

Denial of an Immigration Visa May Implicate the Rights of a U.S. Citizen

Bustamante v. Mukasey, (9th Cir. 2008)

This immigration case involved a spousal petition which was denied. The petitioner was a U.S. citizen, married to a man from Mexico. Even after several years of marriage, the man lived in Mexico while his spouse remained in the United States. The man, however, had a border crossing card issued by U.S. Customs Officials. He lived close to the border and regularly commuted to and from Mexico, using his border crossing card.

Eventually the U.S. citizen petitioned to sponsor her husband so he could immigrate to the U.S. and live in the country permanently. The USCIS approved the spouse's petition; however, the couple ran into problems when the man applied for an immigration visa at the U.S. consulate in Mexico. The consular official denied the man's request for a visa. The basis of the denial was the official had reason to believe that the man was a drug smuggler. This was a lawful denial because, under current immigration law, a foreign national applying to enter the U.S. may be denied entry if there is reason to believe that he/she has committed certain crimes, such as drug smuggling; it is not necessary that the person be convicted of any crime. Rather, a reasonable suspicion may serve as a legitimate basis for a rejection. The man denied any involvement in illegal drugs.

The consular official asked the man to meet with DEA agents, and offered to approve the man's immigration visa in exchange for the man's cooperation in becoming a drug informant. The man refused and continued to deny any involvement in the Mexican drug trade.

The wife petitioned the U.S. District Court to review the decision of the consular official. Typically, the decision of a consular official to deny entry into the U.S. is final and not reviewable by any court or administrative agency; however, because the case implicated the due process right of the U.S. citizen spouse, a limited exception exists. The spouse claimed the denial was improper because it was a *de facto* infringement of her Constitutional right to marry and live with the person of her choice. Since the spouse's Constitutional rights were implicated, the district court agreed the consular official's decision was subject to a limited review.

Unfortunately for the couple, even after the review, the court found the consular official did not abuse his discretion. He had a reasonable basis, on account of his contacts with the DEA, to believe the man was involved in drug smuggling. This was a permissible ground for denial of entry into the U.S. Even though the man denied involvement in drugs, and was, in fact, never convicted of any criminal offense, he may still be barred. The consular official's decision was not an abuse of his discretion because he actually believed the information about the man's drug history. Thus, the court upheld the Circuit Court opinion.