Posner: Immigration Court The 'Least Competent' Agency

By **Allissa Wickham**

Law360, New York (January 3, 2017, 10:39 PM EST) -- Seventh Circuit Judge Richard Posner unleashed a fiery dissent in a deportation case on Friday, blasting the immigration courts as the "least competent federal agency" and arguing that the petitioner in the case was "railroaded by the immigration judge."

Ushering out last year with his own display of rhetorical fireworks, Judge Posner laid into the immigration court system in a sharp-tongued dissent issued with the Seventh Circuit's Dec. 30 ruling, tearing into the agency's basic competency.

"This case involves a typical botch by an immigration judge," Posner wrote. "No surprise: The Immigration Court, though lodged in the Justice Department, is the least competent federal agency, though in fairness it may well owe its dismal status to its severe underfunding by Congress, which has resulted in a shortage of immigration judges that has subjected them to crushing workloads."

The appeal involved an immigrant named Jose Chavarria-Reyes, a Mexican citizen. According the Seventh Circuit's ruling, an immigration judge had ordered Chavarria-Reyes deported after finding that he didn't have authorization to be in the U.S. and was ineligible for relief since he had committed a so-called "crime of moral turpitude."

The appeals panel said that Chavarria-Reyes didn't challenge those findings, but argued that the judge was mistaken in neglecting to tell him about the option of voluntary departure, according to the ruling. But the appeals court said that an exhaustion requirement blocked it from greenlighting Chavarria-Reyes' petition, saying he was seeking relief hinging on an argument he didn't previously make.

However, Judge Posner called the deportation proceeding "cursory" and "farcical," saying that Chavarria-Reyes was provided no chance to lay out his work history, to show his family status or to pledge to exit the U.S. if given voluntary departure. Posner asserted that "Chavarria-Reyes was railroaded by the immigration judge."

"But by arguing both that the immigration judge had erred by failing to grant him voluntary departure and that he was denied due process at his removal hearing, Chavarria-Reyes placed the Board of Immigration Appeals on notice that the immigration judge had made a hash of her duty to inform him of the availability of voluntary departure," he argued.

He concluded that the court should have nixed the deportation order and sent back the case.

A spokesperson with the U.S. Department of Justice said the agency was declining to comment. An an attorney for Chavarria-Reyes did not respond to a request for comment.

Chavarria-Reyes is represented by Matthew J. Singer, Eileen Boyle and Joshua Edward Liebman at Novack & Macey LLP.

Attorney General Loretta Lynch is represented by James A. Hurley.

The case is Jose Chavarria-Reyes v. Loretta Lynch, case number 15-3730, in the U.S. Court of Appeals for the Seventh Circuit.

--Editing by Mark Lebetkin.