

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Alzokari v. Pompeo

No. 19-3133, United States Court of Appeals for the Second Circuit (August 26, 2020)

SUMMARY

The Second Circuit held that the State Department's revocation of a naturalized citizen's passport was arbitrary and capricious under the APA because the citizen used the name and birthdate from his uncontested certificate of naturalization. Using a legal name from naturalization documents cannot constitute passport fraud, even if the citizen previously used a different name; the Department must pursue denaturalization proceedings if it suspects fraud in naturalization, rather than revoking the passport. The court reversed the district court and ordered the return of the passport, leaving open unresolved due process issues regarding burden of proof in passport revocation hearings.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Wesley; Calabresi; Bianco
JURISDICTION	Federal
DECIDED	August 26, 2020
DOCKET	19-3133
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of New York's dismissal of Alzokari's complaint challenging the Department of State's revocation of his passport.
STANDARD OF REVIEW	De novo for the district court's grant of a motion to dismiss; arbitrary and capricious standard for the APA claim under 5 U.S.C. § 706(2)(A).
PRECEDENTIAL VALUE	Published
PARTIES	Ahmed Ali Alzokari v. Michael Pompeo, Carl C. Risch, Rachel Arndt, United States Department of State

TOPICS

administrative law judicial review of agency action constitutional law due process statutory interpretation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Department of State's revocation of Alzokari's passport was arbitrary and capricious under the APA when Alzokari applied for his passport using the legal name and birthdate on his uncontested certificate of naturalization and other immigration documents, and the Department based the revocation solely on a statement that Alzokari had been known by another name before naturalization.

HOLDINGS

1. The Department cannot revoke a passport on that basis. The Department's passport revocation was arbitrary, capricious, and not in accordance with law.

KEY QUOTATIONS

"This case presents a question of first impression for this Court: can the Department revoke a citizen's United States passport on the ground that he concealed his identity in applying for the passport, where the citizen makes a statement that prior to his naturalization he was known by another name but he applied for, and was issued, his passport using his uncontested legal name? We hold that it cannot." (3)

"Because we determine, as a matter of law, that a citizen does not commit passport fraud by applying for a passport under the name and birthdate appearing on his uncontested citizenship and identity documents, there is no basis for remand to the agency." (20)

"At bottom, the Department failed to consider the significance of Alzokari's immigration and nationalization records in accordance with the law. Its premise for revoking Alzokari's passport offers no support for the conclusion that Alzokari obtained his passport fraudulently and is contrary to the Department's own regulations and guidance." (19)

FACTUAL BACKGROUND

Ahmed Ali Alzokari was born in Yemen and naturalized as a United States citizen in 1979 under the name 'Ahmed Ali Alzokari.' He used that name in all his passport applications. In 2013, while visiting the U.S. embassy in Sana'a, Yemen, to obtain a consular report of birth abroad for a child, embassy officials detained him on suspicion of fraud. After several hours of interrogation, Alzokari signed a statement claiming that his true name was 'Ahmed Ahmed Mohamed Albaadani' and that he had been smuggled into the U.S. Based solely on that statement, the Department revoked his passport, concluding it was fraudulently obtained.

PROCEDURAL HISTORY

Alzokari's passport was revoked by the Department of State in 2015. He challenged the revocation in an administrative hearing, which upheld the revocation. He then filed a complaint in the Eastern District of New York, asserting claims under the APA and the Fifth Amendment. The district court granted defendants' motion to dismiss, holding that the revocation was not arbitrary and capricious and that the allocation of the burden of proof did not violate due process. Alzokari appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court should enter judgment for Alzokari and order the Department of State to return Alzokari's expired passport so that he may apply for a new United States passport if he so chooses.

CASES CITED

- Alzokari v. Pompeo, 394 F. Supp. 3d 250 (E.D.N.Y. 2019)
- Weinstein v. Albright, 261 F.3d 127 (2d Cir. 2001)
- Haig v. Agee, 453 U.S. 280 (1981)
- Coal. for Competitive Elec., Dynergy Inc. v. Zibelman, 906 F.3d 41 (2d Cir. 2018)
- Chambers v. Time Warner, Inc., 282 F.3d 147 (2d Cir. 2002)
- Natural Res. Def. Council, Inc. v. U.S. EPA, 658 F.3d 200 (2d Cir. 2011)
- Islander E. Pipeline Co. v. McCarthy, 525 F.3d 141 (2d Cir. 2008)
- Consol. Edison Co. of N.Y., Inc. v. UGI Utils., Inc., 423 F.3d 90 (2d Cir. 2005)
- Karimi v. Holder, 715 F.3d 561 (4th Cir. 2013)
- Guertin v. United States, 743 F.3d 382 (2d Cir. 2014)
- Fedorenko v. United States, 449 U.S. 490 (1981)
- Schneiderman v. United States, 320 U.S. 118 (1943)
- United States v. Sprogis, 763 F.2d 115 (2d Cir. 1985)
- Omar v. Kerry, No. 15-cv-01760, 2016 WL 617449 (N.D. Cal. Feb. 16, 2016)
- Omar v. Tillerson, No. 15-cv-01760, 2017 WL 5751314 (N.D. Cal. Nov. 28, 2017)
- Omar v. Pompeo, No. 15-cv-01760, 2018 WL 4191416 (N.D. Cal. Aug. 16, 2018)
- Awad v. U.S. Dep't of State, No. 19 C 10, 2020 WL 1182743 (N.D. Ill. Mar. 12, 2020)
- Awad v. Kerry, 257 F. Supp. 1016 (N.D. Ill. 2016)