

ROP v. Okamoto, 1 ROP Intrm. 271 (1985)
REPUBLIC OF PALAU,
Appellee,

v.

AKIRA OKAMOTO,
Appellant.

CRIMINAL APPEAL
NOS. 2-84; 3-84; 1-85
Criminal Case No. 74-84

Supreme Court, Appellate Division
Republic of Palau

Opinion

Decided: December 5, 1985

Counsel for Appellant: Johnson Toribiong
Counsel for Appellee: Philip D. Isaac, AAG

BEFORE: ROBERT W. GIBSON, Associate Justice; LOREN A. SUTTON, Associate Justice;
and ALAN L. LANE, Associate Justice.

LANE, Justice.

This appeal was brought challenging the conviction and sentence of defendant/appellant in the Trial Division of the Supreme Court. The defendant/Appellant, a United States citizen, was found guilty of a violation of 53 TTC § 62 -- Unlawfully Remaining in the Republic of Palau After the Expiration of Entry Authorization. The defendant/appellant was ordered to depart the Republic of Palau, by July 5, 1984, as a condition of a one year suspended jail sentence. Other conditions and exceptions were imposed not relevant to this Appeal.

Several motions for stay were filed and heard in both the Trial and Appellate Division, and defendant/appellant was granted additional stays until January 25, 1985, at which time defendant/appellant departed Palau.

On March 5, 1985, the Trial Division found defendant/appellant in violation of condition one (1) of his suspended sentence in that he, after having departed, **L272** re-entered and remained without apparent legal authority. Defendant/appellant was again ordered to leave the Republic by March 8, 1985, and to not return before January 26, 1986. Said Order was stayed until March 15, 1985.

By Order of this Court dated May 2, 1985, all appeals were reinstated, and briefs were ordered. Before addressing the issues of judgment, sentence, order to depart, and revocation of

ROP v. Okamoto, 1 ROP Intrm. 271 (1985)

suspended sentence, the Court, because of the unique nature of these proceedings, must first consider the basis for these proceedings, must first consider the basis for original prosecution as well as the administrative procedures to be followed in cases involving United States citizen residents or visitors.

Title 53 of the Trust Territory Code provides for immigration control of persons entering the Trust Territory. In keeping within the framework of the Trusteeship Agreement with the United States, preferential treatment is to be accorded United States citizens and nationals entering the Trust Territory. 53 TTC § 53(4). To carry out this mandate, a special statute was enacted specifically for the purpose of implementating [sic] such treatment. 53 TTC § 58. Additionally, all persons entering the Trust Territory may do so subject to being excluded for certain reasons enumerated in Section 56 and 57 of Title 53. To safeguard visitors' rights in entering or remaining within the Trust Territory, a showing of the enumerated reasons for exclusion must be made upon "substantial evidence". 53 TTC § 56. The intended purpose for requiring such "substantial evidence" is to avoid arbitrary or discriminatory exclusion by the Government.

Section 58 of Title 53 gives United States citizens and nationals certain appeal rights to the Secretary of Interior after the aggrieved party is served with written notice of the decision to exclude by the High Commissioner (or the President of the Republic of Palau).

The Government is relying on Section 62 allowing prosecution for those persons who overstay their entry authorization. In so doing, they contend that criminal prosecution is an acceptable alternative to a civil action for deportation since section 62 allows for either proceeding to take place and that section 61 authorizes the High Commissioner (or President) to waive any procedural requirement in Title 53, in his discretion, where circumstances warrant. *T.T. v. Arce*, 7 TTR 357 (1976) holds that administrative hearings are not necessarily a prerequisite to a deportation proceeding under Section 62. However, the case involved a Philippine national and no criminal charges or sanctions were involved.

¶273 A distinction must be drawn between the *Arce* case and one involving criminal charges or sanctions. We will not involve ourselves with the issues of deportation for non-U.S. citizens as these matters are not before us at this time. It is clear that a United States citizen or national must be accorded preferential treatment, and compliance with section 58 by the Government is mandatory. Although section 61 allows a waiver of procedures, only the High Commissioner (or President) has the authority to do so and then only if circumstances warrant. Such circumstances may not be arbitrary or discriminatory, and are subject to challenge.

We hold that section 58 of Title 53 necessitates a resort to civil remedies before criminal charges may be instituted against United States citizens or nationals.

In accordance with this conclusion, the conviction and sentence is reversed and dismissed without prejudice to proceed with the remedies available in conformity with this decision.