

NG GIOC LIU (ALIAS VICENTE UY), PETITIONER, VS. THE SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, RESPONDENT.*G.R. No. L-2175. March 31, 1950*

Ponente: REYES, J.

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Sometime in September, 1947, Ng Gioc Liu, alias Vicente Uy, presented to the Department of Foreign Affairs a letter from the Commissioner of Immigration, requesting that the Philippine consulate at Amoy, China, be authorized to issue a returning resident visa to Mariano Uy as an unemancipated minor son of said Ng Gioc Liu, the Commissioner being satisfied that this minor was born in Manila in 1928, but that, having gone to China in 1930 to study and having stayed there since then, he has to have a visa to return to the Philippines. As the Commissioner's request was not granted, Ng Gioc Liu came to this Court with a petition for a writ of mandamus to compel the Secretary of Foreign Affairs to authorize the issuance of the visa in question. Answering the petition, the Solicitor General, on behalf of the respondent, denies the non-immigrant status of the minor Mariano Uy and alleges as a defense, among other things, that the giving of a visa is not a ministerial act that may be compelled by mandamus and that the Government has already adopted the policy of not considering as bona fide residents those aliens who left the Philippines before 1941 and had not returned at the time the said policy was adopted in 1946.

The Immigration Act of 1940, which is still in force, permits resident aliens who leave the Philippines for a temporary visit abroad to return to the Philippines provided they have not relinquished their residence here. Upon returning they are considered non-immigrants, but they are required by section 10 of the Act to present for admission into the Philippine unexpired passports and valid passport visas issued by a consular officer. Section 12 directs that passport visa be not issued to an applicant who fails to establish satisfactorily his non-immigrant status or whose entry into the Philippines would be contrary to the public safety.

It is obvious from the legal provisions above cited that a visa is not issued as a matter of course to anyone applying for it. In the case of a non-immigrant, the law directs that he must first establish satisfactorily his status as such and the consular officer, on his part, has to satisfy himself that the applicant's entry into the Philippines would not be contrary to the public safety. The matter obviously requires an investigation by the consular officer issuing the visa. And it should be stated in this connection that although the foreign service has been placed under the over-all direction and supervision of the Department of Foreign Affairs by Executive Order No. 13 (42 Off. Gaz., 2064), this does not necessarily mean that the Department Secretary takes the place of the consular officers abroad in the matter of the issuance of passport visas, for the Secretary can not relieve those officers of their responsibility under the law. This is in accord with the practice in the United States where the State Department at Washington, D. C., "does not and will not take any interest to direct the issuance of visas by the various consulates in foreign countries," for the reason that "to do so would relieve the consul of his responsibility." (U. S. Immigration, Exclusion, Deportation and Citizenship by Sydney Kansas, p. 70). The reason of the law in

conferring upon the consuls themselves the duty and power to grant passports and visas is obvious. The applicant for a visa is in a foreign country and the Philippine consular officer there is naturally in a better position than the home office to determine through investigation conducted on the spot whether or not the said applicant is qualified to enter the Philippines.

The determination of whether or not an applicant for a visa has a non-immigrant status and whether or not his entry into this country would be contrary to public safety, is not a simple ministerial function. It involves the exercise of discretion and cannot therefore be controlled by mandamus. The fact that the Commissioner of Immigration has made his own investigation and is himself satisfied that the applicant is entitled to his claim is immaterial. For the consular officers are not bound by the findings and conclusions of the immigration office.

The petition for mandamus is, therefore, denied, with costs against the petitioner.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

REYES, J.:

I hereby certify that Mr. Justice Montemayor, who is now in Baguio, took part in the consideration of this case and voted in favor of the decision.

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