

VADIM N. CHIRSKOFF, PETIONER, VS. COMMISSIONER OF IMMIGRATION AND DIRECTOR OF PRISONS, RESPONDENTS.

G.R. No. L-3802. October 26, 1951

Ponente: TUASON, J.

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TUASON, J.:

This is a second petition for habeas corpus by Vadim N. Chirskoff, the first petition having been dismissed in an order promulgated on September 7, 1948, in G. R. No. L-2838, entitled Vadim N. Chirskoff vs. The Commissioner of Immigration, et al.; on the authority of Borovsky vs. The Commissioner of Immigration[1](L-2852) and Mejoff vs. The Director of Prisons[2] (L-2855).

The history of the prisoner's detention is thus set forth in the petition. Chirskoff entered the Philippines on June 19, 1946 with a passport duly visaed by the United States Consul in Shanghai, for the purpose of making repairs on and taking delivery of certain vessels purchased by or in behalf of the Java China Trading Co., Ltd. The vessels having been repaired and dispatched to Shanghai, the petitioner remained behind and stayed for the reason, according to him, that he had "suffered an economic collapse and his return to Shanghai became impracticable."

In the meantime Chirskoff obtained employment in a lumber concern in Bataan and later in a similar concern in Floridablanca, Pampanga. It was while working at the latter place that he was arrested by order of the Commissioner of Immigration on March 16, 1948, charged with aiding, helping and promoting "the final objective of the Hukbalahaps to overthrow the Government. After that arrest, specifically on April 5, 1948, the Deportation Board ordered the petitioner's deportation to Russia, not on the ground stated in the warrant of arrest but on the purported ground that he "violated condition of the temporary stay given him by failing to depart from the Philippines upon its expiration, thus rendering himself subject to deportation under Section 37(2) (7) of the Philippine Immigration Act of 1940, as amended." No formal charges for giving aid to Hukbalahaps have ever been filed.

The immigration authorities were unable to carry out the deportation order, and it is alleged that because of that inability the petitioner repeatedly expressed his desire to leave the country on his own account but that his request was not heeded. The petitioner says that he could easily have departed from the Philippines without any expense on the part of the Government when, upon express authority of the respondent Commissioner of Immigration, he secured employment in the Swedish SS. Axel Salem which was to sail from the Philippines in 1948, but, so he states, the respondent Commissioner of Immigration for no valid and practical reason withdrew the said authority.

Except as to the circumstances of the Immigrants' entries into the Philippines, this case and the cases of Borovsky vs. Commissioner of Immigration and Mejoff vs. Director of Prisons referred to in the order dismissing the herein petitioner's first application, are identical. Borovsky's and Mejoff's applications had been denied because arrangements were being made to have the petitioners deported. Like Chirskoff, Borovsky and Mejoff each later filed a second application for habeas corpus docketed as G.R. No. L-4352 and G.R. No. L-4254. Both these

applications have recently been granted for the reason that since the denial of the first a period of over two years had elapsed without the applicants having been deported and the prospects of removing them were not in sight.

In the last mentioned cases we held that foreign nationals, not enemy, against whom no criminal charges have been formally made or judicial order issued, may not indefinitely be kept in detention; that in the "Universal Declaration of Human Rights" approved by the General Assembly of the United Nations of which the Philippines is a member, the right to life and liberty and all other fundamental rights as applied to human beings were proclaimed; that the theory on which the court is given power to act is that the warrant of deportation, not having been able to be executed, is *functus officio* and the alien is being held without any authority of law (*U. S. vs. Nichols*, 47 Fed. Supp. 201); that the possibility that the petitioners might join or aid disloyal elements if turned out at large does not justify prolonged detention, the remedy in that case being to impose conditions in the order of release and exact bail in reasonable amount with sufficient sureties.

Following our decisions in *Borovsky vs. Commissioner of Immigration*, *supra*, and *Mejoff vs. Director of Prisons*, *Mejoff vs. Director of Prisons*, *supra*, it is ordered that the writ issue commanding the respondents to release the petitioner from custody upon these terms; The petitioner shall be placed under the surveillance of the Immigration authorities or their agents in such form and manner as may be deemed adequate to insure that he keep peace and be available when the Government is ready to deport him. The surveillance shall be reasonable and the question of reasonableness shall be submitted to this Court or to the Court of First Instance of Manila for decision in case of abuse. He shall also put up a bond for the above purpose in the amount of P5,000.00 with sufficient surety or sureties, which bond the Commissioner of Immigration is authorized to exact by Section 40 of Commonwealth Act No. 613.

No costs will be charged.

Paras, C. J., Feria, Bengzon, Padilla, Reyes and Jugo, JJ., concur.
Bautista Angelo, J., took no part.

[1] 84 Phil., 161, *supra*, p. 107.

[2] 84 Phil., 218; *Supra*, p. 70.

PABLO, M., concurrente:

El recurrente en esta causa vino a Filipinas el 19 de junio de 1946 con pasaporte debidamente expedido y con visto bueno del consul de Estados Unidos en Shanghai; que no pudo salir de Filipinas y volver a Shanghai por reveses economicos. El recurrente obtuvo empleo en una compania maderera en Bataan y despues en una aserradora en Floridablanca, Pampanga. Mientras estaba emplea- do en esta aserradora, fue arrestado en 16 de marzo, 1948 por una denuncia de que estaba ayudando a los Hukbalahaps; pero en 5 de abril del mismo año, no habiendose establecido su culpabilidad, el Comisionado de Inmigracion ordeno su deportacion, no por ayudar a los Huks, sino por no haber cumplido la condici6n de su permanencia temporal en el pals al expirar el plazo concedido a 51. (Art. 37 (2) y (7) de la Ley de Inmigracion de 1940, tal corno fue enmendada.)

El recurrente, por lo visto, no estd en las mismas condiciones que Boris Mejoff y Victor Borovsky: Mejoff vino a Filipinas como espla del ejercito japones y Borovsky es un vago, borracho y espia. SI recurrente vino con pasaporte y con empleo; despue"s de terminar su trabajo en el barco comprado por la Java China Trading Co., Ltd. en-contro empleo en dos aserradoras; que si no pudo salir fue por razones economicas. No debe confundirse al recurrente Chirskoff con los dos citados.

En mi disidencia en la causa de Mejoff, G. R. No. L-4254, he dicho lo siguiente: "Si el solicitante no hubiera sido espia, si no hubiera venido aquí para ayudar a las hordas japonesas en la subyugación del pueblo filipino, si hubiera venido como visitante, por ejemplo, y, por azares de la fortuna, no pudo salir, yo sería el primero en abogar por su liberación inmediata."

Concurro con la parte dispositiva de la decisión de la mayoría.

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