

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant v. Kuo Liu, Respondent; 8  
U.S.C. § 1324a Proceeding; Case No. 90100102.

**ORDER DENYING RESPONDENT'S MOTION IN LIMINE**

(September 14, 1990)

On July 19, 1990 Respondent filed a Motion in Limine seeking to exclude certain evidentiary items anticipated to be offered by Complainant, to wit:

-Testimony of Gerald W. Noland regarding all events which took place during and following the illegal entry of the Liu household by Special Agents Noland and Winkler on or about 2/11/1989, all investigatory notes from Special Agent's [sic] interview of Emelita Sampino dated 3/10/1989 and 3/15/89.

-Order To Show Cause issued on Elvie Domo.

-Order To Show Cause issued on Leonides Historillo.

-The entire immigration record of Elvie Domo's deportation hearing.

-Form I-213 for Emelita Sampiano.

-Form I-213 for Leonides Historillo.

-Form I-213 for Elvie Domo.

-Investigative reports by Randall Winkler regarding apprehension of Elvie Domo and events that took place that day.

-Investigative reports by Gerald Noland regarding the apprehension of Elvie Domo and the events that took place at that time.

-Any other statements, documents, reports, or testimony which the Service cannot prove were obtained through sources totally unrelated to the illegal entry into the Liu's residence on or about 2/11/89.

Respondent bases his objections upon a single premise, i.e., that INS entry into the Liu home was illegal due to its failure to secure either a search warrant or, in the alternative, valid consent to search without one. Respondent accordingly argues that all evidence obtained as a result of that entry should be suppressed.

In support of its Brief in Opposition to Respondent's Motion in Limine, Complainant submits affidavits from two INS officers who conducted the interview with Ms. Domo at the Liu home; these affidavits detail the particulars of the purported consensual encounter. Although Complainant does address the issue of Ms. Domo's authority to consent, it merely makes factual assertions concerning her authority and fails to provide any legal foundation for its conclusion that she possessed sufficient authority to consent to the INS' entry into the Liu home.

I deny in its entirety Respondent's Motion to suppress the evidence. For the reasons that follow, I postpone examination of each item on its own merit to determine its admissibility, and the weight, if any, to be accorded it, until, if at all, it is offered at the evidentiary hearing.

It is well-settled that the Fourth Amendment warrant requirement extends to administrative searches, including investigations by the INS. See, e.g., Blackie's House of Beef, 659 F.2d 1211, 1223 (D.C. Cir. 1981) (extending the warrant requirement to INS procedures for workplace raids, concluding that ``an intrusion upon commercial premises, even if motivated by a valid regulatory purpose, is unconstitutional absent a proper warrant or exigent circumstances''); Marshall v. Barlow's Inc., 436 U.S. 307 (1978) (Occupational Safety and Health Act inspections require a warrant); Almeida-Sanchez v. U.S., 413 U.S. 266 (1973) (invalidating the warrantless search of an automobile conducted twenty-five miles from the border where no probable cause existed to justify the stop); Illinois Migrant Council v. Pilliod, 398 F.Supp. 882 (N.D. Ill. 1975) (8 U.S.C. § 1357 does not authorize warrantless searches of private dwellings and finding no valid consent where agents of INS knocked on the doors of several dormitories and a residence in the early morning hours and then entered to conduct a search); Camara v. Municipal Court, 387 U.S. 523 (1967) (warrant requirement can only be avoided in event of public emergency, routine licensing inspections of highly regulated industries or consent).

Consent is one of the recognized exceptions to the warrant requirement. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). When seeking to justify a search on the basis of consent, the government has the burden of establishing that consent was freely and voluntarily given. Bumper v. North Carolina, 391 U.S. 543, 548 (1968). Voluntariness is a question of fact to be determined from the totality of the circumstances. Schneckloth, 412 U.S. at 249. See e.g., U.S. v. Mendenhall, 446 U.S. 544, 558-59 (1980) (the Court looks to the suspect's age, education level and knowledge of a right to refuse consent in considering whether consent to a body search was volun-

tary); Tukes v. Dugger, No. 88-5685, \_\_\_\_\_ U.S. \_\_\_\_\_ (Sept. 7, 1990) (in deciding whether a suspect voluntarily consented to a search the Court considers the voluntariness of defendant's custodial status, presence of coercive police procedures, defendant's awareness of a right to refuse to consent, the defendant's education and intelligence and the extent and level of defendant's cooperation with police).

Even where consent is found to be voluntary, however, a search will only be upheld if the individual purporting to have given such consent possessed ``common authority over or other sufficient relationship to the premises or effects sought to be inspected'' to consent to an entry and search. United States v. Matlock, 415 U.S. 164, 171 (1974). Moreover, the government's burden of showing valid consent is ``especially weighty'' when the consent is that of a third party. Villine v. United States, 297 A.2d 785, 786 (D.C. 1972).

In the present case, neither party contests the absence of a warrant. The sole issue, then, is whether Elvie Domo voluntarily consented to the INS entry onto the Liu premises and, if so, whether she had the requisite authority to consent.

Because the inquiry in this case hinges upon questions of fact which cannot be resolved on the basis of the pleadings alone, I decline to grant Respondent's Motion in Limine. Both the legal and factual issues raised by Respondent can be revisited during the evidentiary portion of the hearing, when both parties will have the opportunity to more fully develop the facts upon which these questions turn.

**SO ORDERED.**

Dated this 14th day of September, 1990.

MARVIN H. MORSE  
Administrative Law Judge