

Circuit Weighs Removal Orders for Voting Aliens

Joseph Celentino August 27, 2012

CHICAGO (CN) – The 7th Circuit reached contrasting removability findings for two noncitizens who illegally voted in the United States. When the visitor’s visa Anthony Kimani obtained in 2000 expired, Kimani neither returned to Kenya nor the United States. He applied for lawful permanent residency after marrying a U.S. citizen three years later.

While his application was pending, Kimani registered to vote in 2003 and voted in the November 2004 general election. When immigration officials discovered that Kimani had voted, they denied his permanent residency petition. Though Kimani admitted to casting the 2004 ballot, he claimed that he should still be allowed to adjust his status because he did not know that his vote was illegal.

The 7th Circuit summarily rejected this argument, as well as Kimani’s entrapment by estoppel defense.

“Entrapment by estoppel’ is poorly named; it is among the justification defenses, rather than, as with similar defenses, a defense to official misconduct,” Chief Judge Frank Easterbrook wrote for a three-member panel. “When a public official performs an act, with assurance that the act is lawful under the circumstances, the person does not act with conviction.”

“Perhaps entrapment by estoppel should be renamed the official authorization defense,” he added.

Kimani did not argue, however, that any public official told him that he could vote legally. He explained that the voter appeared on the same form he completed to get an Illinois driver’s license in 2003.

But the federal appeals court countered that Kimani still checked two boxes to register, including one requiring registration to vote.

“He does not contend that any official told him that it is lawful for aliens to claim to be citizens, or that a public official told him to register to vote,” the Aug. 22 decision states.

“Kimani’s problem stems from his own decision to register, to claim citizenship, and to vote,” Easterbrook wrote.

In an unrelated but similar case [decided](#) on the same day, the 7th Circuit approved review for Elizabeth J. Keathley, a noncitizen who was ordered removed after immigration officials discovered that she had voted in 2006 while a lawful permanent resident.

Keathley had married a U.S. citizen in 2003 and had been living in the United States on a nonimmigrant visa.

While awaiting her residency determination, Keathley applied for a driver’s license and received a voter registration card.

Unlike Kimani, however, Keathley claimed that she presented both her Philippine passport and K-3 visa when applying. Keathley contends that she left the U.S. citizen box unchecked until she was asked by the state official to check it. When she replied “yes,” the official allegedly checked the box for her.

If a government official told her that she could vote legally, Keathley may not be liable for the improper registration, the court ruled. The ruling, which Easterbrook also authored, was issued without oral argument.

“The power to register someone supposes some authority to ascertain whether legal qualifications have been met,” the court said. “The power to register someone supposed to inform applicants about the eligibility rules for voting,” the decision states.

“These officials thus are entitled to speak for the government on that subject. What they say is not conclusive.”

authorization defense does not depend on the public official being right when giving approval,” Easterbrook

Since the immigration judge did not determine whether Keathley’s story was true, she is entitled to further

“If the IJ does credit Keathley’s statements about what occurred, the Department of Homeland Security to withdrawing its proposal that she be declared inadmissible and be removed from the United States,” Easterbrook behaves with scrupulous honesty only to be misled by a state official should be as welcome in this country if entered in 2004.”

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