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Arnold G. Gough

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I. Introduction

"Entry" is a term of art for purposes of United States immigration law.[1] An alien making an entry into this country must comply with rigid admission standards. Reentry is a subcategory of entry which deals with aliens previously admitted to the United States who seek to return after a temporary absence. The reentry doctrine subjects returning aliens to the same admission requirements as first-time entrants. Failure to meet these requirements may result in exclusion at the time of attempted reentry or deportation on the ground that reentry should not have been permitted.[2]

In 1963 the Supreme Court of the United States, in *Rosenberg v. Fleuti*,[3] faced the issue of whether a resident alien's return to the United States after a temporary absence constituted an entry for immigration purposes. The Court defined entry to include only those returns to the United States by resident aliens which followed departures made with "an intent to depart in a manner which can be regarded as meaningfully interruptive of the alien's permanent residence."[4] Contrary to its intended effect, the *Fleuti* decision has led to confusion and conflicting interpretations in the lower courts.[5] This note will examine the present status of the *Fleuti* doctrine and the reasons for its failure to provide courts with a workable judicial standard.

II. Historical Setting of *Rosenberg v. Fleuti*

The reentry doctrine was created by case law during the first half of this century.[6] The most commonly recognized pronouncement of the doctrine, that

1 *See* C. GORDON & E. GORDON, IMMIGRATION LAW & PROCEDURE § 2.3(a) (desk ed. 1980).

2 *Compare* 8 U.S.C. § 1182(a) (1976) (grounds for exclusion) *with* 8 U.S.C. § 1251(a) (1976) (grounds for deportation). Reentering aliens may be excluded or deported because they (1) are insane at the time of reentry, (2) suffered a previous attack of insanity, (3) have admitted the elements of a crime of moral turpitude for which they were never convicted or (4) are otherwise ineligible for citizenship. 8 U.S.C. §§ (a)(1), (3), (9), (22) (1976). None of these conditions would subject the alien to deportation if he had remained in the country after his initial entry. *See generally* 1 C. GORDON & H. ROSENFELD, IMMIGRATION LAW & PROCEDURE §§ 2.32-.50 (rev. ed. 1980); Comment, *Exclusion and Deportation of Resident Aliens: The Re-entry Doctrine and the Need for Reform*, 13 SAN DIEGO L. REV. 192 (1975).

3 374 U.S. 449 (1963).

4 *Id.* at 462.

5 *Cf.* Longaria Castaneda v. INS, 548 F.2d 233 (8th Cir. 1977) (returning alien deported for assisting in the illegal entry of aliens); Ferrano v. INS, 535 F.2d 208 (2d Cir. 1976) (remand of deportation order to determine whether reentry without inspection affects resident alien status); Lozano-Giron v. INS, 506 F.2d 1073 (7th Cir. 1974) (returning alien deported after being apprehended smuggling counterfeit United States currency into the country); Palatian v. INS, 502 F.2d 1091 (9th Cir. 1974) (returning aliens' attempt to smuggle marijuana into the country after two and one-half days in Mexico held an entry even if departure was for innocent purposes); Vargas Barnelos v. INS, 466 F.2d 1371 (5th Cir. 1972) (returning alien not deported despite conviction for assisting in the illegal entry of aliens). *See generally* Gordon, *Recent Developments in Judicial Review of Immigration Cases*, 15 SAN DIEGO L. REV. 9, 13-20 (1977).

6 The Supreme Court in *Fleuti* recognized the reentry doctrine as originating in Lewis v. Frick, 233 U.S. 291 (1914) and cited United States *ex rel.* Claussen v. Day, 279 U.S. 398 (1929), United States *ex rel.* Polymeris v. Trudell, 284 U.S. 279 (1931), and United States *ex rel.* Stapf v. Corsi, 287 U.S. 129 (1932), as cases in the line of precedent. 374 U.S. at 453.

of *United States ex rel. Volpe v. Smith*,[7] defined entry as "any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one."[8] This definition subjected returning resident aliens to strict admission requirements,[9] an effect so harsh that some courts enforced the doctrine only with reluctance.[10] In the late 1940's, courts modified the doctrine, holding it inapplicable to resident aliens who had no intention of leaving the United States permanently[11] or who left the country involuntarily.[12]

Di Pasquale v. Karnuth[13] was the first case holding the reentry requirements inapplicable where the resident alien's prior departure had been unintentional. The defendant, a resident alien, challenged deportation proceedings based on an entry which occurred during a train trip from Buffalo, New York, to Detroit. Unknown to the defendant, the train was routed through Canada. Judge Learned Hand, writing for the United States Court of Appeals for the Second Circuit, did not allow the defendant to be deported based on his reentry because there was no evidence that he "knew or had any intentions of leaving the United States . . . ."[14] Shortly after *Di Pasquale* was decided, the Supreme Court in *Delgadillo v. Carmichael*[15] combined the intent requirement with voluntariness and held that a returning alien does not enter for immigration purposes unless his prior departure was voluntary or intentional.[16]

Subsequent to these judicial developments, Congress included a definition of entry in the Immigration and Nationality Act of 1952 (INA).[17] Section 101(a)(13)[18] of the INA defines entry as follows:

> The term "entry" means any coming of an alien into the United States, from a foreign port or place, or from an outlying possession, whether voluntary or otherwise, except that an alien having a lawful permanent residence in the United States shall not be regarded as making an entry into the United States for the purpose of the immigration laws if the alien proves to the satisfaction of the Attorney General that his departure to a foreign port or place or to an outlying possession was not intended or reasonably to be expected by him or his presence in a foreign port or place or in an

7 289 U.S. 422 (1933).

8 *Id.* at 425.

9 "The immigration laws of the United States contain the most detailed enumeration in the world for disqualification of aliens who may seek admission to a sovereign nation . . . ." WASSERMAN, IMMIGRATION LAWS & PRACTICE 39 (3d ed. 1979).

10 *See, e.g.*, Rosenberg v. Fleuti, 374 U.S. at 454 n.5. The Court cites Jackson v. Zubrick, 59 F.2d 937 (6th Cir. 1932), which held an alien's return from a brief visit to Canada to be an entry within the scope of the Immigration Act of 1917, ch. 29 § 19, 39 Stat. 889 (1917), which authorized deportation on conviction of crime within five years of entry. Judge Simons, concurring in *Zubrick*, declared:

> Ever since it was first held that a departure, however brief and temporary, and without regard to intention to relinquish domicile, makes subsequent return a new entry, courts in border districts have found it difficult to remain silent when the result in human misery of a literal reading of the act has been realized.

59 F.2d at 938.

11 Di Pasquale v. Karnuth, 158 F.2d 878 (2d Cir. 1947).

12 Delgadillo v. Carmichael, 332 U.S. 388 (1947).

13 158 F.2d 878 (2d Cir. 1947).

14 *Id.* at 878.

15 332 U.S. 388 (1947). The Court found that a merchant seaman's return from Cuba after his ship had been torpedoed was not an entry which could serve as a basis for deportation.

16 *Id.* at 391; *accord*, Yukio Chai v. Bonham, 165 F.2d 207 (9th Cir. 1947); Carmichael v. Delaney, 170 F.2d 239 (9th Cir. 1948).

17 The Immigration and Nationality Act of 1952, 66 Stat. 163, 8 U.S.C. §§ 1101-1503 (1952).

18 8 U.S.C. § 1101(a)(13) (1976).

> outlying possession was not voluntary . . . .[19]

The legislative history of section 101(a)(13)[20] makes clear that Congress intended to incorporate in its statutory definition of entry[21] the holdings of *Di Pasquale* and *Delgadillo*.

The Supreme Court interpreted section 101(a)(13)[22] for the first time in *Rosenberg v. Fleuti*.[23] George Fleuti, a Swiss national, was admitted to the United States as a permanent resident in 1952. He remained in this country continuously thereafter except for a visit to Mexico in 1956 of "a couple hours duration."[24] Fleuti was ordered deported[25] because he was excludable at the time of his reentry in 1956.[26] On appeal, the Supreme Court held that Fleuti's return from Mexico did not constitute an entry and that he therefore could not be deported. In so doing, the Court construed the intentional departure requirement of section 101(a)(13)[27] to require "an intent to depart in a manner which can be regarded as meaningfully interruptive of the alien's permanent residence."[28]

The Court's interpretation of section 101(a)(13)[29] looked beyond the plain words of the statute to incorporate what the Court described as a congressional intent "to ameliorate the severe effects of the strict 'entry' doctrine."[30] In support of its construction the Court noted that the legislative history of section 101(a)(13)[31] refers specifically to *Di Pasquale* and *Delgadillo*,[32] both liberalizing decisions. The fact that the legislative history revealed no express congressional intent to exceed the holdings of those decisions did not hamper the Court.[33] In-

19 *Id.*

20 *Id.*

21 As noted in *Fleuti*, 374 U.S. at 457, *quoting* H.R. REP. NO. 1365, 82d Cong., 2d Sess. 32 (1952) and S. REP. NO. 1137, 82d Cong., 2d Sess. 4 (1952), both the House and Senate Committee Reports state:

> [E]arlier judicial constructions of the term entry in the immigration laws, as set forth in Volpe v. Smith (289 U.S. 422 (1933)), generally held that the term "entry" included any coming of an alien from a foreign country to the United States whether such coming be the first or a subsequent one. More recently, the courts have departed from the rigidity of that rule and have recognized that an alien does not make an entry upon his return to the United States from a foreign country where he had no intent to leave the United States (Di Pasquale v. Karnuth, 158 F.2d 878 (2d Cir. 1947)), or did not leave the country voluntarily (Delgadillo v. Carmichael, 332 U.S. 338 (1947)). *Id.* at 457 n.8.

22 8 U.S.C. § 1101(a)(13) (1976).

23 374 U.S. 449 (1963).

24 *Id.* at 450.

25 8 U.S.C. § 1101(a)(13) (1976). The Immigration and Nationalization Service (INS) instituted deportation proceedings against Fleuti in 1959 on the ground that at the time of his return from Mexico Fleuti, a homosexual, was "afflicted with a psychopathic personality" under INA § 212(a)(4), 8 U.S.C. § 1182(a)(4) (1952) and was therefore excludable as an alien falling under "one or more classes of alien excludable by the law existing at the time of entry." *Id.* § 241(a)(1), 8 U.S.C. § 1251(a)(1) (1952). The Ninth Circuit set aside a deportation order holding that § 212(a)(4) was unconstitutionally vague for failing to adequately define "psychopathic personality". Fleuti v. Rosenberg, 302 F.2d 652, 657 (9th Cir. 1962). The Supreme Court granted certiorari to the Ninth Circuit to consider the constitutionality of § 212(a)(4). However, the Court decided the case on the issue of statutory interpretation.

26 *See* note 24 *supra*.

27 8 U.S.C. § 1101(a)(13) (1976) provides an exception to entry: "[A]n alien having a lawful permanent residence in the United States shall not be regarded as making an entry . . . if the alien proves . . . that his departure to a foreign place . . . was not intended . . . ." *Id.*

28 374 U.S. at 462.

29 8 U.S.C. § 1101(a)(13) (1976).

30 374 U.S. at 462.

31 8 U.S.C. § 1101(a)(13) (1976).

32 *See* note 21 *supra*.

33 374 U.S. at 458. Justice Clark pointed out in dissent that the actual language of *Delgadillo* creates no exception for an alien who "plainly expected" to depart. *Id.* at 460 (Clark, J., dissenting).

stead, the Court declared that Congress "could not have meant to limit the meaning of the exceptions it created in § 101(a)(13) to the facts of those two cases"[34]—a statement without direct supporting authority.[35]

The Supreme Court's nonrestrictive reading of section 101(a)(13)[36] in *Fleuti* was intended to prevent the harshness of excluding or deporting a resident alien whose brief stay outside the country did not meaningfully interrupt his status as a United States resident.[37] The Court suggested that whether an interruption of permanent residence is meaningful should be determined by examining the length of the resident alien's absence, whether travel documents were necessary for his departure, the purpose of his trip, and "other possibly relevant factors to be developed by the gradual process of judicial inclusion and exclusion."[38] It has been this invitation to engage in the "gradual process of judicial inclusion and exclusion" which has left the characteristics of a meaningful interruption unsettled.[39] Today there exists no clear, uniform standard for determining what constitutes a meaningful interruption. The absence of an ascertainable standard creates the possibility of inequitable and unpredictable applications of the law.

III. Current Status of the *Fleuti* Doctrine

Lower courts have applied the *Fleuti* doctrine in two related areas of immigration law. One line of cases attempts to mold the rather ambiguous language of *Fleuti* into an ascertainable standard for determining when a returning alien makes an "entry." The other line of cases applies *Fleuti*'s language to a limited statutory exception allowing aliens to petition the Attorney General for an exemption from deportation under INA section 244(a)(1).[40] Both lines of cases confront the question of whether an alien's absence is meaningfully interruptive of his physical presence in the United States, and both apply the same test.

A. *Entry Cases*

"The precise limits of the *Fleuti* principle are still being debated."[41] Although lower courts faced with "entry" questions have followed the liberalizing trend of *Fleuti*, they have all but abandoned the factors suggested by the Supreme Court for determining a meaningful interruption of physical presence. Instead, these courts have considered factors not mentioned in *Fleuti*. For exam-

34 374 U.S. at 458.

35 Justice Clark noted that the plain words and legislative history of the statute are clear. An entry is "any coming" of an alien unless his departure was unintended or involuntary. The statute does not exempt voluntary, intentional excursions outside the United States. *Id.* at 465-66.

36 8 U.S.C. § 1101(a)(13) (1976).

37 374 U.S. at 460-61.

38 *Id.* at 462.

39 *See* 1 C. GORDON & H. ROSENFELD, *supra* note 2, § 4-37.

40 8 U.S.C. § 244(a)(1) (1976) provides that the Attorney General may suspend deportation if in his opinion deportation would cause (1) "extreme hardship" to an alien who has been continuously physically present in the United States for seven years, or (2) exceptional and extremely unusual hardship to an alien who has ten years of continuous physical presence. The cases which utilize *Fleuti* to test for continuous physical presence developed primarily in the Ninth Circuit. *See*, Git Foo Wong v. INS, 358 F.2d 151 (9th Cir. 1966); Wadman v. INS, 329 F.2d 812 (9th Cir. 1964); Kamheangpatiyooth v. INS, 597 F.2d 1253 (9th Cir. 1979); Chan v. INS, 610 F.2d 657 (9th Cir. 1979). *See also* Heitland v. INS, 551 F.2d 495 (2d Cir. 1977).

41 Gordon, *supra* note 5, at 18.

ple, in *Lozano-Giron v. INS*[42] the Seventh Circuit announced that the uprooting caused by deportation is an important factor for consideration. Whether uprooting has occurred depends on the alien's family ties, his property or employment interests in the United States, the nature of the environment to which he would be deported and his relationship with that environment.[43] Additional factors suggested by other courts include whether the alien has minor children who are legal residents or citizens of the United States,[44] whether the alien is legally present in the United States, whether he relied upon deceptive methods to secure reentry[45] and whether his journey outside the country qualified him for more useful employment.[46]

In addition to considering new factors in assessing whether a meaningful interruption of physical presence has occurred, the lower courts have also arrived at divergent interpretations of the factors enunciated in *Fleuti*. This is most apparent with the "purpose of visit" factor. *Fleuti* stated that the strict admission requirements accompanying entry would be applicable if the purpose for which the alien left the country was contrary to the policies of the immigration laws.[47] The Fifth Circuit held in *Vargus-Banelos v. INS*[48] that an alien who became involved in illegal smuggling during a brief stay in Mexico did not make an entry on his return because he did not form an intent to commit the crime prior to departure. Conversely, in *Palatian v. INS*,[49] the Ninth Circuit held that illegal activity destroys the innocent character of an absence regardless of whether the unlawful purpose was formed before or after the alien's departure.

As long as *Fleuti* remains the controlling case in this area, lower courts will have to struggle with the parameters of the "purpose" test. Such confusion is unnecessary. The time at which the intent to commit an act contrary to immigration policy was formed should not be the basis for differentiating among returning aliens. If differentiation is desired the focus should be upon the nature of the illegal act committed, not the timing of the decision to commit such an act.

B. *The Continuous Presence Cases*

The most significant modifications of the *Fleuti* decision have involved the "continuous presence" line of cases. Section 244(a)(1) of the INA[50] permits deportation to be suspended if (1) the Attorney General finds the alien is of good moral character, (2) deportation would cause extreme hardship, and (3) the alien has been physically present in the United States continuously for not less than

42 *See* note 5 *supra*.
43 *Id.* at 77-78. *See generally* Gordon, *supra* note 5, at 18.
44 Zimmerman v. Lehmann, 399 F.2d 943 (7th Cir.), *cert. denied*, 381 U.S. 925 (1965).
45 Heitland v. INS, 557 F.2d 495 (2d Cir. 1977).
46 Longoria-Castenada v. INS, 548 F.2d 233 (8th Cir. 1977).
47 374 U.S. at 462.
48 Vargas Banelos v. INS, 466 F.2d 1371 (5th Cir. 1972). Compare this holding with that of Yanez-Jaques v. INS, 440 F.2d 710 (5th Cir. 1971). In that case a resident alien traveled to Mexico armed with an ice pick for the express purpose of extracting revenge from two men who had beaten and robbed him. The alien returned to the United States when he was unable to find his intended victims. The court found an intent to commit a criminal act prior to departure but held that there was no entry because the evidence did not show any intent to disrupt permanent residence.
49 Palatian v. INS, 502 F.2d 1091 (9th Cir. 1974); *accord*, Longaria v. Castaneda v. INS, 548 F.2d 233 (8th Cir. 1977).
50 8 U.S.C. § 1254(a) (1976).

seven years.[51]

In attempting to define continuous physical presence for purposes of section 244(a)(1),[52] the Ninth Circuit, in *Wadman v. INS*,[53] found the definition of a "meaningfully interruptive absence" to be controlling. The court found no significant distinction between the tests for continuous presence and entry[54] and hence applied the *Fleuti* test to determine whether an absence was meaningfully interruptive of the alien's continuous presence.

It was the "continuous presence" line of cases which actually came to grips with the inherent ambiguity that characterized *Fleuti* and the subsequent decisions attempting to integrate its meaningful interruption test. *Kamheangpatiyooth v. INS*[55] was the first decision in which the three-factor test of *Fleuti* was held not to be dispositive of the continuous presence issue. This case involved a native of Thailand who entered the United States in 1964 with authorization to remain until 1976. When he failed to leave the country at the specified time, the Immigration and Naturalization Service (INS) instituted deportation proceedings. Petitioner applied for suspension of deportation under section 244(a)(1) of the INA,[56] but was rejected because he had left the country for one month in 1970 to visit his dying mother. The immigration judge and Board of Immigration Appeals applied the three-factor test of *Fleuti* and found petitioner wanting on all three.[57]

On appeal, the Ninth Circuit reversed. Although the court acknowledged the principle of the *Fleuti* decision, it found that the lower court's focus on the three-factor test was incorrect. The court held the *Fleuti* test "only relevant as evidence of whether an absence reduced the significance of the whole seven-year period as reflective of the hardship and unexpectedness of exposure to expulsion."[58] *Kamheangpatiyooth* incorporated the liberalizing rationale of *Fleuti*, which was designed to relieve the harshness that would result from a literal interpretation of INA sections 101(a)(13) and 244(a)(1). At the same time the Ninth Circuit enunciated a standard more in line with the recent "entry" and "continuous presence" decisions than *Fleuti*. Subsequent Ninth Circuit cases have extended *Kamheangpatiyooth* so as to reduce the influence of *Fleuti*.[59]

IV. Recent Development

Several recent Ninth Circuit cases indicate that the liberal trend initiated by

51 *Id.*

52 *Id.*

53 329 F.2d 812 (9th Cir. 1964); *see* note 10 *supra*.

54 329 F.2d at 815. The Supreme Court recognized the nexus between continuous presence and the entry doctrine in *Fleuti*. The Court rationalized its nonrestrictive reading of § 101(a)(13) on the basis of the definition of "continuous residence" for purposes of naturalization, citing 8 U.S.C. § 1427 (1952). 374 U.S. at 459. Continuous presence cases may similarly be relied upon for a progressive interpretation of the *Fleuti* doctrine in future "entry" cases.

55 597 F.2d 1253 (9th Cir. 1979); *accord*, Chan v. INS, 610 F.2d 651 (9th Cir. 1979); DeGallardo v. INS, 624 F.2d 85 (9th Cir. 1980). *See generally* Comment, *Suspension of Deportation: A New Approach to the Continuous Physical Presence Requirement*, 10 GOLDEN GATE L. REV. 303 (1980).

56 8 U.S.C. § 1254(a)(1) (1976).

57 The immigration judge found that petitioner's 30 day trip covered several thousand miles and required travel documents. Thus the trip qualified as a meaningful departure under *Fleuti*. 597 F.2d at 1257.

58 597 F.2d at 1257.

59 See notes 56-60 *infra* and accompanying text.

Fleuti has gained momentum. In *Chan v. INS*,[60] the Ninth Circuit held that length of absence is not determinative of whether an absence meaningfully interrupts continuous physical presence. The court suspended deportation of an alien and his spouse even though each had taken trips interrupting continuous physical presence in the United States for as long as three months at a time. In reversing the deportation order the Ninth Circuit considered the personal hardship of deportation, the fact that petitioners had reason to suspect their travels would jeopardize their resident status, and the fact that at least one spouse always remained in the United States while the other was outside the country.[61]

In *De Gallardo v. INS*[62] the petitioner overstayed her student visa and was ordered deported. Referring to the *Kamheangpatiyooth* decision, the Ninth Circuit overturned the deportation order despite petitioner's three-and-one-half month interruption of continuous physical presence and her use of a false pretext to reenter the country.[63]

Recently, in *Plasencia v. Sureck*,[64] the Ninth Circuit affirmed a district court's ruling that an alien apprehended while reentering the United States in an attempt to smuggle illegal aliens into the country was not subject to exclusion in a summary proceeding at the border. The court held that the INS could proceed against such a person only in a deportation proceeding. Although the petitioner may still be deported on basis of an illegal entry, the removal of the threat of summary exclusionary hearings for resident aliens in this situation represents a significant procedural safeguard.

Although *Plasencia* is consistent with the liberal purpose of the *Fleuti* doctrine, the practicality of its approach highlights *Fleuti*'s ineffectiveness. *Plasencia* guarantees that aliens returning to the United States will not be excluded at the border and thus eliminates a particularly harsh element of the reentry doctrine.

V. Conclusion

Today resident aliens face a situation in which statutory language authorizes practices which are not in line with current immigration policy. Unfortunately, that policy is applied under such a fluid set of standards that resident aliens are unable to predict accurately what type of visit outside the country will be held meaningfully interruptive. Returning aliens face the potential danger that a court might dredge up strict statutory language and arbitrarily select factors which will result in their deportation.

The Supreme Court attempted in *Rosenberg v. Fleuti* to alleviate the harshness of the reentry doctrine. This was by no means objectionable. Construing the immigration laws to reduce the harshness and unpredictability of narrowly

60 610 F.2d 651 (9th Cir. 1979).

61 *Id.* at 654-55. Although not mentioned as determinative, a factor which impressed the court sufficiently to cause it to discuss it in depth was the petitioners' background. The Chans entered the United States as nonimmigrant students in 1968. Dr. Chan had worked since 1975 as a Senior Scientist for General Atomic Co. researching new energy sources. Mrs. Chan had an advanced degree in pharmacy and at the time of appeal was chief pharmacist at Pomorado Hospital in San Diego County. *Id.* at 653.

62 624 F.2d 85 (9th Cir. 1980).

63 Mrs. DeGallardo took a three and one-half month vacation in 1973 which interrupted the continuity of her 15 year physical presence in the United States. Upon returning she obtained a permit to reenter the country on the pretext that she intended to stay only a few days.

64 637 F.2d 1286 (9th Cir. 1980).

worded statutes is a desirable response to an unfortunate situation. Recent case law, particularly in the Ninth Circuit, indicates the liberal approach in "entry" and "continuous presence" cases can be expected to continue. The *Fleuti* decision, however, no longer provides a workable standard for resolving those issues.

It is time the immigration laws were amended to reflect current policy and enforcement practice. A solution which has been urged time and again and which clearly reflects current practice is to amend the law to state that "any alien who returns to an unrelinquished domicile in the United States, whether lawful or unlawful, after a temporary absence abroad should not be deemed to have made a new entry."[65] The continuous physical presence requirement of INA section 244(a)(1) could also be reworded to reflect the concept of unrelinquished domicile. For example, the Attorney General could be statutorily allowed to suspend deportation of any alien who has maintained an unrelinquished domicile in the United States for a continuous period of not less than seven years, if he meets the requirement of good moral character and can show extreme hardship as result of deportation. Such an amendment would ensure that all resident aliens are measured by the same standard. Although the concept of unrelinquished domicile is not inherently objective it does offer a familiar standard. It also removes the irrationality of subjecting a person to stricter immigration laws merely because he ventured outside the country. Rewording the INA to incorporate the unrelinquished domicile test would introduce a measure of predictability and standardization into what is now an unpredictable area of immigration law.

Arnold G. Gough

65 Maslow, *Deportation Law: Proposals for Reform*, 56 COLUM. L. REV. 309, 328-29 (1956), *citing* PRESIDENT'S COMMISSION ON IMMIGRATION & NATURALIZATION, WHOM SHALL WE WELCOME. *See also* Comment, *supra* note 2.