1997 DEPORTATION RULES OF PROCEDURE

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EXCLUSIVE JURISDICTION OF THE BOARD OF COMMISSIONERS

Under Book IV, Title Ill, Chapter 10, Sec. 31 of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987, the Board of Commissioners (hereinafter called the BOARD, for brevity), a collegial body, compose of the Commissioner of Immigration and the two Associate Commissioners, was granted exclusive jurisdiction over all deportation cases.

BOARD OF COMMISSIONERS EN BANC

Pursuant to the mandate of Executive Order No. 292 and in the interest of public service, effective immediately, all deportation cases shall be heard and determined by the Board of Commissioners sitting en banc. The Commissioner shall act as Chairman and the two Associate Commissioners as Members, except in the absence of the Commissioner, one of the Associate Commissioners shall act as Chairman. In any case coming before the BOARD, the decision of any two members shall prevail. Hence, the BOARD exercises authority, inter alia, to:

1. Hear charges, evaluate evidence, formulate conclusions and decide deportation cases, including self-deportation and summary deportation judgment.

2. Compel the attendance of the alien charged before BOARD, order the cancellation and forfeiture of the bail bond in favor of the government and order the arrest of the accused for willful disregard of any lawful order of the BOARD, summon and/or subpoena witnesses and require the production of documents by subpoena duces tecum.

3. Review on appeal or motu propio the decision of the Board of Special Inquiry (hereinafter called BSI, for brevity) on admission and exclusion cases, including citizenship and other cases within the jurisdiction of the BSI as provided for in LOI 20

AUTHORITY OF THE COMMISSIONER OF
IMMIGRATION TO PRESCRIBE DEPORTATION RULES OF PROCEDURE

Under the Section 37(c) of the Immigration Act, “no alien shall be deported without being informed of the specific grounds for deportation nor without being given a hearing under the rules of procedure to be prescribed by the Commissioner of Immigration.”

Pursuant to the authority granted by Section 37(c) of the Immigration Act, the 1997 Deportation Rules of Procedure promulgated under this Office Memorandum shall be observed. All rules of procedure affecting deportation cases that are inconsistent with this new rules of procedure on deportation cases are hereby revealed and revoked.

COMPLAINT FOR DEPORTATION

Deportation is not the preferred remedy for criminal charges which can be filed with the Office of the Prosecutor or for administrative charge which can be filed with the proper administrative agency. A written complaint for

deportation shall be referred to the Law & Investigation Division, Office of the Special Prosecutor.

Complaints for criminal offenses and civil obligations shall not be entertained. The complainant shall be advised to file his complaint with the proper administrative agency handling preliminary investigation or to the court in case of civil obligations.

Complaints for deportation filed by private persons must be in writing and under oath. It must specify the violation or violations committed by the alien and the name and address of the alien. Complaints not under oath and without the address of the complainant shall not be entertained. Complaints for deportation whether filed by private persons or an office investigation case shall be referred to the Intelligence Division or to the Law & Investigation Division for case build-up and gathering of evidence. The case as well as the evidence gathered shall then be forwarded to the Office of the Special Prosecutor of the Bureau for determination of a prima facie case for deportation. Legal Officers of this Bureau, by virtue of their functions with authority to take testimony or receive evidence, are hereby designated as Special Prosecutors. They shall have the power, to administer oath, summon witnesses as provided for in Book I, Chapter 9, Sec. 37, E.O. No. 292.

FILING OF CHARGE SHEETS

Special Prosecutors from the Law and Investigation Division are hereby directed to file with the Office of the Secretary of the Board of Commissioners the Charge Sheets for violation of Immigration laws and/or for undesirability under Book Ill, Title I, Chapter 3 of E.O. 292. The Special Prosecutor shall certify in the Charge Sheet, under oath that he has conducted the custodial and/or preliminary investigation and a prima facie case exist for violation of immigration laws and/or for undesirability. The BOC Secretary shall administer the oath pursuant to Book 1, Chapter, Sections 37 and 41 of E.O. 292.

SECRETARY OF THE BOARD OF COMMISSIONERS

The Board shall be assisted by a Lawyer who shall be designated as BOARD Secretary (hereinafter called BOC Secretary, for brevity) and shall avail the services of stenographers, interpreters and clerks.

The BOC Secretary shall keep a docket book for deportation cases, indicating therein: the docket number; the name of the person charged, including his date and place of birth, his nationality and if the passport is available, the country that issued the passport, the number and the expiry date; the date of the filing of charge sheet; and the alleged violation. He shall keep tract of the status of the case and prepare three copies of the records of the case. The original case records shall be kept by the BOC Secretary.

FILING OF PLEADINGS

All pleadings, including motions and appeal on deportation cases, request for bail and for Self and/or Voluntary Deportation shall be filed with the BOC Secretary. Copy of the request for bail shall be attached to the records case and immediately forwarded to the Commissioner for his decision. Deportation proceedings are administrative in character (Lao v. Fabre, 81 Phil. 682), hence the alien has no constitutional right to bail (Ong See Hang v. Commissioner of Immigration, 4 SCRA 442; Republic v. Cloribel, 9 SCRA 453; Carlson v. Landon, 342 US 524). Release on bail shall be denied, if the evidence of guilt is strong or the probability of jumping bail is high. The BOC Secretary shall notify the respondent of the charge or charges filed against him either in person or through mail to his last known address. If the address of the respondent is not known, the BOC Secretary then shall inform the BOARD of such fact and calendars the case for hearing.

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DEPORTATION PROCEEDINGS BEFORE THE BOARD

The BOARD shall meet regularly once a week to hear and determine deportation cases, except on urgent cases, shall at the call of the Chairman, meet to deliberate at any time during office hours. All proceedings before the BOARD shall be duly recorded and all orders, decisions, resolutions, judgment of the BOARD shall be in writing.

In case where the respondent is in the custody of the Bureau, he shall be informed of the charge or charges against him and shall be arraigned. He shall be allowed not more than three (3) days for the preparation of his defense. He shall have the right to be heard by himself or counsel, to produce witnesses in his own behalf, and to cross-examine the opposing witnesses. The deportation proceedings before the BOARD shall continue even if the respondent is not present provided respondent was duly notified of the proceedings. The BOARD shall hear evidence only at the trial in chief. It shall not hear rebuttal or sur-rebuttal evidence. Counsel shall conduct only direct and cross examination of the witness. He shall not conduct re-direct or re-cross examination. The prosecution shall first present evidence and rest its case. The defense shall present evidence and rest its case. Each party shall present no more than three (3) witnesses, unless the BOARD gives special permission. As a rule, in deportation proceedings, the alien has no right to a speedy and public trial (Zakonaite v. Wolf, 226 US 272). The BOARD shall direct parties to abbreviate the examination by developing a specific theory of prosecution or defense and may require counsel to file written memoranda. Written memoranda shall be brief and concise. It shall specify the facts sought to be disputed, and the legal provision sought to be applied.

Officers of the government entrusted in the determination of questions of expulsion, are not bound by the strict rules of evidence applied in courts (Bufalino v. Holland, 277 F 2d 270). The Rules of Court shall be applied when feasible, but are not compulsory.

The BOARD shall promulgate its judgment. In case of a deportation judgment, the BOARD shall require the Commissioner of Immigration to issue the warrant of arrest and warrant for deportation against the respondent pursuant to Sec. 37(a) of the Immigration Act. In case of dismissal of the deportation case, the BOARD shall order the refund of the cash bond posted by the respondent who is on bail. The respondent who is in the custody of the Bureau shall immediately be released.

CASES WHERE THE BOARD MAY ISSUE SUMMARY
DEPORTATION JUDGMENT

If a foreign embassy cancels the passport of the alien, or does not reissue a valid passport to him, the alien loses the privilege to remain in the country, under the Immigration Act, Section 10 and 15 (Schonemann vs. Santiago, et. al. G.R. No. 81461, 30 May 1989). The automatic loss of the privilege obviates deportation proceedings. In such instance, the Commissioner of Immigration shall require the Special Prosecutor of the Law & Investigation Division to file the corresponding charges before the BOARD and immediately present evidence to show that the passport of the alien indeed expired and/or cancelled. If the accused is in the custody of the Bureau, he shall be required to present evidence that he has a valid passport. The BOARD, on the basis of the evidence presented may issue summary judgment of deportation which shall be immediately executory.

Likewise, the Commissioner of Immigration shall require the Special Prosecutor of the Law & Investigation Division to file the corresponding charges of overstaying [violation of any of the limitation of stay as a non-immigrant under Sec. 37(a)(7) of the Immigration Act] before the BOARD and immediately present evidence to show that indeed the accused overstayed. If the accused is in the custody of the Bureau, he shall be required to present evidence that he has not violated any limitation or condition of his stay as a non-immigrant. The BOARD, on the basis of the evidence presented may issue summary judgment.

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Under Book Ill, Title I, Chapter 3, Sec. 10, the “decision of the Board of Commissioners which has jurisdiction over all deportation cases shall become final and executory after thirty (30) days from promulgation, unless within such period the President shall order the contrary.”

Under Sec. 38 of the Immigration Act, an “alien ordered deported shall, at the option of the Commissioner of Immigration, be removed to the country whence he came, or to the foreign port at which he embarked for the Philippines, or to the country of his nativity or to which he is a citizen or subject, or to the country in which he resided prior to coming to the Philippines.” An alien ordered excluded and deported shall be included in the Bureau’s Do not Admit List and/or Blacklist.

EFFECTIVITY

This 1997 Deportation Rules of Procedure shall take effect immediately.

Give a copy of this Memorandum to the University of the Philippines Law Center for information and guidance.

Adopted: 30 June 1997

(SGD.) EDGAR L. MENDOZA
Commissioner

Conforme:

(SGD.) JOSE B. LOPEZ
(SGD.) JOSE L. CABOCHAN
Associate Commissioners

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