

AURORA VILLAMIN SY, PETITIONER AND APPELLANT, VS. HON. COMMISSIONER AND BOARD OF COMMISSIONERS OF IMMIGRATION, RESPONDENTS AND APPELLEES.

G.R. No. L-21453. November 29, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal from a decision of the Court of First Instance of Manila rendered upon a stipulation of facts.

On November 4, 1949; Chiu Wan Hong, a Chinese citizen came to the Philippines and was admitted therein as a non-immigrant or temporary visitor. Over five (5) years later, or on December 18, 1954, the Commissioner of Immigration hereinafter referred to as the Commissioner, caused petitioner herein, who claims to be Aurora Villamin Sy, to be arrested preparatory to proceedings for her deportation, upon the charge:

"That on November 4, 1949, as CHIU WAN HONG she arrived in this country as passenger of PAL PI-C 108 and was admitted on her documentation as non-immigrant; that posing as AVEORA VILLAMIN SY, she secured Alien Certificate of Registration No. A-214333 which was made to appear to have been issued in Sta. Cruz, Laguna, on January 10, 1946; that said Alien Certificate of Registration form was delivered to the Municipal Treasurer of Pagsanjan, Laguna, only on October 8, 1948; that on July 17, 1950, as AURORA VILLAMIN SY, she was able to secure Alien Certificate of Registration No. A-34554; that as AURORA VILLAMIN SY, she was able to secure Immigrant Certificate of Residence No. 58668 on or about December 27, 1950; that in her affidavit application for the issuance of an Immigrant Certificate of Residence and in the investigation under oath conducted on Dec. 22, 1960, concerning said affidavit, she, as AURORA VILLAMIN SY, made it appear that she was born in Cavinti, Laguna, on July 17, 1932, her parents being Sy Sing Pic and Luisa Villamin; that her stay in this country as non-immigrant has already expired. (par. 1, stipulation of facts; Annex 3, Answer)."

Petitioner was, on December 24, 1954, provisionally released on bail. On July 15, 1955, after due investigation conducted by or hearing held before a Board of Special Inquiry, the same submitted its report finding petitioner guilty as charged. This finding was, on December 8, 1955, affirmed in a decision of the Board of Commissioners, hereinafter referred to as the Board. Petitioner sought, on January 3, 1956, a reconsideration of said decision, which was denied on February 22, 1956. Meanwhile, or on January 12, 1956, the Commissioner had issued a warrant for petitioner's deportation, but from January 18, 1956 to October 1, 1962, her counsel had asked, and evidently secured, several extensions for the execution of said warrant. Three (3) days after the last request, or on October 4, 1962, petitioner commenced in the Court of First Instance of Manila this proceeding for habeas corpus against the Commissioner and the Board, upon the ground that she is not Chiu Wan Hong. In due course, said court rendered the decision appealed from, denying said relief, with costs against the petitioner. Hence this appeal by the latter.

In the "statement of the case and of the facts" made in her brief, petitioner avers that this appeal should have been forwarded, not to this Court, but to the Court of Appeals, because the main issue in the case is allegedly one of

fact, namely, whether Aurora Villamin Sy is the same Chiu Wan Hong. This was, to be sure, the issue raised before and passed upon by the immigration authorities, but it was not the one submitted for determination in the court of first instance, nor is it the question to be resolved in this appeal.

This is a special proceeding for habeas corpus, established to inquire into the legality of one's detention or confinement (Rule 102, section 1, Revised Rules of Court; *Duarte vs. Dade*, 32 Phil., 36; *Quintos vs. Director of Prisons*, 55 Phil., 304; *Cruz vs. Martin*, 75 Phil., 11). Petitioner claims that she is entitled to a writ of habeas corpus, because the warrant for her deportation is allegedly illegal or void. Having been issued in compliance with a decision of the Board, the legality of said warrant depends upon that of said decision. It is not denied, however, that said Board had the authority to investigate, hear and determine the truth of the above quoted charges, particularly whether petitioner herein, who claims to be Aurora Villamin Sy, is the same Chiu Wan Hong, a Chinese subject, admitted as a temporary visitor, whose right to stay, as such, in this country has expired over ten (10) years ago. Petitioner maintains, contrary to the findings of said Board and of the Board of Special Inquiry which investigated the matter, that she is not the aforementioned Chiu Wan Hong. In short, she assails the correctness of said findings – a matter which affects the wisdom, not the validity of the decision of the Board.

It is urged that said decision is not based upon substantial evidence. But this pretense raises a question purely of law, and, for this reason, the parties had merely submitted this case for decision in the court of first instance upon a stipulation of facts. It is obvious, therefore, that the present appeal is within our exclusive jurisdiction, not that of the Court of Appeals.

Referring now to the merits of said legal question, the record shows that the finding of the Board of Special Inquiry and that of the Board of Commissioners to the effect that petitioner is the same Chiu Wan Hong was based upon a comparison of the pictures of both. In this connection, the report of the Board of Special Inquiry, which was affirmed by the Board of Commissioners, says:

"After a careful comparison and study made between the picture of CHIU WAN HONG appearing on page 21 of our portrait-parle TV book and that of AURORA VILLAMIN SY appearing on AGR No. 34554, it has been found out that a strong resemblance exists as to the following features:

- 1) Contour of the nose, the bases of which are both elevated (sic) and the projections the same;
- 2) Lips and eyebrows are the same as to thickness;
- 3) Ears are both of contour square and both posterior borders are concave; and .
- 4) Both faces are oval in shape.

"In view of the foregoing, the undersigned is of the opinion and honest belief that the pictures in question belong to one and the same person."

This is substantial evidence, sufficient prima facie to sustain the conclusion reached by the two (2) boards. Petitioner, as such, has the burden of showing that said conclusion is erroneous, but it has not introduced any proof to this effect, either in the Bureau of Immigration or in the court of first instance. She did not even offer to present as evidence in this case the pictures alluded to in said report, in order that the lower court and this Court could visually check the accuracy of said conclusion.

The weight thereof is assailed upon the ground that it is based on a comparison between photographs, "not with the original subject". But, the record indicates clearly that petitioner did not appear personally before the Board of Special Inquiry, thus making it impossible for the latter to do the very thing she now alleges said body should have done. In fact, the memorandum of a Special Agent of the Bureau of Immigration marked as Annex 8 (p. 44,

Record of the court of first instance) shows that said agent had gone several times to petitioner's registered address before October 1, 1962, to apprehend her, pursuant to the warrant issued for her deportation, but she was never found in said address, and the reasons given by the members of the household, as well as the other attending circumstances, led the agent to conclude that she was hiding. In fact, the communications of her own counsel seeking extensions of time to surrender her to the authorities (Annexes 6 and 7, pp. 42 and 48, of said record) state that she was "not available for immediate production". In other words, it was within petitioner's power to refute the accuracy of the conclusion now disputed by her – if it were erroneous – by the simple expedient of her appearance before the Board of Special Inquiry, the Board of Commissioners and/or the court of first instance. It is thus clear that her failure to do so was due to the conviction that such appearance would have confirmed, instead of refuting, said conclusion.

Lastly, this case was not instituted until October 4, 1962, or almost seven (7) years after the rendition of the decision of the Board of Commissioners on December 8, 1955 and the issuance of the warrant for her deportation on January 12, 1956. Pursuant to our ruling in *Lim Son vs. Commissioner of Immigration*, L-18622 (October 30, 1962), which is squarely in point, the present action is barred by the principle of laches.

Wherefore, the decision appealed from is hereby affirmed, with costs against the herein petitioner. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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