

**GO KIONG OCHURA AND GO ZUI OCHURA,
PETITIONERS-APPELLEES, VS. COMMISSIONER OF IMMIGRATION
AND DEPORTATION OFFICER, BUREAU OF IMMIGRATION,
RESPONDENTS-APPELLANTS.**

G.R. No. L-21423. January 31, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a decision of the Court of First Instance of Manila (Civil Case No. 41676) declaring petitioners to be Filipino citizens and restraining the respondents-appellants Commissioner of Immigration and the Deportation Officer of the Bureau of Immigration, from carrying out a warrant for the exclusion of petitioners-appellees.

It is of record that on May 28, 1958, appellees herein, Go Kiong Ochura and Go Zui Ochura, arrived in Manila from Hongkong, and sought admission as legitimate sons of Isaac Ochura and his wife Chua Suy, who had been recognized by the Department of Justice to be Filipino citizens. Applicants for admission were investigated by a Board of Special Inquiry of the Immigration Bureau, and they submitted their evidence to the Board. After the proceedings closed the Board, by majority vote, decreed the admission of applicants as Filipino citizens.

The Board of Immigration Commissioners reviewed the case and on December 5, 1958, unanimously reversed the decision of the Board of Special Inquiry; held that "there is an absolute lack of evidence to establish the filiation of applicants to their alleged parents," in view of the contradictions and discrepancies in the evidence submitted. Hence, applicants were ordered excluded from the country (Exh. I, Petition Annex A).

Applicants for admission moved for reconsideration and rehearing on December 15, 1958, seeking to introduce additional and new evidence in support of their claims; and were granted bail for their provisional release (Exhs. 2 and 3).

After rehearing the case, the Board of Special Inquiry, in a supplemental decision, with one member again dissenting, reaffirmed the findings of their original decision; and upon review once more, the Commissioners of Immigration on July 10, 1959 reaffirmed their original decision of exclusion without any modification other than to order the exclusion of both the Ochura applicants to be carried out immediately (Exh. K, Petition Annex B).

The applicants then instituted on October 13, 1959 these proceedings in the court below, first in an action to declare them as Filipino citizens; and having secured a preliminary writ of injunction, subsequently amended the petition into one for prohibition and mandamus with preliminary injunction on October 23, 1959. After responsive pleading by the immigration authorities, the case was heard. Thereafter, the Court of First Instance, by decision of May 10, 1963, found that the filiation of petitioners had been proved by preponderance of evidence, because the decisions of the Board of Commissioners are only based on contradictions found in the petitioners' written statements given before a Consul of the Philippines in Hongkong and those given before the Board of Special Inquiry and issued the writs applied for, restraining execution of the warrants of exclusion. Thereupon, the

respondents appealed to this Court.

For proper evaluation of the appealed decision, it is fitting to set here at length the findings of the Board of Immigration Commissioners.

In their original decision the Board said:

"The following facts have neither been contro-verted nor satisfactorily explained. In the ap-plication for alien registration, Form I of ACR No. A-186787, issued to Ysaac Ochura on Decem-ber 26, 1950, it appears that the latter refused to name his children, and so none was listed, while in a similar application of his wife, Go Chua Suy, dated July 27, 1955, only Go An ap-pears therein as her child with Isaac Ochura.

"The discrepancies in their testimonies as to small matters and the intimate facts of their lives are so gross and apparent that even the most gullible cannot avoid the conclusion that applicants' claim of relationship to their alleged parents and consequently, their alleged citizenship, is far removed from the truth.

"Applicants both claim having lived in the same house in China. At the Philippine Consulate in Hongkong, Go Zui Ochura testified that said house consisted of 14 rooms, including the visitor's room. Go Kiong Ochura, in the same investigation, however, alleged that the same house has six rooms and one visitor's room. Then, completely contradicting his previous testimony, Go Zui Ochura before the Board of Special Inquiry declared that their house in China has four rooms upstairs and four rooms down-stairs, or a total of eight rooms. Again at the Philippine Consulate in Hongkong, Go Zui testified that his brother Go Kong did not attend school in China. Go Kong himself, however, claimed to have finished the intermediate grades in Ching kang, China. Before the Board of Special Inquiry, Go Kion testified that their witness Chua Siong Pek, was their nearest neighbor and that his house was adjoining that of the applicants. Contrariwise, at the Philip-pine Consulate, Go Zui asserted that said house is nine or ten houses away from their own.

"At the preliminary investigation conducted by the Immigrant Inspector upon their arrival, ap-plicants testified that their alleged mother, Go Chua Suy, married twice; that the applicants are children of her second marriage, Go Chiong Ochura, being the eldest with the alias name of Antonio Go. At the Board of Special Inquiry's investigation, however, Go Kiong declared that he is the oldest, followed by Go Chion and the youngest is Go Zui. To complicate matters further, Isaac Ochura, the alleged father, declared in the same investigation that Go Kiong and Go Chiong Ochura are twins, and consequently, are of the same age. Then, on page 22 of the BSI investigation, applicant Go Kiong testified that it was their father who married twice, that Go Chiong has no alias name, and that Antonio Go is the alias of his half-brother, Go An.

"No probative value can be given by this Board to the NBI blood test finding of the possible relationship between applicants and their alleged parents, the same being inconclusive.

"In view of the foregoing, this Board holds that applicants Go Kiong Ochura and Go Zui Ochura are not Philippine citizens and are hereby ordered excluded from the country."

After examining the evidence produced at the rehearing, the Board of Commissioners reaffirmed its original decision, saying:

"As prayed for in the present petition, we granted it, prompted by the desire to afford them all the opportunities to prove their cause. In so granting, we were then of the impression that they would present newly discovered evidence, only to discover and observe now that petitioners, in their efforts to extricate themselves from the quagmire of incredibilities and inconsistencies in which they found themselves enmeshed after the original hearing, adduced during the rehearing not newly discovered but cumulative evidence in the form of testimonies of recalled witnesses and testimonies, dubbed additional evidence, of new witnesses named Go Guan and Lim Heng, all intended to make credible the incredibles. But, deeply immersed in it before in the same they are deeper now. To illustrate this latter observation, does it now sound incredible that witness Go Guan, absent

from China many years ago, could tell with exactitude that spouses Isaac Ochura and Go Chua Suy were married in 1933? Too, is it not incredible that the same witness Go Guan who, being in the Philippines, away from China, from the very village of Tang Po where petitioners were allegedly born in and around the years they were supposedly born, could have personally known and remembered with certitude, even waxing categorical, that Go Kiong Ochura and Go Zui Ochura were born in 1934 and 1936, respectively? Bear in mind that said witness is now 51 years old and is testifying on matters not of his own intimate concern and which allegedly happened many many years ago. Also, is it not highly incredible that petitioners and said witness, professing intimate acquaintanceship with each other because they had been for years front door neighbors in their village in China, both petitioners did not and could not tell the witness' name when they were queried in the Philippine Consulate at Hongkong as to the names of those they knew in the Philippines who could testify for them? (See Exhibit "I - Rehearing" and Exhibit "II - Rehearing".) And, yet both know now the name of witnesses Go Guan and Lim Heng. Rehearsed and parroted but rendered nil by the weight of their own inherent incredibility, their testimonies are here given no probative value.

"Premises considered, we are constrained to view again with disfavor their claim. Therefore, let our original decision and order stand un-modified, with the addendum that our previous order of exclusion be now carried out and executed immediately."

We agree with appellants immigration officers that the decision of the Court of First Instance, now under appeal, can not be sustained. It must be remembered that the Commissioners of Immigration refused the entry sought by herein appellants on the basis that they had failed to establish satisfactorily that they were the children of their supposed parents Isaac Ochura and Chua Suy. That finding was one of fact which the Court of First Instance overruled as contrary to the preponderance of evidence. The ruling violated the fundamental tenet in judicial review that executive decisions are conclusive on questions of fact and not subject to review by the courts in the absence of fraud, imposition or mistake other than error of judgment in estimating the value or effect of evidence, regardless of whether or not it is consistent with the preponderance of evidence, so long as there is some evidence upon which the finding in question could be made (*Ortua vs. Singson Encarnacion*, 59 Phil. 440; *Julian vs. Apostol*, 52 Phil. 422).

With particular reference to immigration cases, this Court has long, repeatedly and invariably applied the same criterion, and held that the judicial review must predicated upon a showing of abuse of authority, abuse of discretion or error in the application of the law: *Tan Beko vs. Insular Collector of Customs*, 26 Phil. 254; *Flores Tan vs. Collector of Customs*, 33 Phil. 205; *Guevarra vs. Collector of Customs*, 34 Phil. 394; *Molden vs. Collector of Customs*, 34 Phil. 493; *Ty Buan vs. Collector of Customs*, 34 Phil. 937; *Cheng Tao Liap vs. Collector of Customs*, 55 Phil. 894; *Lao Hian vs. Collector of Customs*, 60 Phil. 556.

The present decision of the court a quo, like that in *Manabat vs. De la Cruz*, L-11228, April 30, 1958, assumed that the case of petitioners-appellees is to be decided on the basis of preponderance of evidence as if it were an ordinary civil action. We pointed out in the *Manabat* case that such an assumption is totally erroneous, because a case of this nature -

"hinges, not on whether the findings of appellants herein (immigration authorities) are supported by the evidence but on whether they had acted without jurisdiction, or so abused their discretion as to exceed their jurisdiction. This is specially true in immigration cases, in which it is well settled, by a long line of decisions, that courts should not disturb the conclusions of fact of immigration authorities, in matters which are within their competence, whenever there is 'some' evidence in support of such conclusions. (*Vicente Gñilo vs. Collector of Customs*, 32 Phil., 100; *Law Sing vs. Collector of Customs*, 27 Phil., 491; *Ty Buan vs. Collector of Customs*, 34 Phil., 937; *Cheng Ka Hee vs. Collector of Customs*, 56 Phil., 622; *Ortua vs. Singson Encarnacion*, 59 Phil., 440.)"

While the Manabat case was brought to Court on certiorari, and the Ochuras here prayed for prohibition and mandamus, the governing principles are the same. Only errors of law, arbitrariness or grave abuse of discretion would authorize the disregard of the factual findings of the Board of Immigration Commissioners, and it is to be hoped that in the future, we will be spared the need of reiterating such a well established doctrine.

That the decision of appellant Commissioners rested mainly on contradictions of the witnesses for the applicants for entry does not negate the fact that there is substantial evidence to support their conclusions, and that the Court below grievously erred in disregarding the same. (cf. Manabat vs. De la Cruz, ante.)

Another error committed by the Court a quo lies in its having disregarded the fact that appellees herein failed to exhaust their administrative remedies, in failing to appeal the decision of the immigration commissioners to the Secretary of Justice, as ruled by this Court in Soriano vs. Galang, L-14323, April 29, 1960 and Board of Commissioners vs. Domingo, L-21274, July 31, 1963.

WHEREFORE, the decision under appeal is reversed, and the appellees' action for prohibition and mandamus is ordered dismissed. Costs against petitioners-appellees Ochura.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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