

GEORGE TOLHURST, Petitioner
v.
TRUST TERRITORY, Respondent
Civil Action No. 42-73
Trial Division of the High Court
Palau District
October 4, 1973

Petition for declaratory judgment that petitioner, a resident alien of the United States, Canadian citizen and Trust Territory employee, was entitled to educational benefits for his minor dependents. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that whether or not United States nationals were entitled to benefits, entitlement to which the law limited to United States citizens, petitioner was not a national and was not entitled to benefits.

TOLHURST v. TRUST TERRITORY

Labor Relations—Dependent's Benefits

Petitioner, an employee of the Trust Territory Government, resident alien of the United States, and citizen of Canada, who had begun naturalization proceedings, was not a United States national or citizen and was thus not entitled to educational benefits for dependents of contracting employees who are United States citizens, whether or not nationals were entitled to such benefits.

Counsel for Petitioner:
Counsel for Respondent:

J. LEO MCSHANE
EFFIE SPARLING, *Assistant*
Attorney General

TURNER, *Associate Justice*

Petitioner, an employee of the Trust Territory Government as vocational counselor and teacher, was informed by the government personnel department that he was not entitled to educational benefits for his dependent minor children attending school away from the Trust Territory. He thereupon brought this petition for a "declaratory decree" for an interpretation of his rights to educational benefits under his contract of employment.

The government answered and moved for summary judgment on the pleadings and supporting documents. The government alleged in its answer that (a) petitioner is a resident alien of the United States and is a citizen of Canada, and (b) that educational benefits for dependents of contracting employees are limited to United States citizens as set forth in petitioner's employment agreement, conditions of employment incorporated therein and Section 40(i) of the United States Department of State standardized regulations adopted by the United States Department of the Interior and the Trust Territory.

The petitioner responded by affidavit that he is "in the process of commencing naturalization."

Two questions were raised in the hearing on the motion for summary judgment. The first, whether or not peti-

tioner is a U.S. national and secondly, whether "nationals" are entitled to receipt of educational benefits for dependents. If petitioner is not a national the question whether educational benefits are payable to nationals as well as citizen employees need not be reached.

An "alien" is a person who is not a citizen or a national. 8 U.S.C.A. § 1101(3). A person "lawfully admitted for permanent residence," petitioner's status prior to any naturalization proceedings, remains an "immigrant," 8 U.S.C.A. § 1101(20), and an "immigrant" is an "alien."

In *Scholz v. Shaughnessy*, 180 F.2d 450, the Court interpreted Section 1101 (then 8 U.S.C.A. § 501) and said a "national" is either a citizen or owes permanent allegiance to the United States and that the word "does not include an alien."

The *Digest of International Law*, Hackworth, U.S. Department of State, 1942, says that a "national" includes both citizens and persons who owe permanent allegiance to the state and are entitled to its protection.

It must be concluded that until such time as petitioner's naturalization proceedings have reached the point where he owes permanent allegiance to the United States and thereby becomes a national or citizen he is not entitled to educational benefits.

In this connection we note the ambiguity existing in the several provisions relating to an employee's entitlement to these benefits.

The Department of State Standardized Regulations says that "educational allowance means an allowance to assist an employee. . . ." (Sec. 271(a)). At Sec. 40(1) "Employee" is defined as "a citizen of the United States who meets certain requirements and Distinguishes an "employee" thus defined from a "non-citizen employee."

In contrast to the Standardized Regulations the Trust Territory "conditions of employment" at Section 23 refers

to the Trust Territory Personnel Manual permitting employees to follow appeals procedure outlined in the manual. The "Personnel Manual" referred to has been ostensibly voided by the repeal of the statutes upon which it was based by enactment of P.L. 4C-49. However, the government is admittedly following or attempting to follow the former regulations because they have not as yet been superseded. *Tolhurst v. Micronesian Occupational Center*, 6 T.T.R. 296.

Chapter IX of the manual, dealing with overseas allowances (including educational allowances) provides that "the following . . . allowances are payable to . . . U.S. citizens or nationals. . . ." It was upon this provision petitioner based his action. If he were in fact a U.S. national he would have a different case in spite of the conflict between the Trust Territory manual and the Standardized Regulations.

Petitioner's recourse now is in accordance with 8 U.S.C.A. § 1503 which provides relief for a "national" who is denied the rights or privileges of a national by a department or agency of the government as an agency of the U.S. government. *People of Saipan, et al. v. Department of Interior et al.*, March 20, 1973, Civil Action No. 72-3720, U.S. District Court for the District of Hawaii. Petitioner may under the statute, bring an action to be declared a national by filing in the U.S. District Court of his residence or he may make application to a "diplomatic or consular officer of the United States "with right of appeal from an adverse ruling to the Secretary of State.

Ordered, adjudged and decreed that petitioner having failed to establish that he is a citizen or national is not entitled to educational benefits for his dependent minor children.