

Written by

Saturday, 25 August 2012 17:31 - Last Updated Sunday, 26 August 2012 09:48

By JOSEPH G. LARIOS

(© 2012 *Journal Group Link International*)

CHICAGO (*jGLi*) – “A person who behaves with scrupulous honesty only to be misled by a state official should be as welcome in this country in 2012 as she was when she entered in 2004.”

With this ruling (in *Keathley v. Holder*, No. 11-1594), a three-judge panel of the United States Court of Appeals of the Seventh Circuit in Chicago, Illinois, stopped the removal of 33-year-old Elizabeth Dag Um Keathley from the U.S. for voting in federal elections in 2006 even after she declared to an Illinois state official that she was a Filipino citizen.

Chief Judge Frank H. Easterbrook, along with Senior Judge Kenneth Francis Ripple and Judge

Filipina Who Voted Illegally May Get Green Card - MabuhayRadio

Written by

Saturday, 25 August 2012 17:31 - Last Updated Sunday, 26 August 2012 09:48

Michael Stephen Kanne, in an opinion handed down Aug. 22, said, "If the Immigration Judge (in Chicago) does credit Keathley's statements about what occurred, the Department of Homeland Security should give serious consideration to withdrawing its proposal that she be declared inadmissible and be removed from the United States. The petition for review is granted, and the matter is remanded for proceedings consistent with this opinion."

A copy of the decision forwarded to this reporter by Ms. Keathley's Chicago-based lawyer Richard Hanus said in departing from a similar case "considered and rejected in *Kimani v. Holder*, No. 11-1497, which is being released contemporaneously," the panel said while Anthony M. "Kimani falsely represented himself to be a U.S. citizen when registering to drive and vote, Keathley contends that she represented herself to be a citizen of the Philippines, presenting both her Philippine passport and her K-3 visa."

Mr. Kimani, a citizen of Kenya, entered the U.S. in 2000 on a visitor's visa that expired but he never left. Kimani then married a U.S. citizen and applied for visa for permanent residence. In 2003, he registered to vote and voted in general elections in 2004, misrepresenting himself as a U.S. citizen.

A NATIVE OF PANGATUCAN, BUKIDNON IN THE PHILIPPINES

Filipina Who Voted Illegally May Get Green Card - MabuhayRadio

Written by

Saturday, 25 August 2012 17:31 - Last Updated Sunday, 26 August 2012 09:48

In the case of Ms. Keathley, she married John Keathley, a U.S. citizen, in a marriage ceremony performed in the Philippines in 2003. In 2004, Ms. Keathley was issued a nonimmigrant K-3 visa so that she could live in the U.S.

while awaiting decision for John's request for her permanent residence as immediate relative of a U.S. citizen. Keathley is a native of Pigtauranan, Pangantucan, Bukidnon in the Philippines

After arriving in the U.S., Elizabeth applied for and received a driver's license. The State of Illinois also sent her a voter registration card and she voted in the November 2006 congressional elections.

When she was interviewed by the U.S. Citizenship and Immigration Services (CIS) for her permanent residence application, she disclosed that she voted in the elections. Immediately, her application for green card was denied for violating 18 U.S.C. Sec. 611 "by voting in a federal election (that) renders her inadmissible, and thus ineligible for any benefit as John's spouse. An immigration judge ordered her removal and the Board of Immigration Appeals affirmed."

The opinion said, "while Kimani checked a box on the driver's-license form, claiming U.S. citizenship, Keathley contends that she left that box unchecked until the state official who superintended the process—an official knowing that she is not a citizen—asked her if she would like to vote. Keathley says that she answered "yes"."

Written by

Saturday, 25 August 2012 17:31 - Last Updated Sunday, 26 August 2012 09:48

The opinion said, Keathley contends that, because the state official knew that she is an alien, the question about voting and the state's decision to send her a voter registration card led her to believe that voting would be lawful. She did not know about Sec. "611, and after she learned that aliens can't vote she asked the State of Illinois to revoke her registration (it did). Although by then she had voted, "she contends that she did not violate Sec. 611 because the state officials' advice gave her a good defense of "entrapment by estoppel"—a misleadingly named doctrine that as we observed in Kimani should be called 'official authorization' instead. That name would better fit the doctrine's actual nature and scope."

"ENTRAPMENT BY ESTOPPEL" ALSO APPLIES IN IMMIGRATION CASES

Although the Immigration Judge found her generally credible, the IJ did not make findings on these specific issues because he believed that entrapment by estoppel, as a doctrine of criminal law, is irrelevant in immigration proceedings. The BIA agreed with that conclusion. Both the IJ and the BIA erred, the opinion said.

It added, "a provision in the Immigration and Nationality Act withholding benefits from an alien who has "committed murder" requires the agency to decide, not only whether the alien killed someone, but also whether the killing was justified (and thus not "murder"). Just so with Sec. 1182(a)(10)(D)(i) and Sec. 611. If Keathley has a good defense, she has not violated Sec. 611 and remains eligible for adjustment of status.

Written by

Saturday, 25 August 2012 17:31 - Last Updated Sunday, 26 August 2012 09:48

“Our opinion in Kimani observes that state motor-vehicle registrars lack authority to put aliens on the voting rolls. The power to register someone supposes some authority to ascertain whether legal qualifications have been met, and officials are supposed to inform applicants about the eligibility rules for voting. 42 U.S.C. Sec. 1973gg(a)(5). These officials thus are entitled to speak for the government on that subject. What they say is not conclusive, but the official-authorization defense does not depend on the public official being right when giving approval.

“Our opinion in Kimani concerned someone who represented himself to be a (U.S.) citizen; but we must assume that Elizabeth Keathley represented herself to be an alien. That's why (she says) she thought the official's conduct implied (though wrongly) that aliens could vote.”

Attorney Hanus initially introduced the legal defense of “entrapment by estoppel” that absolves an individual of legal responsibility in criminal proceedings but this was rejected by the Immigration Court.

This prompted Mr. Hanus to seek the support of Professor Albert W. Alschuler, a legal scholar of Chicago's suburban Evanston, Illinois-based Northwestern University, when they appealed the court's ruling before the Board of Immigration Appeals to confirm the relevance of the defense in their defense. But the BIA likewise rejected this defense.

Filipina Who Voted Illegally May Get Green Card - MabuhayRadio

Written by

Saturday, 25 August 2012 17:31 - Last Updated Sunday, 26 August 2012 09:48

Alschuler compared Ms. Keathley's act of voting as "no more a violation ... than the action of a non-citizen, who, with a terrorist's gun on her back, is coerced to enter the voter's booth and vote."

In Illinois, an unauthorized voting is a Class X felony offense that could have meant a few years imprisonment for Ms. Keathley before she could have been removed.

Ms. Keathley, of Bloomington, Illinois, cannot be reached for comment. # # #

Watch out for the upcoming media-outlet oriented, subscription-based website of *Journal Group Link International* that guarantees originally sourced stories, features, photos, audios and videos and multi-media contents.)

Editor's Note: To contact the author, please e-mail him at: (lariosa_jos@sbcglobal.net)

[Joomla SEO powered by JoomSEF](#)