Immigration Court: BIA

Case: *Matter of Rainford*, 20 I&N Dec. 598 (BIA 1992) **Date:** Sept. 9, 1992

Adjudicated by: Milhollan, Dunne, Morris, Vacca, Heilman **Opinion:** *per curiam?*

Tags: Removal, relief, AOS, inadmissibility, deportability, criminal possession of weapon,

Question Presented: Will a deportable offense cause an immediate removal problem for a noncitizen who adjusts status in court as a form of relief from removal? ("futility doctrine")

Holdings: No, that's silly. A previous deportable offense won't immediately kick in removal proceedings when someone adjusts status.

- "We hold that the conviction which renders the respondent deportable . . . will not preclude a showing of admissibility for purposes of section 245(a) and that if granted adjustment of status to LPR, the respondent will no longer be deportable on the basis of this prior conviction." 602
- Also: you can re-do your I-130 and AOS if you're an LPR convicted of a removable offense.

Rationale: The statute doesn't require respondents to defend against BOTH inadmissibility and deportation challenges when adjusting status (just the inadmissibility ones).

Facts: (598-99) Citizen of Jamaica admitted in 1988 as LPR. Convicted in NY in 1991 of criminal possession of a weapon in the third degree, sentenced 1 year. This is an aggravated felony, so removable. But tried to adjust status in court via his USC father's I-130 petition.

Procedural History:

- **IJ:** determined there was no relief available, because although respondent was *admissible*, he was also *deportable* immediately upon admission, per *Matter of V-*, 1 I&N Dec. 293 (BIA 1942), because that would save time administratively.

Appeals to Statute & Precedent:

- ***Matter of V-*, 1 I&N Dec. 293 (BIA 1942):** (distinguished) "futility doctrine"—don't admit/adjust an admissible respondent who's immediately going to be removable for an offense.
- ***Matter of Rafipour*, 16 I&N Dec. 470 (BIA 1978):** AOS case: alien would not automatically become deportable because of a prior act if he were admitted as LPR.
- ***Matter of R-G-*, 8 I&N Dec. 128 (BIA 1958):** AOS case: alien will no longer be deportable for an earlier conviction once admitted as an LPR.

Relevant U.S. History:

- **Pre-1996 INA:** "deportable" rather than "removable."
- **AOS:**
  - Make an application (I-485)
  - Be eligible to receive a visa (I-130) and be admitted as LPR

- An immigrant visa must be immediately available at the time of application. (Visa # current)

Discussion:

- "It has been the consistent practice of this Board to interpret the requirement of admissibility in section 245(a) with reference only to the exclusion grounds in the Act." 600

- "Were we now to apply the rule in *Matter of V-*, we would be imposing upon an applicant an additional burden, not appearing in the statute, that he prove not only that he is admissible, but also that he would not become immediately deportable once admitted for lawful permanent residence." 601

- "Further, the rule in *Matter of V-* requires an 'entry.' An adjustment of status, however, does not constitute an entry. As we have repeatedly held, an adjustment of status is merely a procedural mechanism by which an alien is assimilated to the position of one seeking to enter the United States." 601

- "**In the instant case, as in *Matter of Rafipour*, the respondent faces a charge of deportability for which there is no corresponding ground of exclusion in the Act."** 602

Commentary:

- This stems from the quirk in the immigration law that makes SOME crimes bars to admission, and DIFFERENT crimes causes of removability. A person can be eligible for entry or adjustment, but simultaneously subject to a deportation order.