

**CHIONG TIAO BING AND CHIONG TIAO SIONG WHO IS A MINOR AND
HEREIN REPRESENTED BY HIS FATHER CHIONG PHAI HUN,
PETITIONERS AND APPELLEES, VS. THE COMMISSIONER OF
IMMIGRATION, RESPO...***G.R. No. L-9966. September 28, 1956*

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

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Petitioners Chiong Tiao Bing and Chiong Tiao Siong, brothers of Chinese nationality, were permanent residents of the Philippines, with their parents, prior to 1940. On that year, petitioners, being then age 7 and 2 respectively, were sent by their parents to China for a temporary sojourn there, and were issued Special Return Certificates Nos. 43689 and 43690 upon departure. Apparently because of the confusion of the last Pacific war, petitioners were unable to return before the expiry of their return certificates, and remained in China. After the war, efforts were exerted to secure their re-entry; but before the negotiation could be concluded, the onrush of the Communist forced petitioner to quit China. They then applied and secured temporary visitor visas for the Philippines, and on the strength thereof were admitted into the country, on May 25, 1949, and rejoined their parents. Their temporary visitor visas having been expired on May 25, 1950, warrants for their arrest were issued and deportation proceedings instituted. The Board of Immigration Commissioners ordered them deported, and they applied to the Court of First Instance of Manila to quash the order and stay its execution, on the basis that as of June 25, 1954, the First Deputy Commissioner of Immigration had "corrected" their status from "temporary visitors" to "returning residents" and as such they had a right to permanent stay and were no longer subject to deportation. The Government answered that on August 3, 1955, the Commissioner of Immigration had set aside the order of the First Deputy, and that to change their status petitioners should first depart from the Philippines as required by the immigration law and regulations, specially Commonwealth Act 613, section 9, as amended by Republic Act 503.

The Court of First Instance held that the provision of the Bulletin No. 1 concerning the Philippine Immigration Act (Commonwealth Act 613) to the effect that—

"To obtain permanent admission, a non-immigrant alien must depart voluntarily to some foreign country (anyone in which he can secure admission), and procure from the appropriate consul the proper visa and thereafter undergo examination by officers of this Bureau at a Philippine port of entry for determination of his admissibility in accordance with the requirements of the Immigration Law."

does not apply to the petitioners herein in view of the fact that their status had not been "changed" but merely "corrected" to their proper status of returning residents under the law, section (d), Republic Act 503. The Court below, therefore, set aside the order of August 3, 1953, and permanently enjoined the deportation.

The Commissioner of Immigration has appealed to this Court, invoking our ruling in *Ong See Lun vs. Board of Immigration Commissioners*, 95 Phil., 785, wherein the Court held:

"The requirement that the alien should first abandon the Islands before seeking permanent admission therein is justified by the consideration that in accepting the status of a temporary visitor the alien in effect accepts that he is not entitled to permanent admission; and to allow him to change his status without first departing (as he obligated himself to do) would be encouraging the entry of aliens on false pretenses. Considerations of convenience or efficiency must yield to the definite and express policy of the Republic in its dealings with aliens; and it is well to note that the procedure outlined in Immigration Bulletin No. 1, was sanctioned and reiterated in practically the same terms by Republic Act No. 503, Section 3. An alien's presence and stay in this country being a matter of privilege, he must be held to a strict observance of the laws concerning his admission."

It will be noted in the preceding excerpt that the ruling invoked by the Immigration Commissioner is essentially one based on fraud and estoppel. It is clear that if an alien gains admission to the Islands on the strength of a deliberate and voluntary representation that he will enter only for a limited time, and thereby secures the benefit of a temporary visa, the law will not allow him subsequently to go back on his representation and stay permanently, without first departing from the Philippines as he had promised. No officer can relieve him of the departure requirements of section 9 of the Immigration Act, under the guise of "change" or "correction", for the law makes no distinctions, and no officer is above the law. Any other ruling would, as stated in our previous decision, encourage aliens to enter the Islands on false pretenses; every alien, so permitted to enter for a limited time, might then claim a right to permanent admission, however flimsy such claim should be, and thereby compel our government to spend time, money and effort to examining and verifying whether or not every such alien really has a right to take up permanent residence here. In the meanwhile, the alien would be able to prolong his stay and evade his return to the port whence he came, contrary to what he promised to do when he entered. The damages inherent in such ruling are self-evident.

But the circumstances of petitioners' entry negates any misrepresentation or estoppel. The state does not deny that they originally had the right to return as permanent residents; that they had been exercising efforts to have that right recognized since the termination of the Pacific war, and that their acceptance of the temporary visitor's visa was due to their effort to escape from the Communist forces that shortly afterwards took over their place of residence in China. The Philippine Government was not therefore misled as to the real claims of petitioners, that they were returning residents; and hence, taking into account that petitioners were themselves minors when they returned, we believe the Ong See Lun ruling does not apply to their case. In effect, the issuance of a temporary visa in their favor appears as an assent on the part of the Philippine authorities to their entry pending final decision on their right to return. The decision in their favor was made in the order of Deputy Commissioner De la Rosa on June 25, 1954 (Exhibit A), which could not be validly revoked without notice to and due hearing of petitioners herein.

It is true that petitioners appear to have taken steps to finally determine their status only after their deportation was ordered. Considering their minority, however, we do not believe that the delay should be rigorously held against them.

The decision appealed from is affirmed. No costs.

Paras, C. J., Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

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