

TAN KA HO AND TAN KA PIN, BOTH MINORS, AND JOINED BY THEIR MOTHER CHUA TEK HUN @ TSAI BEK YUEN @ CHUA PEK HUN, PETITIONERS-APPELLANTS, VS. THE COMMISSIONER OF IMMIGRATION, RESPO...

G.R. No. L-24307. August 31, 1970

Ponente: CASTRO, J.

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CASTRO, J.:

Appeal from the order dated October 9, 1964 of the Court of First Instance of Rizal (Branch VIII-Pasig) in its civil case 7495.

On October 12, 1960 Chua Tek Hun alias Chua Fek Hun alias Tsai Bek Yuen and her minor son, Tan Ka Ho, executed before the Philippine Consul in Hongkong, affidavits in support of their respective applications for temporary visitor's visas to the Philippines, which affidavits read in part as follows:

"(1) That I am applying for temporary visi-tor's visa to the Philippines to visit my husband [father], Tan Hui Long @ Tan Huy Liong, a Chinese permanent resident merchant of the Philippines and residing at No. 1888 M. del Pilar Street, Manila;

"(2) That while in the Philippines, I shall never apply for a change of status from tempo-rary visitor; and

"(3) That I shall only stay in the Philippines for ninety (90) days, unless otherwise ex-tended by the proper authorities."

On October 15, 1960 the a forenamed mother and son and Tan Ka Pin, another minor son (all hereinafter referred to as the petitioners), arrived in Manila, aboard a PAL plane from Hongkong, and were admitted (in immigration cases 21801-E to 21803-E) for a stay of three months upon their posting a cash bond in the sum of P24, 000.

On October 21, 1960 the Court of First Instance of Manila rendered a decision in naturalization case 42268 granting the peti-tion for naturalization of Tan Huy Liong. Thereupon, the Secreta-ries of Foreign Affairs and Justice, in their indorsements of December 2 and December 6, 1960, respectively, allowed the peti-tioners a change of category from that of temporary visitors to that of special non-immigrants under sec. 47(a)(2) of the Immigra-tion Act of 1940, and extended their stay in the Philippines until October 21, 1962.

The Bureau of Immigration, however, subsequently re-fused to receive the petitioners' tendered extension fees for the period following August 25, 1962. Consequently, Tan Huy Liong filed on August 23, 1962 with the Court of First Instance of Manila a complaint for mandamus and prohibition with mandatory injunc-tion and preliminary injunction against the Bureau of Immigration, docketed therein as civil case 51343. The said complaint was, however, dismissed by the court on September 19, 1962, which dismissal became final and executory in view of the withdrawal by the petitioner therein of his appeal.

Thereafter, on February 21, 1963, the Court of First Ins-tance of Manila (Branch X) denied Tan Huy Liong's

motion to take his oath. He appealed this order of denial to this Court which affirmed said order and denied his petition for naturalization.[1]

On December 10, 1962 the Commissioner of Immigration (hereinafter referred to as the respondent) confiscated the petitioners' cash bond and declared it forfeited in favor of the Philippine Government, and, on December 17, 1962, issued a warrant for their arrest to effect their deportation from the Philippines. The petitioners, on December 26, 1962, filed with the Court of First Instance of Rizal civil case 7495, which is a petition for prohibition with preliminary injunction against the respondent, to enjoin him and his agents from causing their arrest, confinement, a deportation, as well as the confiscation of their cash bond. The court a quo issued on the same day a restraining order and scheduled the hearing on the application for the issuance of a writ of preliminary injunction. A motion to dismiss with opposition to preliminary injunction was filed by the respondent on January 11, 1963. But in an order dated June 8, 1963 the trial court denied the said motion and ordered the respondent to file his answer.

The parties submitted a complete stipulation of facts on December 7, 1963. On October 9, 1964 the trial court issued an order dismissing the petition, with costs against the petitioners. The restraining order previously issued was ordered lifted and set aside.

Hence this appeal.

The lone issue tendered for resolution is, have the petitioners acquired the right to remain in the Philippines beyond the authorized period of their stay?

The petitioners premise their alleged right to prolong their stay in the Philippines on the pendency of the naturalization case of Tan Huy Liong, the husband and father, and on the possibility that the latter may eventually be granted Philippine citizenship. This is apparent from the arguments which they advance with some degree of vehemence. Thus, the petitioner Chua Tek Hun alias Chua Pek Hun alias Tsai Bek Yuen argues that she has the inchoate legal right to be admitted for permanent residence in the Philippines under sec. 13(b) of the Philippine Immigration Act of 1940, as amended, upon the admission of her husband as a naturalized Filipino citizen, subject to her compliance with the last paragraph of section 9 of the said Act. Upon the other hand, the petitioners Tan Ka Ho and Tan Ka Pin, both minors then but now of age,[2] assert that they have the inchoate legal right to be considered as Filipino citizens upon the admission of their father as a naturalized Filipino citizen, and therefore are entitled to stay so that they may enroll in a public or private school recognized by the Government wherein Philippine history, government, and civics are taught or prescribed, during the pendency of the naturalization case of their father, to enable the latter to comply with sec. 2, paragraph 6 of the Revised Naturalization Law. In-deed, even the Secretaries of Foreign Affairs and Justice based their decision to extend the petitioners' stay in the Philippines until October 21, 1962, upon the fact that Tan Huy Liong's petition for naturalization had been granted. Their respective indorsements extended the period of stay to October 21, 1962 because "... the petition of their husband/father, Tan Huy Liong, for naturalization as Philippine citizen has been granted by the Court of First Instance of Manila in its decision dated October 21, 1960, which has not been appealed,"[3] and "The herein petitioners will become citizens by operation of law, if otherwise qualified, when the decision of the court becomes executory after two years from its promulgation, pursuant to Republic Act No. 530." [4]

Tan Huy Liong's motion to be allowed to take his oath as a naturalized Filipino citizen, however, was denied by the Court of First Instance of Manila on February 21, 1963, which order of denial was affirmed by this Court on February 28, 1966 in *Tan Huy Liong v. Republic*, supra. This final denial of Tan Huy Liong's petition for naturalization has completely removed the props of the petitioners' argument that they have acquired the right to

re-main in the Philippines beyond the authorized period of their stay because of the pendency of their husband/father Tan Huy Liong's naturalization case. And, since the authorized extension of their stay in the Philippines expired on October 21, 1962, their continued presence in this country has become illegal, rendering them liable to arrest, with resultant confiscation of their bond, and subsequent deportation in accordance with section 37(a)(7) of the Immigration Act of 1940, which reads:

"Sec. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

"(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant."

Verily, respondent can now legally order the arrest and cause petitioners as well as the confiscation of cash bond in favor of the Philippine Government.

ACCORDINGLY, the appealed order dated October 9, 1964 of the Court of First instance of Rizal is affirmed, at petitioners' cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Tan Huy Liong v. Republic, L-21671, Feb. 28, 1966.

[2] Tan Ka Ho was born on May 5, 1942, Tan Ka Pin on August 8, 1949.

[3] 1st Indorsement of the Secretary of Foreign Affairs dated December 2, 1960.

[4] 2nd Indorsement dated December 6, 1960 of the Secretary of Justice.

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