266 U.S. 113 (1924)

TOD, COMMISSIONER OF IMMIGRATION,
v.
WALDMAN ET AL.

No. 95.

Supreme Court of United States.

Argued October 20, 21, 1924.
Decided November 17, 1924.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

117 *117 *Mr. Assistant Attorney General Donovan,* with whom *Mr. Solicitor General Beck* and *Mr. Harry S. Ridgely* were on the brief, for petitioner.

Mr. Max J. Kohler for respondents.

118 *118 MR. CHIEF JUSTICE TAFT, after stating the case as above, delivered the opinion of the Court.

We think that the complaint of the Government is well founded. The petitioners in the writ of *habeas corpus* were aliens who had not been legally admitted to the country — that is, neither the immigration authorities nor the court had held that they were entitled to admission. The immigration authorities had ordered their deportation. The Circuit Court of Appeals merely found that in the course of the examination by the immigration authorities the relators had not been given a fair opportunity to appeal to the Secretary of Labor as provided by the statute. This denial of appeal did not give to them a right to admission to the country. In the due and orderly disposition of the writ of *habeas corpus,* relators should not have been discharged and their bail released, but the order should have been framed so as to secure the benefit of the appeal to the relators, to which the court by its decision had held them entitled. To discharge them was to take them out of the proper custody of the government authorities pending their admission or exclusion, was to entail upon the Government the affirmative and initial duty of re-arresting them and was improperly discharging the security for their response to any lawful order of the immigration authorities. The mere fact that by re-arrest the Government would not be confronted by any judgment of *res judicata* did not suffice. The power of the court in such a case is indicated by § 761 of the Revised Statutes in reference to *habeas corpus.* The section provides that a court or justice or judge shall proceed in a summary manner to determine the facts of the case by hearing the testimony and arguments and thereupon to dispose of the party as law and justice require. The law and justice here required under the decision of the
119 Circuit Court of Appeals was that the *119 case should be sent to the District Court with instructions to remand the petitioners to the custody of the immigration authorities, to await the result of the appeal from the judgment of deportation to the Secretary of Labor.

Counsel for the Government urge that under three decisions of this Court, *Chin Yow* v. *United States,* 208 U.S. 8, 13, *Kwock Jan Fat* v. *White,* 253 U.S. 454, and *Ng Fung Ho* v. *White,* 259 U.S. 276, the question with respect to which the petitioners have not been given a fair hearing should now be remanded to the District Court for its decision. Without saying that the circumstances might not arise which would justify such a variation in the order from that which we now direct, we do not think that the course taken in the cases cited should guide us here. In those cases the single question was whether the petitioner was a citizen of the United States before he sought admission, a question of frequent judicial inquiry. Here the questions are technical ones involving the educational qualifications of an immigrant in a language foreign to ours, and the medical inquiry as to effect of a physical defect on the probability of a child's being able to earn a living or of becoming a public charge. The court is not as well qualified in such cases to consider and decide the issues as the immigration authorities. The statute intends that such questions shall be considered and determined by the immigration authorities. It would seem better to remand the relators to the hearing of the appeal, by the Secretary and his assistants, who have constant practice and are better advised in deciding such questions.

We concur with the Circuit Court of Appeals in its criticism of the record in this case in that it does not set out more fully the details of the test applied in the examinations. The record is defective also in not showing the definite rulings of the
120 Commissioner or the Board of Inquiry on the issues made by Mrs. Waldman in her *120 evidence. This made clear her claim that she and her children were refugees from religious persecution relieving her from an educational test; but no finding appears in the record on this point either by the Board or the Department on appeal. The mere implication that the claim must have been passed on adversely to her because the language test was applied is not enough. If the

necessary finding was in fact made, it should be made part of the record. We agree with the Circuit Court of Appeals also that the absence from the record of any finding by the Department on appeal as to the issue whether the lameness of Zenia, one of the children, affected her ability to earn a living or made her likely to become a public charge, is a defect. The inquiry and finding should have been made. If made, the record should disclose it. If not made, the inquiry should be made and the finding recorded.

We see no reason, therefore, why upon the appeal which it is now decided the Secretary of Labor must afford the relators, he should not consider and make a definite finding on the issues made by the petition, to wit, first, whether the relators are not relieved from the test as to language because they are refugees from religious persecution; second, whether, if it be necessary, a proper test as to the reading knowledge of Yiddish only, which Mrs. Waldman had, was sufficient to meet the requirements of the statute, and, if not, to order another; and, third, whether the lameness of Zenia Waldman is likely to affect her ability to earn her living or to make her a public charge. The order of the Circuit Court of Appeals is reversed and modified in accordance with this opinion, with instructions to remand the petitioners to the custody of the immigration authorities to await the hearing on the appeal before the Secretary of Labor. Failing the
121 granting and hearing of the appeal within thirty days after the coming down of the mandate herein, the relators *121 and their bail are to be discharged. *Mahler* v. *Eby,* 264 U.S. 32, 46.

Reversed and remanded to the District Court for further proceedings in conformity with this opinion.