. Another petitioner stated that he "almost walked to the street" before an officer approached him approximately thirty minutes after he reached the shore. *Yang*, 68 F.3d at 1544.

[9] *Matter of G-*, 20 I. & N. Dec. 368 (BIA 1993).

the United States under the INA.[10] In doing so, the district court concluded that the BIA incorrectly applied existing law in two areas.

First, the district court held that the BIA erred in requiring physical presence on dry land. The district court, relying on *United States v. Vasilatos*,[11] concluded that an entry could occur when an alien merely enters the territorial waters of the United States.[12] The district court concluded that Mr. Vasilatos had "entered" the United States in Philadelphia even before the ship had even entered the harbor. Implicitly, the *Vasilatos* court recognized some form of entry when reaching territorial waters.[13] The district court found that the reasoning of *Vasilatos* was binding upon the Third Circuit and that merely arriving in the territorial waters of the United States satisfied the first element of the entry test.[14]

The district court stated that the BIA's second mistake of law was its improper assigning the petitioners the burden of proof. It held that the INA "required [each petitioner] to establish only that he had made a physical entry into the United States at a point distant from an inspection station."[15] The district court further found that petitioners satisfied their burden of proving an entry into the United States. Moreover, it denied the government's request for reconsideration on June 6, 1995. The district court's order required deportation hearings against petitioners to begin within ten days. The government appealed.

II. HOLDING

The Court of Appeals for the Third Circuit reversed the district court and remanded in favor of the government, stating that the BIA's conclusions of law were correct. The Third Circuit held that for entry within the meaning of the INA to occur, an alien must reach dry land. The Third Circuit found that *Vasilatos*,[16] which ruled that entry occurs at the territorial waters of the United States was decided under immigration laws no longer in force.[17] Existing immigration law pointed the court toward the conclusion that merely crossing into territorial waters of the United States is not enough to effect an entry under the INA. Additionally, the court held that proper deference must be given to an agency's statutory interpretation. Therefore, the BIA's interpretation of the INA allowed the agency to shift the burden of proof to petitioners to prove all the requirements of entry before they were entitled to a deportation hearing.

III. APPLICATION/ANALYSIS

The Third Circuit addressed the issue of whether petitioners were entitled to a deportation hearing or a simple exclusionary hearing. A deportation hearing guarantees full due process, while an exclusionary hearing has fewer due process guarantees. If petitioners were found to have entered the United States, they would be entitled to the deportation hearing with its full due process guarantees.[18]

The Third Circuit began its analysis by stating that, in accordance with *Chevron U.S.A. Inc. v. Natural Resources Defense Council*,[19] an agency's statutory interpretation must be accorded deference when Congress has not spoken directly on the issue. *Yang* dealt with § 291 of the INA,[20] which states:

> Whenever any person . . . makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he . . . is not subject to exclusion under any provision of this chapter.[21]

The district court shifted this burden of proof back to the government, concluding that the government

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[10] *Chung v. Reno*, 886 F.Supp. 1172, 1184 (M.D. Pa. 1995).

[11] *United States v. Vasilatos*, 209 F.2d 195 (3d Cir. 1954).

[12] *Chung*, 886 F. Supp. at 1179.

[13] In *Vasilatos*, a Greek sailor was convicted of entering the United States after having been deported. Vasilatos lied about having ever been deported when his ship made a port of call in Philadelphia. He never left the ship while in Philadelphia, but jumped ship after it put in at New York. Vasilatos challenged venue when his case was heard in the Eastern District of Pennsylvania. *United States v. Vasilatos*, 209 F.2d 195 (3d Cir. 1954).

[14] *Yang*, 68 F.3d at 1548.

[15] *Chung*, 886 F.Supp. at 1185.

[16] *United States v. Vasilatos*, 209 F.2d 195 (3d Cir. 1954).

[17] *Yang*, 68 F.3d at 1548.

[18] For a discussion of the due process benefits available in deportation proceedings and absent from exportation proceedings, *see Landon v. Plasencia*, 459 U.S. 21 (1982). *See also* Robert D. Ahlgren, *Procedural Due Process in Exclusion/Deportation*, 964 PLI/Corp. 71 (1996).

[19] *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[20] 8 U.S.C. § 1361 (1952).

[21] *Yang*, 68 F.3d at 1546 (quoting 8 U.S.C. § 1361 (1952)).

was in a better position to know how and when an alien had been placed into custody.[22] The Third Circuit held that the district court's shifting of the burden of proof back to the BIA was unreasonable in light of *Chevron*.[23] Hence, in the Third Circuit the BIA's interpretation of the INA would stand in the absence of Congressional direction, so long as the agency's interpretation was a permissible construction of the statute.[24]

In holding that petitioners satisfied the first element of the test for entry, the district court concluded that presence in territorial waters of the United States was enough to constitute an entry. The Third Circuit rejected this conclusion. It relied upon the Second and Fourth Circuit's requirement of a landing upon solid ground to effect entry.[25] Because *Vasilatos* had been decided under a repealed statute, the Third Circuit found that the district court improperly relied upon its holding.[26] The *Vasilatos* court explicitly stated its decision was governed by immigration laws existing before Congress enacted the INA.[27] The Third Circuit concluded that the *Vasilatos* court failed to recognize that Congress intended the 1952 enactment of the INA to supercede all existing immigration laws.[28] By interpreting entry into the United States according to a definition in the repealed statute, the *Vasilatos* court effectively ignored the definition provided in the newly enacted INA.[29]

The INA currently defines entry as "any coming of an alien into the United States, from a foreign port or place or from an outlying possession."[30] In *Yang*, the Third Circuit found that a strict reading of the statutory language was required because the term "United States" had multiple definitions.[31] The Third Circuit used the language of the INA,[32] which reads in part, "[t]he term 'United States' . . . when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, and the Virgin Islands of the United States,"[33] to conclude that "United States" within the INA required a physical presence on the continental United States, not merely entering the territorial waters. Accordingly, the Third Circuit held that for an alien to enter the United States, he must reach dry land.[34]

The second element of the entry test, inspection and admission by an immigration officer or intentional evasion of such an officer, was not at issue in *Yang*.[35] However, the Third Circuit noted that because the first element required arrival on the continental United States, the second element could occur only on dry land.[36] Official inspection and admission would not occur when a vehicle or ship crosses territorial waters of the United States. Instead, admission would occur at inspection stations within the United States. Because these stations are on dry land, the evasion (or inspection and admission) must also take place on dry land.[37]

To determine whether petitioners were free from official restraint for purposes of satisfying the third element of the entry test, the Third Circuit expressly rejected a Ninth Circuit decision, *United States v. Martin-Plascencia*.[38] In *Martin-Plascencia*, a Mexican juvenile attempted to evade immigration officials at the port of entry in San Ysidro, California.[39] The juvenile crawled through a hole in a chain-link fence which was out of the view of immigration officials on duty. The Ninth Circuit held that the juvenile had entered the United States within the meaning of the INA.[40] The Third Circuit rejected this holding, stating:

> [w]hen an alien attempts to enter the United States, the mere fact that he or she may have eluded the gaze of law enforcement for a brief period of time after having come upon United States territory is insufficient, in and of itself, to establish freedom from official restraint.[41]

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[22] *Chung*, 886 F. Supp. at 1185.

[23] *Yang*, 68 F.3d at 1546-1547 (*citing Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

[24] 68 F.3d at 1546-1547.

[25] *Xin-Chang Zhang v. Slattery*, 55 F.3d 732 (2d Cir. 1995); *Chen Zhou Chai v. Carroll*, 48 F.3d 1331 (4th Cir. 1995).

[26] The Immigration Act of 1917, 8 U.S.C. § 173 (repealed).

[27] *Vasilatos*, 209 F.2d at 197.

[28] *Yang*, 68 F.3d at 1548-1549.

[29] The Immigration Act of 1917, 8 U.S.C. § 173 (repealed) read in part: "[t]he term 'United States' shall be construed to mean the United States, and any waters, territory, or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone . . . ."

[30] *See* 8 U.S.C. § 1101(a)(13).

[31] 68 F.3d at 1549.

[32] 8 U.S.C. § 1101(a)(38).

[33] 8 U.S.C. 1101(a)(38).

[34] *Yang*, 68 F.3d at 1550.

[35] 68 F.3d at 1549.

[36] 68 F.3d at 1549.

[37] *Id.*

[38] *United States v. Martin-Plascencia*, 532 F.2d 1316 (9th Cir. 1976).

[39] *Martin-Plascencia*, 532 F.2d at 1317.

[40] 532 F.2d at 1317.

[41] *Yang*, 68 F.3d at 1550.

The Third Circuit concluded that none of the petitioners had satisfied their burden of proving that they were free from official restraint.[42] The court noted that shortly after the Golden Venture ran aground, the beach was bustling with law enforcement personnel. Petitioners were not free to "go at large and mix with the general population," a factor the Third Circuit saw as indicative of restraint.[43] In fact, all petitioners had been apprehended shortly after they set foot on the beach. The fact that petitioners were free from official restraint for a short time was not dispositive. Hence, no individual petitioner met the third element of the entry test. In concluding that entry had not been effected under the INA, the Third Circuit reversed the district court's granting of partial summary judgement and order for a deportation hearing.

CONCLUSION

The INA may be Congress' attempt to standardize immigration law, but the application of the INA among the circuits has been inconsistent. The central issue in Yang was the level of due process the BIA must provide to aliens. If an alien enters the United States, he or she is entitled to an adversarial hearing with full due process guarantees. If entry does not occur, an alien is subject to an exclusionary hearing of the type the BIA sought in *Yang*, with few due process guarantees. Although the three-part test for entry is uniformly accepted in all circuits, the application of the individual elements to specific facts has been far from uniform. The practitioner should note that the circuits do not agree on the circumstances which satisfy the first element, the physical presence requirement. Likewise, the circuits apply the third element required for entry, freedom from official restraint, inconsistently. In fact, the Third Circuit is expressly at odds with the Ninth Circuit on the issue. Finally, the practitioner should note that *Yang* allows the BIA to shift the burden of proof on proving freedom from official restraint from the government to aliens. This has great practical significance in cases such as *Yang*. In close factual questions, the BIA must make its decision according to where the burden lies.

Because of the emphasis on deference to an agency's own statutory interpretation in *Chevron* and in other judicial reviews of agency decisions, the BIA has the authority to adjudicate claims in a manner more uniform than the federal circuit. However, the BIA may reach decisions too quickly. Exclusionary hearings may have the benefit of speed and low cost, but the result is a loss in due process guarantees petitioners would have received in a deportation hearing. One thing is certain after *Yang:* within the Third Circuit, at least, the BIA appears to have wide latitude in its actions concerning aliens, so long as the agency's statutory interpretations remain "reasonable" in the eyes of the judiciary.

Summary and Analysis Prepared by:

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[42] 68 F.3d at 1550.

[43] *Id.* (quoting *Correa v. Thornburgh*, 901 F.2d 1166, 1172 (2d Cir. 1990)).