

Court Ruling Shifts Focus to Redress Funding

Appeals court rules in favor of children of evacuees in Ishida and Consolo cases.

By JOHN OTA
RAFU CONTRIBUTOR

The July 6 appeals court ruling upholding the redress eligibility of Douglas Ishida is good news for hundreds of others who, like Ishida, were born during World War II to parents who had fled the West Coast in 1942 to avoid being interned. Ishida was born in November 1942 in Marion, Ohio, his parents having moved there from Fresno earlier that year.

However, Ishida's victory is tempered by the reality that Congress will need to approve additional funding in order to make redress payments to all those covered by the court decision.

In a July 24 phone call, Tink Cooper, Office of Redress Administration (ORA) Legal Counsel, stated that the ORA currently has funds to pay about 435 more individuals. In early September, the ORA expects to pay some 200 individuals, and another 50-100 are slated to be paid soon, when their documentation is finalized, said Cooper.

This leaves funding for about 135 to 185 individuals. However, Cooper also stated that the ORA currently knows of about 900 individuals who were born during the war to evacuee parents or to parents who moved out of the internment camps. Furthermore, it is likely that there are many other evacuee children like Ishida who never contacted the ORA, because they believed they were not eligible for redress.

In the 1988 Civil Liberties Act, Congress pledged to redress all those

whose fundamental rights had been violated during the internment. To fulfill that pledge, however, will require approval for new funding by an increasingly tight-fisted and now Republican-controlled Congress.

Most Significant Ruling

"The Ishida decision is the most significant court ruling to date concerning the more than 2,000 Japanese Americans who have been denied redress," said Bruce Iwasaki, an attorney and member of the National Coalition for Redress and Reparations (NCRR). Iwasaki and John F. Daum, both of the O'Melveny & Myers law firm, wrote and filed a friend of the court brief for NCRR in the Ishida appeal.

The U.S. Court of Appeals for the Federal Circuit stated that its decision applied to "children who were deprived of liberty because they were excluded from their family homes (on the West Coast) as a result of Executive Order 9066 and who could not return to their homes without committing a crime."

This apparently includes those born during the war in Boulder, Colorado to Japanese American instructors at the U.S. Naval Language School.

In making its ruling, the court acknowledged that individuals such as Ishida "suffered a grave deprivation of liberty as a direct result of government action excluding them (and their parents) from their family homes. They suffered economic hardship, ostracism and familial disruption, along with their parents, as a result of government action."

A circuit judge noted that courts usually defer to "an agency's interpretation of a statute it is entrusted with administering ... as long as it is reasonable and does not contravene clearly discernible legislative intent." However, the court found the Justice Department's interpretation of the redress law to be "contrary to the unambiguous intent of the Congress" and therefore not entitled to such deference.

Consolo Case

Although the court decision bore the name of Ishida, for those who have been closely following such developments, it might have been more aptly named the Consolo decision, after Linda Yae Consolo, who, like Ishida, sued when the ORA denied her redress claim.

Consolo was born in Fielding, Utah, in 1943 after her parents left Los Angeles to escape internment. Consolo's father, Arthur Kawabe, a physician, was forced to pick beets and tomatoes and herd cattle in Utah to support his family.

Represented by attorney Gerald M. Sato of Sato & Henry, Consolo became the first person to successfully mount a court challenge to the ORA's denial of redress eligibility. On June 23, 1994, Federal Claims Court Judge James Turner agreed with Consolo that the ORA had wrongly denied her redress claim. On August 16, 1994, the U.S. Justice Department appealed the Consolo decision.

"It was Sato's argument that Consolo was deprived of liberty by being excluded from her family's home on the West Coast" that the appeals court adopted at the heart of its ruling, commented Iwasaki. Sato "deserves credit for taking on this

Continued on Page 3

Redress Funding

From Page 1

and other redress appeals cases and refusing to be discouraged," added Iwasaki.

Contacted at his office in Westlake Village, Calif., Sato characterized the appeals court decision as "one hundred percent vindication" for Consolo. He also expressed regret that the Justice Department had opposed Consolo for so long, attempting to "rewrite history by arguing that Consolo had suffered no deprivation of liberty."

On April 22, 1994, prior to the Consolo ruling, Judge Bohdan Futey, another Federal Claims Court judge, had issued a contrary opin-

ion in Ishida's case. Ishida and his attorney, Richard Halberstein, apparently had not intended to appeal Ishida's case. But after they learned of the Consolo ruling, they were granted special permission to appeal Ishida's case even though the deadline for appeal had passed.

Because the Consolo and Ishida rulings represented conflicting decisions on essentially the same issue, the two cases were consolidated for hearing before the Court of Appeals.

On July 10, four days after the Ishida decision, the appeals court affirmed the lower court ruling in favor of Consolo.