

Vartelas v. Holder, 566 U.S. 257 (2012)

FACTS

Lawful permanent resident Panagis Vartelas pleaded guilty to a felony in 1994. Vartelas took a week trip to Greece in January 2003, and upon returning to the United States, an immigration officer asked about his 1994 incident. He subsequently was served a notice to appear for removal in March 2003 for his prior criminal conviction, a verdict of a moral turpitude. His waiver application and his appeal to the Board of Immigration was dismissed by an immigration judge; he was ordered back to Greece.

A motion was made to the BOI to reopen the case to see if he could have used the argument that his prior lawyer failed to raise that is if 8 U.S.C. § 1101(a)(13)(C)(v) could be used. The court said that the ineffectiveness of his lawyer did not harm him, but he could use a new clause of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 retrospectively. A motion was submitted to the United States Court of Appeals for the Second Circuit which was denied. A motion was filed to the United States Supreme Court. The Court ultimately remanded it to the lower court for reconsideration because the Court determined the usage of IIRIRA was unconstitutional. The Flauti Doctrine, *Rosenberg v. Flauti*, 374 U.S. 449 (1963), was allowed to be used to allow Panagis back legally to the United States.

ISSUE(S)

When a lawful permanent residents takes a trip abroad for a short trip, can they be denied reentry if they have a felony?

Can the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 be used for a conviction from 1994?

Did Congress “in the spirit of the law” create a new immigration law to be used retroactively?

Can the Flauti Doctrine be used as a precedent for Vartelas?

RULE(S)

Illegal Immigration Reform and Immigrant Responsibility Act of 1996: Changes to the Immigration and Nationality Act, effective April 1, 1997

8 U.S.C. § 1101(a)(13)(C)(v): 1229b(a): An Attorney General can cancel an alien who is deportable if that person was not convicted of any aggravated felony.

Rosenberg v. Flauti, 374 U.S. 449 (1963): The Flauti Doctrine supports a LPR entering into the United States from short travels abroad.

ANALYSIS

Having lawful permanent status gives aliens certain rights. They can reside indefinitely in the United States with rights to travel, work, and to petition for relatives to be granted LPRs. In 1994, the law for LPRs that had certain convictions were unable to be eligible for reentry back into America. Governing laws changed in 1996 with different requirements, IIRIRA. Vartelas's new lawyer claimed the lack of competence of his former lawyer could be used for an appeal, and 8 U.S.C. § 1101(a)(13)(C)(v): 1229b(a) could be used instead. The BOI would not grant the

appeal but said IIRIRA could be used. The new law allowed LPRs to reenter under certain conditions.

The argument that his lawyer did not do its due diligence in the case was not an effective argument for an appeal and instead said that using IIRIRA was possible. The legal way for Vartelas to keep living in the United States was to use precedent law of *Rosenberg v. Flauti*, 374 U.S. 449 (1963). The Court ruled that a new law cannot be used for the standard in this case with good reason. The new law although favorable for Vartelas does not have the power be used, and thus it is unconstitutional. Laws can be used prospectively and not retroactively.

HOLDING

Certiorari was granted. The case was remanded to a lower court where The Flauti Doctrine was used to allow Vartelas back into the United States.