

GO YU TAK WAI, PLAINTIFF-APPELLEE, VS. MARTINIANO P. VIVO, VIRGILIO GASTON AND MARCIAL RAÑOLA, IN THEIR CAPACITY AS COMMISSIONER AND ASSOCIATE COMMISSIONERS, RESPECTIVELY, COMPO...*G.R. No. L-22257. May 25, 1977*

Ponente: AQUINO, J.

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The Commissioners of Immigration appealed from the judgment of the Court of First Instance of Manila, holding that their decision excluding Go Yu Tak Wai for having abandoned her permanent residence was void because it was allegedly promulgated after the expiration of the statutory one-year period.

The lower court sustained the decision of the Board of Special Inquiry that Go Yu Tak Wai could be admitted as a returning resident in spite of her twenty-year absence. The Solicitor General in his notice of appeal indicated that the lower court's decision is contrary to law (Civil Case No. 54882).

Facts.- On November 8, 1961 Go Yu Tak Wai (who was born in 1903 and is now seventy-two years old) arrived in Manila on board a plane of the Cathay Pacific Airways. She is a widow. She was provided with a passport issued by the Commissioner of the Ministry of Foreign Affairs of the Republic of China stationed at Macao (Exh. J). Stamped on that passport was her immigration nonquota visa issued by the Philippine consulate at Hongkong (Exh. J-1).

On March 22, 1962 a Board of Special Inquiry, composed of Jose Y. Lim, Filomeno J. Soto and Gregorio de la Peña, investigated the application of Go Yu Tak Wai for admission as a returning resident.

The Board found that the applicant arrived in the Philippines for the first time in 1930 with her late husband, Jose Go, a permanent resident who operated a store at Villalobos Street, Manila. In 1941 the spouses left for China. Jose Go died in 1948 in Amoy, China. Due to the war and the occupation of China by the communists, the applicant was not able to return to the Philippines. Chua Guat, a Chinese resident who allegedly managed Go's store in his absence, and Arsenio Clarin, a Filipino who allegedly prepared the travel papers of the Go spouses in October, 1941, corroborated the claim of Go Yu Tak Wai that she was a returning resident.

The Board of Special Inquiry concluded that Go Yu Tak Wai had satisfactorily proven her right to admission as a returning resident notwithstanding her twenty-year absence from the Philippines and the fact that she had no reentry permit (Exh. A).

The decision of the Board of Special Inquiry was promulgated on March 27, 1962. It was reviewed *motu proprio* in the afternoon of March 11, 1963 by Martiniano P. Vivo, Acting Commissioner of Immigration, and by Virgilio N. Gaston and Marcial O. Rañola, Acting Associate Commissioners, all three sitting as a Board.

After due deliberation, they voted to exclude Go Yu Tak Wai (Exh. 7 and 7-A). That resolution is found in the

minutes of the meeting of the Board of Commissioners on March 11, 1963 as certified by its Secretary. The certification, Exhibit 6, page 149 of the record, reads:

"Republic of the Philippines

Department of Justice

BUREAU OF IMMIGRATION

M a n i l a

BOARD OF COMMISSIONERS

"It is hereby certified that, in the admission, returning resident case of Go Yu Tak Wai, female, 59 yrs. (I. C. No. 61-5271-C W. A. No. s. 196_) the Board of Commissioners voted as follows:

Actg. Commissioner Vivo Exclude

Actg. Ass. Com. Rañola Exclude

Actg. Ass. Com. Gaston Exclude

Manila, March 11, 1963.

(SGD.) PIO S. NOCHE

Secretary"

However, the Commissioners' decision in extenso, reversing the decision of the Board of Special Inquiry and excluding Go Yu Tak Wai by reason of her twenty-year absence, was not immediately rendered and promulgated. Their decision, dated March 11, 1963, was received by Go Yu Tak Wai by mail on August 28, 1963. On page 2 of the decision, below the typed name of Commissioner Gaston, there appear the following initials and date: "SE/al (8-13-63)" (Exh. H-1).

The initials "SE" were those of Sabino Esplanada, the lawyer of the Law and Investigation Division, Bureau of Immigration, who drafted the decision. The letters "al" were the initials of Angel Levanza, the stenographer who typed the draft. The figures "8-13-63" stand for the date, August 13, 1963, when the draft was typed for the Commissioners' signatures. The draft and the record of the case were circulated among the Commissioners during the period from August 13 to 26, 1963. On the latter date, the decision and the record were sent to the Records Section.

A duplicate original of the Commissioners' decision, together with a letter of transmittal signed by the Board Secretary and also dated March 11, 1963, was mailed on August 27, 1963 to Go Yu Tak Wai, who, as already noted, received it on August 28, 1963 (Exh. H to H-3).

In justifying the exclusion of Go Yu Tak Wai, on the ground of abandonment of her permanent residence, the Commissioners made the following observations:

"x x x it is manifest that subject is not entitled to admission as a returning resident after having been absent from this country for a period of twenty (20) years. Her taking up residence abroad cannot be considered as a temporary visit, which is a visit made by a departing alien with the intention of returning within the period prescribed by the rules and regulations of this Bureau.

"The allegations that Amoy was overrun by the communists in 1949, her failure to secure evidence for her application for a returning resident visa on account of abnormal conditions and her having lost contact with

Chua Guat, are not satisfactory and cogent reasons to warrant an exception or departure from the policy of this Bureau requiring those applying for reentry to return within the five-year period from their departure.

"The facts show that applicant had abandoned her permanent residence in this country, considering the length of time since her husband died in Amoy in 1948, that their business in the Philippines had been wiped out, and that, moreover, she has no immediate relatives in the Philippines." (Exh. B and H).

The law involved.- The Board of Commissioners is empowered to reverse *motu proprio* the decision of the Board of Special Inquiry within one year from the promulgation of the said decision. The Philippine Immigration Act of 1940, Commonwealth Act No. 613, as amended, provides:

"SEC. 27. x x x x x x x x

"(b) A board of special inquiry shall have authority (1) to determine whether an alien seeking to enter or land in the Philippines shall be allowed to enter or land or shall be excluded, and (2) to make its findings and recommendations in all the cases provided for in section twenty-nine of this Act wherein the Commissioner of Immigration may admit an alien who is otherwise inadmissible. For this purpose, the board or any member thereof, may administer oaths and take evidence and in case of necessity may issue subpoena and/or subpoena duces tecum. The hearing of all cases brought before a board of special inquiry shall be conducted under rules of procedure to be prescribed by the Commissioner of Immigration. The decision of any two members of the board shall pre-vail 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 Commissioners after a review by it, *motu proprio* of the entire proceedings within one year from the promulgation of said decision. At the conclusion of the hearing of any case, the board of special inquiry shall at once proceed to deliberate and decide on the merits thereof. The decision shall be promulgated and the findings and recommendation, in proper cases, submitted not later than two days from the date of the deliberation. Should the board of special inquiry need more time to make a written decision of findings and recommendation in view of the nature of the case, the chairman thereof shall report the case to the Commissioner of Immigration who may grant an extension of time if he considers it necessary.

"(c) An alien excluded by a board of special inquiry or a dissenting member thereof may appeal to the Board of Commissioners, whose decision in the case shall be final. The decision on appeal shall be put in writing and promulgated not less than seven days from the time the case is submitted for decision. In appeal cases, the alien shall have the right to be represented by an attorney or counsel who shall have access to the record of the board of special inquiry in the particular case on appeal." (As amended by Republic Act No. 503, II Philippine Permanent and General Statutes 596-597).

Issue.- The legal question in this appeal is whether, for purposes of section 27(b) of the Immigration Law, a resolution of the Commissioners which reversed the decision of the Board of Special Inquiry and which was adopted within one year from the promulgation of the said decision is sufficient or whether it is necessary that the Commissioners' written decision in amplification of the resolution of reversal or containing their findings, be promulgated within the said one-year period. That question is not new.

Ruling.- This Court had already held that "the operative date of the Commissioners' action is that when the resolution of exclusion was voted and adopted by them as a Board, regardless of the date when the decision in *extenso* was prepared, written and signed" because "the decision in *extenso* must relate back to the day when the resolution to exclude was adopted. Necessarily, the extended opinion had to be posterior to the day when the Commissioners voted and resolved to reverse the findings of the Board of Special Inquiry" (*Arocha vs. Vivo*, L-24844, and *Vivo vs. Arca*, L-24853, both decided on October 26, 1967, and reported in 21 SCRA 532, 538, per Justice J. B. L. Reyes; *Neria vs. Commissioner of Immigration*, L-24800, May 27, 1968, 23 SCRA 806, 815. Go *Oh vs. Vivo*, L-24898, March 31, 1971, 38 SCRA 228, 238).

Consequently, the Commissioners were justified in using March 11, 1963 as the date of their written decision although it was actually prepared or drafted on August 13, 1963 and was mailed to Go Yu Tak Wai on August 27, 1963 (Exh. H-3). The decision (Exh. A or H) related back to the date when the Commissioners deliberated on the decision of the Board of Special Inquiry and voted or resolved to reverse it or to exclude Go Yu Tak Wai.

Section 27(b) specifies that as a rule the decision of the Board of Special Inquiry "shall be promulgated and the findings and recommendations, in proper cases, submitted not later than two days from the date of the deliberation". The absence of such a requirement with respect to the decision of the Board of Commissioners supports the view that such decision need not be promulgated within the one-year period. It suffices that the Commissioners should review the decision of the Board of Special Inquiry and deliberate upon it within one year from the promulgation of the Board of Special Inquiry's decision and that the minutes of their deliberation should reflect the action which they took within the said statutory period.

Moreover, as noted by the Solicitor General, section 27(c) expressly requires that the decision of the Commissioners in case of an appeal from the decision of the Board of Special Inquiry, excluding an alien, should "be put in writing and promulgated not less than seven days from the time the case is submitted for decision". In contrast, no such requirement is provided for in section 27(b) with respect to the Commissioners' decision in case they motu proprio review the decision of the Board of Special Inquiry.

The trial court erred in holding that under section 27(b) a written decision should be signed and promulgated by the Commissioners within one year from the promulgation of the decision of the Board of Special Inquiry.

The thrust of the certiorari and prohibition case instituted by Go Yu Tak Wai in the lower court on September 3, 1963 was the alleged lack of power on the part of the Commissioners to review the decision of the Board of Special Inquiry after the supposed expiration of the one-year period. The merits of the Commissioners' decision of exclusion are not in issue.*

Inasmuch as we have found that the review was effected within the one-year period, it follows that the trial court's decision should be reversed. However, only six (6) Justices (Fernando, Makasiar, Muñoz Palma, Concepcion Jr., Martin, JJ. and the writer) voted for reversal.

Justice Teehankee filed a dissenting opinion in which the Chief Justice and Justice Antonio concurred. Justice Barredo also dissented.

WHEREFORE, for lack of necessary votes to reverse the trial court's decision, the same is considered affirmed. The Court has found it unnecessary to hold a rehearing. (Sec. 11, Rule 56, Rules of Court). No costs.

SO ORDERED.

Fernando, Makasiar, Muñoz Palma, and Martin, JJ., concur.

Castro, C.J., and Antonio, J., concur in the dissent of Justice Teehankee.

Teehankee, J., see dissenting opinion.

Barredo, J., dissents. He do not subscribe to the view that the operative date of the decision of the Commission is that when the members voted. His view is that it is the date of promulgation, if not the date of notice to the party aggrieved.

Aquino, J., certifies that Mr. Justice Concepcion Jr., who is on leave, voted to reverse the trial court's decision.

* As to the finality of the findings of the Board of Commissioners when such findings are in accordance with law, not vitiated by fraud or imposition and are reasonably supported by the evidence, see *Gonzaga vs. Vivo*, L-27030,

March 6, 1968, 22 SCRA 971; Manabat vs. De la Cruz, 103 Phil. 1127; Kaur vs. Commissioner of Immigration, 104 Phil. 1060 and Singh vs. Board of Commissioners of Immigration, 111 Phil. 143.

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SEPARATE DISSENTING OPINION

TEEHANKEE, J.:

I dissent on the ground that it is patent from section 27 (b) of the Immigration Act as cited on pages 4-5 of the decision penned by Mr. Justice Aquino that "the decision of any two members of the Board [of Special Inquiry] 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 Commissioners after a review by it, motu proprio of the entire proceedings within one year from the promulgation of said decision."

Such review and reversal of the decision of the board of special inquiry may be in two ways:

The first is a reversal on appeal by the Board of Commissioners "as hereafter stated" - which refers to the provisions of section 27 (c) of the Act. Said section 27 (c) provides that an alien excluded by a board of special inquiry or a dissenting member thereof [from a majority decision which either includes or excludes the alien][1] may appeal to the Board of Commissioners whose decision in the case shall be final and that "the decision on appeal shall be put in writing and promulgated not less[2] than seven days from the time the case is submitted for decision"; and

The second is by review motu proprio of the Board of Commissioners [of a decision either for inclusion or exclusion] "within one year from the promulgation of said decision." Such a decision of reversal must be put in writing and promulgated within the statutory one-year period and it is not sufficient or valid, as the decision would hold, that the Commissioners voted to reverse the special inquiry board's decision of admission of March 27, 1962 as per their minutes of March 11, 1963 although the decision of reversal dated March 11, 1963 was admittedly drafted only on August 13, 1963 and signed sometime between then and August 26, 1963 by the commissioners and actually promulgated and mailed on August 27, 1963, long after the expiration on March 27, 1963 of the statutory one-year period.

The Act's provisions as well as public policy support such a construction that requires that a resolution or decision of the Board of Commissioners on a review motu proprio of the special inquiry board's decision (whether of admission or exclusion) must be put in writing and promulgated with due notice on the party affected within the statutory one-year period of finality.

On the provisions of law involved, section 27 (b) of the Act provides mandatorily that "the decision [of the board of special inquiry] shall be promulgated and the findings and recommendation, in proper cases, submitted not later than two days from the date of deliberation." Section 27 (c) likewise provides for a summary period of seven days from submittal for decision within which the Board of Commissioners shall put in writing and promulgate its decision on an appeal of the alien or of a dissenting member of the board of special inquiry. Read in context, it seems obvious that the decision on a review motu proprio by the Board of Commissioners must be no less than a decision on appeal by either party, viz, it must be duly put in writing and promulgated within the more than

adequate one-year period fixed by the Act.

Public policy and due process buttress such a construction. Where the alien has appealed from an adverse decision or a dissenting special inquiry board member has appealed a favorable decision, the applicant for admission knows as mandated by the law that a final decision must be handed down within seven days from submittal of the appeal for decision. Where there has been no appeal and the Board of Commissioners conducts a review *motu proprio* of which the applicant is likely unaware, both public policy and due process demand that where no adverse decision is promulgated within the statutory one-year period of finality, the decision of the special inquiry board shall have become final and beyond the Commissioners' authority to reverse or set aside thereafter. (Otherwise, such one-year period would be an elastic rather than a fixed period and would have no meaning, as in this case where the appellee would have been ordered excluded by a decision of reversal promulgated five months after the lapse of the one-year period.)

Such a view is certainly in consonance with the law's policy of a definite date of fixed finality of the special inquiry board's decision - be it of inclusion or exclusion of an alien - and to reduce to the minimum any opportunity or occasion for anomalies and irregularities in the admission or exclusion of aliens and applicants for admission under the procedures for appeal or review *motu proprio* established by the Act. In *Neria vs. Commissioner of Immigration*,^[3] the Court through the now Chief Justice precisely noted a deliberate ante-dating by six days of the Board of Commissioners' action of reversal *motu proprio* of the special inquiry board's admission and declared the decision of reversal null and void, ruling that "the said decision of the Board of Immigration Commissioners, and the warrant of exclusion issued on the strength of such decision, are therefore, as correctly found by the lower court, null and void, for 'lack of jurisdiction', since the decision of the Board of Special Inquiry No. 1 by that time had already become 'final.'"

[1] All notes in brackets supplied.

[2] An obvious error - "not less" should read "not later" as in sec. 27 (b).

[3] 23 SCRA 806, 816-818.

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