In re MONACO et al.

(Circuit Court, S. D. New York. April 1, 1898.)

IMMIGRATION—INSPECTOR'S DECISIONS—JURISDICTION OF COURTS.

28 Stat. 390, making decisions of the customs or immigration officers excluding aliens final, "unless reversed on appeal to the secretary of the treasury," does not exclude the jurisdiction of the courts in habeas corpus when, although an appeal to the secretary has been taken, through some rule of procedure in the office the papers will not be sent to him.

This was an application for a writ of habeas corpus by Sofia Monaco and others, who have been refused a right to land in this country by the immigration or customs officers.

Henry Gotlieb, for the motion.
Loronzo Ullo, opposed.

LACOMBE, Circuit Judge. The statutes regulating immigration evidently contemplate that the alien immigrant shall have at least the opportunity to appeal from the subordinate officers to the secretary of the treasury; and, where he is prevented by the subordinate officers from presenting his case to that tribunal of review, it seems not to be within the intent of congress that the decision of the subordinate officers shall be final. The language used is, "Shall be final unless reversed on appeal to the secretary of the treasury." 28 Stat. 390. When it is remembered that this section took away from the courts the power to determine upon habeas corpus whether the alien was in fact an immigrant, and as such within the operation of the exclusion acts, it is the most natural construction of this language to hold that it gave the alien the right to have that important question passed upon by the secretary of the treasury. If the statements of petitioners' counsel are correct, this is a case in which a review somewhere should be allowed; for he asserts that the physician who at first reported that the immigrants were suffering from a loathsome contagious disease has modified his diagnosis. And upon the facts as asserted by petitioners, and not contradicted, two of the aliens are not immigrants; they have been domiciled here 10 years, and are now returning after a brief absence. The counsel for the board concedes that petitioners have appealed to the secretary of the treasury, but that the papers have not been, and will not be, forwarded to him, in accordance with some rule of procedure in their office. Under these circumstances, the decision of the board cannot be accepted as final, and the case is sent to the clerk of the court, to take testimony and report the facts bearing on the questions: (1) Whether petitioners are immigrants; (2) whether they, or any of them, are suffering from a loathsome, contagious disease.

WORTHINGTON et al. v. UNITED STATES.

(Circuit Court, S. D. New York. March 3, 1898.)

CUSTOMS DUTIES—PLATEAUX OR FLATS.

"Plateaux" or "flats," manufactured from plaits of straw, were free of duty, under paragraph 518 of the tariff act of 1890, as "plaits, and similar manufactures, composed of straw, suitable for making or ornamenting hats," and were not dutiable at 30 per cent., as "manufactures of straw not specifically provided for," under paragraph 460 of the same act.

This was an appeal from a decision of the board of general appraisers sustaining the action of the collector of the port of New York in the classification for duty of certain goods imported by the appellants, Worthington, Smith & Co.

Albert Comstock, for appellants.
Max J. Kohler, for the United States.

TOWNSEND, District Judge (orally). Several exhibits were introduced in this case, but counsel for the importer at the hearing confined his contention to the articles composed wholly of straw, or of which straw is the component material of chief value. It appears from the report of the assistant appraiser, and the evidence before the board of general appraisers, that the articles in question were in fact "plateaux" or "flats" and braids of straw, or of which straw was the component material of chief value. The importer claims that the braids are free, under the decision in U. S. v. Rheims, 45 U. S. App. 755, 89 Fed. 1020; [1] and as this claim appears to be well founded, and was not contested by the attorney for the United States, it is sustained. The plateaux or flats are manufactured from plaits of straw. They were classified for duty at 30 per cent. ad valorem, under paragraph 460 of the act of October, 1890, as "manufactures of straw not specifically provided for." The importer protested, claiming that they were entitled to free entry, under the provisions of paragraph 518 of said act, as "plaits, and similar manufactures, composed of straw, suitable for making or ornamenting hats." In their present condition they are ready for the milliner, who uses them for making hats, by shaping, wiring, trimming, sewing, and perhaps cutting, fitting, and resewing them. In their present shape they are merely oval shapes of braided straw, useless except for making hats. The testimony shows that they are commercially known as "plaits." They are therefore free, either as plaits, or as similar manufactures suitable for making or ornamenting hats. The decision of the board of general appraisers sustaining the action of the collector is reversed.

[1] 33 C. C. A. 687.