

**DOLORES NERIA, ETC., ET AL., PETITIONERS-APPELLEES, VS.
MARTINIANO P. VIVO, AS COM-MISSIONER OF IMMIGRATION, ETC.,
ET AL., RESPONDENTS-APPELLANTS.**

G.R. Nos. L-26611-12. September 30, 1969

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The three petitioners, Dolores, Felix and Manuel, all sur-named Neria, arrived in Manila from Hongkong on board a plane of the Cathay, Pacific Airways on July 9, 1961. They were followed by the two other petitioners Simeon and Ramon Neria who arrived on July 16.

The matter of the admission of Dolores, Felix and Manuel Neria was referred to the Board of Special Inquiry No. 1 which, on August 2, 1961, after investigation, found Dolores Neria to be a Fi-lipino citizen and Felix and Manuel Neria to be her illegitimate minor children by a Chinese national, Gan Chong Bing, and accord-ingly voted to admit them. In a separate proceeding, the board found Simeon and Ramon to be likewise the illegitimate children of Dolores Neria and likewise adjudged them entitled to be admitted as Filipino citizens.

Pursuant to section 27(b)[1] of the Philippine Immigration Act of 1940, the decision admitting Dolores, Felix and Manuel Neria was forwarded for review to the Board of Immigration Com-missioners. The record is not clear whether the decision with respect to Simeon and Ramon was submitted to the board of com-missioners for review although all the identification certificates issued to Felix, Manuel, Simeon and Ramon Neria on September 1, 1961 explicitly and uniformly recite that they had been admitted as "citizens of the Philippines as per Decision of the Board of Spe-cial Inquiry No. 1 dated August 2, 1961 duly affirmed by the majo-riety members of the Board of Commissioners."

On January 24, 1962, the Secretary of Justice issued the following memorandum:

"It appearing that for the past several years, the Board of Commissioners of Immigration has not met collectively to discuss and deliberate on the cas-es coming before it (Memorandum dated January 16, 1962 of the former First Deputy Commissioner of Im-migration and the Memorandum dated January 19, 1962 of the Commissioner of Immigration), pursuant to the authority vested in the Department Head by Section 79(c) of Act No. 2711, as amended, the public interest so requiring, it is hereby ordered that all decisions purporting to have been rendered by the Board of Com-missioners on appeal from, or on review motu proprio of, decisions of the Board of Special Inquiry are set aside. The Board of Commissioners is directed to review in accordance with Section 27(b) of Com-monwealth Act No. 613, as amended, all decisions of the Board of Special Inquiry admitting entry of aliens into the country and give preference to all cases where entry has been permitted on the ground that the en-trant is a citizen of the Philippines, following the prin-ciple laid down in Section 30 of Commonwealth Act 613, as amended, that 'the burden of proof shall be upon such alien to establish that he is not subject to exclu-sion' and the ruling of this Department that 'Citizenship is a status or privilege, power and honor of ines-timable value. When doubts exist concerning a grant of it, they should be resolved in favor of the Go-vernment against the claimant.' (1st Indorsement, April 12, 1947, from Secretary of Justice Roman

Ozaeta to the Commissioner of Immigration.)"

It appears in fact that the immigration commissioners did not deliberate as a board but merely acted individually on this case. Thus Associate Commissioners Talabis and De la Rosa scribbled "noted" on the decision while the chairman, Commissioner Galang, wrote "exclude."

So in August 1962 a new Board of Immigration Commissioners proceeded *motu proprio* to review the proceedings of the board of special inquiry with respect to Dolores, Felix and Manuel Neria and, finding that they have not "satisfactorily established their claim to Philippine citizenship," ordered them excluded "as aliens not properly documented for admission pursuant to the provisions of section 29(a)(17) of the Philippine Immigration Act of 1940, as amended, and returned to the port whence they came or to the country of which they are nationals." No review of the board of special inquiry decision admitting the other petitioners Simeon and Ramon was conducted, and it is now claimed that none could be made because the records of the case were missing.

On July 23, 1965 the Commissioner of Immigration issued a warrant of arrest for the apprehension and eventual deportation of the petitioners, the warrant stating:

"WHEREAS, it has been shown to the undersigned and the undersigned is satisfied that DOLORES NERIA, 51, PIO, 22, FELIX, 15, MANUEL, 13, AL-FONSO, 27, VICTOR, 26, JUAN, 16, SIMEON, 24, and RAMON, 17, all surnamed NERIA, is [sic] a citizen or subject of the Republic of China who is now in the Philippines;

"WHEREAS, it has also been shown to the undersigned and the undersigned is satisfied that the above-named aliens is [sic] subject to deportation under Section 37(a)(1) and 37(a)(2) of the Philippine Immigration Act of 1940, as amended, in view of the following facts and circumstances:

"That being Chinese aliens not lawfully admissible to this country, on the basis of a cablegram bearing the signature of the Secretary of Foreign Affairs Felixberto M. Serrano, by false statements and testimonies, they succeeded in securing documentation as Filipino citizens and were able to gain entry into this country as Filipino citizens by means of said fraudulently obtained documentations and by false and misleading statements and misrepresentations, they being aliens not properly documented for admission; that as to Dolores Neria, she gained entry on the false and fictitious claim that she was born in Makati, Rizal on January 14 or 15, 1914, as the alleged child of Juan Neria and Eladia R. Pedro and the rest of the above-named persons were claimed as the illegitimate children of Dolores Neria by her common law husband, Gan Chong Bing, a Chinese who was not married, to her, said claim being false.

"NOW, THEREFORE, by virtue of the authority vested in the undersigned by law, you are hereby commanded to apprehend the above-named alien [sic] said to be residing at wherever found and to bring him [sic] before the undersigned for the said alien to show [sic] cause, if any there be, why he [sic] should not be deported from the Philippines under the provisions of the Philippine Immigration Act of 1940, as amended."

The petitioners Neria therefore filed these cases for certiorari and prohibition in the Court of First Instance of Manila.[2] They charged that the new Board of Immigration Commissioners acted without or in excess of its jurisdiction and with grave abuse of discretion in reversing the decision of August 2, 1961 of the board of special inquiry because the said decision had by then become final, one year having elapsed from the date it was promulgated. Consequently, it was claimed that as their status as Filipinos had finally been settled by the decision of the board of special inquiry, the warrant of arrest issued by the Immigration Commissioner was illegal.

In their answer the respondents claimed that the petitioners succeeded in gaining entry into the country on the strength of a cablegram purportedly sent to the Philippine Consulate in Hongkong by the Secretary of Foreign

Affairs; that the decision of the board of special inquiry had not been validly affirmed by the first Board of Immigration Commissioners as the members thereof did not deliberate en banc on the matter but merely acted thereon individually, two members indicating that they had "noted" the decision under review, while the chairman voted to "exclude" the petitioners; that there having been no prior valid review, the new Board of Immigration Commissioners could lawfully revoke the decision of the board of special inquiry; that even assuming that the previous review was valid, there is nothing in the law precluding a new Board of Immigration Commissioners from reversing its prior decision provided it does so within one year from the promulgation of the decision under review; and that decisions of immigration authorities do not constitute *res judicata* so as to bar re-examination of the alien's right to enter or to stay.

On March 24, 1966 the lower court rendered judgment setting aside the decision of the new Board of Commissioners as well as the warrant of arrest issued by the Immigration Commissioner for lack of jurisdiction and grave abuse of discretion. The court found that at the time the new Board of Immigration Commissioners promulgated its decision reversing that of the board of special inquiry, the one-year period provided in section 27(b) of the Philippine Immigration Act of 1940 had expired, because while the reversing decision appears to be dated August 2, 1962 it was in point of fact promulgated on August 8, 1962 and that the latter date was changed to August 2, 1962 to make the decision conform to section 27(b). The court likewise held that it was error for the new board to proceed with the review without previously notifying the parties because "motu proprio review" does not mean "ex-parte review."

The respondents appealed to this Court,

As we have already stated these cases were tried in the court a quo on the issue of whether the new Board of Commissioners had the power to review the decision of the board of special inquiry. In the companion case of *Pio Neria v. Commissioner of Immigration*[3] (which arose out of the same facts involved in the present cases), we found that the decision of the Board of Commissioners, reversing that of the board of special inquiry; was actually promulgated on August 8, 1962 and not on August 2, 1962 as pretended, and for that reason we held 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.'"

Consequently, it would seem sufficient to base affirmance of the lower court's decision in these cases now before us on the authority of the other *Neria* case, since all these cases arose out of the same facts and were decided on the same theory. The respondents now claim, however, that the warrant of arrest was issued not in consequence of the decision of the new Board of Immigration Commissioners but rather on grounds warranting the deportation of the petitioners. Otherwise stated, the argument is that the warrant of arrest was issued not under the authority of section 427(b) but under section 37(a)(1) and (2)[4] of the Philippine Immigration Act of 1940. In fact the respondents confidently assert in their brief that it is immaterial whether or not the decision of the new Board of Immigration Commissioners is valid because "Precisely, the warrant of arrest ... was issued premised on the assumption (because petitioners had assailed in other cases the validity of said decision [see G.R. L-24800]) that exclusion proceedings had lapsed on the expiration of the one-year period prescribed under Section 27(b) of the Immigration Act of 1940, as amended. Hence, it is but proper to commence deportation proceedings under Section 37 of the same law, complementing Section 27(b)."

The respondents' present stance involves a complete change of theory, which, of course, is not permissible. Thus, while they went to trial in the lower court below on the theory that the warrant was issued to implement and carry out the decision of the new Board of Commissioners finding the petitioners to be aliens and that the decision of the new Board was valid because it was rendered within a year of the promulgation of the decision of the board

of special inquiry which it sought to reverse, it is now the respondents' contention that the validity of the new Board's decision is immaterial because the warrant of arrest was issued not in consequence of that decision but rather of contemplated deportation proceedings against the petitioners.

What is more, what was expressly and unequivocally found by this Court in the other *Neria* case to be a warrant of exclusion is now in effect sought to be nullified as it is now claimed that the said warrant was actually a warrant of arrest because the case of the present petitioners is not one for exclusion but for deportation, and that the arrest of the petitioners in these cases as well as the petitioner in the other *Neria* case was sought in one and the same warrant and not in different ones. The respondents now point to the recitals of the warrant to support their contention that it was issued under the authority of section 37 on deportation. But what of our finding in the other *Neria* case? As already stated, these cases at bar arose out of the same facts as the other *Neria* case and so our ruling in the latter case must be deemed to be the law of the present cases.

But there is a more fundamental and insurmountable objection to the respondents' new theory. It is that no warrant of arrest can be issued by immigration authorities before a final order of deportation is made. For until it is established that an alien lawfully admitted gained entry into the country through illegal means and his expulsion is finally decreed, his arrest cannot be ordered.^[5] As this Court explicitly said in *Vivo vs. Montesa*, *supra*:

"[T]he issuance of warrants of arrest by the Commissioner of Immigration, solely for purposes of investigation and before a final order of deportation is issued, conflicts with paragraph 3, Section 1, of Article III (Bill of Rights) of our Constitution, providing:

"3. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized."

"It will be noted that the power to determine probable cause for warrants of arrest is limited by the Philippine Constitution to judges exclusively, unlike the previous organic laws and the Federal Constitution of the United States that left undetermined which public officials could determine the existence of probable cause. And in *Qua Chee Gan, et al. vs. Deportation Board*, L-20280, promulgated on September 30, 1963, this Court pointed out that Executive Order No. 69, of July 29, 1947, issued by President Roxas, in prescribing the procedure for deportation of aliens, only required the filing of a bond by an alien under investigation, but did not authorize his arrest.

"Discussing the implications of the provision of our Bill of Rights on the issuance of administrative warrants of arrest, this Court said in the same case:

"Under the express terms of our Constitution it is, therefore, even doubtful whether the arrest of an individual may be ordered by any authority other than the judge if the purpose is merely to determine the existence of a probable cause, leading to an administrative investigation. The Constitution does not distinguish between warrants in a criminal case and administrative warrants in administrative proceedings. And if one suspected of having committed a crime is entitled to a determination of the probable cause against him, by a judge, why should one suspected of a violation of an administrative nature deserve less guarantee? Of course it is different if the order of arrest is issued to carry out a final finding of a violation, either by an executive or legislative officer or agency duly authorized for the purpose, as then the warrant is not that mentioned in the Constitution which is issuable only on probable cause. Such, for example, would be a warrant of arrest to carry out a final order of deportation, or to effect compliance of an order of contempt.

"The contention of the Solicitor General that the arrest of a foreigner is necessary to carry into effect the power of deportation is valid only when, as already stated, there is already an order of deportation. To carry out the order of deportation, the President obviously has the power to order the arrest of the deportee. But, certainly during the investigation, it is not indispensable that the alien be arrested. It is enough, as was true before the executive order of President Quirino, that a bond be required to insure the appearance of the alien during the investigation, as was authorized in the executive order of President Roxas.'

* * *

"We see no reason why the cautionary bond requirement of the 1947 Executive Order No. 69 of President Roxas should not apply to deportation proceedings initiated by the Immigration Commissioners, considering the identity of ends sought to be served. Such notice and bonds should suffice to ensure the subjects' appearance at the hearings, without prejudice to more drastic measures in case of recalcitrant respondents. But as long as the illegal entry or offense of the respondents has not yet been established and their expulsion finally decided upon, their arrest upon administrative warrant violates the provisions of our Bill of Rights. The constitutional guarantees of individual liberty must be liberally construed and applied if we are to enjoy the blessings of a regime of justice, liberty and democracy that the Philippine Constitution sought to secure and consolidate." (emphasis supplied)

ACCORDINGLY, the decision appealed from is affirmed. No pronouncement as to costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, and Teehankee, concur.

Barredo, J., did not take part.

Reyes, JBL, J., on official leave.

[1] Section 27(b) pertinently provides as follows:

"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."

[2] The first one, civil case 63414 (now L-26611), was filed on November 26, 1965 by Dolores Neria in her own behalf and in that of Felix and Manuel Neria, while the second one, civil case 63467 (now L-26612), was also filed by her on December 1, 1965 in representation of Simeon and Ramon Neria. The cases were jointly tried and decided by the lower court.

[3] L-24800, May 27, 1968, 23 SCRA 806.

[4] "(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:

"(1) Any alien who enters the Philippines after the effective date of this Act by means of false and misleading statements or without inspection and admission by the immigration authorities at a designated port of entry or at anyplace other than at a designated port of entry;

"(2) Any alien who enters the Philippines after the effective date of this Act, who was not lawfully admissible at the time of entry;"

[5] E.g., *Vivo vs. Montesa*, L-24576, July 29, 1968, 24 SCRA 155; *Qua Chee Gan vs. Deportation Board*, L-20280, Sept. 30, 1963, 9 SCRA 27; cf. *Morano vs. Vivo*, L-22196, June 30, 1967, 20 SCRA 562.

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