

Supreme Court Finds That Filing a False Tax Return Is Grounds for Deportation

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On February 21, 2012, the Supreme Court issued a decision in *Kawashima v. Holder*, holding that a conviction under Section 7206 for willfully filing a false U.S. tax return (or aiding and abetting the filing of a false tax return) amounts to an "aggravated felony" under the Immigration & Nationality Act. The case arose from the removal (deportation) proceedings of Akio and Fukado Kawashima, lawful permanent residents of the United States since 1984, who underreported their business income on a 1991 corporate tax return for a sushi restaurant they owned. The Internal Revenue Service (IRS) filed criminal charges against the Kawashimas in 1997. The couple pleaded guilty to the charges under Section 7206 and paid \$245,000 in back taxes and penalties. Years later, the Department of Homeland Security initiated removal proceedings against the Kawashimas, arguing that their convictions constituted aggravated felonies under the immigration laws. In February, the Supreme Court agreed, putting an end to a split among the U.S. circuit courts regarding whether tax fraud can be classified as an aggravated felony. **Filing a False Tax Return Is An Aggravated Felony under INA § 101(a)(43)(M)(i)** The Supreme Court ruled that a conviction for filing a false tax return under Section 7206 constituted an aggravated felony because it was a crime involving fraud and deceit in which the loss to the victim exceeded \$10,000; therefore, meeting the definition of an aggravated felony. The Supreme Court found that the conviction was an aggravated felony despite the fact that Section 7206 does not expressly include fraud or deceit as formal elements of the crime. The Court held that even though the words "fraud" or "deceit" do not appear in the criminal statute, the elements of the offenses necessarily involved fraudulent or deceitful conduct. The court also concluded that the \$10,000 loss to the victim element of the aggravated felony definition may include loss to the government in the form of tax revenue. Under the immigration laws, any foreign national (including any lawful permanent resident), who is convicted of an aggravated felony after April 1, 1997, is subject to removal from the United States. **The Significance of the *Kawashima* Ruling for Lawful Permanent Residents** The Supreme Court's ruling has sent shock waves throughout the resident alien community as the decision has far-reaching implications for non-U.S.

citizens. Justice Ginsberg, in her dissent, recognized that the Court's decision sweeps a broad array of federal, state, and local tax offenses - including misdemeanors - into the aggravated felony category even where fraud or deceit is not an element of the crime. It is important to note, however, that the ruling only applies to criminal tax violations, not civil claims which result in repayment. The ruling sends a portentous warning to legal immigrants throughout the country, especially small-business owners in the U.S. and those aliens with foreign income and assets. For example, the decision could trigger deportation for a lawful permanent resident who failed to report a foreign bank account on his or her U.S. tax return. Under the IRS code, permanent resident aliens are required to disclose all income arising from foreign bank accounts, foreign employment, foreign corporations, foreign partnerships, and foreign trusts, among others on their U.S. tax returns. The ruling also carries implications for individuals who prepare tax returns for foreign nationals because it encompasses aiding and abetting the filing of a false tax return. The Court's decision highlights the importance of engaging qualified tax preparers who can properly assist individuals to navigate the IRS's intricate tax code and prepare accurate U.S. tax returns to avoid criminal or civil liability and, now, deportation.

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