

LBONCIO DAYATA, ALIAS SEE SING TOW, PETITIONER AND APPELLEE, VS. HONORABLE VICENTE DE LA CRUZ, AS COMMISSIONER OF IMMIGRATION, RESPONDENT AND APPELLANT.

G.R. No. L-8775. May 30, 1956

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a judgment of the Court of First Instance of Manila, enjoining the Commissioner of Immigration from causing the arrest of Leoncio Dayata alias See Sing Tow, a resident of China, without benefit of bail or bond until his petition for admission as a Filipino citizen could be resolved by the Board of Special Inquiry of the Bureau of Immigration.

From the pleadings, stipulation of facts and papers referred to therein, it appears that the said Leoncio Dayata had applied for documentation as a Filipino citizen with the Philippine consulate in Amoy and later in Hongkong when the consulate in Amoy was closed. Favorably recommended by the Philippine consulate in Hongkong, the matter was referred by the Department of Foreign Affairs to the Bureau of Immigration for comment and recommendation. The bureau returned the papers on October 27, 1950, stating that it could not make a favorable recommendation in view of inconsistencies between the testimony of the said Dayata and that of his alleged mother, but suggesting further investigation.

On December 17, 1953, Dayata came to Manila on the "S/S President Wilson" as a transit passenger and, allowed to land on shore pass solely for the purpose of undergoing a blood test to be conducted by the National Bureau of Investigation to determine his relationship with the alleged mother, he petitioned the Commissioner of Immigration that he be landed and temporarily released on bond to enable him to file an application for admission into this country. This petition was denied. But on the strength of a report subsequently submitted by the National Bureau of Investigation that "Leoncio Dayata is a possible son of the couple Coo Lu and Filomena Dayata," the denial was reconsidered and on December 18, 1953 Dayata was allowed to land under bond to guarantee his temporary stay in this country "during the pendency of his petition for documentation as a Filipino citizen."

In connection with the said petition for documentation, Attorney Constancio Trias of the Bureau of Immigration was named investigator, and in the investigation held by him, Dayata was allowed to present his evidence in support of his application. But before Trias could render his report, Dayata, on December 28, 1953, filed the present action in the Court of First Instance of Manila, alleging that the Commissioner of Immigration had threatened to cause his arrest on pain of detention without benefit of bail or bond if he did not proceed to Hongkong on December 29, 1953, with his petition for admission as a Filipino citizen still unresolved, and praying that the Commissioner be enjoined from doing so. Upon the action being filed, the court, without hearing the Commissioner, on that same day granted a writ of preliminary injunction.

On March 15, 1954, Trias, the investigator, submitted his "finding and recommendation" stating that he felt safe to conclude that Leoncio Dayata was in truth the illegitimate issue of Filomena Dayata, a Filipina, by her common

law husband Coo Lu, a Chinese, and was, therefore, a Filipino citizen at birth, and recommending approval of Dayata's application for documentation as a Filipino citizen. On March 22, 1954, the Acting First Deputy Commissioner forwarded the record of the investigation of Dayata's application for documentation as Filipino citizen to the Department of Foreign Affairs, and that department in turn referred the record to the Department of Justice on March 30. After going over the papers, the Department of Justice on May 14, through the Undersecretary of Justice, gave its opinion, disapproving of the finding and recommendation of Trias and declaring in effect that Dayata "is an impostor." The opinion says:

"This Department, in Opinion No. 131, s. 1952, and Commissioner of Immigration Diaz in his indorsement of October 27, 1950, ruled that because of glaring Inconsistencies in the evidence, See Sing Tow, the applicant, cannot be held to be the same person as Leoncio Dayata, alleged illegitimate child of Filomena Dayata.

"The attempt to explain the inconsistencies strengthens the conviction that the applicant; is an impostor.

"One of the inconsistencies pointed out is that while the applicant testified that his mother, Filomena Dayata, has gone to China, she and his father, Coo Lu, having accompanied him to China in 1932, Filomena Dayata, on the other hand, said that she did not go with his son on that occasion or any other occasion, for the truth is that she has never left the Philippines. The applicant's alleged father explains this contradiction by saying that his son's belief must have been due to the fact that a woman, their neighbor, was with them when they left Cagayan for Cebu on their way to China. This explanation is absurd because it is tantamount to saying that an eight-year old boy (Leoncio was that old) cannot recognize his mother, with whom he had been living since birth.

"The explanation of the second inconsistency is an incredible as that of the first. The applicant deposed that after accompanying him to China in 1932, his father never returned to the Philippines, having died in China in 1941, while the mother declared that Coo Lu came back to the Philippines and is in fact presently residing in Cebu City. The supposed father explains this by saying that his son must have thought that he died in China in 1941 because of the war in that year. The applicant himself gives the lie to this explanation when he said, in attempting to reconcile the conflicting statements, that he was misunderstood. By this, he necessarily meant to say that he did not make the statement that his father did not return to the Philippines and that he died in China in 1941, and that it was due to misunderstanding that he was erroneously thought to have made such statement. The contradiction was caused then, according to the applicant, not because he erroneously thought that his father died in China but because he was mistakenly understood to have made such statement. As to the applicant's claim that he was misunderstood, it is not seen how one could possibly misunderstand the simple assertion that his father returned to the Philippines and that he did not die in China in 1941 if these are what he really said.

"The third inconsistency is that while the applicant declared that he is the only child born to Filomena Dayata and Coo Lu, the applicant's supposed mother, Filomena stated that she has an elder child named Conchita. The explanations given by the applicant and his alleged mother mutually destroy one another. The mother declared that the applicant must have forgotten that he had a sister. The applicant, on the other hand, said that he thought it was not necessary to state that he had a sister, she being already dead—impliedly admitting that he knew he had a sister, contrary to his mother's allegation that he had forgotten he had a sister.

"The inconsistencies remain unexplained, and as they are of such a character that they could not occur in the testimonies of persons who are what they really claim to be, this Department reiterates its previous ruling and that of Commissioner Diaz denying See's application for documentation as a Filipino citizen.

"This Department does not consider itself bound under the law by the finding of the Board of Special Inquiry that the applicant is a Filipino citizen. Section 27 of the Immigration Act, as amended, it is believed, gives finality to the decisions of boards of special inquiry only in so far as they relate to the right of an alien to enter the Philippines but not in so far as they declare him to be a Filipino citizen. Besides, as already noted,

Commissioner of Immigration Diaz had previously ruled that the applicant is not a citizen of the Philippines. It is doubtful, moreover, whether the provision was meant to preclude an inquiry into the identity of an alien allowed to land as citizen where, as in the present case, there are grounds to believe that he is an impostor and consequently subject to deportation. Section 37 of the same act authorized the deportation of an alien who has succeeded in entering the Philippines thru false and misleading statements within five years after the cause for the deportation arises."

Despite the facts above set forth, the lower court found that the "finding and recommendation" of Trias were sustained by the evidence, that the said "finding and recommendation" were the decision of the Special Board of Inquiry, and that as the decision had not been appealed to or reviewed and reversed by the Board of Commissioners of the Bureau of Immigration within one year from March 15, 1954, the decision had become final in accordance with section 27(b) of the Philippine Immigration Act of 1940, so that Dayata was entitled to be documented as a Filipino citizen. The court therefore made permanent the preliminary injunction already issued. From this decision the Commissioner of Immigration appealed to the Court of Appeals, but that court has certified the case here as involving only questions of law.

It is contended in the first place that it was error for the lower court to consider the finding and recommendation of Trias as the decision of the Board of Special Inquiry. The point is, in our opinion, well taken. As pointed out by the Solicitor General, the law specifically provides that "every board of special inquiry shall be composed of a chairman and two members who shall be appointed by the President of the Philippines." (Section 27(a), Philippine Immigration Act of 1940, as amended.) This means that one man alone cannot take the place of the whole board nor could his "decision" be taken or have the effect of a decision of a board of special inquiry legally constituted. This point is important because the object of the law in having the investigation conducted by a board of three members is to minimize the danger from corruption to which cases of this kind frequently give rise. Needless to say, adherence to the requirement that there be three members in the board is essential to the accomplishment of the purpose of the law. And surely that purpose would be defeated or circumvented if a lone investigator were to take the place of a board of three members.

Furthermore, a board of special inquiry is created to inquire into cases for admission into the Philippines (section 26 and 27, Philippine Immigration Act of 1940) and not to pass upon applications for documentation as a Filipino citizen. As pointed out by the Solicitor General, inquiry into an application for documentation is a different and distinct process. He says:

"A case for documentation, it should be explained, involves an original application for registration as a Philippine citizen in a Philippine Consulate abroad. In pursuance with the administrative procedure adapted to coordinate investigations concerning claims to Philippine citizenship, such application is endorsed to the Bureau of Immigration for investigation of such persons in the Philippines, who may be able to establish the alleged Philippine citizenship of the applicant abroad. The records of such investigation are then referred to the Department of Justice for opinion. Once said opinion is rendered, the papers of the case are then returned to the Department of Foreign Affairs, which in the last analysis, has the final authority to decide whether to approve or deny the application for documentation. In making its decision, the Department of Foreign Affairs may or may not follow the opinion rendered by the Department of Justice."

It is pointed out, however, that following the submission of the report of the National Bureau of Investigation, Dayata filed his petition for admission as a Filipino citizen, and this seems to be borne out by what appears on pages 20 to 25 of the record on appeal. But it does not appear that a board of special inquiry was formed to inquire into a petition of that kind. On the other hand, Trias's report itself says that he treated Dayata's motion for investigation as one for a "reconsideration of the previous decision denying the original application of the subject for documentation." And even assuming that Trias also inquired into the question of the appellee's right to

admission to the Philippines, he could not by himself alone render a binding decision for the Board of Special Inquiry because under section 27(6) of the Philippine Immigration Act of 1940, as amended by Republic Act No. 543, for a decision of the board to be valid and binding the concurrence of any two of its members is necessary. The action taken by the Acting First Deputy Commissioner of Immigration, Francisco de la Rosa, in forwarding the record of the investigation made by Trias to the Secretary of Foreign Affairs for transmittal "to the Philippine consulate in Hongkong for whatever action it may deem proper to take in the premises" cannot be legally taken as concurrence on De la Rosa's part in Trias' findings and recommendations, first, because the letter of transmittal does not so state, and second, because De la Rosa does not appear to have been designated a member of a board of special inquiry to look into the matter of Dayata's admission into this country. It does not even appear that any such board was appointed, and the statement in De la Rosa's indorsement (on page 60 of the record on appeal) that the investigation was "conducted by the Board of Special Inquiry," is without factual basis.

It must not also be overlooked that section 27(b) of the Immigration Act provides:

"The decision of any two members of the board shall prevail and shall be final unless reversed on appeal by the Board of Commissioners as hereafter stated, or, in the absence of an appeal, unless reversed by the Board of Commissioner after a review by it, *motu proprio* of the entire proceedings within one year from the promulgation of said decision."

And in that connection, we have to agree with the Solicitor General that the lower court was in error in saying that the "decision" of Trias as the decision of the Board of Special Inquiry became final because it was not appealed to, reviewed *motu proprio* or reversed by the Board of Commissioners within one year from its promulgation on March 15, 1954. The court's statement is without basis because its own decision, which contains the statement, is dated August 27, 1954, and at that time barely 5 months had elapsed from the time Trias rendered his so-called decision, which was on March 15 of that same year.

In view of the foregoing, the decision appealed from is hereby reversed and the writ of injunction issued by the court below ordered dissolved, with costs against the appellee.

Paras, C. J., Bengzon, Padilla, Motemayor, Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endenda, JJ., concur.

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