



# Immigration Monthly

**June 2006**

- **I'll Follow The Sun by *Steven C. Thal***
- **Child Status Protection Act – New Book! Now Shipping!**
- **Family-based Immigration – New Book! Now Shipping!**

I was sitting in church a few weeks ago, listening to a performance of the old Beatles song, "I'll Follow the Sun." After the service ended, I stayed seated in my pew, the music still reverberating in my head, as I recalled that one of its composers, John Lennon had been the focus of a notorious immigration case in the early 1970's. In light of the current controversy over immigration policy and recent actions by the U.S. Congress, I wondered if Lennon's case would have any relevance to the issues being debated now, some thirty years later.

At home, I punched a few keystrokes into my computer and brought up Lennon v.

INS, 527 F.2d 187 (2d Cir.1975), a Court of Appeals case from New York which had decided the fate of the former Beatle's future in the United States.

To set the stage for the decision of the court, Judge Irving Kaufman of the 2<sup>nd</sup> Circuit Court of Appeals wrote:

"We have come a long way from the days when fear and prejudice toward alien races were the guiding forces behind our immigration laws. The Chinese exclusion acts of the 1880's and the 'barred zone' created by the 1917 Immigration Act have, thankfully, been removed from the statute books and relegated to the historical treatises. Nevertheless, the power of Congress to exclude or deport natives of other countries remains virtually unfettered. In the vast majority of deportation cases, the fate of the alien must therefore hinge upon narrow issues of statutory construction. To this rule, the appeal of John Lennon, an internationally known 'rock' musician, presents no exception."

Lennon who had a minor conviction in England from 1968 for possession of cannabis resin for which he was fined \$150, had deportation proceedings launched against him

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# Child Status Protection Act

**A Practitioner's Guide**  
by Charles Wheeler, of the Catholic  
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in March 1972 after his visitor visa ran out. The Immigration Judge found him deportable and Lennon appealed. Several years later, the Court of Appeals overturned his deportation order and found in his favor that he was not an "excludable alien." Despite his conviction in England, he was not in the class of undesirable aliens we would bar from our shores. Because the Court of Appeals ruled in his favor he was able to get his "green card" and remain in the U.S. I wondered whether John Lennon would fare as well in the outcome of his case, if the recently passed bill by the House of Representatives, H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 had been in effect.

For starters, Lennon would never have proceeded to an immigration hearing on his case. A provision in this draconian bill would require any alien who enters the U.S. on a nonimmigrant visa (as John Lennon did) to give up the right to a hearing before an immigration judge in the event that he is later found to be charged with an immigration violation. In other words, you're not only out before you get to first base, you don't even get to approach the batter's box. This House passed bill makes you give up any right to appear before an immigration judge (except for asylum seekers) as a precondition to entering the U.S. Anyone who wanted to apply for a green card before an immigration judge would now be forbidden to do so. The green cards which were obtained by John Lennon and his wife, Yoko Ono, in their deportation case would now be out of reach.

The proposed House bill doesn't stop there. For someone found removable on the basis of certain criminal offenses, the House now strips away any judicial review of immigration judges' decisions. In the end, Lennon was able to prevent his deportation because he was able to appeal to an independent federal court. Without an autonomous judiciary able to review executive branch decisions, we lose the protections of

our system of checks and balances to reign in executive branch excesses. Immigrants today would never get the chance Lennon got. The House bill would not only do away with appeals of criminal cases, but also eliminate any “discretionary” appeals of cases decided by the Immigration Service or immigration judges. The executive branch would have total unfettered discretion over immigration decisions, and if you don’t like the outcome, there’s nothing you can do about it—just pack your bags and leave. Given recent concerns over immigration judges’ conduct from even Attorney General Alberto Gonzalez, the lack of judicial review is a frightening prospect. In addition to the reservations expressed by the Attorney General, certain jurists in the Courts of Appeal have been appalled at the quality of justice received by immigrants. One recent Court of Appeals analysis found that lower level immigration cases were reversed 40% of the time.

While John Lennon was able to pursue his American dream of a “green card” after his visa expired on February 29, 1972, he would not have had such good fortune under H.R.4437. This bill would make any immigration violation, no matter how minor, a federal criminal felony. Overstaying a visitor visa (as Lennon did) could now subject you to criminal felony prosecution if the House has its way. In addition, a brief overstay of a visa would trigger bringing down the hammer of enhanced penalty provisions for being an “aggravated felon.” What was once a minor civil offense is now viewed in the same light as rape, robbery or murder. It will also land you in prison with mandatory detention and virtually no relief from deportation. Don’t give me your tired, your poor, your huddled masses yearning to be free, instead lock’em up and throw away the key is the message emanating from the House.

We can be glad that John Lennon shared his genius with us during an earlier era. He was able to get through the labyrinthine provisions of the Immigration and Nationality

# Family- based Immigration

**Nuts & Bolts**

**by Charles Wheeler, of the Catholic  
Legal Immigration Network, Inc.  
(CLINIC)**

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Act to realize his dream. The Court which assured his green card recognized the fortitude, talents, and perseverance that Lennon brought to these shores, like so many other immigrants before him. The Court knew it had an important message to send:

“ Before closing with the traditional words of disposition, we feel it appropriate to express our faith that the result we have reached in this case not only is consistent with the language and purpose of the narrow statutory provision we construe, but also furthers the intent of the immigration laws in a far broader sense. The excludable aliens statute is but an exception, albeit necessary, to the traditional tolerance of a nation founded and built by immigrants. If, in our two hundred years of independence, we have in some measure realized our ideals, it is in large part because we have always found a place for those committed to the spirit of liberty and willing to help implement it. Lennon's four-year battle to remain in our country is testimony to his faith in this American dream.”

With those words the Court assured the musical gifts of John Lennon would have a future in America. Had we not had an independent Federal Court review of the executive branch immigration judge, Lennon would have had a one-way ticket to England, never to return.

Congress is now returning to work on immigration legislation which if it follows the House Bill, H.R. 4437 will lead us down the dark path of intolerance, criminalization, lack of due process and limited judicial review. Imagine. The brighter choice is comprehensive immigration reform in a bipartisan manner that reduces long waiting times and reunites families, provide protections for workers, preserves judicial review and due process and provides hope and

a future for immigrants now here. How we shape our immigration policy will be a reflection on America for years to come. While Congress debates which direction to go, I've found my compass on the immigration issue: "I'll Follow the Sun."

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### About the Author

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**ISSN 1557-1394**

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