

95 Phil. 785

[G.R. No. L-6017. September 16, 1954]

ONG SE LUN AND GO UAN, PETITIONERS AND APPELLEES, VS. THE BOARD OF IMMIGRATION COMMISSIONERS AND HON. JOSE P. BENGZON, AS ACTING COMMISSION OF IMMIGRATION, RESPONDENTS AND APPELLANTS.

D E C I S I O N

REYES, J.B.L., J.:

This is an appeal by the Board of Immigration Commissioners and the Commissioner of Immigration, represented by the Solicitor-General, from a decision of the Court of First Instance of Manila ordering them to desist from carrying out the orders for the arrest and deportation of the appellees herein, Go Uan and her minor children, Ong Ana and Ong Bun Juan.

It appears that appellees Go Uan and her children, Ong Ana and Ong Bun Jua, are Chinese nationals who, on their last arrival in the Philippines on May 8, 1948, were admitted here as "temporary visitors"; that to guarantee their departure from this country upon the expiration of their temporary stay, Ong Se Lun (husband of Go Uan and father of Ong Ana and Ong Bun Jua) put up in their behalf a cash bond of P4,500 (Exhibit 10); that upon their request, said immigrants Go Uan, Ong Ana, and Ong Bun Jua, were granted by the Immigration authorities several extensions of their temporary visit in this country, the last of which expired on February 9, 1950; that despite the expiration of the last period granted them, they continued to remain in these islands, wherefore warrants for their arrest were issued by the Immigration Office on the charge that their stay in this country as temporary visitors had already expired (Exhibits 1, 2 and 3); and that thereafter, the Bureau of Immigration, acting through a Board of

Special Inquiry, conducted an investigation in 1950 regarding the charges against said aliens Go Uan, Ong Ana, and Ong Bun Jua.

During the hearing and investigation the appellees Go Uan, Ong Ana, and Ong Bun Jua claimed that although they were allowed to reenter this country as temporary visitors, they had, immediately after their arrival, applied for a change of status; that their case was submitted to a Board of Special Inquiry designated by the Commissioner of Immigration and that after investigation, the Board in its decision of October 26, 1948, admitted them as "returning residents" (Exhibit A), finding that they had first entered the Philippines in 1936 as the wife and children of Ong Se Lun, a resident merchant of Iloilo City; that sometime in March, 1941, Ong Se Lun and his family, the appellees herein, departed for China for a vacation, being provided with the corresponding reentry permits; that Ong Se Lun returned soon afterward but appellees Go Uan, Ong Ana and Ong Bun Jua stayed behind in China for a longer stay, but were prevented from returning by the outbreak of the last war; that after cessation of hostilities, being unable to secure permission to reenter due to loss of their reentry permits and inability to establish their former residence, appellees entered the Philippines as temporary visitors.

After the 1950 hearing, the Board of Special Inquiry unanimously found the respondent aliens to have remained in the Philippines in violation of the limitation or condition under which they were admitted as temporary visitors, and ordered their deportation (Exhibit 5); and accordingly, warrants of deportation were issued against them (Exhibits 6, 7, and 8). Pending availability of transportation to China, the respondent aliens were required to increase their cash bond to P4,000 as well to put up an additional surety bond of P6,000 for each one, so that their warrant of deportation would be held in abeyance; and because of their failure to comply with these requirements, their arrest for the purpose of placing them under the custody of the Commissioner of Immigration was ordered. To prevent their arrest and deportation, appellee Go Uan and her husband, Ong Se Lun, petitioned the Court of First Instance of Manila for a writ of prohibition ordering the Board of Immigration Commissioners and the Acting

Commissioner of Immigration to desist from carrying out the orders for the deportation of the immigrants Go Uan, Ong Ana, and Ong Bun Jua.

After trial, the Court of First Instance found the decision of the Board of Special Inquiry of October 26, 1948 (admitting said aliens as returning aliens) to have become final and conclusive, so held that the subsequent proceedings for their deportation were null and void; and ordered the respondent Immigration Commissioners to desist from carrying out the orders of deportation. From this judgment, the Board of Immigration Commissioners and the Commissioner of Immigration have appealed to this Court.

The question for this Court to determine is whether or not under the facts of the case, the Commissioner of Immigration has the power and authority to deport the aliens Go Uan, Ong Ana, and Ong Bun Jua.

No controversy exists on the fact that these aliens were admitted to this country as “temporary visitors”. And the law is to the effect that temporary visitors who do not depart upon the expiration of the period of the stay granted them are subject to deportation by the Commissioner of Immigration for having violated the limitation or condition under which they were admitted as non-immigrants (Immigration Law, Sec. 37(a), subsection (7); C. A. 613, as amended). The period for the temporary visit of these aliens, Go Uan, Ong Ana, and Ong Bun Jua having already expired, they are, under the law, liable to deportation by the Commissioner of Immigration.

The finding of the 1948 Board of Special Inquiry, purporting to declare the status of appellees as aliens entitled to reside permanently in these islands (Exhibit A), is not binding on the appellant Immigration Commissioners, for three reasons:

(1) Under the law then in force, the Boards of Inquiry only “have authority to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded” (C. A. 613, sec. 77(b), and nowhere in the law are these Boards conferred power to determine whether an alien who has already landed or

entered as “temporary visitor” should be admitted for permanent residence.

(2) Because the decision of the Board (Exhibit A), like that of any other administrative body, does not constitute *res judicata* so as to bar reexamination of the alien’s right to enter or stay (Pearson vs. William, 202 U. S. 1029; 50 L. Ed. 281; Flynn ex rel Haw Loy Wong vs. Ward, 95 F. (2d) 742; Loy vs. Cahill, 81 F. (2d) 809).

(3) Because the Immigration regulations specified that—

“An alien who is admitted as a non-immigrant can not remain in the Philippines permanently; nor will he be allowed to remain after he relinquishes his non-immigrant status...

“To obtain permanent admission, a non-immigrant alien must depart voluntarily to some foreign country (any one in which he can secure admission), and procure from the appropriate consul the proper visa and thereafter undergo examination by officers of this Bureau at a Philippine port of entry, for determination of his admissibility in accordance with the requirements of the Immigration Law.” (Bulletin No. 1 of the Bureau of Immigration, concerning the Immigration Law, C. A. 613, November 22, 1940).

The requirement that the alien should first abandon the Islands before seeking permanent admission therein is justified by the consideration that in accepting the status of a temporary visitor the alien in effect accepts that he is not entitled to permanent admission; and to allow him to change his status without first departing (as he obligated himself to do) would be encouraging the entry of aliens on false pretenses. Considerations of convenience or efficiency must yield to the definite and express policy of the Republic in its dealings with aliens; and it is well to note that the procedure outlined in Immigration Bulletin No. 1 was sanctioned and reiterated in practically the same terms by Republic Act No. 503, section 3. An alien’s presence

and stay in this country being a matter of privilege, he must be held to a strict observance of the laws concerning his admission.

It is finally contended that the appellee aliens were not given the benefit of notification and hearing in the deportation proceedings against them. This claim is belied by the records. Exhibit 4 is a transcript of the proceedings, and it appears therein that the appellees were not only present at the hearing, but they had the benefit of counsel and adduced evidence in their behalf.

For the above reasons, the judgment appealed from is reversed, and the writ of prohibition applied for by the petitioners Ong Se Lun and Go Uan is denied. Costs against petitioners-appellees Ong Se Lun and Go Uan.

Paras, C.J., Pablo, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, and Concepcion, JJ., concur.
