

GRADY EDWARD JOHNSON, PETITIONER AND APPELLEE, VS. THE COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLANT.

G. R. No. L-9888. May 29, 1957

Ponente: REYES, A., J.

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REYES, A., J.:

This is a petition for habeas corpus.

Petitioner, an American citizen who had been residing in the Philippines since his discharge from the United States Navy in 1946, was on February 10, 1955 issued an alien certificate of registration which he, however, surrendered on that same day upon issuance to him of an emigration clearance certificate for a short visit abroad and a re-entry permit that was good up to May 10, 1955. On February 15 of that same year he left for abroad, but he returned two months later, armed with a non-immigrant passport visa on the strength of which he was allowed to land and stay here as a "temporary visitor" for a period not exceeding two weeks. After the expiration of that period, he was notified by the immigration authorities to leave the country not later than July 12, 1955 or else face deportation proceedings. And as he chose to remain, notwithstanding the expiration of the period of grace, he was ordered arrested by the Commissioner of Immigration on charge of having violated the limitation of his stay here. Following his arrest, he was, with benefit of counsel, formally investigated by a board of special inquiry, and upon the investigation being concluded, that board submitted its findings and recommendation to the Board of Commissioners as provided by law.

Before the Board of Commissioners could render its decision, the petitioner applied in the Court of First Instance of Manila for a writ of habeas corpus alleging that he had been illegally arrested and was being detained despite presentation of his re-entry permit prior to the date of its expiry.

The petition was opposed by the respondent Commissioner of Immigration. But after hearing, it was granted by the lower court on the grounds that, having already surrendered his re-entry permit and given back his alien certificate of registration—which entitles him to reside here permanently—petitioner had a right to remain.

From this decision the respondent immediately appealed to this Court. But despite perfection of the appeal, the lower court ordered petitioner's release on bail.

The appellant has raised various questions, among them that of the propriety of the court's receiving evidence not presented to the board of special inquiry, the evidence consisting of petitioner's testimony to the effect that the reason why he sought re-entry on a transit visa was because, while in Singapore, he received a message from his wife in Manila, asking him to pick her up for she also wanted to go abroad, and the Philippine consul in that city, upon being consulted on the matter, advised him to obtain a transit visa; but that, finding his wife sick upon his arrival here, he decided to remain and surrendered his re-entry permit.

Without need of going into all the questions raised, we think the petition for habeas corpus must be denied as premature, the same having been filed before the Board of Commissioners of the Bureau of Immigration, the

agency primarily entrusted with the final determination of petitioner's right to stay permanently in the Philippines, has rendered its decision.

"In the absence of exceptional circumstances, habeas corpus proceeding to prevent deportation is premature if proceedings are still pending before the Commissioner of Immigration." (U. S. ex rel. Loucas vs. Commissioner of Immigration, D.C.N.Y., 49 F. 2nd. 473, cited in 39 C.J.S. p. 528)

No exceptional circumstances have been shown to take this case out of the general rule. It is not even claimed, and indeed it does not appear, that the Board has been unduly delaying its decision. There is, therefore, in our opinion no justification for judicial interference.

"Unless it is shown that the deportee is being indefinitely imprisoned under the pretense of awaiting a chance for deportation or unless the Government admits that it can not deport him or unless the detainee is being held for too long a period our courts will not interfere. * * *'" (Borovsky vs. Commissioner of Immigration and Director of Prisons, 84 Phi], 151.) (Italics supplied.)

Wherefore, the decision appealed from is set aside and petitioner ordered recommitted to respondent's custody.

Bengzon, Padilla, Montemayor, Bautista, Angelo, Labrador, Conception, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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